UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF JUSTICE

TO : Burke Marshall
Assistant Attorney General
Civil Rights Division

DATE:

BM:JAB:ieb

FROM : Joseph A. Barry, Head
Federal Custody Unit
Appeals and Research Section

SUBJECT: American Bar Association, Civil Rights Committee

The following opinions and information concerning the backgrounds and beliefs of the members of the Civil Rights Committee of the American Bar Association were obtained by telephone calls which I made to the United States Attorneys in the federal Districts of residences of the Committee members. The only exception is the information concerning Thomas G. Greaves, Mobile, Alabama, which Mr. Greene obtained through Ed Smith of the Tax Division. I could not reach the United States Attorney at Boston to inquire about the member from that city, as he is on leave till August 1st.

William P. Gray, Los Angeles, California

Mr. Gray is a lawyer of very fine reputation in his community; has held office in the State and City Bar. He was once law clerk to Judge Harold Stevens of the Court of Appeals for the District of Columbia. He is presently engaged in handling a case for Assistant Attorney General Ramsey Clark of the Lands Division concerning a matter from Long Beach, California.

On his civil rights attitude it is of some signifiance that he has made speeches to various groups on the thesis that the State Bar cannot take action against persons accused of being Communists unless there is evidence available of meaningful association with Communist groups. It appears that some attorneys in the local Bar had been urging action against attorneys accused of Communist leanings. United States Attorney Whelan added that there is no question of Mr. Gray's loyalty; he is a former naval officer. Mr. Whelan also added that "concerning the Supreme Court, Mr. Gray considers it a fine institution," and he thinks highly of Justice Warren.

James D. Fellers, Oklahoma City, Oklahoma
Colonel Harold J. Sullivan
Tinker Air Force Base, Oklahoma

United States Attorney B. Andrew Potter advised me that Colonel Sullivan is the Judge Advocate General at Tinker Air Force Base which is at Oklahoma City. He is an Oklahoma lawyer by education, about 50 years old and has been stationed now in Oklahoma about two years. Mr. Potter did not have information concerning Colonel Sullivan's civil rights feelings. Attached is a memorandum to Assistant Attorney General Oberdorfer, Tax Division, reporting that Colonel Sullivan has written an article on "Equal Justice for the Accused" (Geo. L.J. 49:168, Yale 1960).

United States Attorney Potter advised that Mr. Fellers is also an attorney with the highest reputation in the community; he sees him frequently but does not know him personally. Mr. Potter said that he would find out for us whether Mr. Fellers or Colonel Sullivan have any connections with organizations in civil rights work. There is one colored Assistant United States Attorney in the office who can readily obtain this type of information. Mr. Potter offered to "visit with" Colonel Sullivan and Mr. Fellers to determine their civil rights beliefs but I advised him that unless he heard further from us a discreet check of possible organizations affiliations would suffice. Since then the United States Attorney has advised me by letter that "it would appear that neither Mr. James D. Fellers nor Colonel Harold Sullivan have, in the past, engaged in any type of civil rights or race relations work."

Karl C. Williams, Rockford, Illinois

I called United States Attorney James P. O'Brien at Chicago since Rockford is in his district. Mr. O'Brien advised that Rockford is about

90 miles from Chicago and that they had a term of court there for only a few days per year; court being held actually at Freeport, Illinois, which is within a few miles of Rockford. Mr. O'Brien had no information or acquaintanceship with Mr. Williams. He offered to have the Bureau run a name check on Mr. Williams but I advised him that we should hold up on this unless he heard from us further. (Actually a name check would only amount to the Federal Bureau of Investigation's checking their files to determine whether they had any information concerning Mr. Williams). I presume we could authorize this through the Central Office here without any stir.

Earl Morris, Columbus, Ohio

United States Attorney Joseph Kinneary advised that he is well acquainted with Mr. Morris; that he is a man of very fine reputation in the community, very active in the Ohio State Bar. Mr. Kinneary said that he is the person who handles for the State, American Bar Association recommendations re federal judicial appointments.

Mr. Kinneary also said Mr. Morris is an "eager beaver" who is very community minded, that he had been educated at Williamsburg College at Springfield, Ohio; that Mr. Kinneary got the impression that he was "a big man on campus", in his college days. He studied law at Harvard and is considered a very fine trial lawyer. Mr. Kinneary said that Mr. Morris was a very fine person in every way but he was "not the sort of fellow whom one would pick as a companion on a two week canoe trip."

He did not have any information as to Mr. Morris' civil rights feelings but he observed that most American Bar Association lawyers who attain stature in the organization are very conservative in their thinking. Later in the afternoon Mr. Kinneary called me to advise that persons of whom he had inquired had told him that Mr. Morris had been very active in all sorts of civic affairs but that one informant believed that he was working more for his own aggrandizement, to achieve status

in his community. He believed that it was one of Morris' ambitions to become president of the American Bar Association. He said however that he does not believe that Morris would get on the civil rights committee unless he intended to work and contribute. He said that while up to now Morris' views may have reflected the attitude of his conservative corporate clients on civil rights -- to ignore the problem and hope it would resolve itself in time -- that he may now be reading the signs of the times for the advancement of the Negro and he may be active in the movement.

James E. Fauer, Salt Lake City, Utah

United States Attorney William T. Thurman at Salt Lake City, Utah, advised me that Mr. Fauer is a man of very fine reputation, president of the Utah Bar Association, about 40 years old. Mr. Thurman said that he does not have knowledge of any bias or prejudice on his part. He also stated that Mr. Fauer is a very conservative person; that he is a Democrat and was recently chairman of a Democrats' dinner for Senator Moss. He is also a high official of the Mormon faith. Mr. Thurman advised that civil rights problems are rather uncommon in Utah; there are only about 1500 colored in the State which has between 750,000 and 800,000 people.

John H. Gordon, Tacoma, Washington

United States Attorney Brockman Adams advised me he knew nothing about John H. Gordon of Tacoma, Washington, but that he would inquire and call me back. I had mentioned that Mr. Schweppe was from Seattle. He volunteered that Mr. Schweppe was a "civil-rights conscious conservative"; definitely not a "fire brand liberal." Mr. Adams advised me that Schweppe had been a co-author of the famous Bricker Amendment which you will recall was designed to keep us out of "foreign entaglements" including, I believe, the United Nations. The attached copy of a Memorandum to Assistant Attorney General Oberdorfer, Tax Division, lists articles written by Mr. Schweppe on civil rights subjects.

Mr. Adams called me back to advise that he had found out that Mr. Gordon is a very conservative attorney. However, he did attend the recent press conference in the White House on civil rights. Mr. Adams explained that as far as both Mr. Gordon and Mr. Schweppe were concerned it would not be inconsistent with their "conservatism" for them to be interested in civil rights matters; "that they could very well be mavericks in this area." I believe he said it was Schweppe who had initiated several "crusading" taxpayer suits in his city.

Vincent P. McDevitt
Philadelphia, Pennsylvania

United States Attorney Drew J. T. O'Keefe of Philadelphia advised me that Mr. McDevitt is a top flight lawyer and is a Vice President and General Counsel of the Philadelphia Electric Company. He has always been active in the American Bar, is a former Chancellor of the Philadelphia Bar, and is about 60 years old. He is a very level headed man with good judgment. Mr. O'Keefe said Mr. McDevitt is not connected in any civil rights organizations.

Mr. O'Keefe before becoming United States Attorney was retained by Mr. McDevitt to handle some complaints made to the Human Relations Committee which is a city organization handling complaints of unfair employment practices. Mr. O'Keefe advised that these few complaints had been settled well. He also stated that the Philadelphia Electric Company has a history of 50 years of employing colored people.

Rush H. Limbaugh
Cape Girardeau, Missouri

United States Attorney Richard D. FitzGibbon, Jr., advised me that Cape Girardeau is about 125 miles south of St. Louis and that there is very little in the way of a civil rights movement there. Mr. FitzGibbon has two Negro Assistant United States Attorneys and neither will go to Cape Girardeau to try cases and Mr. FitzGibbon "agrees with them."

There are two Rush H. Limbaughs, senior and junior, and the United States Attorney believes that the committee appointment is the junior who is about 42 years old. Both Limbaughs are excellent lawyers, members of a leading firm in Cape Girardeau. He believes they will uphold the courts' decisions in spite of their upbringing.

Sherwood Wise, Jackson, Mississippi

United States Attorney Robert E. Hauberg advised me that Wise is an ex-president of the Mississippi State Bar. He is about 50 years of age. He attended the Presidential meeting some ten days ago on civil rights. United States Attorney Hauberg said that he believed that Mr. Wise's attitude on civil rights would be that the State should be permitted to work out its problems.

