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INSTITUTE OF GOVERNMENT
University of North Carolina
Chapel Hill

Memorandum

TO: North Carolina Enforcement Officials

FROM: Dexter Watts

DATE: July 3, 1964 [reprinted with minor changes July 13, 1964]

SUBJECT: Civil Rights Act of 1964

On the evening of July 2 President Johnson signed into law the Civil Rights Act of 1964. Although this is a federal law and is to be enforced by federal courts and agencies, portions of it will have an indirect bearing upon the enforcement of state criminal laws.

Chief among these portions is the public accommodations title, which takes effect immediately following the adoption of the act. As an aid to enforcement officers in North Carolina, a series of questions and answers is set out below covering some of the questions that may arise in the wake of passage of the Civil Rights Act of 1964.

What does the public accommodations title do?

It gives persons the right to be free from "discrimination or segregation on the ground of race, color, religion, or national origin" in the various business establishments which are covered under the act. The exclusive mode of enforcement, however, is through the bringing of a civil action for injunction in a federal district court.

Neither state nor federal officers can arrest business proprietors in the first instance for refusing accommodations upon discriminatory grounds. After a federal injunction has been secured, however, the proprietor may

face misdemeanor penalties for criminal contempt if he disobeys the federal injunction. This is still, though, exclusively a federal matter.

In what way does the act affect North Carolina law?

In the establishments which are covered under the act, the act appears to give a right of entry to all appropriately-dressed, well-behaved customers, without regard to race, color, religion, or national origin. A customer would not become a trespasser merely by entering and making a reasonable effort to obtain service.

As the act changes the respective rights of the parties, it might also have an indirect effect upon assault cases involving customer and proprietor. This aspect is somewhat uncertain and is discussed in greater detail below.

Suppose a restaurant owner calls the police to arrest trespassers?

If the restaurant is covered under the public accommodations title; if it is during normal business hours; if the persons were refused service on account of race or religion; and if the persons seeking service are orderly and not otherwise violating any law--then the police should tell the restaurant owner that the federal law takes the case out of their hands.

Suppose a person refused service does not leave?

The answer to this question can vary, depending on the facts of the particular case. Under the act the remedy of the person refused service is to go to federal court for an injunction. President Johnson has described the Civil Rights Act as designed to take protests "out of the streets and into the courts." A person refused service can probably stay for a reasonable time and try to persuade the proprietor to change his mind.

How far the person refused service can pursue his rights other than through the courts is an unsettled question that may cause a great deal of trouble.

If a man does have a "right" to be in a place, traditional theories of law would hold him justified in using reasonable force to resist the right being taken away--for example, to resist being pushed out of the restaurant by the owner. But, the very purpose of the act was to reduce resort to violence and not to create an explosive no-man's land that would increase the possibility of violence. And, the act does provide a civil remedy to substitute for resort to force or public protest. Until this basic issue is settled, state and local officers will be required to use the utmost judgment and patience. A cautious and neutral approach must be tempered with alertness to take effective action to preserve order.

It is clear, however, that the person refused service can exceed his federal right to be on the premises. He is entitled to be there only as a customer. It is very doubtful that he could picket inside the premises or sing or do things that would disturb and annoy the other customers. In the event a person does go beyond the bounds of his federal rights, he is then subject to state trespass laws.

Suppose the restaurant owner gets a warrant for trespass?

If the warrant is valid on its face in setting out a crime and is signed by an official with the legal power to issue warrants, then the officer is under a duty to arrest. This duty exists regardless of the eventual outcome of the case. If the warrant is valid on its face, the officer is protected even if the issuing official might not be.

Suppose a hostile onlooker assaults a person seeking service?

There is no question but that the onlooker would be guilty of assault. But suppose the person seeking service hits back? This would resolve it-

self into a factual issue of whether there was an affray or whether it was simply a case of lawful self-defense. The state law here would probably be the same inside an establishment covered by the Civil Rights Act as it would be out in the street. Although the public accommodations title is broad enough to authorize an injunction against onlookers who are not connected with the business establishment involved, the primary burden of preserving order will fall upon state and local officers who have a duty to act immediately. Use of the injunction would be effective only against identifiable individuals or groups that could be expected to repeat their actions.

