legislation

Nicholas deB. Katzenbach
Deputy Attorney General
Department of Justice

July 22, 1963

Burke Marshall
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Civil Rights Division

Discussions with persons in Congress regarding the Civil Rights Legislation

The following are persons in Congress with whom I have discussed the legislation:

Senator Aiken - He said that he believed that we would obtain Republican support for everything, including public accommodations, provided a method were created to make specific the institutions covered and not covered. He said he did not consider it impossible to get cloture. This conversation was at breakfast with the Attorney General. We should discuss with him any possibilities of specifying further the establishments covered. He did not appear to favor dollar cut-offs.

Senator Hickenlooper - He did not know what was in the bill. He was under the impression that we had included Part III of the 1957 Act, and said he was opposed to that. He can not conceive how the bill can be constitutional under the Commerce Clause and was not responsive to any legal discussion on this point, his position being that the present Supreme Court would uphold anything, no matter how unconstitutional. He has not, however, crystallized a position against the legislation, and may follow others. This was also at breakfast with the Attorney General.

Senator Monroney - He believes as a matter of constitutional law that businesses can decide whether they are or are not covered by the Commerce Clause by the amount of business they do. In his own mind he appears to equate this with

ownership of establishments in more than one state. This position goes back with him to debates on the minimum wage legislation. The Solicitor General was present at this meeting. I do not believe that it is possible to persuade the Senator to support the public accommodations title in its present form. We were unable to get any feeling as to acceptable changes that might be possible. Nevertheless, he has not committed himself. He will support the rest of the bill.

Congressman McCulloch - I have discussed the bill with him twice. He feels that the key to conservative Republican support in the house is identifying more specifically the establishments covered. He does not consider the argument of the Commerce Clause and the Fourteenth Amendment to be of importance. I discussed with him the fact that Lindsey, McGregor and Mathias said we could only get support for a bill based on the Fourteenth Amendment. His comment was that is "superficial". It would appear that we would gain some votes that we would not otherwise get. My feeling is that he will support a bill with definitions that are more precise, but that he will not take the lead in suggesting any cut-offs.

Congressman Celler - When I last talked to him he wanted to take the word "substantially" out of the bill, to accept no cut-offs, and to base the bill on the Fourteenth Amendment as recommended by Joe Rauh. We left it that Bill Foley would make a list of the points that the Committee had to consider, that we would go over those with Foley, and that I would go before the Committee again as a final witness, perhaps in executive session.

Congressmen Lindsay, McGregor and Mathias - I have had some conversations with these three, but they are all superseded by conversations which the Solicitor General had with them.

legislation

Burke Marshall
Assistant Attorney General
Civil Rights Division
Herbert E. Hoffman, Chief,
Legislative & Legal Section

June 24, 1963

Civil Rights Hearings

Our information as to Hearings on Civil Rights legislation is now as follows:

1. On the Administration bill, H.R. 7152 (Celler) - the Attorney General is scheduled to testify on this measure before the House Judiciary Committee on Wednesday, June 26, at 10:30 a.m.

2. S. 1732 (Mansfield & Magnuson) - Public Accommodations. The Attorney General is scheduled to appear before the Senate Commerce Committee on Monday July 1 at 10:00 a.m. on this measure.

3. H.R. 6938 (Gill), H.R. 6939 (Quie) and H.R. 6972 (Hawkins) - Federal Assistance in Education bills. A request was sent to you on Friday that a statement be prepared for use at hearings scheduled by the Special Subcommittee on Education, House Committee on Education and Labor, chaired by Congressman Dent. These hearings have been deferred and will be rescheduled at a later date.

4. S. 773 (Clark, et al.) - F.E.P.C. bill. The Subcommittee on Employment and Manpower, Senate Labor Committee, has indicated that it intends to start hearings next week on this bill. The Committee would like to have the Attorney General or his designee testify on July 1 or July 2. Earlier today you were advised of this hearing, and I requested that you advise whether the Department should furnish a witness and, if so, who.

Please let me know if any of the above is not in accord with information which you have.

352 OLD SENATE OFFICE BUILDING
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CApitol 4-3121, EXT 4744

FOR RELEASE SUNDAY - JUNE 9, 1963

WILLIAMS ASKS PRESIDENT FOR CIVIL RIGHTS CONCILIATION SERVICE

Washington, D. C. June 9 -- Senator Harrison A. Williams (D. N. J.) revealed today that he has urged President Kennedy to include a national conciliation service among the Administration's civil rights proposals which are expected to be sent to Congress this week.

He added he would introduce legislation tomorrow outlining the details of the proposal which he said he hoped would be incorporated in the Administration's program.

It would be comparable to work of the Federal mediation and Conciliation Service in the labor-management field.

In a letter to the President last week, the New Jersey Democrat said:

"I think one of the most important lessons of the recent Birmingham crisis is the critical need and tremendous value of timely conciliation to re-establish lines of communication in an atmosphere of intense antagonisms and inflamed passions."

Williams pointed to the success of Burke Marshall, head of the Justice Department's Civil Rights Division, and others in opening up channels of communications and mediating the sharp disagreements between Negroes and whites in that torn city.

These efforts were widely hailed and as a result significant civil rights gains were made.

As Reverends Martin Luther King and Fred L. Shuttlesworth said of the Birmingham agreements: "Birmingham may well offer for Twentieth Century America an example of progressive racial relations; and for all mankind a dawn of a new day, a promise for all men, a day of opportunity, and a new sense of freedom for all America."

Williams said:

"This triumph of mediation argues strongly, I believe, for the establishment of a national conciliation service with regional offices to work in communities on a regular, continuing basis for the goal of both racial peace and social justice.

"When violence erupts, the fire brigades are rushed out and sometimes

[illegible] in Birmingham.

"But there also have been and will be failures unless moderating [illegible] are brought into play before the house even starts smoking."

Williams said he believed this proposal "for positive efforts to promote greater understanding would be a most important part of any well-rounded legislative program in the civil rights field."

He asked that a national civil rights conciliation serivce would be of "great help" in stimulating greater efforts along the same lines by local public and private organizations, institutions and individuals.

