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Papers of Tom C. Clark

STATEMENT AND ANALYSIS BY THE ATTORNEY GENERAL
concerning the
PROPOSED CIVIL RIGHTS ACT OF 1949 - { HR. 4682 / S. 1725

General Background

The Fourteenth Amendment to the Constitution, adopted in 1868, prohibits the states from making or enforcing laws "which shall abridge the privileges or immunities of citizens of the United States", from depriving "any person of life, liberty, or property, without due process of law", and from denying to any person "the equal protection of the laws".

The Fifteenth Amendment, which was added to the Constitution in 1870, provides that,

> "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude."

To avoid any doubts on the score, the Amendments specifically authorize the Congress to provide for their enforcement "by appropriate legislation". But it is not questioned that the Amendments are self-executing in that they render void and ineffectual any state action in confliot with them. (Cantwell v. Connecticut, 310 U.S. 296 (1940); Ex parte Yarbrough, 110 U.S. 651 (1884).)

The Thirteenth Amendment, adopted in 1865, by its terms abolished slavery and involuntary servitude. But Congress was, as in the later Amendments, empowered to provide for enforcement by appropriate legislation. It was never doubted that slavery was thereby destroyed, yet the Congress was expressly given power to implement the amendment. (Clyatt v. United States, 197 U.S. 207 (1905).)

The framers of these Amendments, in their wisdom, sought to have enacted not unyielding ordinances limited in their terms to specific situations and cases, but an additional part of a plan of government, declaring fundamental principles, as in the case of the original charter. The Constitution "by apt words of designation or general description, marks the outlines of the powers granted to the national legislature; but it does ~~not~~

undertake, with the precision of detail of a code of laws, to enumerate the subdivisions of those powers, or to specify all the means by which they may be carried into execution". (Legal Tender Cases, 110 U.S. 439 (1884).) Thus the Amendments declare the fundamental principles, which are effective and self-executing insofar as they may apply to a particular matter, but the Congress is empowered to extend their principles to meet the many situations and different circumstances which arise with the growth and advancement of our complex civilization. In the words of Mr. Justice Bradley, from the opinion in the Civil Rights Cases (109 U.S. 3, 20 (1883)):

> "This amendment (the Thirteenth), as well as the Fourteenth, is undoubtedly self-executing without any ancillary legislation, so far as its terms are applicable to any existing state of circumstances. By its own unaided force and effect it abolished slavery, and established universal freedom. Still, legislation may be necessary and proper to meet all the various cases and circumstances to be affected by it, and to prescribe proper modes of redress for its violation in letter or spirit."

Following the Civil War a number of civil rights statutes were enacted, but over the years, through decisions of the Supreme Court and Congressional action in 1894 and 1909, the laws implementing the three Amendments were reduced in number and scope to the following:

Section 241, Title 18, U. S. Code, Conspiracy against rights of citizens, making a conspiracy to injure a citizen in the exercise of his federal rights a felony;

Section 242, Title 18, Deprivation of rights under color of law, making willful action, under color of law, to deprive an inhabitant of his federal rights a misdemeanor;

Section 243, Title 18, Exclusion of jurors on account of race or color, forbidding disqualification for jury service on account of race or color, and making such action by officers charged with selecting jurors a crime punishable by fine;

Section 594, Title 18, Intimidation of voters, enacted as part of the Hatch Act, making it a misdemeanor to intimidate any voter at a federal election (but without clear reference to primary elections, as is discussed later).

Section 43, Title 8, Civil action for deprivation of rights, and Section 47, Title 8, Conspiracy to interfere with civil rights, provide civil causes of actions for persons injured by deprivations and interferences generally similar to the wrongs punishable under the criminal provisions of Title 18, sections 241 and 242. Sections 31, 41 and 42, Title 8, declare the existence of equality without distinction as to race or color, in matters of voting, owning property, ability to contract, sue, give evidence, and the like; and section 76 of the same title abolishes peonage.

Section 1581, Title 18, Peonage; obstructing enforcement, makes the holding or returning of a person to a condition of peonage a crime; and Section 1583, Enticement into slavery, and Section 1584, Sale into involuntary servitude, make criminal the kidnaping, carrying away or holding of a person to a condition of slavery or involuntary servitude.

(The texts of the foregoing statutes are set forth in Appendix A.)

The existing civil rights statutes fall far short of providing adequate implementation of the Amendments protecting life, liberty and property.

America has a great heritage of freedom, and few nations have come closer to achieving true liberty and democracy for its people. But the goal has not been reached. Much remains to be done, which can be done. It is clear that the present civil rights statutes do not represent the full extent of the Congressional power. It is equally clear that there is a real need for a broadening of the statutes, not necessarily to the fullest extent legally possible, but at least to overcome the shortcomings of the existing laws.

By way of example, the courts have had difficulties in dealing, among others, with two of the important statutes, sections 241 and 242, Title 18, U. S. Code, and have on occasion practically invited Congressional clarification. In Screws v. United States, 325 U.S. 91 (1945), where four separate opinions were written by the Justices of the Supreme Court in construing 18 U.S.C. 242, Mr. Justice Douglas in the prevailing opinion indicated that the limitations imposed on the use of section 242 were inherent in the statute, and "If Congress desires to give the Act wider scope, it may find

ways of doing so." Further, if the meaning given to the statute by the Court "states a rule undesirable in the consequences, Congress can change it", 325 U.S. 91, 105, 112-113. Similarly, in Baldwin v. Franks, 120 U.S. 678 (1887), the Court, in dealing with 18 U.S.C. 241, suggested that Congress might cure by appropriate amendment what the Court found to be the limited application of the statute to citizens only, rather than to all inhabitants, (120 U.S. 678, 692.)

In his Message on the State of the Union in 1946, President Truman said,

> "While the Constitution withholds from the Federal Government the major task of preserving the peace in the several States, I am not convinced that present legislation reaches the limit of Federal power to protect the civil rights of its citizens."

The President then informed the Congress of the creation of a special committee on civil rights to frame recommendations for additional legislation.

This committee, known as The President's Committee on Civil Rights, consisted of 15 distinguished Americans from all ranks of life. It was directed by the President 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". (Executive Order No. 9808, December 5, 1946).

Over a year later, after extensive work and research, the Committee rendered its Report to the President, entitled, "To Secure These Rights" (hereinafter referred to as Report). At the outset it was noted that it will not be denied that the United States possesses "a position of leadership in enlarging the range of human liberties and rights, in recognizing and stating the ideals of freedom and equality, and in steadily and loyally working to make those ideals a reality". Great and permanent progress was observed. Serious shortcomings were found and described. Constructive remedies were proposed.

The President, supported by the Department of Justice, which is continually engaged in the enforcement of the civil rights statutes, after careful study, concluded that the Report of the President's Committee was essentially sound and that its principal recommendations should be carried out.

In his Message on Civil Rights, delivered to the Congress on February 2, 1948 (H. Doc. No. 516, 94 Cong. Rec., February 2, 1948, at pp. 960-962), the President stated:

> "One year ago I appointed a committee of 15 distinguished Americans, and asked them to appraise the condition of our civil rights and to recommend appropriate action by Federal, State, and local governments.
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> "The committee's appraisal has resulted in a frank and revealing report. This report emphasizes that our basic human freedoms are better cared for and more vigilantly defended than ever before, but it also makes clear that there is a serious gap between our ideals and some of our practices. This gap must be closed.
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> * * *
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> "The Federal Government has a clear duty to see that constitutional guaranties of individual liberties and of equal protection under the laws are not denied or abridged anywhere in our Union. That duty is shared by all three branches of the Government, but it can be fulfilled only if the Congress enacts modern, comprehensive civil-rights laws, adequate to the needs of the day, and demonstrating our continuing faith in the free way of life."

The President then recommended that the Congress enact legislation directed toward specific objects, including:

Establishing a permanent Commission on Civil Rights,
a Joint Congressional Committee on Civil Rights, and
a Civil Rights Division in the Department of Justice.

Strengthening existing civil-rights statutes.

Protecting more adequately the right to vote.

Prohibiting discrimination in interstate transportation facilities.

These points are met in H.R. 4682. I strongly urge the enactment of the bill, and I join with the President's Committee in its view that "national leadership in this field is entirely consistent with our American constitutional traditions". (Report, p. 104)

ANALYSIS

of proposed

"CIVIL RIGHTS ACT OF 1949"

Section 1 provides for the dividing of the act into titles and parts according to a table of contents, and for a short title, "Civil Rights Act of 1949".

Section 2 contains legislative findings and declarations.

Section 3 is a provision for separability.

Section 4 authorizes appropriations.