Walton J. McLeod, Jr.
Walterboro, South Carolina

United States Attorney Terrell Glenn advised me that McLeod is an administration man; conservative; a fair lawyer. He is not a civil rights champion but will support the orders of the courts. Mr. Glenn mentioned that the South Carolina Bar has just recently passed a resolution condemning any intemperate criticism of courts' decisions. Mr. Glenn stated that McLeod is a reasonable man; a better man might have been picked for the job but that he thought McLeod would be o.k. He has enough confidence in him to say that if he had a problem in Walterboro he would go to McLeod to have it handled.

Thomas G. Greaves, Mobile, Alabama

Mr. Greene spoke to Mr. Smith in the Tax Division who has known Mr. Greaves for a considerable period of time. Mr. Greaves is very active in the ABA. He holds a relatively high position in the organization. He is very intelligent and "conservative in the best sense of the word." He takes his law seriously. He probably would favor encouraging respect for the courts and the law of the land. Not radical, but a man who is reasonable.

William B. Spann, Jr., Atlanta, Georgia

United States Attorney Charles L. Goodson does not know Mr. Spann other than to know him when he sees him; to the best of his knowledge however he is a good lawyer of good standing, and with a good firm. On civil rights matters he would expect Mr. Spann he says to be against the public accomodations bill. He, in response to my question, agreed that Spann, though definitely not a "liberal", was a reasonable man who would go along with the courts.

Charles P. Light, Jr.
Dean of Washington and Lee Law School
Lexington, Virginia

United States Attorney Thomas B. Mason, Roanoke, Virginia, advised me that Dean Light has an excellent reputation but to his knowledge has not been outspoken in matters pertaining to civil rights. Neither the United States Attorney nor two of his assistants who attended Washington and Lee know of any organizations on civil rights matters to which Dean Light belonged. He said he is a Colonel in the JAG and is sure he is a reasonable person.

Mr. Mason mentioned the fact that the Deans of the Southern Law Schools had recently adopted a resolution "standing by the Supreme Court" and recognizing that it must of necessity be the ultimate arbiter of legal questions. In this regard he mentioned that he had read a news item to the effect that the Dean of the University of Virginia had advised the press, when questioned, that he had signed the resolution; but that Dean Light had at that time not yet signed the resolution and presumably was still considering it.

Enclosures

AMERICAN BAR ASSOCIATION — Civil Rights Committee

Alfred J. Schweppe — Chairman; Seattle, Washington

William P. Gray, Los Angeles, California
Frederick G. Fisher, Jr., Boston, Massachusetts
Col. Harold J. Sullivan, Tinker Air Force Base, Oklahoma
Rush H. Limbaugh, Cape Girardeau, Missouri
Walton J. McLeod, Jr., Walterboro, South Carolina
Joseph H. Gordon, Tacoma, Washington
Earl F. Morris, Columbus, Ohio
James D. Fellers, Oklahoma City, Oklahoma
William B. Spann, Jr., Atlanta, Georgia
Charles P. Light, Jr., Dean, School of Law, Washington and Lee University, Lexington, Virginia
James R. Stoner, Washington, D.C.
James E. Faust, Salt Lake City, Utah
Vincent P. McDevitt, Philadelphia, Pennsylvania
Thomas G. Greaves, Mobile, Alabama
Sherwood Wise, Jackson, Mississippi
Karl C. Williams, Rockford, Illinois

Lawyers' Committee for Civil Rights Under Law

FORMED AT THE REQUEST OF THE PRESIDENT OF THE UNITED STATES

Co-Chairmen

HARRISON TWEED
1 Chase Manhattan Plaza
New York 5, N.Y.

BERNARD G. SEGAL
Packard Building
Philadelphia 2, Pa.

November 14, 1963.

Honorable Burke Marshall,
Assistant Attorney General,
Civil Rights Division,
Department of Justice,
Washington, D. C.

Dear Burke:

I thought you would be interested in the enclosed page from the London Daily Express. Jerry Shestack's secretary, Miss Margaret North, is English and recently received this newspaper.

You must have quite a file on the image of this Country which is being created abroad by virtue of our problems in the civil rights area.

With best regards,

Sincerely yours,

Bernard G. Segal

DAILY EXPRESS TUESDAY JULY 16 1963

rrest amid the waves

'WHITE BEACH' LIFEGUARD SWOOPS DOWN ON COLOURED SWIMMERS

VEN the sea can be declared out of unds in Savannah, orgia.
The coloured girl d the two coloured n pictured here ided to go for a im in the sparkling antic Ocean.
But they had been only a few minutes en a white life- rd ordered them of the water.
They were jeered ore—to a "white ch"—and arrested.

October 8, 1963

Report by Program Committee
on Proposed Program for the
Lawyers' Committee for Civil Rights Under Law

To the Executive Committee

We assume that when the President requested the formation of this new and special Committee of Lawyers he had in mind that it would perform functions:

1. which would naturally fall within the special competence of lawyers as lawyers, or

2. which could be performed by lawyers as citizens better than by other kinds of citizens.

We further assume that he did not intend to assign functions to this Committee which some other agency, private or public, was already performing competently.

On these assumptions we recommend as a program:

I. That, as a general proposition, this Committee do not try to duplicate or supplement the work which other experienced groups like, for example, the NAACP Legal Defense and Educational Fund, Inc., are now doing competently.

A. This means that, except as hereinafter stated, we should not attempt to supply or supervise

counsel for individual persons whose civil rights are being violated.

A. However, many lawyers have already volunteered to this Committee to serve as counsel in such individual cases. We should encourage such volunteering, and seek, through State, City and County Bar Associations throughout the United States, to bring about more volunteering for this purpose.

a. Most of these lawyers will be inexperienced in this type of case -- especially in the kind of atmosphere which they will find in the State courts of the South.

b. Therefore they should be recommended for training in one of the law schools or associations which conduct classes and clinics for instruction in practice and substantive law in this highly specialized field. They should then be assigned to cases by such school or association and supervised by it.

c. Our Committee should restrict itself in this field to recommending volunteers and to assisting in obtaining financial support for such clinics to cover the cost of its volunteers.

II. In all of the functions outlined in this memorandum we should decentralize the work as much as possible into the State and local Bar Associations which are willing or can be persuaded to undertake these responsibilities and duties in their separate localities. To this end, this Committee should induce each Bar Association to cooperate in the program here outlined, and to adopt resolutions committing themselves to perform the duties herein detailed.

Specifically, this Committee should recommend and urge that:

1. Bar Associations, local and State, should issue pronouncements advocating full compliance with final orders of a court.

2. They should conduct educational campaigns on State and local levels to persuade citizens of the need to comply promptly with such orders.

3. They should arrange for their members to talk to local lay groups about the supremacy of law and the duty of every citizen to comply with the courts' decisions.

4. They should spread the legal doctrine that the decisions of the Supreme Court of the United States

are paramount over the local State laws of segregation.

5. They should answer inaccurate statements of the law in this field made by public officials or lawyers in their communities.

6. They should file amicus briefs in important civil rights cases with the acquiescence of the attorneys involved in the case.

III. That the Committee, as lawyers, should be ready:

A. To furnish public speakers in any part of the country on civil rights subjects.

B. To promote respect for the judiciary by defending judges whose decisions and opinions in this field may be unpopular in their communities.

C. To furnish, through volunteers, expert assistance from law schools and leading law offices in legal research, legal scholarship and brief writing, particularly in the Supreme Court of the United States and on new constitutional theories and new approaches.

D. To arrange for the writing and publication of articles and pamphlets, where appropriate, in the field of civil rights.

E. To answer publicly any inaccurate public statements or legal commentary about the law in this field, such as the recent statements by Governor Wallace of Alabama and his legal advisers.

F. To make public statements at appropriate times, and from time to time, on the necessity of upholding the law of the land as enunciated by the Supreme Court.

G. Generally, to do as a national body, and on appropriate occasions, the specific things outlined in paragraph II, especially when the local and State Bar Associations decline to do so.

IV. That this Committee, composed as it is of lawyers of prestige in various parts of the United States, should be willing and ready, where emergencies arise, to call upon the public law enforcement agencies of the United States, the various States and their subdivisions for the physical protection of American citizens seeking to obtain civil rights guaranteed to them by law.

A. For this purpose, each State and local Bar Association should be requested to set up committees of its leading lawyers to whom our Chairmen or Executive Secretary could immediately and directly refer distress requests which may come to this Committee for emergency action. An exemple of this was the rioting in the suburb of

Philadelphia which was held to a minimum by the quick but protracted efforts of our Co-Chairman, Mr. Bernard Segal. Emergency committees like this should exist in every community and their names, addresses and phone numbers should be filed with our Committee for instantaneous reference.

