U.S. Department of Justice

Office of Legal Policy

Washington, D.C. 20530

AUG 31 1982

MEMORANDUM

TO: John G. Roberts, Jr.
Special Assistant to the Attorney General

FROM: MMN Miriam M. Nisbet, Deputy Director
Office of Information and Privacy

SUBJECT: FOIA Request of Herbert Brownell

The Civil Rights Division is currently processing a Freedom of Information Act request made in December 1978 by former Attorney General Herbert Brownell. Mr. Brownell seeks numerous civil rights files generated during the years 1953-1960.

A meeting was held on August 7, 1982, to discuss and select an orderly and expeditious manner in which to complete processing of this request, which has had a long and complicated history at the Division. In attendance were Mr. Brownell and members of his staff, Jonathan Rose, Dick Huff, Bob D'Agostino and other departmental employees involved in this matter. It was decided then that staff would give first priority to completing the processing of the Division's legislative history files.

In this regard, this Office has received for review approximately 1200 pages of documents, most of which originated in the Attorney General's Office or were directed to that Office by other departmental components. All of the records are from the Division's legislative history files for the years 1953-1960 and include numerous draft bills and staff opinions on proposed civil rights legislation. As you would expect, many of the documents were signed by, or passed directly through, Mr. Brownell. Although many of the documents are

exempt from mandatory release pursuant to exemption 5 (pre-decisional and deliberative), Jonathan Rose, at the August 7 meeting, expressed a strong desire to make as complete a release as possible to Mr. Brownell. It is his belief (and mine) that a discretionary release is appropriate in view of the age of the documents, the historical interest in this period, and the requester's unique relationship to these materials. Moreover, access to most of the documents was previously provided to Mr. Brownell's assistant, Dori Dressander, who was allowed to review the materials in the Civil Rights Division in 1979. Additionally, such a release would be consistent with the action taken by other components of the Department as well as other Government agencies, which have (except for privacy considerations) made complete releases of their records to Mr. Brownell.

I am forwarding a representative sample of these materials for your review. I propose that all of the documents be released, in some instances with the names of private citizens deleted pursuant to exemptions (b)(6) and (7)(C) (personal privacy).

If you have any questions, please call me at 724-7400. Inasmuch as the Department has undertaken to respond to Mr. Brownell as quickly as possible, your earliest response is appreciated.

Approved: _____

Date: _____

Attachment

MMN:DWH

SAMPLE DOCUMENTS

FOR THE

ATTORNEY GENERAL

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : The Attorney General

DATE: Sept. 3, 1954

FROM : Warren E. Burger, Assistant Attorney General

SUBJECT: Racial Integration Suit in D. C.

On Thursday and Friday this week, Messrs. Rogers, Sobeloff, and I reviewed the possible problems arising out of the action brought by Sabine et al. v. Sharpe, et al., members of the School Board of the District of Columbia, seeking an injunction against any implementation of the plan for racial integration of the public school system of the District of Columbia.

Starting on the assumption that it was not sound to take any step that might make a big case out of a little one, we arranged to have a member of our own staff go to the court and make an analysis of all the papers filed so as not to attract any undue attention to the matter by making request to the Corporation Counsel of the District of Columbia or to the clerk of the court. Our analysis of the grounds on which the injunction was sought is that the grounds are not well founded and could be regarded as frivolous.

However, all of us agreed that it would be taking undue risks to assume that it would be impossible for the plaintiffs to secure a temporary restraining order, in which event we would be at a distinct disadvantage in having to move to set the temporary restraining order aside. I also felt that if these objectives could be accomplished without directing any undue attention and without having you intervene, that would be desirable.

Today I discussed the matter informally with the Acting Corporation Counsel of the District of Columbia, but he had not yet seen the pleadings himself and was not in a position to discuss the matter. He agreed to have his chief of his civil division keep in touch with our General Litigation Section on any developments which occurred. Following that, I consulted with Leo Rover and requested him to communicate informally with the judge in charge of the motions calendar and indicate to him that if any application for a temporary restraining order is

file copy

presented to him ex parte, the Attorney General wished to be notified and given an opportunity to determine what position he would take in the matter. That has been done.

Attached you will find a summary of the entire complaint, together with an analysis of the basic grounds on which the complaint is based.

WEB

Atts.

cc Mr. Rogers
Mr. Sobeloff
Mr. Rankin

Sabine et al. v. Sharpe, et al.

ANALYSIS OF GROUNDS

I. Plaintiffs seek an injunction against the effectuation of a plan for racial integration of the public school system of the District of Columbia on the grounds that said plan:

1. Constitutes an interference with the exclusive jurisdiction of the Supreme Court to decree with respect to the conversion of school systems to a non-segregated status.

2. Deprives plaintiffs of their liberties and property without the due process of law guaranteed by the Fifth Amendment in that they have previously been privileged to place their children in any one of the public schools of the District of Columbia.

3. Is unreasonable and arbitrary in that it forces some children to attend schools where they will be in the minority so that they may be punished because of their color and retarded in their education.

4. Causes irreparable damage to the plaintiffs, because of damage to morale and increased expenditure of time, money, and effort.

II. Exhibit one to the complaint consists of a schedule of steps to complete de-segregation of the public schools submitted by the Superintendent of the Public Schools to the Board of Education.

Sabine et al. v. Sharpe et al.

SUMMARY OF COMPLAINT

1. District Court has jurisdiction under Title 11, Section 306, of the District of Columbia Code, 1951 Ed., and Title 28, Section 1331, of the United States Code; matter in controversy exceeds sum of $3,000 exclusive of interest and costs.

2. Adult plaintiffs are parents of children attending public schools during 1954-55. This class action is brought in the parents' right and as next friend of the children and for all persons of any race similarly situated. The Federation of Citizens Association is a group whose purpose is to obtain expression of general public sentiment upon matters of special interest to all citizens of the District of Columbia; it consists of representatives of fifty-seven neighborhood citizens associations and represents almost the entire white population of the District of Columbia.

3. The defendants are members of the Board of Education and the Superintendent of Public Schools.

4. On May 17, 1954, the Supreme Court held in Bolling v. Sharpe, 347 U. S. 497, that segregation in the public schools of the District of Columbia is a denial of the due process guaranteed by the Fifth Amendment. The opinion concluded that "in order that we may have the full assistance of the parties in formulating decrees, the cases will be restored to the docket, and the parties are requested to present further argument on questions 4 and 5 previously propounded by the court for the reargument this term." Questions 4 and 5 are as follows:

> "4. Assuming it is decided that segregation in public schools violates the Fourteenth Amendment
> (a) would a decree necessarily follow providing that, within the limits set by normal geographic school districting, Negro children should forthwith be admitted to schools of their choice, or
> (b) may this Court, in the exercise of its equity powers, permit an effective gradual adjudgment to be brought about from existing segregated systems to a system not based on color distinctions?
>
> "5. On the assumption on which questions 4(a) and (b) are based, and assuming further that this

Court will exercise its equity powers to the end described in question 4(b),

(a) should this Court formulate detailed decrees in these cases;

(b) if so, what specific issues should ~~the~~ the decrees reach;

(c) should this Court appoint a special master to hear evidence with a view to recommending specific terms for such decrees;

(d) should this Court remand to the courts of first instance with directions to frame decrees in these cases, and if so what general directions should the decrees of this Court include and what procedures should the courts of first instance follow in arriving at the specific terms of more detailed decrees?"

5. The Board of Education intends to put into effect a plan to accomplish immediately the change from a segregated to an integrated school system. This plan includes:

a. Division of the District of Columbia into Elementary, Junior High, and Senior High school areas.

b. Compulsion of every pupil without regard to race or color residing within one of the new boundaries to attend the school or one of the schools designated for the area within such new boundary. Prohibition from attending a school outside the zone within which the child resides except for the most necessitous reasons. Permits pupils enrolled during the 1953-54 school year in one school to continue their attendance at the same school during the 1954-55 school year if they so desire and if the school is not overcrowded; or if so desired individual pupils may be transferred to the school designated to serve the area wherein they reside. All pupils new to the school system or to a particular school level are to be assigned to schools designated to serve the zones wherein they reside.

c. Transfer of 2,900 pupils from about 18 public schools to about 21 other public schools.

d. Consolidation of several public schools and closing of others.

e. Substantial change with respect to the appointment, promotion, and assignment of school personnel, especially teachers.

f. Revision of building organizations, including the transfer of teachers to other schools and the transfer of furniture, supplies, and text books to other schools.

6. It is claimed that the Board of Education and the Superintendent of Public Schools are without lawful authority to proceed with any future steps for enforcement of this plan because the orders of the Supreme Court in Bolling v. Sharpe and four other cases, all pending in the Supreme Court, completely and exclusively govern this action. The announced opinions in these cases remain subject to such modification as the Supreme Court shall deem proper. The Supreme Court has not entered any judgment, decree, or mandate with respect to the procedure that may be permitted to put announced opinions into operative effect in the District of Columbia or elsewhere. The Supreme Court, with its exclusive jurisdiction in the premises, reserved to itself the right to decree in regard to plans and contemplated actions by legislatures and school authorities in converting school systems. It also reserved to itself exclusively the power to decree with respect to the amount of time that may be permitted for legislatures and school authorities to bring about this conversion and its power to decree with respect to whether said conversion should be immediate or by gradual adjustment. Until the Supreme Court takes further action, all the rights, privileges, and duties of the children and parents under the existing laws with respect to public schools remain the same as prior to May 17, 1954, the preservation of such status quo being one of the important purposes of the Supreme Court order.

7. Plaintiffs are by law privileged to place their children in any one of the public schools in the District of Columbia of proper school level with the consent of the Board of Education, which consent cannot be withheld without just cause. This plan deprives plaintiffs of their liberties and property, so secured by the law of the District of Columbia, without due process in violation of the Fifth Amendment.

8. The plan is arbitrary and unreasonable because it compels a child of one color or race to attend a school where 80, 90, or 95% of the pupils are of different race or color. A child forced into such a disproportionate minority may in effect be punished because of color and retarded in his educational pursuits.

9. Plaintiffs will suffer irreparable damage by way of increased expenses, excessive and unreasonable distances to be traveled, increased expenditures of time, damage to morale and deepest sentiments and feelings if defendants are not enjoined.

10. Plaintiffs ask the Court to issue an injunction restraining defendants from taking any further steps to put this plan into effect and to set aside steps already taken.

Office Memorandum • UNITED STATES GOVERNMENT

TO : Warren Olney III, Assistant Attorney General, Criminal Division

DATE: May 11, 1955

FROM : David L. Luce, First Assistant

DLL:an

SUBJECT: Civil Rights Program

We are in the process of forwarding our comments on a number of bills which have been introduced in Congress pertaining to civil rights matters. The bulk of these bills have to do with suggested amendments and enactments in connection with specific offenses. Enactments are offered to make it a crime to segregate in schools on the basis of race, to enumerate in more detail the constitutional rights falling within the provisions of Title 18 and to provide a fair employment practices act and to end segregation in federal housing. Each of these bills is dealt with by memoranda and I believe our recommendations are sound.

However, our comments have been requested in connection with two bills, namely, H.R. 627 and H.R. 389, which deal generally with the entire civil rights program. H.R. 627 is identical with S. 1725 which was introduced in Congress in 1949. H.R. 389 is very similar to H.R. 627 but expands into certain fields not covered by H.R. 627.

Taking up the matter of H.R. 627 first, our comments refer to the previous recommendations and observations the Department has made in connection with this general legislation. In 1949 when the legislation was first presented a detailed statement was drawn up signed by Attorney General Tom C. Clark. A copy of this statement is attached to this memorandum. It goes into the civil rights program in

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detail and sets forth a great deal of material noting the need for passage of a bill such as H.R. 627. Aside from certain amendments to specific offenses which have been mentioned above, the bill in essence provides three important changes. The first of these provisions calls for creation of a Civil Rights Commission in the executive department. This Commission would research, study and make recommendations in connection with civil rights matters. The second provision would set up in the Department of Justice a separate Division to handle civil rights matters. The purpose for the creation of this new Division would be to expand the activities in the civil rights field and to add prestige to the handling of these problems in the Department. The third provision would call for the creation of a Civil Rights Committee within Congress itself.

The analysis by Attorney General Clark strongly supports this legislation and among other things sets forth in some detail the reasons why it would be advisable to create a Civil Rights Division within the Department of Justice. This same proposed legislation was referred to the Criminal Division in 1954 for comment. The Division forwarded a memorandum to Mr. Rogers dated February 19, 1954, in which our only comment on the creation of a Civil Rights Division was to refer the Deputy's office to the statement and analysis made by Attorney General Tom Clark. Thus in 1954 we took the same position as is taken in the statement and analysis which in turn strongly recommends the creation of a separate Division to handle civil rights matters.

I have attached a memorandum which has been prepared by the Civil Rights Section for transmittal to the Deputy's office commenting on the present bill,

namely H.R. 627. In our present proposed memorandum we state that the proposals to establish a Civil Rights Commission in the executive branch and to create a Civil Rights Division in the Department of Justice raise questions of policy concerning which we make no specific recommendations. The memorandum then goes on to make certain observations, however. The first observation concerns the creation of the Civil Rights Commission, and states that it would be difficult to deny the necessity for studies, etc; that it might not be necessary, however, to create such a Commission if there was an "adequately staffed civil rights setup" in the Department of Justice. The second observation has to do with the creation of the Civil Rights Division in the Department of Justice, and lists various matters which could be brought under the supervision of one Division dealing only with civil rights matters. For example, the Department's interest in the school segregation problem and in certain civil actions brought on the basis of civil rights violations could be added to the present duties of the Civil Rights Section to administer certain criminal violations. The observation concludes with the statement, "Should this be done, and should the suggestion made in the preceding paragraph prove acceptable (this refers to the taking over of the study and research activities the bill proposes to be handled by the Civil Rights Commission as mentioned in the first observation), be enacted, it would not be difficult to justify the creation of a Civil Rights Division."