Suppose the proprietor stands in the doorway?

May the person seeking service shove gently to gain entry? This again raises that unanswered question under the act. Clearly it is an assault and a trespass if he uses "excessive" force against the proprietor. But the courts might possibly hold that the person seeking service is remitted exclusively to his injunctive rights under the act and may not use any force.

Suppose the proprietor gently shoves the person seeking service outside?

If the person seeking service is protected under the act, he can go get a federal injunction to prevent such actions in the future. There may be a technical assault here under state law, but this is not absolutely certain. There are some old state cases which permit proprietors to use reasonable force to eject customers they deem undesirable; the question is the extent to which the courts will consider the federal law to supervene.

Of course, under state law there is clearly an assault by the proprietor if he uses more than the minimum amount of force needed to eject the customer from the premises.

What if the proprietor does noting or gives poor service?

Absent any gross abuse or any overt violations of state law, this is purely a matter for the federal courts.

What if the persons refused service in a restaurant continue occupying tables or booths so as to keep the owner from serving others?

The scope of the federal right is not clearly stated. It is certain that the persons refused service could not keep a "vigil" in the restaurant past the normal closing hours. As stated above, persons refused service probably can persevere to a reasonable extent in hopes that the proprietor will change his mind. The moment the limit of the federal right is passed, however, there would be valid grounds for trespass under state law.

What about business establishments not covered under the act?

The law as it presently stands authorizes a private proprietor not covered under the act to exclude persons from his premises upon a selective basis if he wishes and to initiate trespass prosecutions against those refusing to leave. But if state or local governmental agencies in any way participate in or reinforce this decision of the proprietor, this becomes "state action" which is forbidden under the Fourteenth Amendment. Sufficient "state action" has been found to overturn trespass convictions in the following cases:

(1) A city ordinance existed requiring segregation of the races in establishments of the type in question. [This was held "state

action" in a case arising from North Carolina even though there was reason to believe the proprietor and the police did not even know about the ordinance.]

(2) City officials publicly stated that they would not permit demonstrators to continue with their "sit-ins." Although the apparent primary concern of the officials was to maintain order, this was held to result in using the authority and prestige of the city to preserve segregation. [Disapproving notice was also taken of the fact that the proprietor had a well-organized plan as to what to do, including calling the police, that had apparently been worked out in advance with city officials.]

(3) A state agency regulation affecting the establishment required separate toilet and lavatory rooms "where colored persons are employed or accommodated . . . ." This was held to be state encouragement of segregation, since it could require any proprietor wishing to desegregate to go to the additional expense of providing extra rest rooms.

(4) An employee of the establishment who arrested the persons seeking service on charges of trespass held an appointment as a deputy sheriff. This was held to be sufficient governmental participation in the arrest to constitute "state action."

The Supreme Court of the United States has not yet answered the bare legal question whether mere arrest and prosecution under state law constitutes sufficient "state action" to reverse trespass convictions. Three members of the Court have said the answer is "no." Three members have indicated the answer is either "yes" or that "state action" does not need to be shown in public accommodations cases. The other three members of the Court have not indicated their views.

What places are covered under the public accommodations title?

In the process of getting the act through Congress, the proponents made a great many compromises and changes. In many respects the public accommodations title of the act as passed is quite different from that in the original administration bill. The legislative history of the act is, for that reason, not as clear a guide to interpretation of the act as might be expected. Congress attempted to cover about as wide a range of places it thought it constitutionally could under a combination of the Commerce Clause and the Fourteenth Amendment as to certain categories of establishments under the act. On the other hand, apparently as a matter of legislative compromise, the act seems curiously narrow in its coverage in other places.

As to most hotels, motels, restaurants, and gasoline stations the answer as to coverage is easy, but there is room for doubt concerning many places.

