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President's Committee
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Civil Rights

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President's Committee
on
Civil Rights

June 10, 1947

MEMORANDUM

TO: Members of the President's Committee on Civil Rights

FROM: Robert K. Carr

SUBJECT: "Background Notes on the Lynching Problem," a Memorandum by Robert K. Carr and Nancy Wechsler

Incidence and Characteristics of Lynching

A good deal of statistical material has been gathered on lynching. However, since the investigative agencies' views as to whether a particular incident should be classified as "lynching" or as some other crime differ, there is no completely authoritative information. Furthermore there is no certainty that all cases in which private punishment by mob violence is substituted for legal process, or all cases of mob violence resulting in death or injury are reported.

The discrepancies in the available statistical data probably reflect both the difficulty of precise definition of lynching and the difficulty of collecting complete data. Clearly included as lynchings are acts of mobs who "take the law into their own hands" against persons suspected, accused, convicted or acquitted of crime. Clearly excluded are acts of the same nature committed only by one individual. When such an act is committed by a "mob" it has sometimes been a matter of disagreement. In the Crews case, for example, the Tuskegee Institute did not classify the violent incident as a lynching, apparently on the ground that the traditional mob element was not present. [1]. Proposed anti-lynching bills define "mobs" either as groups of three or more persons, or as groups of two or more persons. Where lynchings fall within the scope of crimes defined by the Civil Rights Statutes, only two persons need be implicated.[2]

Available statistics do not limit lynchings solely to mob violence against alleged criminals. Tuskegee has defined lynchings to include mob murder of Negroes accused of "insulting white women;" of Negroes who had hired a lawyer to safeguard title to a farm; who had worked on a job from which whites had been discharged; who had attempted to qualify to vote; who had been accused of failure to refer to a white man as "Mr."; and who had failed to complete payment on a funeral bill. Also recorded by Tuskegee have been lynchings for "communistic activity", activity in a sharecroppers union, lynchings of whites for "participation in strike depredations", for inciting racial troubles, being a foreigner, being disloyal, fomenting strikes.

By and large Tuskegee seems to use the term "lynching" to mean mob violence resulting in death. In his authoritative study, "The Tragedy of Lynching" Arthur Raper uses both Tuskegee figures and statistics from "The Negro Year Book, 1931-1932". While no definition of lynching is given by Raper, the element of public action by a mob in purposeful defiance of the law is stressed. Private conspirational murders, such as occur in gang wars, and deaths resulting from race riots are not considered lynchings by Raper.

The Tuskegee Institute has compiled data showing a total of 4,715 instances of lynching during the period 1882 to 1946 inclusive. Raper cites figures from the "Negro Year Book, 1931-1932" showing 3,745 lynchings during the period 1889 to 1932 inclusive, 166 more cases than the 3,558 instances reported by Tuskegee for these years. The National Association for the Advancement of Colored People records 4,982 lynchings from 1882 through February 1947 (that is, up to the Greenville, S.C. lynching). The reasons for these discrepancies are not clear.[a]

Some of the salient facts which can be derived from the available statistics will be discussed in the next section. This discussion assumes that the scope of the evil of lynching is by no means reflected by the statistics (regardless of any judgment as to how definitive the figures are). The tradition of lynching, the potentialities and psychological impact of the tradition, the relation of lynching to other civil rights violations, present problems whose impact is only partially shown by study of statistical material.

What the statistics show:

The Tuskegee statistics show a steady decline in lynching, in the country as a whole, as well as in the South, over the period 1882-1946. They also show a concentration of lynchings in Southern or border states and a concentration of attacks on Negroes. Up to about 1900 there was a fairly heavy incidence of lynchings of whites; in some years more whites than Negroes were the victims. From about 1900 on, the figures show a steady decline in the proportion of white lynchings to Negro lynchings. With a few exceptions the overwhelming majority of lynching victims in these years were Negroes.

Raper states that the average number of persons lynched from 1889 through 1899 was 187.5, from 1900 through 1909, 92.5, from 1910 through 1916, 61.9, from 1920 through 1924, 46.2 and to 1929, 16.8. The rate of decline, he reports, is less rapid in the South than in other parts of the country.

Over the period 1889-1930, Raper states, four-fifths of the persons lynched were Negroes, and the proportion of whites lynched during this period decreased from 32.2 for 1889-1899 to 13.2 for 1925 - 1929.

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[a]The Pittsburgh Courier for June 7, 1947 reports 29 lynchings since V-J Day. Tuskegee reports 7 for 1945 and 1946.

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The most recent available (Tuskegee) figures show that for the period 1927 - 1936 there were 136 lynchings of Negroes as compared with 14 lynchings of whites, and for the period 1937 - 1946 41 lynchings of Negroes as compared with 2 lynchings of whites.

Raper points out that if Texas, Arkansas and Oklahoma, where many Mexicans have been lynched, are excluded, almost 95% of all lynchings have been of Negroes. He also states that, among the whites other than Mexicans lynched in the South, several were foreigners. /1. A number of Western states, such as Montana, Colorado and Nebraska lead in lynchings of whites over the whole period; this represents a western phenomenon which has long since become relatively insignificant/. All statistics of actual lynchings studied bear out Raper's assertion that "In the typical (modern) lynching the victim is a Negro."

Over the whole period recorded by Tuskegee the leading states in lynchings of Negroes were, in the order given, Mississippi, Georgia, Texas, Louisiana, Alabama, Florida, Arkansas, Tennessee, South Carolina and Kentucky. For the same time the leading states in lynchings of whites were Texas, Montana and Oklahoma, Colorado, Arkansas, Louisiana, Nebraska, Missouri and Alabama, and Tennessee. Only the six New England states were entirely free of reported lynchings.

There seem to be no general statistics on the number of state proceedings brought, or convictions secured, against lynchers. Raper, in commenting on the result of an intensive study of the twenty-one lynchings of 1930, reports that "of the tens of thousands of lynchers and onlookers, the latter not guiltless, only forty-nine were indicted and only four have been sentenced. Chief among the factors rendering the courts ineffective was the prevalent indifference of peace officers and court officials and the apathy of the general white public concerning matters affecting Negroes." In this year indictments were found in 6 of the 21 instances of lynching.

Tuskegee figures, cited by Raper, show that between 1922 and 1926 grand juries investigated 17 lynchings and indicted 146 persons. According to both the "Negro Year Book, 1931 - 1932" and the Tuskegee statistics there were 153 lynchings in these years, of which 136 were of Negroes. Of the 146 persons indicted, 42 were sentenced to serve jail or chain gang terms, 5 received suspended sentences, none received death penalties. Raper makes the general statement that, "Although a few lynchers have been indicted, tried, convicted and sentenced, the courts usually deal with them in the most perfunctory fashion," and "thus far (1933) lynchers have been comparatively safe from indictment and conviction."

Tuskegee has collected data for most of the years from 1922 to 1946 showing the number of lynchings prevented, either by public officials or (comparatively infrequently) by private action. These figures, which omit the years 1926, 1944 and 1945, show a total of 785 prevented lynchings, of which approximately seven-eighths occurred in the South. Raper reports 569 prevented lynchings, almost 85% in the South, from 1913 to 1929, and points out that "in preventing threatened lynchings the peace officers, court officials, and the general public sometimes made promises to the mob which precluded an impartial trial for the accused."/ The infamous Scottsboro case is given as an example/

The Tuskegee statistics for the years 1927 through 1946 (omitting 1940, 1944, and 1945) show that the overwhelming majority of persons threatened by unsuccessful lynch mobs were Negroes.

For the most recent period the Tuskegee statistics report the following:

1) Leading lynch states from 1927 to 1946 inclusive are Mississippi (47), Georgia (29), Florida (22), Louisiana (17), Tennessee (12), Texas (13), Alabama (9), South Carolina (7), Missouri (5), and North Carolina (4).

2) From 1927 to 1946 inclusive there were 171 lynchings, 14 of whites, 157 of Negroes.

3) From 1939 to 1946 inclusive there were 29 lynchings, 2 of whites, 27 of Negroes.

4) From 1939 to 1946 inclusive there were 8 lynchings in Georgia, 6 in Mississippi, 5 in Florida, two each in Alabama and Tennessee, one each in Illinois, Louisiana, North Carolina, Missouri, South Carolina, and Texas.

5) From 1939 to 1946 inclusive (omitting 1940, 1944 and 1945) there were 78 prevented lynchings, 75 in the South, 3 in Northern or Western states. Of the intended victims 12 were white, 85 Negroes.

Federal Action - The Record

It is well known that for years Congress has been urged to pass a statute making lynching a federal crime. Thus far no such measure has been enacted. In the meantime, the Civil Rights Section in the eight years of its existence has found itself concerned with the lynching problem. State inaction, when it comes to punishing persons guilty of lynching, has been extremely common. The failure of the states to act has encouraged the Civil Rights Section to try to provide the protection against the crime of lynching that must exist in a civilized society.

The interest of the CRS in the lynching problem was increased greatly in July, 1942, when the Department of Justice received a directive from President Roosevelt, ordering it to investigate automatically all Negro deaths where the suspicion of lynching is present. It has fallen to the lot of CRS to supervise these investigations.

Federal jurisdiction in lynching cases, on the basis of existing statutes, is not as straightforward as it might be. The crime of lynching must be clearly distinguished from the crime of murder, because there is no general federal jurisdiction over murder in the ordinary sense. To provide any possibility of federal action the definition of lynching must be limited to the murdering of a person who has been accused of unlawful conduct. In all likelihood the

accused must be in the hands of public officers at the time he is seized and lynched, if the Federal Government is to have any chance of spelling out a federal crime. Section 51 and Section 52 of Title 18 of the United States Code provide the statutory basis for federal action in lynching cases. The text of these statutes is as follows:

Section 51 -

"If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same, or if two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured, they shall be fined not more than $5,000 and imprisoned not more than ten years, and shall, moreover, be thereafter ineligible to any office, or place of honor, profit, or trust created by the Constitution or laws of the United States."

Section 52 -

"Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects, or causes to be subjected, any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution and 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."

There is a stronger argument for the use of Section 52 in a lynching case than there is for Section 51. Where a state officer, either through neglect of duty[1] or deliberate connivance, permits a person in his custody to be lynched, it may be argued that he has, under color of law, willfully subjected a person to the deprivation of federal rights. The rights are those set forth in the due process and equal protection clauses of the Fourteenth Amendment. In one indictment secured by the CRS in a lynching case, these federal rights were defined in the following terms:

> the right and privilege not to be deprived of liberty and life without due process of law; the right to be secure in his person and to be immune from illegal arrest or assault and battery; the right and privilege not to be denied the equal protection of the laws and the right and privilege not to be subject to different punishments, pains and penalties by reason of his race and color than are prescribed for the punishment of citizens....[2]

1
The theory that Section 52 is violated when a state officer, through inaction, fails to provide a prisoner with protection against mob violence, received attention in the first Circular analyzing Section 52 issued by the CRS. This Circular suggested that it was possible the courts could be persuaded to uphold convictions of state officers under such circumstances, on the theory that their inaction amounted to a deprivation by the State of the right to due process of law, or the right to equal protection of the law. (Circular No. 3356, Supplement No. 1, pp. 20-21). But the CRS made no substantial effort to use this theory in its work. The failure of the Supreme Court in the Screws case, to uphold a conviction of a sheriff who took positive action in the maltreatment of a prisoner, does not offer encouragement that the use of Section 52 against "inactive" state officers will be sanctioned.

2
Indictment in the case of United States v. Trierweiler, Department of Justice, Division of Communications and Records, Case No. 144-24-5.

Use of Section 51 to prosecute persons who have participated in a lynching is much more controversial. The Fourteenth Amendment establishes the federal right of a person, accused of unlawful conduct, not to be deprived of life or liberty by state action, except by means of a fair trial. But where does the Constitution protect any similar federal right against private action? This question had to be answered by the CRS, if Section 51 was to be of any use in lynching cases. In 1943, Mr. Victor W. Rotnem, Chief of the CRS, made an interesting attempt to provide an answer. He argued that the Fourteenth Amendment establishes the right of due process of law in the state courts, and makes the continued existence of this right a matter of federal interest and supervision. This is illustrated by the numerous decisions of the Supreme Court since 1930, setting aside verdicts in state criminal cases because of the absence of due process of law. It follows, Mr. Rotnem asserted, that a lynching deprives the accused of the possibility of asking a federal court to review his trial by the state for its compliance with the requirements of due process of law. Congress has power to protect this federal interest in the presence or absence of due process of law in state proceedings, by making it a federal crime for private persons to interfere with or obstruct the normal routine of a state judicial proceeding.[3] Having so argued for the authority of Congress to make lynching by private persons a federal crime, it was Mr. Rotnem's belief that Section 51, because of its general language protecting all federal rights, might properly be interpreted as an exercise of this congressional authority.

Unfortunately, previous court decisions, particularly those of the Supreme Court, did not provide the CRS with any strong judicial support for Mr. Rotnem's thesis. Logan v. United States, a decision handed down by the Supreme Court in 1892, sanctioned the use of Section 51 to prosecute private persons who have seized and lynched persons accused of federal crime and in the custody of federal officers. The Court held that the authority of Congress to enact legislation for use in such a situation was not derived from any express language in the Constitution or its Amendments,

> "but arises out of the creation and establishment by the Constitution itself of a national government, paramount and supreme within its sphere of action. Any government which has the power to indict, try and punish for crime and to arrest the accused and hold them in safekeeping until trial, must have the power and duty to protect against unlawful interference its prisoners so held..."[4]

The Logan case, however, was not concerned with the lynching of prisoners in the custody of state officers. One might paraphrase the above language, and argue "Any government which has the power to review the proceedings in a triminal trial conducted

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[3] Victor W. Rotnem, "The Federal Civil Right 'Not to be Lynched'", 28 Washington University Law Quarterly (February, 1943), pp. 57, 67-68.

[4] 144 U.S. 263, 294 (1892).

by a state court, must have the power and duty to protect against unlawful interference the prisoners of a state before such trial." Such paraphrasing might seem a natural and logical extension of the doctrine in the Logan case, but the Supreme Court has never taken this step. Instead, in subsequent decisions, it proceeded in the opposite direction. Ten years before the Logan case, in United States v. Harris, the Supreme Court declared unconstitutional a federal civil rights act, not unlike the present Section 51, under which Harris and nineteen other persons were indicted. Four men, who had been arrested by a Tennessee sheriff for violating a state law, were seized and beaten by Harris and his cohorts. One of the four men died as the result of the beating. The Court held that it was impossible to uphold the federal statute as a valid exercise of congressional power under the Fourteenth Amendment, since it was directed against private as well as public action. The Court also stated that the federal statute could not be sustained on the basis of the Thirteenth Amendment, because it was designed to do more than prevent the placing of persons in slavery or involuntary servitude.[5] In 1906, in Hodges v. United States, the Court held unconstitutional another piece of civil rights legislation. Under this law, certain persons were indicted for using violence to force a group of Negroes to stop work on a private job. The Court held that the right to private employment is not secured by the Constitution.[6] This case had no direct bearing upon the lynching problem. It would not be mentioned here were it not for the fact that three years later, in a short per curiam opinion in Powell v. United States, the Supreme Court affirmed the action of a trial judge sustaining a demurrer to an indictment under Section 51. The indictment charged members of a mob with seizing and lynching a prisoner who was in state custody.[7] The Court cited the Hodges decision as sole authority for its action in the Powell case, though the two cases presented very different problems.

The only judicial support available for the Rotnem thesis is found in the opinion of a federal district judge accompanying a ruling denying a petition for discharge on habeas corpus. In this 1904 case, Ex parte Riggins, members of a mob that lynched a state prisoner had been indicted under Section 51. In his opinion, upholding this indictment, Judge Thomas Jones reasoned as follows: Under the implementing clause of the Fourteenth Amendment Congress may assist the states in the performance of their duty to guarantee due process of law to persons accused of crime. This it may do by passing a law making lawless resistance by private persons to

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[5] 106 U.S. 629 (1883).

[6] 203 U.S. 1 (1906).

[7] 213 U.S. 564 (1909).

state authority a federal crime. Section 51 is such a law.[8] Presumably the defendants were acquitted, for this case never reached the appellate courts.

Constitutional difficulties have not deterred the CRS from a vigorous and continuing attempt to make Sections 51 and 52 serve as a basis for federal prosecutions in lynching cases. Some measure of success has been achieved in having Section 52 play the role of an "Anti-lynch Act."

The first federal attempt in recent times to prosecute members of a lynch mob in a state case occurred in 1942, in connection with the lynching at Sikeston, Missouri, of a Negro prisoner being held in jail facing a state charge of rape. The Negro had resisted arrest, and was shot four times by the policeman who arrested him. Although he was at the point of death, a mob broke into the jail, seized the Negro, tied his feet to an automobile, dragged him through the streets of Sikeston, and then burned him to death. The Department of Justice made its usual investigation, and then turned its findings over to the Governor of Missouri for presentation to a state grand jury. The state grand jury refused to indict any persons, and the evidence was presented to a federal grand jury by the CRS.[9]

In seeking a federal indictment, the local United States Attorney was assisted by a prominent private attorney in St. Louis, who was appointed Special Assistant to the Attorney General. In addition, one of the CRS lawyers, Irwin L. Langbein, was sent to St. Louis. But the federal grand jury also refused to indict anyone, on the ground that no federal offense had been committed.

Curiously enough, a special report submitted by this grand jury closed with these words,

> "In this instance a brutal criminal was denied due process. The next time a mob might lynch a person

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[8] 134 Fed. 404 (1904).

[9] Generally it is the policy of the CRS not to proceed further with a lynching case when state authorities have made a real, though vain attempt to bring the guilty parties to justice. This policy was followed in a recent Tennessee lynching. A mob killed a Negro prisoner of the State Training and Agriculture School, who had been arrested and charged with killing the daughter of the School Superintendent. The United States Attorney reported to the CRS that the state conducted a thorough investigation of the case. Following a careful presentation of the evidence the state grand jury refused to indict. Accordingly, the CRS closed its file on the case. Department of Justice, Division of Communications and Records, Case No. 144-70-6.

> entirely innocent. But whether the victim be guilty or innocent, the blind passion of a mob cannot be substituted for due process of law if orderly government is to survive!"[10]

But the suggestion that the action of a mob, which prevents a state from providing a prisoner with the due process of law guaranteed by the Fourteenth Amendment, constitutes a federal criminal offense received no consideration in this report. One can only agree with Mr. Rotnem that this grand jury should have returned an indictment, if it felt so strongly about the right to due process of law, and left it to the Supreme Court to determine finally whether Sections 51 and 52 might properly be used as a basis for prosecutions in lynching cases.

The second case grew out of the lynching of Howard Wash in Laurel, Mississippi, in 1942. Wash, a Negro, was convicted in a Mississippi court of murdering a white man. Because the jury failed to recommend the death penalty, a sentence to life imprisonment became mandatory under Mississippi law. The day after he had been sentenced, a mob broke into the county jail, seized Wash, and lynched him by hanging. There was evidence that the jailor, Luther Holder, was derelict in protecting Wash, and that after the mob had overcome him, he said, "Come on, Wash, they want you." Within a few hours after the lynching, the Department of Justice started an investigation of the case, and early in 1943, the evidence was presented to a federal grand jury. Again a prominent local attorney in Mississippi, and Frank Coleman, a lawyer from the CRS, were appointed special assistants to the Attorney General to aid the United States Attorney in handling the case. This case survived the grand jury stage, and on January 12 indictments were returned against five persons, including four private citizens and Jailor Holder. Holder was indicted on Section 51 and Section 52 counts, the four other persons on a Section 51 count, and also on a count which charged a conspiracy under Section 88 to violate Section 52.[11] This last count illustrates the possible use of existing civil rights legislation to prosecute private persons in a lynching case, when there is evidence that they have induced a state officer to surrender a prisoner, thus depriving the latter of his right to due process of law. The case came to trial in April, 1943. At that time, the government moved a "not guilty" verdict for two of the defendants. The jury returned the same verdict for the other three defendants, in spite of the fact that one of the defendants had signed a confession of participation in the lynching. During the trial of this case, the defense attorney raised the issue of states' rights in a particularly obnoxious manner. Ultimately, a state grand jury investigated the lynching, but no indictment was returned. While no one was convicted, it was the general opinion of the government lawyers who participated in the case that the prosecution had a healthy effect upon Southern public opinion concerning lynching. Shortly after the indictment was returned, the Mississippi attorney who assisted the government wrote to the United States Attorney, calling his attention to a recent

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[10] Department of Justice, Division of Communications and Records, Case No. 158270-68.

[11] Department of Justice, Division of Communications and Records, Case No. 144-41-8.

incident in another Mississippi town in which two Negro soldiers had killed a sheriff. He wrote,

> "the people of the community got together, agreed that there would be no mob violence, but that the Negroes would have a fair trial. We think the situation is very encouraging.[12]

A third lynching case, in which CRS activity went beyond the investigation stage, was one involving the death of a demented Negro in Illinois, late in 1942. There was evidence showing that the Negro, a discharged soldier named James E. Person, had been wandering about the countryside along the Illinois-Indiana border, seeking food and frightening farm wives. He was tracked down by a mob and shot at as he ran into the woods. Six weeks later his dead body was found. The evidence was obscure as to whether the mob had any legal status as a posse. An Illinois sheriff and several deputies participated in the manhunt, but whether they were present at the time of the shotting was not clear. The facts of the case were brought to the attention of the local United States Attorney by a private citizen in Tennessee, and the Attorney referred the case to the CRS for clearance. Early in 1943, an Illinois state grand jury refused to indict anyone, because of lack of evidence. The FBI and the United States Attorney continued to investigate the case from the federal angle, with the aid of Frank Coleman of the CRS. In July, 1943, thirteen persons were indicted by a federal grand jury, on the charge of violating Sections 88 and 52. The sheriff and three of his deputies were among those indicted. The defendants filed a demurrer to the indictment which the federal district judge overruled. The facts of the case were not nearly so strong, from the government's point of view, as they were in the Sikeston and Wash cases, and the CRS became increasingly skeptical as to its chances of winning a conviction. But the CRS was anxious to develop a federal case where a lynching had occurred in the North, to show that the federal program was not directed exclusively against the South. It kept the case alive for more than three years, and, late in 1946, its efforts met with partial success. The charges against the sheriff and his three deputies were dropped, but the nine farmers entered pleas of nolle contendere, and each man was fined $200 and costs.[13] This punishment was shockingly inadequate, but the culmination of the case was a victory for the government. A technically successful prosecution of members of a lynch mob under Section 52 had been achieved.

In 1945, in the important case of Screws v. United States, the Supreme Court of the United States handed down a decision with respect to the use of Section 52 to prosecute public officers who have participated in a lynching. The very first words in the majority opinion recognized that, "This case involves a shocking and revolting episode in law enforcement." Claude Screws was the Sheriff of

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[12] Ibid., letter of 1/28/43.

[13] United States v. Trierweiler, Department of Justice, Division of Communications and Records, Case No. 144-24-5.

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[12] Ibid., letter of 1/28/43.

[13] United States v. Trierweiler, Department of Justice, Division of Communications and Records, Case No. 144-24-5.

Baker County, reputedly one of the most backward counties in the state of Georgia. In January, 1943, aided by a local officer and a deputy sheriff, Screws arrested Robert Hall, a Negro citizen of the United States, on a warrant charging theft of a tire. Hall was handcuffed and taken by car to the court house, and as he left the car he was beaten by the three men with their fists and with a two-pound blackjack. The defendants claimed that Hall used insulting langauge, and, although he was still handcuffed, reached for a gun. Consequently he was knocked to the ground and beaten for more than a quarter of an hour until he was unconscious. Then dying he was taken to the jail and thrown upon the floor. Ultimately Hall was taken to a hospital where he died without regaining consciousness. This killing was one of the three lynchings in 1943 recorded by the Tuskegee Institute.

The case was brought to the attention of the CRS by a Negro newspaper and the local United States Attorney. The usual investigatory machinery of the Department of Justice was set in motion, but meanwhile, the federal government made every effort to persuade the state of Georgia to prosecute the offenders.[14] Georgia failed to take any action. The reason for Georgia's failure to prosecute the perpetrators of such an extremely brutal crime is not clear. Apparently, the state authorities were willing to see action taken, but the initiative in such an affair lay with local officers. The district solicitor general, whose duty it was to start criminal proceedings, is reported by the United States Attorney to have felt "helpless in the matter." "He has no investigative facilities and has to rely upon the sheriff and policemen of the various counties of his circuit for investigation."[15] Such assistance in this case would have had to come from the accused persons themselves! It is a mistake to think of the choice in starting criminal proceedings in a civil liberties case as lying between the national government and a state government. Viewed more realistically, the choice lies between federal and local authorities. Virtually all state criminal proceedings, while conducted under state law, are local undertakings; the initiative in these proceedings must ordinarily be taken by county, city and town officers. Often a state officer like the attorney general has little to say about bringing criminal charges against a person. In the South, particularly, state interference with such matters is resisted by the local communities almost as vehemently as the states resist federal interference.

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[14] Information drawn from the file on the Screws case in the Department of Justice, Division of Communications and Records, Case No. 144-19M-4.

[15] Ibid. The Government brief submitted to the Supreme Court in the Screws case states that the solicitor general for the Albany Circuit testified, "There has been no complaint filed with me in connection with the death of Bobby Hall against Sheriff Screws, Jones and Kelly, As to whom I depend for investigation of matters that come into my Court, I am an attorney, I am not a detective and I depend on evidence that is available after I come to court or get into the case... The Sheriffs and other peace officers of the community generally get the evidence and I act as the attorney for the state." p. 50.

President's Committee
on
Civil Rights

CONFIDENTIAL

June 10, 1947

MEMORANDUM

TO: Members of The President's Committee on Civil Rights

FROM: Robert K. Carr

SUBJECT: "Negroes in the Armed Forces" Prepared by Milton D. Stewart and Joseph Martha

The importance of the armed forces in the struggle of minority groups for full achievement of their civil rights is too obvious to require labored discussion.* The armed forces are one of our major status symbols; the fact that members of minority groups successfully bear arms in defense of the country, alongside other citizens, serves as a major basis for their claim to equality elsewhere. For the minority groups themselves discrimination in the armed forces seems more immoral and painful than elsewhere. The notion that not even in the defense of their country (which discriminates against them in many ways) can they fight, be wounded, or even killed on an equal basis with others, is infuriating.

Perhaps most important of all is the role of the armed forces as an educator. Military service is the one place in the society where the mind of the adult citizen is completely at the disposal of his government. The use of armies to change public attitudes is an ancient and well-established tradition. In the recent war Great Britain and the Soviet Union, as well as the Axis powers successfully used the time during which their men were in service to "educate" them on a broad range of social and political problems. The efforts of the United States were much more limited and almost certainly less successful. Finally, the armed forces can provide an opportunity for Americans to learn to respect one another as the result of cooperative effort in the face of serious danger.

For a variety of reasons the minority group policies and practices of the armed forces during World War II had a considerable impact upon the thinking of the American people. A number of fundamental questions about social policy were raised. Although this memorandum deals with the utilization of Negroes in the armed forces, it is not meant to suggest that other minority groups did not suffer equally from discrimination. The difficulties which they had were probably in direct ratio to their visibility. Since most of the attention, documentation, policy statements and pro-tolerance education has dealt with Negroes, it is easiest to deal with their problems in the service. The Committee has already heard from Mr. Masaoka, about the problems of the Japanese Americans. At the beginning of the war no branch of the service would accept Americans of Japanese descent. Although the Army later relaxed this rule to admit a volunteer combat unit

*Because of functional differences, which are reflected in a difference in civil rights problems, the Veterans Administration will be covered in a later memorandum on government services.

and a Pacific intelligence group, the Navy continued its policy throughout the war; it did, however, while refusing to accept them into its own ranks, ask the Army for the loan of some Japanese American intelligence workers for operational use.

The main problems confronting Negroes in the armed forces during the War were:

(1) Severe limitations on their recruitment and promotion.
(2) Backlog of prejudice against them among white officers and men.
(3) The official policy of segregating them during their service (the one exception to this policy—and its results--will be discussed in another memorandum)
(4) Tension between Negro soldiers and white civilians, particularly in Southern communities and in others where public transportation and recreation facilities were inadequate.

This memorandum is limited to a consideration of official policies of the armed forces, administrative action to implement its policies and a statistical summary of the utilization of Negroes at the peak of armed forces strength and at a point after demobilization.

During World War I the patterns of discrimination in the armed forces were traditional and undisguised. Whatever slight efforts there might have been to improve them were quickly dissipated in the post-war period. During both wars about one in every ten men in the United States Army was a Negro. In peacetime, however, the ratio was closer to one in forty. Much the same was true of the Navy and Marine Corps.

In peacetime too, the utilization of Negroes in every branch of the armed forces was almost exclusively confined to traditional types of service groups such as steward ratings in the Navy and Marine Corps and Engineer and Quartermaster Corps in the Army. At peak wartime strength the same Negroes were acceptable in all types of combat duty and in many instances received commendations for outstanding service. In the case of the Army and Navy a token Negro officer complament was equally acceptable, although always in command of Negro enlisted men. With the end of hostilities these advances were quickly lost and the Negroes returned to their traditional duty assignments.

What justification there might have been for this representation during and after World War I on the basis of low levels of Negro education, and social origins, was to some extent eliminated in World War II. During the first World War one out of every five Negroes was recruited from the North; in the second World War the proportion was one of every three. In the first World War only one out of every 100 Negro soldiers were high school graduates; during the second World War almost one out of every five. During the first World War one in every 20 Negroes had had some high school training, as against one out of every four in the second World War. Whereas 95 percent of Negro troops in the earlier war had only grade school educations,

this number had dropped to 57 percent during the second World War. The natural consequence was a more prevalent intense feeling on the part of Negroes that they were entitled to continuing improvements in their assignments in the forces.

The following discussions of statements of policy indicate developments which Negro groups had at once considered encouraging and disappointing. The official statements on recruitment and enlistment as received from the War, Navy and Treasury (Coast Guard) Departments follow:

A. Policy Statements*

Navy Department:

(1) Navy Department

"No distinction is made between individuals wearing a naval uniform because of race or color. The Navy accepts no theory of racial differences in inborn ability but expects that every man wearing its uniform be trained and used in accordance with his maximum individual capacity determined on the basis of individual performance."

The historical development of this policy may help to clarify the present status quo. At the end of World War I (June 1922) the enlistment of Negroes in other than the Steward Branch was discontinued. This policy remained in effect until early 1942, when Negroes were again accepted for enlistment in the general service ratings of the Navy.

As a result of the recent demobilization, it was discovered that the number of enlisted personnel in the various rating groups was not in agreement with the peacetime requirements of the Navy. The Steward's Branch, which has traditionally drawn the bulk of Negro enlistments, was approximately 35% over-manned. A previous order prohibited members of the Steward Branch from being assigned to training in other ratings. It was cancelled during demobilization to allow Negroes at present in excess of complement in this branch to transfer to general ratings.

Experience during World War II caused some modifications of directives originally issued in the early stages of the war. For example, a directive regarding the assignment of Negroes issued in the summer of 1943 stated that wherever possible, activities having large numbers of Negroes would become all-Negro. This type of segregation has since been repudiated by the Navy and a blanket non-segregation policy is now in effect. An interesting paragraph from a similar directive to commanding officers of all auxiliary ships is worthy of note here:

"It will be helpful to point out that past experience has proven the desirability of thoroughly

*Based on official correspondence to President's Committee on Civil Rights from Secretaries of War, Navy and Treasury.

> indoctrinating white personnel prior to the arrival of Negroes. It has been the experience that when this is done and the white personnel thoroughly understand the Commanding Officer's policy and what is expected of them, the chances of racial friction are materially lessened."

As a further implementation of present Naval policy, the Navy Department has recently gone on record in favor of the Powell Bill (H.R. 279) to abolish race segregation in the armed forces.

During the war Negroes were accepted in the Women's Reserve under the same qualifications and standards as other members of the Women's Reserve. The training program was identical and all ratings and ranks were open to Negroes and whites alike. The Negro women were completely assimilated into this group of Naval personnel.

The policy with regard to Annapolis is the same as that for the rest of the Naval Service. Since 1872 there have been six Negroes accepted into the Academy for midshipman training. Of these, three were dismissed because of studies, one on a disciplinary charge, one resigned and one midshipman is in attendance at present.

(2) Marine Corps

Due to a reduction in the estimated peacetime requirements, present Marine Corps policy (March 1947) states that Negro first enlistments will only be accepted for Steward duty. Re-enlistments of Negro personnel into the regular establishment continue to be without quota restriction.