"No single man, no matter how eminently qualified, can do the whole job that needs to be done," he said. "Civil, business, labor, and especially religious leaders must play a far larger role, and this proposed conciliation service could be a tremendous catalyst to the vitally needed broader effort."

Williams said that in addition to the conciliation service proposal, he hoped the Administrations's program would also include legislation to give the government more legal tools to cope with segregation in schools, restaurants and other public accommodations, among other things.

He has sponsored this year bills providing broad injunctive powers to the Attorney General, as well as injunctive powers in the cases of mass arrests violating constitutional rights, school segregation and in public accommodations. He has also joined in sponsoring proposals to provide financial assistance to aid in school desegregation, to establish a Fair Employment Practices Commission, and to extend and expand the Civil Rights Commission.

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88TH CONGRESS
1ST SESSION

H. R. 6030

IN THE HOUSE OF REPRESENTATIVES

MAY 2, 1963

Mr. RYAN of New York introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To protect civil rights by providing criminal and civil remedies for unlawful official violence, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Improvement of State and Local Justice Act".

PROTECTION AGAINST VIOLENCE UNDER COLOR OF LAW

SEC. 2. (a) Section 242 of title 18, United States Code, is amended by inserting "(a)" immediately before "Whoever", and by adding at the end thereof the following:

"(b) Whoever, under color of any law, statute, ordinance, or regulation or custom knowingly performs any of the following acts depriving another person of any of the

rights, privileges, or immunities secured by the Constitution and laws of the United States shall be fined not more than $1,000 or imprisoned not more than one year, or both;

"(1) Subjecting any person to physical injury for an unlawful purpose;

"(2) Subjecting any person to unnecessary force during the course of an arrest or while the person is being held in custody;

"(2) Subjecting any person to unnecessary force liciously subjecting such person to unlawful restraint in the course of eliciting a confession to a crime or any other information;

"(4) Subjecting any person to violence or unlawful restraint for the purpose of obtaining anything of value;

"(5) Refusing to provide protection to any person from unlawful violence at the hands of private persons, knowing that such violence was planned or was then taking place; or

"(6) Aiding or assisting private persons in any way to carry out acts of unlawful violence."

(b) The enactment of this section shall not be construed as indicating an intent on the part of the Congress to prevent any State, any possession or Commonwealth of the United States, or the District of Columbia, from exer-

cising jurisdiction over any offense over which they would have jurisdiction in the absence of the enactment of this section.

FEDERAL CIVIL REMEDIES FOR UNLAWFUL OFFICIAL VIOLENCE

SEC. 3. Section 1979 of the Revised Statutes of the United States (42 U.S.C. 1983) is amended by inserting "(a)" immediately after "SEC. 1979.", and by adding at the end thereof the following:

"(b) Every city, county, or political subdivision of a State or territory which has in its employ a person who, under color of any statute, ordinance, regulation, custom, or usage of such State, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress to the same extent as the person employed is liable to the party injured."

PROTECTION OF FEDERAL OFFICERS AND UNIFORMED MEMBERS OF THE ARMED SERVICES FROM INJURY AND THREATS

SEC. 4. Section 1114 of title 18 of the United States Code is amended by striking out "officer or enlisted man of the Coast Guard" and inserting in lieu thereof "uniformed

member of the Army, Navy, Air Force, Marine Corps, or Coast Guard, and by striking out "of the Federal Bureau of Investigation."

EXCLUSION OF MINORITY GROUP MEMBERS FROM JURY SERVICE

SEC. 5. (a) The Attorney General is authorized to institute for or in the name of the United States a civil action or other proceeding for preventive relief, including an application for injunction or other order, against any individual or individuals who, under color of any statute, ordinance, regulation, custom, or usage of any State or political subdivision thereof, exclude any person or groups of persons from grand or petit jury service on account of their race, color, or national origin.

(b) As used in subsection (a), the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

88TH CONGRESS
1ST SESSION

H. R. 5741

A BILL

To provide that no Federal financial or other assistance may be furnished in connection with any program or activity in the United States in which individuals are discriminated against on the ground of their race, religion, color, ancestry, or national origin.

By Mr. RYAN of New York

APRIL 22, 1963

Referred to the Committee on the Judiciary

89TH CONGRESS
1st Session

H. R. 6030

A BILL

To protect civil rights by providing criminal and civil remedies for unlawful official violence, and for other purposes.

By Mr. RYAN of New York

MAY 2, 1965

Referred to the Committee on the Judiciary

Legislation

89TH CONGRESS
1ST SESSION

H. R. 6938

IN THE HOUSE OF REPRESENTATIVES

JUNE 11, 1965

Mr. GILL introduced the following bill; which was referred to the Committee on Education and Labor

A BILL

To amend the various Acts providing Federal assistance for education to insure that Federal funds will not be used to assist educational institutions which practice racial discrimination.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

AMENDMENTS OF NATIONAL DEFENSE EDUCATION ACT OF 1958

SECTION 1. (a) Section 203 of the National Defense Education Act of 1958 is amended by adding at the end thereof the following new subsection:

"(c) The Commissioner shall make no capital contribution to an institution of higher education under this title

until he determines that such institution is being operated, and students admitted thereto, on a racially nondiscriminatory basis, or that it is making progress toward that end with all deliberate speed."

(b) Section 303 (a) of such Act is amended by striking out the period at the end of paragraph (5) and inserting a semicolon in lieu thereof, and by adding at the end thereof the following new paragraph:

"(6) provides assurances that no equipment or services financed in whole or in part with assistance under this part will be provided any school which is not operated, and students admitted thereto, on a racially nondiscriminatory basis, or is not making progress toward that end with all deliberate speed."

(c) Section 305 of such Act is amended by adding at the end thereof the following new subsection:

"(c) Loans may be made under this Act only to schools which are operated, and admit students, on a racially nondiscriminatory basis, or are making progress toward that end with all deliberate speed."

(d) Section 403 (a) of such Act is amended by striking out "and" at the end of clause (2), by striking out the period at the end of clause (3) and inserting in lieu thereof "; and", and by adding at the end thereof the following new clause:

"(4) that such program is operated, and students admitted thereto, on a racially nondiscriminatory basis, or that progress toward that end is being made with all deliberate speed."

