

THE 1965 CIVIL RIGHTS LAW

A HARD LOOK

Prepared by Legal Department  
Congress of Racial Equality  
Earl Rachlin  
General Counsel

## PREFACE

May I take this opportunity to thank Stephen Press, a legal intern of the CORE Legal Department, for his labors in preparing the materials upon which this paper is based, and his patience with me as new thoughts developed requiring new attention. I also wish to thank James Finney, also one of our interns, for his efforts in proofreading and helping to get the copy ready for mimeographing.

In addition, I thank the CORE Scholarship, Education and Defense Fund, Inc. for making these able students available to work on what I trust will be a useful document to lawyers and non-lawyers alike in better understanding the new Civil Rights Law.

Carl Rachlin  
General Counsel  
CORE



## CIVIL RIGHTS LAW OF 1964 - A HARD LOOK

### INTRODUCTION

What gains the 1964 Civil Rights Act represents has been written about at length, but its scope and its impact on the struggle for human equality in this country is still speculative. The primary concern of this paper is to examine in some detail, not those problems in civil rights which the various provisions of the bill will clearly deal with, but to isolate some of the problems to which its provisions will not apply. An understanding of the bill's limitations will greatly assist civil rights activists in understanding it generally, and in utilizing it to the maximum. In developing methods to include within the scope of the new law areas which at first blush might seem to be beyond it, we must give the kind of critical analysis we attempt here.

To the extent that few, if any, of the bill's provisions will be found applicable to most types of de facto civil rights problems, the ghetto minorities in the urban North are ignored. Consider racial imbalance existing in most Northern school systems which results primarily from racial discrimination in housing. The law is addressed to officially sanctioned racial segregation, and refuses to consider other forms of school segregation. No affirmative duty to integrate public schools is recognized or created (unless officially maintained), and "bussing," a method which is currently being discussed as a possible solution to the problem of racial imbalance, may not be demanded. Nor for that matter is racial imbalance even recognized as a civil rights problem.

More than one Southern segregationist has exclaimed that racial segregation in housing patterns in the South was not a serious problem for Negroes. Recent investigation from that area indicates that increasingly is this less the case. Segregationists in the South learn from their Northern brethren and both have come to realize that discriminatory residential patterns will provide them with the means to circumvent the law requiring desegregated public education. Since the new law does not affect housing, and since the law cannot correct racial imbalance, a major problem continues or expands.

The same sort of practical inadequacy characterizes the bill's provisions aimed at securing fair employment practices. Congress would not consider, in drafting this section of the bill, the disadvantage at which the institution of job seniority, coupled with the reality of expanding automation and fewer jobs, places discriminated minorities. It was urged that employers be required not only to implement fair employment practices in the future, but also to take corrective steps to mitigate the result of past evils.



TITLE I. VOTING RIGHTS. What The Law Does

(A) To any person seeking to register to vote, the 1964 Act prohibits state voter registration officials from:

(1) applying any standard practice or procedure not applied to other persons in that county in a similar situation;

(2) denying, as they have so often in the past, the right to vote in any federal election because of any error or omission in registration which is unimportant in deciding whether the person is qualified to vote or not;

(3) using literacy tests as a qualification for voting unless the test is in writing and the prospective voter may later obtain a copy of the test and his answers.

(B) The law creates a presumption in favor of any person who has completed a sixth grade education, predominantly in english that he or she possesses sufficient literacy to vote in any federal election.

(C) The U. S. Attorney-General may bring an action asking the federal court to find a pattern or practice of discrimination. In such an action brought by the Attorney-General, the Attorney-General, or any defendant in a suit brought by the Attorney-General, may request the case to be heard by a special three-judge court. It is hoped that this will make it more simple to uphold the law. Every question involved in a particular case will be decided by this court, appeals going directly to the Supreme Court, thus speeding the procedure, and causing to be more closely supervised those federal judges who do not understand issues of equality.

TITLE I. VOTING. The Hard Look

(A) The provisions of Title I are consistently restricted to federal elections. The term "Federal Election" under Title I is defined as "any general, special or primary election" held solely or in part for the purpose of electing federal officials. What application the new provisions have to elections for state officials held at a different time from the federal elections is open to speculation. No doubt in some areas, separate voting lists for federal and state elections will be created in the hope that state and local political power will not be affected by the 1964 law, only Congressional and Presidential elections.