In my view the findings are the summation of years of experience, and reflect hard, physical facts which the President's Committee on Civil Rights, among others, has reported on, and which we at the Department of Justice meet daily. The purposes to be accomplished by the bill are purposes which this nation has sought to achieve since its founding. We have always had the ideal and so long as we seek to realize it we are a healthy, vigorous nation. Great gains have been made, but greater gains will be made if this bill is enacted. The bill does not purport to solve every problem and cure every evil; it does, however, represent a great forward step toward the goal of full civil liberties for all.

TITLE I -- PROVISIONS TO STRENGTHEN THE FEDERAL GOVERNMENT MACHINERY FOR THE PROTECTION OF CIVIL RIGHTS.

Part 1 -- A Civil Rights Commission.

Section 101 creates a five-member Commission on Civil Rights in the Executive branch of the government, and makes the necessary provision for the appointment of the members, the officers, vacancies, quorum and compensation.

Section 102 provides for the duties and functions of the Commission, including the making of an annual report to the President. (No hearing or subpoena powers are conferred.) To state it simply, the job of the Commission would be to gather information, appraise policies and activities, and make recommendations.

Section 103 provides for the use of advisory committees, consultation with public and private agencies, and federal agency cooperation. A paid staff is authorized, as well as the use of voluntary services.

At the present time the only unit in the Executive branch of the government which is specifically dedicated to work pertaining to civil rights of the people generally is the Civil Rights Section of the Department of Justice. (The work of the Section is more fully discussed below, in connection with the proposed Civil Rights Division.) This Section is a unit of the Criminal

Division. Neither the Section nor the Department has adequate facilities for studies or coordinating activities in civil rights matters. There is no agency which follows developments in the federal or state spheres in civil rights, which can report authoritatively to the President or the Congress, or to the people, on the state of the constitutional liberties and safeguards, which can undertake research or survey projects for legislative purposes. In the fields of securities, trade and commerce, interstate carriers, labor, foreign affairs, defense, finance, and practically every other important phase of modern human endeavor, the federal government possesses highly qualified, specialized administrative and research agencies responsible for keeping the government and the nation abreast of all movements, trends and developments. At any time that a new situation arises which calls for action, an expert opinion and thorough appraisal is available. But in the supremely important field of constitutional rights, the government has no expert body or specialized agency for guidance and leadership.

It is not enough to protect rights now fully recognized and freely enjoyed if we are to progress toward enlarging the range of our liberties and privileges. We must be continually vigilant, prepared for every new form of attack upon the ideals and practices of our free society. We must be in a position to recognize the existence of the disease when it strikes, to diagnose it, to prepare a remedy and to apply such remedy--without giving it time and opportunity to spread and weaken our national fiber.

The White House and the Department of Justice receive a volume of mail from private citizens, including students, teachers, and universities, and, in some instances, from state officials, requesting information and guidance in constitutional problems--frequently in connection with civil liberties. Such mail is usually of necessity channeled to the Civil Rights Section, but it is far too overburdened to cope with the requests. Because of limited personnel and facilities, it must restrict its activities to the enforcement of the criminal civil rights statutes. It can only use expedients such as referring communicants to privately written and published books (which the Department does not and cannot officially approve), and to private organizations and universities which study and report on the problems. (The

NAACP, American Civil Liberties Union, Fisk University, and others have done notable work in the field. Much of the general information which the Department presently possesses has been furnished by such organizations.)

As stated by the President's Committee:

> "In a democratic society, the systematic, critical review of social needs and public policy is a fundamental necessity. This is especially true of a field like civil rights, where the problems are enduring, and range widely. From our own effort, we have learned that a temporary, sporadic approach can never finally solve these problems.
>
> "Nowhere in the federal government is there an agency charged with the continuous appraisal of the status of civil rights, and the efficiency of the machinery with which we hope to improve that status. There are huge gaps in the available information about the field. A permanent Commission could perform an invaluable function by collecting data. It could also carry on technical research to improve the fact-gathering methods now in use. Ultimately, this would make possible a periodic audit of the extent to which our civil rights are secure. If it did this and served as a clearing house and focus of coordination for the many private, state, and local agencies working in the civil rights field, it would be invaluable to them and to the federal government." (Report, p. 154)

The President, in his Civil Rights Message of February 2, 1948, made the following specific proposal to meet the need:

> "As a first step, we must strengthen the organization of the Federal Government in order to enforce civil-rights legislation more adequately and to watch over the state of our traditional liberties.
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> "I recommend that the Congress establish a permanent Commission on Civil Rights reporting to the President. The Commission should continuously review our civil-rights policies and practices, study specific problems, and make recommendations to the President at frequent intervals. It should work with other agencies of the Federal Government, with State and local governments, and with private organizations."

The Commission on Civil Rights proposed by this bill would have, in substance, the following functions and duties: It would act as a fact-finding agency concerned with the state of our civil rights, the practices of governments and organizations affecting civil rights, and with specific cases and situations involving deprivations of the rights of any person, group of persons, or section of the population. It would act as a research agency investigating general civil-rights problems to determine their causes and to recommend cures, either by legislation or by other means under existing laws. It would act as an educating and informational agency to keep before the people and their governments the importance of preserving and

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extending civil rights, not only for the concrete gains such actions would result in, but to bring about a greater awareness of the obligations of this nation as a member of the United Nations. It would act for the federal government in working for and cooperating with the states and local governments in the solution of civil-rights problems, offering advice and assistance where desired or needed. In brief, the Commission would represent the government and the people, as well as provide leadership, in a continuing, vital phase of American life and society.

The establishment of an advisory commission or board to advise and assist the President is, of course, not an unusual action. With the growth of the nation and the increase in the complexities of life and civilization, it has become increasingly necessary to make available expert agencies to handle the highly technical and involved problems naturally resulting. In the nineteenth century the process of building administrative machinery to meet the demands of an emerging industrial society began; the process was rapidly accelerated in the present century with the development of new avenues of enterprise in communication, commerce, finance and general welfare. The administrative agencies, in order to carry out and enforce the Congressional policies, early found it necessary to develop their facilities for research and fact-finding. These were used not only in the application of the specific laws within their jurisdiction, but in planning new programs to meet new problems as they arose. The stories of radio, television, air travel, securities and stock exchanges, and others, are too well known to need repeating here.

Advisory commissions and boards not charged with the administration of a regulatory statute have also been created: serving the President, the Congress, and the nation in the formulation of policies and programs to be proposed to the Congress. Thus, the National Security Resources Board (61 Stat. 499; 50 U.S.C. 404 (1947 Supp.)) was created in 1947 "to advise the President concerning the coordination of military, industrial, and civilian mobilization * * *" Also in 1947, the Commission on Organization of the Executive Branch was created (61 Stat. 246; 5 U.S.C. 138(a) et seq.

(1947 Supp.)) to study and report on the operations and organizations of the several agencies, departments and bureaus of the Executive branch.

By the Employment Act of 1946 (60 Stat. 23; 15 U.S.C. 1021 et seq.), the Congress established a Council of Economic Advisers in the Executive Office of the President charged with duties and functions to gather information concerning economic developments and trends, to appraise relevant programs and activities of the government, "to develop and recommend * * * national economic policies to foster and promote free competitive enterprise * * *", and to make and furnish studies, reports and recommendations. (15 U.S.C. 1023)

The powers given to the Council are in many respects similar to those which would be given to the Civil Rights Commission by this bill, and the purposes and methods of the two groups for the attainment of their respective objectives would also be quite similar. Congress in the field of employment and economic stability of the nation recognized the need for a continuing Executive agency to supervise and study developments, and the need in the field of constitutional civil rights should also be as clearly and decisively acknowledged and met. There is more than adequate precedent for the creation of a Civil Rights Commission as proposed in this bill, and there is more than an abundance of need for such a Commission.

Part 2 -- Civil Rights Division, Department of Justice.

Section 111 calls for the appointment of an additional Assistant Attorney General to be in charge, under the direction of the Attorney General, of a Civil Rights Division of the Department of Justice.

Section 112 makes provision for increasing, to the extent necessary, the personnel of the Federal Bureau of Investigation to carry out the duties of the Bureau in respect of investigation of civil rights cases; and for the Bureau to include special training of its agents for the investigation of civil rights cases.

