since it is aimed at unconstitutionally discriminatory practices. Similarly, under the 15th amendment, Congress may enact appropriate legislation to counteract such discriminatory practices as are used by voting registrars to deny or abridge the right to vote on account of race or color. The provisions of title I obviously are reasonably necessary to eliminate obstructions to the 15th amendment—that the right of citizens to vote shall not be denied on account of race.

One objection which has been voiced to the "literacy" and other provisions in title I is that they establish qualifications for voting and thus infringe on the constitutional right of the States to do so. No portion of title I establishes any qualifications for voting, nor does it even set any standards to which the States must adhere in establishing qualifications. The "equal standards" provisions of title I which are directed to the registration process itself are designed to do so no more than to require that the tests of qualifications established by the State are applied with an even hand and without discrimination as to race. The States remain wholly free to set whatever qualifications they desire. Title I simply implements the equal protection and nondiscrimination requirements of the Constitution itself.

Nor does the literacy presumption establish any qualification for voting or interfere with a State's right to do so. It merely establishes a rule of evidence for court proceedings in voting discrimination cases and, even at that, the presumption is a rebuttable one. The States remain free to set literacy standards, and the sixth-grade presumption would not apply when, for example, a registrar tests an applicant's literacy. But when a lawsuit charging discrimination is brought and the matter comes to court, the burden would be on the defendant to show that a person who has completed sixth grade is not literate. This is wholly reasonable. If a State has literacy as a requirement, it remains the requirement. The presumption relates merely to the manner in which literacy may be proven in specific kinds of cases in court.

The same is true of the requirement that a written record be made of any "literacy" test employed and the provisions that immaterial errors must be disregarded.

Before concluding this summary, I would like to speak briefly on certain amendments which would strengthen and improve title I. The first would be to apply its provisions to State as well as Federal elections. The 1957 and 1960 Civil Rights Acts drew no distinction between Federal and State elections. Neither does the Constitution draw any such distinction, and it is beyond dispute that it is thoroughly constitutional, under the provisions of the 15th amendment, for the Federal Government to protect its citizens against discrimination in voting practices whether these acts occur in the course of Federal or State elections.

The original bill, as reported by a subcommittee of the House Judiciary Committee, originally included State as well as Federal elections within its coverage. I would prefer to see a return to the original wording of the bill and am at the present time preparing an amendment along these lines, which would bring State elections within this law. It will be offered in behalf of myself and a number of my colleagues in the Senate. No one will deny that in many instances the right to vote in local and State elections is more important to a Negro than the right to vote in a Federal election. Many of the discriminations, deprivations of liberty, and disabilities of citizenship which have been inflicted on the Negro have been perpetrated by local officials acting under color of law. It is often more important, more meaningful to the Negro to be allowed to vote for those men who more directly and personally influence his life than it is for him to vote for President of the United States. Those who would have us accept the House version of this bill without crossing a "t" or dotting an "i" argue that applicability to State elections is not needed.

Last evening I noticed an analysis of the bill which was made by a distinguished journalist. It was a well-thought-out analysis of a complicated bill. However, it referred to the bill as the Civil Rights Act of 1964. The bill before the Senate is not the Civil Rights Act of 1964. It is entitled "Civil Rights Act of 1963." Obviously that error was made in the other body. It is one which, of course, must be corrected.

To take the view that no "t" can be crossed and no "i" can be dotted in the bill is a naive view, particularly when we consider the compliance which can be expected in many parts of the country.

As we know, the State of Virginia has already taken steps to circumvent the antipoll tax amendment by authorizing separate State elections. I believe it can be safely predicted that this practice would become widespread in many States if the literacy and registration application provisions were confined to elections where only Federal offices were to be filled.

Another problem which remains unsolved by this bill is that of implementing the second clause of the 14th amendment. That clause provides that representation in the Congress shall be reduced in proportion to the number of disenfranchised voters in the State. Ordering the taking of the census as provided in title VIII does not fully implement this section. If the civil rights laws continue to be circumvented by local officials, it may very well be necessary at some future date to offer legislation directly to implement this clause and reduce representation in Congress. Whether that point has already been reached is a matter of judgment.

Another feature of the original bill which I find preferable to and more realistic than the measure we have before us today was the provision for the appointment of temporary voting referees who would, as soon as a case was filed under the 1957 act, begin to accept registration applications. Since experience has taught us that these suits can continue through the courts for as much as 5 or 6 years, the voting referee provision would have made it possible to start registering voters without the long delay involved in a final court decision.

I point out these flaws in the present bill merely to emphasize that it is not at all a perfect bill nor one with which we can be completely satisfied. It may be the best bill we can get in 1964. Hopefully, compliance will be forthcoming to such an extent that additional legislation will not be necessary in the future. But one of the myths about this bill is that it is a perfect bill, and unless we face the reality of the fact that it alone will not completely eliminate discrimination in voting—that there must be vigorous enforcement and faithful compliance—we will be fooling ourselves and the Nation.

It is more than 175 years since the adoption of our Constitution, "to preserve the blessings of liberty to ourselves and our posterity." It is more than 100 years since Abraham Lincoln began his service as our President and gave a "new birth of freedom" to America. It is more than 90 years since final ratification of the 15th amendment declaring that neither the United States nor any State shall deny or abridge the right of citizens to vote "on account of race, color, or previous condition of servitude." These great events mark the steady progress of liberty in our Nation which has made us the greatest free government in the world. But we cannot rest on our laurels. We must not slacken our efforts as long as some of our fellow Americans are denied the benefits of our common heritage.

Mr. ERVIN. Mr. President, has the Senator from New York concluded his speech?

Mr. KEATING. I have. I am ready to yield the floor, or to yield to the Senator from North Carolina.

Mr. ERVIN. I would rather have the Senator yield to me.

Mr. KEATING. I yield to the Senator from North Carolina.

Mr. ERVIN. I ask unanimous consent that the Senator from New York may yield to me for questions and a colloquy without losing his right to the floor, and without having his remarks counted as a second speech on the pending bill.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. KEATING. It is very kind of the Senator to make the request. I do not expect to make a second speech; however, I appreciate his courtesy.

Mr. ERVIN. I am glad to be able to assure my friend that he will have an opportunity to make a second speech if he cares to do so.

I ask the Senator if he was present at the hearings before the Committee on the Judiciary last summer when the Attorney General said he had not, during his tenure of office, instituted any prosecution against any State or local election official anywhere in the United States under the criminal statutes applicable to the denial of voting rights.

Mr. KEATING. I was present at most of the hearings. I seem to recall that statement by the Attorney General, although I am not certain.

Mr. ERVIN. Does not the Senator recall the hearings conducted during President Eisenhower's administration, at

which the present Attorney General's predecessor, Attorney General Rogers appeared before the Subcommittee on Constitutional Rights? Attorney General Rogers testified to facts indicating that no real effort had been made during his tenure of office to institute any criminal prosecution against any State registrars for denying anybody the right to vote.

Mr. KEATING. I take it the Senator is referring to criminal action?

Mr. ERVIN. Yes.

Mr. KEATING. My understanding is that it is a fact that neither the present Attorney General nor his predecessor brought any criminal action in the States where the offenses occurred. They have reasoned, and said that it was their opinion that juries would be unlikely to convict for offenses under the old reconstruction statutes.

Mr. ERVIN. Does not the Senator from New York agree with the Senator from North Carolina that no Attorney General can very well possess the prophetic power to foretell what a jury will do in any action anywhere in the country?

Mr. KEATING. There have been criminal cases brought in the past—without very much success, I might say.

Mr. ERVIN. Does not the Senator from New York agree with the Senator from North Carolina that the best proof of the pudding is in the eating thereof?

Mr. KEATING. In general, that is my feeling about puddings. But I do not consider it applicable to this case in the manner in which I take it my genial and learned friend uses the phrase. The illustration I gave of a recent court proceeding in Alabama is rather good evidence of one kind of pudding. I do not know whether the Senator heard my statement concerning it, but there is no Negro registered to vote in Wilcox County in Alabama, although Negroes comprise 70 percent of the population thereof. The judges refused a restraining order to enjoin the registrars of that county from discriminating against Negro voters. They contended that the government failed to support its charge of discrimination in spite of the fact that the evidence showed there was not a single Negro registered in that county.

Mr. ERVIN. Does the Senator from New York think that proves anything more than that discrimination had been charged against someone?

Mr. KEATING. No. I was very careful in saying what I did. The Senator is a distinguished judge and lawyer. He knows that we lawyers are loath to comment finally on any case when we have not read the record. It may have been atrociously tried by the U.S. attorney. It may not have been properly briefed. Any number of things might have happened. Certainly, however, the court's decision is, on its face, startling. It would shock anyone. I think it would shock the sensibilities of the distinguished Senator from North Carolina, who has shown great fairness in many of these problems, to find that there was a county where 70 percent of the people were Negro, and not one of them was permitted to vote, and still the court finds that the registrars were complying with the law. It is inconceivable.

Mr. ERVIN. I would like to tell a story in order to illustrate the point. I have told the story before.

Mr. KEATING. I think the Senator's stories are always interesting. I would be delighted to hear it.

Mr. ERVIN. I tell the story to illustrate how inaccurate it is to draw inferences from figures. An old mountaineer down in my country had been buying groceries on credit. He decided to go in and pay his grocery bill. The storekeeper told him the amount of his bill, which exceeded the figure that the old mountaineer thought was right. So he complained.

The storekeeper got out his account books, laid them on the counter, and said: "Here are the figures. You know, figures do not lie."

He said, "I know figures do not lie, but liars sure do figure."

Not only do liars figure, but honest men figure. I trust the Senator will pardon me for drawing a comparison which refers to New York State. In 1960, both major political parties exerted themselves to capture the electoral vote of the State of New York, which had the largest electoral vote of any State in the Union.

During that year, New York numbered among its population 10,880,592 persons of age 21 and over. The records show that only 7,291,079 of those persons voted. Those who voted constituted only 66 percent of the persons in New York State of age 21 years and upward. In other words, 34 percent of the New Yorkers of voting age did not vote.

It is quite possible that the Deep South county to which the Senator referred, where there was no Negro registered, was suffering from the same kind of apathy which kept 34 percent of all New Yorkers of voting age from voting in the presidential election in 1960.

Mr. KEATING. The example I cited would be a much more severe case than the one the Senator mentioned. In the case I mentioned not a single Negro registered to vote. I am rather surprised at the figures the Senator quotes for New York. I did not realize that New York has done as well as the Senator mentioned. I thought the figures on actual voters in New York were somewhere around 60 percent. It is nothing that I condone. Any person who has the right to vote certainly should exercise his franchise. I would like to see him vote a certain way, but whether he votes that way or not, he should vote. It is regrettable that 34 percent did not vote. That situation could arise, however, from a number of reasons—changes in residence, disqualifications for various reasons; illness, absence from the State on election day, or many other reasons. The situation in New York is aggravated by voter apathy. But I cannot believe that in a county where 70 percent of the citizens are Negroes, the failure of Negroes to cast a single ballot was the result of apathy. If there was that much apathy in a county, it would have seeped through and been reflected in the statistics on white voters in the same county. Thirty percent of the county was made up of white citizens. They registered and voted in considerable numbers. But none of the Negroes, who constituted 70 percent of the residents of this county, voted. I do not see how anyone can attribute that solely to apathy.