Prior to World War II, recruitment into the Marine Corps was limited to white citizens. In April 1942, the policy was changed to permit recruitment of male Negro personnel by voluntary enlistment into the Marine Corps Reserve (active). Enlistments were controlled by quotas periodically revised in accordance with the estimated requirements and anticipated strength of the Marine Corps. In December 1942, it was determined to procure all future male Negro personnel through Selective Service. Quotas of Negroes were not to exceed 10 percent of the total Marine Corps quota, and voluntary enlistments were ended. Procurement of male Negro personnel resumed in December 1945, when voluntary enlistments were again accepted if the Negro applicant had been honorably discharged from the Corps. Recruitment under this policy was limited to quotas, depending upon the estimated requirement for male Negro personnel in the peacetime regular establishment. This quota continued to be reduced until March, 1947, when the present policy was established.

No female Negro personnel were taken into the Marine Corps during World War II nor were there any Negro officers on active duty. At the time of demobilization six Negro candidates were under instruction at Officers' training school. All of these candidates were released to inactive duty with the option of accepting a reserve commission.

The Marine Corps' use of Negroes in World War II, and its plans

for their utilization in peacetime, highlight the sharp change since the War's end. At various times during the war, Negro units included: anti-aircraft, artillery and infantry battalions as well as the usual depot and ammunition companies, security forces and steward personnel. Negro units now in existence and presently planned consist of depot companies, security forces for Naval establishments, logistic and training establishments and steward personnel.

(3) Coast Guard

In recruitment of personnel for the Coast Guard at this time, no distinction is officially made with regard to Negro enlistments. Prior to the war, Negro personnel were trained particularly for duty in the Cooks, Bakers and Stewards ratings. During the war general ratings were open to all minority groups. The same opportunities and facilities are available to Negroes as to all other recruits.

War Department

Prior to World War I Negroes were recruited during peacetime to fill existing vacancies in four Negro Regiments (two Infantry and two Calvalry). These units had been authorized by Congress as part of the reorganized regular Army following the Civil War. Requirements for enlistment or re-enlistment were similar to those of other eligibles for like units.

During World War I, Negroes were inducted for additional units comprising a division for infantry regiments and activated service units.

Between World War I and II, recruitment was resumed for vacancies in the 24th, 25th Infantry Regiments, 7 Negro Service and School Detachments and one Quartermaster Company. An April 1937 policy statement announced that in a national emergency, Negroes would comprise 9 percent of the total mobilized strength of the Army at all times.

During World War II, Negroes were inducted into the Army in numbers supplied by the War Department to meet the requirements of activated Negro units. On January 31, 1942, Negro enlistments were limited to those cases in which the enlistment was "obviously to the best interest of the Service." This policy was adopted because of the critical billeting shortage.

Post war recruiting until July 1946, was equally aimed at all eligibles. A minimum mental standard equivalent to a score of 70 on the Army general classification test was established for white and Negro alike. By July 1946, Negroes made up more than 16 percent of the enlisted strength of the Regular Army. On July 17, 1946, an upward revision of the minimum mental standard for Negroes was made. They were now required to meet an Army general classification score of 99. The requirement for white recruits is much lower. There was authorization for re-enlistment of Negroes with certain specialties. This policy is effective at the present time.

Volunteer Negro women were accepted for enlistment in the Women's Army Corps in accordance with policy applicable to all other eligibles.

They may currently reenter the service in accordance with existing policy. No new enlistments have been made in the Women's Army Corps since the end of hostilities.

Army nurses, white and Negro, were accepted upon application for service during the recent War on an equal basis in accordance with individual qualifications and the need for them. This policy will be continued during the post war period.

Before World War II, the policies by which National Guard units recruited and assigned Negro personnel were determined by the various State governments. Some states had no Negroes in their National Guards. Some had Negro enlisted men, but no officers. Some had small or large Negro units which were segregated. The general pattern was for separated assignment to wholly Negro outfits. Post-war policy on the assignment of Negroes to National Guard units is still in a state of flux. Appendix 2, includes a table compiled by the President's Advisory Commission on Universal Training. It reports the policies adopted by 36 states and territories, whose National Guard bureaus replied to a questionnaire. Ten states replied that their Negro populations were too small to warrant guard units. Twenty-eight said that Negro National Guard officers could be commissioned under the law. Twelve states reported that separate Negro units had been established or were contemplated. And 3 governments (Connecticut, Hawaii and Idaho) reported that Negroes could be integrated with white units.

To date, thirty Negro cadets have been accepted by the United States Military Academy at West Point. Of the thirty certified for entrance, eleven have graduated with commissions as second lieutenants, one resigned, fourteen were separated before graduation for deficiencies and four are undergraduates.

B. Administrative Action to Implement Policy

Navy Department

A pamphlet "Guide to Command of Negro Personnel" was prepared for use in the indoctrination of officers. Special training courses for officers supervising Negro personnel were set up at Great Lakes, Illinois, and Hampton, Virginia. In addition to this, directives as quoted in the statement of policy regarding assignment and utilization of Negro personnel were sent to all commands.

(1) Marine Corps

Marine Corps directives were issued to all commanding officers explaining the planned employment of Negroes in the Corps, requiring that every effort be made to locate and group those having the qualities needed for non-commissioned rank. They expressed the policy that so far as the exigencies of the service would permit, Negro Marines would be grouped and assigned to the type of duty which they preferred. No special directives have been issued on the integration of mutually supporting white and Negro units. But emphasis has been placed on the indoctrination of white units serving in the vicinity of Negro units along the lines mentioned above.

(2) Coast Guard

Since the Coast Guard operated under the Navy Department during the war, directives and training material were issued to Navy and Coast Guard alike.

Although no records are kept on the race or color of graduates, the Coast Guard service has no knowledge of any Negro ever having been accepted or graduated from the Coast Guard Academy. There are, however, no regulations prohibiting their attendance, and appointment is made on the basis of open competitive examinations.

War Department

The Army, perhaps more acutely than any other branch of the service, was aware of its minority problem because of its size, its effect upon the efficiency of training camps in divergent areas of the country, and the necessity to insure maximum utilization of all inductees at every level.

An extensive indoctrination program was undertaken for both officers and enlisted men. Pamphlets, memoranda, films, and orientation discussion were circulated to create tolerance and acceptance of minority troops in order to facilitate maximum military efficiency.

In October, 1944, Officers Training Schools initiated courses of instruction on the Negro Soldier, utilizing an Army Services Forces manual entitled, "Leadership and the Negro Soldier." Several similar pamphlets were subsequently published to develop a better understanding of and to effect harmonious relations with Negro units. Films and orientation lectures were available to both officers and enlisted men. Several of these films - "Negro Soldier," "Team Work," "Don't Be a Sucker," and "How Do We Look to Others," have been given army-wide distribution. Among the pamphlets published by the Information and Education Division of the War Department's special staff, were: "The Negro in America," May 1945; "Divided We Fall", December 1944; and "The Army Talks" series among which the best known is No. 170. It deals with Negro manpower in the army, Negro platoons in composite rifle companies and the problems of minorities in the armed forces. (This particular pamphlet has recently been the subject of a number of newspaper articles since it is based on recommendations made by the Gillem Board). A recent War Department circular directs the use of this pamphlet in the indoctrination of all personnel.

To further implement War Department policy a series of orders were issued about the use of facilities on army posts. Among their more important provisions was one permitting Negro membership in officers' clubs, messes, or similar organizations on a military reservation to all officers on duty at the post. In 1943, a policy was adopted prohibiting designation of recreational facilities for any particular race, although permitting allocation of such facilities to organizations in whole or in part, permanently or on rotation basis, provided equal opportunities for usage was granted to all personnel. In July 1944, this policy was further amended to permit the use of recreational facilities on a post to any

personnel located thereon and is still in effect.

The Gillem Board's Report

The War Department is aware of the shortcomings of its policy during the war and its failure to make the most effective use either of the Negro potential in the country or the Negro manpower assigned to the Army. On October 4, 1945, a board of officers headed by Lt. Gen. A. C. Gillem was set up to study the operation of War Department policies over the period of the two world wars and to make recommendations for changes.

According to the Gillem Report the bases of its recommendations are: (1) "the army needs to develop the full capabilities small or great, of every man allotted to it; (2) the improved status of Negroes in education, craftsmanship and participation in government makes a broader base of selectivity available; (3) Negroes should have full opportunity to fulfill their responsibilities as citizens in national defense; and (4) the experiences of white and Negro troops during the war indicated that modifications of policy are desirable."

The essential provisions of the revised policy and program are:

(1) During peace as well as war, Negroes will constitute approximately one-tenth of the army as they do of the civilian population;

(2) In the peacetime army Negro units will be activated, organized and trained in a wider variety of combat and non-combat arms and services than has been peacetime practice heretofore;

(3) There will be no all-Negro divisions in the permanent postwar military establishment such as the 92nd and 93rd Infantry divisions of World War I and II. There will be Negro companies, troops, batteries, squadrons, battalions and regiments. The largest all-Negro unit will be a regiment, group or combat team;

(4) Groupings of Negro units with white units in composite organizations will be accepted policy.

(5) Negro personnel with special skills and qualifications will be employed as individuals in appropriate overhead and special units;

(6) White officers assigned to Negro units will be replaced by qualified Negro officers;

(7) Military considerations being equal, Negro units will be stationed in localities and communities where attitudes are most favorable and in such numbers as not to overburden local civilian facilities;

(8) At installations to which both Negro and white units are assigned, War Department policy directs that Army facilities for recreation and transportation shall be equally available to all military personnel regardless of race.

It is important to note that in its "Army Talk" pamphlets describing the findings of the Gillem Board, the War Department stresses the point that it is not an instrument of social reform. "War Department concern with the Negro is focused directly and solely on the problem of the most effective military use of colored troops. It is essential that there be a clear understanding that the army has no authority or intention to participate in social reform as such but does view the problem as a matter of efficient troop utilization."

Much of the same approach will be found in the Army's attitude towards off-post relationships with the community. In view of the many articles written about the race problem in such camps as Fort Benning, Georgia, a particular sore-spot with the Negro press, the statement of policy seems to lack realism. Army Service Forces Manual M5 states: "Soldiers, Negro and White, should be instructed that the Army has no authority to alter in any direction the existing community pattern as a matter of social reform, and that it will expect the soldier, when in the community to abide by its laws. This, it should be emphasized, applies to all sections of the country and to all soldiers alike. Just as military reservation patterns are the business of the Army so are community interracial patterns the business of the community."

Whether the elimination of racial segregation in Army operated transportation makes the service an educational force for social reform is open to question. It would be difficult to say to what extent a completely non-segregated, non-discriminatory policy in a Southern Army camp would have an educational effect upon the local community. There seems to be a reasonable doubt, in any case, as to whether commanders of certain Southern army camps are putting into effect the latest policies set down by the War Department.

Prewar practice and Policy left decisions on segregation and other discriminatory patterns to the discretion of the local Commanding officer. As was pointed out above, this policy has since changed, but a strong re-affirmation by the Commander-in-Chief and more aggressive implementation by the War Department itself might have a more positive effect.

Those portions of the Gillem Board report which have received major criticism deal with segregated units and the quota system. The former issue has received wide publicity due to a recent bill (H.R. 279) introduced by Representative Adam Powell, The measure is extremely short and is quoted herewith: "...effective six months after the date proclaimed by the President to be the date of termination of hostilities in the present war, the separation of races in the armed forces of the United States whether by means of separate quarters, separate mess halls, or otherwise, is hereby prohibited." According to correspondence released to the Committee on Armed Forces of the House of Representatives, the Navy and the Coast Guard interposed no objection to the enactment of the bill. The Army however, in a lengthy statement referring to the Gillem Board's report, did not recommend enactment of H.R. 279, but said: "The War Department believes that progressive experimentation pursuant to the recommendations of the board of general officers will in time accomplish the purpose of the proposed legislation."

The Number of Negroes in the Armed Forces

A series of Staff requests to the Secretaries of War, Navy and Treasury produced the statistics which are summarized in Appendix 1. They describe the ratio of Negroes to whites in the several branches of the Armed Forces at the peak of their wartime strength and after demobilization. The Staff has available still further statistical information on the actual grades in which Negroes served during the war and are now serving. The data presented in Appendix 1 are designed to give a broad, overall view of the role of the Negro in the Armed Forces. The three things brought out most sharply in the statistics are:

(1) The systematic and successful effort by the several services to hold the number of Negroes to a rigid proportion of the total personnel — both at the peak of wartime strength and after demobilization.

(2) The Army's quota is much closer to the actual Negro population ratio than any of the other forces.

(3) The service of Negroes as officers in all four branches (and as enlisted men in the Navy, Marine Corps and Coast Guard) is way out of line with even the quota systems. How much of this is due to lower educational level of Negroes is debatable.

There is no need to comment at length on the fact that there are only three Negro officers out of almost 70,000 in the Navy, Marine Corps and Coast Guard. More than one out of every ten white men in uniform during the war and after demobilization was a commissioned officer. About one in 100 Negroes held such a rank. Additional data which the Staff has available indicate the high concentration of Negro personnel in most menial ratings, particularly in the Navy, Marine Corps and Coast Guard.

The Future

The Senate Committee on Armed Forces has reported favorably on the proposal to merge the armed forces into a single Department. There has as yet, been very little discussion about the consequences of the merger on armed forces policy with respect to Negroes and other minority groups. It is apparent that as in every other field, the merger will provide an opportunity to reconsider the inequality of rights which the armed forces now extend to their members. At the present moment the Navy has a theoretically more desirable policy on the handling of Negroes, since it does not explicitly involve segregation, or a quota system. On the other hand, everyone agrees that the further away from the office of the Secretary of the Navy one gets the less significance the official statement of policy on this matter has. The Army, on the other hand, with a less acceptable policy statement, has taken much more efficient and aggressive action to implement its policy throughout the Service. Ideally then, the merger ought to be used to generalize to all branches the Navy's

non-segregation statement of policy, and the Army's serious-minded attempt to implement whatever policy it has, straight down the line.

Another, and extremely urgent area in which armed forces policy on the handling of Negroes might be re-examined in the light of pending legislation, is the universal training and reserve organization of units. Some criticism has already been leveled at the Army for its failure to include Negroes in the experimental unit at Ft. Knox, Kentucky, composed of 18-and 19-year old boys. Appendix II consists of quotations from the Report of the President's Advisory Commission on Universal Training which bear on the civil rights of Negroes in the armed forces.

Appendix 1: Table 1:

C O N F I D E N T I A L
For use by the President's Committee
on Civil Rights Only.

RATIO OF NEGROES TO WHITES IN THE ARMED FORCES
AT PEAK WARTIME STRENGTH
(Includes male and female personnel)*

	Negro (1)	White (2)	Total (3)	Percent Negro (4)**	Percent Negro (5)***	Percent White (6)***
ARMY:						
Officers	6,873	885,514	892,387	.8	.8	7.8
Enlisted Men	687,506	6,711,443	7,398,949	9.3	78.0	58.9
Total	694,379	7,596,957	8,291,336	8.4	78.8	66.7
NAVY:						
Officers	53	335,989	336,042	.02	.006	2.9
Enlisted Men	166,897	2,837,499	3,004,396	5.6	18.9	24.9
Total	166,950	3,173,488	3,340,438	5.0	18.9	27.8
MARINE CORPS:						
Officers	0	37,664	37,664	0	0	.3
Enlisted Men	16,675	423,273	439,948	3.8	1.9	3.7
Total	16,675	460,937	477,612	3.5	1.9	4.0
COAST GUARD:						
Officers	6	12,713	12,719	.05	.0006	.1
Enlisted Men	3,629	155,170	158,799	2.3	.4	1.4
Total	3,635	167,883	171,518	2.1	.4	1.5
Total Officers	6,932	1,271,880	1,278,812	.5	.8	11.1
Total Enlisted Men	874,707	10,127,385	11,002,092	8.0	99.2	88.9
TOTAL MEN UNDER ARMS	881,639	11,399,265	12,280,904	7.2	100.	100.

*Based on official statistics submitted by the various Services in response to staff requests. The peak strength of the Army was reached on May 31, 1945, the Navy August 31, 1945, the Marine Corps July 31, 1945, the Coast Guard March 31, 1945. Officers in all categories include Warrant Officers.
** Percent that column 1 is of column 3. *** Percent of total Negroes and Whites in Armed Forces in all Cat.

Appendix 1: Table 2:

C O N F I D E N T I A L

For Use By The President's Committee on Civil Rights Only.

RATIO OF NEGROES TO WHITES IN THE ARMED FORCES AFTER DEMOBILIZATION*

	Negro (1)	White (2)	Total (3)	Percent Negro (4)**	Percent Negro (5)***	Percent White (6)***
ARMY:						
Officers	1,317	143,166	144,483	.9	1.1	8.7
Enlisted Men	92,966	910,499	1,003,465	9.3	78.0	55.4
Total	94,283	1,053,665	1,147,948	8.2	79.1	64.1
NAVY:						
Officers	2	58,671	58,673	.003	.002	3.6
Enlisted Men	21,793	409,444	431,237	5.1	18.3	24.9
Total	21,795	468,115	489,910	4.4	18.3	28.5
MARINE CORPS:						
Officers	0	7,798	7,798	0	0	.5
Enlisted Men	2,190	93,349	95,539	2.3	1.8	5.7
Total	2,190	101,147	103,337	2.1	1.8	6.2
COAST GUARD:						
Officers	1	2,981	2,982	.03	.008	.2
Enlisted Men	910	17,796	18,706	4.9	.8	1.1
Total	911	20,777	21,688	4.2	.8	1.3
Total Officers	1,320	212,616	213,936	.6	1.1	12.9
Total Enlisted Men	117,859	1,431,088	1,548,947	7.6	98.9	87.1
TOTAL MEN UNDER ARMS	119,179	1,643,704	1,762,883	6.8	100	100

*March 31, 1947 - latest figures.
** Percent that column 1 is of column 3.
***Percent of total Negroes and Whites in Armed Forces in each category.

C O N F I D E N T I A L

President's Committee
on
Civil Rights

APPENDIX II

EXCERPTS FROM THE REPORT OF THE PRESIDENT'S ADVISORY COMMISSION ON UNIVERSAL TRAINING WHICH BEAR ON CIVIL RIGHTS

A. A Strong, Healthy, Educated Population

....

2. A high general level of education throughout the country, with advanced schooling made the privilege of all who can qualify for it by their own merit and certainly without regard to race--a factor all too prevalent in many States. This is recommended not only so that we may have enough people in the more special and technical fields that lead to industrial and scientific preeminence but also so that we may have an informed public opinion, cognizant of society's problems, and a universal understanding among our citizens of their duties as citizens, of their responsibility for the general welfare, of their country's obligations in the world community, and of the benefits of democracy.

3. Improved physical and mental health, not only for the happiness they would bring, but also to make available to the country, in peace or war, its full potential manpower resources. We cannot squander our most precious asset by failure to correct the conditions of neglect that led to the rejection for health reasons of one-quarter of the young men examined for military service in World War II.

4. An understanding of democracy and an increased sense of personal responsibility on the part of every individual for making democracy work. This involves the substitution of cooperation for conflict in all human relations and the elimination of all forms of intolerance. It is predicated on the moral and spiritual strength of our people and on a recognition that our form of government rests on the will and active support of the people. Freedom and democracy must be reborn in and rewon by each generation.

... Want, ill health, ignorance, race prejudice, and slothful citizenship are enemies of America as truly as were Hitler and Mussolini and Tojo. (Page 20 and 21)

V. The Role of Universal Training in Supporting the Requirements for National Security

....

A. Military Benefits of Universal Training

...Further, the Commission considers harmful the policies of the States that exclude Negroes from their National Guard units. The civilian components should be expanded to include all segments of our population without segregation or discrimination. Total defense requires the participation of all citizens in our defense forces. (Page 33)

APPENDIX II

EXCERPTS FROM THE REPORT OF THE PRESIDENT'S ADVISORY COMMISSION ON UNIVERSAL TRAINING WHICH BEAR ON CIVIL RIGHTS

. . . .

B. Fundamental Principles of a Program

.... it must provide equality of privilege and opportunity for all those upon whom this obligation rests. Neither in the training itself, nor in the organization of any phase of this program, should there be discrimination for or against any person or group because of his race, class, national origin, or religion. Segregation or special privilege in any form should have no place in the program. To permit them would nullify the important living lesson in citizenship which such training can give. Nothing could be more tragic for the future attitude of our people, and for the unity of our nation, than a program in which our Federal Government forced our young manhood to live for a period of time in an atmosphere which emphasized or bred class or racial differences. (Page 42)

D. Control, Direction, and Organization of the Program

. . .

We recommend that the personnel of the commission should include a group of full-time, well-paid civilian inspectors, whose functions would be principally these: (1) To keep the commission fully and continually informed of the manner in which the program is actually operating in the field; (2) to advise the commission of the extent to which its policies are being carried out in practice at the local level; (3) to provide an avenue through which any individual in training may submit complaints with the assurance that they will be promptly considered by someone outside the operating agency under whose jurisdiction he falls, and (4) to locate any incompetent or irresponsible training personnel, and to discover malpractices in the camps, and to inform the commission thereof so that immediate remedial action can be undertaken. (Page 47)

We recommend that a volunteer civilian advisory committee, composed of representative citizens, be established in the largest city or village in the immediate neighborhood of each training camp. Its object would be to work with the commanding officer or director of the camp on the nonmilitary aspects of the program, and particularly those relating to the health, education, religion, morals, and recreation of the trainees. We should hope that the authorities in charge would seek the frequent counsel of such a committee, and that the two could cooperate extensively in handling some of the many off-post problems that will inevitably arise in a training program. (Page 48)

E. Basic Training Period

...

The individual must be surrounded during each of the 24 hours in every one of the days of his training with the kind of influences and environment that give life and substance to the lessons in the information courses themselves. One important phase of such environment must be the opportunity for every boy to mingle on a basis of full equality with other boys of all races and religions, and from every walk of life and many different parts of the country. (Page 63)

F. The Options

....

3. Grants-in-aid or scholarships in connection with educational options.

...

The selection of persons who would receive such aid should be in accordance with policies and standards prescribed by the commission, and should be carefully supervised by it. Selection should be based exclusively on the principle of choosing those men who are best qualified to carry out the purposes for which the grants or scholarships are to be awarded from among that group of persons who (1) have been accepted at institutions where those purposes can be properly carried out and (2) apply for such grants or scholarships. (Page 85)

The Staff Study on:"The Status of the Health, Education, and Well-being of Children in Relation to National Security" discusses the underprivileged role of Negro children and youths eligible for military training. It points out that there was an unusually high rejection rate of Negro boys (18- and 19-year olds) in all occupational groups. "At one period during the war...mental disease, mental deficiency and failure to meet minimum intelligence standards accounted for about two out of every five rejections of 18-year old white boys and two out of three of those of Negro boys of like age...in a period when educational deficiency was reported separately, it was the reason given for about two-thirds of all rejections of Negro boys for mental causes."

Children in minority groups, especially in areas where the law provides for separate schools on the basis of race, are particularly affected by these educational lacks. Moreover, many families cannot afford expenses that may be necessary for an older child's continuance in school, such as carfares, the costs of school lunches and suitable clothing, and the charges sometimes made for textbooks, use of the laboratory, and participation in various school activities.(Page 197)

The following table was assembled by the Staff of The President's Advisory Commission on Universal Training to learn the extent to which Negroes were utilized in National Guard Units:

TABLE I.--Utilization of Negro Manpower in the National Guard of the States (April-May 1947)

State	Negro population too small	Negroes may by law be commissioned	Separate Negro units established or contemplated	Negroes can be integrated with white units
Alabama	-----	-----	No-----	No.
Arizona	Yes--	Yes--	No-----	No.
Colorado	Yes--	Yes--	No-----	No.
Connecticut	-----	Yes--	Yes----	Yes.
District of Columbia	-----	Yes--	Yes----	No.
Florida	-----	Yes--	No-----	No.
Georgia	-----	Yes--	No-----	No.
Hawaii	Yes--	Yes--	No-----	Yes.
Idaho	Yes--	Yes--	No-----	Yes.
Illinois	-----	Yes--	Yes----	No.
Indiana	-----	Yes--	Yes----	No.
Iowa	-----	Yes--	Yes----	No.
Kansas	-----	Yes--	Yes----	
Kentucky	-----	-----	No-----	No.
Louisiana	-----	No---	No-----	No.
Massachusetts	-----	Yes--	Yes----	No.
Michigan	-----	Yes--	Yes----	No.
Minnesota	-----	Yes--	No-----	No.
Mississippi	-----	-----	No-----	No.
Missouri	-----	Yes--	Yes----	No.
Nebraska	-----	Yes--	No-----	No.
New Jersey	-----	Yes--	Yes----	No.
New York	-----	-----	-------	
Ohio	-----	Yes--	Yes----	No.
Oklahoma	-----	Yes--	No-----	No.
Pennsylvania	-----	Yes--	Yes----	No.
South Carolina	-----	-----	No-----	No.
South Dakota	Yes--	-----	-------	
Tennessee	-----	Yes--	No-----	No.
Texas	-----	Yes--	No-----	No.
Utah	Yes--	-----	No-----	No.
Vermont	Yes--	Yes--	No-----	No.
Virginia	-----	Yes--	No-----	No.
Washington	Yes--	Yes--	No-----	No.
Wisconsin	Yes--	Yes--	No-----	No.
Wyoming	Yes--	Yes--	No-----	No.
36 States and Territories reporting.	10 yes 26 blank	28 yes 1 no-- 7 blank	12 yes- 22 no-- 2 blank	3 yes. 30 no. 3 blank.

President's Committee
on
Civil Rights

June 10, 1947

MEMORANDUM

TO: Members of the President's Committee on Civil Rights

FROM: Robert K. Carr, Executive Secretary

SUBJECT: "Civil Rights of Puerto Ricans in the United States" prepared by Milton D. Stewart and Herbert Kaufman

PUERTO RICANS IN THE UNITED STATES

I

Patterns of prejudice and discrimination against Puerto Ricans in the United States have not yet crystallized. Nevertheless, there are clear indications of trouble to come. Current trends are menacing in terms of our past experience. For this reason, any action taken with respect to civil rights will be of special significance for the Puerto Ricans because it may have important preventive as well as curative effects.

The United States acquired Puerto Rico in 1898. By 1940, approximately 150,000 Puerto Ricans had immigrated to this country. Since the outbreak of World War II and the increase in economic opportunity, the rate of immigration has increased tremendously. Some sources contend that the number is still below 200,000, but social and welfare workers have advanced estimates as high as 350,000. Exact data are lacking because the Puerto Ricans were granted United States citizenship under the Organic Act of 1917; since they have free access to and from all parts of the country, and since they do not fall within the jurisdiction of any single Federal agency, no official tabulations have been made. However, the Puerto Rican Office of Information estimates that the net influx is about 2,500 a month, with 6,500 returning to the island for every 9,000 who arrive.

At present, they come to the United States primarily for economic reasons. Puerto Rico is overcrowded and not well enough developed industrially to support its population. At the same time, continental United States is in a period of prosperity. Transportation, both by air and by ship, is relatively inexpensive. Under these conditions, it is not surprising that Puerto Ricans are making their way to the mainland in ever-increasing numbers.

They settle almost exclusively in New York City; large colonies have appeared in East Harlem, the lower Bronx and near the Brooklyn Navy Yard. The people in these communities retain the Puerto Rican culture pattern to a large extent, especially in language, recreation, diet and social organization.

Most of the Puerto Ricans come here voluntarily and independently. A very small number came in under contract for domestic service.

Charges of "slave labor" have been made, but they were discredited after an insular official investigated the situation and concluded that no civil rights were being violated by the contracts. However, the United States Department of Labor, which must approve all such contracts, is not enthusiastically supporting the contract device, so it is doubtful that it will become a major vehicle for the importation of labor.

II

The economic status of the Puerto Rican in the United States is affected by three major factors:

First, the overtaxed school system of Puerto Rico has been unable to supply many of them with even a rudimentary education. Today, with the highest school registration in history, it is estimated that only 53% of the children of school age actually attend.

Second, English is the official language of the schools, although most of the children speak only Spanish. This, some authorities maintain, operates to make people "illiterate in two languages". Few of those who come to the United States can get along in English.

Third, since Puerto Rico is under-industrialized, the people have no opportunity to develop the skills required by industry here.

For these reasons, Puerto Ricans have been employed mainly in unskilled jobs. They work in restaurants as waiters, busboys, and dishwashers. They supply most of the manual labor in laundries. They clean the ships that stop in the Port. They serve as domestics.

There is no evidence of any deliberate discrimination to restrict Puerto Rican to this kind of work, nor of wages having been scaled against them. No complaints have been lodged by Puerto Ricans with the State Commission Against Discrimination. There is no civil rights problem in employment now.

But stereotypes regarding the capacities of Puerto Ricans are developing. They are associated with manual labor. They come from an area which has a lower standard of living. Should an economic crisis develop, competition for unskilled jobs may increase. The Puerto Ricans may be induced to work for lower wages than native workers in the struggle to hold the only type of job for which they have qualified heretofore. In such a situation, not only will the rights of the Puerto Rican be endangered but an environment will have been fostered in which group tensions will reach a perilous stage. No need for special action to protect civil rights of Puerto Ricans is indicated, but any general recommendations designed to protect all minority groups will do a good deal to prevent a potential sore spot from festering.

III

There are four areas in which a familiar discriminatory pattern has already made itself evident.

In housing, the Puerto Rican has been confronted by the same barriers that obstruct the Negro. When he looks for an apartment, the doors in white neighborhoods are often closed to him or the rents are raised. This factor, in conjunction with the low economic status of the Puerto Rican and the natural desire of recent immigrants to stay together, accounts for the substandard conditions which prevail in these communities. Ancient buildings, overcrowding, poor ventilation and inadequate sanitary facilities are common. Disease rates and crime are consequently high.

There are some indications, not very easily substantiated, of discriminatory police administration in Puerto Rican districts. Complaints of arbitrary arrest have been reported to the Office of Puerto Rican Information. Many of these apparently arise from the inability of the people to make themselves understood in English. However, a good part of this problem is rooted in the failure of New York police to understand Latin American culture, and many ordinary meetings and discussions seem to be regarded as near-riots by officers who are unfamiliar with the group. A startling example of this misapprehension followed the Scottoriggio murder, when all social gatherings of the Puerto Ricans in East Harlem, a common type of recreation in Puerto Rico and virtually the only kind the Puerto Rican in New York can afford, were forbidden by the Police Department and a number of them actually raided. Here, misunderstanding produced a violation of civil rights; the implications for the future are threatening.

In education, the Spanish-speaking Puerto Rican children have posed a serious problem for the authorities. Generally speaking, the children have been treated with courtesy and sympathy and have received special assistance in overcoming their language handicap. However, some teachers have privately manifested hostility toward their Puerto Rican pupils and have even referred to them in derogatory or abusive terms. It is difficult to see how they can keep from reflecting their attitudes in the classroom.

Finally, the armed forces, in applying their policy of segregation on the basis of color, imposed on the Puerto Ricans a pattern foreign to them. Reports from one source illustrate vividly the nature of this type of discrimination. During the war, in Puerto Rico, newly inducted recruits were lined up. An officer then walked along the ranks and, on the basis of a cursory personal inspection, arbitrarily assigned some men to white units, others to segregated Negro units.

In all four areas, the indicators have swung over to the danger zone. The issues are not peculiar to the Puerto Ricans, however, and can be handled by action directed at protecting all minority groups. Such action would prevent the Puerto Rican situation from growing more troublesome.

IV

Socially and politically, the Puerto Ricans in the United States have not met with any widespread violations of their civil rights. They

are admitted to places of public accommodation and recreation, they vote when they qualify on the same basis as other citizens, their civic and legal rights have not yet been widely violated. But unhealthy signs are developing in employment, in housing, in police administration, in education, and in the armed forces. The influx which gave rise to the symptoms is likely to continue, for the insular administration is anxious to relieve the critical economic conditions on the island by moving as many people as possible to continental United States. Furthermore, it is hoped that the Puerto Ricans will seek economic opportunities outside of the crowded New York slums; the problems may well become national. The need for action is clear, though there is no special area in which the Puerto Ricans are distinct from any other minority group. If civil rights in general are maintained, social conflicts which are now only in the making may be resolved.

SOURCES

Interview with Mr. Leonard Sussman, Puerto Rican Office of Information, New York City

Interview with Mr. Donald J. O'Connor, Office of Puerto Rico, Washington, D. C.

McWilliams, Carey, Brothers Under the Skin, 1943, pp. 204-17.

Chenault, Lawrence R., The Puerto Rican Migrant in New York City, 1938.

President's Committee
on
Civil Rights

June 11, 1947

MEMORANDUM

TO: Members of the President's Committee on Civil Rights

FROM: Robert K. Carr, Executive Secretary

SUBJECT: "The Spanish-Speaking Minority in New Mexico," Digest of Memorandum Prepared by Joaquin Ortega, School of Inter-American Affairs, University of New Mexico, for the Committee.