On the matter of whether a Civil Rights Division should be created in the Department we have thus taken the position in 1949 that such a proposal is highly desirable. We have by reference only in 1954 continued in this view. Our current

view as expressed in the proposed memorandum is to make no recommendation but is followed up with observations which indicate that the creation of such a Division would be justifiable.

In order to decide exactly what our position should be it is necessary to review the entire problem involving the emphasis on the administration of civil rights laws. As a practical matter these all-inclusive civil rights bills have not fared well in Congress. It appears that one of the reasons for this, aside from the fact that civil rights legislation is always extremely controversial, is the fact that tacked on to these all-inclusive bills are proposed changes in the substantive civil rights laws. For example, provision is made for eliminating discrimination in interstate commerce, for an anti-lynch bill and for a fair employment practices act. Any one of these matters is headed for obvious difficulty in passing the House and Senate. The fate of a Civil Rights Commission, the creation of a Civil Rights Division in the Department of Justice and the creation of a Civil Rights Committee within Congress depend upon the fate, for example, of the anti-lynch bill. Although the first three proposals relating to the Commission, Division, and Congressional Committee might be laudable they are almost certain to meet defeat because of being tied up with these other more controversial matters. It seems to me the only way these general proposals would stand any chance of success in Congress would be to separate them from any proposals for changes in the substantive law, or at least from such proposals as are known to be extremely controversial.

The objective of most of the proposed civil rights legislation is to provide weapons for the federal government to carry forward an affirmative and vigorous program to enforce civil rights provided for in the Federal Constitution. The direction of this legislation is to make it a crime for any person or group of persons to deprive any individual of any of these rights. The legislation in some instances goes further to place in our criminal statutes provisions for prosecuting for criminal violations those public officers who fail or neglect to enforce civil rights laws. This type of legislation is analogous to the statutory provisions which make it a crime for a police chief or district attorney to fail to enforce gambling laws. Not only is gambling illegal and the person committing that violation subject to punishment, but also the public officer who fails to arrest and prosecute the violator is subject to a criminal charge for this neglect. The purpose of this type of legislation is to put as much emphasis as is possible in carrying out a program of ridding this country of conditions wherein individual civil rights are infringed upon. In the civil rights legislation not only is provision made for criminal sanctions,but persons whose rights have been invaded are provided a remedy for civil recovery which is also in the nature of a punitive measure.

It seems in the civil rights field we have two diametrically opposed philosophies. On the one hand we have those people who would place civil rights violations in a category where the government would be required to investigate, ferret out, and be constantly on the alert for any single case of a violation of an individual civil rights. Wherever such violation is found the full impact of the

criminal law would be directed towards the violator. In addition to civil remedies and as an auxiliary aid, any public officer who permitted such a violation would also be subject to criminal prosecution. This approach would seem to be based on the idea that the rights guaranteed by the Constitution cannot be allowed to be voluntarily complied with by the citizen, but should be enforced by the police power of the federal government.

On the other side of the ledger we find those people who would argue that the rights guaranteed by the Constitution are there for the protection of individuals; that when any individual's rights are infringed upon he is protected in our courts by the Constitution against such infringement. This view would seem to support the idea that it is not necessary to make these infringements separate crimes, but that it is sufficient that the Constitution stands as the barrier against any actions which violate civil rights.

At the present time we seem to be in a state of compromise where many rights guaranteed by the Constitution are left for adjudications in courts if and when such violations occur. For example, if a person is not brought to a speedy trial in a criminal case, the case is dismissed by reason of the constitutional guarantee, or if a person is not allowed a jury trial and is convicted, the case is reversed because the proceedings were not in accordance with the Constitution. The act of bringing a person to trial without allowing him the choice of a jury trial or the act of not bringing him to a speedy trial are not made separate crimes. However, we have come to recognize that certain types of activity which would be in violation of civil rights should be made

separate crimes, such as those situations involving police brutality or lynching. A great deal of the proposed legislation in the field of civil rights would result in shifting this emphasis from our present middle ground over to the extreme position of making every violation a separate crime, etc.

Just how far it is sensible for the federal government to go in making separate crimes of violations of this sort is an extremely difficult matter to decide. I believe only after careful study with a completely open mind could we arrive at the proper solution. Unfortunately, whenever we touch this field of civil rights we are immediately entangled in prejudices, conflicting philosophies and politics. Looking at the problem strictly from a criminal prosecution point of view, it is my opinion that we should be very reluctant to make separate crimes for many of this type of violations. To resort to the criminal law in an effort to administer everyday activities is a dangerous proposition, and I believe that we have taken this way out in connection with regulatory measures on too many occasions. Eventually we would find ourselves in the position of having every act which is not proper under the myriad of laws criminal in nature, even though in fact such acts are by no means ~~their~~ true crimes.

Although this field of civil rights is extremely interesting from a theoretical view, we do not have to decide all these momentous problems immediately. We have progressed from year to year commenting on the various proposals and have apparently, as indicated above, reached a middle ground. However, the emphasis that we should

Returning now to the problems before us, I believe our comments on the substantive law changes proposed in Congress are proper. I believe, however, that we should settle upon the view we should take on the creation of a Civil Rights Division and Civil Rights Commission, so that we are certain that such views reflect our true thinking along these lines.

Office Memorandum • UNITED STATES GOVERNMENT

TO : Mr. Olney

DATE: October 31, 1955

FROM : Herbert Brownell, Jr.

SUBJECT:

At a conference with the members of the Board of Directors of the National Newspaper Publishers Association on Friday, October 28, I was presented with the attached memorandum, and I agreed to have periodical conferences with Mr. Carl Murphy of Baltimore, as a representative of the Association, to keep them in touch with developments.

I would like to discuss the substance of this memorandum with you and any of your assistants you wish to have join the conference, with special reference to the status of our investigations in Mississippi.

If convenient to you we will hold the conference in my office Wednesday, November 9, at 2.30.

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Attachment

STATEMENT OF THE BOARD OF DIRECTORS
of the
NATIONAL NEWSPAPER PUBLISHERS ASSOCIATION

Subject: Injustices In Mississippi And Other Southern States

(To serve as a basis for conference with
Honorable Herbert Brownell
United States Attorney General)

I. The two criminal provisions of the Federal Civil Rights Statutes which are the basis for prosecutions in this type of cases are:

Section 241:

> "Conspiracy Against Rights of Citizens:--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-- ********"

Section 242:

> "Deprivation of rights under color of law.-- Whoever, under color of any law, statute, ordinance, regulation, or custom, wilfully 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."

II. Important Instances to be Considered.

A. The White Citizens Councils, organized in Mississippi, state that one of their chief aims is to keep colored persons from voting.

Other items on their program include continuance of segregation in the schools and maintenance of the status quo in race relations.

They have been careful to state publicly that they abhor violence, but their campaign and the language they use create an atmosphere in which death threats and murders have been tolerated by the local and state law enforcement authorities.

The White Citizens Councils have encouraged an economic boycott of colored citizens who stand up for their civil rights, have sought to have militant Negroes fired from jobs, and have instigated denial of credit to farmers and small businessmen in order to force them to accept the Mississippi Jim Crow system.

B. On May 7, 1955, Rev. George W. Lee was murdered in Belzoni, Mississippi, because he refused to remove his name from the list of registered voters when ordered to do so by local whites.

Nothing has been done to arrest and try his killers.

C. As the election campaign got hotter, more and more pressure was put to force Negroes to get off the voting lists.

Thousands, fearing for their lives, did so.

In one county alone Negro registration dropped from 400 to about 80. In Lowndes County death threats were sent through the mails to three registered colored voters.

On August 13, Lamar Smith, a registered voter, was called from his home to the courthouse in Lincoln County and shot to death on the steps.

D. On August 29, the Till boy, from Chicago, who was visiting an uncle near the town of Money, Mississippi, was kidnapped by two or more persons and his body was found August 31 in a river.

His head had been bashed in.

The "crime" of this 14-year-old boy was a reported "wolf whistle" and an alleged "ugly remark" to the wife of a storekeeper.

For this he was kidnapped and lynched by the woman's husband and brother-in-law.

E. In the county surrounding Mound Bayou during the last election voting boxes of Negroes were forcibly taken and the contents destroyed.

III. Please note that:

Intimidation and violence emphasized by the three known killings give the picture to the world that in areas of this country colored citizens can be intimidated, beaten and even murdered without the criminals involved being punished by either the state or federal authorities.

While well-trained lawyers can make documented arguments showing how nothing can be done, it is impossible for the readers of our newspapers to understand how this type of violence can go unpunished in the year of 1955.

It is obvious that the State of Mississippi is going to do nothing more than pro forma prosecutions.

This will be a precedent for other states of the South to follow thesame type of program.

Consequently we are in the position of insisting that if the federal government fails to act there will be no action.

As much as we would like to have criminal laws enforced by the several states rather than by the Federal Government, it is so certain now that the Federal Government must accept its responsibility for acting as a result of the failure of the state to act.

We, therefore, should take up thecases set out above in order.

A. Although more than likely it will be argued that the White Citizens' Councils are not violating the laws of the United States, they most certainly should be investigated thoroughly to determine whether or not they should be included in the Attorney General's list of subversive organizations similar to the Ku Klux Klan.

B. The case of Rev. G. W. Lee certainly warrants prosecution under the Federal Civil Rights Section for he was murdered solely to prevent him from exercising his constitutionally protected right to vote.

This is clearly within the Federal Rights Statutes even within the decision of the United States Supreme Court in the case of U.S. v. Screws.

C. The case of Lamar Smith. While we do not know the results of the F.B.I. investigations in these cases, this seems to also be within this statute.

D. The murder of Emmett Till may not be within the present framework of the Federal Civil Rights Statutes. Nevertheless, it is a cold-blooded murder or lynching. This is the clearest demonstration of the need of the Department of Justice and the Attorney General to join in support of the bills now in Congress to strengthen the Civil Rights laws of the Civil Rights Section of the Department of Justice.

IV. The members of the National Newspaper Publishers Association wish to make it clear that we are not lawyers or sons of lawyers.

We are not willing to get involved in legal technicalities or niceties of the law.

We are interested in seeing that our Federal Government finds a way to punish those responsible for the crimes in Mississippi, and to assure all citizens that these atrocities will not be repeated.

It appears that the F.B.I. has done an excellent job of investigation.

We think it is time now that prosecutions were instituted. The longer we wait the more crimes willbe committed.

We believe that one successful prosecution of those persons in Mississippi who "conspire to oppress and intimidate citizens in the free exercise or enjoyment of their rights and privileges as guaranteed by the Constitution of the United States," will break the back of this conspiracy with the same dispatch with which you accomplished the destruction of the Ku Klux Klan in North Carolina.

Your address on "Freedom As A Living Reality" delivered at the Annual Inter-Faith Dinner in New York on October 16th was timely and pertinent.

Timely, because our people have waited since the initiation of these Mississippi outrages for a responsible spokesman of the administration to condemn them.

Pertinent, because you began your address with a statement that, "Over the entrance of the United States Supreme Court building in Washington are carved the words 'Equal Justice Under Law.'"

You consider this the "cornerstone of our great Republican form of government because it embraces the great concept of impartial administration of the rules governing the rights of men."

Our Constitution illuminates this statement with its declaration, that there shall be no special privileges or immunities for any citizen, and that all shall vote without discrimination as to race.

Unless equal justice under law can be carved also on every courthouse of the United States, and especially in Missippi and other southern states, it has no meaning for colored citizens who reside in those areas.

For them it is sounding brass and tinkling cymbals.

It is mockery and delusion.

The temper of oppressed peoples around the world shows an impatience with proffers of freedom on the installment plan, when the contracts in their Constitutions call for cash on the barrelhead.

Especially are they impatient with those who say, that rights of minorities can be postponed or delayed, that the time is not ripe, that we seek to go too fast, and that gradualism and persuasion should take the place of law enforcement.

A survey shows non-Communist newspapers in France have commented more bitterly and more frequently on the Till lynching than the Communists.

Realities magazine, published in Paris, polled representatives from nine Asian countries.

Only one out of nine believed the United States is now in top place in world affairs. Four chose Communist Russ four were not willing to make a choice.

The spectacle of our country abstaining or voting with the losers on questions affecting freedom of minorities in Algeria, Morocco, and South Africa is not an inspiring one.

The United States, which leads the world in economic and scientific advancement, like Little Bo Peep, constantly seeks to round up lost allies in the United Nations, allies lost by our shocking demonstration that there is no such thing as equal justice under law for our citizens who belong to the darker races.

Carl Murphy, Member
Board of Directors
National Newspaper Publishers
Association

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FILED
BY
On JAN 12 1956

January 5, 1956.

Typed 1/5/56

The Attorney General

Warren Olney III, Assistant Attorney General
Criminal Division

WO:ABC:mat

Proposed Civil Rights Legislation

Pursuant to your memorandum of December 28 to Messrs. Rogers, Hoover, Rankin, Lindsay, and myself, there are attached drafts of three legislative proposals prepared in the Civil Rights Section and which are submitted for your approval.

(1) The most important of these legislative proposals, from the standpoint of federally-protected rights of individuals, is the bill which provides for amending the existing civil rights statutes — Sections 241 and 242 of Title 18. The amendments revise the two existing laws by bringing them more nearly into line with each other and with similar provisions in the Civil Code. In addition, the proposed amendments would list, specifically, some thirteen rights which are intended to be covered by this legislation, thus correcting the defect in existing law pointed up by the Screws decision, 325 U.S. 91. All of these rights have been approved by various federal court decisions, as explained in the memorandum of justification also attached to the bill.