There is a certain degree of apathy among all races, creeds, and colors. It is regrettable. But apathy does not explain the denial of the right to vote to the Negroes of a certain State.

Mr. ERVIN. The Senator will agree with me that apparently apathy and sickness and factors other than manipulations of Southern election officials kept more than 2½ million New Yorkers from going to the polls at the previous presidential election.

Mr. KEATING. There is no question that in the State of New York there is no discrimination in voting. No one there was denied the right to vote because of discrimination. The 2½ million there, as cited by the Senator from North Carolina, who did not vote, failed to vote for reasons other than discrimination.

Mr. ERVIN. Let me invite the attention of the Senator from New York to some other figures, by means of which I shall compare my State of North Carolina with the Senator's State of New York, to show the unreliability of drawing inferences from figures.

According to the 1960 census, New York had a total Negro population of 1,414,184; and my State of North Carolina had a Negro population of 1,114,970. The same tabulation shows that the State of New York employed only 3,707 Negroes as schoolteachers, whereas North Carolina employed 11,042 Negroes as schoolteachers.

So one who draws inferences from figures could very well fall into the error of believing that New York was discriminating against Negroes, when it was employing schoolteachers, could he not?

Mr. KEATING. I would not think so. Is it not correct that in North Carolina the public schools are segregated?

Mr. ERVIN. Most of them are.

Mr. KEATING. And in North Carolina the Negro schools are required to hire Negro teachers, are they not?

Mr. ERVIN. Not necessarily.

Mr. KEATING. Is it not a fact that they do?

Mr. ERVIN. Regardless of that, North Carolina had 11,042 Negro teachers, whereas New York, with a Negro population 300,000 greater than the Negro population of North Carolina, employed only 3,707 Negroes as schoolteachers.

Mr. KEATING. I may say that is completely understandable, if it is a fact, because in North Carolina the Negro schools are segregated and are required to hire Negro teachers. That would naturally result in a very much larger number of Negro teachers in North Carolina than in New York. New York has State statutes which do not permit any discrimination in the hiring of teachers.

Mr. ERVIN. But I think it is fair to infer that the number of Negro schoolchildren in New York State exceeds the number of Negro schoolchildren in North Carolina; I think it is fair to infer that from the fact that the Negro population of New York State is 300,000 greater than

that of North Carolina. Those statistics would indicate to my mind that New York does not employ Negroes to teach school in the same ratio that New York employs white schoolteachers.

Mr. KEATING. In New York State there is no test on the basis of color; and all applicants for positions as schoolteachers—whether Negroes or whites—are considered on exactly the same footing. That is required by New York State law.

I invite the attention of the Senator from North Carolina to the fact that in the city of New York, for example, where the largest number of Negroes in New York State reside, one-third of the employees of the city of New York are Negroes. That is a very much greater percentage than the ratio of Negroes to whites in the total population of New York City.

Mr. ERVIN. Evidently the Negroes there are able to find jobs other than as schoolteachers.

Mr. KEATING. Personally, I do not know of any case in which a qualified Negro applicant has been denied a job as a schoolteacher on the ground of race. But if such a case did occur, it was a violation of the existing laws of the State of New York, and was not affected by the pending proposed legislation. The laws of the State of New York prohibit discrimination in the hiring of anyone, including teachers.

Mr. ERVIN. Notwithstanding the assurance the Senator from New York gives, I would say that a person who draws inferences from figures and who examines the figures which indicate that New York, with a population of 1,414,184 Negroes, but only 3,707 Negro schoolteachers, as compared with North Carolina, which has a Negro population of 1,114,970 Negroes and 11,042 Negro schoolteachers, would certainly conclude that New York was definitely discriminating against Negroes, insofar as the employment of teachers in the public schools was concerned.

Mr. KEATING. I would not quarrel with the Senator from North Carolina, insofar as any conclusions he may choose to reach are concerned; but I would characterize the last statement he made as a monumental non sequitur.

Mr. ERVIN. It would seem that the arithmetic which is applied to the county in Alabama, to which the Senator from New York referred a few minutes ago, and the arithmetic which is applied to New York are two quite different systems.

Mr. KEATING. I do not recall that at that time I spoke of schoolteachers.

Mr. ERVIN. The Senator from New York spoke about voters; I spoke about public schoolteachers. I think it must be evident that the two sets of inferences are based on entirely different systems of arithmetic.

Mr. KEATING. I would be interested in obtaining the statistics in regard to voting in North Carolina. I would say that North Carolina is one of the States of the South that has one of the best records of nondiscrimination in connection with voting. It so happens that in referring to the outstanding voter discrimination cases which I mentioned, I did not mention any case from the State of North Carolina. I believe I heard the Senator from North Carolina misquote my remarks—although if I am in error as to that, I am sure he will correct me; I believe I heard him say that he believes that every citizen, regardless of race, color, or creed, should have the right to vote.

Mr. ERVIN. Yes; I have always taken that position; and I take it now.

I can assure the Senator from New York that, according to the statistics which have been presented by the U.S. Commission on Civil Rights, 104.1 percent of all the Negroes of voting age in my county are registered.

Mr. KEATING. That is a remarkable feat. The Senator from North Carolina must have had a very effective political organization there.

Mr. ERVIN. No. I think many of them may be on the side of the Senator from New York, rather than on the side of the Senator from North Carolina.

Mr. KEATING. I hope so.

Mr. ERVIN. This may be so because some of them may not understand that the Senator from North Carolina is fighting to preserve constitutional government for their benefit, as well as for the benefit of all the other people of the United States.

Mr. KEATING. I have been intrigued by some of the figures which show that more than 100 percent of the qualified voters are registered to vote. I do not understand how that can be. However, this is the first case which has been brought to my attention in which more than 100 percent of the qualified Negroes were registered to vote. For one of the counties in the Southern States, the figure used for the Civil Rights Commission was 146 percent—showing that 146 percent of the residents of that county are qualified to vote. That is a rather remarkable statistic.

Mr. ERVIN. I merely cite to the Senator from New York some of the figures submitted by the U.S. Commission on Civil Rights. I point out to the Senator from New York that if he will read what the Commission has said on various subjects, he will find some very remarkable statements. For instance, the Commission cited 100 counties in the South where the Commission says Negroes are discriminated against when it comes to voting; and one of the counties the Commission cites on page 35 of its 1963 report is Graham County, N.C. In the 1963 report of the Commission, Graham County is set forth by the U.S. Commission on Civil Rights as one of the 100 counties in which it says there is rank discrimination against Negroes in the voting field. Not a single Negro of voting age lives in Graham County, N.C. Yet we find that such data as that are cited in the attempt to justify the passage of a bill which, in my honest judgment, would virtually destroy the system of government created by the U.S. Constitution and rob all Americans of their basic rights.

Mr. KEATING. I have before me the table to which the Senator has referred. From the table it appears that there are no Negro residents in Graham County. It is not listed as an outstandingly bad case. I call attention to the fact, however, that in Graham County, 121 percent of the white residents of voting age are registered to vote.

I fear I was a little too generous in relation in North Carolina. I call attention to the fact that in Franklin County, which has 1,600 Negroes, the percentage of Negroes registered to vote was 30 percent, whereas the number of white voters is 8,600, and the percentage of white voters registered to vote was 87.4 percent.

In Greene County the percentage of white people registered to vote was 101.9 percent and the percentage of the Negroes registered to vote was 12 percent.

Other examples cited by the Civil Rights Commission are Bertie County, Halifax County, Hertford County, and Northampton County. The table refers to only six counties in North Carolina out of a great many counties throughout the South which discriminate.

Mr. ERVIN. Mr. President, will the Senator lend me his copy of the 1963 report of the U.S. Commission on Civil Rights for a moment? I left my copy in my office.

Mr. KEATING. Certainly. I am always glad to submit evidence to my adversary.

Mr. ERVIN. I invite the Senator's attention to a statement on page 20 of that report. The report tells of the 100 counties in the South in which the Commission claims there is gross discrimination against Negroes in voting. On page 20 this statement appears:

> Seven of the one hundred counties were in North Carolina.

Turning to page 34 of the report we discover that the seven North Carolina counties are enumerated as follows:

> 1, Bertie; 2, Franklin; 3, Graham; 4, Greene; 5, Halifax; 6, Hertford; 7, Northampton.

One of the seven counties in North Carolina in which it is alleged there is gross discrimination is Graham County, where not a single Negro of voting age lives.

Mr. KEATING. I do not consider that discrimination exists in a county in which there are no Negroes of voting age. I do not see how they could very well vote if they are not there. On the other hand, I do not understand how more than 100 percent of the white citizenry could vote.

Let us assume that the use of the number "seven" instead of "six" was a mistake on the part of the Civil Rights Commission and that they did not intend to include Graham County. Certainly we cannot charge discrimination in a county in which there are no Negro voters. However, the Senator is singularly silent about the other six counties in his State to which reference is made in the report. Does he in any way challenge the figures in relation to those counties?

Mr. ERVIN. I do not know. I have no information concerning them now available beyond what appears in the report of the Civil Rights Commission. When a report of the Civil Rights Commission states that in Graham County there is gross discrimination against Negroes registering to vote despite the

fact that no Negroes live there, I do not place reliance upon other statements made by the Commission.

Mr. KEATING. Mr. President, that is typical of the arguments that we so often hear during the debate. In order to place the entire subject in its proper perspective, I ask unanimous consent to have printed at this point in the RECORD that portion of the table on page 35 of the report of the Civil Rights Commission which shows the 1956 and 1962 registration of both white and Negro voters in the seven counties of North Carolina about which we have been talking.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

Voter registration statistics

County	1956 registration				1962 registration			
	White		Negro		White		Negro	
	Number	Percent of voting age	Number	Percent of voting age	Number	Percent of voting age	Number	Percent of voting age
NORTH CAROLINA [1]								
Bertie [2]			400	6.1	6,242	101.4	713	11.7
Franklin			0	0	8,600	87.4	1,600	30.0
Graham			0	0	4,025	121.1	0	0
Greene			0	0	4,882	101.9	385	12.1
Halifax			950	6.8	15,406	93.4	1,954	14.3
Hertford			700	11.4	6,415	144.4	537	8.8
Northampton			500	6.5	4,700	76.1	1,300	18.2
Total			2,550	5.8	50,270	96.0	6,489	15.6

[1] 1956 registration: Report of Southern Regional Council printed in the CONGRESSIONAL RECORD, vol. 103, pt. 7, p. 8612. 1962 registration: Not available. Data from 1961 voting report.
[2] Private voter right suit.