(e) Section 511 of such Act is amended by inserting after the first sentence the following new sentence: "The Commissioner shall require each such institute to be operated on a racially nondiscriminatory basis."

(f) Section 601 (a) of such Act is amended by inserting after the second sentence thereof the following: "The Commissioner shall require each such center to be operated on a racially nondiscriminatory basis."

(g) Section 611 of such Act is amended by inserting after the first sentence thereof the following: "The Commissioner shall require each such institute to be operated on a racially nondiscriminatory basis."

AMENDMENT OF VOCATIONAL EDUCATION ACTS

SEC. 2. (a) Section 8 of the Act of February 23, 1917 (relating to vocational education) is amended by inserting "(a)" after "SEC. 8." and by adding at the end thereof the following new subsection:

"(b) Each State plan shall require that any vocational education program assisted with funds appropriated under this Act shall be operated, and students admitted thereto,

on a racially nondiscriminatory basis, or that progress toward that end shall be made with all deliberate speed."

(b) Section 203 (a) of the Vocational Education Act of 1946 is amended by striking out "and" at the end of clause (4), by striking out the period at the end of clause (5) and inserting in lieu thereof "; and", and by adding at the end thereof the following:

"(6) provide that all training programs carried on under the State plan will be operated, and students admitted thereto, on a racially nondiscriminatory basis, or that progress toward that end will be made with all deliberate speed."

AMENDMENTS OF PUBLIC LAWS 815 AND 874, EIGHTY-FIRST CONGRESS

SEC. 3. (a) Section 6 of the Act of September 23, 1950, is amended by adding at the end thereof the following new subsection:

"(d) An application of a local educational agency may be approved under this Act after June 30, 1963, only if the Commissioner determines that it is operating its schools, and admitting students thereto, on a racially nondiscriminatory basis, or that it is making progress toward that end with all deliberate speed."

(b) Section 5 of the Act of September 30, 1950, is

amended by adding at the end thereof the following new subsection:

"Nondiscrimination

"(d) (1) Notwithstanding any other provision of this Act, after June 30, 1963, payments may be made under this Act only to a local educational agency which the Commissioner determines is operating its schools, and admitting students thereto, on a racially nondiscriminatory basis, or is making progress toward that end with all deliberate speed."

AMENDMENT OF LIBRARY SERVICES ACT

SEC. 4. Section 5(a) of the Library Services Act is amended by striking out "and" at the end of paragraph (4), by striking out the period at the end of paragraph (5) and inserting "; and" in lieu thereof, and by adding at the end thereof the following new paragraph:

"(6) provide that the library services furnished under the plan will be made available on a racially nondiscriminatory basis."

AMENDMENTS OF LAND GRANT COLLEGE ACT

SEC. 5. (a) The first section of the Act of August 30, 1890 (26 Stat. 417; 7 U.S.C. 322, 323), is amended by striking out all that follows "students" in the first proviso and inserting in lieu thereof a period: *Provided*, That any

institution which was entitled to receive the benefits of such Act for the fiscal year ending June 30, 1963, shall be entitled to the benefits of such Act and subject to its provisions, as much as it would have been if it had been included under the Act of July 2, 1862.

(b) Sections 2, 3, and 4 of such Act of August 30, 1890 (7 U.S.C. 324–326), are each amended by striking out ", or the institution for colored students,", "or other institutions", and ", or of institutions for colored students," each place those terms appear.

(c) The amendments made by this section shall apply only with respect to appropriations made under the Act of August 30, 1890, for fiscal years which begin after June 30, 1963.

88TH CONGRESS
1ST SESSION

H. R. 6938

A BILL

To amend the various Acts providing Federal assistance for education to insure that Federal funds will not be used to assist educational institutions which practice racial discrimination.

By Mr. GILL

JUNE 11, 1963

Referred to the Committee on Education and Labor

A BILL

To render aid and assistance in the desegregation of public schools as required by the Constitution of the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Equal Educational Opportunity Act of 1963."

TITLE I--DEFINITIONS

SEC. 101. As used in this Act--

(a) "Commissioner" means the Commissioner of Education.

(b) "Desegregation" means the assignment of all students to public schools and within such schools without regard to their race, color, religion or national origin.

(c) "Public school" means any elementary or secondary educational institution operated by a State, subdivision of a State, or governmental agency within a State, or operated wholly or predominantly from or through the use of governmental funds or property, or funds or

property derived from a governmental source.

(d) "School board" means any agency or agencies which administer a system of one or more public schools and any other agency which is responsible for the assignment of students to or within such system.

TITLE II--ASSISTANCE TO FACILITATE DESEGREGATION

SEC. 201. The Commissioner shall conduct investigations and make a report to the President and the Congress, within one year of the enactment of this Act, upon the extent to which equal educational opportunities are denied to individuals by reason of race, color, religion or national origin in public educational institutions at all levels in the United States, its territories and possessions and the District of Columbia.

SEC. 202. (a) The Commissioner is authorized, upon the application of any school board, State, municipality, school district or other governmental unit, to render technical assistance in the preparation, adoption and implementation of plans for the desegregation of public schools or other plans designed to deal with problems arising from racial imbalance in public school systems. Such technical assistance may, among other activities, include making available to such agencies information regarding effective methods of coping with special educational problems occasioned by desegregation, and making available to such agencies personnel of the Office of Education or other persons specially equipped to advise and assist them in coping with such problems.

(b) The Commissioner is authorized to arrange, through grants or contracts, with institutions of higher education for the operation of short-term or regular session institutes for special training designed to improve the ability of teachers, supervisors, counselors, and other elementary or secondary school personnel to deal effectively with special educational problems occasioned by desegregation or other measures to adjust racial imbalance in public school systems. Individuals who attend such an institute may be paid stipends for the period of their attendance at such institute in amounts specified by the Commissioner in regulations, including allowances for dependents and including allowances for travel to attend such institute.

SEC. 203. (a) To be eligible for assistance under this section, any school board which has failed to achieve desegregation in all public schools within its jurisdiction must adopt a desegregation plan as provided in subsection (b) of this section and file said plan with the Commissioner. A school board which is or hereafter becomes subject to a court order providing for or approving a desegregation plan may file such plan with the Commissioner, and such filing shall constitute compliance with this subsection if such plan complies with the standards of subsection (b).