As I have pointed out, the Civil Rights Section is but one small unit of the Criminal Division of the Department. It has averaged during the ten

years of its existence (having been created in February 1939 by Attorney General, now Mr. Justice, Frank Murphy) from six to eight attorneys who are responsible for supervising the enforcement of the federal civil rights laws throughout the nation. The necessary investigative work is done by the Federal Bureau of Investigation, pursuant to the request of and in cooperation with the Section and the United States attorneys, but coordination and policy are effected and determined by the Section, with the approval of the Assistant Attorney General in charge of the Criminal Division. The following is an observation by the President's Committee:

> "The Civil Rights Section's name suggests to many citizens that it is a powerful arm of the government devoting its time and energy to the protection of all our valued civil liberties. This is, of course, incorrect. The Section is only one unit in the Criminal Division of the Department of Justice. As such, it lacks the prestige and authority which may be necessary to deal effectively with other parts of the Department and to secure the kind of cooperation necessary to a thorough-going enforcement of civil rights law. There have been instances where the Section has not asserted itself when United States Attorneys are uncooperative or investigative reports are inadequate. As the organization of the Department now stands, the Section is in a poor position to take a strong stand in such contingencies." (Report, p. 125)

The Assistant Attorney General in charge of the Criminal Division, as you know, is responsible for the enforcement of a multitude of criminal laws, ranging from espionage and sedition to the Mann Act and the Lindbergh law, and from the Fair Labor Standards Act to the postal laws. He must, of necessity, devote a great deal of his time to the many important matters faced by his Division in addition to those presented through the Civil Rights Section.

The Section, in addition to the enforcement of the civil rights and slavery and peonage statutes, is responsible for the enforcement of the criminal provisions of the Fair Labor Standards Act (29 U.S.C. 201 et seq.); the penalty provisions of the Safety Appliance Acts, dealing with railroads (45 U.S.C. 1, et seq.); the Kickback Act (18 U.S.C. 874); the Hatch Political Activity Act and other statutes relating to elections and policitcal activities (18 U.S.C. 591-612); and sundry statutes designed or capable of being employed to protect the civil rights of citizens, to promote the welfare of workingmen, to safeguard the honesty of federal elections, and to secure the right of franchise to qualified citizens. (For example, Railway

Labor Act, 45 U.S.C. 152; or the statute relating to the transportation of strikebreakers, 18 U.S.C. 1231.)

Due to the limitations under which the Section necessarily operates and has operated, it has not undertaken to police civil rights. The only cases it has handled are those which were brought to its attention by complainants, either directly or through the Federal Bureau of Investigation, the United States attorneys or other government agencies. Nevertheless, it has received a great number of letters and complaints. The Section has received about 10,000 letters each year concerning civil liberties. (See Appendix B.) The majority of these letters make clear the misconception which most members of the general public share regarding the scope of present federal powers. It is estimated that only one fifth of the letters involved a complaint of a possible deprivation of a right now federally-secured. However, since the Report of the President's Committee was issued in October 1947, a clearer awareness of the federal government's function in the field has apparently been created, and a larger number of civil rights complaints of some substance, appropriate for federal attention, have been received.

In addition to the civil rights cases, a large number of intricate cases involving alleged crimes in the field of elections and political activities have been received by the Section, many from members of the Congress. And, of course, a steady volume of prosecutions under the Fair Labor Standards Act and the miscellaneous statutes handled by the Section adds to the burden.

As stated by the President's Committee:

> "At the present time the Civil Rights Section has a complement of seven lawyers, all stationed in Washington. It depends on the FBI for all investigative work, and on the regional United States Attorneys for prosecution of specific cases. Enforcement of the civil rights statutes is not its only task. It also administers the criminal provisions of the Fair Labor Standards Act, the Safety Appliance Act, the Hatch Act, and certain other statutes. It is responsibile for processing most of the mail received by the Federal Government which in any way bears on civil rights. Although other resources of the Department of Justice are available to supplement the Civil Rights Section staff, the Section is the only agency in the Department with specialized experience in civil rights work. This small staff is inadequate either for maximum enforcement of existing civil rights statutes, or for enforcement of additional legislation such as that recommended by this Committee.
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> "The Committee has found that relatively few cases have been prosecuted by the Section, and that in part this is the result of its insufficient personnel. The Section simply does not have an adequate staff for the careful, continuing study of

civil rights violations, often highly elusive and technically difficult, which occur in many areas of human relations." (Report, pp. 119-120)

Appendix B, attached hereto, contains a statistical summary of the work of the Civil Rights Section.

Notwithstanding the difficulties and limitations under which the Section labors, it is called upon to deal with essential civil rights activities beyond the strict duties of prosecuting criminal cases. It assisted the Solicitor General in the preparation of the amicus curiae brief submitted by the Department to the Supreme Court in the restrictive covenant cases (Shelley v. Kraemer, 334 U.S. 1 (1948)), and it has aided the office of the Assistant Solicitor General in cooperating with the State Department in connection with U. S. participation in the preparation by the United Nations of the Universal Declaration of Human Rights and of a proposed Covenant to enforce some of these rights. The Section has assigned attorneys to the preparation and argument of appellate civil rights cases and has sent attorneys to the field in connection with the investigation and prosecution of difficult and complicated cases, including election crimes matters.

The President in his Message on Civil Rights to the Congress, as one of the steps to be taken to strengthen the organization of the federal government to enforce civil rights laws, specifically recommended "that the Congress provide for an additional Assistant Attorney General" to supervise a Civil Rights Division in the Department of Justice. This recommendation is incorporated in the present bill.

With the creation of the Civil Rights Division, all the above-described necessary activities could be conducted with greater thoroughness and dispatch, and important tasks, not now undertaken, could be assumed. The civil rights enforcement program would be given "prestige, power, and efficiency that it now lacks". (Report, p. 152) Enactment of the President's program of civil rights legislation would, of course, necessitate an increase in staff to cope with the increase in burdens. An expanded organization on divisional lines can meet the added requirements, but is certainly important even in the present situation. In the words of Executive Secretary of the President's Committee on Civil Rights,

"With an expanded staff ... the Civil Rights Section would be in a better position to search out civil liberty violations and to take action designed to prevent violations. It would not

have to limit itself, as it has in the past, to taking action after complaints are filed by outside persons. For example, there are sometimes advance warnings when a lynching is threatened, and when such warning signs are seen, the Civil Rights Section could send an agent of its own into the danger area or exercise greater authority to direct the activities of the Federal Bureau of Investigation agents. Such early action might frequently deter persons from contemplated unlawful conduct. At least it would place Federal officers in a position to obtain evidence promptly should an offense under civil right legislation be committed. This might make it possible to avoid the result that prevailed in the 1946 lynchings at Monroe, Georgia. In that instance, extensive but belated Federal investigations could produce no evidence leading to an indictment of the culprits." (Robert K. Carr, "Federal Protection of Civil Rights -- Quest for a Sword", p. 209.)

To constitute an efficient and complete organization, the Division would include specialized units devoted to the enforcement of the criminal civil rights statutes, the enforcement of the peonage and slavery statutes, the enforcement of the election and political activities laws, the administration of the labor and related laws, and legal and factual research and appeals. An important function to be developed, with the aid of legal tools which this bill can provide, is greater use of preventive civil remedies, wherein the Attorney General may proceed in the public interest, not by way of punishment, but to prevent and enjoin threatened infringements and deprivations of rights. An expanded Division would not only deal in such matters but also ought to be prepared to intervene in important litigation affecting civil rights. Even now, under the few current statutes, court construction of the existent civil remedy provisions has serious bearing upon the criminal cases, and vice versa, since the language of both is regarded substantially in pari materia; see Picking v. Pa. R. R. Co., 151 F. (2d) 240, rehearing denied 152 F. (2d) 753.

In addition, an increase in the civil rights staff would serve an essential purpose by providing skilled attorneys who could go into the field to coordinate activities and supervise investigations, as well as try cases and argue appeals. At the present time, practically all of these functions, especially the trial work, must be handled as best can be by the United States attorneys who, of course, are responsible for many other kinds of cases, both civil and criminal, involving interests of the United States.

With regard to the investigative work in the enforcement of the civil rights statutes, I have already observed that this is done by the Federal

Bureau of Investigation. The FBI is, of course, concerned with the enforcement of most of the federal criminal statutes and of necessity can assign only a limited number of agents to civil rights work. The facilities of the Bureau have been severely taxed on many occasions when important and involved cases required investigation and they have been consistently used practically to the maximum in investigating the continued volume of complaints. In spite of these handicaps, the Bureau has done a splendid job in civil rights cases. Any increase in the activities of the present Section (or a new Division) would require a corresponding increase in the work of the Bureau--a fact which is recognized in the bill.

Part 4 -- Joint Congressional Committee on Civil Rights.

Section 121 establishes a Joint Congressional Committee on Civil Rights to be composed of fourteen members, seven Senators to be appointed by the President of the Senate, and seven Members of the House of Representatives to be appointed by the Speaker, with due regard for party representation.

Section 122 provides for the duties of the Committee.

Section 123 deals with vacancies and selection of presiding officers.

Section 124 makes provision for hearings, power of subpoena, and expenditures.

Section 125 provides for the formalities of disbursements.

Section 126 authorizes the use of advisory committees and consultation with public and private agencies.