(2) Equally as important is the bill intended to amend Section 594 of Title 18, which is a part of the Federal Corrupt Practices Act and which presently applies to acts of intimidation, coercion, or other interference with the right of persons to vote for federal candidates. This amendment would enlarge the coverage of the Act to include primary and special elections in which candidates are running for federal office. In this proposed bill Section 3 provides for redress in the civil courts by private suit and authorizes the Attorney General to seek relief by preventive, declaratory, or other means.

As the justification attached to the proposed amendment to Section 594, Title 18, explains, the most serious problem in the whole field of individual rights is the disfranchisement of the Negroes in the South. It is the viewpoint of the Civil Rights Section, based on its experience in this field, that the heart of

1/5/56

cc: Records
Caldwell (2)
Brookley
C. R. Sec.
Chrono
Deputy Attorney General

SENT DIRECT FROM
CRIMINAL DIVISION MAIL ROOM
Date 1-5-56
By. Civil Rts Section

144-01-5

JAN 9 1956 W. M. J.

the whole problem of racial discrimination, lies, in determined efforts to prevent the Southern Negroes from participating in local government through the use of the vote. The provision which would authorize the Attorney General to institute suit in these matters for injunctive relief would be the most effective means of solving this problem. Our present criminal procedures are so cumbersome as to be almost totally ineffective.

(3) In accordance with your suggestion, there is also included a draft of an anti-lynch bill, patterned somewhat after old S. 42 introduced by Senator Hawkes of New Jersey and upon which hearings were held in January and February of 1948. In submitting this anti-lynch bill the Civil Rights Section does not urge that there is actually a great need at this time for such a bill. Certainly, it could not be justified on the experience of the last four years during which no lynching has occurred. On the other hand, in view of the rising tide of animosity and ill feeling which has been engendered by the Citizens Councils of Mississippi and other states, the picture may change — quickly and violently. And to that extent argument could be made that such legislation would be useful and may be needed.

In drafting the anti-lynch bill the Civil Rights Section has eliminated the constitutionally questionable provisions of other similar bills which provide for arrest and prosecution of private individuals who lynch or kill other individuals simply because of race, color or creed. Similarly, the provision which imposed a fine or other monetary penalty against a municipality or subdivision of a state in which a lynching occurs, has been eliminated because of doubt as to the constitutionality of any such provision.

The proposed anti-lynch bill does provide for the arrest of private persons where they band together and take from the custody of state officers an accused person and attempt to inflict punishment. It is believed that constitutionally, such a law could be justified under the Fourteenth Amendment because such acts not only subvert the Federal Constitution, guaranteeing to the individual that he shall have due process and equal protection of law, but such unlawful acts also obstruct justice by interfering with

state law enforcement procedures. In fact, there is good legal argument to support the view that the right "not to be lynched" exists even now and could be enforced under the present Section 241 of Title 18, United States Code.

As stated above, the Civil Rights Section does not urge passage of the anti-lynch bill. It is submitted, however, in a form acceptable to the Civil Rights Section, in the event the Department wishes to submit a bill of this type.

Enclosure
No. 84590

VIII

COPY

HOUSE OF REPRESENTATIVES, U.S.
COMMITTEE ON THE JUDICIARY
Washington, D.C.

February 23, 1956

Honorable Herbert Brownell, Jr.
Attorney General
Washington, D. C.

Dear Mr. Attorney General:

This is to advise you that Subcommittee No. 2 of the Committee on the Judiciary of the House of Representatives has under active consideration a number of civil rights bills. I send you herewith a copy of the hearings held on July 13, 14 and 27, 1955, which identifies and includes copies of these civil rights bills. At a meeting in executive session of Subcommittee No. 2, on February 22, 1956, it was indicated that the press had carried stories to the effect that the Department of Justice plans to submit civil rights legislation to Congress.

If you would like to present the views of the Department of Justice to Subcommittee No. 2 before that group takes action on civil rights legislation, Subcommittee 2 will be happy to receive them. In view of the fact that civil rights bills have been pending before Congress for over a year and because of the heavy work load already programmed for future action by Subcommittee No. 2, it is not possible to delay action on this legislation past 10:00 A.M. Wednesday, February 29, 1956. The subcommittee would be glad to have you, or whomever you may designate, appear and present the views of the Department of Justice on civil rights legislation at a meeting of Subcommittee No. 2 on Wednesday, February 29, 1956, at 10:00 A.M. in Room 327, Old House Office Building. If this is not convenient for you, the subcommittee would be happy to receive, prior to that date, a written statement of the views of the Department of Justice on this legislation so that these views may be given full consideration at a meeting of the subcommittee on February 29.

If you plan to appear before Subcommittee No. 2, please so advise Mr. Thomas Broden, Jr., Committee Counsel, on National 8-3120, extension 2052, or write him at Room 345 Old House Office Building as soon as possible.

With best wishes, I am

144-01-5

Sincerely yours,

s/ Emanuel Celler, Chairman

FEB 2 1956

EC:EB
enc

III

PRELIMINARY DRAFT

Statement of Attorney General Herbert Brownell, Jr.
on Civil Rights

President Eisenhower, in his State of the Union Message, said:

"It is disturbing that in some localities allegations persist that Negro citizens are being deprived of their right to vote and are likewise being subjected to unwarranted economic pressures. I recommend that the substance of these charges be thoroughly examined by a Bipartisan Commission created by the Congress. It is hoped that such a Commission will be established promptly so that it may arrive at findings which can receive early consideration.

* * *

"We must strive to have every person judged and measured by what he is, rather than by his color, race or religion. There will soon be recommended to the Congress a program further to advance the efforts of the Government, within the area of Federal responsibility, to accomplish these objectives."

Under our system of government, conflicts as to the interpretations of existing law are determined by the courts. Thi s is true whether the question involves a municipal ordinance, a state law, an act of Congress, or the Constitution of the United States. Our judicial tribunals have the ultimate authority to declare that the states, the Congress, or the Executive Branch of the Federal Government have taken action which is contrary to the supreme law of the land. Obedience to law as interpreted by the courts is the way differences are and must be resolved.

At a time when many Americans are separated by deep emotions as to the rights of some of our citizens as guaranteed by the Constitution, there is a constant need for restraint, calm judgment and understanding. In order to prevent extremists from causing great disorder and irreparable harm it is important to rely on law and order for the resolution of these most difficult problems. It is particularly important, therefore, to provide more flexible civil remedies rather than to rely solely on existing criminal statutes to guarantee to all of our citizens the rights to which they are entitled under the Constitution.

With this in mind and in keeping with the President's message, I submit the following recommendations to the Congress: First, creation

144-01-5

of the Bipartisan Commission referred to in the message; second, amendment of existing statutes to give further protection of the right to vote; third, amendment of existing civil rights statutes to further protect other rights, privileges and immunities secured by the Constitution; fourth, creation of an additional office of Assistant Attorney General to head a new Civil Rights Division in the Department of Justice.

Separate bills detailing these four proposals are submitted with this statement.

I

The right to vote is one of our most precious rights. It is the cornerstone of our form of government and affords protection for our other rights. It must be zealously safeguarded.

Where there are charges that by one means or another the vote is being denied, we must find out all of the facts -- the extent, the methods, the results. The same is true of substantial charges that unwarranted economic or other pressures are being applied to deny other fundamental rights safeguarded by the Constitution and laws of the United States. The President has therefore asked Congress to create a Bipartisan Commission, clothed with all powers necessary to make thorough investigations, findings, and recommendations.

The responsibility for the solution of this problem does not rest solely on the people of any particular area or locality. It is as well the common problem and responsibility of all of us, north, south, east or west. The need for a full scale public study is manifest. The executive branch of the federal government has no general investigative power of the scope required to undertake such a study. The study should be objective and free from partisanship. It should be broad and at the same time thorough.

We must affirm to all the world that civil rights are of primary concern to all our people. To this end the selection of the Commission's membership must be truly bipartisan and geographically representative.

The bill provides that the Commission shall have six members, appointed by the President with the advice and consent of the Senate. No more than three may be of the same political party. The Commission will be temporary, expiring two years from the effective date of the statute, unless extended by Congress. It will have authority to subpoena witnesses, take testimony under oath, and obtain official data from any executive department or agency. It may be required to make interim reports pending completion of a comprehensive final report containing findings and recommendations.

The Commission will have authority to hold public hearings in every area where there are substantial reasons for concern over alleged denials of civil rights. Knowledge and understanding of every element of the problem will give greater clarity and perspective to one of the most difficult problems facing our country. Such an inquiry, fairly conducted, will tend to unite responsible people in common effort to combat ignorance and lawlessness.

If there are findings of deprivation of civil rights in any particular locality, the Commission should endeavor to discover its source, its extent, the methods used, and the community's efforts and achievements towards finding its own solution. The Commission, in the course of its inquiry, may do much to clear the air of groundless rumor or charge. Investigation and hearings will bring into sharper focus the areas of responsibility of the federal government and of the states under our constitutional system. Through greater public understanding, therefore, the Commission may chart a course of progress to guide us in the years ahead.

II

The first and most important of the proposed amendments to existing law concerns voting. In this the federal government seeks no broader statutory power than is necessary to protect the rights of suffrage guaranteed by the Fourteenth and Fifteenth Amendments and other provisions of the Constitution.

Civil remedies have never before been available to the Attorney General in this field. We think that they should be available. Heretofore the Department of Justice has been limited to the bringing of criminal actions after the harm has been done. Criminal cases in this sensitive field, by their very nature, are extraordinarily difficult for all concerned. Our ultimate goal is the safeguarding of the free exercise of the voting right, subject to the legitimate power of the state to prescribe necessary and fair voting qualifications. To this end, civil proceedings to forestall denials of the right may often be far more effective in the long run than criminal proceedings to punish after the event.

First, the proposed legislation will change the existing civil voting statute, 42 U.S.C. § 1971. This statute declares that all citizens who are otherwise qualified to vote at any election (state or federal) shall be entitled to exercise their vote without distinction of race or color. The statute is limited, however, to deprivations of voting rights by state officers or other persons acting under color of law. We recommend the addition of a section which will cover a denial of the right to vote caused by anyone, whether acting under color of law or not, in any election, general, special, or

primary, concerning candidates for federal office. Thus, the amended statute will give rise to civil remedies (1) in a federal election, including primaries, where a person's vote is unlawfully denied by anyone, and (2) in any election, state or federal, where the federal government, a state, or a person acting under color of law, denies a person the right to vote because of his race or color.

Second, it is recommended that this statute be further amended to provide that the Attorney General may bring injunction or other civil proceedings on behalf of the aggrieved person in any case covered by the statute and the amendments described above.

Third, we recommend that the statute be further amended to overcome the effect of court decision that all state administrative and judicial remedies must be exhausted before access can be had to the federal court. Thus direct relief may be sought in the federal court.

Fourth, we recommend amendment of Title 28 of the Code to ensure that federal district courts shall have jurisdiction in civil rights cases.

III

In addition to the voting bill, we propose legislation to strengthen another civil rights statute -- 18 U.S.C. 241. This statute makes it unlawful for two or more persons to 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". As a sanction against abuses of civil rights, it can become more effective with these proposed changes:

First, broaden the statute to include individuals. Under the present statute if two or more persons merely conspire to deny another person his civil rights, it is a crime; however, if a single individual, in fact, actually injures, oppresses, threatens or intimidates another person in denying his free exercise of his civil rights, it is not a crime. We recommend that this be corrected.

Second, change the word "citizen" to "person", and the words "right or privilege secured to him by the Constitution" to "right, privilege, or immunity secured or protected by the Constitution".

Third, as to individuals, substantial penalties are provided for unlawful conduct which results in maiming or death.

A civil counterpart of Section 241 is 42 U.S.C. § 1985. This statute gives a right of action for damages to any person injured by an act done in furtherance of a conspiracy to (1) prevent a person from accepting or holding federal office or discharging its duties; (2) intimidate parties, witnesses or jurors, or otherwise obstruct justice; or (3) deprive persons of the equal protection of the laws or of equal privileges and immunities, including the right to vote in federal elections.

The legislation which we propose will add a new section to this statute to confer authority on the Attorney General to initiate civil action where necessary to protect the rights secured by that statute.

IV

At present the Civil Rights Section of the Department of Justice is one of a number of sections located within the Criminal Division. The protection of civil rights guaranteed by the Constitution is a governmental function and responsibility of first importance. It merits the full direction of a highly qualified lawyer, with the status of Assistant Attorney General, appointed by the President with the advice and consent of the Senate.

In this area, as pointed out above, major emphasis should be on civil law remedies. The civil rights enforcement activities of the Department of Justice should not, therefore, be confined to the Criminal Division.

Apart from the proposed new laws, the decisions and decrees of the United States Supreme Court relating to integration in the field of education and in other areas, and the civil rights cases coming before the lower federal courts in increasing numbers, are indicative of generally broadening legal activity in the civil rights field.

These considerations call for the authorization of an additional Assistant Attorney General to direct the Government's legal activities in the field of civil rights.

I believe that the enactment of all of this legislation not only will give us the means to meet, fully and intelligently, our responsibility for the safeguarding of Constitutional rights in this country, but will demonstrate to the world at large our determination to secure equal justice under law for all people.

APR 9 1956

The Speaker
House of Representatives
Washington, D. C.

Dear Mr. Speaker:

At a time when many Americans are separated by deep emotions as to the rights of some of our citizens as guaranteed by the Constitution, there is a constant need for restraint, calm judgment and understanding. Obedience to law as interpreted by the courts is the way differences are and must be resolved. It is essential to prevent extremists from causing irreparable harm.