V. To do all it can to remove all forms of racial discrimination in all Bar Associations and Legal Societies in the United States.

VI. That this Committee, as lawyers, should directly intervene, in any manner advisable, preferably through its local members, in any situation where there is involved some interference with a lawyer's right to practice law or to protect adequately the interests of his client in a civil rights matter. An example of this kind of obstruction arose recently in Farmville, Va., involving a Harvard Law School student.

VII. In order to meet these duties and spread the effort numerically as well as geographically, the membership of the Committee should be greatly increased in those States where the issue is acute.

VIII. To urge law firms to employ qualified Negro lawyers as readily as equally qualified white lawyers.

IX. Stimulate local Bar Associations or if that is impossible, other local organizations, to provide under their auspices, public discussions and forums in their own local buildings, if possible, or in other public or semi-public buildings. At these forums (non-segregated) carefully selected speakers should discuss the "pros and cons" of all phases of this issue, as, e.g.:

1. Quota systems for employing Negroes.

2. Correcting de facto segregation in public schools.

3. President's Civil Rights Bill.

4. etc., etc.

This will serve to bring all these controversial issues into the open for discussion instead of permitting them to smolder under the surface.

X. Provide one or more annual awards for lawyers in the South and elsewhere who have distinguished themselves for courage in this field at great professional and personal risk to themselves. The President should be asked to confer these awards in our name at the White House.

XI. Make periodic reports to the President, with recommendations, if any, for official action by the Executive and

Legislative Branches. Annual meetings with the President at the White House would serve to increase the prestige and effectiveness of the Committee.

XII. Constant liaison should be maintained with other national groups working in the general area of civil rights.

The foregoing program arises primarily from the fact that the members of this Committee are all lawyers; and it is a plan of action for it as lawyers.

We believe, however, that an even more important task for this Committee arises from the fact that it is composed of citizens who by virtue of their local (and even national) prestige can, and do, exercise leadership as citizens among their fellow citizens in their respective communities.

How can they best exercise their local leadership in this field?

I. The chief objective should be to get racial strife off the streets and out of the control of mobs, into a room where both sides can sit down to air their views face to face, and come to some agreement as to a course of action. This cannot be done unless a bi-racial committee which is so constituted as to command the respect of both races takes the leadership. One of the reasons for picket lines, sit-ins, rock-throwing and other violence is that in

many communities, especially in the South, there are no other avenues of communication between the two races. If a door can be opened to free and quiet communication between them under the auspices of a respected committee composed equally of both races, a path will be provided to peace and understanding. This has been shown to be true by successful experience in such places as Cambridge, Md.

This kind of discussion, mediation and agreement will take more time, patience, effort and skill, and it will be less dramatic than some of the other parts of this program. But in the long run it will be more effective and produce more lasting results. We are sure that the President had this long-range objective in mind for this Committee -- which, by reason of its composition, is better equipped to do this than any other private or public group.

The Committee through its leading local members should immediately foster the formation of such bi-racial committees in every community possible in the South. We emphasize the South, because it will be seldom indeed in that section of the country that the local political leaders -- the Mayor or the Governor for example -- will make a conscientious effort to organize an impartial, representative bi-racial committee to obviate discrimination in education, jobs, housing and public facilities. Therefore this vacuum of leadership should be filled by our leading lawyers by organizing such groups in their communities -- and we should encourage our local members to do so.

II. The possible role of such committees in our Northern communities is not quite so clear. There the political leaders, whether activated by thoughts of vote-getting or by conscientious solicitude, or by a combination of both, become very active as soon as protests come from Negroes seeking equality of job opportunities, better housing and schools. Where, as in New York, the Governor and the Mayor are both active in getting bi-racial groups to meet, it is doubtful whether we should try to compete or even supplement these efforts.

However, wherever there is conflict or the possibility of conflict in Northern communities, and no leadership has been taken by the political leaders, we should take the leadership through the formation by our members of bi-racial committees for those communities.

III. What can these bi-racial committees do? They can tackle as mediators the immediately pressing problems -- such as discrimination in public-place accommodations, equality of opportunities in labor unions and discrimination in private non-union employment.

IV. But even more importantly, they can begin on the long-range problems of better education and vocational training for Negroes to equip them more adequately for highly skilled jobs -- manual, white-collar, supervisory, academic and professional jobs. They can stimulate equality in Negro vocational training. At present, especially in the South, Negro vocational training is

still along the lines of shoemaking and similar trades, whereas vocational training for the whites is in such fields as electronics, television, dental, mechanics, etc. This is also true to some extent in the North. Negroes should be encouraged and given the opportunities for training in something other than menial tasks at one end, or the higher professions at the other. Those who are qualified should also be educated and trained in the highly skilled trades. Success in this endeavor would solve many of the other problems and grievances. A decent, well-paid job will solve many of the other points of dispute. This, too, is a long-range program, but we can accelerate it and its beneficent results by the use of these bi-racial committees whose members will understand the local problems and the local personalities better than anyone else.

V. Lawyers, as leaders, should also stimulate their local Boards of Education to include courses in civil rights in all its phases in the public and private high schools, so that the next generation will not be as ignorant of the issues involved as is this generation.

Respectfully submitted,

COMMITTEE ON PROGRAM
Bruce Bromley, Esq.
William R. Ming, Esq.
William P. Rogers, Esq.
Samuel I. Rosenman, Esq., Chairman

UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF JUSTICE

TO : Burke Marshall
Assistant Attorney General
Civil Rights Division

DATE: August 22, 1963

JD:lvw

FROM : John Doar
First Assistant

SUBJECT:

Last week when Mr. Luney was in here he said that the restaurant across the street from the courthouse in Wilmington, North Carolina was the key to peaceful desegregation and the local police chief had told him confidentially that he felt the New Hanover Bar Association could use its influence to help on the problem.

Lou Rudolph:
Is there anything we can do on this?
JD

250/63/6

The Association of the Bar
of the City of New York
42 West 44th Street

COMMITTEE ON FEDERAL LEGISLATION

Report on Proposed Federal Civil Rights Laws Relating to Public Accommodations

Introduction

This Report is addressed to certain bills presently before Congress to eliminate discrimination in public accommodations, and to establish causes of action by private individuals and the Attorney General to prevent such discrimination.

We have considered principally the provisions comprising Title II of the proposed "Civil Rights Act of 1963", introduced by Senator Mansfield and others as S. 1731, 88th Congress, 1st Session, and by Representative Celler as H.R. 7152, 88th Congress, 1st Session. Senator Mansfield and others have also introduced substantially the same provisions as Title II in a separate bill, S. 1732, the proposed "Interstate Public Accommodations Act of 1963".* Other bills dealing with this problem have been introduced by a substantial number of other Senators and Representatives, including S. 1591 introduced by Senators Dodd and Cooper and others, and H.R. 6720 introduced by Representative Lindsay and by others in the same form. S. 1731 and H.R. 7152 were proposed by President Kennedy in a special message to Congress on June 19, 1963, which stated that the public accommodations provisions are designed "to guarantee all citizens equal access to the services and facilities of hotels, restaurants, places of amusement and retail establishments". N. Y. Times, June 20, 1963, p. 16, col. 4.

Title II of S. 1731 invokes the powers of Congress under both the Commerce Clause and the Fourteenth Amendment of the Constitution, with chief reliance placed upon the Commerce Clause, and with the operative sections, as introduced, relying solely on the Commerce Clause. S. 1591 and H.R. 6720 are based upon the Fourteenth Amendment, and proposals have been made to amend Title II to place greater operative reliance upon the Fourteenth Amendment.

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* Unless otherwise indicated the references to the "proposed legislation" in this Report refer to Title II of S. 1731, the full text of which is attached hereto as an Appendix.

Title II now provides that all persons shall be entitled "without discrimination or segregation on account of race, color, religion, or national origin, to the full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations" of enumerated kinds of "public establishments" if such establishments satisfy specified criteria with respect to activities or operations related to interstate commerce. The denial of or interference with the right to nondiscriminatory treatment is prohibited, and an aggrieved person, or the Attorney General for or in the name of the United States, may institute a civil action for injunctive relief in the Federal District Courts.

In order for the Attorney General to institute suit, he must certify that he has received a written complaint from the aggrieved person and that in his judgment such person is unable to initiate and maintain appropriate legal proceedings because of lack of adequate financial means or effective representation or risk of economic or other injury. If local laws appear to forbid the discrimination complained of, the Attorney General is required to notify the appropriate State or local officials, and, upon their request, to afford them a reasonable time to act before he institutes an action. In the case of other complaints, the Attorney General is required, before instituting an action, to refer the matter to the Community Relations Service, contemplated by Title IV of the bill, to attempt to secure compliance with the statute by voluntary procedures. Compliance with the provisions for action by local officials or the Community Relations Service is not required if the Attorney General certifies to the Court that delay would adversely affect the interests of the United States or that compliance with such provisions would be fruitless.