The desirability and need for the establishment of a Joint Congressional Committee on Civil Rights, along with the recommended Commission in the executive branch and a Civil Rights Division in the Department of Justice, was stated by the President's Committee:

> "Congress, too, can be aided in its difficult task of providing the legislative ground work for fuller civil rights. A standing committee, established jointly by the House and Senate, would provide a central place for the consideration of proposed legislation. It would enable Congress to maintain continuous

liaison with the permanent Commission. A group of men in each chamber would be able to give prolonged study to this complex area and would become expert in its legislative needs." (Report, p. 155)

Following the Committee's Report, the President in his Message stated:

"I also suggest that the Congress establish a Joint Congressional Committee on Civil Rights. This Committee should make a continuing study of legislative matters relating to civil rights and should consider means of improving respect for and enforcement of those rights."

The President noted that the Joint Congressional Committee and the Commission on Civil Rights,

"together should keep all of us continuously aware of the condition of civil rights in the United States and keep us alert to opportunities to improve their protection".

It is appropriate at this point to quote from an early case by Mr. Justice Story:

"The constitution unavoidably deals in general language. It did not suit the purposes of the people, in framing this great charter of our liberties, to provide for minute specifications of its powers, or to declare the means by which those powers should be carried into execution. It was foreseen, that this would be perilous and difficult, if not an impracticable, task. The instrument was not intended to provide merely for the exigencies of a few years, but was to endure through a long lapse of ages, the events of which were locked up in the insorutable purposes of Providence. It could not be foreseen, what new changes and modifications of power might be indispensable to effectuate the general objects of the charter; and restrictions and specifications; which, at the present, might seem salutary, might, in the end, prove the overthrow of the system itself. Hence, its powers are expressed in general terms, leaving to the legislature, from time to time, to adopt its own means to effectuate legitimate objects, and to mould and model the exercise of its powers, as its own wisdom, and the public interests, should require." (Martin v. Hunter, 14 U.S. (1 Wheat.) 304, 326 (1916).)

To enable "the legislature * * * to adopt its own means to effectuate legitimate objects", Congressional committees are created and engage in continuous activity to keep the Congress fully informed in the several fields of federal concern. Creation of the Joint Committee on Civil Rights would be a recognition of the great importance which the Congress attaches to the protection of the civil rights and liberties of the people.

Congress has, in recent years, enacted statutes creating joint congressional committees to survey, study and investigate certain fields of

enterprise and to make recommendations and reports as to necessary legislation and as otherwise may be deemed advisable. Thus, in the field of labor, a Congressional Joint Committee on Labor-Management Relations was created by the Labor-Management Relations Act of 1947 (61 Stat. 160; 29 U.S.C. 191 et seq. (1947 Supp.)). The Committee was required by law, among other things,

> "to conduct a thorough study and investigation of the entire field of labor-management relations * * *". (29 U.S.C. 192)

In the Atomic Energy Act of 1946, the Congress established a Joint Committee on Atomic Energy (60 Stat. 772; 42 U.S.C. 1815); and required it, among other things, to,

> "make continuing studies of the activities of the Atomic Energy Commission and of problems relating to the development, use, and control of atomic energy".

Again, in the Employment Act of 1946, the Congress established a joint committee, known as the Joint Committee on the Economic Report (60 Stat. 25; 15 U.S.C. 1024). This group was required by the law to "make a continuing study of matters relating to the Economic Report" required to be submitted by the President by another provision of the statute (15 U.S.C. 1022), to "study means of coordinating programs in order to further the policy of this chapter", and to report to both Houses of the Congress its findings and recommendations as specified. It may be noted again that by the Employment Act the Congress also created a commission in the Executive branch, the Council of Economic Advisers in the Executive Office of the President. As indicated before, in discussing the proposed Civil Rights Commission, the Congress in the Employment Act recognized the need for a continuing agency in the Executive branch as well as in the Congress to survey the field in question and recommend and report in connection therewith.

The establishment of the foregoing joint committees, as well as of others, was in recognition of the need in our complex society for specialized agencies to keep abreast of developments in vital branches of American life so that new problems and difficult situations can be met without delay by agencies best equipped to do so. The need is no less vital in the field of constitutional rights and liberties.

TITLE II -- PROVISIONS TO STRENGTHEN PROTECTION OF THE INDIVIDUAL'S RIGHTS TO LIBERTY, SECURITY, CITIZENSHIP AND ITS PRIVILEGES.

Part 1 -- Amendments and Supplements to Existing Civil Rights Statutes.

Section 201 - Among the existing civil rights laws, already noted, is 18 U.S.C. 241 (which was 18 U.S.C. 51 prior to the 1948 revision of Title 18; see Appendix A). This is a criminal conspiracy statute which has been used to protect federally-secured rights against encroachment by both private individuals and public officers. Several changes are proposed, pursuant to recommendations made by the President in his Civil Rights Message (1940) to the Congress.

The phrase "inhabitant of any State, Territory, or District" is substituted for the word "citizen". This would bring the language into conformity with that of 18 U.S.C. 242 (formerly 18 U.S.C. 52; see Appendix A), which is a generally parallel protective statute designed to punish state officers who deprive inhabitants of rights, privileges or immunities secured or protected by the Constitution or laws of the United States. Section 241 has had a narrower construction because of the use of the word "citizen", as for example, in Baldwin v. Franks, 120 U.S. 678 (1887), holding that an alien did not come within the protection of the section. On the other hand, in referring to the rights of "inhabitants", the language used in 18 U.S.C. 242 does not exclude from its scope protection of the rights which may happen to be accorded only to citizens, such as the right to vote. Thus, section 242, addressed to protecting the rights of inhabitants, applies to the deprivatinn of constitutional rights of qualified voters to choose representatives in Congress, and was held to protect the right of voters in a primary election, which was prerequisite to the choice of party candidates for a Congressional election, to have their votes counted, United States v. Classio, 313 U.S. 299 (1941), rehearing denied 314 U.S. 707. Since the Classio case also involved and upheld a conspiracy count under 18 U.S.C. 241 (then 18 U.S.C. 51), there would appear to be no danger of harm to the existing protection of federal rights of citizens in extending section 241 to cover "inhabitants" as in section 242.

It should also be noted that in Baldwin v. Franks, supra, doubt was expressed as to whether Congress had or had not used the word "citizen" in the broader or popular sense of resident, inhabitant or person (120 U.S. 678, 690, see also dissent of Harlan, J. at pp. 695-698), which a majority of the court resolved in favor of the narrower political meaning of citizen. In so doing the Court added: "It may be by this construction of the statute some are excluded from the protection it affords who are as much entitled to it as those who are included; but that is a defect, it if exists, which can be cured by Congress, but not by the courts." Ibid., p. 692.

The Fourteenth Amendment protects "any person", not merely those who are citizens, from state actions in deprivation of life, liberty, or property without due process of law, or in denial of the equal protection of the laws. Hence, the proposed change in section 241 to inhabitant is without doubt within the power of Congress, as the Court indicated in the Baldwin case.

In addition to removing what appears to be an unnecessary technical limitation to "citizens", it may properly be urged, at this date, that the extension of coverage is in accordance with the general public policy of the United States, as subscribed to in the United Nations Charter, to promote respect for, and observance of, human rights and fundamental freedoms for all.

Section 241 of Title 18, U.S.C., is a conspiracy provision. There is no legal reason why protection should be given only in cases of conspiracy. The President, in his Message of February 2, 1948 (94 Cong. Rec. 960), as did the President's Civil Rights Committee (Report, p. 156), recommended an extension to the cases of infringements by persons acting individually. That is the purport of new subsection (b). As a result the present section 241 is retained by numbering it subsection (a). It remains separately identifiable as the conspiracy provision, which has had a long history of interpretation and which has been sustained as constitutional against various forms of attack, Ex parte Yarbrough, 110 U.S. 651 (1884); Logan v. United States, 144 U.S. 263 (1892); United States v. Mosely, 238 U.S. 383 (1915).

An additional reason for separating the present conspiracy law, new subsection (a), from the proposed individual responsibility provision, new subsection (b), was the desire to adjust penalty provisions. It was thought that the action by a single individual condemned in section 241(b) might parallel in penalty the individual violation in section 242 (a principal difference between the two sections is that the offender in section 242 is always a public officer). And since section 242 has always been criticized as being too mild for the serious cases (though otherwise advantageous, as discussed below in the comment under section 202), a more formidable penalty is provided for those cases in both 241(b) and 242. As stated by the President's Committee,

> "At the present time the Act's (Section 242) penalties are so light that it is technically a misdemeanor law. In view of the extremely serious offenses that have been or are being successfully prosecuted under Section 52 (now 242), it seems clear that the penalties should be increased." (Report, p. 156)

To bear out the Committee's contention, reference need be made only to Screws v. United States, 325 U.S. 91 (1945), and Crews v. United States, 160 F. (2d) 746 (CCA 5, 1947). The latter case involved the brutal murder by a town marshal of a defenseless victim. The Court pointed out the inherent shortcomings of present federal enforcement under existing laws as follows:

> "The defendant, although guilty of a cruel and inexcusable homicide, was indicted and convicted merely of having deprived his helpless victim of a constitutional right, under strained constructions of an inadequate Federal statute, and given the maximum sentence under that statute of one year in prison and a fine of $1,000." (Ibid., p. 747)

Notwithstanding "the shocking details of the beating that Crews administered with a bull whip" upon the victim and the homicide which followed thereafter, the government was able to proceed against Crews only on a misdemeanor charge. This defendant was never punished under state law.