(1) On reading Title 42, United States Code, §1971, one finds, however, the possibility of utilizing Title I of the 1964 Civil Rights Bill to enhance Negro registration in all elections, including those held solely for the purpose of election of state or local officials. Title 42 USC 1971 (A) provides that all citizens "qualified by law to vote at any election by the people" in any territorial subdivision shall be allowed to vote at all such elections." We must consider



whether a person who has qualified to vote in any federal election pursuant to Title I of the 1964 law, can be denied the right to vote in any state or local election under Title 42 USC 1971.

(2) Article I, Section 2 of the United States Constitution provides that persons eligible to vote for the election of representatives to the House of Representatives shall have the same qualifications required for electors of the largest house of the state legislature. (There is a similar requirement for the Senate contained in the 17th Amendment.) Since this is so, once a person has been registered to vote for a U.S. Representative or Senator under the 1964 law, he should be allowed to register and vote for representatives to the largest house of the state legislature. Once again, using Title 42 USC 1971 above, he must be allowed to vote in all such state elections.

(B) No limitation is placed upon state requirements for voter literacy qualification tests, merely that rules or tests be applied impartially.

(1) In fact, the U.S. Attorney-General is permitted to accept, as proper, rigid tests if they are equally applied. Since, in discriminatory areas, white voters far outnumber Negro voters, it is inevitable that rigid qualifications can work against Negroes. Severe tests, equally applied, will equally keep new white and Negro voters off the lists; and will keep the voter rolls largely white, as they presently are.

(2) Unless educational deficiencies of many Negroes are corrected, and until equal opportunity in education is a reality for greater numbers, new applicants for registration under rigid tests, even if fairly applied, will be predominantly white. Since a sixth grade education is not conclusive of the right to vote, though it is the basis for a presumption of literacy, however, how beneficial this provision will prove to be under these circumstances is open to some doubt. In addition, it cannot be overlooked that the six grades of education must have been acquired in a school where English must have been the language "predominantly" employed, so that persons whose education is or was in Spanish or some other language are thrown back upon the general literacy tests, and their protection by the 1964 law is minimal if the literacy tests are equally applied.

## TITLE II. PUBLIC ACCOMMODATIONS. What the Law Does

(A) All persons are entitled to full and equal enjoyment of the goods, services, facilities, privileges and accommodations. The following establishments are covered and are considered "accommodations," the facilities of which should now be open to all:



(1) hotels, motels, inns and any place affording lodging to transient guests (except any establishment renting 5 or fewer rooms, and is occupied by the proprietor as his residence, i.e. Mrs. Murphy's Rooming House).

(2) eating establishments, including restaurants, lunch counters, soda fountains, cafeterias, and other places principally engaged in selling food for consumption on the premises if it caters to interstate travelers, or much of the food moves in interstate commerce.

(3) gasoline stations, rest rooms and facilities.

(4) theatres, movie houses, concert halls, sport arenas, stadiums and other places of public entertainment and exhibition if the entertainment shown is the kind that goes from state to state like movies or shows.

(5) any other establishment which is located within one of these places and generally serves its patrons (e.g. a barber shop in a hotel) or which houses a place of public accommodation (e.g. a department store that houses a restaurant).

(B) In addition, Title II prohibits any third person from intimidating, threatening or coercing any other person to

(1) interfere with his right to enter or use any public accommodations, or to punish anyone for using these rights or

(2) interfere with anyone such as an innkeeper, who wishes to comply with the law.

(C) If any covered service such as in a hotel is withheld, the person harmed may ask the federal court for an injunction. He may also ask for the appointment of a lawyer by the court. If he wins, the hotel, restaurant, etc., may have to pay his attorney's fee if the court decides. But if he loses, the court can order such person to pay the fee of the restaurant for example.

(D) If the discrimination in any hotel, restaurant, etc., is carried on by authority of law, or a local custom enforced by local public officials, at any place, it is also a violation under the law even though it is not engaged in interstate commerce.

(E) Where exists a general pattern or practice of denying Negroes the use of these public facilities, certified to by the Attorney-General, then the Attorney-General may sue for an injunction immediately. At his request and upon further certifying to the public importance of the case, a special three-judge court to hear the case will be designated.



Please note here that the exhibition in the bowling alley or the tennis court must presumably involve people giving exhibitions in various parts of the United States. A couple of local fellows giving a bowling demonstration would not bring the place under the Act. But if the place had a restaurant which was of the covered type, then the bowling alley would be covered.