In keeping with this spirit, President Eisenhower, in his State of the Union Message, said:

> "It is disturbing that in some localities allegations persist that Negro citizens are being deprived of their right to vote and are likewise being subjected to unwarranted economic pressures. I recommend that the substance of these charges be thoroughly examined by a Bipartisan Commission created by the Congress. It is hoped that such a Commission will be established promptly so that it may arrive at findings which can receive early consideration. ***
>
> "We must strive to have every person judged and measured by what he is, rather than by his color, race or religion. There will soon be recommended to the Congress a program further to advance the efforts of the Government, within the area of Federal responsibility, to accomplish these objectives."

I

The right to vote is one of our most precious rights. It is the cornerstone of our form of government and affords protection for our other rights. It must be safeguarded.

Where there are charges that by one means or another the vote is being denied, we must find out all of the facts -- the extent, the methods, the results. The same is true of substantial charges that

144-01-3

DEPARTMENT OF JUSTICE
APR 11 1956
BY SPEC. MES., APR 9 1956

unwarranted economic or other pressures are being applied to deny fundamental rights safeguarded by the Constitution and laws of the United States.

The need for a full scale public study as requested by the President is manifest. The executive branch of the federal government has no general investigative power of the scope required to undertake such a study. The study should be objective and free from partisanship. It should be broad and at the same time thorough.

Civil rights are of primary concern to all our people. To this end the Commission's membership must be truly bipartisan and geographically representative.

A bill detailing the Commission proposal is submitted with this statement.

The proposed legislation provides that the Commission shall have six members, appointed by the President with the advice and consent of the Senate. No more than three may be of the same political party. The Commission will be temporary, expiring two years from the effective date of the statute, unless extended by Congress. It will have authority to subpoena witnesses, take testimony under oath, and request necessary data from any executive department or agency. It may be required to make interim reports pending completion of a comprehensive final report containing findings and recommendations.

The Commission will have authority to hold public hearings. Knowledge and understanding of every element of the problem will give greater clarity and perspective to one of the most difficult problems facing our country. Such a study, fairly conducted, will tend to unite responsible people in common effort to solve these problems. Investigation and hearings will bring into sharper focus the areas of responsibility of the federal government and of the states under our constitutional system. Through greater public understanding, therefore, the Commission may chart a course of progress to guide us in the years ahead.

II

At present the Civil Rights Section of the Department of Justice is one of a number of sections located within the Criminal Division. The protection of civil rights guaranteed by the Constitution is a governmental function and responsibility of first importance. It merits the full direction of a highly qualified lawyer, with the status of Assistant Attorney General, appointed by the President with the advice and consent of the Senate.

In this area, as pointed out more fully below, more emphasis should be on civil law remedies. The civil rights enforcement activities of the Department of Justice should not, therefore, be confined to the Criminal Division.

The decisions and decrees of the United States Supreme Court relating to integration in the field of education and in other areas, and the civil rights cases coming before the lower federal courts in increasing numbers, are indicative of generally broadening legal activity in the civil rights field.

These considerations call for the authorization of an additional Assistant Attorney General to direct the Government's legal activities in the field of civil rights. A draft of legislation to effect this result is submitted herewith.

III

The present laws affecting the right of franchise were conceived in another era. Today every interference with this right should not necessarily be treated as a crime. Yet the only method of enforcing existing laws protecting this right is through criminal proceedings.

Civil remedies have not been available to the Attorney General in this field. We think that they should be. Criminal cases in a field charged with emotion are extraordinarily difficult for all concerned. Our ultimate goal is the safeguarding of the free exercise of the voting right, subject to the legitimate power of the state to prescribe necessary and fair voting qualifications. To this end, civil proceedings to forestall denials of the right may often be far more effective in the long run than harsh criminal proceedings to punish after the event.

The existing civil voting statute (section 1971 of Title 42, United States Code) declares that all citizens who are otherwise qualified to vote at any election (state or federal) shall be entitled to exercise their vote without distinction of race or color. The statute is limited, however, to deprivations of voting rights by state officers or other persons purporting to act under authority of law. In the interest of proper law enforcement to guarantee to all of our citizens the rights to which they are entitled under the Constitution, I urge consideration by the Congress and the proposed Bipartisan Commission of three changes.

First, addition of a section which will prevent anyone from threatening, intimidating, or coercing an individual in the exercise of his right to vote, whether claiming to act under authority of law or not, in any election, general, special or

primary, concerning candidates for federal office.

Second, authorization to the Attorney General to bring injunction or other civil proceedings on behalf of the United States or the aggrieved person in any case covered by the statute, as so changed.

Third, elimination of the requirement that all state administrative and judicial remedies must be exhausted before access can be had to the federal court.

IV

Under another civil rights statute (section 1985 of Title 42 of the United States Code) conspiracies to interfere with certain rights can be redressed only by a civil suit by the individual injured thereby. I urge consideration by the Congress and the proposed Bipartisan Commission of a proposal authorizing the Attorney General to initiate civil action where necessary to protect the rights secured by that statute.

- - - - - - - - - -

I believe that consideration of these proposals not only will give us the means intelligently to meet our responsibility for the safeguarding of Constitutional rights in this country, but will reaffirm our determination to secure equal justice under law for all people.

Sincerely,

HERBERT BROWNELL JR.

Attorney General

A BILL

To establish a Bipartisan Commission on Civil Rights
in the Executive Branch of the Government

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

ESTABLISHMENT OF THE COMMISSION ON CIVIL RIGHTS

Sec 1(a) There is created in the Executive Branch of the Government a Commission on Civil Rights (hereinafter called the "Commission").

(b) The Commission shall be composed of six members who shall be appointed by the President by and with the advice and consent of the Senate. Not more than three of the members shall at any one time be of the same political party.

(c) The President shall designate one of the members of the Commission as Chairman and one as Vice Chairman. The Vice Chairman shall act as Chairman in the absence of disability of the Chairman, or in the event of a vacancy in that office.

(d) Any vacancy in the Commission shall not affect its powers and shall be filled in the same manner, and subject to the same limitation with respect to party affiliation, as the original appointment was made.

(e) Four members of the Commission shall constitute a quorum.

COMPENSATION OF MEMBERS OF THE COMMISSION

Sec. 2(a) Each member of the Commission who is not otherwise in the service of the Government of the United States shall receive the sum of $50.00 per day for each day spent in the work of the Commission, shall be reimbursed for actual and necessary travel expenses, and shall receive a per diem allowance of $12.00 in lieu of actual expenses for subsistence, inclusive of fees or tips to porters and stewards.

(b) Each member of the Commission who is otherwise in the service of the Government of the United States shall serve without compensation in addition to that received for such other service, but while engaged in the work of the Commission shall be reimbursed for actual and necessary travel expenses, and shall receive a per diem allowance of $12.00 in lieu of actual expenses for subsistence, inclusive of fees or tips to porters and stewards.

DUTIES OF THE COMMISSION

Sec. 3(a) The Commission shall:

(1) Investigate the allegations that certain citizens of the United States are being deprived of their right to vote or are being subjected to unwarranted economic pressures by reason of their color, race, religion, or national origin.

(2) Study and collect information concerning economic, social and

the laws under the Constitution.

(3) Appraise the laws and policies of the Federal Government with respect to equal protection of the laws under the Constitution.

(b) The Commission shall submit interim reports to the President at such times as either the Commission or the President shall deem desirable, and shall submit to the President a final and comprehensive report of its activities, findings, and recommendations not later than two years from the date of the enactment of this statute.

(c) Sixty days after the submission of its final report and recommendations the Commission shall cease to exist.

POWERS OF THE COMMISSION

Sec. 4(a) Within the limitations of its appropriations, the Commission may appoint a full-time staff director and such other personnel as it deems advisable, in accordance with the civil service and classification laws, and may procure services as authorized by section 15 of the Act of August 2, 1946 (60 Stat. 810; 5 U.S.C. 55a) but at rates for individuals not in excess of $50.00 per diem.

(b) The Commission may accept and utilize services of voluntary and uncompensated personnel and pay any such personnel actual and necessary traveling and subsistence expenses incurred while engaged in the work of the Commission (or, in lieu of subsistence, a per diem allowance at a rate not in excess of $12.00).

(c) The Commission may constitute such advisory committees and may consult with such representatives of State and local governments, and private organizations, as it deems advisable.

(d) All Federal agencies shall cooperate fully with the Commission to the end that it may effectively carry out its functions and duties.

(e) The Commission, or on the authorization of the Commission any subcommittee of two or more members, may, for the purpose of carrying out the provisions of this Act, hold such hearings and act at such times and places as the Commission or such authorized subcommittee may deem advisable. Subpoenas for the attendance and testimony of witnesses and/or the production of written or other matter may be issued over the signature of the Chairman of the Commission or of such subcommittee, and may be served by any person designated by such Chairman.

(f) In case of contumacy or refusal to obey a subpoena, any district court of the United States or the United States court of any Territory or possession, or the District Court of the United States for the District of Columbia, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Attorney General of the United States shall have jurisdiction to issue to such person an order requiring such person to appear before the Commission or a subcommittee thereof, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

APPROPRIATIONS

Sec. 5. There is hereby authorized to be appropriated out of any money in the Treasury not otherwise appropriated, so much as may be necessary to carry out the provisions of this Act.

A BILL

To provide for an additional Assistant Attorney General.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there shall be in the Department of Justice one additional Assistant Attorney General, who shall be appointed by the President, by and with the advice and consent of the Senate, who shall assist the Attorney General in the performance of his duties, and who shall receive compensation at the rate prescribed by law for other Assistant Attorneys General.

Form No. G-1E
(Ed. 6-9-55)

Goldschmidt
M Tuttle ✓

From

THE DEPUTY ATTORNEY GENERAL

XI

to

Official indicated below by check mark

The Attorney General	
The Solicitor General	
Assistant Attorney General, Antitrust	
Assistant Attorney General, Tax	
Assistant Attorney General, Civil	
Assistant Attorney General, Lands	
Assistant Attorney General, Criminal	✓
Assistant Attorney General, Legal Counsel	
Assistant Attorney General, Alien Property	
Assistant Attorney General, Internal Security	
Administrative Assistant Attorney General	
Director, F.B.I.	
Director, Bureau of Prisons	
Commissioner, Immig. and Naturalization	
Pardon Attorney	
Parole Board	
Board of Immigration Appeals	
Executive Assistant to the Attorney General	
Director, Public Information ✓	
Records Administration Branch	

MEMORANDUM

2/25/57

Please have a reply prepared for my signature and a copy of it marked for the files of my office. All Congressional mail to be acknowledged within three days after receipt in Divisions.

144-01-3

DEPARTMENT OF JUSTICE
MAR 25 1957
RECORDS BRANCH
RECEIVED

FEB 2[illegible] 1957
CIVIL RIGHTS SECTION

United States Senate

COMMITTEE ON THE JUDICIARY

February 22, 1957

Honorable Herbert Brownell, Jr.
Attorney General of the United States
Department of Justice
Washington, D. C.

Dear Mr. Attorney General:

After you gave your testimony concerning the incidents in Court House Township Precinct in Camden County, Lolivia Precinct in Brunswick County, and Snow Hill Precinct in Greene County, North Carolina, I contacted the North Carolina State Board of Elections and made an inquiry concerning these incidents.

I was informed by the Executive Secretary of the North Carolina State Board of Elections that these incidents were called to the attention of the North Carolina State Board of Elections by the Field Secretary of the N. A. A. C. P. in North Carolina, immediately after their alleged occurrence; that the North Carolina State Board of Elections immediately directed the Chairmen of the County Boards of Elections in Camden, Brunswick, and Greene Counties to investigate these complaints; that pursuant to such direction, the Chairmen of the County Boards of Elections in these counties investigated the complaints and made a proper corrective action to be taken; and that no further complaints were made to the North Carolina State Board of Elections in respect to such precincts either in the Primary Election of 1956, when these complaints arose, or the General Election of 1956.

When you made your statement before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary, you stated that you based your statement concerning these three precincts on F. B. I. reports. The purpose of this letter is to request that you review the F. B. I. reports relating to these three precincts and advise me by letter whether such F. B. I. reports contradict or corroborate the information given me by the Executive Secretary of the North Carolina State Board of Elections.

Sincerely yours,

Sam J. Ervin, Jr.

Sam J. Ervin, Jr.

SJE:a

From
ASSISTANT ATTORNEY GENERAL WARREN OLNEY III
Criminal Division
To
Official indicated by check mark

The Attorney General	✓
The Solicitor General	
Deputy Attorney General	
Assistant Attorney General (Antitrust)	
Assistant Attorney General (Civil)	
Assistant Attorney General (Internal Security)..	
Assistant Attorney General (Lands)	
Assistant Attorney General (Tax)	
Assistant Attorney General (Office of Legal Counsel)	
Director, FBI	
Director of Prisons	
Commissioner, Immigration and Naturalization	
Pardon Attorney	
Administrative Assistant Atty. Gen.	
Deputy Administrative Asst. Atty. Gen.	
The Executive Assistant to the Atty. Gen.	
Director of Public Information	

MEMORANDUM
3/21/57

Our inclination to ignore these requests of Sen. Ervin is based on ignorance on 5 just what you had in mind in making your requests. Is it all right with you first to pass on this?

144-01-5
DEPARTMENT OF JUSTICE
18 MAR 28 1957
RECORDS BRANCH

OFFICE OF THE ATTORNEY GENERAL
RECEIVED
MAR 22 1957

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : Mr. Warren Olney III, Assistant Attorney General, Criminal Division — DATE: February 27, 1957

FROM : Mr. Edward L. Barrett, Jr., Special Assistant to the Attorney General

SUBJECT: Information to be Given by Attorney General to Subcommittee on Constitutional Rights, Senate Judiciary Committee.