Summary

We support the proposed legislation and we believe it is validly founded on the Commerce Clause and also derives substantial constitutional support from the Fourteenth Amendment. We believe that Congress should rely on both constitutional provisions, since we regard the Commerce Clause and the Fourteenth Amendment as complementary and not competitive sources of Congressional power.

The Commerce Clause

Article I, Section 8, Clause 3, of the Constitution confers upon Congress the power "To regulate Commerce * * * among the several States * * * ."

The Commerce Clause has repeatedly been held by the United States Supreme Court to empower Congress to reach and control activity which affects interstate commerce and to remove burdens on such

commerce whether or not a particular activity or transaction embraced by the legislation is itself interstate in character. Even if an activity or transaction considered in isolation is both intrastate in character and insubstantial in its impact on interstate commerce, Congress may legislate with regard to the aggregate impact or burden on interstate commerce of all such activities or transactions. The power reaches not only activities which are purely "commercial" in nature, but, in furtherance of particular public policies, can be, and has been, used to reach non-commercial activities. In our opinion, under these principles, each fully supported by authority, the proposed public accommodations law would be a valid exercise of the power of Congress under the Commerce Clause.

Effect of Discrimination on Interstate Commerce. Title II contains proposed legislative findings that discriminatory acts (a) make unavailable to Negro interstate travelers goods and services which are available to others; (b) make adequate lodgings for Negro interstate travelers difficult to obtain and inconvenient to reach; (c) require Negro interstate travelers to detour to find adequate eating places; (d) restrict the audiences of interstate entertainment industries and thus burden interstate commerce; (e) have led to the withholding of patronage from retail establishments by those affected by such acts and inhibit and restrict the normal distribution of goods in the interstate market; (f) drive conventions away from cities where discriminatory practices prevail; and (g) reduce the mobility of the national labor force and deter the interstate movement of industries.

We believe that these findings that discrimination in public accommodations burdens and obstructs interstate commerce are manifestly reasonable for Congress to make. Such findings help to lay the proper foundation for legislation intended to deal with the problem as found to exist by Congress and will be given great weight when the constitutionality of the proposed legislation is under attack. See Block v. Hirsh, 256 U.S. 135, 154 (1921); Borden's Co. v. Baldwin, 293 U.S. 194, 209 (1934); Communist Party v. Subversive Activities Control Board, 367 U.S. 1, 94 (1961).

Precedents Under Commerce Clause Support Proposed Legislation. The validity of the proposed legislation as an exercise of the commerce power is clear from the decisions of the United States Supreme Court in N.L.R.B. v. Jones & Laughlin Steel Corp., 301 U.S. 1 (1936), United States v. Darby, 312 U.S. 100 (1941) and numerous other cases.

In the Jones & Laughlin case, the Court sustained the constitutionality of the National Labor Relations Act under the Commerce Clause. The Court held that, irrespective of respondent's contention that its manufacturing activities represented a break in the "stream of commerce," Congress could legislate "to protect

interstate commerce from the paralyzing consequences of industrial war." 301 U.S. at 41. The Court summarized the course of relevant authority as follows:

> "The congressional authority to protect interstate commerce from burdens and obstructions is not limited to transactions which can be deemed to be an essential part of a 'flow' of interstate or foreign commerce. Burdens and obstructions may be due to injurious action springing from other sources. The fundamental principle is that the power to regulate commerce is the power to enact 'all appropriate legislation' for 'its protection and advancement' (The Daniel Ball, 10 Wall. 557, 564); to adopt measures 'to promote its growth and insure its safety' (Mobile County v. Kimball, 102 U.S. 691, 696, 697); 'to foster, protect, control and restrain.' Second Employers' Liability Cases, supra [223 U.S.] p. 47. See Texas & N.O. R. Co. v. Railway Clerks, supra [281 U.S. 548]. That power is plenary and may be exerted to protect interstate commerce 'no matter what the source of the dangers which threaten it.' Second Employers' Liability Cases, p. 51; Schecter Corp. v. United States, supra [295 U.S. 495]. Although activities may be intrastate in character when separately considered, if they have such a close and substantial relation to interstate commerce that their control is essential or appropriate to protect that commerce from burdens and obstructions, Congress cannot be denied the power to exercise that control. Schecter Corp. v. United States, supra. Undoubtedly the scope of this power must be considered in the light of our dual system of government and may not be extended so as to embrace effects upon interstate commerce so indirect and remote that to embrace them, in view of our complex society, would effectually obliterate the distinction between what is national and what is local and create a completely centralized government. Id. The question is necessarily one of degree. As the Court said in Chicago Board of Trade v. Olsen, supra [262 U.S.] p. 37, repeating what had been said in Stafford v. Wallace, supra [258 U.S. 495]: 'Whatever amounts to more or less constant practice, and threatens to obstruct or unduly to burden the freedom of interstate commerce is within the regulatory power of Congress under the commerce clause and it is primarily for Congress to consider and decide the fact of the danger and meet it.'" 301 U.S. at 36-37.

The Court noted that in Chicago Board of Trade v. Olsen, it had upheld the Grain Futures Act of 1922 "with respect to transactions on the Chicago Board of Trade, although these transactions were 'not in and of themselves interstate commerce.' Congress had

found that they had become 'a constantly recurring burden and obstruction to that commerce.' Chicago Board of Trade v. Olsen, 262 U.S. 1, 32." 301 U.S. at 35-36.

In the Jones & Laughlin case, furthermore, the Court stressed the factor of experience in determining the scope of Congressional power over interstate commerce:

> "We have often said that interstate commerce itself is a practical conception. It is equally true that interferences with that commerce must be appraised by a judgment that does not ignore actual experience.
>
> "Experience has abundantly demonstrated, that the recognition of the right of employees to self-organization and to have representatives of their own choosing for the purpose of collective bargaining is often an essential condition of industrial peace. Refusal to confer and negotiate has been one of the most prolific causes of strife. This is such an outstanding fact in the history of labor disturbances that it is a proper subject of judicial notice and requires no citation of instances." 301 U.S. at 41-42.

This emphasis on the relevance of practical experience has clear pertinence to the present question.

Similarly, in United States v. Darby, the Supreme Court sustained provisions of the Fair Labor Standards Act barring from shipment in interstate commerce goods produced by employees whose wages and hours of employment did not conform to the requirements of the statute, and prescribing adherence to such requirements with respect to all employees engaged in the production of goods for commerce. In upholding the prohibition on shipment of the proscribed goods in interstate commerce, the Court considered the nature of the commerce power:

> "The motive and purpose of a regulation of interstate commerce are matters for the legislative judgment upon the exercise of which the Constitution places no restriction and over which the courts are given no control. McCray v. United States, 195 U.S. 27; Sonzinsky v. United States, 300 U.S. 506, 513 and cases cited. 'The judicial cannot prescribe to the legislative department of the government limitations upon the exercise of its acknowledged power.' Veazie Bank v. Fenno, 8 Wall. 533. Whatever their motive and purpose, regulations of commerce which do not infringe some constitutional prohibition are within the plenary power conferred on Congress by the Commerce Clause." 312 U.S. at 115.

The power of Congress to forbid the production of goods for commerce unless the prescribed labor standards were met was likewise upheld, and the Court stated:

> "The power of Congress over interstate commerce is not confined to the regulation of commerce among the states. It extends to those activities intrastate which so affect interstate commerce or the exercise of the power of Congress over it as to make regulation of them appropriate means to the attainment of a legitimate end, the exercise of the granted power of Congress to regulate interstate commerce. See McCulloch v. Maryland, 4 Wheat. 316, 421. Cf. United States v. Ferger, 250 U.S. 199.
>
> "* * *
>
> "But it does not follow that Congress may not by appropriate legislation regulate intrastate activities where they have a substantial effect on interstate commerce. See Santa Cruz Fruit Packing Co. v. National Labor Relations Board, 303 U.S. 453, 466. A recent example is the National Labor Relations Act for the regulation of employer and employee relations in industries in which strikes, induced by unfair labor practices named in the Act, tend to disturb or obstruct interstate commerce. See National Labor Relations Board v. Jones & Laughlin Steel Corp., 301 U.S. 1, 38, 40; National Labor Relations Board v. Fainblatt, 306 U.S. 601, 604, and cases cited. But long before the adoption of the National Labor Relations Act this Court had many times held that the power of Congress to regulate interstate commerce extends to the regulation through legislative action of activities intrastate which have a substantial effect on the commerce or the exercise of the Congressional power over it." 312 U.S. at 118-20.