Mr. ERVIN. In North Carolina there is no annual registration. If a person registers, he remains registered. When he moves from one precinct to another, often he registers in the new precinct without obtaining a transfer from the old one. That is the explanation of the percentage over 100 percent.

Mr. KEATING. Would a man such as the one stated in the example given by the Senator vote twice?

Mr. ERVIN. No.

Mr. KEATING. The Senator means that he is not supposed to vote twice.

Mr. ERVIN. The name of one who moves away from one precinct to another is not always removed from the rolls. That is the reason that the percentage in excess of 100 percent appears.

Mr. KEATING. When a person moves from one county to another his name is not taken off the rolls of the county from which he moved?

Mr. ERVIN. As a rule, it is not. Indeed, the names of those who move or die are not ordinarily stricken from the registration books unless they are a totally new registration—an event which does not occur very frequently.

Mr. KEATING. I beg the Senator's pardon. Will he repeat that statement?

Mr. ERVIN. In North Carolina, names are usually not stricken from the registration books unless there is a new registration, which does not occur, frequently. This course is followed to avoid inconvenience to all concerned.

Mr. KEATING. Mr. President, I do not wish to prolong the discussion, but I would like to ask what would prevent a man, such as the one in the example stated by the Senator, from voting in both counties?

Mr. ERVIN. Nothing, except that in North Carolina, it is against the law to vote twice, and North Carolina, unlike the Department of Justice, believes in instituting prosecutions.

Mr. KEATING. That is a good reason.

Mr. ERVIN. We do not convict before a man is tried. We institute prosecutions and obtain convictions.

I ask the Senator if he is not aware of the fact that there is a statute codified in the United States Code as title 18, section 242, which bears the headnote, "Deprivation of Rights Under Color of Law," which provides as follows:

§ 242. Deprivation of rights under color of law.

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

I ask the Senator if he does not know that the Federal courts have repeatedly held that a State or local election official violates that statute and renders himself subject to criminal punishment upon conviction if he willfully denies to any person who is qualified to vote the right to register and vote?

Mr. KEATING. I have no reason to question the validity of that statute. Can the Senator tell us when that law was enacted?

Mr. ERVIN. That statute has been on the statute books for almost 100 years. If my recollection serves me right, it was originally a part of the Enforcement Act of 1870.

Mr. KEATING. Those are the criminal statutes to which the Senator referred in his earlier questions.

Mr. ERVIN. The Senator is correct. I ask the Senator if he does not know that under that statute a man, upon conviction of the offense, could be sent to prison for as much as 1 year and fined as much as $1,000, or both. Is that not a fact?

Mr. KEATING. I am sorry. I did not hear the question.

Mr. ERVIN. The question is as follows: If a State election official willfully denies any qualified person of any race the right to register and vote, he can be sent to prison for as much as 1 year and fined as much as $1,000 under that statute, or have both such fine and imprisonment imposed on him.

Mr. KEATING. I have no reason to doubt the penalties are as the Senator has read them.

Mr. ERVIN. Does not the Senator recall that the statute codified as 18 United States Code, section 1, makes that crime a misdemeanor?

Mr. KEATING. That may well be. I assume that the Senator has correctly read the code.

Mr. ERVIN. I assure the Senator that the crime is a misdemeanor. Does not the Senator from New York agree with the Senator from North Carolina that under rule 7(a) of the Federal Rules of Criminal Procedure a misdemeanor may be prosecuted by an information filed by a U.S. attorney?

Mr. KEATING. I assume so.

Mr. ERVIN. So, a man could be tried on a charge of having violated title 18, United States Code, section 242, upon an information filed by the U.S. attorney and without any indictment being found by a grand jury, could he not?

Mr. KEATING. I would assume so.

Mr. ERVIN. So all the Attorney General would have to do to obtain a conviction for a violation of section 242 of title 18 of the United States Code would be to convince a petit jury of his guilt.

Mr. KEATING. It is not as simple as that. I have no reason to question the wisdom of the present Attorney General or his predecessor in feeling that these old statutes, 100 years old, are completely inadequate to meet voter discrimination problems in certain States.

Mr. ERVIN. The Senator would accept such assertion even though the Department of Justice has not undertaken to prosecute any man for violation of the statute in any voting rights case?

Mr. KEATING. There have been efforts over the years, without success, to obtain such convictions.

Mr. ERVIN. I am not aware of any in the past 15 or 20 years. We have been assured by the Attorney General that there have been no efforts to enforce the statute in voting rights cases during recent years.

Mr. KEATING. I believe that is true of both the present Attorney General and his predecessor. It is a decision with which I find myself in accord. I do not believe those statutes, enacted 100 years ago, would be effective in any way to meet the problems of discrimination in voting.

Mr. ERVIN. Has the Senator anything to base that argument on except the statements of some Attorney Generals who have never lived within 400 or 500 miles of the places involved?

Mr. KEATING. Although it may be fallible and imperfect, that is the judg-

ment of the junior Senator from New York.

Mr. ERVIN. I should like to know in how many States below the Mason and Dixon line the Senator from New York believes, on the basis of the statements of Attorneys General, there are not enough jurors of honesty to convict an election official of a wrongful deprivation of voting rights when the evidence shows him to be guilty beyond a reasonable doubt.

Mr. KEATING. I want to make it clear that I am not impugning the honesty of any jury or group of people. I am only saying that the statutes which have been on the books for 100 years are completely outworn, and that it is not likely that they would bring about the results which are sought to the same extent as is proposed in the pending bill.

Mr. ERVIN. Those statutes are much newer than the Constitution, or the Declaration of Independence, or the Ten Commandments. I know the Ten Commandments are not outworn. However, when I see bills of the character of the one here proposed, I sometimes think that some people believe the Constitution is.

Mr. KEATING. This bill is based on the Ten Commandments. I did not mention that in my original remarks, because the Ten Commandments are not a part of the basic statutory law of this country. I referred only to the Constitution. But the provisions of the bill are in the spirit of the Ten Commandments and the Beatitudes.

Mr. ERVIN. I would say this bill would come nearer to being based on the Beatitudes than on the Constitution of the United States. But we are not supposed to be legislating on the basis of the Beatitudes, no matter how beautiful they may be.

Mr. KEATING. That is why I did not refer to them or base my case on them, because I was afraid the Senator would challenge it if we put the bill on the basis of the Beatitudes or the Ten Commandments. But they are completely relevant.

Mr. ERVIN. It is interesting to hear that laws become obsolete and worn out by the passage of time. It is rather disconcerting to think that they do. I notice that the Preamble to the Constitution is in the same words as it was at the time when it was written, and it is much older than these laws. I trust the Preamble is not worn out, because it states that the Founding Fathers drafted the Constitution in order to "secure the blessings of liberty to ourselves and our posterity." This bill would destroy the blessings of liberty.

Mr. KEATING. That is the opinion of the Senator from North Carolina. It does not happen to be mine.

Mr. ERVIN. We sometimes disagree. Sometimes we agree. I regret very much that the Senator from New York does not share my sound opinion on these subjects. He is a man of great ability.

I ask the Senator from New York if there is not another statute, title 18, section 241 of the United States Code, which bears the heading "Conspiracy Against Rights of Citizens," and if it does not read as follows:

> If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or
>
> If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured—
>
> They shall be fined not more than $5,000 or imprisoned not more than 10 years, or both.

I ask the Senator from New York if he does not know that the Federal courts have held in a number of cases that if an election official conspires with another person to deprive any qualified voter of any race of the right to register and vote, he would violate this statute and be subject to the punishment prescribed by it.

Mr. KEATING. I understand that that is so, under the conspiracy section.

Mr. ERVIN. I call the Senator's attention to another statute, section 371 of title 18 of the United States Code, which is the general conspiracy statute of the United States. I ask the Senator if he does not know that the courts have held that a State or local election official violates that statute when he conspires with another to deprive a person of the right to register and vote when he is qualified to do so.

Mr. KEATING. I am willing to accept the Senator's statement that it has been so held.

Mr. ERVIN. I have referred to three criminal statutes which are available to the Attorney General to prosecute any election official who, of his own volition, or in conspiracy with another, willfully deprives any qualified citizen of any race of the right to register and vote.

Does the Senator not believe that the Attorney General should make an effort to enforce those criminal laws in the event of any wrongdoing on the part of State or local election officials?

Mr. KEATING. What the Attorney General and his predecessor, and those of us who support the pending bill, are interested in is preserving for all of our citizens the right to vote and not putting some official in jail. Assuming the complete honesty of jurors and judges and everybody else involved, because I do not impugn anybody's honesty, it is very difficult to convince jurors that there was a criminal intent involved when voting officials were merely accepting and furthering the general mores of the community.

I am therefore in complete accord with the decision reached by the Attorney General and his predecessor that it would be fruitless, unavailing, undesirable, and in many cases unfair, to bring criminal action against them, because many of the election officials are reputable citizens of the community.

The way to handle such a situation is by a civil action, requiring compliance with the law, with the objective in mind of enforcing the right to vote, and not putting someone in jail or fining him.

Mr. ERVIN. Does the Senator not agree with me that an election official who willfully and intentionally denies a qualified citizen the right to register and vote should be punished?

Mr. KEATING. I believe that any person who does so with criminal intent should be punished. I am trying to say to the Senator—and for one of his knowledge and perspicacity, he seems to be singularly unable to understand what I am getting at; I must be unusually obtuse—that it might be difficult to convince 12 men on a jury that Mr. John Jones, an estimable character in the community, was in fact guilty of willful or intentional or vicious conduct in denying someone his right to vote, and that they would therefore be reluctant to say that he should be criminally held.

However, he should be held to account. There are a great many laws violated every day whose violators are never prosecuted, as the Senator knows.

Mr. ERVIN. I do not know of any laws which have been so completely ignored by the Federal Government as the laws with respect to voting rights. I refer to sections 241, 242, and 371 of title 18 of the United States Code.

Mr. KEATING. The laws regarding diplomats in the District of Columbia, are one good illustration.

Mr. ERVIN. They are dealt with under the principle of comity and international law. I have never heard of anyone being anxious to avoid prosecuting southerners for anything. Moreover, I have never observed anyone solicitous about the constitutional rights of any southerner of the Caucasian race.

Mr. KEATING. Let me say to the Senator that standing on the floor of the Senate now is one who is as solicitous about the constitutional rights of a North Carolinian as he is about the rights of any citizen living in any other part of the country. He is as solicitous about the rights of white citizens as he is of the rights of Negro citizens. All I am saying is, that when it comes to voting, all citizens should be treated alike.