1. On February 26, I discussed what material should be presented by the Attorney General with Messrs. Schauer, Barrett, Brodie, and Hubbard. We concluded at that time that no information should be submitted as a result of the following exchanges at the hearing:

(a) On February 14, Mr. Slayman asked the Attorney General if the Department had recommendations to overcome the narrow interpretation put on 18 U.S.C. 241 and 242 in the second Williams case. The Attorney General said: "Might I have permission then to discuss that with the staff? We do have some suggestions along that line." (Trans. p. 49.) It is our opinion that we are not ready to make recommendations regarding amendments to 241 and 242 and that it is best to say nothing on the subject in the absence of a further request from the Subcommittee. The other alternative would be a restatement of what the Attorney General said in his prepared statement about waiting until the civil remedies had been tried out. WE DO NOT NOW HAVE PREPARED what I would regard as satisfactory drafts of amendments to these sections.

(b) On February 15, Senator Ervin asked whether Congress would have power to provide civil remedies in areas where it had no Constitutional power to provide criminal remedies. Mr. Brownell replied: "I believe there are instances on the books where it has been done, and successfully done." Senator Ervin asked the Attorney General to "kindly advise me as to any instances of that kind." Mr. Brownell replied: "I will be glad to furnish that, sir." We are not certain that we understand just what this colloquy was all about. None of us can think offhand of any situation where the federal government would have Constitutional jurisdiction to pursue civil remedies when it had no such jurisdiction for criminal remedies. In the absence of further specific request, our recommendation is to say nothing on this score.

File

2. Do you concur in our recommendation? If so, should Mr. Rogers be also consulted?

CRIMINAL DIVISION

Date: March 13, 1957

FROM: Mr. Schauer

TO: Mr. Irons

You will note our reference to the statement of the Snow Hill, Greene County Registrar in the third paragraph of our letter. The statement of this registrar, as it appears in the FBI reports, is according to Mr. Ed Barrett, one of those which will be furnished to the Subcommittee in accordance with Senator Ervin's request.

CRIMINAL DIVISION

Date: February 27, 1957

FROM: Mr. Schauer

TO: Mr. Olney

Re: Senator Ervin's letter dated 2-22-57
File No. 144-01-5

The following will indicate why we have not referred in attached reply to Senator Ervin to his statement (2nd paragraph of his letter) concerning the absence of complaints as to the general election.

1. The FBI investigation ended in Aug. 1956. We received no particular complaints following the November general election.

2. The United States Attorney at Raleigh, during the latter part of September conferred, at our request, with the Secretary of the State Board of Elections in an effort to adjust things so that Negroes would have a fair opportunity to register in October and vote in November. The United States Attorney felt that he accomplished something but the NAACP North Carolina representative reported after the election that he had noticed no change in the situation.

JJS

144-01-3

XII

RECORD

May 31, 1957

FILED
BY AL
JUN 11 1957

Honorable Clifford P. Case
United States Senate
Washington 25, D. C.

Dear Senator Case:

Thank you for the letter of May 15 signed by you and Senator Kuchel requesting the comments of the Department of Justice relative to the minority report filed by Senators Ervin and Johnston in opposition to S. 83 (the Administration's civil rights program) and particularly to their discussion of their jury trial amendment. In addition to the comments which follow may I particularly call to your attention the statement of the American Civil Liberties Union opposing an amendment to require jury trial in contempt proceedings arising under the proposed civil rights legislation. This statement was reprinted in the Congressional Record for May 22, 1957, at pages 6579-6580.

The proposed legislation seeks merely to apply long-established civil procedures for enforcing federal laws to civil rights cases where experience has shown the need for civil remedies. In urging Congress to authorize the Government to institute civil suits for preventive relief in civil rights cases we are requesting the right to use procedures long available to the Government as a means of enforcing other types of federal laws. Ever since the adoption of the Sherman Act in 1890 the Department of Justice has been empowered to institute proceedings in equity to prevent and restrain civil violations of the antitrust laws as well as to bring criminal prosecutions. The

CC: Deputy Attorney General
Attorney General
Records
Chrono.
Mr. Ed Barrett
Civil Rights Section

Department of Labor uses the injunctive process as a means of enforcing the Fair Labor Standards Act. The Interstate Commerce Commission, the Civil Aeronautics Board, the Securities and Exchange Commission, the National Labor Relations Board, the Atomic Energy Commission, and other government agencies have similar authority to use civil remedies in addition to criminal prosecutions. In none of these fields are jury trials required in contempt cases.

There are valid reasons for the ever-increasing use of civil suits for preventive relief as a means of enforcing federal law. Judicial determination of the validity of a course of conduct in advance aids the government in its primary purpose of preventing violation of law. It also aids the defendant since he can litigate the legality of his proposed conduct without the necessity of taking action at the risk of a criminal conviction if he guesses incorrectly.

All of these reasons exist in the civil rights field, particularly in connection with the protection of the right to vote. The primary interest of the government is in making it possible for all citizens to vote without discrimination based upon race, creed, or color, not in punishing local officials for denying such rights. Often it is not clear whether the particular conduct of a registrar of voters, for example, does constitute a violation of federal law. Under present law the Government can only wait until the harm has been done - the rights to vote denied - and then proceed with a criminal prosecution as a means of testing the validity of the registrar's action. The registrar himself is often caught between community pressures to discriminate and the fear of federal criminal prosecution with no way to resolve the issue in advance. With civil remedies authorized, the Government will often be able to obtain a judicial ruling in advance of the election which will determine the legality of the proposed conduct of the registrar, removing from him the necessity of risking criminal prosecution and effectively protecting the constitutionally guaranteed right of citizens to vote without discrimination based on race, creed, or color.

Suits for preventive relief under the proposed legislation will be governed by the traditional rules of procedure which have

always applied to such suits. The Government seeks no new or radical procedures to govern injunction suits in civil rights cases. Under the proposed legislation the rules of procedure which have traditionally governed equitable suits in the federal courts would apply in the same manner and to the same extent that they now apply to other suits by the Government for preventive relief. The defendant in an injunction suit in a civil rights case will have the same rights that the defendant now enjoys in a similar suit under the antitrust laws, the Fair Labor Standards Act, or any other one of the federal laws mentioned above.

These procedural protections are ample to protect all legitimate rights of the defendant. He gets a full hearing before the court on the question of whether his conduct violates federal law and hence should be enjoined. If he disagrees with the determination of the court, he may appeal the ruling for full consideration by the appellate courts. In most cases this is the end of the matter. The defendant obeys the court order and the public interest in the enforcement of the federal law has been vindicated. But if the defendant chooses to ignore or defy the court order he may be subjected to punishment for contempt of court. Again he is entitled to a full hearing before the court. He is presumed to be innocent, his guilt must be established beyond a reasonable doubt, and he cannot be compelled to testify against himself. If he is found guilty, he again may appeal. And an examination of the cases in recent years demonstrates that the appellate courts are alert to protect defendants against any possible unfairness in contempt proceedings.

It is true that wherever the Government is authorized to sue for preventive relief the defendant is not entitled to a jury trial in contempt proceedings. The Constitution of the United States recognizes the traditional differences between the procedures of courts of law and courts of equity and does not require jury trial in equitable proceedings. As long ago as 1890 the Supreme Court of the United States said: "It has always been one of the attributes--one of the powers necessarily incident to a court of justice--that it should have this power /the contempt power/ of vindicating its dignity, of enforcing its orders, of protecting itself from insult, without the necessity of calling upon a jury to assist it in the exercise of this power."

In 1914 Congress passed a statute (now 18 U.S.C. 3691) extending the right to jury trial in criminal contempt cases where the acts constituting the contempt also constitute criminal offenses under federal or local law. This statute expressly excepted contempts arising out of disobedience to court orders entered in suits brought in the name of the United States. Since criminal contempt proceedings are not often sought in private litigation (the Clinton, Tennessee case is one of the few instances of its use), this statute has had little impact upon the enforcement of federal court orders. In 1932 in the Norris-LaGuardia Act Congress, after removing almost all of the jurisdiction of the federal courts to issue injunctions in labor dispute cases, provided for jury trial in contempt proceedings arising under the Act. It was only with the enactment of the Taft-Hartley Act in 1947 that the Government was given jurisdiction to seek injunctions in any substantial number of labor dispute cases and that Act expressly provided that the jury trial requirement of the Norris-LaGuardia Act should not apply to it. Hence it is probable that the statute which appears to grant jury trial in contempt proceedings for violation of injunctions issued in labor dispute cases (18 U.S.C. 3692) has no application to injunction suits brought by the Government under Taft-Hartley, which are, for all practical purposes, the only type of injunction suits (private or governmental) in labor dispute cases over which the federal courts have jurisdiction. (See United States v. United Mine Workers of America, 330 U.S. 258.)

With reference to jury trial, then, the procedure under the proposed legislation would be the same as that which has always governed suits by the Government for preventive relief. This procedure appears at the present time to be effective and satisfactory. I am aware neither of abuse nor of serious complaint of abuse by the federal courts in contempt proceedings instituted for the purpose of enforcing injunctions issued in Governmental litigation. I foresee no reason why this procedure should not be equally satisfactory in civil rights cases.

Enactment of legislation providing for jury trial in contempt cases arising out of governmental litigation would undermine the authority of the federal courts by seriously

weakening their power to enforce their lawful orders. The effect of adopting current proposals for jury trial would be to weaken and undermine the authority of the federal courts by making their every order, even when issued after due hearing and affirmed on appeal, reviewable by a local jury. Referring to proposals similar to those now advanced President (and later Chief Justice) Taft said in 1908: "The administration of justice lies at the foundation of government. The maintenance of the authority of the courts is essential unless we are prepared to embrace anarchy. Never in the history of the country has there been such an insidious attack upon the judicial system as the proposal to interject a jury trial between all orders of the court made after full hearing and the enforcement of such orders."

Furthermore the proposed amendment to existing procedures that is being advocated under the innocuous slogan of "jury trial" would permit practical nullification of the effectiveness of the proposed civil rights legislation. The enforcement of any court order may require prompt and vigorous action if it is to be effective. Prompt action will often be vital in civil rights cases, especially election cases where the registration period or the election may pass while enforcement is delayed. The injection of a jury trial between an order of a court enjoining discrimination against Negroes in an election, and the enforcement of that order would provide numerous opportunities for delay beyond the time when the order could have practical effect.

I hope that the foregoing statement provides the information requested by you. If I can be of further assistance, do not hesitate to call upon me.

Sincerely,

Attorney General

XIII

The Attorney General via the Deputy A.G. July 3, 1957

Warren Olney III, Assistant Attorney General, Criminal Division WO:mmr

RECD. 144-01-5

Civil Rights legislation

K.E.B.

In accordance with your memorandum to me of June 26, there has been prepared and you will find attached hereto a memorandum on the subject of persons subject to punishment for contempt for violating federal court injunctions. I believe this is of a character suitable for distribution to members of Congress and others interested in this problem.

Attachment - 1

SENT DIRECT FROM
CRIMINAL DIVISION MAIL ROOM
DATE 7/3
BY

CC: Records
Chron.
Mr. Olney
Mr. Erdahl
Ed Barrett

FILED
K.B.
JUL 15 1957

NOT INSPECTED FOR
MAILING BY R.A.B.
JUL 5 1957
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Persons subject to punishment for contempt for violating federal court injunctions

The reach of an injunction, both in terms of what is required or prohibited and of the persons enjoined, has been circumscribed by statutory and decisional law. Rule 65(d) of the Federal Rules of Civil Procedure, derived from Section 19 of the Clayton Act, 38 Stat. 738, provides:

> Form and Scope of Injunction or Restraining Order. Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who received actual notice of the order by personal service or otherwise.

The specific limitations expressed in this rule respecting the breadth of an injunction itself, and the class of persons subject to its terms, embody long established equity principles. The aim is to facilitate obedience to the order, without giving the courts dragnet authority to punish those "who act independently and whose rights have not been adjudged according to law." Chase National Bank v. Norwalk, 291 U.S. 431, 437. To achieve this balance, the decree itself must not be "so vague as to put the whole conduct of the defendant's business at the peril of a summons for contempt," nor generally enjoin "all possible breaches of the law." Swift & Co. v. United States, 196 U.S. 375, 396; Hartford-Empire Co. v. United States, 323 U.S. 386, 410 (restraining order under Sherman Act). The decree must "state with reasonable specificity the acts which

the respondent is to do or refrain from doing." Labor Board v. Express Publishing Co., 312 U.S. 426, 433 (restraining order issued by National Labor Relations Board); New York N. H. & H. R. C. v. Interstate Commerce Comm'n., 200 U.S. 361, 404. Likewise, it has long been held than an injunction may not be so broad as to authorize contempt proceedings against those persons, although having actual notice of its terms, whose violation is independent of, and not in concert with the parties to the proceeding. Regal Knitwear v. Labor Relations Board, 324 U.S. 9, 13-15; Chase National Bank v. Norwalk, 291 U.S. 431, 436-437; Hitchman Coal & Coke Co. v. Mitchell, 245 U.S. 229, 234; Scott v. Donald, 165 U.S. 107, 117; Alemite Mfg. Corp. v. Staff, 42 F. 2d 832 (C.A. 2).