(The Committee may be interested in Mr. Ortega's comments on this sizeable minority group, since he is intimately familiar with its problems. This memorandum might be considered a supplement to that on the Mexican Americans, recently sent to Committee members; the two groups make up the Spanish-speaking peoples of the Southwest, and are frequently mistaken as a homogeneous entity.

One Spanish-American said about this group, "Outside of the State they are sometimes called Mexicans and treated badly, but here they have only been neglected."[1] This, over-simplified, is the gist of Mr. Ortega's comments. The principal problems of the Spanish Americans are unequal opportunity because of their distinct cultural and economic background, and the lack of any substantial help in overcoming such a disadvantage. Civil rights are involved wherever this differentiation becomes associated in the minds of the Anglos with the differentiation practiced in other parts of the country with respect to other groups, particularly the Mexicans.)

There is a distinction between Spanish-Americans and Mexican-Americans. The former, all citizens of long standing, are concentrated largely in the upper Rio Grande Valley of New Mexico and the San Luis Valley of Colorado. The latter are relatively recent immigrants or the children of immigrants, and are scattered in a broad band from southwestern Texas to southern California. The number of Mexican-Americans in New Mexico out of a Spanish-speaking population of some 250,000 is approximately 2 percent, or 5,000.

The Spanish-Americans, or Hispanos, have been in New Mexico longer than the Anglo-American.[2] Many of them own land which has been in the family for generations. It gives them a feeling of security and stability, and provides a living, although a very poor one. In the areas

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[1] Wallace Stegner, One Nation, Houghton-Miflin Co., 1945, p. 169

[2] "...the Hispanos of New Mexico and southern Colorado are descendants of the Spanish peasants, our first white settlers, who began colonizing the Rio Grande Valley in 1598. They had been in isolation for two hundred years when the Treaty of Guadalupe Hidalgo that ended the Mexican War made them citizens of the United States. In many ways they are in isolation still." Stegner, op.cit., p. 172.

in which they are concentrated the Hispanos are numerically the majority, not a minority.[3] They wield political power, as witnessed by Congressional representation in both houses and the holding of important state offices.

The status of the Spanish-speaking minority in New Mexico and its relations with English-speaking residents is based largely on three factors:

1. A mutual awareness by members of both groups of the cultural differences that still exist between them, which at times makes difficult active cooperation in civic and private affairs.

2. A recognition of class lines of the same general kind that are drawn elsewhere in the United States, which coupled with the cultural differentiation mentioned above, tends to allow full recognition only to leading members of the Spanish-speaking group.

3. Relatively large migrations of Anglos from adjacent states to New Mexico have tended to impose, there, discriminatory attitudes existing elsewhere in the Southwest. This tendency is particularly noticeable in those areas of the state where the concentration of Spanish-speaking is relatively slight (east and southeast), where there is some industrial activity (coal, potash, and oil producing areas of the northeast, southeast, and west central), and where there is a sizeable number of Mexican immigrants in the population (south central). It is less noticeable in the middle and upper Rio Grande Valley, or in those areas of the state characterized by a high concentration of Spanish-American population.

Discrimination in New Mexico is largely negative. There is little positive discrimination of the type that exists against other minorities in many parts of the country, a discrimination based on caste distinctions and on the firmly held belief in the inferiority of the minority group. No institutional segregation is imposed in New Mexico. What does exist is a partial separation as a result of local geographical and social forces. The Spanish-American, with a language, a history, and a social organization not shared by the Anglos, is more comfortable among those with whom he has more things in common. Hence, he tends to live in areas where there are other Spanish-Americans. The Anglo does likewise, and for the same reasons. Schools, churches, business establishments, and other institutions are attended or patronized almost exclusively by Spanish-Americans or by Anglos because members of those groups live in

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[3] 49 percent of New Mexico is Spanish-speaking, and in some counties as high as 80 percent is Spanish-speaking. Ibid, p. 169.

areas served by those institutions. Where Anglos and Spanish-Americans live in the same areas, institutions are shared by both groups.

Because of easily recognizable cultural differences between Anglos and Spanish-Americans, class lines are clearly seen. The Spanish-Americans, have until recently, been rural dwellers. They are now entering the Anglo-dominated urban culture on the lower socio-economic levels, exactly as have all other ethnic groups which have been drawn into that culture.

As latecomers to urban life the Spanish-Americans as a group are not yet equipped with the necessary occupational skills, psychological attitudes, or material values to enable them to compete on equal terms with the Anglos in the urban economy. Although individuals do compete successfully in business, the professions, and especially in politics, the majority of the Spanish-Americans either remain in rural areas or are concentrated in the less skilled, lower paying jobs in the urban areas. The same kinds of prejudices are brought to bear against them that middle and upper class groups use against those on the lower rungs of the socio-economic ladder everywhere in the United States. Class feelings are here augmented by the fact that not only class, but cultural, differences separate the two groups, making the Spanish-American doubly visible. That it is mainly class discrimination is clear because those Spanish-Americans who are able to rise in education or class status, move freely in the Anglo culture. They may live where they please, have friendships with whomever they wish, and participate without reservation in the life of the community.

The real obstacle to a closer association between the two groups is the prejudice of incoming English-speaking individuals. Assimilation necessitates persuasion on the part of the dominating group. When there is hostility, the dominated group withdraws into itself and continues to adhere to its own ways, a logical mechanism of self-defense.

The problems of the Spanish-speaking minority of New Mexico depend for their solution on a consistent and well-planned attack on the basic causes of the existing economic and social conditions. The most pressing needs are:

1. More adequate teaching of English and vocational skills in the schools.

2. An intensive health rehabilitation program in New Mexico.

3. Better land distribution and use, intensive education in agricultural practices, equalization of wages and work opportunities.

4. Creation of effective community organizations. The School of Inter-American Affairs of the University of New Mexico has been working in this field.

HARRY S. TRUMAN LIBRARY

President's Committee
on
Civil Rights

MEMORANDUM June 15, 1947.

TO: The President's Committee on Civil Rights

FROM: Robert K. Carr

SUBJECT: "The Historical Role of the President's Committee on Civil Rights," prepared by Robert K. Carr.

The roots of the American civil liberties tradition can be traced almost as far back in history as one chooses to go. For example, English and American attitudes toward liberty and authority owe obvious debts to the philosophers of ancient Greece and to the religious doctrines of the early Judaic and Christian traditions.

In more recent times the emergence in Western Europe of what may be called the Bill of Rights principle was of great significance. Particularly in England, beginning with Magna Carta in 1215, and continuing through the Petition of Right in 1628 and the Bill of Rights in 1689, there was established in that country a definite code of civil liberties committed to writing. These were liberties belonging primarily to the individual which were presumably guaranteed against violation by the government, or particular governmental agencies. For example, Magna Carta forbade the sale of justice, provided that no man was to be imprisoned or deprived of his property save by legal judgment of his peers and in accordance with the established law of the land, and restricted the king from the commission of certain arbitrary acts. The Petition of Right forbade the billeting of soldiers in the homes of the people, restricted trial by martial law as opposed to trial by civil law, forbade the collection of taxes not authorized regularly by Parliament, and prohibited imprisonment without specific charges and an orderly trial. The Bill of Rights forbade the King to suspend laws, protected the right to petition the government without fear of punishment, prohibited a standing army in time of peace except as authorized by Parliament, provided that Parliamentary elections were to be held regularly and free from influence by the King, guaranteed freedom of debate in Parliament and proscribed excessive bail in criminal cases.[1]

Naturally enough the English colonists who came to America in the seventeenth and eighteenth centuries brought with them this idea of a specific and formal listing of personal rights which government is forbidden to encroach upon. However, their first real opportunity to formulate such codes did not come until 1776 and the Declaration of Independence. Thereafter, many of the new state constitutions that were written between 1776 and 1787 contained bills of rights, so that when the national Constitutional Convention met in Philadelphia in the latter year the principle of a formal, written bill of rights had been well established.

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1. Robert E. Cushman, "Civil Liberties," III Encyclopaedia of the Social Sciences, 509-13.

In the light of the strong English bill of rights tradition, and of the early Americans' love of liberty, it might have been expected that the Philadelphia Convention of 1787 would surely include a Bill of Rights in the Constitution it formulated. It did not do so. The reasons for this surprising action are complex. It is sufficient here to mention Alexander Hamiltion's argument which indoubtedly carried weight with the Founding Fathers. He asserted that since the new national government was to be one of limited powers there was no need to include in the Constitution a bill of rights forbidding the government to exercise certain powers which it would not possess anyway.

But, as is well known, this logic did not satisfy many people, and the supporters of the Constitution were forced to give ground in order to obtain support for the document. In many of the states ratification of the Constitution was obtained only after an understanding was clearly established that the first Congress would submit to the states amendments to the Constitution incorporating a bill of rights. This was promptly done, Congress proposing twelve amendmends. Ten of these were approved by the states and became part of the Constitution in 1791.

The Significance of the Bill of Rights

One of the least - understood aspects of the American Constitution is that the first ten amendments protect the individual's civil rights only against interference by the federal government. The very first word of our Bill of Rights makes this clear:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peacefully to assemble, and to petition the government for a redress of grievances.

It is easy to understand why, in 1790, people were concerned with the threat to liberty inherent in governmental activity. Men locked to the experience of the past, and, reflecting upon the evils of preceding ages, concluded that the threat of arbitrary, tyrannical government was very serious. It has been said, "Bills of rights are for the most part reactions against evils of the past rather than promises for the future."[2] In their commendable concern for safeguarding freedom of religion, free speech, and a free press, our forefathers naturally were impressed by the threats to these rights scattered through the pages of two centuries of English governmental practice.

Government was the enemy of freedom. Accordingly, it was against government, and government alone, that the Bill of Rights was directed. Moreover, it was only the national government that was limited. The legislative history of these amendments leaves little doubt that they were directed exclusively against the central government. Whatever lingering doubts may have existed were effectively silenced by the Supreme Court in 1833. Speaking through Chief Justice Marshall, the Court declared,

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2. William Seagle, in a book review in The Nation, Sept. 30, 1944, p. 388.

"These Amendments /making up the Bill of Rights/ contain no expression indicating an intention to apply them to the state governments. This Court cannot so apply them."[3]

Protection of Civil Rights Against State and Local Government

A constitutional shield against national governmental activity endangering civil liberty was thus provided at the very beginning of our constitutional system. But a second step was necessary if the coverage provided by this shield was to be complete: the extension of its protection to cover encroachments by state and local governments.

It is obvious that state and local governments, as well as the national government, can become enemies of civil liberty. Freedom of the press may be threatened as readily by a municipal ordinance curbing house - to - house distribution of printed matter, as by a national sedition act forbidding newspaper criticism of governmental policies. A similar situation exists regarding governmental treatment of crime. The catalogue of civil liberties is extensively concerned with the rights of persons accused of crime. The rights to trial by jury, to a grand jury hearing, to the assistance of legal counsel, to freedom from unreasonable search and seizure, to freedom from self-incrimination, and freedom from excessive bail and from cruel and unusual punishments--these are all prominent features of the federal Bill of Rights. Yet it is the state or city which, nine times out of ten, accuses the individual of crime and places him on trial in a court, thereby subjecting him to the danger of violation of one of his rights.

The grave threat to civil liberty inherent in state activity is indicated by the great civil liberty decisions of the United States Supreme Court, which have been rendered with few execptions, in cases involving some sort of state governmental activity. Throughout our history there has been a real need for protection in the federal courts, under federal constitutional guarantees, against state interferences with civil liberty. Public pressure for such protection has long existed.

Arguments for bringing the states within the restraining influence of the federal Bill of Rights were put forth in 1789- in the very first Congress- at the time this Bill was being prepared.[4] Among

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3. Barron v. Baltimore, 7 Peters, 243, 250 (1833).

4. Before this, a demand in the Philadelphia Convention of 1787 for inclusion of restraints upon the states in the federal Constitution, met with some success. Section 10 of Article 1, and other scattered clauses in the original Constitution, limit the states in a number of ways. Only a few of these restraints, like the ones preventing the enactment of bills of attainder or ex post facto laws by the states, are concerned with safeguarding civil liberty.

the many proposed constitutional amendments that Congress considered was the following:

> No State shall infringe the equal rights of conscience, nor the freedom of speech or of the press, nor the right of trial by jury in criminal cases.

This proposal was approved by the House of Representatives, but the Senate rejected it. James Madison, who helped steer the Bill of Rights through Congress, is said to have regarded this particular item as "the most valuable of the whole list" and he regretted the failure of Congress to accept it.[5]

Next came the futile effort to persuade the Supreme Court that the Bill of Rights, as adopted in 1791, was intended to restrict the states as well as the federal government. The failure of this move in 1833 has been noted previously. There the matter rested until after the Civil War, when the adoption of the Fourteenth Amendment provided a new constitutional basis on which to resume the struggle. The portion of the Fourteenth Amendment which made it possible to renew the pressure for nationalization of the guarantees of the Bill of Rights was the final sentence in Section 1, which reads,

> No State shall make or enforce any law which shall abridge the privileges of immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The meaning of this section of the Fourteenth Amendment has been the subject of much bitter controversy. In spite of the relatively late date of the Amendment's adoption it is impossible to determine the intention at every point of the men who framed it and voted for it. A good case can be made for the proposition that the Amendment was intended to extend the protection of the federal Bill of Rights to state activity endangering civil rights. Carl B. Swisher, a careful student of American constitutional history, presents convincing evidence that such as the intention of at least some of the men responsible for the Fourteenth Amendment.[6]

It was not until 1931 in the case of Near v. Minnesota that the Supreme Court for the first time flatly invalidated a state law on the ground that it deprived a person of one of the liberties innumerated in the Bill of Rights.[7]

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5. Osmond K. Fraenkel, Our Civil Liberties (New York: The Viking Press, 1944) p. 148.

6. American Constitutional Development (Boston: Houghton Mifflin Company, 1943) pp. 330-34.

7. Near v. Minnesota, 283 U.S. 697 (1931).

Thereafter, the Court rendered a number of similar decisions, bringing other liberties enumerated in the Bill of Rights within the protecting influence of the Fourteenth Amendment's due process clause. In 1937, however, the Court made it clear that not all of the liberties enumerated in the first ten amendments were to be safeguarded from invasion by state action. It took the position that only "those fundamental principles of liberty and justice which lie at the base of all our civil and political institutions" are entitled to protection in the federal courts against state as well as federal encroachment.[8] In general, it is the First Amendment which has enjoyed the greatest power in this respect. Every one of its several guarantees--freedom of religion, freedom of speech and of the press, the rights of assembly and of petition--has now been declared a "fundamental principle", and has received some sort of protection under the Fourteenth Amendment against adverse state action.[9]

In spite of this failure of the Supreme Court to use the due process clause of the Fourteenth Amendment as a means of carrying over into the area of state government all of the items in the Bill of Rights nationalization of civil liberty against state infringement is now pretty much an established fact. The function of the Constitution as a shield which protects our fundamental civil rights against interference resulting from governmental activity has thus been rendered complete.

Protection of Civil Rights Against Private Encroachment

Civil rights in America have traditionally been thought of as running against the government whereas life in this country has frequently revealed that rights are endangered by private action. Accordingly, it was long ago suggested that while preserving protection of our rights against government we needed to provide government protection of these rights against violation by private persons.

Unfortunately, those who have looked to the national government for the development of a positive program of governmental activity in the protection of civil rights, have not always understood the constitutional limitations under which that government operates. Reverence for the Bill of Rights may explain why the people demand protection from the national government, but it does not help that govern-

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8. Palko v. Connecticut, 302 U.S. 319, 328 (1937).

9. Freedom of Religion: see Cantwell v. Connecticut, 310 U.S. 296 (1940); and West Virginia State Board of Education v. Barnette, 319 U.S. 624 (1943). Freedom of Speech and of the Press: see Near v. Minnesota, 283 U.S. 697 (1931); Herndon v. Lowry, 301 U.S. 242 (1937); Grosjean v. American Press Co, 297 U.S. 233 (1936); Thornhill v. Alabama, 310 U.S. 88 (1940); and Carlson v. California, 310 U.S. 106 (1940). Right of Assembly and Petition: see DeJonge v. Oregon, 299 U.S. 353 (1937); and Hague v. C.I.O., 307 U.S. 496 (1939).

ment to meet such demands. Indeed, as we have seen, the Bill of Rights operates in every way to curtail federal activity, not to encourage it. In those other sections of the Constitution that bestow positive power upon the national government, there is no express grant of power to protect civil liberties, or even to enact criminal statutes and provide for the punishment of criminals. Power in the national government to protect freedom of religion, freedom of speech and press and the other great rights against infringements by private persons, must be found elsewhere than in the Bill of Rights or in the express grants of power to Congress. It must be found in the interstices of the Constitution with the aid of the implied power doctrine.

The Civil War Amendments and the Civil Rights Acts

Previous to the establishment of the Civil Rights Section in 1931, one very important attempt was made to use the power of the federal government as a positive instrumentality for the protection of civil rights. This was the legislative program that was enacted following the adoption of the Thirteenth, Fourteenth and Fifteenth Amendments.

The meaning and purpose of these Civil War Amendments has been the subject of much controversay. But one can build a strong case contending that their Congressional framers meant them to serve as a basis for a positive, comprehensive federal program --a program defining fundamental civil rights protected by federal machinery against both state and private encroachment.[10] Perhaps the best evidence supporting this contention is that during and just after the period when the Amendments were framed, Congress passed seven statutes establishing just such a federal program. There were members of Congress who argued against the constitutionality of this program and voted against the bills, just as there were members of Congress who opposed the three Amendments. But the Amendments and statutes received the necessary majorities in both houses of Congress. The significance of the nearly simultaneous action of Congress in passing the three Amendments and seven statutes implementing them, cannot be overlooked.

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10. See Carl B. Swisher, American Constitutional Development, Chap. 15, and H. E. Flack, The Adoption of the Fourteenth Amendment (Baltimore: The Johns Hopkins Press, 1908). While Flack's study is concerned only with the Fourteenth Amendment, he concludes that "according to the purpose and intention of the Amendment as disclosed in the debates in Congress and in the several state Legislatures and in other ways, Congress had the constitutional power to enact direct legislation to secure the rights of citizens against violation by individuals as well as by States." p. 277.

We will examine first the relevant portions of the Amendments. The Thirteenth Amendment, adopted in 1865, established the right of all persons to be free from slavery or involuntary servitude, and expressly authorized Congress to enforce this right by appropriate legislation. The Fourteenth Amendment, adopted in 1868, outlawed any state action which might abridge the privileges or immunities of citizens of the United States, deprive any person of life, liberty or Property, without due process of law, or deny to any person the equal protection of the laws. Again Congress was given express power to enforce these provisions by appropriate legislation. Finally, the Fifteenth Amendment, adopted in 1870, forbade both federal and state governments to deny any person the right to vote because of race, color or previous condition of servitude. Once more Congress obtained express power to enforce this guarantee by appropriate legislation.

Five of the statutes by which Congress tried to implement the Civil War Amendments were general civil rights acts. The first of these was the Act of April 9, 1866, which was passed at a time when only the Thirteenth Amendment had gone into effect. Known as the Civil Rights or Enforcement Act, it was entitled, "An Act to protect all Persons in the United States in their Civil Rights, and furnish the Means of their Vindication." The Act was aimed at outlawing the "Black Codes", enacted by the Southern states immediately after the close of the war, which restricted the movement and occupation of Negroes. It provided that all persons born in the United States were citizens thereof, and it endeavored to place members of all races on an equal basis as to their rights "to make and enforce contracts, to sue, be parties, and give evidence, to inherit, purchase, lease, sell, hold and convey real and personal property, and to full and equal benefit of all laws and proceedings for the security of persons and property." The federal courts were given exclusive jurisdiction of cases arising under the Act, severe penalties were prescribed for its violation and the President was empowered to use the land and naval forces to secure its enforcement.[11]

The second Civil Rights, or Enforcement Act, was passed by Congress on May 31, 1870, and was entitled, "An Act to enforce the Rights of Citizens of the United States to vote in the several States of this Union, and for other purposes." This second statute was amended by an Act of February 28, 1871. The general purpose of these two acts was to make the Fourteenth and Fifteenth Amendments effective. More specifically, they were designed to protect the right to vote by providing federal machinery to supervise elections in the states, and severe penalties for any interference based on race or color with the exercise of the right of suffrage at federal or state elections. In addition, it was made a felony for two or more persons to conspire to interfere with the free exercise by a citizen of any right granted to him by the laws or Constitution of the United States.[12]

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11. 14 Stat. 27. The text of this and the other civil rights laws of the Reconstruction period is given in Appendix 1.

12. 16 Stat. 140, and 16 Stat. 433.

The Act of April 20, 1871, often known as the Ku Klux Klan, or Antilynching Act, was entitled, "An Act to enforce the Provisions of the Fourteenth Amendment to the Constitution of the United States." This Act penalized action, under color of law, which deprived persons of their rights under the laws or Constitution of the United States. The Act also provided penalties for conspiring to overthrow the government of the United States, or to prevent the execution of its laws. The President was authorized to use the military force to suppress unlawful action, when the states were unable or unwilling to prevent interferences with citizens' rights or the obstruction of the federal government processes.[13]

Finally, there was the Civil Rights Act of March 1,,1875, entitled, "An Act to protect all Citizens in their civil and legal rights." This Act was designed to guarantee to Negroes equal accommodations with white citizens in all inns, public conveyances, theaters and other places of amusement. Refusal by private persons to provide such accommodations was declared to be a misdemeanor, and injured parties were given the right to sue for damages.[14]

Two of the seven statutes were more limited in purpose. These were the Slave Kidnaping Act of May 21, 1866, and the Peonage Abolition Act of March 2, 1867, which were designed to implement the Thirteenth Amendment. The former was entitled, "An Act to prevent and punish Kidnaping," and made it a federal crime to kidnap or carry away a person with the intention of placing him in slavery or involuntary servitude. The latter was entitled, "An Act to abolish and forever prohibit the System of Peonage in the Territory of New Mexico and other parts of the United States." While aimed primarily at practices prevailing in New Mexico, it also was designed to define "involuntary servitude" and to provide specific criminal penalties for violations of the Thirteenth Amendment.[15]

It is clear that in these seven acts, Congress intended to make extensive use of the "sword" technique in providing federal protection of the rights of individual against interferences either by public officers or by private individuals. Those acts admittedly were motivated by a general concern on the part of Congress for the newly-freed Negro, and by a specific desire to safeguard his rights. But, without exception, no mention is made of the Negro as such. Instead the wording is sufficiently broad to cover the rights of all citizens,

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13.
17 Stat. 13.
14.
18 Stat. 335.
15.
14 Stat. 50 and 546.

if not all inhabitants or persons.[16] Many students of American history refuse to recognize these acts as designed to safeguard civil liberty in any enlightened or liberal sense. They regard them as part and parcel of the dark chapter of Reconstruction in which a cruel and vindictive North stamped upon the body of the prostrate South.[17] As late as 1945, three justices of the United States Supreme Court were unwilling to sanction the federal government's use of one of the surviving remnants if this legisation, to punish a southern sheriff for the brutal killing of a Negro prisoner. The justices asserted that it was "familiar history that much of this legislation was born of that vengeful spirit which to no small degree envenomed the Reconstruction era."[18] The fact remains, however, that much of the legislation was worded to serve as a basis for safeguarding the rights of citizens, black or white, in all parts of the country. The rights singled out for protection were, with few execptions, rights that enlightened persons have always regarded as fundamentally important to a citizen in a free society. Sectional malice and partisan hatred may have played their part in bringing about the enactment of these laws. But on their face they did no violence to the democratic principle and offered many possibilities for constructive use in furthering the cause of individual rights.

The Fate of the Civil Rights Acts Experiment

The civil rights statutes enacted by Congress in the decade after the close of the Civil War may not have been motivated entirely by the highest of ideals. Moreover, as a consistent, comprehensive program of legislation, they left much to be desired. Nonetheless, these acts represented the most substantial attempt in our history up to 1939 to use the power of the national government to safeguard individual, fundamental rights.

The undertaking was an ill-fated one. In less than thirty years after the passage of the first Civil Rights Act in 1866, the program had ended in failure. Three causes contributed to the disaster which overtook this first attempt to forge a sword for the federal government to weild in protecting civil liberty. These causes were (1) the invalidation of several key provisions of the civil rights legislatiion by the Supreme Court, (2) the eventually repeal by Congress of many other provisions, and (3) the reluctance of administrative officers to use the authority that remained to them after the Court and Congress had acted.

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16. Occasionally, the original statutes make use of the "race, color, or previous condition of servitude" phraseology. However, the grouping of these laws in the Revised Statutes of 1873, revealed an intent that they should operate generally. Some provisions went into Title 24, headed "Civil Rights," some into Title 70 ("Crimes"), Chapter 7 ("Crimes Against the Elective Franchise and Civil Rights of Citizens") and some, elsewhere. None went into Title 27, headed "The Freedmen."

17. Note, for example, the unfriendly attitude of Charles Warren toward this legislation in his thirty-fourth chapter, "The Civil Rights Acts," in volume three of The Supreme Court in United States History (Boston: Little, Brown and Company, 1922).

18. Screws v. United States, 325 U.S. 91, 140 (1945).

In a series of six decisions handed down between 1876 and 1906, the Supreme Court held specific sections of the civil rights legislation unconstitutional. Two other decisions, while not invalidating federal legislation, placed barriers in the way of the program. The six cases in the first group are, United States v. Reese, United States v. Harris, the Civil Rights Cases, Baldwin v. Franks, James V. Bowman and Hodges v. United States. The two additional decisions are those in the Slaughter-House Cases and United States v. Cruikshank.

The facts in the six cases of the first group, and the specific provisions of law declared null and void are indicated in a note.[19]

19.
United States v. Reese, 92 U.S. 214 (1876). Two Kentucky election inspectors were indicated under Sections 3 and 4 of the Act of May 31, 1870 (16 Stat. 140), for refusing to receive and count the vote of a Negro citizen. The Supreme Court sustained demurrers to the indictment, holding the legislation unconstitutional because it went beyond the authority of Congress to enforce the Fifteenth Amendment. The Court said it was directed not only against interference with the right to vote, based on race, color, or previous condition of servitude, but against other type of interference. The fact that the interferences here was with the right of a Negro to vote, seemed irrevelant to the Court. It was unwilling to uphold the statute even when limited, as here, to the protection of Negroes. The Court said, "It would certainly be dangerous if the legislature could set a net large enough to catch all possible offenders, and leave it to the courts to step inside and say who could be rightfully detained, and who should be set at large. This would, to some extent, substitute the judicial for the legislative department of government." p. 221.
United States v. Harris, 106 U.S. 629 (1885). Twenty persons were indicted under Section 2 of the Act of April 20, 1871 (17 Stat. 13), also known as Section 5519 of the Revised Statutes of 1873, for conspiring to injure four men being held by a Tennessee deputy sheriff, and to deprive them of equal protection of the laws. The Supreme Court sustained demurrers, holding the legislation unconstitutional because it went beyond Congress' authority to enforce the Fourteenth Amendment in that it was directed against by private persons.
Civil Rights Cases, 109 U.S. 3 (1883). These five cases involved proceedings against private persons under Sections 1 and 2 of the Civil Rights Act of March 1, 1875 (18 Stat. 335) because of refusals to admit Negroes to hotels, theaters, and a railway car. The Court held the legislation unconstitutional because it went beyond the authority of Congress to enforce the Fourteenth Amendment in that it was directed against action by private persons, and because it went beyond Congress' authority to enforce the Thirteenth Amendment in that it was directed against action falling short of holding persons in a state of slavery or involuntary servitude.
Baldwin v. Franks, 120 U.S. 678 (1887). The Supreme Court ordered the issuance of a writ of habeas corpus, in a case involving the arrest of a private person charged with a violation of Section 2 of the Act of April 20, 1871 (17 Stat. 13; Section 5519 of the Revised Statutes of 1873). This provision again was held unconstitutional, though here its use against a private person protected a federal right--namely, the right of a Chinese alien, under a treaty between the United States

It is sufficient to state here that key section of vital importance to the entire program of legislation were invalidated, and to note the three reasons which led the Supreme Court to view these sections with disfavor. First, the Court was influenced by a firm belief that the rights covered by the Fourteenth and Fifteenth Amendments are ones that Congress may safeguard only against action by agencies of state government, and not against action by private persons. This was its chief reason for invalidating the Civil Rights Act of 1875 in the Civil Rights Cases. In its decision in these cases, the Court held that the Fourteenth Amendment does not authorize Congress to pass a statute penalizing private persons operating hotels, theaters or railroads, for refusing to allow Negroes to enjoy their services.

Second, the Court insisted that the Fifteenth Amendment, while protecting the right to vote in both federal and state elections against state interferences, authorizes Congress to provide such protection only against interferences based upon the race, color, or previous condition of servitude of the voter. In United States v. Reese, the Supreme Court

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and China, to remain in a California town and engage in business there on equal terms with American citizens. The Court, following the reasoning of the Reese decision, held that Congress intended the provision to have much broader application. It refused to uphold the provision here, although it indicated that a more narrowly worded statute might have been used to protect such a right against private encroachment.

James v. Bowman, 190 U.S. 127 (1903). Bowman and others were indicted under Section 5 of the Act of May 31, 1870 (16 Stat. 140), also known as Section 5507 of the Revised Statutes of 1873, for preventing Negro citizens from voting in a congressional election in Kentucky. The Court ruled that the statute could not be upheld under the Fifteenth Amendment, because it was directed against private persons as well as state officers; it ruled that it could not be upheld under Section 4 of Article 1 of the Constitition, as an act designed to protect the right to vote in a federal election, because, while its use here was in connection with a federal election, it was worded so broadly as to apply to state elections also.

Hodges v. United States, 203 U.S. 1 (1906). Hodges and others were indicted under a federal conspiracy statute (R.S. 5508) for conspiring to deny eight Negro citizens rights established by Section 16 of the Act of May 31, 1870 (16 Stat. 140; Section 1977 of the Revised Statutes of 1873)--the right to make contracts--by using violence to prevent them from working in a lumber camp in accordance with the terms of a contract the Negroes made with their employer. The Supreme Court sustained demurrers to the indictments, holding R.S. 1977 unconstitutional because it went beyond Congress' authority to enforce the Fourteenth Amendment in that it was directed against private action, and because it went beyond Congress' authority to enforce the Thirteenth Amendment in that interference with a man's right to contract did not force him into slavery or involuntary servitude.

upset the indictment of two Kentucky election officials, on the ground that the federal statute under which they had been indicted was unconstitutional since it was not directed exclusively against state interferences with the right to vote motivated by race and color. Actually, the voters in this case were Negroes, but the Court felt that the language of the statute was so broad that it must be held unconstitutional, even though it was being applied here in a situation that was well within the limits of the Fifteenth Amendments.

Third, while admitting that the Thirteenth Amendment does establish rights that Congress may protect against private as well as public threats, the Court said that these rights--to be free from slavery and involuntary servitude--must be narrowly defined, and do not include any right to be free from mere acts of discrimination based upon color. In Hodges v. United States, the Court set aside an indictment of persons charged with interfering with the right of certain Negroes to make a contract, on the ground that the Thirteenth Amendment does not protect such a right. The Court asserted that interference with a man's right to contract did not force him into slavery or involuntary servitude. Accordingly, the constitutionality of a statute making such interference a federal crime could not be upheld under the Thirteenth Amendment.

The Slaughter-House and Cruikshank cases are of importance here because in these decisions the Supreme Court insisted that the Constitution does not establish and great body of civil rights on a federal level which Congress may protect.

The second factor contributing to the ultimate failure of the federal government's civil rights program in the period after the Civil War was the lukewarm attitude of Congress toward the experiment, which increased as time went by. As early as 1873, some of the force of the original program was lost in the preparation of the official Revised Statutes. In this rearrangement, the civil rights acts were broken up and scattered under various chapter headings. This action, in the words of Attorney General Biddle, "effectively concealed the whole scheme for the protection of rights established by the three amendments and five acts."20

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20. Safeguarding Civil Liberty Today, The Edward L. Bernays Lectures of 1944 given at Cornell University. (Ithaca: Cornell University Press, 1945); "Civil Rights and the Federal Law," by Francis Biddle, p. 131. Provisions of the civil rights acts were reassembled under eight widely separated title headings as follows:

Title 2 The Congress
Title 13 The Judiciary
Title 19 Several Classes of Officers
Title 24 Civil Rights
Title 25 Citizenship
Title 26 The Elective Franchise
Title 29 Immigration
Title 70 Crimes

In 1877, a Democratic Congress passed legislation repealing much of the federal Enforcement Act Program, but this was vetoed by President Hayes. Finally in 1894 and 1909, many provisions of these laws, which had not been annulled by the adverse decisions of the Supreme Court, were repealed outright by Congress. By the Act of February 8, 1894, thirty-nine sections of the Revised Statutes of 1873, dealing with federal protection of the right to vote, were repealed.[21] This action was taken during the second Cleveland Administration, and reflected the Democratic Party's desire to end federal supervision of elections in the South. In the preparation of the Criminal Code of 1909, the remaining provisions of the original legislation were reduced still further.[22]

It is not surprising that the adverse decisions of the Supreme Court, and the gradual waning of congressional enthusiasm for civil rights legislation, discouraged the Department of Justice from making any attempt to enforce the remaining laws vigorously. The Department for a while tried to enforce the legislation, but it was continually under fire in the press and Congress for the part it had played during Reconstruction. By the last decade of the nineteenth century it had lost heart, and thereafter only sporadic attempts were made to enforce the remnants of the civil rights legislation.[23]

The Experience of the Civil Rights Section

When the Civil Rights Section was created in 1939, its lawyers could spell out two principle of constitutional law which were conducive to a program of positive federal action in safeguarding civil liberty.