When the tax collector comes along and takes taxes out of one's pay envelope or pocketbook, he does not stop to ask about the color of one's skin. When one goes to the polling place to vote, he should have the right to vote, without being asked about the color of his skin.

Mr. ERVIN. I agree perfectly with the Senator from New York in the thought that all qualified persons should be permitted to vote.

Mr. KEATING. I would not have been surprised if the Senator from North Carolina had said that if title I was all there was to the bill, he would be able to accept it, because I believe everything should be done to expedite the right of every citizen to vote. I know that is the view of the Senator. I can know of his objection to some of the other titles in the bill, but I do not understand his objection to title I.

Mr. ERVIN. I will tell the Senator why I object to title I.

Mr. KEATING. I presume we shall hear about that in the days to come.

Mr. ERVIN. It really grieves me to hear Attorneys General of the United

States assert that honorable jurors cannot be found in Southern States. I have lived among southerners all my life, and I have found them to be as honorable as persons living anywhere else. I believe that when they take the oath to decide a case according to the law and the evidence, they will decide that case according to the law and the evidence, as fairly and as justly as jurors in any other State in the Union.

I have called attention to the three criminal statutes which the Attorney General has available to him, to prosecute wrongful deprivations of voting rights. When the Attorney General says, "I do not believe I can obtain a conviction," and admits in the next breath, "I have never tried to obtain a conviction," it grieves me to hear such statements made concerning millions of good Americans. The Attorney General should use the laws already on the books, instead of demanding the enactment of other laws in the voting rights field.

The Senator from New York knows that in addition to having these three criminal statutes at his disposal, the Attorney General of the United States has two civil statutes, one of them the Civil Rights Act of 1957 and the other the Civil Rights Act of 1960; is that not true?

Mr. KEATING. That is true; and I have tried to point out in my remarks why he needs additional aid for action under those statutes, and to point out some of the difficulties that have been encountered in the enforcement of those statutes.

Mr. ERVIN. The Attorney General already has five laws available to him, yet the Senator thinks he needs more? I know that the Senator from New York will not be surprised to hear that I disagree with him. I believe those five laws, in the hands of any competent lawyer, are sufficient to enforce the right of every qualified citizen anywhere in the United States—in Alabama, Mississippi, New York, Illinois, or Missouri—to register and vote.

Mr. KEATING. Mr. President (Mr. JAVITS in the chair), I cannot share the Senator's view that the reason for continued discrimination in voting in many of our States is due to the incompetence of the Attorney General.

Mr. ERVIN. If I were the Attorney General of the United States and I had the evidence to support the allegations which the Senator from New York quoted from reports of the Civil Rights Commission, I would institute some old-fashioned criminal prosecutions in the Federal courts. I would not let the fear or the apprehension or the conjecture or the suspicion that a jury might not do its duty keep me from doing mine.

Mr. KEATING. The Senator may become the Attorney General one day. I do not know what will happen then.

Mr. ERVIN. I could never be Attorney General in the political climate that prevails in the United States today. This is true because I place constitutional principles and the liberty of all the people above the considerations which prompt the introduction of bills of this character.

Mr. KEATING. I believe the Attorneys General of our country have had in mind the Constitution of the United States at all times.

Mr. ERVIN. They assert that the people residing in a whole section of the country, or in certain States, will not keep their oaths as jurors and try cases according to the law and evidence; I respectfully submit that they ought to refrain from making such statements until they have prosecuted a few election officials for violating election laws.

Mr. KEATING. I have never heard any of them make that accusation.

Mr. ERVIN. The Senator has said that they cannot obtain convictions. At least I thought I heard him say that that was the reason why they do not use the criminal statutes which they already have available.

Mr. KEATING. I shall let the Attorney General speak for himself. I have stated what my views are.

Mr. ERVIN. I ask the Senator from New York if he does not know that under title 28, section 1864, and section 1865 of the United States Code, persons selected to serve upon juries in the Federal courts of the country are selected by a clerk of the court and by a jury commissioner appointed by the judge of the district. They place the names of those eligible to serve in the jury boxes.

Mr. KEATING. That is my understanding.

Mr. ERVIN. The clerk of the Federal court is appointed by the judge, is he not?

Mr. KEATING. I believe so.

Mr. ERVIN. The jury commissioner is appointed by the judge, is he not?

Mr. KEATING. That is my understanding.

Mr. ERVIN. The names of Federal jurors are selected and put in the jury box by Federal officials and not by State officials; and that statement applies to Alabama, Mississippi, and everywhere else in the United States. Is that correct?

Mr. KEATING. That is correct. The Federal officials usually come from that neighborhood.

Mr. ERVIN. Does not the Senator believe that when anyone, whether he be the Attorney General or someone else, says that it is not possible to find a jury who would convict an election official on a criminal charge in a voting rights case in the South or in any area in the States of the South is doing what Edmund Burke said cannot and must not be done; namely, indicting a whole people?

Mr. KEATING. I am opposed to indicting a whole people.

Mr. ERVIN. When the charge is made that it is impossible to obtain a jury in an entire State who would convict a State election official for criminally depriving a qualified citizen of his right to vote, are not the people of the whole State being indicted?

Mr. KEATING. I have never said that one could not get a fair jury trial. I have tried to point out the difficulties a prosecutor experiences in seeking to overrule the generally accepted practices of a community, and that juries would naturally be reluctant to convict of a criminal charge an estimable resident of their community who was merely "doing what comes naturally."

Mr. ERVIN. Does the Senator believe that a man would be an estimable member of a community if he denied a college graduate the right to register and vote?

Mr. KEATING. Does not the Senator consider estimable people who are doing that very thing? Does not the Senator call them estimable people?

Mr. ERVIN. I do not. I believe that instead of passing more laws, the laws that are already on the books should be used.

Mr. KEATING. I am glad to hear the Senator say that.

Mr. ERVIN. It is rather strange for me to be in favor of prosecuting people, when the prosecutors in the Department of Justice say they do not want to prosecute. An equity, proceeding in a Federal court is tried without a jury, is it not?

Mr. KEATING. I beg your pardon. I did not understand the Senator.

Mr. ERVIN. A litigant is not entitled to a jury trial in an equity proceeding in a Federal court, is he?

Mr. KEATING. The Senator is correct.

Mr. ERVIN. Under the two civil rights acts which are already on the statute books and which are available to the Department of Justice, a State election official is not entitled to a jury trial on the merits. Is that correct?

Mr. KEATING. The Senator is correct.

Mr. ERVIN. Under those two acts a party is not entitled to trial before a jury. The case is triable before a judge alone.

Mr. KEATING. I pointed out the difficulties which have been encountered. When the Senator from North Carolina was interrogating the Attorney General for 8 days, in the hearings before the Judiciary Committee, the difficulties involved in bringing actions under the 1957 and 1960 acts were pointed out. The Attorney General has been up against a number of difficulties. One of the most serious of them is the long delay involved in prosecuting these cases. As I said, it is not possible to give a man the right to vote retroactively. The delay defeats the ends of justice. The bill before the Senate, in part, is designed to minimize that delay.

Mr. ERVIN. If a case is tried under the Civil Rights Act of 1957 to determine whether an individual plaintiff has been wrongfully denied the right to vote, it can be tried before the judge without a jury; and the only thing the judge would have to do in that case would be to find that the plaintiff is qualified, and has been denied registration by the State election official, and to do that the judge would have to take only enough evidence to show those things. I cannot understand how it would take more than 30 minutes of any judge's time to hear such evidence and make such findings. When anyone talks about a long delay in a case of this kind I am confident he is conjuring up some nonexistent legal ghosts.

Mr. KEATING. The cases I cited this morning are actual cases. The delay in one case was, I believe, 3 or 4 years. In another case it was 2 years. In still another it was 1 year. This delay oc-

curred before an initial decision was obtained. After that, the case was appealed. In one of the cases, even after the decision had been made, the defendant refused to comply with it, and it was necessary to bring a contempt proceeding. That is a separate proceeding, as the Senator knows. It is that kind of obstructionism which the pending bill is designed in part to remedy.

Such cases are not disposed of in a half hour. In many instances they are long drawn out, particularly when it is necessary to show a pattern of discrimination. Such cases require a great deal of proof.

Mr. ERVIN. Does not the Senator from New York agree with the Senator from North Carolina that under the Civil Rights Act of 1957 the Attorney General could bring a suit to enforce the right of a man to register and vote, and that in such a case the only question before the court would be whether the man was qualified and whether he had been denied the right to register?

Mr. KEATING. That is the basic part of the act; yes.

Mr. ERVIN. With all due respect to everyone concerned, if a Federal judge cannot try a case of that kind in a day, he should quit the bench.

Mr. KEATING. The Senator is doing the very thing that he objects to. He is indicting the Federal judiciary because the Federal judges who have tried such cases have not been able to dispose of them in half a day. I do not believe we should do that. I do not even criticize the judges who tried the cases for taking more than a half hour. It might have been necessary to take considerably more time.

Mr. ERVIN. I do not see why a judge, sitting without a jury, should take more than a day to try a case involving the question of whether an individual was qualified to vote according to law, and whether he had been denied the right to register and vote.

I ask the Senator from New York if he does not believe that under the Civil Rights Act of 1957 and the Civil Rights Act of 1960, a person can be conditionally allowed to vote? In other words, if a referee finds a person qualified, he can be allowed to vote, notwithstanding an appeal, can he not?

Mr. KEATING. That is after the court makes a finding.

Mr. ERVIN. Yes, after the judge adopts the finding of the voting referee.

Mr. KEATING. The Senator is correct.

Mr. ERVIN. This being true, an appeal would not prevent a person from voting, and it would not make any difference whether it took 2 or 3 years to get the appeal to the Supreme Court of the United States; he would still be able to vote. At least, the law would authorize the judge to allow the person to vote conditionally.

I sometimes suspect that the reason why prosecutions are not instituted or resort is not had to courts is that it is necessary to prove a claim when one goes to court; whereas it is not necessary to prove anything when one alleges something before a congressional committee or in Congress.

Mr. KEATING. In a civil action it is necessary to present proof, just as in a criminal action.

Mr. ERVIN. It is necessary to present the proof, but the proof is presented before a Federal judge, who is a man presumably trained in the law. Does not the Senator from New York know that in the State of Mississippi there are only two Federal judicial districts, and that in most criminal cases the court sits, in places remote from where the alleged crimes are said to have been committed?

Mr. KEATING. I am not too familiar with the situation in Mississippi. I know that there are two Federal judicial districts in Mississippi.

Mr. ERVIN. According to title 28, section 104, of the United States Code, there are only two Federal judicial districts in Mississippi; under title 28, section 81, of the United States Code, there are only three Federal judicial districts in Alabama; under title 28, section 90, of the United States Code, there are only three Federal judicial districts in Georgia; and under title 28, section 98, of the United States Code, there are only two judicial districts in Louisiana.