Many instances of violations of the federal civil rights laws, which have come to our notice, also constitute serious offenses under state laws, which provide substantially more severe penalties than are provided by the

present federal civil rights statutes, such as 18 U.S.C. 242. Unfortunately, however, where public opinion is indifferent, state officers, who violate the rights of persons less-favored in the community, do escape local prosecution and punishment. Accordingly, while every effort is made to have state authorities proceed under local law against those who deprive others of their rights, the Department, when satisfied that the federally-secured civil rights of a victim have been infringed, has felt bound to proceed under the federal statutes, even though fully aware that in cases such as the Crews case the maximum punishment obtainable can never fit the crime.

The purpose of new subsection (c) of section 241 is to plug the gaps in the civil remedy side. There already appears to be in existence a civil remedy for damages more or less covering the existing conspiracy violations of section 241(a). This remedy is found in 8 U.S.C. 47 (Appendix A). There is no parallel to cover proposed subsection (b), absent a conspiracy. In neither the case of subsection (a) nor subsection (b) is there clear-cut authorization for the bringing of proceedings other than for damages, unless the violators of sections 241(a) and 241(b) should happen to be state or territorial officers (more often chargeable under 18 U.S.C. 242), in which case 8 U.S.C. 43 would appear to afford civil remedies ("in an action at law, suit in equity or other proper proceeding for redress"). See Hague v. CIO, 307 U.S. 498 (1939), a suit in equity against state officers. Parenthetically, for all practical purposes, 8 U.S.C. 43 is a parallel, on the civil side, of the criminal statute, 18 U.S.C. 242 (see Picking v. Pa. R.R. Co., 151 F. (2d) 240 (1945), rehearing denied 152 F. (2d) 753); and it appears adequate to cover the situations on the civil side, which are similar to the criminal violations of 18 U.S.C. 242, without requiring further amendment or supplement of section 242 in that regard.

The jurisdictional provision of new subsection (c) of section 241, under which both the federal district courts and the state and territorial courts shall have jurisdiction of the civil proceedings, is well fortified with precedents. A similar provision in the Emergency Price Control Act

of 1942, 50 U.S.C.A. App., sections 925(c) and 942(k), was recently sustained in Testa v. Katt, 330 U.S. 386 (1947). For an earlier example, under the Federal Employers' Liability Act, see Mondou v. N.Y. N.H. etc. R.R. Co., 223 U.S. 1 (1912).

The portion of the proposed jurisdictional provision which reads: "without regard to the sum or value of the matter in controversy" has been inserted to avoid misapprehension in these cases that jurisdiction of the federal district courts is subject to the $3,000 or more requirement of 28 U.S.C. 1331. The latter is a general jurisdictional provision. Exempted from it are the existing civil rights actions maintainable in the district courts, under 28 U.S.C. 1343, without regard to money value, Douglas v. City of Jeannette, 319 U.S. 157 (1943), rehearing denied, ibid., 782; Hague v. CIO, 307 U.S. 498. However, paragraphs (1) and (2) of 28 U.S.C. 1343 refer specifically to suits for damages growing out of the conspiracy provisions of 8 U.S.C. 47, and paragraph (3) follows closely the language of 8 U.S.C. 43, apparently dealing only with suits against public officers--"to redress the deprivation under color of any law, etc.", 28 U.S.C. 1343(3). In consequence, it does not appear that 28 U.S.C. 1343 covers all of the civil rights cases for which it is now proposed to create civil actions. Hence, the need for a provision which obviates a possible judicial construction placing the new causes of action under the provisions of 28 U.S.C. 1331 and its money value requirement.

Section 202 - This section amends 18 U.S.C. 242 (see Appendix A), but leaves it intact except in regard to the matter of penalty. As already indicated in the disussion of the previous section, this is a statute which is used to protect federally-secured rights against encroachment by state officers. There has been criticism that the penalty of a fine of not more than $1,000 or imprisonment of not more than one year, or both, is too light in the serious cases. On the other hand, the increase of the prison term would change the nature of the offense from a misdemeanor to a felony, with a loss of the facility the government now enjoys in being able to prosecute

by information rather than by the more cumbersome method of proceeding by indictment, 18 U.S.C. 1, Catlette v. United States, 132 F. (2d) 902 (1943). Accordingly, it is deemed preferable to leave the general punishment at the misdemeanor level, but in cases where the wrong results in death or maiming, to provide for the greater penalty. On the civil side, as already observed in the comment on the preceding section, the existing remedies under 8 U.S.C. 43 appear adequate for this section.

Section 203 provides a supplement to 18 U.S.C. 242. The intent is to provide an enumeration of some of the rights, privileges and immunities secured and protected by the Constitution and laws of the United States, of which inhabitants shall not be wilfully deprived (which is the general language of 18 U.S.C. 242), in order to overcome what seems to be a handicap at trial in the use of section 242, as recently imposed in Screws v. United States, 325 U.S. 91 (1945). Pursuant to the Screws case, the government, in order to obtain a conviction under 18 U.S.C. 242, is required to prove, and the judge must adequately instruct the jury, that the defendant has "wilfully" deprived his victim of a constitutional right, which specific right the defendant had in mind at the time. Proof of a general "bad" purpose alone may not be enough, 325 U.S. 91, 103. See more recently to the same effect, Pullen v. United States, 164 F. (2d) 756 (1947), reversing a conviction for failure of the indictment and the judge's charge with respect to "willfully".

The enumeration of rights is of course only partial, and does not purport to enumerate all federal rights running against officers. But it is demonstrable that none of the enumeration creates any new right not heretofore sustained by the courts. The following examples are cited:

1. The right to be immune from exactions of fines without due process of law, Culp v. United States, 131 F. (2d) 93 (1942) (imprisonment by state officer without cause and for purposes of extortion is denial of due process and an offense under 18 U.S.C. 242, formerly 52).

2. The right to be immune from punishment for crime except after fair trial and due sentence, Screws v. United States, 325 U.S. 91 (1945) (sheriff beating prisoner to death may be punishable under 18 U.S.C. 242, formerly 52); Crews v. United States, 160 F. (2d) 746 (1947) (sheriff making arrest

and, without commitment or trial, causing death of prisoner by forcing him to jump into a river violated 18 U.S.C 242, formerly 52); Moore v. Dempsey, 261 U.S. 86 (1923) (conviction in state trial under mob domination is void); Mooney v. Holohan, 294 U.S. 103 (1935) (criminal conviction procured by state prosecuting authorities on perjured testimony, known by them to be perjured, is without due process).

3. The right to be immune from physical violence applied to exact testimony or to compel confession of crime, Chambers v. Florida, 309 U.S. 227 (1940) (convictions obtained in state courts by coerced confessions are void under Fourteenth Amendment); United States v. Sutherland, 37 F. Supp. 344 (1940) (state officer using assault and torture to extort confession of crime violates 18 U.S.C. 242, formerly 52).

4. The right to be free of illegal restraint of the person, Catlette v. United States, 132 F. (2d) 902 (1943) (sheriff detaining individuals in his office and compelling them to submit to indignities violates 18 U.S.C. 242, formerly 52); United States v. Trierweiller, 52 F. Supp. 4 (1943) (sheriff and others attempting to arrest and killing transient, without justification, violated 18 U.S.C. 242, formerly 52).

5. The right to protection of person and property without discrimination by reason of race, color, religion or national origin, Catlette v. United States, 132 F. (2d) 902 (1943) (sheriff subjecting victims to indignities by reason of their membership in a religious sect and failing to protect them from group violence violates 18 U.S.C. 242, formerly 52); Yick Wo v. Hopkins, 118 U.S. 356 (1886) (unequal administration of state law, because of a person's race or nationality, resulting in his being deprived of a property right, is a denial of rights under the Fourteenth Amendment).