(9) Private hospitals are not covered unless they are state facilities or have sufficient state or federal support or interest to bring them under Title III.

(B) A private person may sue in federal court for relief where a state or local agency such as a Human Rights Commission exists covering discrimination problems, only after he has given that state or local agency 30 days' notice. Even after that notice, the court has further discretion to stay the action pending the termination of state or local proceedings.

(C) A private individual cannot sue for money damages for violations of this Title; only injunctive relief may be granted.

(D) In any event, an operator of a place of public accommodations is not required to service all customers (e.g., drunks, patrons in bathing suits). The section merely bars discriminatory application of any such rules. But, of course, he cannot use this as an excuse to refuse people service on grounds of race.

(E) Where a law suit has started, the court may delay any action for up to 120 days in order to give the Federal Community Relations Service an opportunity to gain voluntary compliance. This is the new service set up under this law and presently headed by former Governor Collins of Florida.

(F) The section prohibiting discrimination supported by state action does not apply to professional services of doctors, lawyers, dentists, for example, simply because they may be licensed by the city, county or state since nowhere in the 1964 Act are such services described as a place of public accommodation.

### TITLE III. DESEGREGATION OF PUBLIC FACILITIES What The Law Does

(A) When the Attorney-General receives a written complaint that:

(1) anyone because of race is denied the use of a facility owned, operated or managed by the state (except a school, which comes under Title IV), and

(2) he believes that desegregating this particular facility is important to the orderly progress of desegregation, and



(3) he certifies that those complaining can't afford to bring the action themselves or, if they can, they will be subject to abuse or hardship, then he may sue to end the discrimination by the state or city.

(B) Private persons may still take legal action in these circumstances as they could before the passage of the Act.

### TITLE III. DESEGREGATION OF PUBLIC FACILITIES    The Hard Look

(A) Facilities that are merely licensed or regulated, but not owned, by the state are not included under this Title, including such services as rendered by electricians, plumbers, doctors, etc. They must be owned, operated or managed "on behalf of the state" to be included within the intent of Title III.

(B) Broad on its face, this Title does not, however, apply to public schools or colleges. Whatever benefits are applicable to schools are included under the narrower Title IV discussed below.

(D) Before the Attorney-General may act, he must receive a complaint in writing from the person affected. Nor may the Attorney-General act unless he certifies that the complainant cannot maintain appropriate proceedings. This will require investigation and clarification, and how it will be interpreted is open to question. Should the complainant have any assets it is possible that the Attorney-General may believe that he cannot proceed; similarly, should CORE, or any civil rights group, be interested in the person involved, the Attorney-General may refuse to handle the case even though the person involved cannot afford the expense, on the grounds the person does not need help.

### TITLE IV. DESEGREGATION OF PUBLIC EDUCATION What The Law Does

(A) The U. S. Commissioner of Education is directed to submit a report within two years on the lack of availability of equal educational opportunities for individuals in public educational institutions at all levels throughout the country.

(B) The Commissioner is authorized to provide grants for these purposes:

- (1) technical assistance to schools, etc., and
- (2) to set up training institutes to help train personnel to deal with problems incident to desegregation.



(C) Upon receipt of a written complaint from a student or parent or group of parents that students are being denied admission or are not permitted to continue in a public college by reason of race, color, religion or national origin and being satisfied that they cannot bring the action either for financial or other reasons, the Attorney-General may ask the federal courts for any appropriate relief.

#### TITLE IV. DESEGREGATION OF PUBLIC EDUCATION The Negative Look

(A) Primary schools, secondary schools and colleges which are not predominantly supported by state funds are not covered by this Title. What the word "predominantly" means at this time is difficult to understand. Whether it means that more than 50% of its budget comes from governmental sources, or instead will consider it sufficient if governmental sums are the largest single operating resource is an important question here.

Should it be the latter, it is possible that a college receiving less than 50% of its funds from the state and receiving various smaller grants from private sources will be covered by the law. This question will be important in the case of colleges, but not likely to involve schools below this level. Not to be ignored in considering the proposals for support of private schools by the federal government is the effect this will have on whether such support would bring the school under the law.