(b) Every desegregation plan required under subsection (a) shall provide for achieving desegregation in all public schools within the jurisdiction of the school board with all deliberate speed, pursuant to a schedule setting forth the time when and the manner in which

desegregation is to be achieved for each class, grade, school, and district within the jurisdiction of the school board involved.

(c) Every plan submitted to the Commissioner pursuant to subsection (a) of this section shall be reviewed by him to determine whether it satisfies the requirements of this section and of any rules and regulations issued pursuant to section 205 of this title. Whenever the Commissioner determines that a desegregation plan submitted to him meets such requirements, he shall be authorized, for the purpose of facilitating the carrying out of any such desegregation plan and upon receipt of application therefor, to make grants or loans, as hereinafter provided, to a school board, State, municipality, school district, or other governmental unit to assist in meeting the costs which he determines to be reasonably necessary for the implementation of such desegregation plan.

(d) A grant may be made under this section for--

(1) the cost of giving to teachers and other school personnel in-service training in dealing with problems incident to desegregation;

(2) the cost of employing specialists in problems incident to desegregation and of providing other assistance to develop understanding of desegregation by parents, schoolchildren, and the general public, in order to facilitate such desegregation; and

(3) incidental costs directly related to the process of eliminating segregation in public

(e) Each application made for a grant under this section shall provide such detailed information as the Commissioner may by regulation require. Each grant under this section shall be made in such amounts and on such terms and conditions as the Commissioner shall prescribe, which may include a condition that the applicant expend certain of its own funds in specified amounts for the purpose for which the grant is made. In determining whether to make a grant, and in fixing the amount thereof and the terms and conditions on which it will be made, the Commissioner shall take into consideration the amount available for grants under this section and the other applications which are pending before him; the financial condition of the applicant and the other resources available to it; the nature, extent and gravity of its problems incident to desegregation, and such other factors as he finds relevant.

(f) A loan may be made under this section to any school board or to any local government within the jurisdiction of which any school board operates if the Commissioner finds that--

(1) part or all of the funds which would otherwise be available to any such school board, either directly or through the local government within whose jurisdiction it operates, have been withheld or withdrawn by State or local governmental action because of the actual or prospective

desegregation, in whole or in part, of one or more schools under the jurisdiction of such school board;

(2) such school board has authority to receive and expend, or such local government has authority to receive and make available for the use of such board, the proceeds of such loan; and

(3) the proceeds of such loan will be used for the same purposes for which the funds withheld or withdrawn would otherwise have been used.

(g) Any loan under this section shall be made upon such terms and conditions as the Commissioner shall prescribe. Any such loan shall be repaid within such time as the Commissioner prescribes after the funds withheld or withdrawn are restored to the school board or local government concerned, or after funds become available to such school board or local government by borrowing from private sources.

(h) A desegregation plan approved by the Commissioner pursuant to subsection (c) of this section may be modified by agreement between the school board and the Commissioner.

(i) The Commissioner shall suspend or terminate assistance under this section to any school board which, in his judgment, is failing to comply in good faith with the provisions of the desegregation plan filed pursuant to subsection (a) or such plan as modified pursuant to subsection (h). Such suspension or termination shall be without prejudice to any other remedy which may be available to the United States at law or in equity.

SEC. 204. Payments pursuant to a grant or contract under this Act may be made (after necessary adjustment on account of previously made overpayments or underpayments) in advance or by way of reimbursement, and in such installments, and on such conditions, as the Commissioner may determine.

SEC. 205. The Commissioner shall prescribe rules and regulations to carry out the provisions of this title.

TITLE III--DESEGREGATION OF PUBLIC SCHOOLS

SEC. 301. (a) All civil actions, commenced by any person in any court of the United States for relief against denial of equal protection of the laws by reason of the failure of a school board to achieve desegretation, and all proceedings had in connection therewith, shall be given precedence and assigned for hearing at the earliest practicable date.

(b) Whenever the Attorney General receives a complaint signed by a parent or group of parents to the effect that his or their minor children, as members of a class of persons similarly situated, are being deprived of the equal protection of the laws by reason of the failure of a school board to achieve desegregation, and the Attorney General certifies that in his judgment the signers of such complaint are unable for any reason to initiate and maintain appropriate legal proceedings for relief against such failure of a school board, the Attorney General is authorized to institute for or in the name of the United States a civil action in a district court of the United States against such school board to compel desegregation of the public schools within the jurisdiction of such board with all deliberate speed.

The Attorney General may implead as defendants such additional parties as are or become necessary to the grant of effective relief hereunder.

(c) A person or persons shall be deemed unable to seek effective legal protection within the meaning of subsection (a) of this section not only when such person or persons are financially unable to bear the expense of the litigation, but also when there is reason to believe that such person or persons are unable to obtain effective legal representation or that the institution of such litigation would jeopardize the employment or economic standing of, or might result in injury or economic damage to, such person or persons, their families or their property.

(d) Whenever an action has been commenced in any court of the United States seeking relief from the denial of equal protection of the laws by reason of the failure of a school board to achieve desegregation, the Attorney General for or in the name of the United States may intervene in such action if he certifies that, in his judgment, the plaintiffs are unable to maintain the action for any of the reasons set forth in subsection (b) of this section. In such an action the United States shall be entitled to the same relief as if it had instituted the action under subsection (a) of this section.

(e) If, within six months after the institution of or intervention in an action by the Attorney General under this section, the court has not issued a final order granting or denying relief, it shall be deemed to have denied all relief under this section. An appeal shall thereupon lie

Appeals, in an appeal under this subsection the provisions of Rule 52(a) of the Federal Rules of Civil Procedure as to the effect to be given to the findings of fact of the district court shall apply only with respect to findings actually made by that court.

(f) The term "parent" as used in this section includes other legal representatives.

SEC. 302. Nothing in this title shall be construed to deny, impair, or otherwise affect any right or authority of the Attorney General under existing law to institute or intervene in any action or proceeding.

SEC. 303. In any action or proceeding under this title the United States shall be liable for costs the same as a private person.

TITLE IV--MISCELLANEOUS

SEC. 401. Nothing in this Act shall affect adversely the right of any person to sue for or obtain relief in the federal courts against discrimination in public education.