1. In so far as the Fourteenth and Fifteenth Amendments prohibit state action contravening the individual's rights, Congress may use their implementing clauses to establish statutory criminal penalties. These penalties may be invoked against state officers responsible for interferences with such rights. Apart from the right to vote, the two Amendments enumerate no other specific rights that may be so protected. But the Supreme Court had succeeded, in part, in making clear which of our traditional rights were encompassed by the vague clauses of the Fourteenth Amendment.

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21. 28 Stat. 36.

22. Act of March 4, 1909, 35 Stat. 1088.

23. See Cummings and McFarland, Federal Justice, Ch. 12, "Peace to This House;" and Safeguarding Civil Liberty Today, pp. 109, 131-32.

2. A limited principle established the right of the federal government to use criminal sanctions against private persons who invade certain rights of other individuals. But few rights had been held to fall within the scope of this principle. Supreme Court decisions, indicated that, scattered throughout the Constitution, are a few rights which the federal government may protect against private invasion. Moreover, these decisions suggested that additional rights coming under this broader type of protection, might be found in the interstices of the Constitution.

The experience of the CRS during the eight years of its existence is generally known to members of the Committee and will not be reviewed here. It is sufficient to say that the Agency has employed three statutes - all remnants of the ill-fated post-Civil War program - with varying degrees of success. These are Section 51 and 52 of Title 18 of the United States Code, and Section 444 of the same title, better known as the Anti-peonage Act. In situations where the rights of individuals have been endangered either by public officers or private persons the CRS has brought criminal prosecutions under these laws. These cases have in many instances resulted in appeals to the federal Circuit Court of Appeals and to the United States Supreme Court. In the decisions of these appellate courts the law of civil liberty has been carried forward to a considerable extent. In general, the CRS has not only succeeded in preserving the favorable principles of constitutional law which carried over from the earlier period, but has also obtained from the Courts approval of the principles underlying its efforts to put the civil rights laws to new and more effective use.

And yet there have been difficulties. In certain cases the appellate courts have refused to go along with the CRS program. The decision of the Supreme Court in the Screws case, setting aside the conviction which has been won by the government, is the outstanding example of such a result. However, here, as in the other unfavorable decisions, the objection of the Courts has been not so much to the constitutional basis of the CRS program as to its statutory weaknesses. In other words, the Supreme Court has seemed willing to acknowledge that the American Constitution can be interpreted to provide a favorable basis for a positive program of federal protection of civil rights. But it has doubted that the statutory tools utilized by the CRS provide a sufficient congressional authorization of such a program, constitutional though the program maybe.

The realization by the Department of Justice of the weaknesses in the statutory basis of its civil rights program, undoubtedly was one of the factors that led President Truman to create the Committee on Civil Rights. In his Executive Order establishing the Committee the President states:

"WHEREAS the action of individuals who take the law into their own hands and inflict summary punishment and wreak personal vengeance is subversive of our democratic system of law enforcement and public criminal justice, and gravely threatens our form of government; and

"WHEREAS it is essential that all possible steps be taken to safeguard our civil rights. . . . . .

"There is hereby created a committee to be known as the President's Committee on Civil Rights. . . . . .

"The Committee is authorized on behalf of the President to inquire into and to determine whether and in what respect current law-enforcement measures and the authority and means possessed by Federal, State, and local governments may be strengthened and improved to safeguard the civil rights of the people.....

The Committee shall. . . . . in particular make recommendations with respect to the adoption or establishment, by legislation or otherwise, of more adequate and effective means and procedures for the protection of the civil rights of the people of the United States."

And in his informal statement to the Committee the President said,

"The preservation of civil liberties is a duty of every Government - state, Federal and local. Wherever the law enforcement measures and the authority of Federal, state and local governments are inadequate to discharge this primary function of government, these measures and this authority should be strengthened and improved.. . . .

"In its discharge of the obligations placed on it by the Constitution, the Federal Government is hampered by inadequate civil rights statutes. The protection of our democratic institutions and the enjoyment by the people of their rights under the Constitution require that these weak and inadequate statutes should be expanded and improved. We must provide the Department of Justice with the tools to do the job.

"I have, therefore, issued today an Executive Order creating the President's Committee on Civil Rights and I am asking this Committee to prepare for me a written report. The substance of this report will be recommendations with respect to the adoption or establishment by legislation or otherwise of more adequate and effective means and procedures for the protection of the civil rights of the people of the United States."

It is thus clear that the Committee occupies a position of great significance in the broad sweep of civil rights history. Its primary concern is the building of a more effective federal governmental program for the positive protection of civil liberty. In so far as the Committee by its labors may contribute to such a result it will inevitably have participated in an historical development as climactic in character as the adoption of the Bill of Rights, itself.

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President's Committee
on
Civil Rights

MEMORANDUM June 19, 1947.

TO: The President's Committee on Civil Rights

FROM: Robert K. Carr

SUBJECT: "Civil Rights in Our Dependencies" by Milton D. Stewart and Rachel Sady.

Over two and a half million people live in territories and possessions dependent on the United States. These areas were acquired by purchase, armed force, lease, and trusteeship agreement. The people include Caucasians, Negroes, Orientals, Eskimo, Indians, Polynesians, Micronesians, and various combinations of each. They have civil rights problems within the scope of the Committee's interest.

These dependent areas are Hawaii, Alaska, Puerto Rico, the Virgin Islands, Guam, American Samoa, the former Japanese Mandated Islands of Micronesia, and the Panama Canal Zone. All of these areas are governed by or under the authority of Congress, but the forms of government vary. The territories of Hawaii and Alaska, and the island possessions of Puerto Rico and the Virgin Islands, have governors appointed by the President, and popularly elected legislatures whose powers are much the same as those of state legislatures. Although Congress has the right to annul any enactment of the territorial legislatures, it has never exercised this right.

Hawaii and Alaska are incorporated territories. This means that the Constitution and laws of the United States extend to them except where they are manifestly inapplicable. The people are citizens of the United States and send a non-voting delegate to Congress.

Puerto Rico and the Virgin Islands are unincorporated territories. This means that the Constitution and the laws of the United States do not apply. Congress has enacted organic acts, however, which take the place of a constitution as the fundamental law of the local government and which contain guarantees of personal and civil rights. The organic acts are binding upon the territorial governments, but not upon Congress. The people are also citizens of the United States. Puerto Rico elects a resident commissioner to the United States who acts as a non-voting delegate in Congress. The Virgin Islanders do not have such representation.

Guam and American Samoa are possessions of the United States in which the Constitution does not apply; nor has Congress provided organic acts establishing a government and local law. The Navy has full control on the islands. The Guamanians and Samoans are not citizens of the United States, but are "nationals."

The Canal Zone is leased by the United States from the Republic of Panama. The organic act of the Zone guarantees those rights which in the United States are protected by the Constitution. Government is incidental to the administration of the Canal. Both are headed by a presidentially appointed governor, an army engineer. The people are

United States citizens, Panamanians, and West Indian Negroes, usually British subjects.

The United States Navy governs the former Japanese Mandated Islands, which it occupied during the war, until more permanent provisions for their government are made under the trusteeship administration.

These dependent areas are small, the people relatively few and scattered, their problems varied and complicated by political and economic factors, many of which are outside of the Committee's province. Nevertheless, circumstances warrant their consideration. Civil rights problems do exist, as serious in principle if not in number of people affected as those on the mainland. Our dependent areas are a federal responsibility and no jurisdictional questions complicate the issues. Our treatment of our dependencies is vital to the strength of our foreign policy. We have moreover, specific international obligations with respect to the Micronesian trust islands. The United States also has a reputation to uphold in the eyes of the dependent peoples of the world. The good will of these peoples was achieved by the granting of independence to the Philippine Islands in 1946, as provided in the Philippine Independence Act of 1934.

The problems, in general, are the interlinked ones of political rights (suffrage, representation, and self-government) and of discriminatory treatment of minority or native groups. Varying records have been made in the dependent areas in these respects, ranging from exemplary to deplorable. A brief background sketch of each area will serve to point up the civil rights problems.

Hawaii

Hawaii was annexed in 1898, and became an integral part of the United States two years later when its Organic Act established the territorial form of government. The islands have been described from the stand point of race and cultural differences as the most thoroughly scrambled community in the world. This situation resulted from importation of laborers to work on the sugar plantations, starting with the Chinese, and followed by Japanese, Portuguese and Puerto Ricans, and more recently by Filipinos. South Sea islanders, Europeans, and Asiatic Russians have also immigrated to the islands.

Today there are approximately 520,000 civilian residents of Hawaii. Of these approximately 33% are Caucasian, representing a more than two fold increase of the Caucasian population in the last decade. The next largest group (32%) are persons of Japanese descent. Fourteen percent are native Hawaiian or part Hawaiian, the mixed group being by far the larger. Ten percent are Filipinos, the newest arrivals. Other groups are the Chinese (6%) and the Koreans and Puerto Ricans (under 2% each).

These people represent various cultures, but the mode of life in the islands is essentially American and the language most generally spoken is English. Intermarriage has resulted in considerable mixture of

physical types and cultures.

The people of Hawaii are citizens of the United States, except for those aliens made ineligible for citizenship by the naturalization laws -- the foreign born Japanese, Koreans, and South Sea islanders.

Hawaii already has a considerable amount of self-government, and there is a strong movement for statehood. A bill has been introduced in this Congress to enable Hawaii to form a constitution and state government and be admitted as a state. The bill has Presidential and strong congressional support.

Hawaii is celebrated for its traditional lack of group prejudice and discrimination. There is no pattern of segregation, and members of different groups are at ease socially with one another. In spite of this inter-group success, tensions persist. Conflict is building up as Hawaii's non-white second generation discovers the discrepancy between the ideal of equality and an economic system dominated by a few big white-controlled corporations.

Hawaii's main wealth is agricultural, and the land is controlled largely by a few corporations. The highly industrialized agricultural operations require large numbers of farm laborers. Successive waves of immigrant groups have provided them. The children of these immigrants have been brought up in an educational atmosphere of group equality. They are not satisfied to follow in their parents' paths as unskilled laborers. On the other hand, the better jobs in big business and administration are given by whites to whites. The non-whites are also in unequal competition with whites for professional and other white collar jobs. One observer describes what happens to the non-white graduates:

> "Then they find barriers, some of them very subtle to be sure, while their Caucasian classmates, protected by vested rights, move unopposed into the preferred positions."*

Alaska

The United States bought Alaska from Russia in 1867 for $7,200,000. It was not until 1912 that the Organic Act was adopted and Alaska acquired the status of a territory.

According to the 1940 census there are over 72,500 people in Alaska. Of these approximately 54 percent are white, 22 percent are Eskimo, 15 percent are Indians (Athapascan, Tilingit, Haidan and Tsimshian), and 8 percent are Aleuts. Less than 1 percent are Japanese, Chinese, Filipino, Negro, and Hawaiian. These figures ignore a growing mixed population. In general, Indian, Eskimo and Aleut communities are some distance from white communities:

> "The various indigenous groups have fairly distinct habitats. The Eskimos inhabit the region along the coast of the Arctic Ocean, the Bering Strait, and the Bering Sea, and share the Alaska Peninsula with the

* Carey McWilliams, Brothers Under the Skin, p. 199.

> Aleuts. The latter also occupy the Aleutian Islands and Kodiak Island. The Athapascans inhabit the southern coast from Cook Inlet to the Canadian border, and the region inland to the Arctic Ocean. The Tlingits live in the Panhandle and on some of the adjoining islands. The Tsimshians reside on Annette Island in southern Alaska, and the Haidans inhabit the south end of Prince of Wales Island."*

The Treaty of Cession made all white residents and "civilized natives" citizens of the United States. All Alaskan natives became citizens in 1924, with the rest of the American Indians, by congressional action. They have much the same wardship status as the Indians of the states.

Alaska, like Hawaii, wants statehood with the increasing amount of self-government it would bring. Alaska's delegate to Congress introduced a bill in Congress this session authorizing the territory to draw up a state constitution. There will be hearings on the bill in Alaska this summer. Statehood would give Alaska more self-government, a vote in national elections and voting representation in Congress. It would also correct certain discriminations Alaska now suffers as a result of her territorial status. The territory is now excluded from the benefits of the Federal Highway Aid Act by which federal funds are granted to supplement state funds for road-building. It gets lower appropriations for farm research than do the states under the formula for states, and in other ways does not get sufficient appropriations for economic development.

Cultural and racial differences between native Alaskans and the white population are marked by inadequate protection of the civil rights of the former. In 1945 the local legislature did enact legislation which guarantees equal access to places of public accommodation. There are, however, other problems of a rather unique nature.

Alaska's school system is dual. The territorial government runs the schools for white children and children of mixed blood "leading a civilized life," the federal government supports the schools for native children. This distinction is a practical one insofar as it is based on different needs arising from different cultures. It becomes discriminatory when local authorities resist the admittance of native and mixed blood children to the territorial schools, in spite of their assimilation. They argue that these children are a federal responsibility, and that white parents are unwilling that native children attend the same schools as do their children. The determination of "children of mixed blood leading a civilized life" has been a point of controversy. In some city schools full blooded native children are not admitted to territorial schools. This is a growing problem since the number of natives in the cities is increasing. And Alaskan natives, unlike the Indians in the States, are subject to local taxation. A

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* Reid, Education in the Territories and Outlying Possessions, p. 19.

student of the problem of education in Alaska has recommended against consolidation of the school system on the grounds of special needs of the large native group and the likelihood of discrimination against them in a territorial system. But he also declares the need to establish for natives who live near whites, and who have acquired the white mode of life, the right to enter territorial schools.

The Superintendent of the Alaskan Native Service feels that Eskimo civil rights are seriously infringed in such areas as Kotzebue, Nome, and Hooper Bay:

> "The typical white there is an opportunist, get-rich-quick-and-get-out person. Natives get in their paths, they get rid of 'em. If natives have gold or jade claims, they skin 'em out of them. Charges are trumped up against them and filed with the U.S. Commissioner. A warrant's issued, and they're arrested and tried at a kangaroo hearing...where the native is neither represented nor advised, and he's sentenced and fined. And lady, if that Eskimo has any money, they get it away from him!"*

The Superintendent also stated that "virtual peonage" is practiced in these areas. Judge George Folta, of the District Court, wrote to the Committee in explanation:

> "The situation at Kotzebue is not unlike that encountered elsewhere north of the Yukon or Arctic Circle in each community where the trader has a virtual monopoly and can, by withholding or granting credit, maintain almost complete control over the natives. The practice of not issuing sales slips or bills or statements, so as to enable them, or anyone else, to verify the charges made in connection with any particular purchase or sale of furs, makes it impossible, particularly for those who are illiterate, to have any idea whether the indebtedness claimed by the trader is even approximately correct. It isn't surprising, therefore, that few, if any, of them are ever out of debt. However, in the larger communities and where there is competition, such practices do not prevail..."**

Non-recognition of Indian property claims in southeastern Alaska by some federal government agencies is another problem. Early legislation on Alaska indicated that Indians had claims to those lands where they trapped, hunted and fished, but these property rights were not formalized by treaty and they are now subject to question. A bill introduced in this Congress by the Alaskan delegate would determine these land titles by negotiation with the Indians. In the meantime, the Forestry Service of the Department of Agriculture continues to grant commercial companies cutting privileges on forest land claimed by the Indians. In reporting on the bill in Congress Agriculture suggested that Congress revoke Indian claims in that area except where actual buildings stand. Commercial canning companies are successfully invading recognized Indian fishing grounds, in some cases causing the removal of entire

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* Interview with the Superintendent.
** Letter of June 13, 1947, to Dr. Carr from Judge Folta.

Indian villages. The only federal agency which has protested these encroachments in the Office of Indian Affairs.

Some five hundred Aleuts of the Pribilof Islands, near the middle of the Bering Sea, stand in a peculiar relation to the federal government from which they derive certain benefits. It has also been reported, however, that they are subject to restrictions on their lives by the federal government, which are suffered by no other group of citizens. The Pribilof Islands are a government reservation for the protection of fur seals under the jurisdiction of the Fish and Wildlife Service of the Department of Interior. Covering legislation stipulates that the Aleuts of the Islands be employed at fair wages in the killing of the seals and the taking of sealskins. The federal government must furnish food, shelter, fuel, clothing, and such other provisions as are necessary for comfort, maintenance, education and protection, to the Aleuts.

One of the principal critics of the Fish and Wildlife Service administration of the affairs of the Aleuts has summed up the situation in the comment, "The Service is organized to handle animals, birds and fish. The Aleuts come under none of these classifications."*

The Service wage system is archaic and allegedly unjust. The Aleuts are paid in cash for trapping fox and for their short season of killing seals. The amount received varies with the worker's assignment to one of six classes representing degrees of skill. Actually, it is claimed, assignment to class has been used to "reward good behavior" and punish bad. Sealers have been demoted to a lower wage class for drinking, for example, thus penalizing their families by a serious income reduction. The danger of demotion, dependent on an agent's favor or disfavor, is demoralizing.

The Aleuts are not paid in cash for the skilled work they do the year round in maintaining the villages. They are given rations, housing, and social services. This kind of payment is both difficult to evaluate and psychologically akin to charity. It fosters an attitude of dependence. In addition, the diet rations as late as 1946 were reported as insufficient. Rations have been reduced in the last few years, and Aleuts no longer have the taste for seal meat that their ancestors did and no substitute for it has been introduced in the diet. More and more of their limited income, consquently, has to be spent to supplement the rations.

The Aleuts of the Pribilofs have no local self-government. They may not hold meetings unless an official of the Service is present. They may not leave the islands without permission from the Service. Before they were evacuated to the Admiralties during the war they had little understanding of their status. The war wrought this change:

> "During their exile the sealers discovered that they were citizens. They learned that the designation 'government wards' was a mere label which agencies handling their affairs had found convenient. It was neither the social stigma that

* Fredericka Martin, The Hunting of the Silver Fleece.

it had seemed on their home islands nor a barrier between them and their citizenship and voting rights, as the sealers and many of their governors had formerly interpreted the term. Once the label was exposed, the sealers realized they could neither be forbidden nor be prevented forcefully from leaving the Probilof Islands. Only, as previously, the threat of officials that, if they fail to make good outside, they will not be readmitted to the Seal Islands can continue to bar their egress. . . . It is to be hoped that no Pribilof official will again resort to such menace."*

Puerto Rico

Puerto Rico was ceded to the United States by Spain after the Spanish-American war, along with Guam and the Philippines. The island is governed in accordance with its Organic Act of 1917, which also made Puerto Ricans citizens of the United States.

There are over 2,000,000 Puerto Ricans with an essentially Spanish culture, although they are moving toward bilinguality. Three-fourths are classified as white and one-fourth as non-white. Actually, the population is a mixture of whites, Negroes, and, to a less extent, Indians, in various blends. There is little unanimity as to who are Negroes and who are not. However, as Carey McWilliams noted, the tendency is to use a rule of identification contrary to that used in the United States: a small amount of white blood is sufficient to cause a person to be classified as white instead of Negro. Hence, the three-fourths white classification.

Puerto Rico is vexed by an increasing population for the already overcrowded island, inadequate income production, and unsatisfactory income distribution (300,000 out of Puerto Rico's 350,000 families receive an average of $341 a year). Plans to revive the islands economic situation are complicated by its uncertain political status. Puerto Ricans have a measure of self-government, but have no voice in many decisions affecting island economics. Puerto Rico faces the alternatives of independence, statehood, and voluntary federation of some kind. It is not known which the people would choose, and there has been some movement toward holding a plebiscite on the political future of the island. In 1946 President Truman appointed a Puerto Rican, Jesus Pinero, governor of the island. A bill has been introduced in this Congress to amend the island's Organic Act to permit the people to elect their own governor.

There is no legal nor political discrimination against Negroes in Puerto Rico. Intermarriage is acceptable. Munoz Marin, the president of the Puerto Rican Senate, remarked that, "Jim Crow cars would seem as freakish as a man with two thumbs on one hand and eight fingers on the other."

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* Martin, op. cit., p. 282.

The other side of the picture is social discrimination in the upper classes and employment discrimination in certain prestige companies. This is insignificant when compared with the situation in the States, but nevertheless serves as a civil rights warning signal. A few years ago social discrimination had increased to such an extent and had been so reflected in hotels and restaurants that the local legislature in 1943 enacted a law guaranteeing equal access to facilities afforded by public places, businesses and any agency of the local government. One observer declares that in spite of this law colored Puerto Ricans "are very reluctant to visit certain hotels or night clubs."

Generally only white people or very light colored persons are employed by banks, sugar corporations, airlines and shipping companies, and the large department stores. In this way the entry of American capital has increased discrimination in Puerto Rico. According to Munoz Marin, American authorities have introduced segregation in the National Guard.

The Virgin Islands

The Virgin Islands were acquired by the United States from Denmark in 1917 for 25 million dollars, for the express purpose of establishing a military base in the Atlantic. Only a few of the fifty islands making up the group are populated, and of these only three - St. Thomas, St. John, and St. Croix - are important.

There are approximately 27,000 Virgin Islanders. About 95 percent of the population is Negro, some of mixed blood. Most of them are descendants of Africans brought to the immense wholesale slave market of the Islands in the 18th and 19th centuries. The white group includes a small settlement of people of French descent living in isolation from the rest of the islanders. A few thousand Puerto Ricans have immigrated to the Islands within the last twenty years, most to St. Croix. Virgin Islanders became citizens of the United States by Act of Congress in 1932.

Congress provided in 1936 the civil government under which the Islands are now operating, thereby increasing their self-government. As in other dependent areas, the Virgin Islanders do not have the suffrage in national elections. They do not have representation in Congress as do Hawaii, Alaska and Puerto Rico. They have asked to be so represented, and a bill authorizing the appointment of a resident commissioner in Washington is pending in Congress. President Truman, in 1946, appointed Judge William Hastie as governor of the Islands, the first Negro to hold the office.

The Virgin Islands have great economic and social problems which need special federal attention. Extension of Social Security provisions to the Islands would be a step toward providing the welfare aid needed.

Since the population of the Islands is largely Negro, there is little question of discrimination on the basis of race. However, the

Virgin Islands is trying to attract the tourist trade, as an aid to its sagging economy. There, as in other West Indians islands, the local population has seen evidence of commercial catering to white tourists' prejudices, particularly in hotel accommodations. The Second West Indian Conference meeting in the spring of 1946 under the auspices of the Caribbean Commission, took note of this development, and participating governments went on record in favor of stopping such practices by local legislation. The Virgin Islands last year enacted a law guaranteeing equal access to places of public accommodation. (Also pursuant to the Conference, the Caribbean Tourist Conference of the Caribbean Development Association, a group of organizations trying to promote tourist travel in the area, included in its Articles of Incorporation the provision that hotels and other public places open to tourists also be available to Caribbean natives).

The Canal Zone

The Panama Canal Zone came under the administration of the United States in 1904, after the revolutionary Panamanian government had been quickly recognized. The Zone is leased to the Unites States by Panama in perpetuity for $250,000 a year.

Unlike the dependencies discussed above, there is not even a modicum of self-government in the Canal Zone. Everything is owned by the federal government, and all activity centers around the Panama Canal. Administration of the Zone involves the operation and maintenance of the Canal, the operation of auxiliary enterprises, and the government of the Zone. Nine major departments handle all functions cutting across these fields.

When the United States acquired the Zone there were only a few hundred people living in the area. Executive and skilled workers were recruited from the United States. Unskilled and semi-skilled laborers were brought in from the West Indies and South America, the majority of them Negroes. Many of these workers were migratory, and repatriated when specific jobs were done, but others stayed. The population is restricted to employees of the Canal and the Railroad, members of the Army and Navy contingents, and their families.

There are 47,452 residents of the Zone, according to the Annual Census taken by the Police and Fire Division March, 1947. 22,102 of these are Americans, all white except for approximately 30, 229 are Europeans, also white. 9,624 are Panamanians, many white, some Negro, and some mixed white, Indian and Negro. 13,322 are Negro West Indians, most of them British subjects, and 275 are Negroes from Central American countries.

United States naturalization laws do not apply to the Zone. Therefore the Caribbean Negroes cannot become citizens, although some of them have lived there many years, and their children know no other country.

Although the Canal Zone is exclusively a federal government preserve, administration and government proscribes a rigidly segregated

way of life for the Negroes and the white people. Technically, this is on the basis of professional, skilled and supervisory workers (Gold) and unskilled labor (Silver):

> "The force employed by The Panama Canal and the Panama Railroad Company is composed of two classes which for local convenience have been designated 'gold' and 'silver' employees. The terms 'gold' employees and 'silver' employees originated during the construction period of the Canal from the practice of paying in silver coin common laborers and other unskilled or semi-skilled workers employed in the Tropics while skilled craftsmen and those occupying executive, professional, and similar positions were paid in gold coin, the latter group being recruited largely from the United States. Although all employees are now paid in United States currency, the original terms used to designate the two classes of employees have been retained for convenience. The terms 'gold' and 'silver' are applied also to quarters, commissaries, clubhouses, and other public facilities."*

This system of "convenience" operates to the serious detriment of the Negro workers. There are separate and lower standards for them in occupations and wages, education, housing and recreation.

Wages of the gold employees are comparable to wages paid in the United States. Wages of the silver employees "are established at levels which will ensure a standard of living comparing favorably with that prevailing for similar workers in the Republic of Panama and elsewhere throughout the Caribbean areas." One observer has suggested that in some cases colored silver workers do equal work with white gold workers for unequal pay, although the latters' job descriptions are "written up."

The Panama Metal Council, an affiliate of the A.F. of L., is composed of white skilled workers. It is a strong pressure group for the replacing of the West Indian Negroes in clerical or semi-skilled jobs with white workers. They have been successful in reaching Congress with this program, but to date it has been overruled by the President's emergency powers. The C.I.O. has recently organized a Public Workers Union which is asking for better working conditions and an end to discrimination in the Zone.**

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* Report of the Governor of the Panama Canal Zone, 1946, p. 60. Italics ours.

** See Reid, op. cit. pp. 408-409; Blanshard, "Jim Crow at the Canal", Survey Graphic, May, 1947. Also interview with Charles King, of the Personnel Staff of the Panama Canal.
The current issue (June 23rd) of Time Magazine reports that the CIO affilate in the Zone has achieved, among other gains, the removal of public "gold" and "silver" signs indicating separate accommodations.

There are separate schools for whites and Negroes in the Zone. The white schools have been expanded and improved; those for the Negro children are far inferior. Unlike the whites, the Negroes have no educational opportunities beyond eighth grade, and no apprentice-learner nor extension programs.

Zone public institutions, all under government control, segregate the Negroes and the whites, using the "convenient" gold and silver labels. Gold employees are housed in the best districts; most silver workers have to live in crowded areas in Panama where the rents are higher in comparison with those in the Zone. Government commissaries, the only stores, are divided into the gold and the silver. Government-owned hotels do not accept Negroes as guests. Drinking fountains come in pairs, one labeled gold and the other silver. The Zone's baseball parks and theatres are segregated. Clubhouses, such as the Cristobal Gold Clubhouse, flaunt the labels in their names. Occasionally exceptions are made for Negroes from the United States in some of these facilities, but in general the segregation is complete.

Guam and American Samoa

Guam, of the Mariana group of islands in Micronesia, was acquired by the United States in 1898 from Spain at the end of the Spanish American war. American Samoa in Polynesia came under United States control in 1899, with the native chiefs voluntarily ceding their islands a few years later. According to the 1940 census there are approximately 22,000 people in Guam and 13,000 in American Samoa, the great majority native to the areas.

These islands are and have been for the past half century governed by the United States Navy. The inhabitants are in the anomalous position of being neither citizens nor aliens, but "nationals" with none of the rights of citizenship yet owing allegiance to the American flag.

The Treaty of Paris, providing for the acquisition of Guam, obligated the United States to establish by act of Congress "the civil rights and political status" of the people of Guam. Samoa came under United States control with the express understanding that its residents would be given civil status and a rule of law. After almost fifty years neither the civil rights of the peoples nor the political status of the places has been defined. There is no organic act providing a government by law and guaranteeing civil and personal liberties. Government of the islands is completely in the hands of the naval governors who decree, administer, and judge.

The early history of naval administration in the islands is spotted with tyrannical and intolerant actions. Guamanians began petitioning as early as 1902 for definition of their rights and status. Samoans also petitioned for consideration of their rights, and in 1920 some of the leaders of this movement were charged with conspiracy and jailed. In 1930 a Commission, appointed by President Hoover to study the the Samoan situation, unanimously concluded that the Samoans should be given American citizenship, a bill of rights, and an organic act. That this legislation was never enacted seems to have been due largely to

Navy influence.

Harold Ickes has pointed out that the nature of naval dominance when applied to civilian populations is to be expected. Naval organization, training, and thinking relate entirely to the tasks of war, and those tasks have no relationship to the complicated problems of civilian populations:

> "In scores of Congressional hearings the testimony of naval officers follows the same pattern: the natives are ignorant, lazy, slothful, immoral children. An island is a battleship and is run as such. The civilian population happens to be on the island and cannot be got rid of. It must be endured like other tropical inconeniences. Automatically and with finality, the rules by which the Navy governs itself are clamped down on the civilian population. The result is a rule of authority, color distinction, and the ignoring of the problems of and strivings toward democratic living."*

John Collier, in his testimony before the Committee, described injustices resulting from naval rule. These points have been documented in the Newsletters of the Institute of Ethnic Affairs and other places:

1. Employment has been limited. The Armed Forces have taken over without compensation most of Guam's farmland, thereby making the Guamanians dependent on wages. Army and Navy contractors on Guam, the big employers, are prohibited from hiring Guamanians. They must import their labor at more than four times the Guamanian pay-rates. Guamanians, therefore, must turn to employment by the Navy, and domestic service for naval and civil service families, at depressed wages.

2. There is wage discrimination against Guamanians. There are different wage scales for Guamanians and continental Americans, although they may be working side by side at the same work. For example, in 1946 Guamanian carpenters received 43 cents an hour; continental Americans in Guam received $1.36, continental Americans brought to Guam received $1.66. All workers are paid from federal funds. Continental Americans get annual and sick leave with pay. If the Guamanians take such leave it is without pay. Continental Americans get time and a half for overtime for all time in excess of 40 hours a week. Guamanians get only straight time no matter what the work.

3. Guamanians do not have a due process guarantee. The armed forces have seized private property without compensation.

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* "Meet the Navy" speech by Harold Ickes at annual meeting of the Institute of Ethnic Affairs, May 29, 1946.

For example, a native owned bus line was seized, no compensation given the ousted owners, fares were raised out of the reach of Guamanians. Property taken by the armed forces becomes closed areas for the Guamanian owners.

4. War damages awards made by the Navy have been slowly processed and extremely low.

The machinery has already been set in motion to correct the serious civil rights situation in Guam and American Samoa. There has been considerable public criticism of the naval administrations on the islands. The Secretary of the Navy this year appointed a three-man civilian committee (the "Hopkins Committee") to investiage the administration of the islands. The Committee, with the Secretary concurring, recommended that citizenship be given the natives of Guam and Samoa and that the future government of both possessions should be established by organic acts. It found serious flaws in the Navy's administration, and made numerous recommendations for its improvement. But the Committee advised against setting any date for transfer to a civilian agency. The organic acts suggested for the two possessions by the Committee were similar to those already established for other dependent areas, except that,

"No provision is made for indictment or trial by jury, as to date the concept of a jury trial is quite unknown to the Guamanians and it is considered unwise to require it by Congressional enactment."

Hearings have recently been concluded in Congress on bills introduced this session on Guam providing for organic acts, citizenship, and in some cases administration by a civilian agency.*

Former Japanese Mandated Islands

These islands include the Mariana, Marshall and Caroline groups of Micronesia. Formerly under Japanese mandate, they will be trust areas under United States administration by action of the United Nations Security Council. They are now governed by the Navy by right of conquest and in the absence of definite congressional action or Presidential order.