(B) While almost all private schools are licensed by the state with standards set by the state, with substantial credits granted to schools in the form of benefits both state, local and federal, it is doubtful that private schools are covered unless perhaps it can be shown that these various benefits can be shown to support the school "predominantly" in the terms of this title of the statute. In the cases of colleges and universities we may have a different story; so many special group student-aid programs exist that "predominantly" may be less difficult to prove. It should be kept in mind that federal grants to schools may perhaps be withheld under the authority granted by the federal government to terminate or withhold such grant to any private institution which discriminates. Whether this power would apply to any individual who receives a grant and then uses it for study at a discriminating school is doubtful. This is one of the great dangers in legislation that contributes money to individuals to be used for education; policing the use of money may be difficult and segregation supported unless rigid controls are maintained to guarantee that no student will use the money in any school that discriminates.

(C) Racial imbalance in any school by requiring bussing



of students from one school district to another may not be corrected by this statute. But it is arguable that bussing may be ordered by the court if that is necessary to achieve desegregation as distinguished from correcting racial imbalance.

(D) Any deprivation of equal protection of the law in public schools must be by the "school board" itself. Improper acts of a principal or teacher, as agents of the Board, are not likely to be considered as acts of the board itself unless the Board refuses to correct the situation. Under the definition of "school board" is included any agency responsible for the assignment of pupils so that any other state agency, or perhaps the state itself, which has as its official policy segregation in education may properly be classified as a defendant and be ordered to take appropriate action by the court.

(E) A college student will be protected only should he have been denied admission or have not been permitted to continue in attendance at a public college. Note that discriminatory facilities, therefore, in a public college (such as a segregated dormitory or eating facility) won't be grounds for action under this title unless these irregularities force the student to discontinue his education at the school.

(F) The law is cumbersome. The Attorney-General must in every complaint involving school segregation in public schools give the school board involved reasonable time (as if 10 years were not enough) to adjust the grievance before beginning a court proceeding. In addition, here, also, the Attorney-General must certify that the persons or the organizations interested in the case cannot bear the expense. In effect, the Attorney-General must get financial reports from parents or organizations who ask the U.S. for help. Why a person with a little money should be required to use his funds to achieve a constitutional right long withheld by the state is somewhat hard to understand. The statute thus raises a form of economic discrimination, although what amounts must be owned in order not to receive the help of the United States is not set forth in the law itself.

(G) The statute does not demand the end of all forms of segregation and discrimination in colleges. Protection is granted only for "admission" or "continuance" in college. A broad area is left uncovered. In the case of lower schools, on the other hand, the protection is broader and includes any denial of equal protection of the laws. Since many colleges and universities are the beneficiaries of federally-assisted or financed programs, Title VI to a limited extent may beef up Title IV in this regard.



TITLE V. COMMISSION ON CIVIL RIGHTS. What It Does

(A) This title changes and expands the procedures of the U.S. Commission on Civil Rights and further defines its duties with regard to the investigation of voting rights, education, housing, employment, etc. The life of the Commission has been extended to January 31, 1968.

(B) The Commission may not:

(i) investigate the denial of civil rights,

(ii) evaluate the policies of the U.S. in regard to discrimination.

Presumably the Commission will not only look into discrimination as it may involve the Federal Government directly, but also what effect the policies of the Federal Government are having on discrimination in the many areas outside the Federal Government.

TITLE V. COMMISSION ON CIVIL RIGHTS. The Hard Look.

Despite its investigative power, its educative authority, its important clearing-house function, the Commission has no authority to enforce any laws involving discrimination. Powers to enforce under the new law were carefully given, in large part, to new agencies such as the Community Relations Service and the Equal Employment Opportunity Commission, thus merely creating a multiplicity of federal agencies when one experienced agency might be better able to do the work. Different agencies may have different standards as to discrimination.

TITLE VI. NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS.  
What The Law Does

(A) i. Discrimination is prohibited against any person denied the right on the grounds of race, color or national origin to participate in or receive the benefits under any program or activity receiving federal financial assistance.

ii. Unlike the requirement in the education title where the Attorney-General must receive a complaint in writing, the federal agency or department involved may act on its own initiative without the receipt of a formal complaint and offer specific steps to cut off federal funds.

(B) Each federal agency or department who extends federal financial assistance to any program in the form of loan, grant or contract to enforce the above prohibition may refuse to grant or may terminate federal assistance to the particular program or activity where discrimination has been found. Many such programs exist in agriculture, health, commerce and industry.

(C) Such action may only be taken after mediation.