SEC. 402. There are hereby authorized to be appropriated such sums as are necessary to carry out the provisions of this Act.

SEC. 403. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of the Act and the application of the provision to other persons or circumstances shall not be affected thereby.

IN THE SENATE OF THE UNITED STATES

Mr. _____

introduced the following bill; which was read twice and referred to the Committee on

_____

A BILL

To establish a Community Relations Service to provide conciliation assistance in communities where disagreements or difficulties among citizens are disrupting, or are threatening to disrupt, the peaceful life of the community.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That this Act may be cited as the "Community Relations Service Act".

COMMUNITY RELATIONS SERVICE; DIRECTOR

Sec. 2. There is hereby established as an independent agency of the Government a Community Relations Service (hereafter in this Act referred to as the "Service"). The Service shall be headed by a Director who shall be appointed by the President by and with the advice and consent of the Senate. The Director shall serve for a term of four years and until his successor is appointed and qualified. The Director shall receive compensation at a rate of $20,000 per year.

ASSISTANT DIRECTORS

Sec. 3. (a) There shall be five Assistant Directors who shall be appointed by the President by and with the advice and consent of the Senate. Each Assistant Director shall serve for a term of four years and until his

appointed, one shall serve for a term of one year, one for a term of two years, one for a term of three years, and two for a term of four years. Each Assistant Director shall receive compensation at a rate of $17,500 per annum.

(b) Each Assistant Director shall perform such duties and functions as may be assigned to him, or delegated to him, by the Director.

PRINCIPAL OFFICE: REGIONAL OFFICES

Sec. 4. (a) The principal office of the Service shall be in the metropolitan area of Washington, but the Director may establish such regional offices, not exceeding five, as he deems necessary to carry out the duties and functions of the Service.

(b) Each regional office established pursuant to subsection (a) shall be headed by an Assistant Director.

DUTY AND FUNCTION OF THE SERVICE

Sec. 5. (a) It shall be the duty of the Service, subject to the provisions of this Act, to provide conciliation assistance in communities where (1) disagreements or difficulties regarding the laws or Constitution of the United States, or (2) disagreements or difficulties which affect or may affect interstate commerce, are disrupting, or are threatening to disrupt, peaceful relations among citizens of such communities.

(b) In providing conciliation assistance under this Act, the Service shall have no power --

(1) to arbitrate any disagreement or difficulty,

(2) to make public recommendations for settlement of any disagreement or difficulty, or

(3) to enforce any agreement reached as a result of conciliation assistance.

(c) The activities of all officers and employees of the Service in providing conciliation assistance under this Act shall be conducted in confidence and without publicity, and they shall not be obliged to disclose any information acquired in the regular course of performing their duties.

Sec. 6. (a) The Director shall whenever possible in the course of providing conciliation asssitance seek and utilize the cooperation of the agencies of the State or States, or local subdivisions thereof, in which is located the community which is affected by the differences which are the subject of such conciliation assistance.

(b) The Director may, in the course of providing conciliation assistance, seek and utilize the cooperation of any nonpublic agency which he believes may be helpful.

ADMINISTRATIVE PROVISIONS

Sec. 7. (a) The Director is authorized to appoint and fix the compensation, in accordance with the civil service laws and regulations and the Classification Act of 1949, of such technical, clerical, and other assistants as may be necessary to carry out the duties and functions of the Service under this Act.

(b) The Director is authorized to delegate to the Assistant Directors such of his powers and duties as he deems advisable.

(c) Subject to the provisions of section 7, the Director shall, on or before January 31 of each year, submit to the Congress a report of the activities of the Service during the preceding fiscal year. Such report shall also contain information with respect to the internal administration of the Service and may contain recommendations for legislation necessary for improvements in such internal administration.

APPROPRIATIONS

Sec. 8. There are authorized to be appropriated such sums as may be necessary to carry out this Act.

SECTIONAL ANALYSIS OF REVISED S. 499, PROPOSED CIVIL RIGHTS ACT OF 1959

TITLE I - COMMUNITY RELATIONS SERVICE

SEC. 101 expresses a Congressional purpose to provide conciliation services to citizens within a community who desire assistance in finding peaceful solutions consistent with the Constitution to disagreements or difficulties regarding the appropriate means of implementing constitutional rights.

SEC. 102 (a) establishes a Community Relations Service as an independent agency; and imposes upon it the duty of providing conciliation assistance in communities where disagreements or difficulties regarding appropriate means of implementing the requirements of the Constitution are disrupting, or are threatening to disrupt, peaceful relations in the community.

Subsection (b) requires that the conciliation service should be conducted in confidence and without publicity and provides that officers and the employees shall not be required to disclose any information acquired in the regular course of duty.

SEC. 103 directs the Service to seek and use whenever possible the cooperation of State and local governmental agencies in the communities involved, and authorizes it to seek and use the cooperation of any non-public agency when it would be helpful.

SEC. 104 (a) provides for the appointment by the President, with the advice and consent of the Senate, of a Director who is to serve for four years at an annual compensation of $20,000.

Subsection (b) provides for the appointment in the same manner of 5 Assistant Directors who are to also serve for terms of 4 years at an annual compensation of $17,500. Terms of the Assistant Directors are to be staggered so that not all will expire at the same time. Each Assistant Director is to perform such duties and functions as may be assigned or delegated to him by the Director.

Subsection (c) authorizes the Director to employ and fix the compensation of not more than 100 technical, clerical and other assistants in accordance with civil service laws and regulations and the Classification Act of 1949 as amended.

SEC. 105 establishes the principal office of the Service in the metropolitan area of Washington and authorizes the establishment of not more than 5 regional offices. Each regional office is to be headed by an Assistant Director.

SEC. 106 requires the Director to make annual reports to the Congress of its activities and the internal administration of the Service.

SEC. 107 authorizes appropriations of moneys necessary to carry out Title I.