In those States, and other Southern States, the Federal courts sit only in a very few places in each district. As a consequence, most of the cases that are tried in the Federal courts in Southern States, which are largely rural, are tried at great distances from the homes of the persons who are being tried. For this reason, these persons are away from their friends, and those they can influence. I cannot accept the assertion that it is not possible to get a southern jury to convict a State election official for a violation of the criminal statutes we have discussed. Furthermore, I believe it is possible to try voting rights cases very expeditiously. However, I should like to ask the Senator from New York if there are not two other statutes; namely, title 42, section 1983, and title 42, section 1985, which allow an aggrieved person, that is, a person who is denied the right to vote, to bring actions in Federal court in his own behalf, including an action in equity for preventive relief?

Mr. KEATING. Yes. There are such statutes.

Mr. ERVIN. When the aggrieved person brings an action in equity in the Federal court, his case is also tried without a jury?

Mr. KEATING. That is correct.

Mr. ERVIN. So there are seven statutes already available on the books. There are three criminal statutes and four civil statutes available to enforce the right to register and vote of any qualified person of any race. The Senator from New York nevertheless thinks that we need three or four more?

Mr. KEATING. The person aggrieved has the right under the law to bring an action to enforce his rights. But in many cases it has been found imprudent to do so. Let us put it that way.

Mr. ERVIN. I shall not detain the Senator very much longer.

Mr. KEATING. It is always delightful to be detained by the distinguished Senator.

Mr. ERVIN. I ask the Senator from New York if subdivision (2) of subsection (a) of section 101 of title I, which begins at line 9 on page 2 and runs through line 12 on page 3 is not a provision based upon section 4 of article I of the Constitution?

Mr. KEATING. No. It is a provision based primarily on the 14th and 15th amendments. Article I, section 4 of the Constitution is another basis for the legislation.

Mr. ERVIN. Are not the provisions which I have called to the attention of the Senator provisions which are all restricted to Federal elections rather than State elections?

Mr. KEATING. Yes. They are restricted to Federal elections. I do not think they should be. I think they should extend to State elections.

Mr. ERVIN. I ask the Senator if there is anything in the provisions to which I have referred, beginning on line 9, page 2, and ending at line 12, page 3, which would restrict their applicability to the denial or abridgment of the right to vote on account of race, color, or condition of previous servitude?

Mr. KEATING. They are not so restricted. That is one of the bases on which those sections stand. Abundant proof exists to establish that people have been denied the right to vote because of immaterial errors in their applications. Further, there is difficulty in proving these cases, since the literacy test was oral. Therefore, the test could be administered by the registrar in whatever way he saw fit. In any event, the 14th amendment guarantees to all citizens the "equal protection of the laws," and if this clause is violated for any reason, by any State official, the Federal Government can, without question, legislate to correct the situation.

Mr. ERVIN. I ask the Senator if he does not know that the courts have repeatedly held that no legislation is valid under the 15th amendment unless it is restricted in its application to abridgement or denial of the right to vote on the basis of race, color, or previous condition of servitude?

Mr. KEATING. That is the exact wording of the 15th amendment. The right of people to vote has been abridged by States on account of race by resorting to the very practices that are dealt with under the sections to which the Senator has referred.

Mr. ERVIN. Does not the Senator from New York agree with me that the provisions we are discussing apply regardless of whether there has been any denial or abridgement of the right to vote?

Mr. KEATING. Yes. They would apply. However, they would not be before us now if there had not been denial or abridgement.

Mr. ERVIN. I invite the attention of the Senator to the case of Karem against United States, which is a decision of the Circuit Court of Appeals for the Sixth Circuit reported in 121 Federal Reporter at page 250. I read from page 255:

There are certain very obvious limitations upon the power of Congress to legislate for the enforcement of this article—

Referring to the 15th amendment—

(1) Legislation authorized by the amendment must be addressed to State action in

some form, or through some agency. (2) It must be limited to dealing with discrimination on account of race, color, or condition.

Does the Senator quarrel with the proposition that this is a correct statement of the power of Congress under the 15th amendment?

Mr. KEATING. I have no reason to think that the Senator has not correctly read the language of that decision.

Mr. ERVIN. It is certainly clear, it seems to me, that the provisions of subdivision (2) of subsection (a) of section 101 of title I, commencing on line 9 of page 2 and ending on line 12 of page 3 cannot possibly be legislation under the 15th amendment. They are not restricted to an abridgement or a denial of the right to vote on the basis of race, color, or previous condition of servitude. This being true, it must be legislation under the only other power conferred upon Congress in respect to voting, which would be section 4 of article 1, which permits Congress to regulate the manner of holding elections for Senators and Representatives.

Mr. KEATING. Of the 14th amendment which guarantees equal protection of the laws I assume this is one of the many points of difference between the Senator and me.

Mr. ERVIN. Does not the Senator from New York concede that under the *Guinn* case (238 U.S. 347) and the *Lassiter* case (360 U.S. 45), and the express wording of section 2 of article 1, and the 17th amendment, the power to prescribe the qualifications for voting, including literacy tests, belongs to the States?

Mr. KEATING. There is nothing in the bill that would interfere with the right of the State to set up whatever qualifications it desired.

Mr. ERVIN. However, the bill would create a Federal presumption, would it not? I call the attention of the Senator to another section. To make it a little more specific, does not the Senator from New York agree with the Senator from North Carolina that under the decisions and the constitutional provisions to which I have just alluded, the States have the right to prescribe literacy tests?

Mr. KEATING. I agree. The States have a clear right to prescribe a literacy test.

Mr. ERVIN. I call the attention of the Senator to the provisions of subsection (b) of section 101 of title I, beginning on line 19 of page 3, and ending on line 5 of page 4. I ask the Senator if that subsection does not provide that the courts need not go into the question of whether a person is actually literate within the meaning of the State law. Does it not create a presumption which takes the place of such inquiry?

Mr. KEATING. The section to which the Senator referred would not establish any qualification for voting, nor would it in any way interfere with the right of the State to establish a qualification.

It would merely establish a rule of evidence in court proceedings in voting discrimination cases. Even then, the presumption set forth there is a rebuttable one. The States remain free to set literacy standards; and the sixth grade presumption would not apply at all when, for example, at the point where a registrar tested an applicant's literacy. But when a lawsuit charging discrimination was brought, and when the matter came to court, the burden, instead of being on the applicant, would be on the defendant. The defendant would have the burden of showing that the person who had completed the sixth grade was not literate. If the defendant could show that even though the applicant had finished the sixth grade, he still was not literate, the defendant would win the case. But the burden would be on the State to prove that. In other words, if a State has set a literacy requirement, that would remain the requirement—whatever that literacy requirement might be. The presumption relates only to the manner in which literacy might be proven in specific kinds of cases in the courts; and the States would remain wholly free to adopt literacy as a qualification, or any kind of literacy test as a qualification, or not to do so, as they might choose.

Mr. ERVIN. But under the law a person is not entitled to register to vote unless he is literate, within the meaning of the law of the State in which he applies for the right to register and vote; is not that true?

Mr. KEATING. No—for, as I understand, some States do not have a literacy requirement.

Mr. ERVIN. Approximately one-half of the States have literacy requirements. Of course the presumption could not possibly apply to a State which did not have a literacy requirement.

Mr. KEATING. Yes.

Mr. ERVIN. I am referring to States which do have a literacy requirement. Does not the Senator from New York agree with me that no person is qualified to vote within a State which has a literacy test, unless he can pass the literacy test?

Mr. KEATING. That is correct.

Mr. ERVIN. Would not the presumption provided by the bill render it unnecessary for a court to inquire, in the first instance, whether the applicant met that literacy test? Would not the bill permit the court—instead of making that inquiry—merely to ask whether the applicant had completed the sixth grade in an accredited school?

Mr. KEATING. When the citizen applies to the registrar, to register, even if the applicant is a college graduate, the registrar can deny him the right to register and can hold him to be illiterate. But when the applicant goes into court, seeking the enforcement of his right to vote, and when he shows that he has passed the sixth grade, the burden shifts to the State to prove that he is illiterate. It is a rebuttable presumption that a man who has finished the sixth grade knows enough to vote.

Mr. ERVIN. Was not the Senator from New York on the floor of the Senate when I discussed this question and when I stated that, insofar as the Civil Rights Act of 1960 applies to voting referees, it creates what I called an irrebuttable rebuttable presumption?

Mr. KEATING. I did hear something said about that; but I was in and out of the Chamber; and when I tried to listen—I say frankly—the Senator from North Carolina got me so involved that I was not entirely sure about what reasoning the Senator from North Carolina was using when he called the presumption an irrebuttable rebuttable presumption.

Mr. ERVIN. The amendment creating a rebuttable presumption would be added to the subsection of the Civil Rights Act of 1960 which deals with court proceedings; would it not?

Mr. KEATING. It specifically amends subsection (c) of section 2004, which subsection was enacted in 1957. If the Senator refers to the whole of section 2004, including the 1960 amendments, he would be correct.

Mr. ERVIN. Does not the Civil Rights Act of 1960 provide that if a judge finds that a Negro has been wrongfully denied the right to vote pursuant to a pattern of discrimination in the election district, the judge can appoint a voting referee to pass upon the applicant's voting qualifications and to report back to the court?

Mr. KEATING. Yes; if a pattern of discrimination has been found.

Mr. ERVIN. Yes. Does not that statute also provide that the voting referee shall conduct an ex parte proceeding, to pass upon the voting qualifications of the applicant?

Mr. KEATING. I did not quite understand the Senator's question.

Mr. ERVIN. Does not the Civil Rights Act of 1960 provide that whenever a judge appoints a voting referee—as is authorized by that act—the voting referee shall pass upon the voting qualifications of the applicant, in an ex parte proceeding?

Mr. KEATING. That is correct.

Mr. ERVIN. Is not the term "ex parte proceeding" one which we lawyers understand to mean a proceeding in which only one side is heard?

Mr. KEATING. That is the phrase we use, although sometimes it is not fully understood.

Mr. ERVIN. But I believe that is the understanding the Senator from New York and I have of it; is it not?

Mr. KEATING. Yes.

Mr. ERVIN. In other words, the voting referee would conduct a proceeding, to inquire into the question of whether a particular applicant was qualified to vote; and the inquiry would be made without the presence of the election official whose conduct was involved, would it not?

Mr. KEATING. That is correct—although, of course, he would have a right to go to court before the referee's finding became final.

Mr. ERVIN. But the election official would not be permitted to testify, or to be represented there by counsel, or to cross-examine the applicant, in that ex parte proceeding, would he?

Mr. KEATING. Yes, he could submit the applicant's written literacy test at the hearing before the referee.

Mr. ERVIN. But I mean the election official who allegedly had denied the applicant the right to register would not be permitted to testify or to be represented by counsel or to have the applicant

cross-examined, during the hearing before the voting referee, would he?