**TITLE VI. NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS**  
**The Negative Look**

(A) This title covers only federally-assisted grants, loans or contracts. Employment practices by the employer under the federally-supported programs do not appear to be affected unless employment is the primary objective of the federal assistance contract. Thus a federal beneficiary, so long as it carries out in a non-discriminatory manner the particular program, may continue to discriminate in its employment policies.

(B) Federal assistance by way of contracts of insurance or guarantee (all the usual benefits in the purchase of housing such as mortgages, guarantees of savings and loan accounts) are specifically exempted from the coverage of this title. Since housing discrimination is not covered by this Act at all and protection is explicitly withheld by virtue of the exclusion of guarantees, we must, in order to prevent discrimination in the sale and rental of housing, fall back upon the general provisions of the Fourteenth Amendment, or the rules of various state statutes to prevent discrimination in those cases where the building has had the benefit of federal guarantees in obtaining mortgage loans, etc. What effect the exclusions in the Act will have upon the thinking of the court is speculative, but hopefully the federal courts will decide that regardless of what Congress does, the name and credit of the U.S. cannot be used to uphold discrimination.

(C) In order to gain the benefits of this title, a cumbersome procedure must be gone through; the title is not self-operating.

(1) The federal agency must issue rules and regulations under the 1964 Civil Rights Law. These regulations have now been issued. Many faults appear in them, often having a weakening effect on the law.

(2) The President must approve them, which he has.

(3) A voluntary compliance agreement must be attempted before any action can be taken against the offending party or group.

(4) If this fails, there must be a hearing and an expressed finding of violation of the law.

(5) Despite all these precautions, the federal department cannot act until it files a full report with the committee of the Senate or House of Representatives covering the particular activity (e.g., if the discrimination is in an agricultural program, the report must be filed with the committees on agriculture in the House and Senate; 30 days thereafter the federal agency can act to cut off a program. What will happen if the congressional committee rears its head, we can only guess. The Act gives Congress no power at this point, but calling the head of the agency before the committee of Congress can well discourage



the federal agency from acting.

(D) This is still a piecemeal attack against a state which is still carrying out a massive campaign of discrimination. It means that each program must be attacked separately at great loss of time.

TITLE VII. EQUAL EMPLOYMENT OPPORTUNITY. What The Law Does

(A) Race, color, religion, sex or national origin may not be an excuse used by (1) employers, and (2) employment agencies to discriminate in hiring, referral for hiring, discharge, terms and conditions of employment, and (3) unions to exclude or expel anyone from membership, or discriminate in regard to apprenticeship programs, or (4) advertise for people in a discriminatory manner.

(B) An EQUAL EMPLOYMENT OPPORTUNITY COMMISSION is created to enforce these rights.

(C) A proceeding commences when

(1) either a written sworn complaint is filed with the Commission by someone discriminated against, or,

(2) a member of the Commission himself may file such a charge in order to begin a proceeding

(D) Conciliation is first attempted. Should this fail and the Commission finds, after an investigation to which it can subpoena books and records as well as persons, that the complaint has merit, then the person or persons affected by the discrimination may seek an injunction in the U.S. District Court to prevent the employer, union or employment agency from discrimination.

(E) A complainant may request the appointment of a lawyer by the court, and the court not only can do this, but may award counsel fees and costs.

(F) Where there is a pattern or course of conduct of discrimination, the Attorney-General can begin an action in court and ask for a three-judge court.

(G) Should the court find the intent to discriminate it may issue an injunction against the discrimination and award back pay if the person discriminated against has lost earnings.

(H) Also illegal is discrimination by employers or unions against employees, members or applicants who have opposed practices made illegal by this title.

(I) The employer must post notices explaining to employees



how to file complaints under this title.

(J) Any labor organization or employer discriminating against individuals on grounds of race, color, religion, sex or national origin in admitting persons to any program to provide apprenticeship or other training also violates Title VII.

(K) Employment agencies regardless of size are covered by this title.

TITLE VII. EQUAL EMPLOYMENT OPPORTUNITY. The Hard Look.

(A) Coverage is limited to employees, agencies and labor organizations concerned with industries which affect interstate commerce, i.e., any industry or activity in commerce in which a labor dispute could obstruct commerce or the free flow of commerce. Many smaller employers are not covered by the law.