Approximately 52,000 natives live on these islands; almost as many Japanese, Okinawas, and Koreans living on the islands were repatriated immediately after the war. The islanders have had varying amounts of culture contacts with Spanish, German, Japanese and American rulers, and consequently vary considerably in extent of acculturation to western ways. Native social organizations function in the management of their affairs.

Civil rights are pledged to the natives by the terms of the strategic trusteeship agreement. These are freedom of speech, of the press, and of assembly; freedom of conscience, of worship, and of

* June 30, 1947, the House received a request from the President for citizenship and civil governments for Guam and American Samoa.

religious teaching; freedom of migration and movement. The agreement, however, allows the suspension of these rights for the entire area, by unilateral action of the United States, if it is thought advisable for security. This provision places civil rights at the mercy of Army and Navy administrators, even in peace time. No other country has included such a provision in its proposed trusteeship agreements.

Whether these islands, along with Guam and American Samoa, should remain under naval rule or should be transferred to a civilian agency of the government, is an undecided issue. No other government relies on military or naval agencies to administer its non-self-governing areas, including the British and French Pacific Island administrations.

Conclusions

All of the dependent areas of the United States suffer to a greater or less extent from lack of the political rights of suffrage, representation, and self-government. In some of the areas the civil rights of native or other groups are not guaranteed or effectively protected. Some of the civil rights problems the Committee may wish to consider are:

1) The lack of civil rights guarantees, citizenship, and an established local government in Guam and American Samoa; the subjection of civil rights guarantees in the former Japanese Mandated Islands to the requirements of security; and the absence of civilian administrations in those areas.

2) The rigid system of segregation and discrimination of the West Indian Negro "silver" workers in the federally controlled Panama Canal Zone.

3) The lact of protection of Eskimo civil rights in the frontier regions of Alaska; non-recognition of Indian property claims in southeastern Alaska; and the restrictions upon the lives of the Aleuts of the Pribilof Islands.

4) The danger of increasing discrimination against non-whites in such territories as Hawaii, Puerto Rico, and the Virgin Islands, which have had a good record to date.

5) Increased self-government for Hawaii and Alaska in the form of statehood, for Puerto Rico in a plebiscite to determine its political status and in election of its governor, for the Virgin Islands in representation in Congress; and suffrage in national elections for all citizens.

6) Discrimination against the territories as compared with the states in receiving various federal benefits.

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President's Committee
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Civil Rights

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President's Committee
on
Civil Rights

MEMORANDUM June 23, 1947.

TO: Members of the President's Committee on Civil Rights

FROM: Robert K. Carr

SUBJECT: "Discrimination in Government Employment," by Milton D. Stewart and Joseph M. Murtha.

Discrimination against minority group members in federal government employment is expressly prohibited in policy statements on government service. Nevertheless, it does exist. War experience has shown that before the government can expect private industry to observe fair employment practices, it must offer leadership in the field.

The earliest Civil Service rules and regulations contained provisions against discrimination, and departmental directives and executive orders have restated this policy from time to time. These restatements have been made particularly during crisis periods, such as wars or depressions. Crisis period gains made by minority groups as indicated by the reaffirmation of policy, were small and quickly lost as the economic pressure or national emergency passed.

The Negroes in government employment today face the loss of gains which they made during the war years. Agencies which had never employed Negroes were forced by 1943 to accept them because of the manpower shortage. More progressive agencies employed them in high administrative positions. The available Negro manpower was in many respects superior to the available white, indicating the extent to which discrimination had operated in the past. The work of newly employed minority group members was highly satisfactory. A recent study* indicates that higher standards are set for Negroes than for whites in competition for employment, promotion, and work assignments.

Since the end of the war a large number of Negro federal employees have been reduced in force. This was in part inevitable since the majority of them had entered government employment with temporary or war services appointments and so lacked tenure. They are having difficulty finding new positions in government. Although a few agencies have made outstanding efforts to place Negroes reduced in force, most have made no effort at all. Some organizations have suggested that the Civil Service Commission establish a central hiring register for these temporary employees. However, the Commission feels that this would be impractical since it is currently faced with the tremendous task of setting up examinations and registers for permanent classified positions. There seems to be no immediate solution of the problem the temporary employees face under present reduction in force procedures.

Steps can be taken, however, to abolish or at least minimize discrimination in the federal government in non-crisis, as well as

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*By the staff of the National Committee on Segregation in the Nation's Capital. This Committee is studying how segregation and discrimination operate in the District, with the view of making practical recommendations to effect a change in the District pattern.

crisis years. Recommendations made here arise out of: an examination of stated federal policy, actual agency practice, existing machinery for handling allegations of discrimination, and the successful war-time experiences of two agencies with positive programs of non-discrimination.

Policy of the Federal Government

The Constitution provides that "no religious tests shall ever be required as a qualification to any office or public trust under the United States." After Congress passed the Civil Service Act of 1883, civil service rules and regulations were established barring discrimination in the method of filling vacancies. Persons making appointments are required to act "solely on the basis of merit and fitness and without regard to political or religious affiliations, marital status or race." (Rule 4, Section 4.3) Similar discrimination in removals and demotions are forbidden, and the Civil Service Commission has the power to investigate when an employee establishes a strong case proving discrimination. (Rule 4, Sections 9.101 and 9.105)

Application forms for civil service examinations do not contain any information on the race or religion of applicants. Examination papers are identified only by number, and the examiner is not aware of the name of the competitor whose paper he rates. Similarly, the appointing officer cannot determine from the list of applicants he receives their race or religion. He is required by law to select, for positions in the classified civil service, one of the three highest available eligibles certified to him, or to furnish the Commission with his objections to those he wishes to pass over.

Executive orders in recent years have reaffirmed the policy against discrimination. In 1940 a civil service rule was amended to assert:

> "No discrimination shall be exercised, threatened or promised by any person in the Executive Civil Service against or in favor of any applicant eligible or employee in the classified service because of race or his political or religious opinion or affiliation, except as may be authorized by law."

Executive Order 8802, of June 25, 1941 stated:

> "...I do hereby reaffirm the policy of the United States that there shall be no discrimination in the employment of workers in defense industries or Government, because of race, creed, color or national origin..."

Executive Orders 9346 (May 27, 1943) and 9664 (December 20, 1945) authorized the continuation of the original policy and the work of the Fair Employment Practices Committee until June, 1946.

That agency practice was not always in accord with these policies is indicated in a letter from the President to the heads of all federal agencies:

> "It has come to my attention that there is, in the federal establishment, a lack of uniformity and possibly some lack of sympathetic attitude toward the problems of minority groups, particularly those relating to the employment and assignment of Negroes in federal civil service...it is my desire that all departments in independent establishments in the federal government make a thorough examination of their personnel policies and practices to the end that they may be able to assure me that in the federal service the doors of employment are open to all loyal and qualified workers regardless of creed, race or national origin." (Letter of Sept. 3, 1941)

A committee to study the problems of minority groups in federal service was appointed in 1941 by the Federal Personnel Council.* This committee recommended that federal agencies implement the policy already established, and that personnel directors take the leadership in this respect not only for their own staffs, but also for the administrative officials of their organizations. The committee's report included statements by people who have done outstanding personnel work in the race relations field. Judge William H. Hastie, Civilian Aide to the Secretary of War, pointed out that where personnel officers have insisted upon a non-discriminatory program, "the results have been satisfactory." This is borne out by the wartime experience of several government agencies where administrators took positive stands against discrimination. In actual work situations feelings previously expressed against the employment of a member of a minority group disintegrated. W. J. Trent, Jr., race relations officer of the Federal Works Agency, also emphasized the need for personnel officers to take a leading role in implementing the non-discrimination policy. He advised that they discover which sections in their agencies are more inclined to accept Negro employees, and place Negro applicants in those sections first. Dr. Robert C. Weaver, Chief of the Negro Employment and Training Branch in the Office of Production Management suggested that analyses be made within the agencies of rejections of Negro eligibles, and that they be followed by investigations of units not employing Negro eligibles.

Toward the end of the war minority groups became concerned about losing their wartime gains in government employment. President Truman called the problem of discrimination in reductions in force of wartime agencies, and in placement elsewhere of war service personnel, to the attention of his agency heads:

> "...It has come to my attention that a considerable number of loyal and qualified employees have been refused transfer and reemployment by employing agencies solely because of race and creed. This condition is a violation of civil service rules which have been issued

*Advisory Council on Federal Personnel Administration composed of agency personnel officers.

by the President and in violation of exisitng law.

"I am writing to request that you make careful analysis of your personnel policies, procedures, and practices in order that you can assure me that they are in accord with national law and policy, and in order that all qualified workers in exisiting temporary war jobs will be considered fairly for appointments without distinction because of race, creed, color, or national origin." (Letter of Dec. 18, 1945)

The Civil Service Commission issued temporary regulations in 1946, to be in effect until the revision of the civil service rules, amending the section on removals and reductions to read:

"...and no discrimination shall be exercised for political or religious reasons or because of marital status race, creed, color or national origin."

Several governmental departments and agencies were asked for statements of policy on the employment of minority groups, for the use of the President's Committee. They were also asked to describe administrative steps taken to carry out this policy. Most agencies merely supplied a short statement of policy, however, and in all instances this policy conformed with the Civil Service rules and regulations and executive orders on the subject. (See Appendix I for the agency statements).

Agency Practice

The material presented here illustrates actual agency practice, in contrast to stated policy. It was gathered by a member of the research staff of the National Committee on Segregation in the Nation's Capital.

The experiences and opinions of several administrators in old line agencies concerning employment of Negroes are indicative of the general pattern of agency practice. Some of the difficulties in placing Negroes, and the kind of discrimination they may come up against, are illustrated in the comments of two administrators:

"I tried pretty continuously to get colored clerical people into the department...but results were simply pitiful. With much urging and pressure, we finally got a few in the mimeograph room and then, after a great deal more effort, the typing pool finally agreed to take a couple. Two or three days after they had been brought into the pool, I asked the pool supervisor how things were coming and she replied that she has solved the problem completely. I asked her what she had done and she showed me a screen in one corner of the big room behind which the two colored girls were sitting."

"During the war, department personnel, when I would ask them for clerical help, would often ask me whether I was willing to take a colored girl. Frankly, I refused consistently although I told them I would like to. There were a couple of reasons: One was that I was afraid of losing a number of the very good girls I had; the second, this Division was being neglected generally. The Secretary paid no attention to anybody but the political departments. Consequently, I didn't feel I could take Negro clerical help until the political departments did too and I told department personnel that I would take one when they could report to me that a political division had one. To tell the truth, we did not feel in a position to get out of line with the more influential parts of the Department."

A difficulty facing Negroes in promotions was described by another administrator:

"At the professional level we have a different kind of problem. At P-3 and above, our professionals have as a large part of their duties the business of meeting representatives of industrial firms, either going out in the field to get data from them or meeting them in the office for similar purposes. We have two Negro personnel in this division. One P-1 and one P-2. This P-2 is due for, and deserves, a promotion to 3 but we are hesitating because we are afraid of trouble in his contacts with the outside. If we had some way of writing up the job description so that his work would be purely inside the bureau, we would do it in a minute but we simply do not feel we can take the chance of putting him on these outside contacts."

The remark of one administrator indicates a broad pattern of discrimination extending throughout the government service, which has tended to build up a large pool of skilled Negro workers:

"We had a clerical shortage and I wanted to bring some Negroes in. I talked to my division chief about it and he said it would be O.K. so I went to the chief of department personnel. He said he would be delighted to get us some good Negroes. He said that due to the shortage and to discrimination he could get us better Negroes at that time then he could whites."

Still another comment reveals that Negroes must often meet higher standards than whites for the same jobs:

"We have made a practice of leaning over backwards in choosing our supervisors; that is, we have insisted on an extra measure of ability and skill in a colored person before we have made him or her a supervisor simply because we did know that they were on the spot in a way that a white is not."

On the other hand, another administrator felt that the threat of a charge of discrimination operated to protect inefficient Negro workers:

> "Whenever we have an inefficient colored person and want to fire her there is a charge of race discrimination. Because race discrimation is charged whenever a Negro is inefficient, we have supervisors who tolerate Negro inefficiency. They have to prove it up to the hilt whenever they want to fire one."

An administrator at the top level in a major department recalled his experience in hiring a Negro:

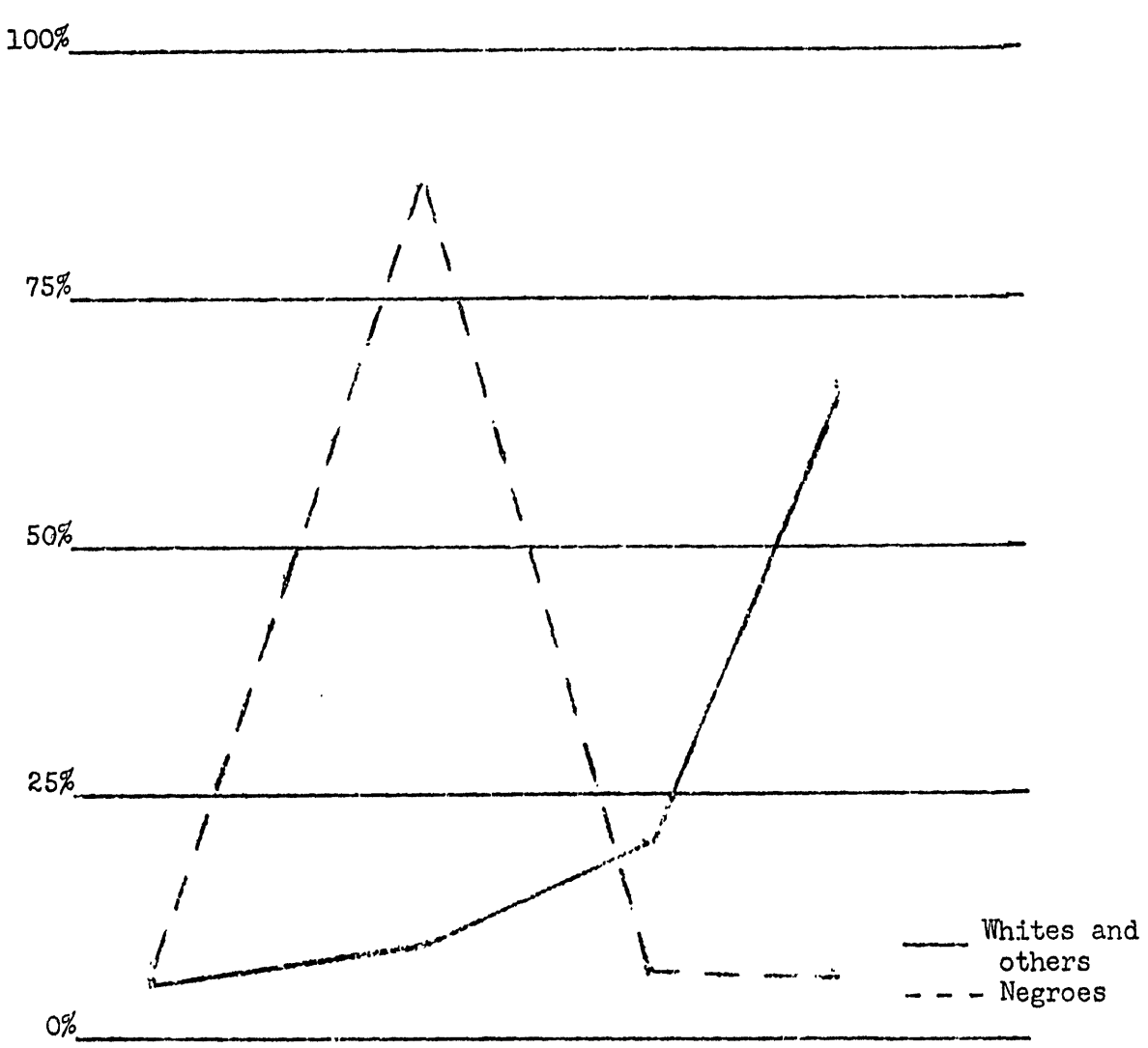
> "About a year ago, I decided that since we are doing so much talking about FEPC we ought to do something about it here. My secretary was leaving and I asked personnel to nominate three or four people from among whom I might make a choice. I cleared it with the other girls in the office. I found they had no strong animosities and no strong convictions either just as you would expect from a group of people at their level. When I explained to them what I wanted to do and why, they said that was all right with them and agreed, at my suggestion, to be missionaries for the girl along the floor here."

A case study in one government agency demonstrates a pattern of discrimination in government service. Samples of Negro and white workers in this agency were matched for the variables of age, sex, marital status, educational level, length of service, division in which inducted, and job title and grade at which inducted. Out of 503 whites and 292 Negroes inducted into the agency in the fiscal year 1946, 40 pairs were perfectly matched for these variables. These pairs were also checked for veteran's status and efficiency ratings. Twenty-seven of the Negroes and 22 of the whites in the sample were veterans so that if this status played any part in subsequent promotions it should have worked in favor of the Negroes. The average efficiency ratings for whites and Negroes were exactly the same. Variations in the cluster, however, were not taken into consideration.

A check on promotion and resignation for the sample was made in April, 1947. It was found that the whites had received 12 grade promotions in a total service of 22 man-years. This was an average of one promotion for each two man-years of service. The Negroes had received two grade promotions in a total service of 28-man-years. This was one promotion for each 14 man-years. In other words, it took the average Negro seven times as long as the average white to get a promotion, in spite of the fact that almost all of the variables which could effect promotion were exactly the same.

Another study in a given agency was made to determine the utilization of college graduates. Out of three thousand employees, just under one-third were Negroes. Of the 472 college graduates employed 104 were Negroes and 368 were white. The following graph illustrates the utilization of Negro and white college graduates in professional (P) and clerical (CAF) positions.

College Graduation Classified CPC, CAF, and P.



In percentages and numbers the following breakdown can be made:

Classification	College Graduates White and others		Negroes	
Professional	245	67%	5	5%
CAF 5-15 (supervisory and administrative)	69	19%	6	6%
CAF 2-4 (rank-and-file clerks)	34	9%	86	82%
CPC or unclassified	20	5%	7	7%
Total	368	100%	104	100%

This study does not take into consideration work performance and a number of other important factors. It does, however, indicate an unbalanced utilization in terms of educational qualifications.

Grievance Machinery

Grievance machinery is a negative approach to the problem of discrimination in employment, but nonetheless necessary in handling disputes. Well established grievance procedures must be a part of any program to eliminate discrimination.

Executive Order 7916 of June 24, 1938, directs federal agencies and departments to establish grievance machinery, and to submit it to the Civil Service Commission for approval. A recent Executive Order establishing personnel policy and procedure for the post-war period reaffirms the Commission's responsibility for review. In spite of the instructions given in the original executive order, only 33 out of the hundreds of government agencies have filed procedures with the Civil Service Commission and received its approval. (See Appendix 2 for list of agencies) Other departments may have machinery now in existence, but if so, they have not advised the Commission of it. The Commission does not feel that it should take the initiative in getting recalcitrant agencies to submit procedures in use or to develop them where they do not exist.

A letter from the President directing the Commission to follow through in this report, or to the department heads themselves, would be sufficient to establish well organized and standardized machinery in each agency.

Two Agency Programs

Under the pressure of the New Deal and the national emergency a few of the old line agencies have attempted in the past several years to follow through on a positive policy of non-discriminatic It has been the wartime agencies, however, which have demonstrated that a practical program can be effective. The Office of Price Administration and the National Housing Agency are outstanding examples. Both of these agencies admit that they were not completely successful. Many of their attempts failed. There were divisions and offices within each agency wher no progress was made. Nevertheless, the attempts were often effective and merit consideration.

The National Housing Agency in a letter to the President's Committee on Civil Rights cited the following factors as most important in a program against discrimination:

1. Sincere conviction and determination on the part of the administrator.

2. Clear cut statement of policy which transmits that determination down through the various divisions and office heads.

3. Thorough and open discussion of the implications of the non-discriminatory employment policy by the top staff.

4. Implementation of the policy by <u>specific</u> procedures and personnel.

5. Personnel in the administrator's office whose duty is to see that minority group members participate equitably in all phases of the agency program.

6. Regular reports and review of the operations and results of the program against discrimination.

Copies of letters on employment of minority group members from the files of NHA clearly show the determination of the administrators to carry out a non-discrimination policy. Directives were sent to all regional and field offices requiring submission of employment records and calling for a justification by supervisors where the record of minority employment was particularly poor. Universities and organizations which might supply Negro applicants for professional jobs were contacted and informed of personnel needs. A careful record of Negro employment was kept at the Washington offices month by month, with grade breakdowns.

The Office of Price Administration from its inception did an outstanding job in overcoming discrimination in employment. The record is long, and it is impossible here to make even passing mention of all the techniques used. However, in a memorandum to the Committee, the Director of Personnel described some of the steps taken to overcome prejudice. He included the following principles:

1. Prejudice has its roots in economic and political programs. A program of non-discrimination must likewise have its roots in economic and political programs.

2. Prejudiced people generally influence their neutral fellow workers. If this influence is actively countered the large group of neutrals will not discriminate.

3. Experience with members of minority groups under proper circumstances is the most effective way of breaking down prejudice. An effort must be made to see that person-to-person contact occurs. For this reason, all Negro units are bad.

4. Few people admit to prejudice themselves, but discriminate under the guise of protecting others, or out of real or simulated fear of the reactions of others to minority group members. "Chase the prejudiced person down, and often you won't find him."

5. Fiat will not defeat discrimination. There must be a program which utilizes the above principles and other social forces.

An important factor in OPA's program was the emphasis given the fact that its functions affected all segments of the population. Rationing and price administration were a direct concern of every citizen. It was natural, therefore, that all citizens should participate equally in the administration of its programs. Whatever was done in the field of race relations was done not to benefit a minority, but to make the agency's programs work. This thesis is not inherent in OPA's functions alone. Agriculture, Veteran's Administration, Social Security, and other agencies could also emphasize this factor. Personnel policy and administration should be seen as an integral part of the government programs they service.

The history of OPA demonstrates that rank and file organizations, and particularly unions, can play important parts in programs against discrimination in government employment. The union in numerous instances was effective in overcoming discrimination in the use of facilities and in social and recreational programs. An administrator wishing to eliminate discrimination must seek the cooperation of existing rank and file organizations. In a successful program pressure must be exerted from the bottom as well as from the top.

Another point brought out by OPA's experience is the necessity of top administrators' insistence that their non-discrimination programs are not subject to the review of supervisors at various levels. In government administration supervisors frequently decide that policy set at the top is subject to their review, and this has happened particularly in respect to non-discrimination policies. In many agencies work assignments and office status of minority group members are determined solely by the immediate supervisor, in spite of directives issued from the top level. At OPA this was not tolerated. One of the earlier administrators of OPA issued a statement in which he pointed out that the policy of non-discrimination was "a matter which the views or prejudices of individuals are not expected to control."

Conclusions

There is discrimination in varying degrees in federal government employment, in spite of the policy against discrimination. The following recommendations stem from the experiences of agencies which have tried to carry out a non-discriminatory policy. In brief, policy must be clearly stated at the highest levels, standardized procedures to carry out the policy must be initiated, and their success or failure periodically reviewed.

1. Letters from the President to departmental heads and the Civil Service Commission re-stating the policy of non-discrimination and outlining a detailed program of implementation would have a positive effect. Past executive orders have only stated the policy and not described how it is to be carried out.

2. Reiteration by the President of his wishes in regard to non-discrimination in government service, at Cabinet meetings, would stress the policy. Important agency policies are, it is believed, laid down at Cabinet meetings. The President's emphasis on non-discrimination would establish its importance to the federal family.

3. Similar reiteration by department heads to their immediate staffs, and so on down the line, would militate against supervisors at the lower levels blocking the program. Each administrator should convince his staff that the non-discrimination policy is as much a part of their responsibility as any other program, and that it is not simply a policy to which lip service is paid.

4. A continuous process of education carried on by the Civil Service Commission and the Federal Personnel Council at the various levels of departmental operation would help communicate the policy throughout the administration. The Commission may carry on the educational process in its day-to-day contacts with departmental administrators. The Council, made up of personnel directors of government agencies, can do educational work in their conferences on personnel policy. The decisions of these conferences are far-reaching, especially in the light of the important role the Council has been given by the executive order reestablishing civil service on a peacetime basis.

5. The example of top administrators placing Negro employees conspicuously in their own "front" offices would probably result in the employment of Negroes in other offices. Many supervisors hesitate to lead in the employment of Negroes where the front office has never taken a dramatically positive stand. Such an example in the White House would undoubtedly have considerable impact upon Cabinet officers. These appointments should not be limited to positions advising specifically on race relations matters.

6. The Inspection and Investigation Divisions of the Civil Service Commission could, with additional training of staffs, implement the policy by educational work and by checking allegations of discrimination. The Inspection Division, formally organized in February, 1947, inspects the personnel operations of Washington and field agencies. It interviews administrators at the highest level on the policies and procedures established by the Commission, with the objective in part of assisting agencies to adhere to Commission standards. The Division can take corrective action where violations are discovered. It is expected that the main work of the Division will be the education of top operating officials in policy and procedure. The Commission agrees that it could be used effectively to follow through on policies and practices of non-discrimination. Some additional training of the inspectors in that particularly field would be necessary.

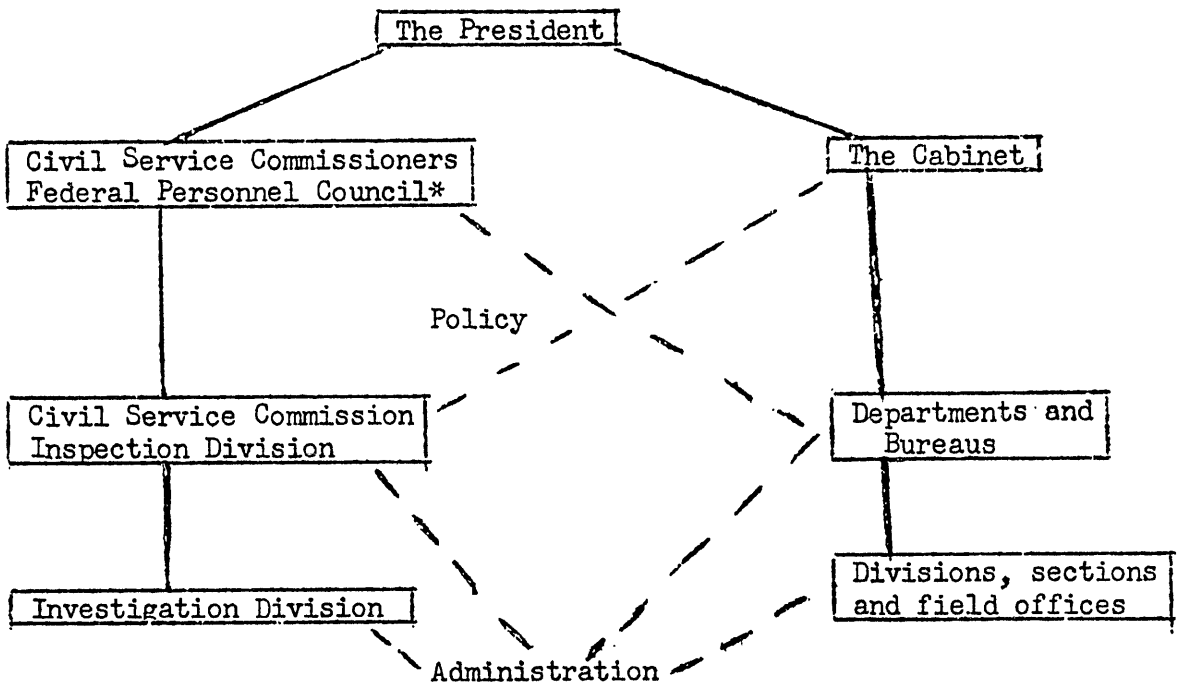
The Investigation Division follows up allegations of discrimination. If there is smoothly operating grievance machinery in each agency and the investigators are properly trained to handle this type of case, much can be done to check the more flagrant discriminatory practices.

7. The carrying out of the non-discrimination policy would be accomplished more effectively through ordinary personnel channels than through special race relations units. This is the conclusion of those wartime agencies which created such units. People specialized in race relations are necessary, but they should never be used to shift or replace regular line authority. Allegations of discrimination should be handled in the employee relations office, where the trained personnel should be placed. On a higher level, there should be a person close to or in the

top administrator's office who is interested and qualified in the race relations field. Ideally this person would be an administrator holding a line position in the agency with the understanding that he devote as much time as is necessary to the non-discrimination program. Rank and file organizations should be cooperated with in trying to overcome discrimination.

8. As a check on the employment program reports should be submitted to the personnel director and top administrator of each agency showing the number of Negroes employed in each bureau with a breakdown by grade. The necessity for this procedure became evident in a series of interviews with personnel officers. In theory the maintenance of such records is undemocratic, but it remains the only practical way for the administrator to measure the effect of the non-discrimination program, and the progress made by bureaus with traditions of discrimination. This does not mean that personnel records should be tabbed for race or segregated in filing. But actual head counts could be taken from time to time by supervisors, and submitted by memorandum up the line.

The sketch below depicting the personnel flow chart of the federal government showing inter-relationships of the various agencies concerned with personnel policy and administration and the manner in which policy can be established and implemented.



* In cooperation with Semi-Public Organizations such as: Society for the Advancement of Management, Society for Personnel Administration etc. in round table conferences.

APPENDIX 1

Statements of Policy on Employment of Minority Group Members

State Department

The Department selects its staff on the basis of merit without discrimination.

"The Department recognizes that the individual employee's rise and interests with reference to his position are based upon his ability and performance without discrimination or prejudice. He is entitled to fair treatment by his supervisors, equitable compensation for his services and deserves consideration for his advancement within the department." (From the Personnel Program, Departmental Order 1272, May 3, 1944.)

The Department also circulated President Truman's letter of December 18, 1945 establishing the principles governing reduction in force and transferring employees to peacetime activity. The Department's correspondence with the President's Committee does not indicate the existence of any positive program to implement the above policy.

Department of Commerce

"The Department of Commerce has for many years maintained a policy of nondiscrimination in the selection, promotion and retention of members of the minority groups and has implemented this policy by memorandum and more recently by covering the subject in several administrative orders issued by the Secretary of Commerce. The Secretary of Commerce has, from time to time, made this subject a part of a staff meeting with the operating officials..."

The Director of Personnel issued a memorandum on November 9, 1945 restating this policy with the following directive:

"In order to strengthen the application of this policy, I shall expect your operating officials to conduct a prompt and thorough investigation of each charge of discrimination made in your establishment. A report of their findings should be submitted to this office within five days after the investigation is completed. This office will fully review the evidence submitted and suggest appropriate action."

Department of Labor

"No consideration is given to questions of religion, or race in choosing candidates for employment, reassignment or promotion in a department. Inquiries are not made on these subjects and records are not maintained on a basis of religion or race."

The Employee Relations Policy contains the following

statement:

"No discrimination shall be exercised, threatened or promised in favor of or against any employee of the Department because of race, sex, color, racial origin or his political or religious opinions or affiliations (except as may be required by law)."

War Department

The War Department was the largest employer of civilians during the period of World War II. Nonwhites constituted 22% (37,012) of the War Department personnel in Washington and 15.4% of the 950,748 field workers. In October, 1940, a Negroes' Interest Office (a Civilian Aide to the Secretary of War) was established for the "purpose of assisting in the formulation, development and administration of policies affecting the fair and effective utilization of negroes in the Army and of policies involving their employment as civilians." This policy has been further clarified in Personnel Regulations No. 2 (a statement of civilian personnel policy November 14, 1945) and Personnel Regulations No. 10 (basic materials relating to civilian personnel administration, June 1, 1945).

Treasury Department

"Religious, racial or political discrimination for or against any employee is strictly prohibited in the Treasury Department" (Information for employees, September 1945).

Post Office Department

"All of the positions in the Postal Service are under civil service. The Civil Service Commission conducts examinations and establishes eligible registers for the various positions in the field postal service. Selections from these eligible registers are made in accordance with civil service law, rules and regulations without regard to political or religious affiliation or race. The departmental instructions to all postmasters and appointing officers in the field service are that no discrimination shall be made strictly in accordance with civil service law, rules and regulations. ...There is no special rule or regulation incident to the employment of negroes." The Post Office Department has not indicated the existence of any program to implement the above-stated policy.

Department of Agriculture

"The policy of this Department was stated in General Departmental Circular No. 34, dated April 17, 1944...reaffirmed in Memorandum No. 1141 dated January 15, 1946 and as set forth below:

'In filling vacant positions, the best qualified person available will be chosen, regardless of race, sex, color, creed, political affiliation, personal sponsorship, or other extraneous consideration.'"

