

# Proposed Discrimination Ban Invokes Former Doctrine of Equity

By WILLIAM J. EATON  
 United Press International  
 Washington - (UPI)—President Kennedy's proposal to ban racial discrimination in public places would invoke the centuries-old doctrine of equity to enforce Negro rights to equal access and service.

The legislation, now hotly debated in Congress, would declare that racial restrictions in hotels, theaters, restaurants and stores were illegal. It also would open the federal courts for Negroes or other aggrieved minorities to seek a remedy.

The provisions covering rights to access and service in public places are contained in the controversial "Title II" or public accommodations section of the President's sweeping civil rights bill. It is the section of the bill most repugnant to opponents of civil rights legislation and it is certain to touch off long and heated debate in Congress.

Congressional approval of the law would, in effect, say that property rights of the hotel or restaurant owner must not be exercised to exclude anyone on the basis of race or creed. But no criminal penalties would be imposed on violators. Enforcement would be achieved through court orders, backed up if necessary by contempt-of-court proceedings.

**Discretionary Power**  
 Atty. Gen. Robert F. Kennedy would be given discretionary authority to file suits in major cases if he found that those who complained of discrimination were unable to take their cases into court and his participation would advance the objectives of the law.

Opponents argue that the proposed law would invade property rights of businessmen to select their own customers. Proponents contend that these property rights have been curtailed many times in the past through federal legislation to protect the public interest. They cite minimum wage, child labor, pure food and drug legislation and a host of Sunday "blue laws" to support their view.

The President's civil rights bill is based largely on the equity powers of courts, which can be traced to medieval England, to issue restraining orders or injunctions to prevent a wrong from occurring.

Here is a step-by-step explanation of how the equal accommodations provisions would work if Congress passed the proposal exactly as the President presented it:

**How Plan Works**  
 1. A Negro who was rejected at a hotel, theater, restaurant or store covered by the act could file suit in federal court for an order directing that discrimination be halted at the establishment named.  
 2. The owner would have the right to object that his place was not covered by the law because it did not house interstate travelers or did not substantially affect interstate commerce. He also could argue that the Negro was refused entry or service because of reasons other than race.  
 3. The judge would decide, first, if the business was covered by the law. This deci-

sion would be based on a reading of the language and past court interpretations of the relation of business firms to interstate commerce. If he refused to take the case, the Negro could appeal. The judge probably would order a hearing to see if the Negro's complaint was justified. Both sides could present witnesses or other evidence to back up their claims but the burden of proof would be on the Negro seeking relief. He might have to show that he was orderly and reputable, for example, to counter accusations to the contrary by the owner.

4. If the complaint was found justified, a federal judge could issue a temporary restraining order or an injunction directing a halt to the discriminatory practices. This could be appealed if it was a "final" decision of a lower court.

**List Punishment**  
 5. Defiance of the court order could be punished through either civil or criminal contempt proceedings. Judges have wide powers to deal with contempt. They could imprison anyone who violated their directive until the accused agreed to obey it or impose a fine of unlimited amount for each day the court order was defied. The law is not yet clear on whether a man accused of criminal contempt would be entitled to a jury trial.

In civil cases, the defendant is considered to have the "key to the jail door in his own pocket" since punishment stops when he begins obeying the order. The attorney general would be empowered to file suit on behalf of Negroes or other victims of discrimination in carefully limited circumstances. Before he could go to court, however, the nation's chief law enforcement officer would have to find that the complainant was (1) too poor to hire a lawyer, or unable to find one, (2) filing the suit probably would result in physical or economic reprisals to him, his family or property.

If these requirements were satisfied, the attorney general would have to refer the case to state or local officials if state or local laws in that area forbade discrimination in public facilities. These authorities would be given a "reasonable time" to act before the federal government could file suit.

Where there is no such law, the attorney general would be required to submit the matter to a newly established community relations service and give it 30 days to try for a voluntary solution. The attorney general could file the suit if the complaint still was not settled in that month-long period.

He could shortcut all of these preliminary steps, however, if he certifies to the federal court that the delay would adversely affect U.S. interests or the procedures would be futile.

**TUNA BITE**  
 Boston—(UPI)—Tuna fishing is due for a big development off the New England coast in summer, the federal government believes. Last year's catch of 7 million pounds was double the previous year's.

The proposed legislation provides that Negroes who win their legal battle for equal access would be paid a "reasonable attorney's fee" by the losing party.

It also would provide that a suit should be filed if there is good reason to believe that a hotel or restaurant covered by act would discriminate even though no one has been refused a room or meal service.

Justice department attorneys said it is intended that the attorney general would be

concerned primarily with major "test cases" involving clear-cut discrimination. Borderline cases would be left for private individuals or organizations, they said.

**Does Not Apply**  
 Atty. Gen. Kennedy also has made it plain in his testimony before congressional committees that the law was not designed to apply to the so-called "Mrs. Murphy" guest house, an owner-occupied dwelling with a few rooms for rent to travelers. These and other exemptions

would be decided by the courts and not by Congress if the law goes through as presented. Many members of Congress favor excluding establishments that do less than a certain volume of business.

Kennedy has said he would be willing to sharpen the definitions but he does not want to create "loopholes" or "water down" the measure because, he said, discrimination in small as well as large businesses should be abolished. It is its present form the bill would cover:

—Any hotel, motel or other public place engaged in furnishing lodging to transient guests, including those from other states or traveling in interstate commerce.

—Any motion picture house, theater, sports arena, stadium, exhibition hall or similar place which customarily presents entertainment or athletic teams which move in interstate commerce.

—Any retail shop, market, gasoline station, restaurant, soda fountain or other estab-

lishment (1) if the goods or services are provided to a substantial degree to interstate travelers or (2) a substantial portion of the goods has moved in interstate commerce or (3) the operations of the business substantially affect interstate travel or movement of goods in interstate commerce.

Kennedy has said that 99 per cent of the business establishments involved would know whether the law affected them or not, without litigation.

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SEGREGATION PROTESTED—Pickets hang on to a chain and a crane's unloading gear atop cement blocks which were about to be removed from a truck at a construction site in New York. Demonstrators were protesting alleged segregation in hiring for public-financed construction projects. (UPI)