6. The right to vote as protected by federal law, United States v. Classic, 313 U.S. 299 (1941), rehearing denied 314 U.S. 707 (violation of right of qualified voters in primary election for congressional candidate to have their votes counted, punishable under 18 U.S.C. 242, formerly 52); United States v. Saylor, 322 U.S. 385 (1944), rehearing denied 323 U.S. 809 (right of voter in a congressional election to have his vote honestly counted is violated by a conspiracy of election officials to stuff the ballot box, and is punishable under 18 U.S.C. 241, formerly 51); Smith v. Allwright, 321 U.S. 649 (1944), rehearing denied 322 U.S. 769 (right of a citizen to vote in primary for candidates for Congress is a right which may not be abridged by a state on account of race or color, and damages are recoverable for violation under 8 U.S.C. 43).

The great majority of our people are secure in their homes, their property and their persons under the protections extended through the offices of the state, county and municipal authorities. Police protection is generally taken for granted. But an unfortunately large number of our people are

not thus secure; they live in fear and distrust. They fear not only their neighbors, but the authorities who by law are chosen to protect them. When these authorities themselves invade their rights, or refuse to protect them against others, there is none but the federal government to aid them.

In the words of the President's Committee,

> "Freedom can exist only where the citizen is assured that his person is secure against bondage, lawless violence, and arbitrary arrest and punishment. Freedom from slavery in all its forms is clearly necessary if all men are to have equal opportunity to use their talents and to lead worthwhile lives. Moreover, to be free, men must be subject to discipline by society only for commission of offenses clearly defined by law and only after trial by due process of law. Where the administration of justice is discriminatory, no man can be sure of security. Where the threat of violence by private persons or mobs exists, a cruel inhibition of the sense of freedom of activity and security of the person inevitably results. Where a society permits private and arbitrary violence to be done to its members, its own integrity is inevitably corrupted. It cannot permit human beings to be imprisoned or killed in the absence of due process of law without degrading its entire fabric." (Report, p. 6)

Section 204 amends 18 U.S.C. 1583, formerly 443 (see Appendix A). This is a statute, enacted under the plenary power of the Thirteenth Amendment to the United States Constitution, punishing the kidnaping or enticing of persons for purposes of subjecting them to slavery or involuntary servitude. The amendment purports to make clear that the holding in involuntary servitude is punishable. A discussion of the doubt and the causes thereof, with respect to the existing provision, is found in 29 Cornell Law Quarterly 203. The insertion of "other means of transportation" is simply to bring the statute up to date by supplementing the word "vessel".

Insertion of the words "within or beyond the United States" was to settle any question that an enticement on board a vessel, etc., with intent that one be made a slave or held in involuntary servitude, applies within as well as outside the country.

Part 2 -- Protection of Right to Political Participation.

Section 211 is an amendment of section 1 of the present Hatch Act, formerly 18 U.S.C. 61, now 594 (see Appendix A). This section of the

Hatch Act presently makes punishable intimidation and coercion for the purpose of interfering with the right of another to vote as he chooses at elections for national office. The purpose of the amendment is to make the provisions applicable to primary and special elections as well as to general elections for federal office. The existing language is "any election" (for the named offices). The amendment would make it "any general, special or primary election" (for the named offices).

The Hatch Act was enacted in 1939 at a time when, due to the decision in Newberry v. United States, 256 U.S. 232 (1921), there was doubt in Congress as to the constitutionality of federal regulation of nominating primaries. This doubt was resolved in 1941, in favor of federal power, by United States v. Classic, 317 U.S. 299 (1941), 324, fn. 8. Nevertheless, in view of the legislative history, companion sections to section 1 of the Hatch Act were construed, since the Classic case, not to include primary elections, United States v. Halphurs, 41 F. Supp. 817 (1941), vacated on other grounds 316 U.S. 1. Accordingly, the amendatory insertion, above, is necessary notwithstanding the generality of the existing language "any election" etc.

Section 212 is an amendment of one of the old existing civil rights statutes, enacted as part of the Act of May 31, 1870, and which became section 2004 of the Revised Statutes (8 U.S.C. 31, see Appendix A). Section 2004 presently declares it to be the right of citizens to vote at any election by the people in any state, territory, country, municipality or other territorial subdivision without distinction as to race, color, or previous condition of servitude.

As originally drafted, it was the first section of the Act of May 31, 1870, and depended upon remedies provided in other sections of that act and later acts, parts of which were held unconstitutional or repealed. In order to avoid any question as to the kind of punishment or remedy which is available in vindication or protection of the states right, the amendment inserts a specific reference to the two basic criminal and civil remedy provisions

directed at state officers, namely, 18 U.S.C. 242 and 8 U.S.C. 43. The latter, providing civil remedies, has already been successfully applied in the past to the present statute (8 U.S.C. 31) in a number of cases such as Nixon v. Herndon, 273 U.S. 536 (1927), Nixon v. Condon, 286 U.S. 73 (1932), Smith v. Allwright, 321 U.S. 649 (1944), and Chapman v. King, 154 F. (2d) 460 (1946), cert. denied 327 U.S. 800. There appears to be no parallel history of applying the corresponding criminal sanctions of 18 U.S.C. 242 to 8 U.S.C. 31, although in United States v. Stone, 188 Fed. 836 (1911), an indictment under section 20 of the Criminal Code (18 U S.C. 52, now 18 U.S.C. 242), charging that state officials acting under color of state law deprived negroes of their vote or made it difficult for them to vote their choice at a Congressional election, was sustained against a demurrer. Indeed, it was not until the comparatively recent decision in the Classic case (1941), 313 U.S. 299, that the potentialities of 18 U.S.C. 242 in protecting voting rights became evident. (8 U.S.C. 43 and 18 U.S.C. 242 are, as stated, regarded in pari materia with respect to the nature of the offense charged. Picking v. Pa. R.R. Co. 151 F. (2d) 240 (1945), rehearing denied 152 F. (2d) 753.)

The phrase "and other applicable provisions of law" is designed to preclude any implication that by specifying two statutory sections there is an exclusion of other sections of the criminal and civil statutes, which by operation of law and construction, are part of the legal arsenal in the use of the specified sections. Thus, under existing law the same offense under 18 U.S.C. 242 may, because of a conspiracy, give rise to an added count in the indictment for a violation of 18 U.S.C. 241, United States v. Classic, 313 U.S. 299 (1941) (conspiracy of public officers); or a prosecution solely under 18 U.S.C. 241, United States v. Ellis, 43 F. Supp. 321 (1942) (conspiracy of public officers and private individuals); or a prosecution under 18 U.S.C. 371 (formerly 18 U.S.C. 88) and 18 U.S.C. 242, United States v. Trierweiller, 52 F. Supp. 4 (1943) (conspiracy of public officers and private individuals). It is intended that these and any other such remedies shall be available.

A number of changes in language have been made both in the interest of modernizing the old phraseology and closing certain obvious holes now open for construction. For example, insertion of the phrase "general, special or primary" in describing "election by the people" is intended to avoid any handicaps of earlier legislative history noted, supra, in the comment on the similar problem in connection with amending the Hatch Act.

One change in verbiage deserves special comment. The present statute speaks only of distinctions of race, color or previous condition of servitude. The words "previous condition of servitude" have been dropped as unnecessary, since the slave-holding days are far removed. In their place have been substituted the words "religion or national origin" (consistent with other nondiscriminatory provisions of this bill).

It is clear that the existing guarantee against distinctions in voting based on race or color is expressly authorized by the Fifteenth Amendment, United States v. Reese, 92 U.S. 214 (1874); Smith v. Allwright, 321 U.S. 649 (1944); and is validly applicable in all elections whether federal, state or local, Chapman v. King, 154 F. (2d) 460 (1946), cert. denied 327 U.S. 800. In addition, the present statute has been sustained under the equal protection clause of the Fourteenth Amendment, Nixon v. Herndon, 273 U.S. 536 (1927), Nixon v. Condon, 286 U. S. 73 (1932), which clause also is the source for the claim that distinctions in voting based on religion or national origin are arbitrary and unreasonable classifications both as they appear in state laws, cf. Cantwell v. Connecticut, 310 U.S. 296 (1940); Truax v. Raich, 239 U.S. 33 (1915); Oyama v. California, 332 U.S. 633 (1948); or in the administration of such laws, Yick Wo v. Hopkins, 118 U.S. 356 (1886). See also Hirabayashi v. United States, 320 U.S. 81, 100 (1943), wherein the Court recognized that, as a general rule, "Distinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality." Moreover, the instant statute deals with the right of citizens to vote, and it could easily be regarded as an infringement upon the

exclusively federal naturalization power for states to deny, or differently accord, to citizens voting rights based on the national origin of such citizens, wholly apart from the aspect of an unreasonable classification. Cf. Truax v. Raich, 239 U.S. 33, 42 (1915), where the Court took the view that for a state to deny or limit aliens in the right to work in private employment would interfere with the power of Congress to control immigration.