Veterans Administration

"Selection of persons to fill vacant positions in the Veterans Administration will be made in accordance with applicable legislation or civil service rules and regulations on the basis of merit and fitness for the work and highest practicable standards. There will be no discrimination, either for or against individuals because of race, creed, color, national origin or other irrelevant factors." (Veterans Administration Circular No. 165, July 10, 1946)

APPENDIX 2

Agencies with Grievance Procedures Approved by the Civil Service Commission

Agriculture
Board of Economic Warfare (out of existence)
Central Intelligence Group
Civil Service Commission
Commerce
Federal Power Commission
Federal Public Housing Authority
Federal Security Agency
General Accounting Office
Home Owners' Loan Corporation
Labor
Interior
Library of Congress
National Archives
National Housing Agency
National Resources Planning Board
National War Labor Board (out of existence)
Navy
Office of Price Administration (out of existence)
Office of Strategic Services (out of existence)
Petroleum Administration for War (out of existence)
Post Office
Reconstruction Finance Corporation
Securities and Exchange Commission
Social Security Board
State Department
Tarriff Commission
Tennessee Valley Authority
Treasury Department
Veterans Administration
War Department
War Assets Administration
War Manpower Commission (out of existence)

Grievance Procedures Submitted But Not Approved

Executive Office of the President
Government Printing Office
Interstate Commerce Commission
Department of Justice

President's Committee
on
Civil Rights

MEMORANDUM June 24, 1947

TO: The President's Committee on Civil Rights

FROM: Robert K. Carr

SUBJECT: "The Negro in the United States", a Memorandum prepared by Milton D. Stewart and Herbert Kaufman

The Negro Population

There are more than 13 million Negroes in the United States today, comprising about 9.8% of the total population. 99.3% are citizens. Almost 10 of the 13 million, or 77%, live in the South, 21.7% live in the Northeastern and North Central States and 1.3% live in the West. More than 3½ million, or over 27% live in cities of 100,000 and over.

The distribution of the Negro population is in flux. With the last World War, a mass migration to the urban centers of the Northeast and North Central regions began and "there seem to be good reasons to expect a continuation of the northward migration in spite of depressions and booms."*

The war attracted many migrants to the Pacific Coast, where new industries opened opportunities for Negro workers. Many of these plants have closed, however, so that while movement to the North can be expected to continue, it is doubtful that declining industrial activity in the far West will attract many to that area for a time. 1/

Extremes of opinion about increases in the Negro population appear to be invalid. The Negroes do not seem to be either a "dying race" or multiplying so rapidly that they threaten to crowd out the whites. Prior to 1930, the white reproduction rate was higher than that of the Negroes; since then, the white rate has dropped somewhat faster, so that the Negroes are reproducing themselves slightly more rapidly than the white. Nevertheless, the race differentials are not very significant in terms of total population for "in their reproduction, American Negroes are like American whites and show the same sort of differential by regions and groups." (Pp. 161-166)

To sum up, the Negroes are a large part of the American population and they will probably remain so. They are concentrated in the South, but tend to move North and West to areas of greater economic opportunity. They are almost all citizens. Yet, despite their number, their permanence, their increasing mobility toward greater freedom, and their citizenship, they are confronted with a pattern of prejudice and discrimination which infringes upon every one of their fundamental civil rights.

* Gunnar Myrdal, An American Dilemma, Harper & Bros., New York, 1944; p. 193. All subsequent page references are to this book.

Patterns of Discrimination

I

Discrimination is most obvious in employment. Occupationally, speaking of the entire nation, the opportunities for Negroes in professions, in semiprofessional work, in proprietary, managerial, clerical and sales positions are much lower than opportunities for whites. It is chiefly in manual and menial positions -- domestics, service workers, unskilled and farm labor -- that the Negroes can find openings. 2/ There is a vicious circle of reasoning in this: The Negro is not given a fair chance because his current position is said to indicate a lack of ability. He is in his present position, however, because he has never had a fair chance. This is true not in the South alone -- the Negro encounters discrimination in Northern labor markets as well. By prejudiced recruiting and training policies, by discriminatory advancement and promotion, only menial positions are left to the Negroes. Naturally, the situation is worse in the South because the greatest portion of the Negro population is located there and because opportunities even for the whites are somewhat limited.

> "Still the record of the North certainly is not a good one either. Many labor unions discriminated against the Negro workers. So did many employers, especially when it came to skilled work. (P. 296)
>
> "Even in those cities in the North where there is a substantial Negro population, Negroes do not work and have never worked in most industrial plants. Taking on a Negro worker sets a precedent and will ordinarily be avoided if possible.....
>
> "Workers are usually conservative. An attempt by an employer to introduce Negro workers into a hitherto all-white plant will usually be met by more or less active resistance on the part of the workers. This resistance is likely to become more intense if Negroes are to get a share of the skilled jobs. Even a change in the Negroes' position in such plants where they have already been accepted may cause trouble -- as for instance, if Negroes were promoted to higher jobs than they have previously been allowed to have, or if an attempt is made to break up other segregational patterns in workrooms and cafeterias." (P. 388)

The major unions have made sincere efforts to overcome prejudice, but most of them have proved relatively unsuccessful.[3] While the rise of industrial unions has favored the Negroes and there is reason to believe that the growth of unionism will redound even further to their benefit, Myrdal, as late as 1944, drew the conclusion that "it is still true that most of them exclude or segregate Negroes." (P. 369)

II

As one might expect from the discussion of the employment problem, bias reflects itself in inequitable income distribution. On the basis of 1939 statistics on wage and salary income, the existence of discrimination in wage and salary scales is conclusively established. The median income for all wage or salary workers in the country was $877 per person per year. For white workers alone, it was $956 per person. For non-white workers, however, it was only $364.

43.9% of the total workers in the country made over $1,000 per year. 47.6% of the white workers fell into this category. However, only 9.6% of all the non-white workers earned over $1,000.[4]

III

In view of the considerable differentials in occupations and incomes for Negroes and whites, the fact that housing conditions are worse for the Negroes follows necessarily. Whether in the North or the South, in rural areas or in cities, the racial differentials in housing are tremendous. Unbelievable overcrowding Negro districts is omnipresent, and few of the crowded, ancient buildings have any modern sanitary facilities. Landlords allow houses rented to Negro tenants to fall into disrepair and the conditions under which some families live are far below minimum standards of health, safety and common decency. Certainly this is not incongruous with the poverty created in large part by economic discrimination. But this is far from the whole cause.

For Negroes often cannot secure housing commensurate even with their depressed economic status. In fact, there is reason to believe that they must often pay more than white families for equal accommodations. Poverty is a contributing element, but "there is another and even more fundamental cause; the artificial limitation in the choice of housing for Negroes brought about by residential segregation." (P. 377)

Nor can it be argued that segregation is an outcome of a natural desire of Negroes to stick together: "Practically all the statistically observed Negro housing contentration is, in essence, forced segregation....."[5]

No matter where he goes, the Negro runs into the same restrictive barriers; residential segregation is practiced almost as vigorously in the North as in the South.6/

Four devices have been used to keep Negroes from moving into white neighborhoods. The first of these, the municipal zoning ordinance, was invalidated by the Supreme Court, but it has been replaced by an expanding use of restrictive covenants in property deeds. Even where these methods are not used, not many individuals attempt to resist the informal social pressures which are brought to bear -- refusal to sell or rent and spontaneous hatred of those who break through the color bar. Finally, some neighborhood associations use techniques ranging from persuasion to violence to keep out Negroes. Thus, even when Negroes overcome the handicaps placed upon them by economic discrimination, they find it almost impossible to rise out of the slums to which the whites have relegated them.

IV

Poverty and poor housing breed poor health. The Negroes consequently, have higher disease and mortality rates, as a group, than do the whites. For example, the Negro death rate from pellagra is more than 14 times higher than that of whites; from syphilis, more than 8 times higher; from pneumonia and influenza, more than 3 times higher; from tuberculosis, more than three times higher; from whooping cough, nephritis and from diarrhea and enteritis, respectively, more than twice as high; infant mortality is 69% higher among Negroes than among whites. The list could be extended, but it is clear that the health of Negroes generally is far worse than that of whites.

But poverty and housing are not the full explanation. Again, discrimination is a major causal factor. For directly and indirectly, discrimination manifestly operates against the Negroes' health. There are proportionately fewer hospitals and hospital beds available to Negroes throughout the country; even where hospital facilities are available, they are generally of much poorer quality than those provided for whites. There are relatively few Negro doctors, dentists and nurses, and most of these are employed in the North. Discrimination in education (discussed below) keeps knowledge of hygiene and sanitation from the Negro populace; it also prevents the training of Negro medical experts. The end product is another vicious circle; "Ill health reduces the chances of economic advancement, which in turn operates to reduce the chances of getting adequate medical facilities or the knowledge necessary for personal health care." (Pp. 171-74)

V

Poverty and disease are partially responsible for the fact that the average Negro over 25 has had less schooling than whites of the same age.[7] These factors are particularly important with regard to education in the North. By and large, however, considering the whole Negro population, discrimination in education is the main reason for the inferiority of their schooling.

This is especially true in the South where most of the Negroes reside. Segregation is required by law; two complete sets of elementary and secondary schools are maintained. The Negro institutions, however, are in inferior buildings and have poorer equipment. The teachers are lower paid and confined to teaching only elemental vocational subjects. Negroes have little voice in the control over their own schools. Education in the South is certainly separate, but it is far from equal. Some Negro colleges are maintained in the South, but they are inferior with respect to both facilities and personnel. Some states make financial provision for Negro students to study in any university in the country, but these aids are difficult to obtain.

In the North, segregation is not official polity, but it is actually in effect in the elementary schools as a result of residential segregation, school district gerrymandering and policies in granting permits to transfer. There is much less segregation in the secondary schools. The great Northern universities do not restrict Negroes to any significant extent, but "most of the minor private universities and colleges prohibit or restrict Negroes. Some of these permit the entrance of a few token Negroes, probably to demonstrate a racial liberalism they do not feel." (Pp. 632-33)

Thus, discrimination in combination with economic and related factors make it extremely difficult for a Negro to get an adequate education.

VI

The pattern of discrimination also is manifest in police administration and in the administration of justice. This is largely a Southern problem, for "since, on the whole, Negroes do not meet much more discrimination from officers of the law than do white persons of the same economic and cultural level, there is in the North no special problem of getting justice for Negroes....." (P. 528)

"Practically all public officials in the South are whites." And almost all of the public officials stand for "white supremacy" as well as for the purposes of their office. This applies alike to "quasi-officials" -- public conveyance operators, gas and electric meter readers, etc. An atmosphere of terror has been

engendered by the fact that the Negroes know all of these functionaries are charged with sustaining white authority. Negroes dare not insist on their rights or resist humiliation and injustice, for the whites view this as an attack on the whole social structure. In any situation involving both races, the Southern policemen will arrest the Negro for "disturbing the peace" without carefully investigating the cause, and that, in many Southern communities, ends in police brutality.

The Negro cannot successfully turn to the Southern courts for protection, for racial discrimination distorts the administration of justice. In the first place, technical legal devices are being developed to evade the decision in the Scottsboro case requiring that qualified Negroes be admitted to jury service. Thus, juries are flagrantly biased; grand juries will often refuse to indict a white man for an offense against a Negro and petit juries rarely convict even when an indictment is returned. When, on the other hand, a Negro offender is concerned, there are no such difficulties. There is a double standard of justice; crimes of Negroes against Negroes are treated relatively lightly as compared with cases involving both races. However, when a white is the victim of an alleged crime by a Negro, the verdict is virtually reached in advance.

Not only the juries but the judges and prosecutors as well exhibit obvious partiality. Negro parties and witnesses have often been browbeaten, humiliated or ignored entirely, and trials are frequently lacking in the rudiments of judicial procedure.

> ".....The courts, particularly the lower courts, too often seem to take for granted the guilt of the accused Negro. The present author, during his visits to lower courts in the South, has been amazed to see how carelessly the Negro defendants -- and sometimes also defendants belonging to the lower strata of whites -- are sentenced upon scanty evidence even when they emphatically deny the charges. There is an astonishing atmosphere of informality and lack of dignity in the courtroom, and speed seems to be the main goal. Neither the judge nor the other court officers seem to see anything irregular in the drama performed; the observer is welcomed and usually asked to sit beside the judge to be better able to watch the interesting scene." (Pp. 551-52)

Finally, the sentences imposed upon Negroes, when they become involved in cases with whites, are usually much more severe than those imposed on whites for similar crimes.

Out of the discriminatory administration of justice has grown a disregard of the law. Since the police and the courts stand behind any practices which preserve white dominance, the white population, acting individually or in groups,has not hesitated to make extensive use of violence and intimidation.

> "It is the custom in the South to permit whites to resort to violence and threats of violence against the life, personal security, property and freedom of movement of Negroes .....It would not be possible except for the deficient operation of the judicial sanctions in protecting Negroes' rights and liberties." (P. 558)

The practice ranges from admonition through threats, beating and murder.

Lynching is a manifestation of the same type of lawless intimidation,though more spectacular. It is increasingly deplored by many elements in the South; state authorities do not side with the lynchers. Yet it is difficult to apprehend and particularly to convict lynch mobs or vigilante groups because local police support them and few who oppose the practice are ready to take the risks involved to hinder it.

Lynching has been declining, but its psychological effects are still out of all proportion to its frequency. For it is but one element of a larger complex of intimidation in which other forms of violence -- striking, beating, robbing, destroying property, exiling, threatening - go on with almost imperceptible decrease. The entire pattern must be considered if any part of it is to be viewed realistically.

> "In the last analysis, the true perspective of lynching is the inherited pattern of white society in the South not to respect the rights of Negroes on equal terms....(P. 566) It should not be forgotten that lynching is just one type of extra-legal violence in a whole range of types that exist in the South. The other types....are much more common than lynching and their bad effects on white morals and Negro security are greater. (P. 560)

In short, discrimination by the police and the courts produces not only injustice but violence. Certainly, every effort should be made to stop lynching, but at the same time, the fundamental causes and the other symptoms should not be lost from sight. The administration of justice, violence and intimidation, and lynching are all cut from the same cloth.

VII

Discrimination is a prominent feature of suffrage and elections in the South. The three outstanding political facts about the region are:

First, it has, for all practical purposes, only one political party, in which the primary is more important than the general election.

Second, a much smaller proportion of the population participates in elections here than in the North, and "most of this voting is carried on with a corruption and disrespect for law that is found in only a few areas of the North and West." (P. 425)

Third, for all practical purposes, Negroes are disfranchised.

These three political facts are part of the Negro problem. The first results from the belief that any attempt to build up a two-party system is an effort to introduce "black domination." The second grows out of the disfranchisement for Negroes, for some of the devices have also kept white men from the polls. The third, of course, is motivated by the desire to maintain "white supremacy." (Pp. 474-75)

Exclusion of Negroes from the all-important primaries has been tested before the Supreme Court. In the most recent case, Smith v. Alwright, the primary was held to be part of the public electoral process if it was governed by state law, and therefore within the scope of the Fifteenth Amendment to the U. S. Constitution; discrimination was held to be unlawful under such circumstances. South Carolina replied to the decision by repealing every relevant state law, thus making parties private associations which can choose their own membership on any basis they choose. The final page is not yet written; should the South Carolina contention be held valid, Negroes will still have little hope of voting in primaries in the South. Many Southern states are already following South Carolina's lead.

Techniques for keeping Negroes from exercising the right of suffrage include, in addition to the white primary, the poll tax (in which the manipulation of technical requirements as well as the amount of the tax is used to discriminatory ends), property, educational, and character requirements for voting (a means by which the same officials who approve barely literate whites, for example, disqualify Negroes of superior education), and other devious legal devices 8/. In addition, the common extra-legal devices of violence, terror and intimidation are used to the fullest extent at elections. Finally, "other favorite devices are to evade the prospective Negro registrant or voter

by ignoring him, by telling him that registration cards have "run out", or that all members of the registration board are not present, that he should go somewhere else, or that he will be notified when he can register, by "losing" his registration card or by "forgetting"to put his name on the list of voters." (P. 485)

Again, the Negro is caught in a vicious circle. Without the ballot he cannot exert the influence he should if he is to secure the rights to which he is entitled. Without first getting those rights, he cannot vote. Discrimination in the political process thus plays an important role in sustaining the conditions described earlier.

VIII

Finally, most public facilities are open to Negroes with about the same pattern of discrimination and segregation as in the schools. Libraries, parks and playgrounds in the South are segregated, but those provided for Negroes are poor substitutes for those available to whites. In the North, segregation and discrimination in this respect is negligible. As for jails, penitentiaries, reformatories and insane asylums, on the other hand, some segregation is found even in the North.

Privately run public services are often forced by law, in the South, to segregate customers and to bear the expense of providing two sets of service.

> "A good part of the segregation and discrimination that does occur in such facilities as railroad trains, railroad waiting rooms and ticket offices, streetcars, buses and taxicabs occurs because the law requires it. (P. 634)

There is practically no segregation of this kind in the North.

Hotels, recreational and amusement facilities, restaurants, cemeteries and churches are completely segregated in the South; in the North, there is theoretical absence of discrimination, but the pattern varies greatly. Factories in the South, sometimes by law, but usually by choice of the factory owner, segregate Negroes when they are admitted to industry at all. In ordinary stores, whether in the North or the South, the degree of segregation depends on how personal the service is -- barber shops and clothing stores discriminate rigidly; gas stations and hardware stores hardly at all. Civic, social business and professional associations almost always bar Negroes in the South and frequently even in the North. All of this has tended to increase the social distance between the races because the Negro has responded by building a separate community of his own and isolating himself.

Conclusion

There is no phase of American life in which the Negroes do not suffer discrimination. They are subject to the entire gamut of infringements on civil rights. Furthermore, the violations are all closely interrelated; they interact upon each other, and each one contributes to the existence of the others. Any attempts to remedy the situation must therefore take the total picture into consideration. This involves a three-pronged approach.

First, part of the Negro problem is economic. Poverty contributes to keeping Negroes in substandard housing, in poor health, and uneducated. It keeps him from securing adequate legal aid when he needs it, and from voting. Hence, insofar as there are civil rights, the protection of a decent standard of living is a prerequisite to any other action. Furthermore, speaking both qualitatively and quantitatively, sufficient jobs, houses, schools and hospitals must be made available if protection of these rights is to have meaning.

Secondly, action must be taken to prevent discrimination. For this is the common denominator of all the other issues. To the fullest extent possible, whatever legal devices are available should be used to reduce discrimination in employment (including recruitment, job assignments, promotions and advancement), housing, voting, education, the use of places of public accommodation and recreation, travel in public conveyances, the administration of justice, police administration, and the enjoyment of public services and benefits. Certainly, legislation or administrative action cannot be expected to end the Negro problem. But they can do much to help the Negroes to help themselves -- to break the vicious circle that relegates the Negroes to a position in which they are rendered incapable of obtaining the economic status and political influence to which they are entitled. Laws will not establish equality, but they may reduce the extent to which fundamental constitutional guarantees are violated. (It should be noted, in this connection, that Negroes in the South feel that they can expect much more equal treatment from federal agencies than from state and private bureaus. Reform and welfare agencies bent on improving conditions and preventing social ills have been particularly effective in bringing discrimination within some limits. (P. 546))

Finally, the attack on discrimination must be implemented by a program of education aimed at reducing and ultimately eliminating prejudice in individuals. In the last analysis, this hits at the root of the problem; it strikes at the causes of social disease at the same time that it alleviates the painful symptoms.

The Negro problem cannot be separated from the rest of America's social problems:

> "The Negro problem is an integral part of, or a special phase of, the whole complex of problems in the larger American civilization. It cannot be treated in isolation." (P. XLIX)

Inevitably, then, the solution will rest on the improvement of every aspect of the entire social scene. No remedies are sound which aim at less than this.

NOTES

[1]Bureau of the Census, Special Reports, Series P-47, No. 3, April 3, 1947.

Number of Negroes in each region of the United States:

Northeastern States	1,369,875)	21.7%
Northcentral States	1,420,318)	
The South	9,904,619	77.0%
The West	170,706	1.3%

(Source: 16th Census of the U.S.: 1940)

[2]16th Census of the U.S.: 1940, Release, Series P-16 No. 5:

"Striking differences between the occupations of whites and Negroes were shown in 1940 census statistics. Farmers, farm laborers, and other laborers constituted 62.2 percent of all employed Negro men and only 28.5 percent of all employed white men. Only about five percent of all employed Negro men, compared with approximately 30 percent of employed white men, were engaged in professional, semiprofessional, proprietary, managerial, and clerical or sales occupations. Skilled craftsment represented 15.6 percent of employed men and only 4.4 percent of employed Negro men. More than half of the Negro craftsmen were mechanics, carpenters, painters, plasterers and cement finishers, and masons.

Equally large differences are shown between the occupations of white and Negro women. Almost 70 percent of employed Negro women, as compared with 22.4 percent of employed white women, were engaged in service occupations. Clerical and sales workers constituted almost one-third of employed white women but only about one percent of employed Negro women. The proportion of employed white women who were operatives (20.3 percent) was more than three times that for employed Negro women (6.2 percent). Almost 16 percent of employed Negro women and only 2 percent of employed white women were farmers or farm laborers.

These figures focus attention upon differences among occupations in employment opportunities for members of minority groups. They show, for example, that employment opportunities for Negroes were extremely small in skilled craft occupations as a whole, since Negroes constituted only 2.6 percent of all men employed in this major group. In certain specific craft occupations, however, opportunities for Negroes were much greater. For example, of all men employed as plasterers and cement finishers, molders, and masons, 14.8, 7.9, and 7.2 percent, respectively, were Negroes."

[3]Myrdal,, p. 402:

"It is understandable, for several reasons, that these attempts so far have not been significant from a quantitative viewpoint. The rank-and-file members, the majority of whom have only recently become organized, are often biased against Negro fellow workers. Many employers have been rather noncooperative in increasing the range of employment opportunities for Negroes. The Negro workers themselves often have difficulty in overcoming their old suspicions. And the leaders have had to put their main efforts into the work of building up the new unions. The time has been too short to bring about fundamental changes in industrial race relations. The observer finds that the leaders of the new unions are usually much more broad-minded and less prejudiced than the average run of white union workers. Many of the new unions have made a courageous start in workers' education and an important element of this education is to spread the principle of universal labor solidarity and to combat race prejudice."

[4]16th Census of the U.S.: 1940. Special Report, Series P-46, No. 5:

"Negroes earned markedly less than native whites of similar residence, age and grade of school completed."

4 (continued)

U. S. DEPARTMENT OF COMMERCE
Bureau of the Census
Washington 25, D. C.

COLOR OF PERSONS WHO WERE WAGE OR SALARY WORKERS (EXCEPT ON EMERGENCY WORK) IN MARCH 1940, BY WAGE OR SALARY INCOME IN 1939, FOR THE UNITED STATES
(Statistics based on a 5-percent sample)

Wage or salary income in 1939	Wage or salary workers (except on emergency work), March 1940			Percent distribution		
	Total	White	Nonwhite	Total	White	Nonwhite
Total persons	38,322,420	34,429,140	3,893,230	100.0	100.0	100.0
With wage or salary income	34,762,300	31,272,280	3,490,020	90.7	90.8	89.6
Without wage or salary income	2,673,440	2,360,420	313,020	7.0	6.9	8.0
Not reported	886,680	796,440	90,240	2.3	2.3	2.3
With wage or salary income	34,762,300	31,272,280	3,490,020	100.0	100.0	100.0
$1 to $99	1,277,280	935,140	342,140	3.7	3.0	9.8
$100 to $199	2,203,520	1,560,220	643,300	6.3	5.0	18.4
$200 to $399	4,430,840	3,506,440	924,400	12.7	11.2	26.5
$400 to $599	3,889,380	3,287,540	601,840	11.2	10.5	17.2
$600 to $799	4,241,880	3,801,240	440,640	12.2	12.2	12.6
$800 to $999	3,472,840	3,265,460	207,380	10.0	10.4	5.9
$1,000 to $1,199	3,110,120	2,973,960	136,160	8.9	9.5	3.9
$1,200 to $1,399	2,979,820	2,882,860	96,960	8.6	9.2	2.8
$1,400 to $1,599	2,338,240	2,296,560	41,680	6.7	7.3	1.2
$1,600 to $1,799	1,273,860	1,257,500	16,360	3.7	4.0	0.5
$1,800 to $1,999	1,463,340	1,450,640	12,700	4.2	4.6	0.4
$2,000 to $2,499	2,039,920	2,020,180	19,740	5.9	6.5	0.6
$2,500 to $2,999	771,520	768,540	2,980	2.2	2.5	0.1
$3,000 to $3,999	713,040	711,080	1,960	2.1	2.3	0.1
$4,000 to $4,999	200,700	200,240	460	0.6	0.6	—
$5,000 and over	356,000	354,680	1,320	1.0	1.1	—
Median.....(dollars)	877	956	364	—	—	—

Source: "Population - The Labor Force - Wage or Salary Income in 1939"

[5]Myrdal, p. 620:

"...Residential segregation may be defined as residential segregation which, even though it were voluntary at the beginning or caused by 'economic necessity,' has been forced upon the group from outside: the Negro individual is not allowed to move out of a 'Negro' neighborhood. The question whether the average Negro 'wants' to live among his own kind then becomes largely an academic one, as we have no means of ascertaining what he would want if he were free to choose. In this sense practically all the statistically observed Negro housing concentration is, in essence, forced segregation, independent of the factors which have brought it about."

[6]Myrdal, p. 618:

"Residential segregation...is relatively more important in the North than in the South, since laws and etiquette to isolate whites from Negroes are prevalent in the South but practically absent from the North, and therefore institutional segregation in the North often has only residential segregation to rest upon."

[7]Myrdal, p. 943:

"The average Negro past the age of 25 years is reported to have had 5.7 years of schooling, as compared to 8.8 years for the average native white person."

16th Census of the U.S.: 1940, Release, Series P-10, No. 8:

	United States	
Years Completed	Native White	Negro
Persons 25 years and over	100.0	100.0
No. school years completed	1.3	10.0
Grade School:		
1 to 4 years	6.1	31.3
5 - 6 years	9.7	21.5
7 - 8 years	36.0	19.8
High School:		
1 to 3 years	17.3	8.5
4 years	16.6	4.1
College:		
1 to 3 years	6.6	1.8
4 years and more	5.4	1.2
Not Reported	1.1	1.8
Median School Years Completed	8.8	5.7

[8]Myrdal, p; 484:

"In addition to these better known legal requirements for voting, there are several others which are, or have been employed in one or more Southern states to disfranchise Negroes. A tricky registration blank must be filled out: whites will be given assistance, and their errors adjusted or overlooked; Negroes will not be allowed even the most trivial incompleteness or error, and are given no assistance. Certain of the previously discussed requirements (poll tax payment, education, or property) are waived for the war veterans, or for the aged in certain states: in practice whites are informed of such privileges but Negroes who qualify are not expected to ask for them. Some Southern states withhold the vote from anyone convicted of a crime: this is overlooked for most of the whites but applied as rigorously as can be to the Negro."

President's Committee
on
Civil Rights

MEMORANDUM June 25, 1947

TO: Members of the President's Committee on Civil Rights

FROM: Robert K. Carr, Executive Secretary

SUBJECT: "Bigotry Control through Disclosure", prepared by Milton D. Stewart and Jack Durham

A. Previous Experience with Disclosure

Stated most simply, the principle underlying disclosure laws is: those who try to influence public decisions have the responsibility of providing the public with as much information about themselves, their purposes, their organizations, their finances and their activities as is reasonable. Concealment is held to be an imposition on the public since it makes rational judgments impossible by depriving the public of essential information.

Very few theorists of civil liberties take issue with this principle. Those who do argue that there is a civil right to anonymity. They allege that advocates of unpopular causes (and presumably unsound commercial wares) ought to be free to take advantage of the public. Or, to put it more properly, they argue that the function of learning all the relevant information about advocates, and evaluating this information, is one which should not properly be exercised by government. They would leave this function to competing groups or to the ultimate consumer. This is, of course, an extreme theoretical position. At the other extreme are those who say that the government ought to assume the responsibility for collecting all the information about participants in the opinion or economic market places, evaluating its truth and then aggressively reporting the results of the analysis to the public.

Disclosure laws which have been enacted by Congress fall between these extreme positions. The Securities and Exchange Commission, the Federal Trade Commission and the Pure Food and Drug Administration all collect information, "test the product", and issue public reports on their findings about the truth of the seller's claims. They have what amount to police powers to prevent the continued publication of false and misleading statements.

In the political realm, the law is considerably more limited. The F.C.C. requires truthful statements from applicants and holders of broadcasting licenses, and can withdraw a license if false or inadequate information is given. The Post Office Department, with which holders of second class mailing permits must file annual statements of ownership, uses as its sole sanction

the withdrawal of the permit and reduced mailing rates for failure to disclose truthfully all of the information required by law. Under the first statute all political parties and organizations which offer candidates in federal elections must file with Congress a complete list of campaign contributors. The larger contributors are usually reported in a publication of the Campaign Expenditures Committees of the House and the Senate. Under the Lobby Registration Law, everyone who attempts to influence Congress must file his name, address, the organizations for which he works, the sources of his income, the names of his associates and staff members, etc., with the Clerk of the House or the Secretary of the Senate. He must, moreover, file a quarterly report setting forth the activities in which he has been engaged for the preceding three months, as well as the uses to which he has put the funds. These reports are published in the Congressional Record. There have also been efforts to control the activities of lobbyists in the states. Perhaps as many as two-thirds of them now have some kind of registration requirement for those who attempt to directly influence the process of legislation.

During the "Great Debate" on foreign policy between isolationists and interventionists, anonymous propaganda reached what was probably a new peak. This was especially true during the election campaign of 1940 when appeals to racial and religious prejudice were widespread. Senator Guy Gillette, who served as Chairman of the Senate Committee on Campaign Expenditures, reported that he and his colleagues were "astounded at the revelation of the extent to which the circulation of scurrilous, obscene, vicious, subversive and destructive propaganda was used."

A sample of campaign propaganda was analyzed by the staff of that Committee. They calculated that fully one-third of all the literature distributed was completely anonymous and that one-half was partially and probably inadequately identified as to source and authorship. The Committee's report states that anonymous material included "the most virulent, dishonest and defamatory portion" of the campaign literature. Senator Gillette and his Committee recommended the enactment of a statute which would "compel those who sponsor, finance, or circulate this type of campaign literature to reveal certain facts to the public so that they may know whose plans are directing the attack, whose money is financing it and whose authority is behind the statements made."

It was not until December, 1944, that Congress amended its election laws to provide that no person could publish or distribute any political statement relating to a candidate for election to any federal office which did not contain the name of the person responsible for publication and distribution. The term "election" is defined as including general, public and primary elections, as well as political party conventions.

The alarm which was felt by many students of the 1940 campaign was intensified by convincing evidence that much of the most objectionable material emanated from foreign sources, particularly Nazi Germany. Growing recognition of the "divide and conquer" technique which had been used effectively throughout much of Europe led to the enactment of two new disclosure statutes. Undercover political warfare, operating through a maze of "front organizations" had made it increasingly difficult in many countries to identify original sponsorship and determine the true intent of such propaganda. In 1938, Congress passed the Foreign Agents Registration Act (The McCormack Act) which required "the registration and full and fair public disclosure of all persons (including individuals, partnerships, associations, corporations or any other combination of individuals) who are engaged in propaganda activities and other activities in the United States on behalf of a foreign government or a foreign political group". Such persons must file extensive statements about themselves, their leadership, their finances and their activities, with the Department of State. The Voorhis Act possed soon after, required the registration of both foreign and domestic organizations which proposed to use force and violence, or threats of force and violence, to overthrow our government or any other government. The latter statute proved to be unenforceable. However, some of its provisions probably served to inhibit political racketeers who were organizing uniformed "marching societies" and sponsoring private military training.

The Foreign Agents Registration Act (FARA) made no attempt to distinguish between "friendly" and "unfriendly" or "good" and "bad" organizations. The British Information Service and the German Library of Information were both required to register. Administration of the Act was soon moved to the Department of Justice. Prosecutions under the Act were brought a number of times during the defense and war periods, against such groups as the Soviet agency "Bookniga," and persons like John Eoghan Kelly who had edited the pro-Franco magazine "Spain." In those prosecutions the only question was whether the defendants had failed to register and disclose their foreign sponsorship, support and activities. One of the special objectives of the Act was to force foreign agents to label their propaganda so that the reader would know that the sponsor had registered with the Department of State.

It is difficult to evaluate these various experiments with the disclosure principle. "Success" or "failure" can reasonably be claimed only in terms of specific objectives. As a general matter, it can be noted that public attention to the results of disclosure procedure (at least as reflected in mass media coverage) has not been great. On the other hand, attention by interested persons and

organizations has been adequate, at least in the economic disclosure operations. These comments are pertinent because critics of disclosure often argue that disclosure is meaningless and valueless unless the government undertakes to publicize the contents of registration statements. And this, they argue, would be dangerous.