As a starting point, the act covers the following specific establishments:

(1) All places of lodging for transient guests. [Exception: where there are no more than five rooms to let and the proprietor resides in the same building.]

(2) All eating places which either:

  (a) Serve or offer to serve interstate travelers, or

  (b) Serve food a substantial portion of which has moved in interstate or foreign commerce.

(3) All gasoline stations which either:

  (a) Serve or offer to serve interstate travelers, or

  (b) Sell gasoline or other products a substantial portion of which has moved in interstate or foreign commerce.

(4) Places of exhibition or entertainment which customarily present films, performances, athletic teams, exhibitions, or other sources of entertainment which move in interstate or foreign commerce.

In addition, all the places named above are covered without regard to interstate or foreign commerce if discrimination or segregation is supported by "state action." "State action" is defined in the act as action that:

> (1) is carried on under color of any law, statute, ordinance, or regulation; or (2) is carried on under color of any custom or usage required or enforced by officials of the State or political subdivision thereof; or (3) is required by action of the State or political subdivision thereof.

In addition, all establishments physically located within the premises of a covered establishment come under the act, if they hold themselves out as serving patrons of the covered establishment. And, all establishments which have physically located within them a covered establishment come under the act, if they hold themselves out as serving patrons of the covered establishment.

Finally, <u>any</u> establishment or place, of whatever kind, is covered under the act if it practices discrimination or segregation that is or purports to be required by any law, statute, ordinance, regulation, rule, or order of a state or any agency or political subdivision of a state.

The act <u>exempts</u> private clubs or other establishments not <u>in fact</u> open to the public. But if a private establishment makes its facilities available to patrons of a covered place of public accommodations, then it is to that extent covered by the act.

It may be helpful to consider a number of specific examples under the above provisions.

<u>Dance Halls</u>

If a dance hall does not serve food, the question turns upon whether it is similar enough to a "motion picture house, theater, concert hall, sports arena, [or] stadium" to be included in the catch-all phrase "other place of exhibition or entertainment . . . ." The lower courts are likely

to be more narrow on this point than the Supreme Court. There is at least a possibility that dance halls will be covered if the band or source of music or entertainment it presents customarily moves in interstate commerce. This concept could extend to phonograph records or juke boxes as well as radio and television signals.

Pool Halls

Pool halls, as such, are probably not covered under the act. But pool halls are traditionally a subject of licensing and regulation by city ordinance and local act. If one of these requires segregation, then the pool hall would be covered.

Barber Shops

Barber shops are not covered under the act. But, the act would cover barber shops in hotels, in railway and bus terminals that also contain restaurants or soda fountains, or that are required to be segregated by some state or local law.

Beauty Parlors

Beauty parlors are not, as such, covered under the act. But, as many beauty salons are located within department stores that also contain lunch counters or restaurants, these beauty parlors would be covered. It is possible that beauty parlors located in some department stores take customers by advance appointment only and absolutely refuse to take "walk-in" customers from the store. In this case it is at least arguable that the beauty parlor is not covered. This issue will probably be litigated in the federal courts.

Cemeteries

Privately-owned cemeteries would not be covered unless there were an ordinance, statute, regulation, or order requiring or purporting to require segregation. Of course, if a town owns or manages the cemetery, it makes no difference whether there is an ordinance or not or whether it literally comes under the act or not. It would be prohibited from permitting segregation by existing court decisions affecting publicly-owned facilities.

Retail Stores

Retail stores would not be covered unless they contain, or are contained within, one of the covered establishments--or unless discrimination or segregation is or purports to be required by some state or local law.

Boarding Houses

If a lodging house does not rent to "transient guests," it apparently is not covered. But if it does cater to transients, it is covered unless there are five rooms or less to let and the proprietor occupies the establishment as his residence.

If a lodging house that is not covered has a dining room that is open only to guests, then the dining room would not seem to come under the act. This would apparently be true even if a fairly substantial amount of the food served had moved in interstate commerce, since the dining room would be only a part of the boarding-house operation; the boarding-house proprietor would not be "principally engaged in selling food for consumption on the premises . . . ." But, if the dining room accepted outside business with any regularity whatever, then it might well be covered under the act as an "establishment" to be considered separately--on the basis of whether the food or the customers might have been in interstate commerce.