Section 213 is designed to supplement Section 211 of this Part by creating civil remedies for violations of that Section; and to authorize for both Sections 211 and 212 of this Part of the bringing of suits by the Attorney General in the district courts for preventive, declaratory or other relief. The reason for this seemingly uneven application is that 18 U.S.C. 594, which Section 211 amends, already contains criminal penalties but has no clear civil remedy. On the other hand, Section 212 has specifically rewritten 8 U.S.C. 31 to contain within itself references to both criminal penalties and civil remedies, since the existence of the former was not clear and the latter existed by construction. In addition, as to both sections, there is need for recognition of the right of public authority to take timely civil measures in heading-off threatened denials of the right to vote.

With respect to the jurisdictional provisions, the precedents for state court jurisdiction are cited in the analysis of Part 1, Section 201, supra. The need for specifically excluding regard to the sum or value of the matter in controversy, so far as the United States district courts are concerned, is also explained in the analysis of Part 1, Section 201, supra. No similar reference is needed in the case of suits by the Attorney General since the federal district courts obtain jurisdiction in a suit where the United Stat is a party plaintiff regardless of the amount at issue, 28 U.S.C. 1345; United States v. Sayward, 160 U.S. 493; United States v. Conti, 27 F. Supp. 756; R.F.C. v. Krauss, 12 F. Supp. 4.

On the question of the need and desirability of the amendments and other provisions to be effectuated by this Part of the bill, the President said in his Civil Rights Message to the Congress (1948),

"We need stronger statutory protection of the right to vote. I urge the Congress to enact legislation forbidding interference by public officers or private persons with the right of qualified citizens to participate in primary, special, and general elections in which Federal officers are to be chosen. This legislation should extend to elections for State as well as Federal officers insofar as interference with the right to vote results from discriminatory action by public officers based on race, color, or other unreasonable classification."

In somewhat more detail, the President's Committee on Civil Rights, recommending legislation which would apply to federal elections and primaries, said,

"There is no doubt that such a law can be applied to primaries which are an integral part of the federal electoral process or which affect or determine the result of a federal election. It can also protect participation in federal election campaigns and discussions of matters relating to national political issues. This statute should authorize the Department of Justice to use both civil and criminal sanctions. Civil remedies should be used wherever possible to test the legality of threatened interferences with the suffrage before voting rights have been lost." (Report, p. 160)

And the Committee also recommended

"The enactment by Congress of a statute protecting the right to qualify for, or participate in, federal or state primaries or elections against discriminatory action by state officers based on race or color, or depending on any other unreasonable classification of persons for voting purposes.

"This statute would apply to both federal and state elections, but it would be limited to the protection of the right to vote against discriminatory interferences based on race, color, or other unreasonable classification. Its constitutionality is clearly indicated by the Fourteenth and Fifteenth Amendments. Like the legislation suggested under (2) it should authorize the use of civil and criminal sanctions by the Department of Justice." (Report, pp. 160, 161)

Part 3 -- Prohibition Against Discrimination or Segregation in Interstate Transportation.

Section 221 (a) declares that all persons traveling within the jurisdiction of the United States shall be entitled to equal treatment in the enjoyment of the accommodations of any public conveyance or facility operated by a common carrier engaged in interstate or foreign commerce without discrimination or segregation based on race, color, religion or national origin.

Section 221 (b) makes punishable by fine (no imprisonment), and subject to civil suit, the conduct of anyone who denies or attempts to deny equal treatment to travelers of every race, color, religion or national origin, in the use of the accomodations of a public conveyance or facility operated by a common carrier engaged in interstate or foreign commerce. Civil suits may be brought in the state courts as well as the federal district courts.

Section 222 makes it unlawful for the common carrier engaged in interstate or foreign commerce or any officer, agent or employee thereof to segregate or otherwise discriminate against passengers using a public conveyance or facility of such carrier engaged in interstate or foreign commerce on account of the race, color, religion or national origin of such passengers. Violations are subject to fine and civil suit, the latter being cognizable in state as well as federal courts.

This Part is needed to both implement and supplement existing Supreme Court decisions and acts of Congress, as recommended by the President and the Committee on Civil Rights. (Report, p. 170)

In a recent case, Bob-Lo Excursion Co. v. Michigan, 333 U.S. 28 (1948), the Supreme Court had occasion to consider the validity of the Michigan Civil Rights Law applied to a steamboat carrier transporting passengers from Detroit to an island which is a part of Canada. Although the carrier was engaged in foreign commerce, the Court laid aside this aspect in view of particular localized circumstances and held that the prohibition of the state law against discrimination for reasons of race or color was valid and applicable to the carrier. Mr. Justice Rutledge, speaking for the Court, said (at p. 37, note 16),

> "Federal legislation has indicated a national policy against racial discrimination in the requirement, not urged here to be specifically applicable in this case, of the Interstate Commerce Act that carriers subject to its provisions provide equal facilities for all passengers, 49 U.S.C. § 3 (1), extended to carriers by water and air, 46 U.S.C. § 815; 49 U.S.C. §§ 484, 905. Cf. Mitchell v. United States, 313 U.S. 80. Federal legislation also compels a collective bargaining agent to represent all employees in the bargaining unit without discrimination because of race.

45 U.S.C. §§ 151 et seq. Steel v. Louisville & Nashville R. Co., 323 U.S. 192; Tunstall v. Brotherhood of Locomotive Firemen & Enginemen, 323 U.S. 210. The direction of national policy is clearly in accord with Michigan policy. Cf. also Hirabayashi v. United States, 320 U.S. 81; Korematsu v. United States, 323 U.S. 214; Ex parte Endo, 323 U.S. 283."

There is little doubt as to the direction of national policy, referred to in the Bob-Lo case. Instrumentalities of interstate and foreign commerce are being cleared of the obstructing influences of discrimination and segregation. Prejudices, advantages, and discrimination have been forbidden for many years by the Interstate Commerce Act (49 U.S. Code 3; Mitchell v. United States, 313 U.S. 80 (1941)). In Morgan v. Virginia, 328 U.S. 373 (1946), the Supreme Court held that a state statute requiring segregation of the races in motor buses was unconstitutional in the case of an interstate passenger, as a burden on interstate commerce. See also Matthews v. Southern Ry. System, 157 F. (2d) 609 (1946), indicating that there is no different rule in the case of railroads.

The Civil Rights Section has found that notwithstanding the ruling of the Supreme Court in the Morgan case, local law enforcement officers have arrested and caused the detention and fine of negro passengers who refused to move to a seat or car reserved for negroes. Of the several complaints in such matters received within the past two years, three investigations were instituted. In each of these cases it was reported that the officers involved had violated the rights of the passengers to be free from unlawful arrest, since the officers were without authority to effect the arrest. However, in the absence of a clearly stated statutory basis for prosecution, and in view of the handicap in attempting to proceed under the limitations placed upon the existing general civil rights laws by the Supreme Court (Screws v. United States, 325 U.S. 91 (1945)), none of these cases was prosecuted. It was determined that the officers in question probably acted without the requisite specific intent necessary to constitute a violation of the constitutional rights of the passengers under the general statutes, as required by the Screws case; rather that they were acting in ignorance and in an effort to "cooperate" with the railroads involved.

Proposed Section 221 would remove any doubts on this score, and would declare the rights of passengers to be free of discrimination and segregation in interstate and foreign commerce on account of race, color, religion or national origin. It would put all persons, including public officers, on clear notice of the rights of passengers.

The proposed section would also make the carrier and its agents responsible for their participation in any such unlawful practices. It will be remembered that the Morgan case dealt only with state law and not with the action of the interstate carriers themselves, Morgan v. Virginia, 328 U.S. 373, 377, fn. 12 (1946), who have continued to segregate Henderson v. Interstate Commerce Commission, 80 F. Supp. 32 (1948) (appeal pending, jurisdiction noted, ____U.S. ____, March 14, 1949; the Government will urge reversal).

In cases involving the carriers and certain segregation practices or requirements, which the court felt overstepped the bounds of existing law, the Supreme Court has stated on several occasions that constitutional rights are personal and not racial, Mitchell v. United States, 313 U.S. 80, 96 (1941); McCabe v. A.T. and S.F. Ry. Co., 235 U.S. 151, 161 (1941) (see also the restrictive covenants case for enunciation of the same principle in another field, Shelley v. Kraemer, 334 U.S. 1, 22 (1948)). The action of the Congress is needed to give unequivocal effect to this principle in interstate travel. As stated in the President's Message on Civil Rights,

> "The channels of interstate commerce should be open to all Americans on a basis of complete equality. The Supreme Court has recently declared unconstitutional State laws requiring segregation on public carriers in interstate travel. Company regulations must not be allowed to replace unconstitutional State laws. I urge the Congress to prohibit discrimination and segregation, in the use of interstate transportation facilities, by both public officers and the employees of private companies."