Mr. KEATING. An ex parte proceeding does not involve the taking of testimony on both sides.

Mr. ERVIN. That is correct; only one side of the case is heard. But does not that statute provide that the voting referee shall make his report and recommendation to the court, and the court shall issue to the State's Attorney General a notice to show cause, and the election official will not be heard at all by the court unless the Attorney General files exceptions to the report and recommendation of the voting referee?

Mr. KEATING. That is correct.

Mr. ERVIN. Does not that statute also provide that the voting referee shall reduce to writing the testimony of the applicant; and that the testimony of the applicant as to his age, residence, and matters other than his literacy or understanding, shall constitute prima facie evidence of the truth of the facts as testified to by him?

Mr. KEATING. The Senator from North Carolina has failed to state a very important part of that section, if he is going through it item by item.

Exceptions as to matters of fact shall be considered only if supported by duly verified copies of public records or by evidence of persons having personal knowledge of such facts or by statements on the matters contained in such report.

Mr. ERVIN. In other words, the case will be tried, in the first instance, by the voting referee, in the absence of the State election official whose conduct is involved; is that correct?

Mr. KEATING. But the case is not tried there. That is where the decision which is subject to an exception or to an appeal is made.

Mr. ERVIN. The voting referee takes the evidence in the absence of the election official concerned, and makes his finding and recommendation to the judge, does he not?

Mr. KEATING. That is correct. And that evidence would include any written literacy test.

Mr. ERVIN. Up to that time the State election official would be excluded from the whole proceeding, would he not?

Mr. KEATING. The judge would have before him the findings of the State election official. If there were a written literacy test, he would have the results of that test before him.

Mr. ERVIN. Yes. But the Attorney General must file exceptions, and they must be accompanied by either citations to the public record or by affidavits of persons having personal knowledge of the facts.

Mr. KEATING. That is correct.

Mr. ERVIN. Then the applicant would have a hearing before the judge. Does not the bill provide that the judge cannot consider any evidence whatever as to the literacy or understanding of the applicant except evidence taken by the voting referee?

Mr. KEATING. That and any exception filed and documented by the State attorney general. I do not know what evidence there would be except the literacy test itself.

Mr. ERVIN. So when the case came on for trial, if the evidence taken before the voting referee should indicate that the man was literate, the judge would have to so decide, even if there were 50 witnesses who would be willing to swear, if they were permitted to do so, that they had personal knowledge of the man and knew that he could neither read nor write.

Mr. KEATING. If the literacy test showed that he was literate, he would be entitled to vote.

Mr. ERVIN. That is correct; and those witnesses could not contradict the evidence on that point taken by the voting referee in the absence of the election official.

Mr. KEATING. No. The decision in the first instance would be that of the registrar. That decision would be reviewed by the voting referee. The voting referee would have before him the literacy test and the report, and he would make his decision on those documents.

Mr. ERVIN. But if the application were handled by a voting referee in the first instance rather than by the judge, the election official could not possibly rebut the presumption, could he? He could not offer any evidence to rebut the presumption?

Mr. KEATING. If there were a written literacy test or affidavits or documented exceptions filed by the State attorney general, there might be a rebuttal of the presumption. I do not understand the point the Senator is getting at.

Mr. ERVIN. The presumption which the bill would create would apply to hearings before the voting referee, would it not?

Mr. KEATING. I should think so. But a good case can be made for the argument that it applies only in cases filed under the 1957 act—before the voting referee provision was enacted.

Mr. ERVIN. So when a man testifies before a voting referee that he has completed the sixth grade, that is as far as the voting referee would have to go. Is that not correct?

Mr. KEATING. He could accept written evidence to the contrary.

Mr. ERVIN. He would not have to accept anything except the testimony that the applicant had completed the sixth grade, would he? That is all he would have to receive, because that would constitute prima facie evidence sufficient to support an adjudication not only of literacy, but also understanding. Is that not true?

Mr. KEATING. The title would be an additional section of the law. It would not eliminate the provisions of existing law which would allow the submission of documents relating to literacy which were part of the registrar's record. It would be merely an additional section relating to evidence submitted to a court. If a person felt that he had been improperly denied the right to vote, and there was written evidence of his illiteracy, even apart from the fact that he had completed the sixth grade—it is pretty hard to think of such a case but there might be one—it might be sufficient to rebut the presumption.

Mr. ERVIN. If the bill were passed, the only evidence that the referee would need would be evidence that the man had completed the sixth grade, and that would constitute prima facie evidence of the applicant's literacy and understanding. That evidence would be taken before the voting referee, and that would be the only thing that the judge would pass upon. Even though there might be 50 witnesses available to testify that the man was not literate, not a single one of them could be presented at the hearing before the judge. So instead of creating a rebuttable presumption, the bill would create an irrebuttable presumption in any proceeding which would come before a voting referee.

Mr. KEATING. That is not an accurate statement. The 50 affidavits relating to literacy, if filed as exceptions by the attorney general of the State, could be considered.

Mr. ERVIN. Does not the Senator from New York agree with me that the voting referee would not be required to ask the applicant anything about his literacy beyond the question of whether he had completed the sixth grade of school?

Mr. KEATING. He would not have to ask him anything.

If an exception were taken to placing an applicant on the registration rolls, and that fact were presented to the court, and there were a public record or affidavit of persons having knowledge of the facts, that evidence would be a part of the record for judicial determination, would it not?

Mr. ERVIN. The reason assigned to justify the creation of a presumption is that procedures would be expedited. Is that not so? Is it not maintained that the procedure would be expedited?

Mr. KEATING. No. The presumption would be created because of the way in which literacy tests have been used in the past. College graduates have been denied the right to vote because of the color of their skin. People may differ about whether a sixth grade education is a proper standard to use. A good deal of study has indicated that the sixth grade is the grade at which functional literacy is obtained. It is sufficient literacy to enable one to get along in the normal pursuits of life. The literacy requirement is designed to meet that problem.

Mr. ERVIN. Does not the Senator from New York agree with me that the only question which a voting referee would have to put to an applicant in the ex parte proceeding would be whether or not the applicant had completed the sixth grade of an accredited school?

Mr. KEATING. He would probably desire some proof that he had finished the sixth grade.

Mr. ERVIN. That would be prima facie evidence. That is all he would need to make the finding in the absence of any adverse evidence.

Mr. KEATING. That would create a rebuttable presumption that the applicant was qualified to vote.

Mr. ERVIN. I invite the Senator's attention to the following part of the Civil

Rights Act of 1960. I read from the end of the fifth paragraph of subsection (e):

The applicant's literacy and understanding of other subjects shall be determined solely on the basis of answers included in the report of the voting referee.

I ask the Senator if that does not provide that the judge cannot consider any evidence on the applicant's literacy and understanding of other subjects except the written evidence taken down by the voting referee.

Mr. KEATING. Or affidavits of persons having personal knowledge of the facts.

Mr. ERVIN. I think the Senator is placing a wrong construction on that provision. That is the way the State election official gets a hearing. I am talking about what the evidence shall be before the judge. It provides that:

The applicant's literacy and understanding of other subjects shall be determined solely on the basis of answers included in the report of the voting referee.

Mr. KEATING. That is, the answers to the exceptions.

Mr. ERVIN. That is the hearing before the judge.

Mr. KEATING. That refers to the decision. The exceptions shall be considered if they are duly supported by affidavits of persons having knowledge of the facts or by matters contained in his report.

Mr. ERVIN. That is what the bill provides the Attorney General must attach to his exceptions in order to get a hearing before the judge. What I am calling attention to is that when the judge grants the hearing he must determine the literacy and understanding of the applicant solely on the basis of answers included in the report of the voting referee.

In other words, if there were a thousand witnesses who would swear that the applicant was not literate, the judge could not hear a single one of them.

Mr. KEATING. I believe the Senator refers to the fact that the judge cannot try the case ab initio in his court. He must consider it on the record of the voting referee and the exceptions to that record.

Mr. ERVIN. Under the bill the judge could not try the question of literacy or the question of understanding on anything except the evidence taken by the voting referee in the ex parte hearing, from which the attorney general of the State and the State election officials were excluded. The judge is forbidden to consider any evidence on the question of literacy or understanding except the evidence taken by the voting referee when the official of the State was denied the right to be present or to be heard.

Mr. KEATING. And any exceptions to his report, which are based on affidavits and other matters such as we have been discussing. The situation is similar to that which exists when the court is in effect acting on an appeal from the decision of the voting referee, if someone wishes to have a court review that decision.

Mr. ERVIN. If this bill were enacted, it would be the only statute I have ever discovered under which the courthouse door would be nailed shut against the admission of the truth. Any proof contradictory to the evidence taken by the voting referee in respect to literacy or understanding would be inadmissible.

I read from the provision:

The issues of fact and law raised by such exceptions shall be determined by the court or, if the due and speedy administration of justice requires, they may be referred to the voting referee to determine in accordance with procedures prescribed by the court. A hearing as to an issue of fact shall be held only in the event that the proof in support of the exception disclose the existence of a genuine issue of material fact.

That refers to the hearing by the judge.

The language continues:

The applicant's literacy and understanding of other subjects shall be determined solely on the basis of answers included in the report of the voting referee.

A judge could not consider any evidence in respect to the literacy or understanding of the applicant except that taken before the voting referee. It would not make any difference if there were a thousand witnesses who could testify that the applicant was illiterate. The judge could not hear the evidence. This is the first time I have ever heard of a proposed statute which provides that the judge may not consider any evidence except that taken in secret where the adverse party was denied the right to be present.

Mr. KEATING. And the record made below, including the written literacy test. I wish to add to what I said on this subject—on which the Senator from North Carolina and I are in obvious disagreement—that section (b), starting on page 3, line 19, relates to the 1957 act, before the voting referee provisions were incorporated into the law, according to a memorandum furnished to me by the Department of Justice.

Mr. ERVIN. Will the Senator repeat that statement? I did not understand him.

Mr. KEATING. According to a memorandum furnished to me by the Department of Justice, the sixth grade literacy provision of title I is not relevant to the voting referee provisions to which the Senator from North Carolina has been referring. As the Senator will remember, the voting referee provisions are contained in the Civil Rights Act of 1960. The presumption of literacy contained in title I of this bill, starting on line 19 of page 3, relates to subsection (c) of section 1971, the provision which was enacted as a part of the Civil Rights Act of 1957, and which relates to the situation before the voting referee question was involved.

The Senator will remember that the 1957 act permits the Attorney General to bring a lawsuit to establish voting discrimination in a particular county. It frequently happens in such lawsuits that the State voting registrars challenge the literacy of Negro citizens. When that happens, in the proceeding in the Federal court the presumption of literacy of title I will apply.

It will be presumed that a person with a sixth-grade education is literate. The State will have the opportunity to rebut that presumption.