Once a dining room comes under the act, then the entire boarding house would come under the act.

Taverns

There are two matters to be settled before taverns can be covered under the terms of the act. (1) Is a tavern that sells little other than beer and wine similar enough to a "restaurant, cafeteria, lunchroom, lunch counter, [or] soda fountain" to be included in the catch-all phrase "or other facility principally engaged in selling food for consumption on the premises"? (2) Is beer or wine, in any event, to be considered a "food"?

The answer is not free from doubt, but taverns that sell little in the way of food would not appear to be covered under the normal rules of statutory interpretation. Whether the Supreme Court of the United States is likely to take a broader view of the meaning of the act remains to be seen.

It might be argued that the provisions of G.S. 18-72(1), -73(1), and -99 do not authorize the licensing of "taverns"; this is true, but it seems probable that the courts would look at factual situations rather than licensing terminology that would vary from state to state in determining whether an establishment is covered under this national act.

Of course, any tavern within a hotel or a restaurant would be covered. And, if any substantial amount of food is served the courts would without doubt include the tavern under the provisions of the act.

Golf Courses

The act does not seem to cover golf courses as such. They are in a sense places of entertainment, but the listed establishments were theaters, sports arenas, and other places accommodating spectators. Golf courses

on which exhibition matches with out-of-state golfers are played present a different problem. The question here would be whether such matches are frequent enough so that the course could be characterized as "customarily" presenting teams or exhibitions that have moved in interstate commerce.

Swimming Pools

The logic that would exclude golf courses from the act would also exclude swimming pools. It is another matter as to both facilities, though, if they are supported by "state action" in selective choice of patrons or if there is any public ownership of the premises. They would be subject to desegregation by court order even if the public accommodations title of the act might not cover them. It seems certain that if a pool or golf course is part of a covered establishment such as a hotel, then the swimming pool and golf course would be covered under the Civil Rights Act also.

Amusement Parks

Circuses and carnivals with sideshows probably fit the definition covering places of exhibition or entertainment. It is a much more broderline situation if a carnival gives nothing in the way of exhibitions or performances and just has booths (such as shooting galleries) and rides (Ferris wheels, etc.)--even though the carnival may travel across state lines.

Permanent amusement parks that give no performances or exhibitions are probably not covered.

Country Stores That Sell Gasoline

The wording of the act applying to eating places restricts coverage to those establishments "principally engaged in selling food . . . ."

But a "gasoline station" is covered outright if a substantial portion of the gasoline or other products sold has moved in interstate commerce. Unquestionably there will be a testing in the courts of the meaning of the term "gasoline station," but it appears to be likely that any place which holds itself out as selling gasoline to the public in general is covered under the act and thus the entire premises would be covered.

Churches

Churches do not seem to be covered under the terms of the act.

Hospitals

Hospitals do not seem to be "places of public accommodation" as the term is used in Title II of the act. Some hospitals may be covered under Sec. 202 if there is any "discrimination or segregation [that] is or purports to be required by any law, statute, ordinance, regulation, rule, or order of a State or any agency or political subdivision thereof."

But whether or not a hospital is included within the public accommodations title, it is probable that it is subject to federally-enforced desegregation. Most hospitals today are either so heavily subsidized by public funds or so totally regulated by public agencies that it would be difficult to find one that would escape the latest court decisions defining "state action." The person seeking admittance might not be able to use certain of the procedural provisions under Title II, but there would be a right to be pursued in federal court.

Hospitals which are "owned, operated, or managed by or on behalf of any State or subdivision thereof" will come under Title III of the act relating to desegregation of public facilities. This title gives the Attorney General of the United States broad powers to institute suits to desegregate public facilities.

Schools

There is a separate title of the act relating to schools. Discussion of this subject is beyond the scope of this memorandum.