Whether a non-party may be subject to contempt for violating an injunction depends essentially upon his relationship to the party actually restrained. As expressed by Judge Hand in the Alemite case, jurisdiction to punish a non-party requires that he "must either abet the defendant [party], or must be legally identified with him. * * *" (42 F. 2d 833). In that case, a former employee independently violated an injunction issued against the employer. Such violation occurred after termination of the employment, and was not pursuant to any scheme or arrangement with the former employer. In fact, the employer committed no act in violation of the injunction. The Second Circuit ruled that the contempt power could not properly be extended to include this former employee.

On the other hand, where an employee knowing of an injunction order against his employer violated its terms, he was held subject to contempt proceedings since his act was legally that of his employer.

In re Lennon, 166 U.S. 548. Successors and assigns of a party may be within the scope of the court's jurisdiction where they are set up by a party who seeks to do by indirection what he is specifically enjoined from doing by his own act. Southport Petroleum Co. v. Labor Board, 315 U.S. 100, 106 (Labor Board orders reach those who are "merely a disguised continuance of the old employer"); Walling v. Reuter Co., 321 U.S. 671, 674; Regal Knitwear v. Labor Relations Board, 324 U.S. 9, 13-15.

Aside from such persons "legally identified" with the party named in the injunction, the authority of the court extends to those persons who, with actual knowledge of the order, aid and abet the party in its violation. The rationale of jurisdiction here is likewise based on a connection between the party and the violator. Jurisdiction attaches because of the conspiratorial scheme or plan between the actor and the party. The actor is not acting independently for himself alone but in concert with and in furtherance of the party's purpose to violate the order. This authority to punish one who aids or abets marks, in the usual case, the outer limits of contempt jurisdiction to punish a non-party for violation of an injunction. The rationale was expressed in Regal Knitwear v. Labor Relations Board, 324 U.S. 9, 14:

> This [Rule 65 d] is derived from the common law doctrine that a decree of injunction not only binds the parties defendant but also those identified with them in interest, in "privity" with them, represented by them or subject to their control. In essence it is that defendants may not nullify a decree by carrying out prohibited acts through aiders and abettors, although they were not parties to the original proceeding. [Emphasis added.]

Conversely, where there is no connecting link or concert of action between the violator and the party, so that the party is not, in fact,

nullifying the effect of a decree "by carrying out prohibited acts through aiders and abettors," jurisdiction does not attach to punish the non-party actor. To illustrate, in Garrigan v. United States, 163 Fed. 16 (C.A. 7), certiorari denied, 214 U.S. 514, a contempt conviction against the defendant, who was not party to a labor injunction, was reversed because it had not been established that he knew of the injunction, or that he "was engaged by or with any person or association enjoined in its violation. * * *" to the same effect are Harvey v. Bettis, 35 F. 2d 349 (C.A. 9); Hill v. United States, 33 F. 2d 489 (C.A. 8), certiorari denied, 280 U.S. 592; International Brotherhood etc. v. Keystone F. Lines, 123 F. 2d 326 (C.A. 10); Kean v. Hurley, 179 F. 2d 888 (C.A. 8); Swetland v. Curry, 188 F. 2d 841 (C.A 6); Reich v. United States, 239 F. 2d 134 (C.A. 1), certiorari denied, 352 U.S. 1004. Thus, jurisdiction to punish a non-party for contempt must be based upon his actual knowledge of the injunction plus some association or concert of action with a party.

WWW:aj

January 27, 1959

144-01-5

MEMORANDUM TO THE ATTORNEY GENERAL

Re: Information on Racial Discrimination Submitted by NAACP to Civil Rights Commission and to the AFL-CIO.

Mr. Cushman has transmitted to me two letters addressed to you by the NAACP, one dated January 12, 1959, and the other January 13. The first encloses a copy of a letter addressed to the Civil Rights Commission under date of January 9, 1959, by Clarence Mitchell, Director of its Washington Bureau. The second transmits a memorandum of December 4, 1958, from Herbert Hill, Labor Secretary, NAACP, to Boris Shishkin, Director Civil Rights Department, AFL-CIO, and copies of letters between George Meany, President, AFL-CIO and Roy Wilkins, Executive Director, NAACP, regarding Mr. Shishkin's memorandum. Mr. Cushman asked that I bring to your attention any information in these letters that might be of interest to you.

In his memorandum of December 4, 1958, Mr. Shishkin sets out racially-discriminatory practices followed by certain unions affiliated with the AFL-CIO. The complained-of practices, inasmuch as they are being carried on by private organizations, not under color of law, do not involve any violation of the federal civil rights statutes. The memorandum sets forth certain complaints which have been lodged with the President's Committee on Government Contracts on the theory that certain employers who have contracts with the Government and are subject to the standard non-discrimination clause had acted in collusion with certain labor unions to discriminate against Negro employees. Even if these latter allegations were true, however, the situation would not be one calling for any action by this Department.

In his letter of January 9 to the Civil Rights Commission, Mr. Mitchell calls attention to a number of situations which he believes the Commission should consider in appraising (in the language of Section 104(a)(3) of the Civil Rights Act of 1957) the "laws and policies of the federal government with respect to

cc: Deputy Attorney General
Mr. White
Mr. Ryan

equal protection of the laws." The complaints set forth by Mr. Mitchell relate to (1) leases of federal land; (2) federal aid to schools; (3) federal aid to hospitals, and (4) federal aid to airports.

Leases of Federal Land.

Mr. Mitchell complains that there appears to be no over-all federal regulation requiring non-discrimination by the lessee of federal land; however, the only specific situation which Mr. Mitchell suggests as an example of discrimination is a lease of land by the Tennessee Valley Authority to the Department of the Army. Mr. Mitchell states that his organization is "processing" a complaint in connection with this lease but does not state specifically where the alleged discrimination is involved.

Federal Aid to Schools.

As examples of instances where schools built entirely with federal funds and used primarily for the education of children of members of the armed services are operated on a segregated basis, Mr. Mitchell points to the schools operated in connection with the Little Rock Air Force Base, Little Rock, Arkansas, the Seward Air Force Base near Nashville, Tennessee, and the Redstone Arsenal near Huntsville, Alabama.

Federal Aid to Hospitals.

Mr. Mitchell points out that the Department of Health, Education and Welfare is still making grants under the provisions of the Hill-Burton Act for the construction of hospitals providing separate but equal facilities for different races.

Federal Aid to Airports.

Mr. Mitchell complains that although the Civil Aeronautics Administration does not approve grants of federal money where the facilities built by such money will be used on a discriminatory basis, they do approve grants for certain facilities at airports where other facilities of the same airport (such as restaurants run by concessionaires) are operated on a segregated basis. Mr. Mitchell asserts that this practice violates the provisions of 49 U.S.C. 1110(i).

It appears that the matters which Mr. Mitchell brings to the attention of the Civil Rights Commission are properly within the Commission's jurisdiction as a fact-finding and recommending agency.

W. WILSON WHITE
Assistant Attorney General
Civil Rights Division

14

FEB 2 1959

144-01-5

W. Wilson White
Assistant Attorney General
Civil Rights Division
Harold H. Greene
Chief, Appeals and
Research Section

Proposed Bill to Strengthen the Civil Rights Laws (Part III)

W.W.W. RECEIVED

I

General

1. Analysis of the Bill

The bill "To strengthen the Civil Rights Laws" permits the Federal Government to aid in the enforcement of the equal protection guarantees of the Fourteenth Amendment and thus to assure and protect the interest of the United States in the full enjoyment of these rights by all the citizens of this Nation.

To accomplish this result the bill gives the Attorney General the power to seek an injunction or a declaratory judgment to prevent any person acting under the authority of the state from depriving any individual of his rights to equal protection.

The Attorney General is authorized to institute suit only after receipt of a complaint. Such complaint must meet the requirement of setting forth reasonable grounds for belief that acts described by the bill have occurred. A determination of whether the complaint fulfills this requirement is a matter for the sound judgment of the Attorney General. The complaint must be made either by the person aggrieved or, in the case of a minor, by the parent or guardian of such person. It is not specified in the bill precisely what form this complaint must take. In most cases it will no doubt take the form of some kind of writing. But there may be instances in which oral complaints will be considered to have the dignity and effect of written complaints. Naturally no suit is instituted by the Department of Justice without investigation, so that there is little need for distinguishing between oral and written complaints as to reliability; reliability will be determined upon investigation.

Section 2 of the bill clearly contemplates that the Attorney General will bring suit only in unusual cases--that is, in cases in which some special factor establishes the appropriateness of suit by the Government rather than by private persons. Among the factors which would tend to make suit by the

United States particularly appropriate are the face that the practice sought to be enjoined has a widespread effect, that it affects military personnel and their dependents, or that private persons cannot sue without being subjected to reprisals. Section 2 also makes clear that the Attorney General would not sue where local officials are in good faith attempting to remedy the evil complained of or where there is a more desirable remedy available. For a more detailed analysis of the factors, see pp. , infra.

Section 3 requires that the court in which suit is brought be satisfied that the prerequisites of section 2 to the bringing of an action by the Attorney General are actually present. This section thus eliminates any possible doubts as to the limited role which the Government will play in this area of civil rights. The local federal courts will be in a position to prevent any tendency to range beyond the narrow field of operation contemplated in section 2.

Section 4 provides that the United States shall be liable for costs in suits brought under the Act "the same as a private party." This provision will prevent any possibility of unwarranted hardship to defendants in the event that the suit proves to be without merit.

Section 5 defines the term "minor dependent of the complainant" which is used in section 1 so that a complaint may be filed on behalf of a minor by his parent or by any other person who would be authorized by state or federal law to sue as guardian ad litem or next friend.

2. Constitutional Basis

The Fourteenth Amendment prohibits any state from enacting or enforcing laws which deny to any person the equal protection of the laws. The civil rights which are protected under that Amendment, are, in general terms: the right not to be subjected to racial segregation under complusion of state authority and the right not to be denied the use of public facilities on account of race or color. The courts have held that the prohibition of the Fourteenth Amendment operates against laws which discriminate on account of race or color or other considerations not strictly relevant to an efficient operation of proper governmental function. A denial of equal protection of the laws occurs whenever a state or state agency requires persons of different races to avail themselves of separate public facilities and establishments. This is true not only with respect to public schools but also with respect to other publicly maintained and tax-supported facilities in such fields as transportation and recreation.

Section 5 of the Fourteenth Amendment expressly provides that "The Congress shall have power to enforce, by appropriate legislation, the provisions of this article." It is clear that this bill is appropriate to enforce the guarantees of the Amendment. Accordingly, there should be no serious question as to its constitutionality.

3. Does Not Extend Powers

The bill does not extend or increase the area of civil rights jurisdiction in which the Federal Government is already authorized to act. Civil rights are now protected by Amendments to the Constitution and, when they are violated, the Government presently may prosecute under the criminal laws (18 U.S.C. 241, 242). This proposal would merely add civil remedies. It would not enlarge the area of civil rights or in any way clash with the constitutional limitations on Federal action in this field. Rather, it would permit the use of civil, remedial action as an alternative to criminal proceedings. Such use would, in many instances, make the difference between success and failure in the meaningful protection of the civil rights of our citizens. See p. , infra.

4. Ample Statutory Precedent

The Attorney General is not asking here for new and untried powers. The use of civil remedies as a means of enforcing federal rights is not uncommon; it exists in a number of areas. For more than 60 years the Department of Justice has had experience in the coordinate use of civil and criminal remedies in the anti-trust field. Ever since its adoption the Sherman Act has provided that the District Courts have jurisdiction to prevent and restrain violations of the criminal sections of the Act, and has made it the duty of the Department of Justice to institute proceedings to prevent and restrain such violations. Much of the success of the Department in the anti-trust work is directly attributable to the availability of civil remedies, since here, as in civil rights cases, criminal prosecution of violators sometimes might be unduly harsh.

Civil anti-trust actions, moreover, like those which could be brought under the instant proposal, provide a benefit not only to the Government but also to private persons. And there are numerous other areas in which the Government can seek relief by way of injunction in situations where an incidental benefit occures to private persons. For example, 15 U.S.C. 80a-34(d) authorizes the Securities and Exchange Commission to seek an injunction to prevent unlawful representations by investment companies. 33 U.S.C. 921(c) authorizes federal officials to apply

for a court order to enforce payment of a longshoreman's compensation award. Under the provisions of the Labor Management Relations Act of 1947 (Taft-Hartley Act) the National Labor Relations Board is empowered to enter cease and desist orders and to take affirmative action, including reinstatement of employees with back pay. The Board is authorized to have such orders enforced by way of injunction by appropriate application to the various circuit courts of appeal (29 U.S.C. §160(c) and 160(e)).

Under the provisions of the Fair Labor Standards Act (29 U.S.C. 201, et seq.) the Wage and Hour Administrator is granted authority to sue employers on behalf of employees for back wages and overtime pay which had not been paid pursuant to the provisions of that Act. (See 29 U.S.C. 216(c)). Under the legislation dealing with reemployment rights of servicemen the United States Attorneys are empowered to appear and act as attorneys for persons claiming to be entitled to reemployment benefits under that Act (50 U.S.C. App. 459(d)). In these, as in anti-trust and in civil rights cases, there is often an incidental benefit to a group of individuals. But it is implicitly recognized that private citizens are unable to obtain a vindication of their rights through their own resources. Basically it is the public interest in enforcement of the law which justifies suit by the Government. Indeed, it would seem that the public interest in enforcing purely statutory mandates. There can be no doubt that when the constitutional rights of any individual are suppressed there is a threat to the proper functioning of our society. This threat demands public action if we are to be faithful to our belief in the role of the Constitution in our Government.

It is true that the bill requires that the Attorney General act only on complaints. But from this it should not be inferred that the purpose of suit by the Government would be to protect solely private rights. The purpose of requiring a complaint is rather to ensure that the Government will not act where the individual, class, or group which might be affected is content with matters as they are or wishes to avoid any possibility of turmoil even for the sake of protecting constitutional rights. It does not negate the fundamental interest which the Federal Government has in observance and enforcement of the Constitution and the constitutional rights of the citizens of this Nation.