Certainly most analysts seem to feel that the Securities and Exchange Commission, the Federal Trade Commission, and the Pure Food and Drug Administration, however limited their specific successes, have justified their existence by discouraging the sale of fraudulent securities and of patent medicines. It can be argued that registration with the F.C.C., the Post Office and Congress have been less successful because (1) punitive action is rarely taken; and (2) public interest in the contents of the disclosure statements has not been very great. This leaves aside a further and more basic question, "What would the situation be if we did not have these disclosure statutes?" In other words, would devious, hidden ownership of newspapers and radio stations be widespread?

In the final analysis it is impossible to determine definitely the significance of the presence or absence of a disclosure statute in the opinion-forming field. The fact that newspapers and radio stations must disclose ownership and control structure may serve as a deterrent to malicious schemers who would like to remain anonymous. Newspapers and magazines, using the second-class mails, are required to publish in their own papers the annual ownership and circulation statements filed with the Post Office. This, at the very least, enables readers who want to to get behind the unrevealing masthead which publications normally carry.

These considerations probably add up to the fact that at the very least the case for disclosure is defensible because it is better to have the information available and not used than not to have it at all.

B. Disclosure and Bigotry Control

The possible use of the Disclosure technique for dealing with professional bigots was first proposed in a Committee memorandum by Mr. Ernst. He put the case as follows:

> "The unfortunate coincidence in our society of the misuse of our traditional guarantees of freedom of the press and of speech by those groups dedicated to the abolition of these freedoms has led many people and organizations, sincerely concerned with the preservation of civil liberties to advocate various kinds of suppressive measures against groups dedicated to the spread of bigotry and hatred. While we cannot but sympathize with the genuine concern for our way of life of those who would suppress the

Coughlins, the Gerald L. K. Smiths, the Klans and others of the ilk, we must recognize that such suppression in and of itself constitutes a blow to civil liberties. The great contribution of the United States to the history of government and to mankind is the concept that if all shades of thought and belief are allowed freely to circulate, truth will eventually win out in the market place of thought. To solve the immediate problems raised by the bigotry groups by suppression is, therefore, a betrayal of this basic philosophy of free thought.

"We have, however, an alternative method of combatting the influence of the bigotry groups which is more consonant with our tradition of freedom and which has not yet been fully explored. This is the principle of full disclosure by any group which seeks to affect the thinking of the nation. I propose that the Committee examine as one of its recommendations a series of legislative enactments which would outlaw anonymity for all groups entering the market place of thought in an endeavor to persuade the minds of people....

"...Experience has indicated that bigotry groups in this country gain their greatest protection against public condemnation and rejection by the cloak of secrecy under which they operate. The trial of a full-disclosure policy may well prove that no bigotry group can survive with vitality in our society if the public is permitted to know all the relevant facts about its sponsorship and operation. ..."

Subcommittee No. 3 and the staff have heard a number of witnesses on the various problems involved in a disclosure statute. Some have been favorable, some critical and some ambivalent. To some extent the disagreement reflects a difference in conception of what the purpose of disclosure ought to be. For example, a certain amount of criticism of disclosure proposals seems based on the feeling that the ultimate effect of disclosure ought to be an immediate end to bigotry groups. As Mr. Ernst made clear, it was his feeling that a free public opinion would more readily and ultimately drive such groups out of business if complete information about them were available to the public and its responsible leaders.

The immediate purposes which a disclosure statute would presumably serve with reference to bigotry groups would be:

1) to provide information about who supports them financially, and to force their supporters to take public responsibility for that support;

2) to know who is profiting from the activities of such groups;

3) to have accurate information about the strength of such groups; and thus, ultimately

4) to enable the public to make more realistic estimates of the true intentions and significance of bigotry movements.

The following dialogue indicates some of the replies which have been made to criticisms leveled at expansion of the disclosure activities of government:

ANTI-DISCLOSURE: "It's foolish to make such a fuss about getting bigot groups to disclose. Actually there is nothing terribly significant about their private lives. They get most of their money from small contributions and not from fantasy millionaire plotters."

PRO-DISCLOSURE: "It doesn't matter where they get their money. If there is nothing to disclose, a disclosure procedure will show that, too. It's better to have a disclosure mechanism which shows you that there are no secrets to be known than to have secrets and no systematic way of learning them."

ANTI-DISCLOSURE: "Isn't it rather like using a cannon to shoot mice, to try to get at these bigotry organizations through a disclosure procedure?"

PRO-DISCLOSURE: "Some mice carry bubonic plague. Besides, as as we shall see below, some of these 'mice' are more like husky, well-fed rats."

ANTI-DISCLOSURE: "Well, that may be true but you are caught on the horns of a dilemma. If the government requires the information but doesn't disseminate it, it serves no purpose. Yet it seems to me to be very dangerous to place in the hands of an administrative body the right to broadcast information about private groups. It may, after all, decide to disclose the information about some groups and not others. It may misrepresent the significance of some of the facts disclosed."

PRO-DISCLOSURE: "It may be a dilemma, but I doubt it; at least, the horns don't seem to be very sharp. I do not propose a political SEC reporting on the truth or falsity, or "goodness" or

"badness" of organizations. I just want the information in a government office. The government's responsibility ends right there. From that point on, I am willing to leave the process to experts and publicists of vigorous, pro-democratic private groups."

ANTI-DISCLOSURE: "Well, now that you mention those private groups, won't some of the best pro-democratic groups be hampered in their work by having to make their sources of financial support public?"

PRO-DISCLOSURE: "If you are a democrat, you must be willing to take the same medicine which you would give to your opponents. I have confidence in the ability of the American people to make sound decisions about public policy. That means that I am willing to risk the effectiveness and reputations of pro-democratic groups, if they depend on their living in organizational glass houses.

ANTI-DISCLOSURE: "Well, that sounds very good when you say it, but you still don't get away from the danger of unfair application of the principle. At the very least, pro-democratic groups will probably be only too anxious to comply while anti-democrats will seek to evade a legal disclosure requirement."

PRO-DISCLOSURE: "I think, again, that you missed the point. I rely on the few civil servants who will administer the disclosure procedure only to use the government power to get the information. After that I am willing to leave it to the competing private organizations to exercise their interest and vigilance in seeing that there is no bias or evasion."

ANTI-DISCLOSURE: "Well, if you have so much confidence in private organizations and the free competition of ideas and their protagonists, why can't you rely on them to carry out the disclosure function, too? It seems to me that these organizations spend a good deal of their time and money investigating and exposing one another. It may be that they are more aggressive and efficient at it than some bureaucracy would be."

PRO-DISCLOSURE: "We have learned in our economy that there are some functions that we cannot leave to the free market place. The kind of investigation and exposure you mention actually alarms me considerably, since it leads to private semi-gestapo activities. From there it is only one step to the dangerous assumption of the police power by private groups. Besides, a systematic disclosure operation under responsible government auspices would be a source against which one could check the irresponsible allegations now made by some groups on both sides."

ANTI-DISCLOSURE: There is something psychologically unrealistic about this whole notion. I don't like these bigot organizations any more than you do, but it seems to me you will be defeating your own purpose by putting them through a disclosure wringer. They whine all over the place now about how persecuted they are. Won't they just use this as an argument to prove that they are?

PRO-DISCLOSURE: "I think that may be a danger, but it certainly is not a serious one. No one can make more of a martyr of these groups than they now make of themselves. And if the disclosure procedure is fairly operated and treats all organizations alike, it may actually serve to prove that they are not being singled out for special treatment, or 'mistreatment' as they would have it."

C. A Possible Treasury and Post Office Disclosure Program

Some information about many of the groups which affect public opinion -- including hate-spreading groups -- is now collected by the federal government. In the normal course of tax collection the Treasury Department presumably receives returns from many of these organizations. If the groups are organized for profit they pay taxes as does any other business venture or individual. If the groups claim to operate for educational or other public service objectives, they must file a special form requesting tax exemption. The Post Office Department requires an annual statement of ownership and circulation of all those who apply for the low-cost second class mailing privilege. About 25,000 such certificates were filed last year.

In the case of the Treasury there is a legal obligation for organizations to file tax returns. In the case of the Post Office there is a financial incentive in the form of lower postal charges. It has been proposed by Mr. Ernst that the unquestioned powers of the federal government represented by both of these agencies be used to increase the amount of information disclosed to the public by all groups. A letter from the General Counsel of the Treasury Department (see Appendix) in reply to a staff query sent at Mr. Ernst's request, contains, at least implicitly, compelling arguments for utilizing the Treasury's data collection from groups and organizations. A list of some seventy "dubious" organizations was compiled. It was made clear that these organizations were not being "labeled" in any way. The organizations listed were selected simply for illustration and experiment. The Treasury was asked to report the financial resources of these organizations. We hoped to learn three things: 1) how much information on their finances is now available to the Treasury; (2) do their financial resources indicate that they are sufficiently significant to warrant disclosure?; and (3) are these organizations now receiving tax exemption?

Information was available on only twelve of forty-seven organizations. No record at all was available on some thirty-one of the organizations. Four organizations had suspended activities.

Mr. O'Connell, General Counsel for the Treasury, had the following comments to make on the availability of information (see Appendix):

> "It would seem that your Committee must also take into consideration the fact that apparently there are a number of questionable organizations, and no doubt individuals as well, who do not file tax returns. I should hesitate to estimate from this one examination what percentage of the total that might be."

This means that the Treasury does not now have adequate information on the financial resources and activities of organizations whose activities may be inimical to civil rights. It may be presumed that this limitation extends to pro-democratic groups as well. If the returns of all such groups were made public, other groups could scrutinize them. They would probably see to it that their "opponents" were not evading the laws by failing to file returns.

The total receipts reported by the twelve organizations for the most recent year in each case were almost $650,000. The bulk of this was accounted for by five organizations, whose receipts in each instance were more than $7,500 for the year indicated. This figure, although it may not be large compared with the budgets of mass media, certainly seems to indicate that the resources of these organizations make them important enough to

warrant public disclosure. It is almost certain that the total picture would show hundreds of tiny organizations and a few large ones. Leaders and groups whose frank objective is to undermine the civil rights of some or all of the American people have made public statements about their ultimate hopes to unify all the bigotry groups. In view of this, it would be shortsighted to brush aside all of these groups as unimportant. It would not take very much social disorganization to provide aggressive leaders like Smith or Winrod with a situation in which they could achieve their purpose. It is essential that society know which of these organizations are flourishing in terms of financial contributions.

Of the twelve organizations ("A" through "L" in Appendix), ten have been granted exemption from the Federal income tax. One ("K" in Appendix) was denied exemption and one ("L" in Appendix) pays taxes and has never claimed exemption. The organization denied exemption reported receipts of $41,978 in the last available year, 1941. It submitted no balance sheet of assets and liabilities. The organization which pays taxes reported an income of $154,714 and gave its assets as $138,811. The figures given in the organization data are notable for how little they actually disclose. For example, organization "B", with assets of $72,000, does not explain almost $40,000 of them, but apparently they are something other than cash, receivables, or capital assets. The other significant organizations indicate that the bulk of their income comes from "contributions". These are not spelled out in any way.

With reference to tax exemption, it appears that three of the five large organizations are tax exempt. But Mr. O'Connell's comment is, "From this, it appears clear that the problem cannot be solved by directing attention only to tax exempted organizations."

On the basis of discussions with Treasury officials, the following four difficulties with the extension of disclosure in the Treasury have become apparent:

(1) The scope of disclosure

It would be necessary to include tax paying as well as tax exempt organizations. This means great difficulty in separating the returns filed by organizations whose tax records ought to be made public from other tax exempt or tax paying groups. The total number of returns involved has been estimated at 500,000.

(2) Adequacy of present forms

The forms now used by the Treasury for tax exempt and tax paying organizations are almost certainly inadequate for the purposes at hand. The basic form for tax exempt organizations is given in the transcript of the staff interview of T. H. Anderson and Robert Hagill of the Treasury Staff.

(3) Administrative Burden

Special checks and analyses would have to be made of new forms. Information about alleged violations would have to be considered. Evasions would have to be tracked down through spot checks. This would be a considerable task and would require additional staff and finance.

(4) The desirability of opening tax returns

The Treasury is permitted to collect the information which it gathers for revenue purposes. It has no right under existing law to make returns available to the public or even to congressional investigations, except on express authorization by the President. The power to disclose the contents of returns has been used very sparingly. It would probably require new legislation if a general change in Treasury policy and practice like this were to be made.

The last two objections can be met only by the decision that a disclosure program is sufficiently important to justify the additional burden and the departure from custom. The first two objections (scope of the program and the adequacy of the forms) have been met in part by Mr. Ernst's correspondence as well as discussions with Treasury officials. A possible form for the proposal, pieced together from both of these sources and the testimony of witnesses, follows. It is extremely tentative, and can be revised and made still more explicit.

I. Amending the tax laws to require:

A. The inclusion of an affidavit in the tax return indicating whether or not the taxpayer or the claimant for exemption engages in any of the following:

Using any modern devices for mass communication, such as the radio, printing press, multiple reproducing devices, etc., to advocate*:

a) adoption of a different form of government for the United States:

b) retention of the present form of government for the United States;

c) discrimination in employment, public accommodation, amusement, education or governmental treatment because of race, color or creed.

While the affidavit could appear at any place in the return, for ease in handling, a legend should appear on the front page indicating whether or not the taxpayer answered any of the questions in the affidavit in the affirmative.

B. Taxpayers answering any of the questions in the affidavit in the affirmative to file a separate schedule showing:

(1) gross receipts including gifts and contributions and services received;

(2) the names and addresses of all persons contributing gifts, contributions or services valued at more than 50 dollars during the period of the report (at present very limited data are required).

(3) assets and liabilities including accruals thereof;

(4) a detailed statement on expenditures including the names and addresses of recipients of more than $500;

(5) persons associated with the taxpayer directly or indirectly in carrying on the activities covered by the affidavit.

*This is an attempt to spell out the "market-place of thought" standard.

II. Handling the returns in the following manner:

A. By separating the returns of all taxpayers answering any of the questions in the affirmative. This treatment would have the advantage of permitting disclosure of the returns as a class if that were desired. It would have the disadvantage of presenting a greater administrative problem. A separate handling would be required to separate out these special returns.

B. The question of who is to have access to these special returns still requires clarification. One possibility would be to make them available to the general public. Another would be to limit access to some group of government officials or members of Congress.

The chief disadvantage (in addition to the two remaining objections cited above) which this proposal would have would be that it would require the submission of additional information by all of the agencies engaged in mass communication, e.g. radio stations, movies, magazines, etc. This additional burden on "responsible" organizations does not seem to be prohibitive. Some of them would certainly object to having their returns made public. At any time it would be possible to limit the disclosure of returns to those groups which answered Questions "1a" and "1c" in the affirmative and not those which answered "1b". This would, however, make the proposal vulnerable to the charge of discrimination. Enforcement of the new requirements might be the result of direct investigation by Treasury agents, or could be based on allegations in "informations filed by private agencies or persons.

Proposals for expanding the Post Office disclosure activities are outlined in the Discussion and Decision papers submitted to the Committee for its Hanover meeting. New postal measures would be designed to give the citizen at least a minimum of information about the people who make appeals to him through the mails. Basically they would require all mail to carry a return address; make the users of the first class mail for bulk propaganda file registration certificates like those now in use in the second class; and require holders of postage meters to file detailed statements about themselves and their activities.

The personnel of the Treasury Department and the Post Office have been very helpful to the staff. They are naturally somewhat reluctant to assume new administrative responsibilities, particularly any as controversial as those here proposed. However, the problems which they raise do not seem to be prohibitive.

Ultimately, the government's data collection activities with respect to Treasury, Post Office, Lobby Registration and the

Federal Communications Act, might be coordinated. For the sake of efficiency it might be desirable to require only one master form for the Post Office and the Treasury in the case of sponsors of publications; for the F.C.C. and the Treasury in the case of radio broadcasters; and for the Lobby Registration Act and the Treasury in the case of organized groups which exert direct pressure on Congress. New mechanical techniques for data collection through the use of IBM punch card and sorting equipment make possible efficient management of great masses of information. It may be possible to use them here. If the number of forms were cut down, duplicate sets of punch cards bearing the data could be turned over to the several agencies. The resulting efficiency might compensate for some of the burden imposed by the new proposals.

The end product would be a continuing "moving picture" of those engaged in the process of influencing public opinion. It would be possible for scholars, private analysts and experts to use this data. The government agencies involved would not have to accept any more responsibility than they now do for receiving and storing information. It would be up to private persons to make use of them for scholarly, political and journalistic projects.

APPENDIX (Extra Confidential)

(For Use of President's Committee on Civil Rights Only)

THE GENERAL COUNSEL OF THE TREASURY

Washington

June 20, 1947

Dear Mr. Carr:

Pursuant to Mr. Durham's oral request I asked the Bureau of Internal Revenue to furnish certain financial information appearing in its files concerning the organizations named on the list furnished Mr. Oliphant by Mr. Durham. I asked specifically for information showing assets and liabilities of such organizations, if such information were available, and income and expenditures as of the most recent year.

Attached is a tabulation prepared by the Bureau showing for the years indicated in each case assets and liabilities and/or income and expenditures of 12 of the organizations named on the list. Those organizations designated "A" through "J" have been granted exemption from Federal income tax; organization "K" was denied exemption and organization "L" which has filed no claim for exemption pays a Federal income tax. The Bureau has no record for 31 of the organizations named on the list. This leaves 4 organizations for which the Bureau has a record but which are not included in the tabulation since they are no longer in active operation. The total number of 47 organizations reached by the Bureau as against the enumeration of 39 on the list referred to is accounted for by the fact that in the latter instance organizations having similar names were listed as only one organization.

I understand that you also desire Treasury comments as to the significance of this tabulation.

You will note that only 5 of the organizations for which the Bureau submitted data report receipts or disbursements in excess of $7,500 for the year indicated. Only 3 of these were tax exempt.

From this it appears rather clear that the problem cannot be solved by directing attention only to tax-exempt organizations. It would seem that your Committee must also take into consideration the fact that apparently there are a number of questionable organizations, and no doubt individuals as well, who do not file tax returns. I should hesitate to estimate from this one examination what percentage of the total that might be.

Very truly yours,

/s/
Joseph J. O'Connell, Jr.
General Counsel

Honorable Robert K. Carr
Executive Secretary
The President's Committee
on Civil Rights
1712 G Street, N. W.
Washington, D. C.

Enclosure

HARRY S. TRUMAN LIBRARY

President's Committee
on
Civil Rights

Organization List

Stoner Anti-Jewish Party
J. B. Stoner, Archleader
Route 3, Chattanooga, Tennessee

Patriotic Mothers; no address

Woman's Voice
537 South Dearborn Street, Chicago, Illinois

International Science Committee
Los Angeles, California

The Celtic-Iberian Guild
San Antonio, Texas

Anti-Semitic Association
Chicago, Illinois

The Vigilantes, Inc.
Tampa, Idaho
(Exempt 103(1), Rev. Act of 1928, 5-1-31)

The Vigilantes of America, Inc.
Denver, Colo.
(No ruling until operated, 10-4-33)

The Legion, U. S. A.
943 South Hoover Street, Los Angeles, California

The Malist Publication
P.O. Box 198, Meriden, Connecticut

The American
Joplin, Missouri

Pioneer News Service
P.O. Box 435, Chicago 90, Illinois

The Imp's Bulletin
108 North "G" Street, Aberdeen, Washington

Protestant War Veterans of the United States
1211-A Connecticut Avenue, Washington, D. C.

National Liberal League
33 Park Row, New York 8, N. Y.

Full Salvation Tract Society
214 High Street, Hanover, Pennsylvania

The White Horse
1012 Birch Street, Atlanta, Georgia

The Gospel Witness
130 Gerrard Street, East, Toronto 2, Canada

America on Guard Committee
Indianapolis, Indiana

Protestant Book House
Box 125, Station B, Toledo, Ohio

Bible Book & Tract House
Box 125, Station B, Toledo, Ohio

Pilgrim Tract Society, Inc.
Randleman, North Carolina
(Exempt 101(6), Int. Rev. Code and prior Rev. Acts for 1938 and subsequent years by letter of 3-29-39.)

Book & Bible House
Eastern Branch Office
Evang. John A. Klepper, 6 Oak Street, Poughkeepsie, N. Y.

Book & Tract House
Station B, Box 125, Toledo, Ohio

The Christian Century
407 South Dearborn Street, Chicago 5, Illinois

Lindstrom's Music Publishing Company
Aberdeen, Washington

American Coalition of Patriotic Societies
Washington, D. C.
(Exempt 101(8) IRC and prior acts for 1929 and subsequent years by letter of 10-11-44.)

American Shores Patrol, Inc.
Arlington, Va.
(Exempt 101(3) IRC by letter of 5-6-46.)

American Vigilante Intelligence Federation
Chicago, Illinois
(Exempt 101(8) IRC and prior acts for 1927 and subsequent years, 1-27-44. They were denied 101(6) exemption.)

Anglo-Saxon Federation
Detroit, Michigan, and Haverhill, Mass.
(Ruled exempt 101(6) Rev. Act of 1936 and prior acts on 9-13-37; affirmed 6-20-44.)

Anglo-Saxon Federation
Knoxville, Tennessee
(Exempt 103(6) Rev. Act of 1934 and prior acts by letter of 10-1-34. Affirmed 4-4-38.)

Anglo-Saxon Federation of Oregon
(Exempt 101(6) IRC and prior acts, 8-24-39. Name changed to Anglo-Saxon Christian Association of the U.S.A., 9-18-42.)

Arab League
(Women's Arab League, Highland Park, Mich., exempt 101(8) IRC and prior acts for 1937 and subsequent years by letter 12-16-46

Christian Veterans of America
(Christian War Veterans of America, Inc., Los Angeles, Calif., exempt 101(8) IRC by letter 1-23-46. Denied 101(6) exemption.)

Committee for Constitutional Government; no address
(Ruled exempt 101(8) 12-24-46; affirmed on various dates; denied 101(6) exemption. Bureau of Internal Revenue has subject file.)

Constitutional Educational League; no address
(Denied under all provisions of S.101 IRC, 2-25-44. Bureau of Internal Revenue subject file re.)

Independent Music Publishers' Service; No address.

National Economic Council; no address
(Exempt 101(8) IRC and prior acts for 1931 and subsequent years by letter 3-10-47; denied 101(6); Bureau of Internal Revenue subject file.)

We, the Mothers; no address.

Book and Bible House
Box 125, Station B, Toledo, Ohio

Knights of the Ku Klux Klan
Atlanta, Georgia
(Denied exemption 3-17-42. Advisory letters 8-2-43 and 8-6-43.)

National Blue Star Mothers of Pennsylvania
No address

HARRY S. TRUMAN LIBRARY

President's Committee
on
Civil Rights

ORGANIZATION "A"

(Calendar Year 1945)

Receipts and Disbursements

Receipts:

Dues	$1,960
Other	---
Total	$1,960

Disbursements:

Office expenses, including telephone, telegraph, stamps, supplies and rent	$ 387
General expenses, such as purchase of office furniture, typewriters, Corporation fees	521
Printing and stationery	443
Relief and gifts to members in need	101
Traveling expenses	230
Miscellaneous	13
Total	$1,894

Assets and Liabilities

No balance sheet data available. Receipts and disbursements schedule indicates cash on hand December 31, 1945 of $ 72

HARRY S. TRUMAN LIBRARY

President's Committee
on
Civil Rights

ORGANIZATION "B"

Receipts and Disbursements (Calendar Year 1944)

Receipts:

Dues and fees	$1,331
Dividends and interest	47
Sale of Magazines and books	71,795
Donations	8,611
Total	$81,784

Disbursements:

Cost of magazines and books	$40,901
Wages, salaries and commissions	23,915
Rent	1,218
Office supplies	1,322
Postage	2,616
Advertising	1,939
Packing and shipping	3,613
Depreciation	2,098
Other	3,597
Total	$81,219

Assets and Liabilities (December 31, 1943)

Assets:

Cash	$22,056
Receivables	4,417
Capital Assets	7,369
Other (unexplained)	39,127
Total	$72,968

Liabilities:

Accounts payable	$ 1,706
Other liabilities	953
Surplus	70,309
Total	$72,968

President's Committee
on
Civil Rights

ORGANIZATION "C"

(Calendar year 1938)

Receipts and Disbursements

Receipts:

Donations and subscriptions	$1,000
Collections and offerings	350
Sales - Books and literature	280
Total	$1,630

Disbursements:

Rent	$ 650
Postage	100
Literature, books, etc.	250
Transportation	110
Radio broadcasting	460
Other	210
Total	$1,780

Assets and Liabilities

Assets:

Equipment and furnishings	$ 600
Books, stationery, literature	985
Total	$1,585

Liabilities:

Accounts payable	$ 750
Surplus	835
Total	$1,585

President's Committee
on
Civil Rights

ORGANIZATION "D"

(Calendar Year 1941)

Receipts and Disbursements

Receipts:

Gifts, grants, dues, etc.	$2,165
Gross sales	1,115
Loans	942
Total	$4,222

Disbursements:

Cost of goods sold	$1,064
Salaries, wages, and commissions	466
Rent	686
Supplies, equipment and miscellaneous	949
Other (unexplained)	992
Total	$4,157

Assets and Liabilities

Assets:

Cash	$ 158
Capital assets	4,177
Total	$4,335

Liabilities:

Notes and accounts payable	$1,576
Surplus	2,759
Total	$4,335

President's Committee
on
Civil Rights

ORGANIZATION "E"

No detailed statement of receipts and disbursements or assets and liabilities available.

Gross income for 1938 aggregated.....	$3,815
Cash on hand as of January 1, 1939.....	425

ORGANIZATION "F"

(Calendar Year 1941)

Receipts and Disbursements

Receipts:

Gifts, Grants, dues, etc.....	$7,039
Other.....	---
Total.....	$7,039

Disbursements:

Wages, salaries, commissions, etc.....	$4,217
Rent.....	1,045
Taxes.....	45
Other (unexplained).....	1,568
Total.....	$6,875

Form 990 indicates that organization had no assets, liabilities, or surplus as of December 31, 1941.

HARRY S. TRUMAN LIBRARY

President's Committee
on
Civil Rights

ORGANIZATION "G"

(Calendar Year 1943)

Receipts and Disbursements

Receipts:

Gifts, grants, dues, etc.	$4,586
Other	30
Total	$4,616

Disbursements:

Secretary	$3,000
Taxes	145
Literature, printing, etc.	286
Other (unexplained)	2,016
Total	$5,447

Assets and Liabilities

Assets:

Cash	$ 239
Furniture and fixtures	250
Total	$ 489

Liabilities:

Other	none
Surplus	$ 489
Total	$ 489

HARRY S. TRUMAN LIBRARY

President's Committee
on
Civil Rights

ORGANIZATION "H"

Period February 26, 1945, to November 30, 1945

Receipts and Disbursements

Receipts:

Gifts	$ 621
Memberships	935
Total	$1,556

D isbursements

Secretarial expenses	$ 378
Telephone	74
Office supplies	145
Printing	303
Postage	283
Rent	197
Other (unexplained)	79
Total	$1,459

Assets and Liabilities

Assets:

Cash	$ 97
Other	---
Total	$ 97

Liabilities:

Accounts payable	$ 262
Surplus	(165)
Total	$ 97

HARRY S. TRUMAN LIBRARY

President's Committee
on
Civil Rights

ORGANIZATION "I"

(Calendar Year 1943)

Receipts and Disbursements

Receipts:

Contributions	$261,104
Book sales	51,063
Other (unexplained)	3,125
Total	$315,292

Disbursements:

Cost of preparing printing, distribution, literature, etc.	$135,740
Postage	29,671
Cost of mailing department	58,629
Committee office executives' and editorial salaries, etc.	48,724
Expenses of field meetings, etc.	19,378
Rent, light, telephone, etc.	19,138
Other	1,777
Total	$313,057

Assets and Liabilities

No balance sheet data available.

HARRY S. TRUMAN LIBRARY

President's Committee
on
Civil Rights

ORGANIZATION "J"

(Fiscal Year Ending May 31, 1946)

Receipts and Disbursements

Receipts:

Contributions	$39,181
Sale of literature and books	888
Radio requests	570
Loans	600
Special radio fund	80,331
Other (unexplained)	13,546
Total	$135,116

Disbursements:

Salary - officers	$11,852
Salary - clerical	11,855
Agency fees (cost of broadcasting)	57,605
Legal and professional fees	13,257
Luncheons and entertainments	741
Traveling expenses	1,445
Rent	7,174
Interest	113
Loans repaid	2,050
Taxes	748
Telephone and telegraph	4,060
Publications, books, news indices	7,549
Postage	2,455
Office supplies, services and expenses	1,284
Other (unexplained)	435
Total	$122,625

Assets and Liabilities

Assets:

Cash	$13,137
Other	1
Total	$13,138

Liabilities:

Accounts payable	$ 3,515
Notes payable	10,150
Accrued expenses	326
Other	---
Surplus (Deficit)	853
Total	$13,138

HARRY S. TRUMAN LIBRARY

President's Committee
on
Civil Rights

ORGANIZATION "K"

(Calendar Year 1941)

Receipts and Disbursements

Receipts:

Gifts, grants, dues, etc.	$38,535
Sale of literature	3,443
Other	---
Total	$41,978

Disbursements:

Wages, salaries, commissions, etc.	$21,011
Compensation of officers	7,201
Attorney's fees	2,000
Rent	1,100
Postage	992
Printing	4,650
Telephone and telegraph	1,255
Express	155
Automobile expense	1,214
Office supplies	138
Research	400
Other (unexplained)	1,643
Total	$41,759

Assets and Liabilities

No balance sheet data shown on Form 990 or attached schedule.

ORGANIZATION "L"

(Fiscal Year Ending August 31, 1944)

Receipts and Disbursements

Receipts:

Gross receipts	$151,568
Interest on loans, notes, etc.	290
Interest, Government	1,931
Trust income	564
Purchase discounts	361
Total	$154,714

Disbursements:

Compensation of officers	$ 23,300
Salaries and wages	32,705
Paper stock	15,040
Printing and mailing	47,522
Premium costs	553
Advertising	3,660
Rent	3,600
Taxes (including Federal income tax)	3,529
Depreciation	596
Promotional and road expenses	2,853
Bills and statements	4,725
Stationery and supplies	643
Bank exchange	844
Insurance	149
Light, telephone and telegraph	511
Postage	798
Legal and audit	1,025
Other (unexplained)	1,635
Total	$143,688

Assets and Liabilities

Assets:

Cash	$ 17,217
Notes and accounts receivable	22,959
Inventories	5,283
Government obligations	45,000
Other investments	44,923
Capital assets	1,202
Prepaid expenses	1,803
Accrued interest on bonds	424
Other	---
Total	$138,811

(continued on next page)

President's Committee
on
Civil Rights

ORGANIZATION "L"

(Fiscal Year Ending August 31, 1944)

Receipts and Disbursements

Receipts:

Gross receipts	$151,568
Interest on loans, notes, etc.	290
Interest, Government	1,931
Trust income	564
Purchase discounts	361
Total	$154,714

Disbursements:

Compensation of officers	$ 23,300
Salaries and wages	32,705
Paper stock	15,040
Printing and mailing	47,522
Premium costs	553
Advertising	3,660
Rent	3,600
Taxes (including Federal income tax)	3,529
Depreciation	596
Promotional and road expenses	2,853
Bills and statements	4,725
Stationery and supplies	643
Bank exchange	844
Insurance	149
Light, telephone and telegraph	511
Postage	798
Legal and audit	1,025
Other (unexplained)	1,635
Total	$143,688

Assets and Liabilities

Assets:

Cash	$ 17,217
Notes and accounts receivable	22,959
Inventories	5,283
Government obligations	45,000
Other investments	44,923
Capital assets	1,202
Prepaid expenses	1,803
Accrued interest on bonds	424
Other	---
Total	$138,811

(continued on next page)

HARRY S. TRUMAN LIBRARY

President's Committee
on
Civil Rights

ORGANIZATION "L" (continued)

Liabilities:

Accounts payable	$ 6,223
Accrued taxes	3,862
Accrued salaries	1,480
Deferred subscription sales	53,393
Other	---
Common stock	36,000
Paid in or capital surplus	4,032
Earned surplus	33,821
Total	$138,811

President's Committee
on
Civil Rights

MEMORANDUM June 26, 1947

TO: Members of the President's Committee on Civil Rights

FROM: Robert K. Carr

SUBJECT: "Housing and Civil Rights"
Prepared by Nancy Wechsler

Housing problems affect civil rights at many points. First, segregation or discrimination against minority groups in housing directly invades the rights of minority groups to equal access to one of the most basic facilities of life. Second, the geographical effect of segregation in housing produces segregation in schools and recreational facilities and other related services. Third, segregation and discrimination in housing intensify minority group frustration and resentment, increase racial and religious prejudice, and aggravate tensions among groups, thus heightening the danger of further invasion of civil rights of minorities and of violent outbreaks inimical to preservation of civil rights.