Federally Assisted Programs

A title of the act requires all federal departments and agencies which extend federal financial assistance to any program or activity by way of "grant, loan, or contract other than a contract of insurance or guaranty" to make rules and regulations to prevent exclusion or discrimination on the ground of race, color, or national origin in any federally assisted program. The rules and regulations must be approved by the President, and opportunity for voluntary compliance must be given before any assistance is cut off.

Business Offices

Business offices, as such, are apparently not covered. This would probably be true even as to businesses that rent space within covered places such as hotels since business offices are not thought of as "serving the public" in the general sense of the other "places of public accommodations" included in the act. Title VII of the act, however, will cover employment opportunity within businesses which employ over a certain number of persons. This title goes into effect on July 2, 1965.

Attachment: Titles II, X, and XI of Civil Rights Act of 1964.

Titles II, X, and XI from the Civil Rights Act of 1964:

TITLE II--INJUNCTIVE RELIEF AGAINST DISCRIMINATION IN PLACES OF PUBLIC ACCOMMODATION

Sec. 201. (a) All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, religion, or national origin.

(b) Each of the following establishments which serves the public is a place of public accommodation within the meaning of this title if its operations affect commerce, or if discrimination or segregation by it is supported by State action:

(1) any inn, hotel, motel, or other establishment which provides lodging to transient guests, other than an establishment located within a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his residence;

(2) any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises, including, but not limited to, any such facility located on the premises of any retail establishment; or any gasoline station;

(3) any motion picture house, theater, concert hall, sports arena, stadium or other place of exhibition or entertainment; and

(4) any establishment (A)(i) which is physically located within the premises of any establishment otherwise covered by this subsection, or (ii) within the premises of which is physically located any such covered establishment, and (B) which holds itself out as serving patrons of such covered establishment.

(c) The operations of an establishment affect commerce within the meaning of this title if (1) it is one of the establishments described in paragraph (1) of subsection (b); (2) in the case of an establishment described in paragraph (2) of subsection (b), it serves or offers to serve interstate travelers or a substantial portion of the food which it serves, or gasoline or other products which it sells, has moved in commerce; (3) in the case of an establishment described in paragraph (3) of subsection (b), it customarily presents films, performances, athletic teams, exhibitions, or other sources of entertainment which move in commerce; and (4) in the case of an establishment described in paragraph (4) of subsection (b), it is physically located within the premises of, or there is physically located within its premises, an establishment the operations of which affect commerce within the meaning of this subsection. For purposes of this section, "commerce" means travel, trade, traffic, commeree, transportation, or communication among the several States, or between the District of Columbia and any State, or between any foreign country or any territory or possession and any State or the District of Columbia, or between points in the same State but through any other State or the District of Columbia or a foreign country.

(d) Discrimination or segregation by an establishment is supported by State action within the meaning of this title if such discrimination or segregation (1) is carried on under color of any law, statute, ordinance, or regulation; or (2) is carried on under color of any custom or usage required or enforced by officials of the State or political subdivision thereof; or (3) is required by action of the State or political subdivision thereof.

(e) The provisions of this title shall not apply to a private club or other establishment not in fact open to the public, except to the extent that the facilities of such establishment are made available to the customers or patrons of an establishment within the scope of subsection (b).

Sec. 202. All persons shall be entitled to be free, at any establishment or place, from discrimination or segregation of any kind on the ground of race, color, religion, or national origin, if such discrimination or segregation is or purports to be required by any law, statute, ordinance, regulation, rule, or order of a State or any agency or political subdivision thereof.

Sec. 203. No person shall (a) withhold, deny, or attempt to withhold or deny, or deprive or attempt to deprive, any person of any right or privilege secured by section 201 or 202, or (b) intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person with the purpose of interfering with any right or privilege secured by section 201 or 202, or (c) punish or attempt to punish any person for exercising or attempting to exercise any right or privilege secured by section 201 or 202.