Subsection (e), relating to the voting referee, which is now in the same law, was added by the Civil Rights Act of 1960, and contemplates an entirely different proceeding. That proceeding is initiated only after the suit to which I have referred concludes in a finding that there has been a pattern of discrimination in voting. That is the only time the voting referee appears in the picture. At that point a Federal judge may order the qualified voter to be registered, or he may appoint a Federal referee to hear evidence and report to him.

The presumption of literacy which is referred to here, according to the Department of Justice, has no meaning or practical relation to the proceedings before the referee. Those proceedings contemplate that the referee may take evidence regarding the qualifications with respect to a voter who asserts that he has been denied the right to vote because of his race or color.

If the literacy of such applicant is a necessary qualification for voting under State law—and those are the only cases we are talking about—and the referee administers a literacy test to the applicant, after the referee's report is filed with the judge, the issue of literacy is determined upon the basis of the test given by the referee, together with such exceptions as may be taken to his finding. It is obvious, in this kind of proceeding, that the presumption of literacy provided in title I has no application and no meaning and will not operate to deprive the registrar of any right which he now has. The sentence added to subsection (c) is an amendment to the 1957 statute, before we ever heard anything about voting referees and has to do with the original suit brought under the 1957 statute rather than the proceeding before the voting referee.

Mr. ERVIN. If I understand the Senator correctly, he is basing that interpretation upon the brief of the Department of Justice?

Mr. KEATING. A memorandum prepared by the Department. The Senator is correct.

Mr. ERVIN. I opened that brief at random and read three pages of it, and I found four misstatements concerning decisions decided on constitutional principles on those three pages. I can demonstrate the inaccuracies of those statements to anyone who has studied elementary law for as much as 30 days.

The provisions relating to voting rights are codified in the current pocket part of the United States Code Annotated as title XLII, section 1971. This section correctly codifies the 1957 and 1960 acts together insofar as voting rights are concerned because the 1960 Civil Rights Act was an amendment to the 1957 Civil Rights Act. As codified in title 42, section 1971, they have subsections (a), (b), (c), (d), and (e), which are relevant to this subject.

Under subsection (a), Congress legislated under the 15th amendment, because subsection (a) is tied exclusively to an abridgement or denial of the right to vote on account of race.

Subsection (b) is tied to section 4 of article I of the original Constitution, be-

cause it deals only with the election of Federal officials.

Subsection (c) deals with civil action brought to enforce either subsection (a) or subsection (b). It provides that the provision of the bill relating to literacy and understanding tests, which appears on page 3, lines 21 to 24 and on page 4, lines 1 through 5, would constitute an amendment to subsection (c) which authorizes court proceedings.

Subsection (e), which deals with voting referees, provides:

In any proceeding instituted pursuant to subsection (c) of this section—

So this is an amendment to subsection (c) of section 1971 of title 42 as codified in the pocket part. It applies, of course, to subsection (a), which deals with racial matters; and provides in express words:

The court may appoint one or more persons who are qualified voters in the judicial district, to be known as voting referees, who shall subscribe to the oath of office required by section 16 of title 5, to serve for such period as the court shall determine, to receive such applications and to take evidence and report to the court findings as to whether or not at any election or elections (1) any such applicant is qualified under State law to vote, and (2) he has since the finding by the court heretofore specified been (a) deprived of or denied under color of law the opportunity to register to vote or otherwise to qualify to vote, or (b) found not qualified to vote by any person acting under color of law. In a proceeding before a voting referee, the applicant shall be heard ex parte at such times and places as the court shall direct. His statement under oath shall be prima facie evidence as to his age, residence, and his prior efforts to register or otherwise qualify to vote. Where proof of literacy or an understanding of other subjects is required by valid provisions of State law, the answer of the applicant, if written, shall be included in such report to the court; if oral, it shall be taken down stenographically and a transcription included in such report to the court.

The next paragraph, which I shall not read, deals with the exceptions; then comes the trial before the judge. It is provided that:

The applicant's literacy and understanding of other subjects shall be determined solely on the basis of answers included in the report of the voting referee.

In any proceeding which comes through the voting referee and is reviewed by the court, the attorney general of the State and the State election officials are denied the right to offer any evidence to rebut the presumption based upon the applicant's testimony concerning his schooling taken in secret by the voting referee. This being true, the bill would create an irrebuttable presumption on the court's review of the ex parte proceeding before the voting referee, if the voting referee merely takes evidence raising the presumption.

Mr. KEATING. If the Senator's interpretation is correct, this amendment applies to the whole section, to the present law as codified, even though it adds one sentence in a paragraph which only amended the 1957 act. Even if that is so, I do not agree with the Senator's contention, by reason of the fact that the court would have before it the entire record. It would not have any witnesses sworn to testify, but it would have any exceptions that either side wished to submit, with a copy of the public record or affidavit of a person having personal knowledge of the facts.

Mr. ERVIN. I could discuss this subject at great length.

Mr. KEATING. We have already done so.

Mr. ERVIN. Yes; but nothing can erase from this section 1971 of title 42 the plain words:

The applicant's literacy and understanding of other subjects shall be determined solely—

The word "solely" means alone, nothing else—

solely on the basis of answers included in the report of the voting referee.

I ask the Senator if the provisions of subsection (h) of title I, which begin on line 15 on page 4 and end on line 9 on page 5 do not permit the Attorney General, or counsel for defense, to shop around to find a more favorable court than the district court in which the proceeding is brought? I invite the attention of the Senator to pages 4 and 5 beginning in line 15 on page 4 and ending in line 9 on page 5. I ask the Senator if that does not allow the Attorney General, or the counsel for the defense, to shop around and find a more favorable court than the district judge having original jurisdiction of the proceeding?

Mr. KEATING. Shopping for judges is not unknown, but it is a phrase that we do not like to use. There is a great deal of precedent for proceedings similar to that authorized in title I in both antitrust cases and in the interstate commerce cases. Those are two instances in which application may be made to any judge in any district court. The Senator has practiced law, as has the Senator from New York. In making an application to a court, neither the Senator from North Carolina nor the Senator from New York would stick his head in a noose by going to a judge who he felt sure was against him from the outset. That does not mean that judges will not decide a case on its merits.

Mr. ERVIN. I have heard the statement that there are many precedents for such a procedure.

There are six statutes on this subject. It is rather intriguing to note the difference between the bill and two of the statutes now on the books. One of them, namely, 28 United States Code 1253, relates to transportation, especially with reference to common carriers and tariffs. Another deals with antitrust and monopoly cases. It is 15 United States Code, section 28.

In each of these cases the Attorney General must make certification to the effect that the case is of such general public importance that it should be tried by a three-judge court rather than by a district court of one judge. Is there any provision in the lines to which I have called the Senator's attention that provides counsel with any standards whatever by which to determine whether the case should be removed from a one-judge court to a three-judge court?

Mr. KEATING. It inheres in the very essence of the situation. This case is stronger than any one of those five, because those five cases, as I remember, deal with property rights. Property rights can be given to an injured person retroactively. One can never retroactively give a person the right to vote. That is the reason for the provision in the bill. It is to expedite a case involving the denial of the right to vote.

Mr. ERVIN. I read from lines 15 to 19 at page 4 of the bill:

In any proceeding instituted in any district court of the United States under this section, the Attorney General or any defendant in the proceeding may file with the clerk of such court a request that a court of three judges be convened to hear and determine the case.

I ask the Senator if there is anything in this entire provision which fixes any standard or which could serve as a guide to the Attorney General or counsel for the defense in asking for a three-judge court?

Mr. KEATING. There is none. When the Attorney General or any defendant feels it is necessary to proceed expeditiously, he may do so. It is a stronger case than any other case in which application can be made for a three-judge court. We grant that right in certain antitrust cases and interstate commerce cases. However, there is not the same urgency in those cases that there is here. In an antitrust suit, if the Attorney General wins, there is usually something that can be done retroactively to the defendant. If the Attorney General wins in a voting case, he can insure the right to vote in the future, but he cannot insure the right to vote during the intervening period while that right is illegally denied.

Mr. ERVIN. I cannot go along with the Senator in believing that it would expedite the work of the court to have three judges do work which one judge can do. On the contrary, I believe it would clutter up the dockets of the courts. However, aside from that, either the Attorney General or the defendant can call for a three-judge court without rhyme or reason under the bill. Under the terms of the bill there is no standard except the caprice or whim of the Attorney General or the counsel for the defense. Is that not correct?

Mr. KEATING. Either the Attorney General or the defendant may request a three-judge court in this type of case.

Mr. ERVIN. When the bill was presented to the House, only the Attorney General had the power to call for a three-judge court. However, Representative WILLIS, of Louisiana, offered an amendment to give that power to the defense also. I call the Senator's attention to title 15, United States Code, section 28, which allows a three-judge court in certain monopoly cases, and to title 28, United States Code, section 1253, which allows a three-judge court in certain transportation cases. They require certification that the case is of such general public importance as to require its trial by a three-judge court.

I invite the Senator's attention to a part in the bill, beginning on line 22, page 4, and ending on line 4, page 5, which reads:

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 3 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.

I ask the Senator from New York if the presiding judge of the circuit could not bypass the district court judge who had had original jurisdiction of the proceeding, if he happened to be a judge of a district in which there are two or more district judges.

Mr. KEATING. There is no requirement to appoint the same judge who had the case originally. That is not unprecedented.

Mr. ERVIN. I agree with the Senator that it is not unprecedented under title 28, United States Code, section 1253, or title 15, United States Code, section 28, where certification is required to show that the case is of general public importance. However, that is not true in the case of any other statute I have found which authorizes a three-judge court to supersede a single district judge.

In this connection, I invite the Senator's attention to title 28, United States Code, section 2281; title 28, United States Code, section 2282; and title 28, United States Code, section 2284. In each of those instances it is provided that such cases shall be tried under the provisions of title 28, section 2284. Title 28, United States Code, section 2284, provides in express terms that the district judge who had original jurisdiction must be a member of the three-judge court.

Can the Senator from New York tell me why the drafters of the pending bill were so diligent to evade the provisions of these sections of the United States Code, which require that one member of the three-judge court shall be the district judge who had original jurisdiction of the proceeding?

Mr. KEATING. As the Senator has pointed out, in some cases it is provided that the original district judge must be a member of the court; in others, it is not so provided. In the bill, it is not so provided. Matters of internal judicial administration within the circuit are involved. It was felt that the situation could be best dealt with by the particular circuit involved, and that the appointment of the three-judge panel would be made in accordance with any procedure which the circuit may adopt to guide it in such matters.

There would be nothing to prevent the appointment of a district judge who originally had jurisdiction. It is to be expected that among the important factors in setting up any such three-judge court—and the Senator is aware of this—the immediate availability of any given judge, the calendar demands, and the allocation of other pending matters are the things that are chiefly considered in setting up the three-judge court.