The aggregate impact on commerce of goods produced under proscribed conditions was deemed controlling rather than the volume of any one shipper or producer:

> "Congress, to attain its objective in the suppression of nationwide competition in interstate commerce by goods produced under substandard labor conditions, has made no distinction as to the volume or amount of shipments in the commerce or of production for commerce by any particular shipper or producer. It recognized that in present day industry, competition by a small part may affect the whole and that the total effect of the competition of many small producers may be great. See H. Rept. No. 2182, 75th Cong. 1st Sess. p. 7. The legislation aimed at a whole embraces all its parts. Cf.

National Labor Relations Board v. Fainblatt, supra, 606." 312 U.S. at 123.

Again, in Wickard v. Filburn, 317 U.S. 111 (1942), the Court upheld the marketing penalties imposed for noncompliance with the wheat marketing quotas of the Agricultural Adjustment Act of 1938, even with respect to production not intended for commerce but wholly for consumption on the farm. The Court stated that "even if appellee's [the farmer's] activity be local and though it may not be regarded as commerce, it may still, whatever its nature, be reached by Congress if it exerts a substantial economic effect on interstate commerce, and this irrespective of whether such effect is what might at some earlier time have been defined as 'direct' or 'indirect.'" 317 U.S. at 125.

The Court's consideration in that case of the power of Congress to stimulate commerce is likewise pertinent with respect to the proposed findings in Title II:

> "The stimulation of commerce is a use of the regulatory function quite as definitely as prohibitions or restrictions thereon. This record leaves us in no doubt that Congress may properly have considered that wheat consumed on the farm where grown, if wholly outside the scheme of regulation, would have a substantial effect in defeating and obstructing its purpose to stimulate trade therein at increased prices." 317 U.S. at 128-29.

The Court further held that the fact that "appellee's own contribution to the demand for wheat may be trivial by itself is not enough to remove him from the scope of federal regulation where, as here, his contribution, taken together with that of many others similarly situated, is far from trivial. Labor Board v. Fainblatt, 306 U.S. 601, 606 et seq." 317 U.S. at 127-28.

Each of these decisions is replete with citations to additional authority supporting the power of Congress to regulate activities which themselves may be deemed intrastate in character but which burden or obstruct interstate commerce, and subsequent decisions reinforce this doctrine. E.g., Mandeville Island Farms, Inc. v. American Crystal Sugar Co., 334 U.S. 219, 229-35 (1948); United States v. Women's Sportswear Mfctr's Assn., 336 U.S. 460, 464 (1949); United States v. South-Eastern Underwriters Assn., 322 U.S. 533, 539-53 (1944); Polish Nat. Alliance v. N.L.R.B., 322 U.S. 643, 648 (1944). As tersely summarized in the Women's Sportswear case:

> "If it is interstate commerce that feels the pinch, it does not matter how local the operation which applies the squeeze." 336 U.S. at 464.

As made clear by the Darby and Wickard v. Filburn decisions, Congress is not limited under the Commerce Clause by the size or impact on commerce of any particular enterprise subjected to regulation. It is the aggregate impact on commerce of the regulated activities which is determinative, irrespective of the extent of impact of any specific isolated activity. In Wickard v. Filburn, for example, the farmer planted only 23 acres and the amount of wheat at issue amounted to only 239 bushels. Similarly, in Mabee v. White Plains Publishing Co., 327 U.S. 178 (1946), the Fair Labor Standards Act was applied to a newspaper with a circulation of about 9,000 copies of which only 45 were mailed out of the State in which the newspaper was printed.*

Use of Commerce Clause to Eliminate "Social" Evils. It is abundantly clear that Federal public accommodations legislation can be validly founded on the Commerce Clause even if the proposed legislation be regarded as directed in large measure at a "social" evil which might be the subject of State regulation under the police power. In the first place, the "social" evil has clear economic consequences of which the proposed legislation takes account. Furthermore, as stated in Darby:

> "It is no objection to the assertion of the power to regulate interstate commerce that its exercise is attended by the same incidents which attend the exercise of the police power of the states. Seven Cases v. United States, 239 U.S. 510, 513; Hamilton v. Kentucky Distilleries & Warehouse Co., 251 U.S. 146, 156; United States v. Carolene Products Co., 304 U.S. 144, 147; United States v. Appalachian Electric Power Co., 311 U.S. 377." 312 U.S. at 114-15.

Indeed, the commerce power has been relied upon to reach a variety of non-economic activities deemed to violate public

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* It has been suggested in some quarters that public accommodations having a gross annual income below a specified amount be excluded from the proposed legislation. We do not favor such an exclusion. The impact on commerce of relatively small businesses may well vary more with the location and community involved than the actual dollar volume. For example, there may be stops along interstate bus and automobile routes where only small lunch counters or motels are available. The applicability of Title II would in all cases depend on the applicability of the statutory criteria which refer to activity or operations related to interstate commerce, and in an enforcement action by the Attorney General he would have to certify under Section 204(a)(2)(ii) of Title II that "the purposes of this title will be materially furthered by the filing of an action".

policy. Most pertinent are cases upholding the barring of racial discrimination by interstate carriers and related public facilities. E.g., Georgia v. United States, 371 U.S. 9 (1962), aff'g 201 F. Supp. 813 (N.D. Ga. 1961); Boynton v. Virginia, 364 U.S. 454 (1960); Henderson v. United States, 339 U.S. 816 (1950); Mitchell v. United States, 313 U.S. 80 (1941). The Interstate Commerce Commission has dealt with the subject on numerous occasions, both in specific proceedings and through a General Order forbidding such discrimination. Docket No. MC-C-335, paragraphs 180a(1), 180a(2) (1961). Indeed, the Commission's decisions on matters of racial discrimination date back to such cases as Heard v. Georgia R. Co., 1 I.C.C. 719 (1888), and Councill v. Western & A.R. Co., 1 I.C.C. 638 (1887), and extend to such recent decisions as N.A.A.C.P. v. St. Louis S.F. R. Co., 297 I.C.C. 335, 347-8 (1955).

The Supreme Court has also consistently sustained under the Commerce Clause statutes having major social objectives. It has upheld legislation forbidding the interstate transportation of lottery tickets as an aid to local enforcement of gambling prohibitions. Lottery Cases, 188 U.S. 321 (1903). Regulation designed to insure pure food and drugs has been sustained. Hipolite Egg Co. v. United States, 220 U.S. 45 (1911). The banning of transportation of women in interstate commerce for purposes of prostitution has been upheld. Hoke v. United States, 227 U.S. 308 (1913). The prohibition of interstate transportation of women for immoral purposes has been upheld even where commercial prostitution is not involved. Caminetti v. United States, 242 U.S. 470 (1917). Thus, it is apparent that there is no pertinent distinction under the Commerce Clause between "economic" and "social" legislation.

Effect on Commerce Clause Jurisdiction of Fifth and Tenth Amendments. The proposed legislation would violate neither the Fifth nor Tenth Amendment to the Constitution. It is beyond challenge at this date that reasonable regulation to meet a public evil does not violate the Due Process Clause. "The Constitution does not secure to any one liberty to conduct his business in such fashion as to inflict injury upon the public at large, or upon any substantial group of the people." Nebbia v. New York, 291 U.S. 502, 538-39 (1934). See N.L.R.B. v. Jones & Laughlin Steel Corp., 301 U.S. 1, 43-44 (1936); Chicago Board of Trade v. Olsen, 262 U.S. 1, 40-41 (1923).

In Wickard v. Filburn, the Court rejected the contention that the legislation involved violated the Fifth Amendment by limiting the use of private property:

> "It is of the essence of regulation that it lays a restraining hand on the self-interest of the regulated and that advantages from the regulation commonly fall to others." 317 U.S. at 129.

President Kennedy's message to Congress referred to some thirty States, the District of Columbia and numerous cities "covering some two-thirds of this country and well over two-thirds of its people" which have already enacted "laws of varying effectiveness" against discrimination in places of public accommodation. N.Y. Times, June 20, 1963, p. 16, cols. 3-4. It is clear that State and local anti-discrimination laws do not violate the Due Process Clause of the Fourteenth Amendment. Railway Mail Assoc. v. Corsi, 326 U.S. 88 (1945) (New York law prohibiting racial discrimination by labor union upheld against Due Process Clause challenge). See also Bolden v. Grand Rapids Operating Corp., 239 Mich. 318, 214 N.W. 241 (1927); Pickett v. Kuchan, 323 Ill. 138, 153 N.E. 667 (1926); People v. King, 110 N.Y. 418, 18 N.E. 245 (1888) (cases involving public accommodations laws). Patently, Federal legislation based upon the Commerce Clause is no more subject to attack under the Due Process Clause of the Fifth Amendment than are such State enactments under the Fourteenth Amendment. As observed by the Supreme Court in United States v. Rock Royal Co-operative, 307 U.S. 533, 569-70 (1939):

> "The authority of the Federal Government over interstate commerce does not differ in extent or character from that retained by the states over intrastate commerce."