Sec. 204. (a) Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice prohibited by section 203, a civil action for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order, may be instituted by the person aggrieved and, upon timely application, the court may, in its discretion, permit the Attorney General to intervene in such civil action if he certifies that the case is of general public importance. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the civil action without the payment of fees, costs, or security.

(b) In any action commenced pursuant to this title, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs, and the United States shall be liable for costs the same as a private person.

(c) In the case of an alleged act or practice prohibited by this title which occurs in a State, or political subdivision of a State, which has a State or local law prohibiting such act or practice and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, no civil action may be brought under subsection (a) before the expiration of thirty days after written notice of such alleged act or practice has been given to the appropriate State or local authority by registered mail or in person, provided that the court may stay proceedings in such civil action pending the termination of State or local enforcement proceedings.

(d) In the case of an alleged act or practice prohibited by this title which occurs in a State, or political subdivision of a State, which has no State or local law prohibiting such act or practice, a civil action may be brought under subsection (a): Provided, That the court may refer the matter to the Community Relations Service established by title X of this Act for as long as the court believes there is a reasonable possibility of obtaining voluntary compliance, but for not more than sixty days: Provided further, That upon expiration of such sixty-day period, the court may extend such period for an additional period, not to exceed a cumulative total of one hundred and twenty days, if it believes there then exists a reasonable possibility of securing voluntary compliance.

Sec. 205. The Service is authorized to make a full investigation of any complaint referred to it by the court under section 204(d) and may hold such hearings with respect thereto as may be necessary. The Service shall conduct any hearings with respect to any such complaint in executive session, and shall not release any testimony given therein except by agreement of all parties involved in the complaint with the permission of the court, and the Service shall endeavor to bring about a voluntary settlement between the parties.

Sec. 206. (a) Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights secured by this title, and that the pattern or practice is of such a nature and is intended to deny the full exercise of the rights herein described, the Attorney General may bring a civil action in the appropriate district court of the United States by filing with it a complaint (1) signed by him (or in his absence the Acting Attorney General), (2) setting forth facts pertaining to such pattern or practice, and (3) requesting such preventive relief, including an application for a permanent or temporary injunction, restraining order or other order against the person or persons responsible for such pattern or practice, as he deems necessary to insure the full enjoyment of the rights herein described.

(b) In any such proceeding the Attorney General may file with the clerk of such court a request that a court of three judges be convened to hear and determine the case. Such request by the Attorney General shall be accompanied by a certificate that, in his opinion, the case is of general public importance. A copy of the certificate and request for a three-judge court shall be immediately furnished by such clerk to the chief judge of the circuit (or in his absence, the presiding circuit judge of the circuit) in which the case is pending. Upon receipt of the copy of such request it shall be the duty of the chief judge of the circuit or the presiding circuit judge, as the case may be, to designate immediately three judges in such circuit, of whom at least one shall be a circuit judge and another of whom shall be a district judge of the court in which the proceeding was instituted, to hear and determine such case, and it shall be the duty of the judges so designated to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited. An appeal from the final judgment of such court will lie to the Supreme Court.

In the event the Attorney General fails to file such a request in any such proceeding, it shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

It shall be the duty of the judge designated pursuant to this section to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited.

Sec. 207. (a) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this title and shall exercise the same without regard to whether the aggrieved party shall have exhausted any administrative or other remedies that may be provided by law.

(b) The remedies provided in this title shall be the exclusive means of enforcing the rights based on this title, but nothing in this title shall preclude any individual or any State or local agency from asserting any right based on any other Federal or State law not inconsistent with this title, including any statute or ordinance requiring nondiscrimination in public establishments or accommodations, or from pursuing any remedy, civil or criminal, which may be available for the vindication or enforcement of such right.

. . .