TITLE II - TECHNICAL ASSISTANCE BY DEPARTMENT OF HEALTH, EDUCATION AND WELFARE

SEC. 201 authorizes the Department of Health, Education and Welfare to render technical assistance to States, municipalities, school districts and other local governmental units who desire assistance in desegregating public schools by collecting information on desegregation in the public schools; providing upon request, information and assistance to State or local officials to aid them in developing desegregation programs; making available, upon request, specialist services to assist State and local officials to develop and carry out such programs; and assisting by appropriate related methods governmental units desiring assistance in eliminating segregation in public education.

SEC. 202 authorizes necessary appropriations to carry out the Title.

TITLE III - EXTENSION OF COMMISSION ON CIVIL RIGHTS

SEC. 301 amends section 104 (b) of the Civil Rights Act of 1957 so as to extend the life of the Commission beyond the expiration date of September 9, 1959 to January 31, 1961.

TITLE IV - PROVIDING FOR THE RETENTION AND PRESERVATION OF FEDERAL ELECTION RECORDS AND FOR ACCESS TO SUCH RECORDS BY THE ATTORNEY GENERAL

SEC. 401 requires every officer of election to retain and preserve for three years all records and papers relating to any application, registration, poll tax payment or other act requisite to voting in any general, special or primary election at which federal officials are voted for; except that when required by law he may deliver such records and papers to another officer of election and if a State designates a custodian, he may deposit such records and papers with such custodian. Willful failure to comply with this section is to be punished by a fine of not more than $1,000, or imprisonment for not more than one year, or both.

SEC. 402 provides that any person who willfully steals, destroys, mutilates, or alters any record or paper required to be retained and preserved by section 401 shall be fined not more than $5,000, or imprisoned not more than five years, or both.

SEC. 403 requires upon demand in writing any record or paper required to be kept by section 401 is to be made available for inspection, reproduction and copying by the Attorney General or his representative.

SEC. 404 requires that records or papers demanded under section 403 shall be produced for the purposes specified at the office of the person upon whom demand is made, or at the office of the United States attorney in the district where such documents are located.

SEC. 405 forbids the Attorney General and his representatives or any employee of the Department of Justice, unless ordered by a United States court from disclosing any record or paper produced pursuant to this title, or a reproduction, except as necessary in performing his official

SEC. 406 confers upon the United States district court for the district in which a demand is made under section 403 or in which a record or paper demanded is located jurisdiction to compel its production.

SEC. 407 defines "officer of election" to embrace any person, who under color of any law, statute, ordinance, regulation, authority, custom or usage, performs any function, duty or task in connection with any application, registration, poll tax payment or other act requisite to voting in any general, special or primary elections at which candidates for federal office are voted for.

TITLE V - AMENDMENTS TO CRIMINAL CODE AND INVESTIGATIONS BY FEDERAL BUREAU OF INVESTIGATION

SEC. 501 adds a new section, § 837, to Chapter 39 of title 18 of the United States Code.

This section provides that whoever imports into the United States, or introduces, delivers, or receives for introduction, attempts to transport, transports, or causes to be transported, in commerce (as defined) any explosive as defined, or possesses any explosive which has been imported into the United States, or introduced, delivered for introduction, or transported in commerce, with the knowledge or intent that it will be used to damage or destroy any real or personal property in violation of State law shall be fined not more than $1,000, or imprisoned not more than one year, or both. If death results from any violation of this provision, punishment shall be death or imprisonment for any term of years or life.

This new section of the Criminal Code also provides that whoever, through the use of the mail, telephone, telegraph or other instrument of commerce, willfully imports or conveys, or causes to be imported or conveyed, information known to be false, concerning an attempt or alleged attempt being or to be made to damage or destroy any real or personal property in violation of State law shall be imprisoned not more than one year or fined not more than $1,000, or both.

SEC. 502 adds to the crimes under State law specified in section 1073 of the Criminal Code, for which the movement or travel in interstate or foreign commerce with intent to avoid prosecution, custody or conviction or to avoid giving testimony is made punishable under section 1073, the crime of "feloniously damaging or destroying any building or other real or personal property."

SEC. 503 (a) authorizes the Attorney General to cause an immediate investigation by the Federal Bureau of Investigation whenever any real or personal property has been damaged or destroyed by any explosive and the Attorney General is of the opinion there are reasonable grounds to believe there has been a violation of section 837 of the Criminal Code.

Subsection (b) authorizes the Attorney General, upon request of the Governor of a State or of the chief executive officer of any political subdivision, to assign FBI agents to assist State and local law enforcement officials to investigate the damage or destruction by explosive of any real

SEC. 504 declares that nothing in Title V is to be construed as indicating Congressional intent to occupy the field to the exclusion of State law, and that the enactment of the title shall not invalidate any State law or deprive any local authorities of any jurisdiction.

TITLE VI - MISCELLANEOUS PROVISIONS

SEC. 601 declares the Congressional intent that nothing in the Act is to be construed to authorize any federal official to exercise any direction, supervision or control over the curriculum, program of instruction, the administration or personnel of any educational institution.

SEC. 602 provides for the citation of the Act as the "Civil Rights Act of 1959."

SECTIONAL ANALYSIS OF REVISED S. 499, PROPOSED CIVIL RIGHTS ACT OF 1959

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SEC. 106 requires the Director to make annual reports to the Congress of its activities and the internal administration of the Service.

SEC. 107 authorizes appropriations of moneys necessary to carry out Title I.

SEC. 108 designates Title I as the "Community Relations Service

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SEC. 405 forbids the Attorney General and his representatives or any employee of the Department of Justice, unless ordered by a United States court from disclosing any record or paper produced pursuant to this title, or a reproduction, except as necessary in performing his official duties, including presentations to a court or grand jury.

SEC. 406 confers upon the United States district court for the district in which a demand is made under section 403 or in which a record or paper demanded is located jurisdiction to compel its production.

SEC. 407 defines "officer of election" to embrace any person, who under color of any law, statute, ordinance, regulation, authority, custom or usage, performs any function, duty or task in connection with any application, registration, poll tax payment or other act requisite to voting in any general, special or primary elections at which candidates for federal office are voted for.

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Subsection (b) authorizes the Attorney General, upon request of the Governor of a State or of the chief executive officer of any political subdivision, to assign FBI agents to assist State and local law enforcement officials to investigate the damage or destruction by explosive of any real or personal property and to apprehend the persons responsible.