(B) No requirement is made as to the hiring of members of minority groups to balance past improper acts. All that is required is a lack of discrimination in employment in the case of new qualified applicants. In other words, preferential treatment to right past wrongs is not required. What can be accomplished by negotiations with an employer or a union is not covered by the Act, and the Act does not present new hiring practices designed to attract persons of minority groups.

(C) Enforcement of the nondiscrimination requirements against employers and unions will not begin until July 2, 1965. At that time only employers with at least 100 employees and unions with at least 100 members will be covered. Coverage will thereafter be extended year by year so that beginning July 2, 1966 the minimum number will be 15; July 2, 1967, 50, and finally July 2, 1968, when companies or unions with 25 or more workers or members will be covered. Thereafter, no union or employer with fewer than 25 workers will ever be covered by this title. Since many employers have fewer than 25 people, even at its best, in 1968, large gaps exist in the law.

(1) Thus even though a company is actually engaged in interstate commerce and has fewer than 25 employees, it can continue to discriminate. On the other hand, a company or union, no matter how large (not engaged in interstate commerce) may also continue to discriminate.

(2) The definition of what companies are covered under the Civil Rights Law is different from that of the National Labor Relations Act. Since the NLRB is also concerned with certain aspects of discrimination in employment, some confusion will result because of the different standards. Generally speaking, those of the NLRB are preferable.



(D) The United States government, corporations under its control--such as TVA, and states and political subdivisions of states are not included within the definition of employer. The first two, however, are covered by executive order and the President's Commission on Equal Employment Opportunity, the latter two by the Fourteenth Amendment to the U. S. Constitution, but this may have to be battled case by case in each state.

(E) A bona fide private club is also exempted from coverage under this title (see the tests for a bona fide private club under Title II, The Hard Look.

(F) Educational institutions, in regard to the employment of persons in connection with educational activities of the school, and church organizations in connection with their religious work, are not covered by the law and may discriminate. In addition, church related schools may hire persons or only one religion, apparently, regardless of whether the work done by such persons has any connection with religious activities.

(G) (1) What constitutes the educational activities of a school is somewhat uncertain, but would certainly include teachers, librarians, technicians of various kinds, etc.

(2) Similarly in a non-school religious organization; whether or not janitors, office workers or similar employees are covered is uncertain. What are "religious" activities is nowhere defined.

(H) Only employers who hire employees for more than twenty weeks of the year are covered, therefore excluding employers of seasonal employment and permitting discrimination.

(I) Seniority or merit systems are not covered by this title. Built-in discrimination practiced in prior years, whereby older employees with seniority cannot be affected, is protected. Reading this section carefully, an argument may be made that past seniority, built up on discriminatory practices of the past, may be the basis for a complaint with the Commission, since such seniority is not bona fide as required by the Act.

(1) Similarly, ability tests may be used in employment provided the test is not intended to discriminate. Any test, however apparently fair, can be designed to protect the status quo.

(J) Past discrimination is protected, and employees, beneficiaries of prior wrongful practices, may retain the benefits of knowingly discriminatory conduct by either employers or unions; nor may wrongfully maintained imbalance of numbers of employees created in the past be corrected. Only with current and future employment is the act concerned.



(K) The Equal Employment Opportunity Commission has limited authority. The one harmed may not obtain an order from the Commission protecting him; his remedy lies in bringing a suit in the federal court. Once a federal court order in his favor has been entered in a civil law suit brought by the injured person against the employer or union, the Commission may then obtain an order for compliance if the employer or union does not comply.

(L) The Commission must allow any state which has a Fair Employment Practices Law at least sixty days to act under the local law to remedy the situation. This period may be extended to 120 days in the case of a state law which has been in effect for less than one year. Whether some states, to delay action under this title, may pass their own Fair Employment Practices (F.E.P.) Law, which they will be lax in enforcing, we will have to watch and see.

(M) Every charge must be filed with the Commission within 90 days from the date of the alleged illegal practice, or, if there is a state F.E.P. law, the filing must take place within 210 days of the alleged practice or 30 days after the termination of the state proceedings, whichever is earlier. This means that action must be taken promptly and civil rights organizations must be vigilant.

(N) The Commission may enter written agreements with state F.E.P. agencies not to process charges in certain classes of cases. Although the Law does not say so, presumably such cases will be prosecuted under state law. However, the Commission shall rescind any such agreement "whenever it determines that the agreement no longer serves the interest of the effective enforcement of this title." This can have dangerous possibilities should many states pass F.E.P. laws and the state agencies enter into discriminatory agreements with the federal agency.