There is nothing sinister about omitting an affirmative requirement that the original district judge be on the panel. If the Senator would support this title of the bill if such an amendment were included, I would see no objection to accepting it.

Mr. ERVIN. I see only one thing that would improve this bill. That would be to strike out all after the enacting clause.

Mr. KEATING. I thought that would be the position of the Senator. However, I wanted to show him how generous I was, and that I would be willing to accept an arrangement like this if the Senator from North Carolina would accept the bill, or accept title I.

Mr. ERVIN. Every day I study the bill, I find new tricks in it. While the Department of Justice claims there is ample precedent for it, this provision is different from every other statute I can find in the United States Code dealing with the subject. In the first place, it is different from the provisions relating to monopolies, and transportation, in that there is a definite legal standard in those provisions. There must be a certification that the case is—to use the exact words—of general public importance before the case is to be removed. In every other case of statutes authorizing removal from a district judge to a three-judge court, there is the specific requirement, as appears by reference to title 28, section 2284, that one of the members of the three-judge court must be the district judge who had original jurisdiction of the proceeding.

The whole section shows a studied purpose, a carefully calculated purpose to bypass the original district judge for fear that he may not give a decision favorable to the Attorney General. That was in the original provision, and that was what it was designed for.

Mr. KEATING. I must challenge the Senator's statement that that was the motivation behind it. I think the purpose of the provision is to get prompt action.

Mr. ERVIN. I wonder if the Senator would support an amendment of mine which would provide that the original district judge should be a member of the three-judge court?

Mr. KEATING. My father taught me that when a person gives something away, he should get something in return. I was making the Senator a very generous offer in saying that I would accept that amendment provided the Senator could see fit to support this bill, or indeed support this title of the bill.

Mr. ERVIN. I assure the Senator I would like to have an amendment like that. I believe in regularity of procedure. But my desire to obtain regularity of procedure would not induce me to desist from my purpose to fight to preserve constitutional government for all Americans, and to preserve the right of all Americans to be free from the kind of tyranny this bill would impose upon them.

I am hoping that the Senator's love for regularity of procedure will induce him to support my amendment, even though I cannot go so far as to stultify my conscience and vote for the bill.

Mr. KEATING. I really could not accept the amendment unless it was going to further the bill in some way. If the Senator, with the great influence which he bears among his colleagues, could convince them that this was a good bill after the amendment, I think we would be wise to accept it.

Mr. ERVIN. The sixth statute relating to three-judge courts is 28 United States Code 2325, which incorporates by reference the requirement of 28 United States Code 2284 that the district judge having original jurisdiction of the proceeding must be a member of the three-judge court.

I ask the Senator from New York one other question, with reference to subdivision (2)(A) of section (a) of section 101 of title I, lines 10 through 17 on page 2:

(2) No person acting under color of law shall—

(A) in determining whether any individual is qualified under State law or laws to vote in any Federal election, apply any standard, practice, or procedure different from the standards, practices, or procedures applied under such law or laws to other individuals within the same county, parish, or similar political subdivision who have been found by State officials to be qualified to vote—

I ask the Senator for an interpretation of that in order that I may advise the registrar of my precinct. The registrar has been a schoolteacher for many years. She taught many of the residents of her precinct in the public schools before her retirement. If she were to register one of her former students, who she knows can read and write, without requiring him actually to read and write, would she be required to register everybody else without giving them a previous literacy test?

Mr. KEATING. I do not think I understood the Senator's question.

Mr. ERVIN. The registrar of my precinct is a retired schoolteacher who taught many of the people residing in that precinct while they were students in the public schools. Necessarily, she knows whether they can read or write as required by the North Carolina constitution. If she were to register one of her former students who she knew could read and write without giving him a literacy test, would she have to register everybody else in that precinct without giving them a literacy test?

Mr. KEATING. I do not know what the laws of North Carolina provide as to literacy.

Mr. ERVIN. The law of North Carolina is very simple on literacy. It requires a person to read and write a section of the State constitution. Our courts have interpreted that law to mean that the registrar has to lay the constitution before them and let them copy it. That is the North Carolina law. The registrar can give a literacy test to anyone in 30 seconds.

Mr. KEATING. Under this law, she would have to apply the same standards and practices to all persons that she was seeking to register. She would have to treat them all the same.

Mr. ERVIN. If she registered one of her former students who she knew could read and write without giving that person a literacy test, she would have to register everybody else in the precinct who applied, without giving them a literacy test?

Mr. KEATING. I understood the Senator to say she would have to give every applicant a literacy test, and she would be violating her requirement if

she just passed any one without giving him a test. If she gave the test to one applicant, she would have to give it to all.

Mr. ERVIN. Mr. President, will the Senator from New York yield again to me?

The PRESIDING OFFICER (Mr. KENNEDY in the chair). Does the Senator from New York yield again to the Senator from North Carolina?

Mr. KEATING. I yield.

Mr. ERVIN. So she would have to give the test to her former student to ascertain something she already knew to be true.

Mr. KEATING. If the law of North Carolina so required.

Mr. ERVIN. But the bill would change the law of North Carolina and the laws of all the other States of the Union.

Mr. KEATING. No, the bill would not change the law of North Carolina or the laws of any of the other States of the Union.

Mr. ERVIN. But if the law were violated in one case, the registrar would have to violate the law in all other cases in the district or parish; that is what the bill provides.

Mr. KEATING. That is not my interpretation of the bill.

Mr. ERVIN. That is what the bill provides; it provides the following:

(2) No person acting under color of law shall—

(A) in determining whether any individual is qualified under State law or laws to vote in any Federal election, apply any standard, practice, or procedure different from the standards, practices, or procedures applied under such law or laws to other individuals within the same county, parish, or similar political subdivision who have been found by State officials to be qualified to vote—

Mr. KEATING. She would not be applying the law if she violated the law. She would have to apply the law equally and on the same basis to any individuals who applied to her to vote.

Mr. ERVIN. I disagree with the Senator from New York, because many times the courts apply the law erroneously. So if the registrar applied the law erroneously in one case, the registrar would—under the provisions of the bill—be required to apply it erroneously in every other case.

Mr. KEATING. That is a farfetched argument, and it is not worthy of the distinguished Senator from North Carolina, because I have heard him in action, and I know how able and distinguished a lawyer he is. He really could not make that argument with a straight face, in my judgment.

Mr. ERVIN. I am making it with a very straight face, although with a rather long and sad face. I dislike to see Congress attempt to enact a law requiring standards of action for officials on the basis of what the officials may do, regardless of whether they do what the law provides. I sincerely believe that what I have said is true, that is, that my interpretation of the bill is correct.

I thank the Senator from New York for his patience. I hope his longing for regularity of procedure will induce him to support my amendment, which would provide that the district judge having original jurisdiction of the proceeding must be a member of the three-judge court, notwithstanding my unwillingness to accept the trade the Senator tendered me.

Mr. KEATING. Under the circumstances, I consider it a compliment to have been interrogated by the Senator from North Carolina, in view of the obvious fact that he was selected by the opponents of the bill and by the generalissimo of the forces in opposition to the bill to handle the interrogation. I consider that as a compliment to me, because the Senator from North Carolina knows that I hold him and his opinions and his ability in very high regard. My regard and my affection for him are in no way diminished by our differences over the pending bill.

Before now, I should have stated that the considerable debate in regard to voting referees could, in my opinion, properly be regarded as only academic, because not one voting referee has been appointed since the 1960 act was enacted. The reason for that situation is very simple: In Mississippi, not one Federal judge has found a pattern or practice of discrimination, although the Department of Justice has asked for such a finding in every case there. I have referred to the case in Alabama in which not one Negro has been registered to vote, despite the fact that Negroes constitute 70 percent of the population there. Therefore, until the litigation over voting rights has progressed further and until enlightenment has been shed, all our debate about voting referees is, to a degree, academic.

However, I still feel that we should shape and fashion the bill in the manner we think best, in the hope that eventually we shall be able to rectify some of the extreme situations which have been brought to light.

Mr. ERVIN. If I may make an observation, I express the hope that the reason why no judges have appointed voting referees is that the judges have a higher opinion of what constitutes due process of law than Congress manifested when it passed the Civil Rights Act of 1960. That was the first time in American history, so far as I can determine, that Congress passed a law providing that a case shall be tried in secret, and that the person whose conduct is under investigation shall be excluded from the trial, and denied the right to testify, and the right to have counsel present to represent him and to cross-examine the witnesses.

I believe that perhaps the judges had read what Daniel Webster said in the Dartmouth College case, when he declared that due process of law is a law which hears before it condemns, which proceeds upon inquiry, and renders judgment only after trial.

I am gratified that Federal judges remember that 749 years ago the barons of England compelled King John, at Runnymede, to insert a pledge of due process of law in Magna Charta.

Mr. CARLSON. Mr. President, will the Senator from New York yield?

Mr. KEATING. I yield.

Mr. CARLSON. I did not want the distinguished Senator from New York to conclude his speech and his debate with the distinguished Senator from North Carolina in regard to title I of House bill 7152, which deals with voting rights, until I stated that, in my opinion, not only has the Senator from New York carefully analyzed that title, but I also believe the debate back and forth will be helpful as we give further consideration to this matter.

I also wish to state that, in my opinion, no right is more essential to a citizen than the right to vote. I think it occupies the position of primary importance among the rights of our citizens; and I believe that the secret ballot is really the touchstone of representative government.

So I appreciate very much the excellent statement the distinguished Senator from New York has made; and I hope that before this debate is concluded, he will give further thought to an amendment—which I noticed he mentioned—that would extend the voting right provisions of the bill to the States and the local communities.

Mr. KEATING. I thank the Senator from Kansas for his comments. It is my intention to offer such an amendment at the appropriate time.

Mr. JAVITS. Mr. President, will my colleague yield?

Mr. KEATING. I yield.

Mr. JAVITS. I have heard some of the debate, and I have also read the prepared remarks of my colleague. As is typical of him, he is rendering noble, outstanding, and distinguished service in the debate, which is unusually organized—for the first time—by the proponents of the bill, and in which he has had the honor, together with the Senator from Michigan [Mr. HART], of leading off for the proponents in the debate on title I.

I believe the Senator from North Carolina [Mr. ERVIN] also has rendered a service by means of his detailed questioning, which in my humble judgment has only served all the more effectively to highlight the significant points which have been made, which I think strongly favor the enactment of title I of the bill. I also support my colleague in what I know will be his effort to extend this title to State elections.

Mr. KEATING. I thank my colleague very much. All Senators know of his long interest in assuring voting rights, and in other civil rights areas; and I am very much gratified by his kind remarks about my address.

Mr. President, I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan [Mr. HART] is recognized.

Mr. MANSFIELD. Mr. President, will the Senator yield?

Mr. HART. I yield gladly.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that I may suggest the absence of a quorum—with the understanding that it will be a live quorum—without the Senator from Michigan losing his right to the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.