

government within the State.

THE CHAIRMAN: Delegate Mitchell.

DELEGATE MITCHELL: I think the courts have interpreted the State to include all of the political subdivisions, the agencies, the servants, employees. Wherever the state influence and support goes, that is where the State is. That is state action.

THE CHAIRMAN: Delegate Hostetter.

DELEGATE HOSTETTER: Delegate Mitchell, then what you are saying is that the words "discrimination which the state" mean state action?

THE CHAIRMAN: Delegate Mitchell.

DELEGATE MITCHELL: Yes.

THE CHAIRMAN: Delegate Hostetter.

DELEGATE HOSTETTER: Now, discrimination by law, would this also mean state action?

THE CHAIRMAN: Delegate Mitchell.

DELEGATE MITCHELL: Yes, law as it is commonly known, is interpreted by masses of people to mean legislation. But law can mean the rules of the State, whether it is legislative, whether it is the court precedents, whether it is administrative and the like. We believe that the word "state" is a word which has been interpreted because of the 14th Amendment language and has resulted in a tremendous body of case law interpreting what state action is.

THE CHAIRMAN: Delegate Hostetter.

DELEGATE HOSTETTER: And discrimination by the State, getting back to Delegate Sollins' question as to whether or not it covers all of the instrumentalities of the State, could also mean the same thing as other governmental action. Is this not correct?

THE CHAIRMAN: Delegate Mitchell.

DELEGATE MITCHELL: Yes, but in the area of the phrase "governmental action" per se, it does not have the body of case law. The courts have said that this is governmental action when it has a case before it involving denial of the equal protection of laws by the State, and have used governmental action in some instances with the word "state." But it is our opinion that the word "state" as it is interpreted now, and as it will be interpreted by the courts of this State and the General Assembly and by the federal courts and the Supreme Court, will involve action by the State, all

action, whatever the facts and circumstances of the case before it indicate as far as its influence upon the denial to a citizen of the equal protection of the law.

THE CHAIRMAN: Delegate Hostetter.

DELEGATE HOSTETTER: From this point on I will use the term "state action". I believe we understand that, Delegate Mitchell.

It is my understanding that there have been cases involving state action which have gone over into the private sector. I would like to ask you at this time what would be meant by the term "private discrimination"?

THE CHAIRMAN: Delegate Mitchell.

DELEGATE MITCHELL: In the case of *Shelley v. Kraemer*, which was decided by the Supreme Court in 1948, and which involved racially restrictive covenants, the court there interpreted state action to mean judicial action of the courts, as Justice Bradley said in 1883 in the Civil Rights cases. The Supreme Court said that while this was a private agreement between a purchaser and a seller, nevertheless if it was discriminatory on racial grounds, the complainant could not come into the court. The court could not be asked to use its strength, or the whole panoply of the court action, to enforce a private agreement discriminating against citizens which the 13th, 14th and 15th Amendments to the federal Constitution were enacted to eliminate.

THE CHAIRMAN: Delegate Hostetter.

DELEGATE HOSTETTER: According to your amendment, Delegate Mitchell, would there be any way that the people of the State of Maryland could be sure that the private sector would be protected? In other words, that this entire area be kept within the public sector? We have had this discussion before in Committee. Is there any real protection there or guarantee in your proposal here, your amendment, that the private sector would be protected?

THE CHAIRMAN: Delegate Mitchell.

DELEGATE MITCHELL: I would like to quote for you the language of the Supreme Court in this area of private discrimination, and how far state action goes.

In *Belle v. Maryland*, we had a private proprietor of a restaurant who had opened up his private property to the public, and was subject to all of the statutory regulations of the city and State, health and otherwise. He had opened the restaurant to