(O) The Commission may not determine whether any act is unlawful. It may only decide whether there is reasonable cause to believe the charge true, not make a firm decision; it



accused may receive fees from the person complaining if a charge is not proven. This may act as a damper on bringing cases unless there is a certainty of winning. Such a certainty rarely exists. Under usual American practice, giving counsel fees to the prevailing party is not common, since we believe it prevents a person with little means from suing for fear of a big counsel fee award against him in the event of a loss, keeping in mind that such a loss means often that the evidence was not sufficient to sustain the burden of proof which is on the plaintiff, and not that the employer or the union did not discriminate.

#### TITLE VIII. VOTING STATISTICS. What The Law Does.

In selected areas the Commerce Department at the request of the Commission on Civil Rights is directed by this title to conduct a survey of persons of voting age by race, color and national origin and to determine to what extent such persons have registered and voted in such areas as the Commission suggests.

#### TITLE IX. INTERVENTION AND REMOVAL IN CIVIL RIGHTS CASES

##### What The Law Does

(A) Trying a civil rights case in a segregated court room, or in court in the North where the judges often have little conception of civil rights, is very difficult. This section provides that civil rights lawyers may remove many civil rights cases to the federal courts, which are generally better able to understand the problems. Should a federal court refuse to accept a civil rights case and send it back to a state court, this "remand" to the state court may be reviewed on appeal.

(B) The Attorney-General is authorized to intervene in any suit filed by a private person seeking relief from the denial of equal protection of the laws on account of race, color, religion or national origin.

#### TITLE IX. INTERVENTION AND REMOVAL IN CIVIL RIGHTS CASES.

##### The Hard Look.

This valuable procedure has sometimes been used indiscriminately. A substantial number of cases have been removed



which really cannot be accepted by the federal court. The appeal process is expensive, time-consuming and the delay causes those people involved to be uncertain of their position about trials, etc. Should any people fail to appear over the years, additional costs and expenses are involved (i.e.: forfeiture of bonds). When used properly, in a well-documented case, the procedure can be very helpful. As of the moment, however, those cases, indiscriminately and thoughtlessly removed, may come back to plague us at a time when we should be looking forward, not backward. It is highly unlikely that traffic cases will be retained by the federal courts. When they are remanded to the state and the people are no longer available to testify, we may be in difficulties.

TITLE X. COMMUNITY RELATIONS SERVICE. What The Law Does.

Those who have seen the valuable assistance provided by mediation in the often very knotty problems in labor relations know that Title X, if properly utilized, will be of importance to the future of civil rights. Often an outside person of considerable understanding can help white communities learn to accept the future society, one built on equality. Local people, even those well-meaning ones, are so much a part of the structure of the local society that they are unable to take any meaningful action.

This title provides that a Community Relations Service be established in the Department of Commerce to provide assistance to persons or communities who can use help in establishing equality under federal civil rights laws. In general, the Service will aid in conciliation and attempt to bring about voluntary settlement of such problems.

TITLE XI. MISCELLANEOUS. What The Law Does.

(A) Upon demand by the accused, i.e., one who has refused to carry out an order of the court, a jury trial must be granted in any proceeding for criminal contempt arising out of any Titles to the 1964 Act except Title I, which retains the more limited jury trial provisions of the 1957 Civil Rights Act (in that case a jury trial must be granted in the event the punishment exceeds \$300 fine or 45 days' imprisonment, which is the more common experience).

(B) No jury trial is available to such a person if the contempt is committed in the presence, or very close to the presence, of the court itself. The theory is that criminal



contempt is very similar to a criminal trial and should involve a jury. A conviction for a criminal contempt is punishment for a past wrong and generally is not punishment to prevent the continuance of a current wrong or failure to carry out a decree of the court.

(C) Civil contempt of federal court orders are still heard without a jury. The purpose of civil contempt is to persuade someone to mend his ways and carry out a court order under the threat of imprisonment for continued refusal.

#### TITLE XI. MISCELLANEOUS. The Hard Look.

While the right of civil contempt is adequate in most cases for the carrying out of federal court orders in favor of civil rights, in some flagrant situations (Meredith case) only criminal contempt will suffice to uphold the federal court. A jury trial in such cases in effect means that the prejudices of local communities will govern a conviction or acquittal as the case may be. This has been the general experience.