legislation

Speech by Senator Stennis on the Constitutionality of the Public Accommodations Title

On July 22, 1963, Senator Stennis of Mississippi spoke on the floor of the Senate on the constitutionality under the Fourteenth Amendment of the public accommodations title of the Administration bill. He stated that at a later time he would discuss the constitutionality of the bill under the Commerce Clause.

Senator Stennis' argument essentially is as follows. Court decisions, from the Civil Rights Cases on, through the recent case of Williams v. Howard Johnson Restaurant, 268 F. 2d 845 (C.A. 4, 1959), have held consistently that the Fourteenth Amendment applies only to state action. To be sure, in a number of instances, such as in the restrictive covenant cases, the white primary cases, and the recent sit-in cases, the court found the requisite state action although the person involved was a private individual. But these cases, in the view of Senator Stennis, involved special situations which could not be applied across the board, as is attempted in the Administration bill. The Senator noted that the Attorney General himself cast substantial doubt upon the Fourteenth Amendment basis for the legislation.

There is nothing fundamentally novel in these arguments. To the extent that they rely on old precedent, they may be answered by reference to changed conditions of travel and interdependence of commerce and by reference to changing concepts of state action exemplified by the sit-in cases and the white primary cases.

The brunt of Senator Stennis' attack is directed at the licensing theory which is not primarily relied upon by the Administration. There is little, if anything, in the speech to undermine the theory that the acts of private persons may be considered to be state action for Fourteenth Amendment purposes if the discrimination is fostered or encouraged by the state. This, of course, was the basis upon which the recent case of Lombard v. Louisiana, 373 U.S. 267 (1963) was decided.

Re. 126 legislation

SUGGESTED QUESTIONS, SENATE COMMERCE COMMITTEE

For July 14, 1963

1. The point has been made before this committee that, at least in the area of public accommodations, federal legislation to forbid discrimination would tread on the rights of private property owners to do business with whomever they choose. What is your view of that contention, Governor?

2. Governor, isn't it correct that Mississippi state laws not only authorize operators of public accommodations to refuse service to Negroes (Miss. Stat 2046.5), but require you and the entire executive branch of the state government to prohibit the integration of whites and Negroes "in public schools, public parks, public waiting rooms, public places of amusement, recreation or assembly" in the state? (4065.3).

3. Then let me ask what is the difference--in terms of private property rights--between a law that says Negroes must be admitted and a law that says Negroes must not be admitted? In view of the feelings you just expressed, you must not believe the Mississippi statutes intrude on private property rights. By the same logic, how can you then contend that a federal public accommodations law would intrude?

4. Governor, the State of Mississippi, both during your administration and for decades before, has been trying to attract new industries into your state. Your state Agricultural and Industrial Board had scheduled a meeting last fall in Chicago at which you were to speak to several hundred industrialists and seek to interest them in establishing plants in Mississippi. But in the wake of the rioting at the University of Mississippi, that meeting was called off. One report said several manufacturers indicated they were no longer interested and a state official was reported to have said it was feared you would get a cold reception. Doesn't such a loss of potential industry hurt your state? Doesn't it also hurt interstate commerce?

5. Even when industry does locate in Mississippi, wouldn't you think that local desegregation laws and customs would have a terribly discouraging effect on potential employees, both white and Negro, who might otherwise go to your state to work? I wonder if I might ask you to put yourself in the position of, say, a Negro engineer from San Francisco. What would you then think about joining a company's new force in Mississippi?

6. Governor, at present, the median white family income in your state is $4,200 opposed to nearly $6,000 nationally. The median Negro family income is $1,400 -- less than a third of the white -- opposed to $3,100 nationally. In the last 20 years, Census Bureau figures show that 220,000 white persons and 650,000 Negroes left Mississippi to go elsewhere. Education, at least gauged by Selective Service rejection rates, lags behind other states. More than 66 percent of potential draftees in Mississippi were rejected in fiscal 1962, compared with the national average of 46.2 percent. In short, there seems to be no question that Mississippi both wants and needs new industry. But in view of how racial discrimination discourages the location of such industry in your state, how do you rationalize continuing to insist on discrimination in education, public accommodations and other fields and to oppose this legislative effort to remedy the problem?

7. The question has been raised that this bill would interfere with people's right to associate with whomever they choose. Yet the bill quite clearly does not apply to private clubs or organizations. What do you think, Governor, the word "public" means in the phrase "public accommodations"?

8. The question also has been raised as to whether the Federal Government has power to legislate in this area, whether under the 14th Amendment or the Interstate Commerce Clause. How do you think the Government's power -- and responsibility -- in this area differ from other areas? What about the Wagner Act which requires employers to bargain in good faith with unions? What about the federal requirements for interstate shipment of commodities so humble as aspirin or oleomargarine?

Legislation

88TH CONGRESS
1ST SESSION

H. R. 6938

IN THE HOUSE OF REPRESENTATIVES

JUNE 11, 1963

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.