TITLE X--ESTABLISHMENT OF COMMUNITY RELATIONS SERVICE

Sec. 1001. (a) There is hereby established in and as a part of the Department of Commerce a Community Relations Service (hereinafter referred to as the "Service"), which shall be headed by a Director who shall be appointed by the President with the advice and consent of the Senate for a term of four years. The Director is authorized to appoint, subject to the civil service laws and regulations, such other personnel as may be necessary to enable the Service to carry out its functions and duties, and to fix their compensation in accordance with the Classification Act of 1949, as amended. The Director is further authorized to procure services as authorized by section 15 of the Act of August 2, 1946 (60 Stat. 810; 5 U.S.C. 55(a)), but at rates for individuals not in excess of $75 per diem.

(b) Section 106(a) of the Federal Executive Pay Act of 1956, as amended (5 U.S.C. 2205(a)), is further amended by adding the following clause thereto:

"(52) Director, Community Relations Service."

Sec. 1002. It shall be the function of the Service to provide assistance to communities and persons therein in resolving disputes, disagreements, or difficulties relating to discriminatory practices based on race, color, or national origin which impair the rights of persons in such communities under the Constitution or laws of the United States or which affect or may affect interstate commerce. The Service may offer its services in cases of such

disputes, disagreements, or difficulties whenever, in its judgment, peaceful relations among the citizens of the community involved are threatened thereby, and it may offer its services either upon its own motion or upon the request of an appropriate State or local official or other interested person.

Sec. 1003. (a) The Service shall, whenever possible, in performing its functions, seek and utilize the cooperation of appropriate State or local, public, or private agencies.

(b) The activities of all officers and employees of the Service in providing conciliation assistance shall be conducted in confidence and without publicity, and the Service shall hold confidential any information acquired in the regular performance of its duties upon the understanding that it would be so held. No officer or employee of the Service shall engage in the performance of investigative or prosecuting functions of any department or agency in any litigation arising out of a dispute in which he acted on behalf of the Service. Any officer or other employee of the Service, who shall make public in any manner whatever any information in violation of this subsection, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000 or imprisoned not more than one year.

Sec. 1004. Subject to the provisions of sections 205 and 1003(b), 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.

TITLE XI-MISCELLANEOUS

Sec. 1101. In any proceeding for criminal contempt arising under title II, III, IV, V, VI, or VII of this Act, the accused, upon demand therefor, shall be entitled to a trial by jury, which shall conform as near as may be to the practice in criminal cases. Upon conviction, the accused shall not be fined more than $1,000 or imprisoned for more than six months.

This section shall not apply to contempts committed in the presence of the court, or so near thereto as to obstruct the administration of justice, nor to the misbehavior, misconduct, or disobedience of any officer of the court in respect to writs, orders, or process of the court. No person shall be convicted of criminal contempt hereunder unless the act or omission constituting such contempt shall have been intentional, as required in other cases of criminal contempt.

Nor shall anything herein be construed to deprive courts of their power, by civil contempt proceedings, without a jury, to secure compliance with or to prevent obstruction of, as distinguished from punishment for violations of, any lawful writ, process, order, rule, decree, or command of the court in accordance with the prevailing usages of law and equity, including the power of detention.

Sec. 1102. No person should be put twice in jeopardy under the laws of the United States for the same act or omission. For this reason, an acquittal or conviction in a prosecution for a specific crime under the laws of the United States shall bar a proceeding for criminal contempt, which is based

upon the same act or omission and which arises under the provisions of this Act; and an acquittal or conviction in a proceeding for criminal contempt, which arises under the provisions of this Act, shall bar a prosecution for a specific crime under the laws of the United States based upon the same act or ommission.

Sec. 1103. Nothing in this Act shall be construed to deny, impair, or otherwise affect any right or authority of the Attorney General or of the United States or any agency or officer thereof under existing law to institute or intervene in any action or proceeding.

Sec. 1104. Nothing contained in any title of this Act shall be construed as indicating an intent on the part of Congress to occupy the field in which any such title operates to the exclusion of State laws on the same subject matter, nor shall any provision of this Act be construed as invalidating any provision of State law unless such provision is inconsistent with any of the purposes of this Act, or any provision thereof.

Sec. 1105. There are hereby authorized to be appropriated such sums as are necessary to carry out the provisions of this Act.

Sec. 1106. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the remainder of the Act and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.