Any argument against the validity of the proposed legislation based upon the Tenth Amendment is similarly without merit, as shown in the Darby case:

> "Our conclusion is unaffected by the Tenth Amendment which provides: 'The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.' The amendment states but a truism that all is retained which has not been surrendered. There is nothing in the history of its adoption to suggest that it was more than declaratory of the relationship between the national and state governments as it had been established by the Constitution before the amendment or that its purpose was other than to allay fears that the new national government might seek to exercise powers not granted, and that the states might not be able to exercise fully their reserved powers.
> * * *
>
> "From the beginning and for many years the amendment has been construed as not depriving the national government of authority to resort to all means for the exercise of a granted power which are appropriate and plainly adapted to the permitted end." 312 U.S. at 123-24.

We believe that the proposed legislation is well within the granted power of Congress and is a wholly appropriate means to deal with a national problem of great importance.

The Fourteenth Amendment

The Equal Protection Clause in Section 1 of the Fourteenth Amendment provides that "No State * * * shall deny to any person within its jurisdiction the equal protection of the laws." This prohibition may be enforced by Congress by appropriate legislation under the provisions of Section 5 of the Amendment.

The findings in Title II of S. 1731 rely on the Fourteenth Amendment, as well as the Commerce Clause, in Section 201(h) and (i), which provide:

> "(h) The discriminatory practices described above are in all cases encouraged, fostered, or tolerated in some degree by the governmental authorities of the States in which they occur, which license or protect the businesses involved by means of laws and ordinances and the activities of their executive and judicial officers. Such discriminatory practices, particularly when their cumulative effect throughout the Nation is considered, take on the character of action by the States and therefore fall within the ambit of the equal protection clause of the fourteenth amendment to the Constitution of the United States.
>
> "(i) The burdens on and obstructions to commerce which are described above can best be removed by invoking the powers of Congress under the fourteenth amendment and the commerce clause of the Constitution of the United States to prohibit discrimination based on race, color, religion, or national origin in certain public establishments."

S. 1591 and H.R. 6720 are based exclusively on the Fourteenth Amendment. S. 1591 provides relief against discrimination in public accommodations "conducted under a State license," and H.R. 6720 provides relief against discrimination in businesses "authorized by a State."

Consideration of a Fourteenth Amendment basis for public accommodations legislation must begin with the Civil Rights Cases, 109 U.S. 3 (1883). The Supreme Court there held that Sections 1 and 2 of the Civil Rights Act of 1875, which purported to prohibit discrimination in "inns, public conveyances on land or water, theaters, and other places of public amusement," were unconstitutional because directed at individual rather than State action:

> "It is State action of a particular character that is prohibited [by the Fourteenth Amendment]. Individual invasion of individual rights is not the subject-matter of the Amendment. It has a deeper and broader scope. It

> nullifies and makes void all State legislation, and State action of every kind, which impairs the privileges and immunities of citizens of the United States, or which injures them in life, liberty or property without due process of law, or which denies to any of them the equal protection of the laws." 109 U.S. at 11.

It is hardly likely that the "State action" requirement of the Civil Rights Cases will be overruled, particularly in view of such recent pronouncements by the Court as in Burton v. Wilmington Pkg. Auth., 365 U.S. 715, 722 (1961):

> "It was clear, as it always has been since the Civil Rights Cases, supra, that 'Individual invasion of individual rights is not the subject-matter of the amendment' * * * ".

The principle of the Civil Rights Cases, however, does not prevent application of the proposed legislation to the areas of discriminatory activity which are already subject to the Congressional power granted by the Fourteenth Amendment, namely, activity which is not purely "individual invasion of individual rights" but involves the State sufficiently to bring the Amendment into play. Indeed, the majority of the Court in the Civil Rights Cases addressed itself only to the lack of any requirement of State action under the 1875 Act and did not consider what degree of State participation is required to support the applicability of the Fourteenth Amendment, stating:

> "It is not necessary for us to state, if we could, what legislation would be proper for Congress to adopt. It is sufficient for us to examine whether the law in question is of that character.
>
> "An inspection of the law shows that it makes no reference whatever to any supposed or apprehended violation of the 14th Amendment on the part of the States." 109 U.S. at 13-14

The concept of "State action" under the Fourteenth Amendment has undergone considerable expansion in recent years. Thus, the prohibitions of the Fourteenth Amendment extend to State judicial enforcement of racially restrictive covenants among private persons. Shelley v. Kraemer, 334 U.S. 1 (1948). The enforcement of State trespass statutes against Negroes for refusing to leave a lunch counter has been held to be barred by the Fourteenth Amendment where there is a local segregation ordinance. Even if the exclusion is based on the store manager's own decision, the Equal Protection Clause is applicable because the existence of the ordinance is deemed to remove his decision from the sphere of private choice. Peterson v. Greenville, 373 U.S. 244 (1963). Where local

officials in the absence of an ordinance publicly state that Negroes would not be permitted to seek desegregated lunch-counter service, the situation is considered the same from the standpoint of the Fourteenth Amendment as if there were such an ordinance. Lombard v. Louisiana, 373 U.S. 267 (1963). Lessees operating restaurants in a municipal airport and in an automobile parking building operated by a State agency have also been held subject to the Fourteenth Amendment. Turner v. Memphis, 369 U.S. 350 (1962); Burton v. Wilmington Pkg. Auth., 365 U.S. 715 (1961). In these and other situations, the application of the Fourteenth Amendment is no longer in doubt, and such decisions suggest that there may well be further expansion of what constitutes "State action" under the Amendment when other factual situations come before the Court.

The reliance upon the granting of a State license or authorization in S. 1591 and H.R. 6720 for Fourteenth Amendment coverage may rest in part upon a portion of the dissenting opinion of the first Mr. Justice Harlan in the Civil Rights Cases. In the course of his discussion of discriminatory treatment in places of public amusement as a vestige of slavery which could be barred by Congress under the Thirteenth Amendment, he stated:

> "The authority to establish and maintain them comes from the public. The colored race is a part of that public. The local government granting the license represents them as well as all other races within its jurisdiction. A license from the public to establish a place of public amusement, imports, in law, equality of right, at such places, among all the members of that public. This must be so, unless it be--which I deny--that the common municipal government of all the people may, in the exertion of its powers, conferred for the benefit of all, discriminate or authorize discrimination against a particular race, solely because of its former condition of servitude." 109 U.S. at 41.

Similarly, in his discussion of the Fourteenth Amendment, he wrote:

> "What I affirm is that no State, nor the officers of any State, nor any corporation or individual wielding power under State authority for the public benefit or the public convenience, can, consistently either with the freedom established by the fundamental law, or with that equality of civil rights which now belongs to every citizen, discriminate against freemen or citizens, in those rights, because of their race, or because they once labored under the disabilities of slavery imposed upon them as a race." 109 U.S. at 59

Mr. Justice Douglas substantially reiterated this position with respect to the Fourteenth Amendment in two recent

concurring opinions. Lombard v. Louisiana, 373 U.S. 267, 274 (1963); Garner v. Louisiana, 368 U.S. 157, 184 (1961). In Garner, Mr. Justice Douglas also adverted to the pattern of segregation pursuant to Louisiana custom:

> "Though there may have been no state law or municipal ordinance that in terms required segregation of the races in restaurants, it is plain that the proprietors in the instant cases were segregating blacks from whites pursuant to Louisiana's custom. Segregation is basic to the structure of Louisiana as a community; the custom that maintains it is at least as powerful as any law. If these proprietors also choose segregation, their preference does not make the action 'private', rather than 'state', action. If it did, a minuscule of private prejudice would convert state into private action. Moreover, where the segregation policy is the policy of a State, it matters not that the agency to enforce it is a private enterprise." 368 U.S. at 181 (emphasis in opinion).

