

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

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

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

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

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

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

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

QUESTION:

Is this bill constitutional?

ANSWER:

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

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

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

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

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

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