SEC. 304 declares that nothing in Title V is to be construed as indicating Congressional intent to occupy the field to the exclusion of State law, and that the enactment of the title shall not invalidate any State law or deprive any local authorities of any jurisdiction.

TITLE VI - MISCELLANEOUS PROVISIONS

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SEC. 602 provides for the citation of the Act as the "Civil Rights Act of 1959."

TESTIMONY OF ERWIN N. GRISWOLD, COMMISSIONER

U.S. COMMISSION ON CIVIL RIGHTS

BEFORE THE

SENATE COMMERCE COMMITTEE

ON S. 1732 AND OTHER PENDING LEGISLATION

WEDNESDAY, JULY 24, 1963

Mr. Chairman and Members of the Committee:

I appreciate this opportunity to present the views of the Commission on Civil Rights on the legislation now pending before your Committee.

The public accommodations bill you are now considering is clearly the most important part of any program for protecting the civil rights of American citizens and indeed, in my judgment, the most important issue facing this Congress.

Its importance lies in the fact that the continued denial to one group of American citizens of access to restaurants, hotels and other places of public accommodation has plunged many communities in our Nation into turmoil and has challenged our ability to govern ourselves through the peaceful and orderly processes of law. But there is an even greater meaning to your deliberations. The Courts of our Nation have established beyond any doubt that all citizens are entitled to equal treatment at the hands of government. This matter is settled, although we are having inordinate difficulties in translating this legal principle into practice. There remains, however, the issue of the right of citizens to equal treatment in their public dealings with other important segments of

society. This is the principle to which Congress is addressing itself in the public accommodations bill. It goes to the heart of the matter--the dignity of each individual and his right to decent and equitable treatment at the hands of society.

It is clear that the denial of access to public places is a problem of national, rather than regional or sectional, dimensions. This is reflected in the accounts of our biracial Advisory Committees throughout the country of their own difficulties in conducting business in segregated communities. Last year, for example, our Nevada Committee reported that when the Committee held a public meeting in Hawthorne, its members, along with a representative of the Governor of Nevada, were refused service at the city's leading restaurant because of the racial composition of the group. Two weeks ago, our Louisiana Committee reported a similar incident in connection with a public meeting it was holding in New Orleans. The Commission itself, in conducting hearings and other Government business throughout the Nation, has found on more than one occasion that the only facilities which could be secured on an unsegregated basis were those available at military installations.

If these are the minor tribulations of Government officials trying to conduct their business, how much more devastating is the impact of racial discrimination on the daily lives of Negro citizens. The average white person takes for granted the recreational, cultural and entertainment offerings of his community--the restaurants, department stores, theaters, concert halls, sports arenas, bowling alleys and skating rinks. But the Negro in a segregated city is entirely excluded from the mainstream of

community life; he must build his own minority society or have none at all. For the white man traveling from State to State, the road is a series of familiar landmarks and frequently his most difficult problem is to make a choice among the array of establishments offering him food, lodging and respite. But for the Negro traveler, the road may be more like a desert and each inviting sign a mirage or, worse yet, a humiliating rebuff to him, his family or companions.

The problem can also be seen in the plight of the Negro who is a member of the Armed Forces. He travels wherever ordered to serve his country--but once there he may be excluded from the surrounding community and virtually restricted to the base. This has created a delicate problem for one Air Force installation in Alabama which trains foreign nationals as well as Americans. The military authorities have solved it by issuing "passports" to colored foreigners to enable them to travel unmolested in the community. For the American serviceman, neither his uniform nor his birthright is enough.

II.

The existence of this kind of situation should be of vital concern to the government of a democracy whether or not it gives rise to protests and demonstrations. In my judgment, Congress has authority under the Constitution to provide a complete remedy for the discriminatory denial of access to places of public accommodations. This power can be exercised pursuant to the Commerce Clause, the Fourteenth Amendment or a combination of both provisions.

First, as to the Commerce Clause, there is no question that acts of racial discrimination which affect interstate commerce are an appropriate subject for regulation. Congress has in fact prohibited certain acts of racial discrimination in passing the Aviation and Interstate Commerce Acts. It has, for example, forbidden restaurants which are an integral part of interstate bus transportation to discriminate against customers on the basis of race. Even in the absence of statute, the Supreme Court has held that racial discrimination constitutes a burden upon interstate commerce in violation of the Constitution.

Since Congress and the Courts have already dealt with discrimination under the Commerce power, it is not necessary to reason from analogy to prove that the legislation before you would be an appropriate exercise of authority under Article I, Section 8. But if analogies were needed, they are plentiful. The Government has regulated the businessman in his dealings with customers and the public as well as with his employees and other businessmen and employers. Congress in exercising the Commerce power has sought to protect the public from impure food, drugs and water, from unsafe appliances, from criminal or immoral acts, from price-fixing and other restraints of trade. In doing so, it has prescribed the shape of oleomargarine served in restaurants and the labelling of bottles of aspirin in drugstores. Surely, then, we are not dealing with an exercise of authority which in any respect would be unique or peculiar in its application.

It is equally clear that when Congress is dealing with a subject appropriate for legislation it has plenary authority to achieve its objectives. Congressional authority is not limited to the regulation of commerce among the States. It extends, as the Supreme Court said in United States v. Darby, "to those activities intrastate which so affect interstate commerce or the exercise of power of the 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." In practice this has meant the regulation of intrastate transactions when they are "so comingled with or related to interstate commerce that all must be regulated if interstate commerce is to be effectively controlled." It has meant that amusement activities such as motion pictures, professional boxing and football are subject to the antitrust laws even though the showing or exhibition is a local affair; that employees of a window cleaning company may be covered by fair labor standards if the greater part of their work is done on the windows of industrial plants of producers of goods in interstate commerce; that agricultural production quotas may be applied to wheat grown by a farmer only for his own consumption where it is determined that price is affected by the whole supply and not merely the quantity offered for sale.

In the United States of 1963, it does not require any fiction to see the relationship of places of public accommodation to interstate commerce. In 1961, commercial airlines flew more than 18 billion revenue passenger miles in the Nation during the first half of the year. More than 350

million passengers traveled on the 218 thousand miles of railroad routes in 1958. Intercity buslines in 1959 carried 170 million passengers over 208 thousand miles of route. The 41,000 mile interstate highway system, which reaches into every corner of the land, crosses the boundaries of 673 cities and passes close to many hundreds of others.