In view of the Lombard decision, it would appear that the practice of segregating public accommodations in many communities to conform to the position taken by local officials would infringe the Fourteenth Amendment even in the absence of local laws requiring segregation. The combination of various circumstances, perhaps including elements of local licensing, regulation, official attitude and custom, might in other instances also support the application of the strictures of the Fourteenth Amendment. Licensing alone, however, has not thus far been judicially adopted as a basis for invoking the Fourteenth Amendment. Moreover, legislation referable to a licensing requirement alone could produce arbitrary variations between communities depending upon the nature and extent of local licensing laws and might exclude various types of public accommodations entirely if licensing of them is abolished or non-existent in the locality. However, there is no necessity to have the reliance on the Fourteenth Amendment so limited.

Over ninety years ago Congress exercised its power under the Fourteenth Amendment to provide relief against deprivation of constitutional rights "under color of any statute, ordinance, regulation, custom, or usage of any State or Territory * * *" 42 U.S.C. §1983 (originally Section 1 of the Ku Klux Act of April 20, 1870). See Monroe v. Pape, 365 U.S. 167 (1961). Congress has also employed similar language in imposing criminal penalties for the deprivation of constitutional rights. 18 U.S.C. §242. The Court in the Civil Rights Cases adverted with apparent approval to the substantially similar version of this penal statute then in effect as illustrative of an act which was properly directed against "State action" under the Fourteenth Amendment. The Court said:

> "This law is clearly corrective in its character, intended to counteract and furnish redress against State laws and proceedings, and customs having the force of law, which sanction the wrongful acts specified. In the Revised Statutes, it is true, a very important clause, to wit, the words 'any law, statute, ordinance, regulation or custom to the contrary notwithstanding,' which gave the declaratory section its point and effect, are omitted; but the penal part, by which the declaration is enforced, and which is really the effective part of the law, retains the reference to State laws, by making the penalty apply only to those who should subject parties to a deprivation of their rights under color of any statute, ordinance, custom, etc., of any State or Territory: thus preserving the corrective character of the legislation." 109 U.S. at 16-17

Title II of S. 1731 might be amended in similar terms, as has been suggested by some proponents of increased reliance on the Fourteenth Amendment, by providing for preventative relief against discrimination in specified kinds of public establishments by any person acting under color of any law, statute, ordinance, regulation or custom or usage having the force of law, of any State or Territory.*

Use of Multiple Constitutional Support

We believe that reliance on both the Commerce Clause and the Fourteenth Amendment in the proposed legislation would be highly advisable. The broadest coverage and the most secure constitutional support can be derived from reliance upon all pertinent sources of power. Much legislation is expressly founded on more than one power of Congress, and the Supreme Court has relied on multiple constitutional support in upholding the validity of various statutes, e.g. Board of Trustees v. United States, 289 U.S. 48 (1933) (Tariff Act of 1922 upheld under power to raise revenues and power to regulate commerce with foreign nations); Ashwander v. T.V.A., 297 U.S. 288 (1936) (Tennessee Valley Authority Act upheld on basis of war, commerce and navigation powers). See also United States v. Manning, 215 F. Supp. 272 (W.D. La. 1963) (voting registration provisions of Civil Rights Act of 1960 upheld under Fourteenth and Fifteenth Amendments). Similarly, in

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* Such a provision in the proposed legislation would to some extent parallel the provisions of 42 U.S.C. §1983, supra, but would give the Attorney General a cause of action not afforded by that Section.

the elimination of discriminatory treatment in public accommodations, the sources of Congressional power provided by the Commerce Clause and the Fourteenth Amendment are fully compatible, and we believe that both should be invoked by Congress.

Policy Considerations and Recommendation

The course of recent events makes it plain that the demands of the Negro for just treatment are being insistently pressed and that, one hundred years after the Emancipation Proclamation, the patience of the Negro with inequality and injustice is at an end. Legislation and judicial decisions have, in recent years, begun to afford redress in numerous respects, but discriminatory treatment in public accommodations open to others remains a continual affront.

We thoroughly endorse the moral and social objectives of the proposed legislation. It is a primary, ancient and honorable function of the law to provide the instruments for the peaceful and just resolution of disputes among men. We believe that it is the responsibility of the Bar to support the provision of adequate legal remedies to that end and to encourage the respect for legal processes which can only be fostered among the affected groups by providing vehicles of relief against injustice. In our opinion the proposed legislation would fill the serious need for a means under law to redress a major grievance of the Negro. We approve the individual right of action provided by the bill, but in view of the frequent obstacles to suit by private litigants for relief against discriminatory treatment, we believe that an active, affirmative role by the Federal Government is necessary. Hence, we endorse the provisions in the proposed legislation which, while encouraging local initiative and responsibility, empower the Attorney General to institute enforcement actions.

We strongly recommend enactment of the proposed legislation.

Respectfully submitted,

COMMITTEE ON FEDERAL LEGISLATION

Fred N. Fishman, Chairman

Sidney H. Asch	Nanette Dembitz	Ida Klaus
Eastman Birkett	Arthur J. Dillon	Leonard M. Leiman
George H. Cain	Barry H. Garfinkel	George Minkin
Joseph Calderon	Elliot H. Goodwin	Gerald E. Paley
Donald J. Cohn	Sedgwick W. Green	Albert J. Rosenthal
Louis A. Craco	H. Melville Hicks, Jr.	Peter G. Schmidt
Benjamin F. Crane	Robert M. Kaufman	Henry I. Stimson

August 19, 1963

ASSISTANCE TO SOUTHERN LAWYERS

The "Massive" resistance of the Southern States to the Fourteenth Amendment has taken the form, among others, of harassing criminal prosecution of Negroes and their white supporters. Thousands of such prosecutions have taken place already and have resulted in convictions, fines and jail sentences.

Most of these prosecutions have been so devised as to make it appear that violations of the ordinary criminal laws were involved, such as disturbing the peace, loitering, trespass, etc. The task of defense in these cases constitutes an enormous financial burden upon the persons charged, principally because difficult constitutional issues must frequently be raised. The efforts to achieve integration in accordance with the Supreme law of the land also takes the form of affirmative suits in the South to compel integration and to restrain segregation.

The need for lawyers to carry out these tasks is obvious. Despite this need, in many communities it is impossible for persons charged with these offenses to obtain a lawyer, and many lawyers who have undertaken the burden of assuming the defense or participating in legal battles to end discrimination and segregation have suffered harassment, loss of practice and social ostracism.

Except for a courageous and dedicated few lawyers, the Bar has generally defaulted on what Ernest Angell has correctly called the "responsibility to make effective in practice the fundamental right of all persons, regardless of color or economic status, to competent, fearless legal representation."

This responsibility cannot remain solely on the shoulders of the few brave advocates who have thus far, assumed the burden. The task is for the entire American Bar, which must enlist the services of all lawyers in the South, and must educate the Bar and the public to support individual attorneys who recognize this high professional duty.

The National Lawyers Guild, therefore proposes:

1. That the National Lawyers Guild establish a Special Committee charged with the following responsibilities:

   (a) To canvass the members of the Guild for the purpose of compiling a list of lawyers who will contribute their time, skill or financial assistance when called upon;

   (b) To inform Southern lawyers who are engaged in the legal struggle against segregation, of the availability of such assistance;

   (c) To undertake other activities such as information services, brief banks, handbooks, conferences, as may effectuate the objective of providing adequate assistance in such cases.

2. That the National Lawyers Guild pledge itself to the immediate establishment of a Special Fund for the above purposes.

3. That the Guild cooperate with other organizations in avoiding duplication of work.

4. That other national bar associations be urged to take similar action and that the Guild offer its cooperation to such associations toward this end.

I arrived in Birmingham on April 13, 1962. I met Bruce Waltzer, associate of Ben Smith, at New Orleans. When we arrived in Birmingham we went to the St. Paul Methodist Church for a meeting.

We were greeted at the steps of the church by photographers from the Birmingham Police Department and by many parked police cars, each containing a large fierce-looking police dog. I felt like 150 pounds of Mr. Ross dog food at that point. The church was surrounded by many police officers and motorcycle policemen as well as the photographers. Once inside the church Bruce and I deposited our luggage and were led to seats near the front of the church. The meeting was already in progress. The most memorable speech was made by Bishop C. Eubank Tucker who spoke in thunderous tones about the fight for integration and freedom in the South. The meeting was closed by Rev. J. C. Wilson, who, in his final prayer, asked that God keep His hands around each of us as we walked through the streets of Birmingham on the way to our homes and our lodgings.

I could not help but be impressed by the fact that for these people, citizens of the United States though they were, a simple walk through the streets of their own home town was fraught with danger and fear of harm or death. I had never attended a service in a Negro church before and was struck with the beauty and with the great faith exhibited. During the last prayer mentioned above, a woman with a magnificent voice began singing, "Oh Captain Help Us Weather the Storm" and the combination of the prayer that God watch over us as we walked through the streets and her voice singing moved me more that I thought was possible. Before leaving the church I had the great pleasure of meeting Rev. Fred L. Shuttlesworth. He smiled when we shook hands and said that he was always happy to have lawyers in attendance. In fact the more lawyers that he had around him, the happier and safer he felt.