5. Need for the Bill

Part III of the bill (H.R. 6127 which became the Civil Rights Act of 1957 provided for suit in equity by the Attorney General to protect and secure rights similar to those which are protected by the instant bill. The need for legislation of this

kind has actually increased since Part III was stricken by the Senate from the 1957 bill. 1957 and 1958 have seen a steady deterioration in some states of both the educational situation and the observance of federal law by state officials.

The post-1954 snowballing of state legislation designed to circumvent the desegregation decrees greatly increased the opportunity for deprivation of equal protection by persons acting under color of law. Approximately 200 such measures have been adopted in 11 states since 1954 -- Alabama, Arkansas, Florida, North Carolina, Tennessee, Texas, Georgia, Louisiana, Mississippi, South Carolina, and Virginia. By 1957 over 100 had been passed; 1957 produced 35 "resistance" measures; and in 1958 some 20 were adopted. The 1959 sessions of the deep South legislatures promise still more additions. An endless amount of litigation can, and no doubt will, arise from such state policy.

Where the state's denial of the federal right of equal protection is extremely glaring, action by the Attorney General is a real necessity. Take, for instance, the Bush case in Louisiana. It was first filed in 1952. After the Brown decision, the state passed a law designed to circumvent that decision by reserving control of schools to the legislature. A federal court declared this unconstitutional in 1956 and ordered admission of Negroes. The case is still in the courts and no integration has taken place. The next legislative session may well pass another law and give rise to further appeal.

Perhaps these delays cannot entirely be eliminated merely by suit by the Attorney General, but in these "stubborn" cases the appearance of the Attorney General as plaintiff might cause the officials concerned as well as officials in other places to think long and hard before attempting discriminatory procedures and sham delaying techniques.

It is to be noted that in a number of states no desegregation has taken place almost five years after the historic Brown decision. In other states there has been a considerable slowing of the desegregation process during the past 18 months. The following table graphically demonstrates this trend.

School Districts Desegregated

	Fall 1955	June 1957	Fall 1957	Fall 1958	Court Orders	Cases Pending	Biracial districts as of 1958	Still Segregated
Alabama	0	0	0	0	0	1	113	113
Arkansas	4	5	9	7	*2	1	228	221
Delaware	12	18	18	18	#1	0	61	43
D.C.	1	1	1	1	0	0	1	0
Florida	0	0	0	0	1	3	67	67
Georgia	0	0	0	0	0	1	196	196
Kentucky	40	92	114	123	8	0	171	48
Louisiana	0	0	0	0	1	2	67	67
Maryland	9	20	21	21	2	0	23	2
Mississippi	0	0	0	0	0	0	151	151
Missouri	114	193	209	211	1	0	244	33
N,Cardina	0	0	3	3	0	4	172	169
Oklahoma	88	197	214	238	4	0	271	33
S,Carolina	0	0	0	0	"0	0	107	107
Tennessee	0	1	2	2	2	1	141	139
Texas	65	103	121	124	*3	2	722	598

School Districts Desegregated

	Fall 1955	June 1957	Fall 1957	Fall 1958	Court Orders	Cases Pending	Biracial districts as of 1958	Still Segregated
Virginia	0	0	0	0	7	(?)	114	114
W.Virginia	35	41	43	43	8	0	43	0

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* Van Buren, desegregated
Little Rock, desegregated 1957, re-segregated 1958
Ozark, desegregated, re-segregated 1958
(No court order)

Order affects 7 districts concerned in suit and all other segregated districts throughout state. Plan proposes gradual integration, beginning 1959.

" Since Briggs v. Elliott, one of the 5 school segregation cases, 347 U.S. 483, 349 U.S. 294, No further court action.

' Mansfield, Dallas, Houston. Still segregated.

The fact that public elementary and secondary schools in 7 states and state colleges in 4 of these states remain completely segregated four years after the Supreme Court decision gives ample ground for the belief that it may take the bringing of suits by the Attorney General to accomplish a start toward compliance with the law of the land in these states.

While not every attempt by a Negro child to enter a "white" school is formalized by petition to the Board, the disparity between the number of such petitions submitted and the suits filed after refusal bears witness to the need of a persistent plaintiff.

The following table shows the great disparity between the relatively large initial efforts at desegregation and the very small number of cases in which private plaintiffs were able to litigate their cases to a conclusion.

State	Petitions to School Bds.	Court Action	Result
Alabama	15	1	Suit pending.
Arkansas	15	3	Ordered integration at Little Rock, Van Buren, Bearden. Van Buren desegregated. Bearden still segregated. Defiance at Little Rock. Schools closed.
Florida	Almost all boards	2	No integration. Pending
Georgia	6	1	Pending
Louisiana	5	2	One ordered to desegregate but no integration yet. Still on appeal.
Mississippi	5	0	No integration
North Carolina	22	4	Token integration but not as a result of suits. All still pending.
South Carolina	14	1	No integration

The failure of the last Congress to approve Part III of H.R. 6127 undoubtedly encouraged those opposed to desegregation and thus contributed to the marked slowdown in compliance with the law. Further, it certainly gave comfort, too, to such men as Governor Faubus, who defy the federal courts. That error can now be righted by empowering the Attorney General to take the initial action in litigation in special situations. The fact that the Attorney General is or may be plaintiff should have a deterring effect on the offenders and potential offenders.

Education is becoming more and more a national concern -- as witness the new Aid to Education Act and the President's proposal of a committee to study needs of the country in health, education and welfare. The possibility that in at least eight states schools may close because of integration and thus deprive innocent children of the right to learn is a formidable thought. The President in his state of the Union message said: "The image of America abroad is not improved when school children, through closing of some of our schools and through no fault of their own, are deprived of their opportunity for an education."

Dr. Charles Alan Wright, Professor of Law at the University of Texas writes in an article entitled "School Integration -- An Almost Lost Cause":

> The problem of integration is, in ultimate analysis, a simple question of law enforcement. A state which discriminates according to race in admissions to its

August 1958 Progressive — in
1958 Cong. Rec. A7275

schools is breaking the law. Usually when a government has a law forbidding certain conduct, the full resources of that government, including its police and its prosecutors, are devoted to preventing and punishing such conduct. Quite frequently private persons who have a special concern with the unlawful conduct may also bring their own lawsuit, but this is a supplement to the efforts of the government to enforce the law, rather than a substitute for such effort. It is virtually unprecedented to leave enforcement of the law of the land exclusively to private lawsuits, brought and financed by private persons, as we now are doing with that provision of the 14th Amendment prohibiting school segregation.

The partial protection afforded by Part IV of the Civil Rights Act of 1957, which deals primarily with 15th Amendment rights, must now be strengthened by assuring the same type of civil sanction for violation of the rights protected by the 14th amendment.

II

Comparison With Part III of the 1957 Act

1. General

As originally proposed Part III of the bill which became H.R. 6127, 85th Cong., 1st Sess., and of S. 83, the similar Senate bill, sought to amend 42 U.S.C. 1985 by adding thereto two paragraphs. These two additional paragraphs would have given the Attorney General authority to institute civil actions for injunctions or other relief in all cases wherein any person was about to engage in or had engaged in acts or practices giving rise to a civil cause of action for damages pursuant to the first three paragraphs of this Section of the Code.

The acts protected by the first three paragraphs of section 1985 may be summarized as follows. First, conspiracy to intimidate or to injure officers of the United States; second, conspiracy to intimidate parties, witnesses, or jurors, or to obstruct justice with intent to deny to anyone the equal protection of the laws; third, conspiracy to deprive persons of the equal protection of the laws or of the equal privileges and immunities under the laws or to prevent state authorities from according persons the equal protection of the laws. As it passed the House, Part III of H.R. 6127 was limited to preventive relief, as is the present proposal.

The opponents of Part III attacked the bill on the grounds (1) that it was designed to establish a new procedure for the

enforcement or vindication of the civil rights of private persons at public expense; (2) that it conferred upon the Attorney General "despotic power to grant or withhold the supposed benefits of the new procedure at his uncontrolled discretion" (Minority report of Senators Ervin and Johnston to accompany S. 83; 103 Cong. Rec. 10,992); (3) that it referred to other legislation and that by such reference, without spelling out the total effect of the proposed law in express terms, it "cunningly obscures its real scope and purpose" (103 Cong. Rec. 10772); (4) that it would authorize the Attorney General to bring suits whether the aggrieved party wished him to do so or not (103 Cong. Rec. 10773, H. Rept. 291, p. 46); and (5) that it permitted the Attorney General to proceed against private persons in the community despite the fact that the entire community of both races would oppose the use of such power and the resulting use of federal force (103 Cong. Rec. 10774).

2. Specific Differences

The differences between the new proposed legislation and the old proposed Part III may be summarized as follows:

1. The proposed new legislation is separate and distinct in itself. It does not incorporate by reference or otherwise section 1985 or any other previously enacted legislation.

2. Under the new proposed legislation the Attorney General can act only when he receives a complaint which sets forth reasonable grounds for belief that the complainant or minor dependent of the complainant is being deprived of the equal protection of the law. Under old Part III no complaint was necessary and the Attorney General was empowered to act whenever actions were engaged in which were proscribed by the first three paragraphs of section 1985 of title 42. The new provision represents a departure from the policy expressed in Part III of the 1957 bill and a reversion to earlies proposals. (See H. Rep. 291, p. 2, 85th Cong., 1st Sess.) It is in line with the proposals which have been made by leading sponsors of civil rights legislation. It is also in line with the policy of the Congress in the Civil Rights Act of 1957 with respect to the Civil Rights Commission which likewise can act only upon the basis of specific complaints (Section 104(a)(1) of the Act). This change avoids the possibility that suit may be brought where there is no desire by the parties aggrieved. These complaints are not expressly required to be inwriting, although as a practical matter they no doubt would be. There may be instances, however, in which it would be desirable to act on an oral complaint. For example, federal officials might receive informal complaints which upon

investigation proved to be of merit. Yet the complainants might be so intimidated by local pressures that they would be unwilling to commit themselves in writing. Such a situation would present one of the most compelling instances in which suit by the federal government would be appropriate. The important consideration is that the requirement of a complaint means that there can be no fear that the government will be a free-wheeling protagonist looking for trouble or stirring it up.

3. Under the new legislation the Attorney General is empowered to act only against persons who "are acting under color of any statute, ordinance, regulation, custom or usage of any state." The former Part III concerned conspiracies of individuals, not necessarily officials.

This change meets one of the objections to the old Part III that the resources of the United States would be pitted against those of a private person. Now it is only a question of suit by the United States against persons acting on behalf of the state, and they, presumably, would be furnished counsel by the state. Moreover, experience has shown that the acts of violence and lawlessness in disregard of judicial decrees and the law of the land in the field of civil rights have in large part been the result of the actions of duly constituted state authorities who disregarded these decrees and laws. When state leaders evidence a disregard of properly constituted authority and violate the rights of other citizens of the state who belong to a minority group lawless elements tend to take advantage of such situations and engage in acts of violence. Thus, the proposed legislation actually gets at the root of the evil without involvement in collateral, essentially private action. A person acts under the authority of the state not only when he carries out express state or local legislation but also when he uses official position or status to accomplish his purposes.

4. Section 2 of the new proposal sets forth 9 factors or criteria which the Attorney General must consider before instituting any action or proceeding. Under old Part III no factors governing the discretion of the Attorney General were spelled out.

As is indicated by the testimony of former Attorney General Brownell, (Hearings before the Subcommittee on Constitutional Rights of the Committee on the Judiciary, United States Senate, February 14, 1957, at page 7) there never was any intention on the part of the Executive Branch -- even under the old Part III -- to bring suit in all cases involving a denial of the constitutional rights covered by the Act and thus to displace the traditional role of private parties in the vindication of their own constitutional rights. As a matter of fact, it always

has been the policy of the Department of Justice in the field of civil rights to defer action where there was a probability that private or state action might lead to a correction of the practices involved. That policy would undoubtedly have been followed had Part III been enacted in 1957, and only in extraordinary cases, involving a specific federal interest or an inability on the part of the victims to proceed by themselves, would suit have been brought by the Attorney General. Nevertheless, fears were expressed that the discretion given to the Attorney General was too broad and that suits by the Government would soon make obsolete the traditional role of private suits. The present bill spells out the specific instances in which suit by the Government under the bill would be appropriate; thus it makes specific what was previously tacitly assumed: that suit by the Government was to be reserved to extraordinary cases.

The circumstances in which suit may be filed by the Attorney General are those in which there is a substantial public or governmental interest, duty or function. The factors in section 2 are closely related to such interests, as the following listing of the factors and the reasoning behind them shows:

(a) The number of similar actions which have been instituted pursuant to the Act and are pending. This is self explanatory. Obviously, the Department of Justice would not bring suit in a great number of different areas at the same time. Such massive intervention would clearly not be in the public interest. Moreover, personnel limitations would not permit such action even if it were otherwise desirable.

(b) The desirability and effectiveness of suit as compared with other means for correction of the acts or practices complained of.

It is quite possible that by discussions with local officials the United States Attorney or other representatives of the Attorney General will be able to reach a satisfactory solution without the necessity of suit. Many suits by private litigants particularly in such states as Kentucky, West Virginia, and Maryland have been little more than a consent agreement between Negro plaintiffs and school board under the aegis of the Court. Where another similar case is pending in the same state the Attorney General might well refrain from suit awaiting the outcome of the first case. Where the same issue has been decided -- e.g., use of public golf course facilities -- the fact that a new suit will almost assuredly result in the same

decision should cause the potential defendants in the new suit to consider seriously conciliatory means of settlement.