1. Patterns of discrimination:

There is evidence of discrimination in housing against a large number of minority groups--Negroes, Japanese, Chinese, Mexicans, Jews, Indians, Hindus, Syrians, Armenians and others. The Negroes are the group whose housing problems are most acute, and who are subject to the most complete system of housing restrictions. The discrimination against members of the other groups varies with different localities and different historical periods (see e.g. the memorandum on Japanese Americans). While discrimination against Negroes is not uniform and varies in intensity in different sections of the country, it is, on the whole, complete and overpowering. Many people feel that housing is the Negro's number one problem today.

The Negro's housing situation today is almost intolerable. It has never been good. In the South, while there has been some public housing, there has been virtually no private building for Negroes. Negroes, by and large, live in slums, urban and rural, with little prospect for improvement. In the North, ever since the migrations of the first World War, Negroes have had inadequate living space and have been segregated in restricted areas where population density far exceeds that of the white community. There is a higher than average incidence of substandard dwellings, rents tend to be unduly high and services unduly low.

Negroes have been steadily moving into the cities, in the South as well as the North. This movement accelerated greatly

in the course of the recent war, but the available housing for Negroes remained constant in most areas and even decreased in others (except for such instances as San Francisco, where Negro in-migrants replaced evacuated Japanese.) There is an absolute shortage of land available for Negro housing.

Segregation of Negroes into ghettoes has resulted from a combination of many factors -- informal social pressures, custom or agreements of real estate and financial interests, physical violence and other forms of terrorism, restrictive covenants and past public housing agency policies.

Undoubtedly, the resistance, among large numbers of whites, to mixed or even contiguous residence is intense in many sections of the country. This is in considerable degree a result of segregational tradition and practice. Myrdal makes the following observation:

> "The main reason why informal social pressure has not always been effective in preventing Negroes from moving into white neighborhoods has been the tremendous need of Negroes to move out of their intensely overcrowded ghettoes and their willingness to bear a great deal of physical and mental punishment to satisfy that need.
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> "The clash of interests is particularly dramatic in the big cities of the North to which Negro immigrants from the South have been streaming since the first World War. When white residents of a neighborhood see that they cannot remove the few Negro intruders and also see more Negro families moving in, they conjure up certain stereotypes of how bad Negro neighbors are and move out of the neighborhood with almost panic speed. For this reason Negroes are dangerous for property values as well as for neighborhood business, and all whites are aware of this fact. In describing the succession of Negroes down the South Side of Chicago, an informant said, 'This was not an incoming of the Negroes, so much as an outgoing of the whites. If one colored person moved into the neighborhood, the rest of the white people immediately moved out'.
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> "Such a situation creates a vicious circle, in which race prejudice, economic interests, and residential segregation mutually reinforce one another. When a few Negro families do come into a white neighborhood, some more white families move away. Other Negroes hasten to take their places, because the existing Negro neighborhoods are overcrowded due to segregation. This constant movement of

> Negroes into white neighborhoods makes the bulk of the white residents feel that their neighborhood is doomed to be predominantly Negro and they move out -- with their attitudes against the Negro reinforced. Yet if there were no segregation, this wholesale invasion would not have occurred. But because it does occur, segregational attitudes are increased, and the vigilant pressure to stall the Negro at the borderline is kept up."1/

Traditionally, private enterprise has not built new houses for Negroes. Negroes have "trickled down" into housing abandoned by whites. During the War, under the influence of government distribution of building priorities, there was, for the first time, a certain amount of new private building for Negro occupancy, and during the same period some private real estate associations (NAREB, NAHO) for the first time took some steps to interest their constituents in the Negro market. Currently, NHA (National Housing Agency) is trying to continue this work through consultation with local building interests. In the present market, with most private building directed toward the luxury housing market, it is difficult to ascertain to what extent the traditional refusal of private interests to build for Negroes has been overcome. Relatively little housing is being constructed for lower or middle class occupancy of any group. There is, however, no evidence that the private organizations are actively continuing to encourage building for Negroes at this time.

Private industry, in addition to failing to build for Negro occupancy, has consistently encouraged and enforced segregation in existing housing. This is particularly evident in the rental field, where private groups refuse to rent to Negroes outside the "Negro" areas. Private financial institutions generally will not lend to Negroes who want to undertake their own construction. It is extremely difficult for Negroes to buy vacant land, or even for public housing authorities to buy sites for Negro housing projects.

Another factor which has reinforced the customs and institutions tending to deprive Negroes of adequate living space has been the readiness of local white citizens in some areas to resort to pressure, political agitation and violence to prevent expansion of Negro housing. There have been many instances of this, ranging from agitation in Buffalo during the early war years to prevent decent sites outside of the ghetto being used for public

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1/ It should be noted that the out-migration of whites is due to popular notions of effects of Negro tenancy or ownership, rather than to experience with the only kind of Negro occupancy which affords a reasonable test -- non-slum occupancy under decent conditions. There is considerable evidence that such occupancy does not produce the conditions popularly feared.

housing for Negroes, to violence in Detroit against Negro occupancy of war housing projects and in Chicago against Negro veterans attempting to occupy new housing.

The restrictive covenant, which will be considered in more detail under a separate heading below, is currently the most effective device (other than custom) for perpetuating the inferior housing status of minority groups. For the Negro it is a device which attempts (although not always successfully) to rigidly confine Negroes in defined, and already overburdened areas. There is comparatively little data showing the extent to which covenants serve to restrict other minorities within specific areas; probably for some, at least, of the other groups the effect at the moment is rather to limit available areas of expansion. Extended resort to restrictive covenants, however, (and the tendency has been markedly in this direction) may eventually create housing problems for other minorities approaching those of Negroes.

Another factor which, in the past, has operated adversely to Negroes, has been government housing policy. This will also be discussed in more detail below.

2. Some aspects of segregation in housing:

Segregated housing leads to segregation in many other facilities. Shopping and service facilities, schools, parks, and other community services inevitably tend to be segregated where living quarters are segregated. This results in separate communities, determined on racial lines. As a result healthy inter-group experience is impossible, and, particularly where adjoining restricted communities are crowded and underprivileged, inter-group misunderstanding flourishes and often results in violence. The Chicago race riots following the first World War are attributed by many to white resistance to efforts of overcrowded Negroes to break out of the ghetto.

Undoubtedly some forms of residential segregation (such as that of newly arrived immigrants) have resulted from tendencies of groups sharing cultural traits and interests to congregate in the same localities. To the extent that this is true the resulting evils of divided communities may be inevitable. But where segregation is forced upon such groups, either by custom or legal device, these evils become permanent. Moreover, where segregation is forced, the group against which it is aimed inevitably suffers discrimination in other forms, and tensions rise beyond the level which would exist if segregation was merely the result of voluntary action.

RESTRICTIVE COVENANTS

The racial restrictive covenant is the basic legal device

enforcing segregation. State or municipal legislation requiring residential separation on racial lines was attempted in various states after the Civil War, but such laws were declared unconstitutional by the Supreme Court in the early part of this century. Nevertheless the effort died hard, and as late as 1940 such a law was struck down in North Carolina. In recent years the general tendency has been to look to restrictive covenants to protect against "intrusion" from groups considered undesirable. This has been particularly marked in the North and West since the first World War.

Restrictive covenants vary in form, but in general they fall into two categories. One type prohibits ownership or occupancy by a person of the proscribed group. The other variant permits ownership, but forbids use. Covenants are known which are directed against Negroes, Jews, Indians, Mexicans, Armenians, Syrians, "Non-Caucasians", and "Semites".

There are no general statistics on the amount of property covered by racial restrictive covenants. Estimates have put the area of land covered by covenants in Chicago as high as 80%. There is evidence of widespread use of covenants to restrict landholding in Los Angeles, Detroit, Washington, D.C., and many other large cities. Robert Weaver, a leading authority on minority housing problems, points out that the "over-all incidence of covenants is not as important as their strategic location". He states that most new subdivisions are covered by covenants, and most old ghettoes encircled by them. Covenants are thus used both to prevent the enlargement of existing ghettoes, and to prevent the expansion of minorities into newly developed areas.

It has been pointed out that segregation accomplished through restrictive covenants is in some ways more destructive than outright municipal ordinance, since it is more inflexible. Thus many covenants permanently bar members of the excluded race, religion or nationality, regardless of changing circumstances. Some flexibility can be achieved by application of the doctrine of "changed conditions", used by some courts to lift the restrictions when achievement of their purpose has become impossible by neighborhood developments, such as infiltration of the barred group along the border of the restricted area. But this doctrine is not uniformly applied, and is in any event a haphazard remedy.

The validity of these covenants has not been litigated in most of the states. Litigation has usually resulted when an owner of land subject to a covenant sells or rents to one of the excluded groups, and neighbors sue to enjoin the sale or evict the new occupant. In the minority of states where the question has

been litigated the courts have enforced the covenants. There have been occasional decisions against restrictive covenants, but at this time there is no jurisdiction in the country whose highest court refuses to enforce restrictive covenants.

Some states, such as California and Michigan, will not enforce covenants against ownership, because of real property law principles relating to restrictions on free alienation of land. These courts will, however, enforce covenants against use. The result allows members of minority groups to own land which they cannot occupy. The ultimate effect is the same as judicial enforcement of restrictions against both ownership and use.

While decisions upholding state judicial power to enforce racial restrictive covenants cite the only Supreme Court decision in the field, Corrigan v. Buckly, to justify the result on constitutional grounds, this case did not clearly pass on the question whether state judicial enforcement of restrictive covenants violates the Fourteenth Amendment. Some commentators have expressed the view that state enforcement of such covenants by judicial decree is "state action" within the meaning of the Fourteenth Amendment, and state action which unconstitutionally deprives persons of due process or equal protection. The Supreme Court, on June 23rd, agreed to review decisions of the highest courts of Michigan and Missouri which upheld enforcement of restrictive covenants. A decision on the merits of the constitutional question may therefore be announced next year.2/

It has been suggested that a useful avenue of attack on restrictive covenants can be found in the Sherman Act. Proceedings under this law would seek to invalidate covenants as unlawful restraints on trade, rather than to forbid state court enforcement. In response to an inquiry from Dr. Carr, Wendell Berge, then Assistant Attorney General in charge of the Anti-Trust Division of the Department of Justice, made the following comment:

> "I do not believe that the antitrust laws would be a very useful general weapon for this purpose. It is only in rather unusual circumstances that a restrictive covenant on land would affect interstate commerce or would otherwise fall within the prohibitions of the Sherman Act. Therehave, however, been instances in which one aspect of a conspiracy which was unlawful under the antitrust laws related to citizens of a particular race, color or creed. In those cases, the activity against a particular group of citizens was a part of a larger conspiracy."

2/ It is expected that the Court will also be asked to review the recent decision upholding enforcement of restrictive covenants in the District of Columbia.

A pending antitrust proceeding, United States v. The Mortgage Conference of New York, et al, charges, as one part of a broad conspiracy in restraint of trade by a number of banks, insurance and mortgage companies, that the companies refrained from granting mortgage loans on property in blocks in New York City inhabited by Negroes and Spanish speaking persons. The defendants are further charged with having induced owners of real estate in certain sections of the city not to permit Negroes and Spanish speaking peoples to move into these sections. This case may go to trial in the fall.

A favorable decision in this case might help to persuade some state courts to view restrictive covenants with disfavor in state litigation testing whether they are consistent with state public policy. As Mr. Berge pointed out, however, the technical difficulties of antitrust litigation are such that reliance on this weapon is not likely to result in a successful attack on covenants in many sections of the country. Moreover even successful antitrust proceedings, where jurisdictional requirements of the Sherman Act are successfully met, would not necessarily result in the end of restrictive covenants. It might still be possible to enter into such covenants without affecting interstate commerce so as to violate the Sherman Act. All of these considerations suggest that the antitrust laws should be considered an auxiliary but not a primary weapon against restrictive covenants.

A recent decision of the Supreme Court of Ontario held invalid a restrictive covenant of the anti-semitic variety on the ground, among others, that it violated the public policy of Canada. The court referred to the Atlantic Charter, the United Nations Charter and the statutory law of Ontario prohibiting certain forms of racial discrimination, as expressing a public policy which would be violated by judicial approval of racial restrictive covenants. The court's opinion includes the following statement:

> "Proceeding from the general to the particular, the argument of the applicant is that the impugned covenant is void because it is injurious to the public good. This deduction is grounded on the fact that the covenant against sale to Jews or to persons of objectional nationality prevents the particular piece of land from ever being acquired by the persons against whom the covenant is aimed, and that this prohibition is without regard to whether the land is put to residential, commercial, industrial or other use. How far this is obnoxious to public policy can only be ascertained by projecting the coverage of the covenant with respect both to the classes of persons whom it may adversely affect, and to the lots

> or subdivisions of land to which it may be attached. So considered, the consequences of judicial approbation of such a covenant are portentous. If sale of a piece of land can be prohibited to Jews, it can equally be prohibited to Protestants, Catholics or other groups or denominations. If the sale of one piece of land can be so prohibited, the sale of other pieces of land can likewise be prohibited. In my opinion, nothing could be more calculated to create or deepen divisions between existing religious and ethnic groups in this province, or in this country, than the sanction of a method of land transfer which would permit the segregation and confinement of particular groups to particular business or residential areas, or conversely, would exclude particular groups from particular business or residential areas."

Except with respect to the District of Columbia and the territories, the United States Supreme Court could not follow the exact course of the Canadian court, since it cannot rule on the public policy of the states. But a vehicle for reliance on the United Nations Charter to invalidate restrictive covenants may be found in the rule that international treaties have precedence over state law.[3/] This approach will probably be presented to the Supreme Court in the cases in which applications for certiorari have been granted.

The Circuit Court of Appeals for the District of Columbia recently reaffirmed the rule that covenants are enforceable in the District, over the ringing dissent of Judge Edgerton. The dissent rested on a number of points, some fairly technical. Following are some of the more interesting passages:

> "Racial restrictive covenants have been defended on two grounds. They are said to increase the value, i.e., the price, of the restricted property, and to prevent racial conflict. If the first proposition is true, which is very doubtful in the Distrcit of Columbia, it is no defense of these covenants from the point of view of public policy, but quite the contrary, since the prices of homes are inflated above any level than can be thought socially desirable. The second proposition assumes that racial conflict is likely to result when whites and Negroes live near each other. Familiar facts refute this assumption. In unrestricted areas within the economic reach of Negroes, and particularly along the boundaries between restricted and unrestricted areas, whites and Negroes do live near each other and racial conflict does not result. Serious students of the subject believe that enforced housing segregation

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3/ The reasoning of the Ontario court would also support the view that state enforcement (assuming that it is "state action") is a deprivation of due process or equal protection

increases rather than diminishes the possibility of racial conflict. If the satisfaction which many of the whites in restricted areas may derive from excluding Negroes is to be given weight, it must be weighed against the dissatisfaction which Negroes may feel at being excluded."

* * * * *

"The housing shortage in the District of Columbia has long been acute. The shortage of decent housing, or any housing for Negroes is particularly acute. They are largely confined to wretched quarters in overcrowded ghettoes. These facts are commonly known and undisputed. The correlation of bad and overcrowded housing with delinquency, disease and death has often been proved. The Negro death rate from tuberculosis in the District of Columbia is 4½ times the white, the Negro maternity death rate is 5 times the white, and the Negro death rate from all causes 40 percent higher than the white. Though these differences are not due entirely to the inferiority of Negro housing no one questions the fact that they are due partly to that cause.

"The inferiority of Negro housing is not due entirely to racial covenants, but no one questions the fact that it is due in part to racial covenants. Covenants prevent free competition for a short supply of housing and curtail the supply available to Negroes. They add an artificial and special scarcity to a general scarcity, particularly where the number and purchasing power of Negroes as well as whites have increased as they have recently in the District of Columbia. The effect is qualitative as well as quantitative, Exclusion from decent housing confines Negroes to slums to an even greater extent that their poverty makes necessary. Covenants exclude Negroes from a large fraction -- no one knows just how large -- of the decent housing in the District of Columbia. Some of it is within the economic reach of some of them. Because it is beyond their legal reach, relatively well-to-do Negroes are compelled to compete for inferior housing in unrestricted areas, and so on down the economic scale. That enforced housing segregation, in such circumstances, increases crowding, squalor, and prices in the areas where Negroes are compelled to live is obvious. It results in 'doubling up, scandalous housing conditions for Negroes, destroyed home life, mounting juvenile delinquency, and other indications of social pathology which are bound to have their contagious influence upon adjoining white areas.'"

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"Suits like these, and the ghetto system they enforce are among our conspicuous failures to live together in peace. In another such suit, this court recently argued that 'if ever the two races are to meet upon mutually satisfactory ground, it cannot be through legal coercion...' This premise, instead of supporting the court's conclusion that racial restrictive covenants should be enforced by injunctions, is one more argument against it. The question in these cases is not whether law should punish racial discrimination, or even whether law should try to prevent racial discrimination, or whether law should interfere with it in any way. The question is whether law should affirmatively support and enforce racial discrimination. Appellants do not ask that appellees be forced to sell them houses. Appellees alone have come into court with a claim. They ask the court to take away appellants' homes by force because they are Negroes. There is no other issue in the case."

The states have statutory power to forbid judicial enforcement of restrictive covenants, or to declare such covenants void, and Congress, with respect to the District of Columbia and the territories has equal power. Bills making such agreements illegal are pending in Colorado and Illinois; a bill making covenants judicially non-enforceable is pending in Pennsylvania. Many witnesses have suggested that the Committee endorse such legislation, particularly with reference to the District of Columbia.

GI Loans

Under the GI Bill of Rights /Servicemen's Readjustment Act of 1944 (38 USC § 693 et.seq.)/ the Veterans Administration guarantees loans made to veterans by private lending agencies for the purpose of purchasing, constructing or improving a home. It has been called to the Committee's attention that Negro veterans have difficulty taking advantage of GI loans because private institutions frequently will not make loans to Negroes for construction outside of Negro areas, or will not make loans on property subject to racial restrictive covenants. It has been suggested that the Veterans Administration should require equal access to GI loans by Negro veterans. This, however, seems outside of the powers of the Veterans Administration since the statute provides only for VA guarantee of loans already negotiated by the Veteran and the lending institution.

Section 694(b) states that "Loans guaranteed under this subchapter shall be payable under such terms and conditions as may be agreed upon by the parties thereto, subject to the conditions and limitations of this subchapter and the regulations (of the Administrator)." The conditions of the statute contain various restrictions on eligibility and amount and purpose of loans. The Administrator is authorized "to promulgate such rules and regulations not inconsistent with this subchapter, as are necessary and appropriate for carrying out the provisions of this subchapter..."

The provision specifically relevant to home loans (Sec. 694a) makes a government guarantee automatic in the case of any loan meeting standards concerning such matters as relation of the veteran's income to the purchase price and relation of price to reasonable value.

There seems no basis, under the statute, for other than hortatory action of Veterans Administration in aid of Negro veterans denied loans by private agencies. But there may be a considerable area in which VA could help persuade banks to follow a more liberal policy.

Attempts to secure for Negro veterans equal access to GI loans might be made by legal action against the lending institutions based on the theory of conspiracy to deprive Negro veterans of rights contemplated by the GI Bill of Rights. But since the GI Bill of Rights in terms remits to private institutions basic terms and conditions of loans, and by necessary implication places the decision whether and when to make a loan in the hands of the banks, there seems little chance of successful action along these lines. The "right" conferred by the GI Bill of Rights seems to be the right to a government guarantee if the veteran persuades a bank to make a loan, not a right to secure a loan.

Federal Government Policy and
Minority Housing Problems.

The relation of public housing and publicly supported private housing to the special problems of minorities has been and remains a

very troublesome problem. The record of the federal government has been uneven. Certain past government policies are generally considered responsible for much of the increased use of racial restrictive covenants in recent years. Other federal activity has helped somewhat to alleviate Negro housing problems.

The federal government has been in the housing field both in building and as a financial institution making loans to home owners and guaranteeing loans of private financial institutions for large scale rental housing. During the war federal housing agencies exercised authority with respect to building priorities, and built and managed war housing. Under the United States Housing Act, the Federal Public Housing Authority (FPHA) conducts the program of federal aid for low-rent housing and slum clearance projects of local housing authorities. The Federal Housing Administration (FHA) is primarily concerned with insuring mortgage loans on private housing meeting FHA standards. Since the war these agencies have been coordinated by the National Housing Authority (NHA) which has had general supervision over policy matters.

None of the statutes governing federal housing agencies contain provisions specifically relevant to minority housing problems. Thus policy decisions on segregation, restrictive covenants and allocation of priorities or public housing to minority groups have been the responsibility of the administrative officials. As might be expected, federal policy on these subjects has varied with changes in administrative personnel.

The past relationship of FHA activity to the housing needs of Negroes has been described by Myrdal as follows:

> "This federal agency has taken over the policy of segregation used by private institutions, like banks, morgage companies, building and loan associations, real estate companies. When it comes to developing new sub-divisions, the FHA is obviously interested in getting such a layout that property values can be maintained. Private operators, in order to secure FHA backing, usually follow the advice of the agency. One of the points which property valuators of the FHA are specifically urged to consider is whether the area or property to be insured is protected from 'adverse influences.' This, in the official language of the agency, 'includes prevention of the infiltration of business and industrial uses, lower class occupancy, and inharmonious racial groups.' In the case of undeveloped and sparsely developed areas, the agency lets its valuators consider whether
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> > ...effective restrictive covenants are recorded against the entire tract, since these provide the surest protection against undesirable encroachment and inharmonious use. To be most effective, deed restrictions should be imposed upon all land in the immediate environment of the subject location.

The restrictions, among other things, should include, 'prohibition of the occupancy of the properties except by race for which they are intended.'

This matter is a serious one for the Negro. It is one thing when private tenants, property owners, and financial institutions maintain and extend patterns of racial segregation in housing. It is quite another matter when a federal agency chooses to side with the segregationists. This fact is particularly harmful since the FHA has become the outstanding leader in the planning of new housing. It seemed probable that the FHA has brought about a greatly increased use of all sorts of restrictive covenants and deed restrictions, which are the most reliable means of keeping Negroes confined to their ghettoes. It may even be that those income groups of the white population which are particularly served by the FHA formerly lived in areas which were much less covered by such restrictions. The damage done to the Negroes is not only that FHA encourages segregation. There is also the fact that this segregation is predominantly negative."

FHA's policy of encouraging use of restrictive covenants occassioned bitter protest from minority groups. In October of 1944 the NAACP submitted a memorandum to the President charging that FHA, through its vast influence on building practices, was "using government power to crystallize current residential segregation patterns", was guaranteeing "the extension of such racial patterns of living" and was fostering "the spread and acceptance of the fallacious conception that property values or deterioration is associated with race rather than with economic factors."

The NAACP asked for the following directives to FHA:

"1. To instruct the Commissioner of FHA to revise its policies and procedures so that the Agency will cease

   a. the extension of racial restrictive covenants in new areas.
   b. basing the guaranteeing of loans on the use of such covenants.

"2. To remove all references to race from the Underwriting Manual and issue instructions to all personnel that no distinction on the basis of race shall be made in considering applicants for FHA mortgage insurance.

3. To accept the responsibility for encouraging and assisting private builders to meet the needs of the private housing market among Negroes by gathering and disseminating accurate information on

   a. the Negro as a good financial risk

b. the Negro as a tenant and owner in the maintenance of property and

c. the effect of Negro occupancy upon property values as shown by the experience of recent years in housing financed by the government.

4. The use of racial relations techniques which have been found effective for public housing and other governmental programs to (1) implement sound racial policy, (2) assist in the gathering of data, (3) interpret needs of Negroes to the Agency and (4) to promote the FHA program among Negroes."

The provisions of the FHA Underwriting Manual which virtually required restrictive covenants have finally been deleted. In May of this year a new Manual was released, which omits racial considerations as tests of economic soundness of new projects, and substitutes a criterion of "user group". While the new language is not free of the danger that it may be interpreted to encourage racial restrictive covenants, it represents a marked change in FHA policy.

The policy of FPHA, the agency responsible for the public housing program, has been very different from that of FHA. A report prepared for the National Public Housing Conference in March of this year states:

"The only successful instrument to date for improving the housing condition of colored minorities has been public initiative. Negroes live in 46,500 units of prewar public housing, or 35% of the total. In publicly constructed war housing, they occupied 16% or 95,000 homes. About 37% of the permanent low-rent housing for which application has been made by local authorities pending the availability of more funds, will be available to Negroes.
(In Southern cities, where the need is relatively greater, the proportions are much higher, particularly in the low-rent USHA program. In Memphis with 42% non-white population, 72% of the public housing is reserved for Negroes. In Dallas the figures are 17% and 50% respectively. These examples are typical.)

Although segregation in public housing projects is universal in the South and variable in the North, the principle of equal standards has been pretty well adhered to, in community facilities as well as in the design and equipment of dwellings."

In commenting on the contrast between FHA and FPHA Myrdal says:

"The subsidized housing projects for low income families are an entirely different matter. About 7,500, or one-third, of the dwelling units in projects built during 1933-1937 by the Housing Division of the Public Works Administration are for Negro occupancy. The building of subsidized housing projects has since been carried on by local housing authorities with

the financial assistance of the United States Housing Authority (USHA).[2] By July 31, 1942, there were 122,000 dwelling units built by or under loan contract with the USHA and intended for low income families. About 41,000 or 33 percent, of those were intended for Negro occupancy.

Thus the Negro has certainly received a large share of the benefits under this program. Indeed, the USHA has given him a better deal than has any other major federal public welfare agency. This may be due, in part, to the fact that, so far, subsidized housing projects have been built mainly in urban areas, where, even in the South, there is less reluctance to consider the Negro's needs. The main explanation, however, is just the fact that the USHA has had the definite policy of giving the Negro his share. It has a special division for non-white races, headed by a Negro who can serve as spokesman for his people. Many of the leading white officials of the agency, as well, are known to have been convinced in principle that discrimination should be actively fought.

So far, however, only about 3 percent of Negro urban families live in subsidized housing projects. This is a good beginning, but unless these efforts continue, the results are a drop in the bucket compared with the total need."

Since the FPHA is directly concerned with public housing projects the segregation problem has of course arisen. The history of public housing in this respect has been complex, and there have been cases where introduction of public housing institutiohalized segregation where this had not before been the case. Some observers believe that because of the tendency to construct large standardized housing projects the FPHA program has "on the whole strengthened rather than weakened housing segregation". The agency's policy has been, in general, to conform to local custom. This means segregation in the South, and in the North is a variable picture. There have been mixed and segregated public housing projects in the North. While there is no scientific material on the results of the mixed projects, the opinions of careful commentators seem to be uniform that the experience has been good. Many observers state that most friction develops where segregated projects are built contiguously, or projects are divided on racial lines.

The task of dealing with the segregation problem in the North has called for intelligent and imaginative planning. The federal agency must deal with local authorities and local citizens, and this fact complicates an already difficult problem. In some cases there have been bad failures, in others the approach of the federal agency has been excellent.

The need for integration among federal housing agencies and enlightened planning of the entire housing effort was pointed out by

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[2]USHA is the previous name of FPHA.

Myrdal as indispensible to solution of the Negro housing problem. During the war much progress was made in this direction. Race relations advisors, first used in FPHA, had become, by the Spring of 1947, an important and useful means of dealing with minority housing problems throughout the federal housing agency structure. Federal agencies have made significant efforts to increase housing for Negroes through the priorities system and temporary war housing, by attempting increased allocation of temporary housing for Negro veterans, and by trying to influence private industry to build for the Negro market.

At the present time it appears that one of the effects of proposed Congressional action cutting the budget of the housing agencies may be to destroy the racial relations advisor system. This may have a profoundly retrogressive influence on housing agency work on minority problems.

The relation of the national housing shortage and the Taft-Ellender-Wagner Bill to the minority housing problem:

When there is a general shortage of housing minority groups subject to special restrictions obviously suffer most. Furthermore, when both minority and majority groups are struggling for living space, racial antagonisms increase. Certainly minority housing problems will never be solved while there is a national housing shortage, and if the acute shortage lasts for a long time minority housing conditions will undoubtedly become even worse than they are today.

Subcommittee No. 2 has recommended support of long range federal housing legislation. The need for federal aid has been recognized as essential by the groups concerned with minority housing problems. But a federal housing program is not in itself a guarantee that minority needs will be served. Frequently in the past new housing projects, by displacing minority-group slum dwellers, have diminished the land area available for housing for minorities. Moreover, even if public agencies do not encourage or require restrictive racial practices by private interests discrimination may well be practiced by private interests, supported or subsidized by the government, if government programs do not forbid it. The story of New York City's experience with Stuyvesant Town is a warning of the dangers of uncontrolled delegation to private interests. In that case the city granted the Metropolitan Life Insurance Company tax-exemption and eminent domain powers in order to construct a large housing project. Metropolitan then barred Negroes from occupancy, although New York is a city in which mixed public housing projects have been successfully maintained.4/

A long range housing program which will improve the housing situation of minorities and which will not intensify existing inequalities must take cognizance of the special housing needs of minorities, of the dangers of extension of segregation and racial restrictive covenants and of the likelihood that large scale housing projects may drive minority groups even further into ghettoes. To meet minority needs and to avoid dangers such as those mentioned above it would seem that both legislative declarations of policy and well-coordinated, informed administrative action are needed.

4/ It was recently reported in the New York Times that the Metropolitan Life Insurance Company's discriminatory policy was the cause for action by the United Nation's breaking agreements for housing United Nation's personnel in two Metropolitan projects.

There appears to be general agreement among groups interested in minority housing that the Taft-Ellender-Wagner Bill is a good vehicle for meeting the general housing crisis. But there has been criticism of the bill's inadequacies with respect to minority problems. The bill contains no reference to special needs of minorities and no prohibition against use of restrictive covenants by private industry operating with government aid. There is no requirement that such private groups give fair consideration to needs of minorities in planning housing projects. The bill also fails to make provision for protection of persons displaced by slum clearance projects; it does not require that redevelopment plans assure equitable participation by all ethnic groups.

The preamble to the bill does declare the purpose of realizing "as soon as feasible the goal of a decent home and a suitable living environment for every American family". The phrase "every American family" suggests that administration of the bill, if it becomes law, should be non-discriminatory. But it may be very difficult for even the best intentioned administrator to cope with the deep rooted traditions of racial restriction and discrimination in housing with no more support than this language.

An interesting set of standards for public housing is the following declaration of principles adopted by the National Public Housing Conference in March of this year:

"1. More land and living area available to occupancy by minority races:

Where private covenants or other limitations block the natural and necessary expansion of living space open to any segment of the population, suitable land for such purposes should be acquired by public condemnation, for private as well as public development.

Special care must be taken to guarantee that no urban redevelopment schemes result in a reduction of space or dwellings available to minority races.

2. Enough houses, fairly distributed:

This means passage of comprehensive housing legislation such as the Wagner-Ellender-Taft Bill, plus fair distribution of its benefits to minority peoples, according to need and eligibility in public housing and according to demand and ability to pay in private housing.

3. Maximum progress toward nonsegregation:

Housing and planning agencies have a major responsibility for effectuating progress, as rapidly as feasible, toward the full integration of ethnic minority groups into our American democracy.

In the numerous communities where, despite any continuing practice to the contrary, the trend in local law and obvious public intent is against discrimination or differentiation in any form, housing programs and city plans must be prepared to embody this principle in practice at the earliest possible moment. Much friction and painful later adjustment can be avoided if the housing and planning agencies now, at the outset of a period of major development, take a firm stand against restrictive covenants and in favor of nonsegregation, above all in new projects and neighborhoods.

Where the framework of local law still requires social separation, a special responsibility devolves upon public agencies to insure adequate supply of land and houses, fair distribution, equal standards, and the responsible participation by minority groups in the development and administration of housing and planning policy. Consideration should be given to Negro representation on the boards of local housing authorities.

4. Balanced neighborhoods, not geographic standardization by class or race:

Segregation is not wholly a question of active race prejudice or legal discrimination. Indeed, even where social separation is traditional, different races have normally lived in the same neighborhoods. Today, however, large-scale operations in land subdivision, private building, public housing, and redevelopment, all tend to encourage the standardization of population over vast areas, by income as well as by race, unless housing and planning agencies take positive steps to prevent it.

Wherever different races or classes have occupied the same neighborhood in the past, the pattern should be preserved insofar as possible. The scale of any residential development planned for a single type of use must be kept down, and a democratic social balance anticipated in every section of a city or metropolitan area."

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