Bruce introduced me to several of the students in the restaurant at the motel. Among them were Charles McDew and Bob Zellner, both of whom were members of the Student Non-Violent Co-ordinating Committee and both had been charged with criminal anarchy in Baton Rouge, Louisiana, and both were out on bail. I shared my room on Friday night with one of the field secretaries of the Student Non-Violent Co-ordinating Committee, Tom Murray. Too scared to sleep, I kept Tom up for several hours talking about the struggle for integration in the South. Tom gave me representative [illegible]

The workshops of the conference began at about 9:00 the following morning with a short address by Rev. Shuttlesworth. Later I attended a workshop which dealt with implementing court decisions favorable to integration. The workshop was attended by students from many areas in the South. Attorney Len Holt of Norfolk, Virginia, led the discussion and Bruce and I gave a hand whenever possible.

A discussion was had concerning the National Lawyers Guild Committee to assist Southern lawyers and its function. An explanation was made that the Committee could only assist attorneys who requested such aid. Where it was impossible for a group of people in a Southern community to obtain the services of a lawyer, it was suggested that the Committee might aid in finding an attorney. Mr. Holt led a good discussion around the whole question of omnibus lawsuits which were described as class actions by a group of Negroes to compel the City, County or State authorities to integrate all the facilities within a certain city or county.

I was apprehensive throughout the afternoon workshop held in the auditorium. This was the first integrated meeting held in Birmingham since 1938, and delegates stated that it would be a miracle if there was no violence or police harassment of the participants.

At the conclusion of the conference we all rose and sang "We Shall Overcome". We all joined hands and next to me stood Rev. Pfieffer, a tall, sturdy, handsome man who had recently shared a jail cell with Rev. Shuttlesworth. Rev. Pfieffer took my left hand in his right hand and we sang I became aware of the fact that my hand had been all but swallowed up by Rev. Pfieffer's and that the grip was warm and strong and full of life. I could almost feel a small part of his strength and faith flowing from his hand into mine.

That night Bruce and I hosted an open house in our room. This was one of the highlights of the conference for me because it gave me a chance to meet, drink with, sing with and talk to many of the students and younger people at the conference. Some of the friendships which started that night will, I am certain, grow even though many miles now separate us.

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On April 27 and 28 I attended a conference which was sponsored

by the Student Non-Violent Co-ordinating Committee in Atlanta, Georgia. This conference was held so that the student protest groups in all parts of the country could meet, share their ideas and experiences and plan future campaigns for integration. Upon arriving at the conference meeting place, I was told that three of the members of S.N.C.C., including James Foreman, one of the leaders of the group, had been arrested that afternoon in downtown Atlanta. Before the first meeting was over, however, these three people were released on bail. The conference was held in the Inter-Denominational Theological Center, a group of Negro colleges situated on one large campus. The attorneys present were Len Holt of Norfolk, Virginia, and Victor Rabinowitz of New York City.

As soon as this first meeting ended, the three of us went to our accommodations in the same building for a meeting with a group of young men from Lebanon, Tennessee. They wanted information on how to go about filing an Omnibus suit. Len Holt chaired this informal meeting and for several hours we discussed the content of an Omnibus suit, who should be named as plaintiffs and defendants, etc.

The three of us were again directly involved in the conference proceedings after lunch the following day at a meeting on the subject of "How to secure your legal rights." Len Holt first gave a short and moving speech concerning the method of obtaining legal rights in the South. The meeting was then opened to questions from the floor. About 250 persons were in the meeting and the questions came thick and fast. These students are in the front line of the struggle against segregation in the South and they had all experienced some form of abuse, jailing and denial of their legal rights.

We discussed the possibility of assault and battery cases against policemen and private citizens who molested members of peaceful picket lines and sit-ins. We answered questions as to the content and meaning of the Bill of Rights and the Fourteenth Amendment to the United States Constitution, the concept of the supremacy of the United States Constitution and the meaning of some of the Federal Civil Rights Acts. Discussion was also held concerning the need to find evidence of some sort of state action in order to bring suits in the Federal Courts, how to determine the true legal names of corporations and the nature and make-up of the FCC in relation to radio and television

by radio and TV stations as to grocery stores and movie houses being open to the general public, while in actuality they are closed to Negroes.

We had a long and very fruitful discussion led by Vic Rabinowitz related to the case of Hague V. CIO and the whole question of deprivation of First Amendment Constitutional Liberties. Vic discussed the matter of ordinances which purport to disallow any picketing, assembly, and outlaw virtually all activities of integration organizations. Vic pointed out that the labor movement had successfully passed through similar problems in the 1930's and the audience was happy to find that they had some precedent in their favor.

Later we conducted a legal problems and possibilities workshop with some 22 students in attendance. We were presented with fact situations concerning registering at a motel in Nashville, Tennessee, by two white students who signed one registration card for themselves and another student who was not present at the time of registration. When the third student, a Negro, showed up to claim his room, the manager refused to admit him and then locked out the two white students after returning their baggage. The clerk had told the two white students that they could sign one card for all three of them, but it turned out that under Tennessee law each registrant in a motel must sign his own card, or so the police told the three students.

Then the questions came thick and fast. Can they sue the owner of the motel? Can they sue the clerk for fraud? Can they sue the City of Nashville because the city police interfered? Can they sue the AAA for listing a motel which discriminated? On and on went the questions. Multiply this by 100 and you have a fairly clear picture of the magnitude of the problems involved and the burden on the three attorneys to wrestle with this mass of questions, digest the facts as best they could, and come up with workable and understandable answers.

After dinner another workshop was conducted until late in the evening, again concerning the legal problems of these students and suggested solutions to these problems.

Submitted by,

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REPORT ON THE
CONFERENCE WITH THE AMERICAN BAR
ASSOCIATION - COMMITTEE ON CIVIL
RIGHTS---MAY 26, 1962

Following the 1962 Detroit Convention of the Guild and the creation of the Special Committee to Assist Southern Lawyers, President Dreyfus addressed a communication to the American Bar Association in which he called attention to the difficult problems faced by clients in the South who seek legal representation, and by lawyers in the South who undertake to handle their civil rights cases relating to racial segregation. His letter indicated the nature of the program adopted by the Guild to aid in the solution of this problem and called upon the American Bar Association to accept its responsibility for similar assistance.

In the morning of May 26th at the Mayflower Hotel in Washington, the Co-chairman of our Committee, Attorney Crockett, and the Co-secretary, Attorney Smith, met with Attorney Alfred W. Schweppe and the following members of the American Bar Association's Committee on the Bill of Rights:

Herschel H. Friday of Little Rock, Arkansas
Joseph F. Johnston of Birmingham, Alabama
Hugh H. Lumbaugh of Cape Girardeau, Missouri
Reuben Oppenheimer of Baltimore, Maryland

Our reception was a cordial one. Our presentation was divided into two parts with Attorney Smith discussing the nature and extent of the problems confronting both clients and attorneys in Southern civil rights cases. He relied in large measure upon his own experiences and those of other lawyers in the South with whom he had been associated. Attorney Crockett discussed the program devised by the Guild to assist Southern lawyers, the mechanics involved in the operation of the program and several of the instances in which the program had proved beneficial.

Both Attorney Smith and Crockett then addressed themselves to the questions raised by the members of the American Bar Committee. These questions, for the most part, sought specific suggestions or contributions which could be made by the American Bar Association.

The members of the American Bar Committee seemed to agree that the principal task faced by their organization would be that of interesting and uniting the leadership of their affiliated Bar Associations in the

Southern states. The Chairman of the Committee stated that at its Boston Convention in 1953 the American Bar Association had adopted a broad resolution calling upon the members of the Bar to provide legal assistance for defendants in so-called "unpopular cases". While the immediate purpose of the resolution related to pending Smith Act prosecutions, the Committee was of the view that the resolution was sufficiently broad to encompass the present day situation in the South. This was the closest to any approximation of what the Committee was likely to do. Hence, we came away with the impression that the Committee's report would possibly recommend some extension of the 1953 resolution to cover current problems and would call upon Southern bar associations to adopt similar resolutions to be implemented by the personal urging of leading members of the bar in Southern states.

It was pointed out by the Chairman that any report or record made by the Committee could not be made public until after the same had been considered and passed on by the Board of Directors of the American Bar Association and presented to the Association's Convention at San Francisco in August.

Respectfully submitted

GEO. W. CROCKETT, JR.
BENJAMIN SMITH