(c) The extent to which local or state officials are attempting to correct the acts or practices complained of. The Attorney General would be expected to refrain from suit where voluntary, good faith efforts at correcting the offending practices are being made by proper state officials. In Birmingham, for example due to discussions with Negro leaders, municipal Civil Service officials have recently acted to remove the "White Only" clause from their job requirements. Had such conciliation been adequately "engineered" at an earlier stage the pending suit for civil service employment rights need not have been filed. On the other hand, a pattern of legislative (and consequently factual) resistance of defiant "school-closing" and other massive resistance, might be a factor in favor of suit by the Attorney General.

(d) The prevalence of the acts or practices complained of, and (e) the number of persons affected by the acts or practices complained of. These criteria would primarily apply to state-wide acts and practices promulgated and fostered by state governments. Examples of this would be suits to enjoin patently discriminatory legislation designed to circumvent the constitutional obligations of the state to its citizens. Conversely, where, for example, the state adopted a local option plan or a pupil placement plan, and the only real complaint is in its local administration, the Department of Justice would probably wish to let private parties litigate the rights involved.

(f) The existence of prior judicial determinations of the question of law involved. As discussed elsewhere, many new legal issues are posed by the shifting resistance legislation. The novel and far-reaching problems presented by the recent Norfolk school-closing case, James v. Almond, could appropriately have been handled by the Attorney General. And in Arkansas it would probably have been far preferable to have the United States act as a party rather than as amicus.

(g) The danger to the complainant of reprisal by persons acting in concert. As an example of the type of suit that could be brought under this factor is the Montgomery, Alabama bus segregation case. The application of state and county desegregation laws affected not only Rosa Parks, the Negro woman accused of violation of the state laws, but all Negroes who would use Montgomery buses -- or any buses operated under state segregation laws. Reprisals were many against the ministers who instigated the suits. Bombings, etc. With the Attorney General as plaintiff a public right would have been upheld -- and the likelihood of vindictive action reduced. It must also be borne in mind that harassment of the NAACP for litigating in behalf of Negro pupils is the objective of many state laws. While mere inability of a plaintiff to sue is not of itself a reason for assumption of that burden by the Attorney General it does become significant where other means of support are hampered by state laws (so-called "anti-barratry laws"). On the other hand, the Attorney General may decline to file suit where action on his part might precipitate reprisals which the victims would not be willing to risk.

(h) The effect of the acts or practices complained of on members of the armed services of the United States or their dependents. If a local segregation regulation operates to deprive a member of the armed forces of the United States of protection certainly the Attorney General is the logical person to bring suit. Recently the local school authorities in Pulaski County, Arkansas refused admission to the dependents of a Negro sergeant stationed at the Air Force Base, despite an agreement that the school, which was constructed and partially supported by federal funds, would be operated on a desegregated basis. Under present law the standing of the United States to sue is not wholly settled. While apparently such standing exists, specific reference thereto in the bill would no doubt be helpful. The Pulaski situation could be duplicated in many localities whose schools serve armed forces personnel.

(i) The existence of a previous order, judgment or decree of a court of the United States with respect to the acts or practices complained of. If a previous order or judgment exists with regard to the acts complained of, it is nevertheless possible that relitigation is necessary because of changed state laws. E.g., the many Arkansas and Virginia laws enacted since the original court orders issued to the school boards in localities in those states. The seemingly endless chain of private litigation would badly need the reinforcing governmental link furnished by the Attorney General. On the other hand, where an order has issued and a gradual desegregation plan has been accepted by a court but plaintiffs wish to speed up the process the Attorney General would not normally expect to be "on call" for such litigation. Where a federal court has issued an order

which has not been respected, the Attorney General would be the most appropriate person to file suit to vindicate the power of the Court. Disrespect for federal judicial authority demands action by the Government for the purpose of restoring the supremacy of the law.

The effectiveness of the foregoing provisions as a limitation on the authority of the Attorney General is assured by the provision that as a prerequisite to suit he will be required to satisfy the court that he has acted in accordance with the limitations.

5. Part III of H.R. 6127, by incorporating 42 U.S.C. 1985, was directed only against conspiracies by two or more persons. Whatever may have been the justification for such an approach at the time the House passed that bill, there seems to be no sound basis for it in the present bill. There is simply no reason why unlawful action should not be subject to attack when it is attributable to a single individual or to serveral individuals acting independently. It has generally been thought that conspiracies are more dangerous than individual action, but here it would seem that the relevant factor is the effect or nature of the action itself, which can be assessed without regard for the number of people responsible.

6. The present bill is limited to denials by public officials of the equal protection of the laws. The old Part III, on the other hand, was concerned as well with actions by private individuals which interfered with the efforts of public officials to afford the equal protection of the laws to other persons or which obstructed federal officers in the performance of their duties, and with various other types of private action. The present bill is more realistic and useful in that it relates to the problems which are most the serious and pressing. The additional rights which are covered by 42 U.S.C. 1985 (and thus by the old Part III), such as the right to protection from limited types of private action and the right to be free from interference with privileges and immunities protected by the Constitution, are not of primary concern on the basis of our experience in recent years.

III

Alternatives Inadequate

1. Amicus Curiae

In past years the Government has entered a number of private suits as amicus curiae. In doing so it has demonstrated a recognition of its responsibility for ensuring constitutional rights. But the role of amicus, while it may be adequate in some instances, has proved on the whole to be insufficient. As amicus the Government is not free to institute actions on its own. The present bill corrects this defect.

Another disadvantage of participation as amicus is that the Government does not control the litigation and participates only at the sufferance of the court. In such cases it is always possible that the public interest and the interest of private litigants will not be identical. The possibility of termination of Government participation as amicus was raised just recently in the Little Rock case, when

the defendants filed a motion to remove the Government from the case. If such a move were successful it would be extremely unfortunate for the Government and for the public. Control of the litigation would seem essential once it is determined that there is sufficient public interest to warrant participation by the Government.

2. Criminal Penalties

It is true also that under 18 U.S.C. 242 the Government has the power to protect Fourteenth Amendment rights by the criminal prosecution of state officials responsible for suppressing them. But criminal prosecution would be a most ineffective remedy in the situations encompassed by this bill. In the first place, effective enforcement of such rights is simply not possible through the use of criminal sanctions. Moreover, criminal conviction seems an unduly harsh remedy where the practice being attacked, though unconstitutional, is in accordance with long-standing and deeply ingrained community attitudes. Criminal prosecutions do not provide the most appropriate means for arriving at rational and fair solutions of the problems presented. Also, a criminal prosecution, with its stringent requirements of proof of intent and with its other procedural characteristics is ordinarily not the most appropriate device where the primary objective is not to punish but to establish and define a constitutional right. Another disadvantage of criminal prosecutions is that they may not have the effect of protecting the right sought to be vindicated since they relate to past rather than to future conduct. It is true that a criminal conviction will have some deterrent effect, but it is by its very nature more particularized and less prospective in its effect than a civil injunction.

With due regard also for the obvious desirability of maintaining a spirit of cooperation and mutual respect between state and federal functions, it seems worthwhile to emphasize that unfortunate collisions in the criminal courts between federal and state officials can be avoided or at least minimized if the Congress would authorize the Attorney General to apply to the courts for preventive relief in civil rights cases. In such a proceeding the facts can be determined, the rights of the parties adjudicated, and future violations of the law prevented by a proper order of the court without having to subject state officials to the indignity, hazards, and personal expense of a criminal prosecution in the federal courts.

3. Private Suits

It is of course also true that the rights with which we are here concerned may be vindicated in suits by private individuals. Indeed, much of the large body of judicial precedent and decision in this area has been built up and great strides forward have been taken in such suits. Ordinarily private suits are the most appropriate means of enforcing constitutional protections; section 2 of the proposed bill embodies this belief. But that section also indicates the kinds of situations in which suit by the United States may be warranted. See pp. , supra.

IV

Miscellaneous

1. Jury trial

The House-passed version of the Civil Rights Act of 1957 was unfarily criticized on the grounds that it deprived the would-be defendants of certain basic safe-guards, i.e., a) of the right of indictment by grand jury; b) of the right of a trial by petit jury; c) of the right to confront and examine adverse witnesses; d) of the right to trial by jury in indirect contempt cases where the alleged contemptuous act constituted a crime under federal or state law and e) of the right to the benefit of limited punishments in indirect contempt cases. The right to indictment by grand jury is appropriate only to criminal cases and is not applicable to civil litigation. There is no deprivation of this constitutional guarantee, because this right was never afforded in these types of suits. The primary purpose of action at law is to compensate an aggrieved party in money damages for injuries which he has sustained. In actions at law the right to a jury trial is preserved by the Seventh Amendment to the Constitution (See also rules 38 and 39 of the Federal Rules of Civil Procedure). Prior to the founding of this country suits in equity were developed to afford appropriate relief where the law courts could not afford a plain, adequate and complete remedy. Because of the nature of a suit in equity and the remedy which is afforded such suits are addressed to the sound discretion of the Court and no jury trial is afforded. This distinction is preserved in Article III, Section 2 of the Constitution. It is entirely clear that there is no constitutional requirement for a jury trial in proceedings to punish contempt of court orders. Punishment in such cases is not for a crime defined by a general statute directed to the public at large; rather it is for violation of an express order of the court addressed to a specific individual or group of individuals. A person commits a contempt

the defendants filed a motion to remove the Government from the case. If such a move were successful it would be extremely unfortunate for the Government and for the public. Control of the litigation would seem essential once it is determined that there is sufficient public interest to warrant participation by the Government.

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of court only when he defies the authority of the court by refusing to obey such an order. This is a matter vitally affecting the integrity of the court itself and therefore is one which should be peculiarly within the province of the court to handle by itself. Especially in the area of civil rights where the defendants are public officials whose attitudes reflect those of the community, jury trial is particularly inappropriate since juries are likely to view the contempt proceeding as a test of the wisdom of the order rather than the authority of the court. Moreover, provision for jury trial is a departure from our common law traditions. Congress' power to alter that tradition should be exercised and has in the past been exercised only in very special cases. 18 U.S.C. 3691 provides for jury trial in contempt cases for violation of an injunction where the conduct upon which the action is based constitutes a criminal offense. But for good reasons, which need not be reconsidered at this time, Congress did not make this provision applicable where the injunction was entered in a suit brought or prosecuted in the name of or on behalf of the United States. Thus, a provision for jury trial in the present bill would represent a departure from a previously established general policy. Jury trials have also been provided in actions for contempt of an injunction arising out of a labor dispute (18 U.S.C. 3692). But it hardly seems necessary to mention the unique character of labor injunctions. In the issuance of such injunctions the courts are faced with extremely difficult choices as to competing social interests. In such situations it may be reasonable to give a jury some opportunity to pass upon the court's action. But no such reasoning is applicable to the cases involving a denial of constitutional rights. Moreover, it is interesting to note that in this area, too, there is an exception in the case of injunctions issued in actions brought by the United States to prevent strikes or lockouts which "imperil the national health or safety." (29 U.S.C. 178).

It is significant to bear in mind also that court orders issued as a result of suits by private individuals to enforce Fourteenth Amendment rights are not subject to this special requirement. It would seem anomolous indeed to change that practice merely because the United States was the plaintiff. This reasoning was equally applicable to the 1957 bill relating to voting rights and the inclusion of a jury-trial provision in that bill was unfortunate. But that provision should not operate as a precedent for the present bill.

[redacted]

March 6, 1961

(b)(6)-
privacy

The Hon. Everett Dirksen, Senator
Washington, D. C.

Dear Senator Dirksen:

In a recent news item your statement that you would "u
Rights bill" in a couple of weeks since President Kenn
to ask for one, also Representative Charles Halleck's criticism of
President Kennedy's omission of Civil Rights in his recent list of
16 most wanted bills, prompts me to write this letter.

Quite a number of people I have talked with following that disgusting and unwarranted demonstration by the Negroes during U. N. Ambassador Adalia Stevenson's talk, recently, at the United Nations, feel that you members of the Senate and House who introduce and legislate the laws of our land, should act cautiously and think twice before you introduce and enact bills that "would give statutory authority to the Equal Jobs Opportunity Commission and to give Federal aid to school districts to help them desegrate". Many, I have talked with, feel that, perhaps, President Kennedy, after seeing such an unruly and unwarranted demonstration by those Negroes at the United Nations, has put the "caution" light on a Civil Rights bill; this, we, in the South, hope is the President's reason for his failure to act on these controversial and alarming issues. If you will study the actions of the Negro in our country, you will realize that there is some sinister force behind their actions-- COMMUNISM! In the South, there has always been very good relations between the black and white races-- today, because of that sinister force, hatred has cropped up on both sides, something I've never seen before in the South.

No, I am not just an "anti-Negro" speaking. I am [redacted] to the [redacted] of one of the larger hospitals in the City of Memphis, and work in direct contact with about 95 negroes, both male and female, young, middle age and older ones, and I know I have the respect of everyone of these people-- they feel that I am kind to them and helpful to many of them in their numerous problems, but I know that they are not ready for EQUALITY, for many reasons, the main one - their lack of MORALS. I fear if Civil Rights is pushed too fast, we will have in this country - and particularly in the South - a situation almost as bad as the one now existing in the Congo. So I earnestly pray that you members of the legislative branch of our Government, use caution and judgment in "pushing thru" Civil Rights Bills.

Very truly yours,

MAR 29 1961

(Misc) [redacted]

CC: The Hon. Robert F. Kennedy, Att'y. Gen. ✓
The Hon. Arthur Goldberg, Sec'y. Labor

File

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