With the growth of metropolitan complexes, many thousands of citizens travel across State lines for business or pleasure, not periodically but on a daily basis. And at the same time, a great volume of the goods and appliances used by businesses which serve the public move in interstate commerce.

Thus it seems to me that the great majority of public accommodations in a true sense affect, or are affected by, interstate commerce. The issue is not whether Congress has power to act with respect to these businesses, but whether it wishes to draw the line short of a full exercise of its authority.

Secondly, I believe that a strong case can be made establishing a right to equal access to public accommodations under the equal protection clause of the Fourteenth Amendment. I recognize, of course, that in the Civil Rights Cases, decided in 1883, the Supreme Court rejected the Fourteenth Amendment as a basis for a statute similar in many respects to the bill you are considering. But in the past eighty years much of the force of that decision has diminished and the premises on which it was based have been undermined.

Justice Bradley, in the opinion of the court in the Civil Rights Cases, assumed that the States were exercising their responsibilities for dealing with racial discrimination in public places. In fact,

30 States have now acted specifically to protect the rights of their citizens to equal treatment. But in other States quite the contrary has been true. Hundreds of statutes and ordinances enforcing a policy of segregation have been enacted since 1883. And in many localities which have no laws or which have repealed them, customs having the force of law have operated to establish a uniform community policy of segregation in public places.

Moreover, even in areas which have no segregation laws or policies, businesses serving the public have become much more involved with Government over the course of time. They receive various kinds of assistance and protection from the State. Licensing and regulatory provisions such as antitrust, fair trade and zoning laws have been enacted for the protection of legitimate business activity as well as for the benefit of the public. With this growing involvement, the concept of State action has expanded so that now the Fourteenth Amendment may be found applicable whenever "to some significant extent the State in any of its manifestations has been found to have become involved" in private conduct which abridges individual rights. (Burton v. Wilmington Parking Authority, 365 U.S. 715)

The application of the Fourteenth Amendment is clear where there is "state participation through any arrangement, management, funds, or property." (Cooper v. Aaron, 358 U.S. 1, 4) Thus, for example, transportation companies and other enterprises which operate under a State franchise which give them a preferred position must make their services available to all persons without regard to race. But these are not the only

enterprises in which there is a substantial State involvement. It should be remembered that the earliest type of public utility was the innkeeper, and that businesses which offer food, drink, lodgings or entertainment to the public are affected with a public interest and hence have been subjected to State regulation and control. Where such enterprises which serve the public are in fact regulated by the State, citizens are entitled to equal protection of the laws. Thus, while the Commerce Clause is an adequate basis for this legislation, the Fourteenth Amendment is an added source of Congressional authority.

It follows from what I have said that I do not believe that in acting to protect personal rights, Congress would in any sense be violating the property rights of businessmen. The short answer to such a contention is that 30 States have already restricted the use of public accommodations in a racially discriminatory manner and that the courts have sustained these exercises of State power. For centuries, real property even when dedicated to private use has been subject to reasonable restrictions. These include restraints upon alienation, health, building, fire and zoning codes, and even the taking of property by the Government. How then can it be asserted that a business which serves the public is not subject to reasonable regulation for the protection of the public - particularly when the restriction is simply upon proprietors' making racial distinctions among the public they have chosen to serve.

III.

Thus, in my opinion, legislation is urgently needed and Congress has ample authority to respond to the need. The only real issue is how Congress should exercise its recognized authority. In drawing any lines, it seems to me that Congress should be guided by a desire for effective enforcement of the rights guaranteed, for a reasonable degree of certainty in the coverage of the law and for imposing an obligation which will be borne equally by business establishments of a like character.

The standards are met best by S. 1732 which would establish the right of all persons to equal treatment in places of public accommodation if these places serve interstate travelers or in other ways, such as the movement of goods, substantially affect interstate commerce. Under this test, a familiar formula for Congress in enacting legislation pursuant to the Commerce Clause, the evil of discrimination would be removed in most public places while establishments of a purely local character would be excluded; the impact of the law would be equally distributed among businesses in competitive situations; and, while there would be a few marginal areas of doubt, the great majority of proprietors would understand whether or not the law applied to them. If an attempt were made to import more certainty into the legislation, more troublesome problems might be raised. A formula based upon the dollar volume of various types of enterprise would not remedy the evil and would be inequitable in distributing the responsibility. What is a small and relatively unimportant enterprise in a large city often is a large and significant business in a small community. Under a dollar test, Negro

citizens might continue to be barred from entry or excluded from service in many smaller communities, even though the enterprises exempted were of a public character and had a significant impact upon interstate commerce.

Too much concern has been given, it seems to me, to the small operator, the so-called "Mrs. Murphy." I would point out again that 30 States now have public accommodation laws, and all of these are comprehensive in the scope of their coverage, as far as the size of the establishment is concerned. People are, of course, free not to serve the public. But if they choose to serve the public, they should serve all, without discrimination. This may be a step which is hard for some to take in prospect. Once it is taken, though, we will be soon wondering why it was so long delayed.

It is important, too, that the legislation contain provisions for effective enforcement. S. 1732 meets this need by authorizing the Attorney General to deal with violations, while preserving local remedies and the right of the aggrieved individual to seek redress. The relief provided is an injunction and, while I think it might be useful to add a provision for liquidated damages, the emphasis is properly on preventive and remedial action rather than upon penal sanctions. Room is also left for employing voluntary procedures such as conciliation and persuasion so that many cases may be settled before they reach the stage of litigation.

IV.

Mr. Chairman, we are in the midst of a too-long delayed change in race relations in this country. The walls which divide our society are at last crumbling. The time has come when we should move clearly forward. We must now live up to the best of the American tradition, and build a society governed by laws which permit every person to participate and compete according to his ability. We must do so not merely for the benefit of those who have been held back by racial discrimination but because the health, economic welfare, security and integrity of our Nation are at stake.

This is a responsibility which is entrusted in great measure to Congress under the Constitution. The public accommodations bill is the key element in legislation designed to meet this responsibility. I hope that Congress will enact it into law.