It is submitted that passage of this Part would remove all doubts on the subject and would bring to a conclusion a long process of making carrier facilities available to all without distinction because of race or color. Expensive, involved litigation has accomplished a great deal. But an

express statement of Congressional policy is desirable to accelerate an ending of this source of constant friction and irritation in interstate commerce.

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I would like to proffer one final, general comment with regard to the whole of this proposed legislative effort. It is stated in the words of the President's Committee, and I should like to make them, at this point, my own words.

> "The argument is sometimes made that because prejudice and intolerance cannot be eliminated through legislation and government control we should abandon that action in favor of the long, slow, evolutionary effects of education and voluntary private efforts. We believe that this argument misses the point and that the choice it poses between legislation and education as to the means of improving civil rights is an unnecessary one. In our opinion, both approaches to the goal are valid, and are, moreover, essential to each other.
>
> "It may be impossible to overcome prejudice by law, but many of the evil discriminatory practices which are the visible manifestations of prejudice can be brought to an end through proper government controls." (Report, p. 103)

§ 241 (18 U. S. Code) Conspiracy against rights of citizens

If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or

If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured --

They shall be fined not more than $5,000 or imprisoned not more than ten years, or both.

§ 242 (18 U. S. Code) Deprivation of rights under color of law

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

§ 243 (18 U. S. Code) Exclusion of jurors on account of race or color

No citizen possessing all other qualifications which are or may be prescribed by law shall be disqualified for service as grand or petit juror in any court of the United States, or of any State on account of race, color, or previous condition of servitude; and whoever, being an officer or other person charged with any duty in the selection or summoning of jurors, excludes or fails to summon any citizen for such cause, shall be fined not more than $5,000.

§ 594 (18 U. S. Code) Intimidation of voters

Whoever intimidates, threatens, coerces, or attempts to intimidate, threaten, or coerce, any other person for the purpose of interfering with the right of such other person to vote or to vote as he may choose, or of causing such other person to vote for, or not to vote for, any candidate for the office of President, Vice Presicent, Presidential elector, Member of the Senate, or Member of the House of Representatives, Delegates or Commissioners from the Territories and Possessions, at any election held solely or in part for the purpose of electing such candidate, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

§ 43 (8 U. S. Code) Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

§ 47 (8 U. S. Code) Conspiracy to interfere with civil rights --

(1) Preventing officer from performing duties.

If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district, or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties;

(2) Obstructing justice; intimidating party, witness, or juror.

If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

(3) Depriving persons of rights or privileges.

If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

§ 31 (8 U. S. Code) Race, color, or previous condition not to affect right to vote

All citizens of the United States who are otherwise qualified by law to vote at any election by the people in any State, Territory, district, county, city, parish, township, school district, municipality, or other territorial subdivision, shall be entitled and allowed to vote at all such elections, without distinction of race, color, or previous condition of servitude; any constitution, law, custom, usage, or regulation of any State or Territory, or by or under its authority, to the contrary notwithstanding.

§ 41 (8 U. S. Code) Equal rights under the law

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

§ 42 (8 U. S. Code) Property rights of citizens

All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.

§ 56 (8 U. S. Code) Peonage abolished

The holding of any person to service or labor under the system known as peonage is abolished and forever prohibited in any Territory or State of the United States; and all acts, laws, resolutions, orders, regulations, or usages of any Territory or State, which have heretofore established, maintained, or enforced, or by virtue of which any attempt shall hereafter be made to establish, maintain, or enforce, directly or indirectly, the voluntary or involuntary service or labor of any persons as peons, in liquidation of any debt or obligation, or otherwise, are declared null and void.

§ 1581 (18 U. S. Code) Peonage; obstructing enforcement

(a) Whoever holds or returns any person to a condition of peonage, or arrests any person with the intent of placing him in or returning him to a condition of peonage, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

(b) Whoever obstructs, or attempts to obstruct, or in any way interferes with or prevents the enforcement of this section, shall be liable to the penalties prescribed in subsection (a).

§ 1583 (18 U. S. Code) Enticement into slavery

Whoever kidnaps or carries away any other person, with the intent that such other person be sold into involuntary servitude, or held as a slave; or

Whoever entices, persuades, or induces any other person to go on board any vessel or to any other place with the intent that he may be made or held as a slave, or sent out of the country to be so made or held --

Shall be fined not more than $5,000 or imprisoned not more than five years, or both.

§ 1584 (18 U. S. Code) Sale into involuntary servitude

Whoever knowingly and willfully holds to involuntary servitude or sells into any condition of involuntary servitude, any other person for any term, or brings within the United States any person so held, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

APPENDIX B

The Civil Liberties Section (now Civil Rights Section) was established on February 6, 1939, for the purpose of handling all problems and supervising all prosecutions involving interference with the ballot, peonage, the strikebreaking statute, shanghaiing men for service at sea, conspiracies to violate the National Labor Relations Act, the intimidation of persons for having informed the Departments of the Government of matters pertinent to their function, and other infringements of civil rights. On February 5, 1944, the Section was reorganized to extend its duties to enforcement of Fair Labor Standards Act, Hours of Service Act, Safety Appliance Act, Kickback Act, Walsh-Healy Act, Soldiers and Sailors Civil Relief Act, and the Reemployment Section of the Selective Training and Service Act of 1940; and the name of the Section was changed to "Civil Rights Section".

During the ten years following the establishment of the Civil Liberties Section, approximately 100,000 complaints have been received involving real or imagined civil rights matters. Though there is some duplication of complaints involved in this figure, the vast majority of them are distinct individual complaints. Totals of mail handled in connection with pressure campaigns on particular cases are not included in this total. The Section conducts about 1,00 personal interviews with complainants and visitors each year. Following is a resume of the volume of work which has been handled in the Section:

CIVIL RIGHTS AND POLITICAL CASES

In 1939, three outstanding civil rights cases were tried. In addition to these, 24 persons were convicted for violation of Election laws.

In 1940, approximately 8,000 civil rights complaints were received. Forty investigations were undertaken in connection with Hatch Act violations. Of these, 16 were completed and prosecutions were recommended in 12 cases.

In 1941, six outstanding civil rights, Hatch Act and Election fraud cases were prosecuted. Convictions were had in 5 cases. Grand juries returned no bills in 7 cases.

During the fiscal year of 1942, 8,612 complaints were received, 224 investigations were requested and prosecutive action was taken in 76 cases. (170 personal interviews were had with complainants).

In 1943, nine cases of outstanding importance were prosecuted.

During the fiscal year of 1944, 20,000 complaints were received in matters concerning civil rights, election crimes, reemployment under the Selective Training and Service Act and the Soldiers and Sailors Civil Relief Act. 356 investigations were conducted and 64 prosecutions were undertaken during the year. 75 cases which involved the Soldiers and Sailors Civil Relief Act of 1940 were received.

During the fiscal year of 1945, 4,421 complaints were received and 139 investigations conducted. Prosecutions were undertaken in 32 cases. Pleas of nolo contendere were entered in 23 cases. No bills were returned in seven instances and one case was before the Supreme Court. Prosecution was undertaken in 23 Election fraud cases, and pleas of nolo contendere were entered in all 23 cases.

In the year ending June 30, 1946, 7,229 complaints were received in civil rights and political cases. 152 investigations and 15 prosecutions were undertaken. 5 convictions were secured, 7 cases were concluded adverse to the Government and one case was before the Supreme Court. 6 election fraud cases were prosecuted and 2 convictions were secured in peonage cases.

In the fiscal year of 1947, 13,000 complaints were received, 241 investigations were instituted and prosecutions were undertaken in 12 cases. Convictions were secured in 4 cases and 6 resulted in acquittals.

During the year ending June 30, 1948, approximately 14,500 complaints were received, 300 investigations were instituted and 20 prosecutions undertaken.

It is estimated that 15,000 complaints will be received during the fiscal year 1949, and 300 investigations instituted.

CASES INVOLVING LABOR STATUTES

	Year	Examined and referred to U. S. Attorneys for prosecution	Penalties Assessed
Fair Labor Standards Act cases (Child Labor, Wage & Hour, Record Keeping and Criminal Contempt).	1944	59	$ 80,123
	1945	99	46,255
	1946	230 (Approx.)	222,844
	1947	135	84,751
	1948	79	59,488
Hours of Service Law cases	1944	65	$ 77,400
	1945	49	23,100
	1946	38	37,900
	1947	8	6,700
	1948	18	4,300
Safety Appliance Act Cases	1944	284	$ 65,600
	1945	247	23,100
	1946	157	58,000
	1947	114	42,900
	1948	180	65,000

Kickback Act		Complaints Received	Indictments Obtained	Convictions	Penalties Assessed
	1944	100	6	3	$ 4,100
	1945	35	2		
	1946	9			

Walsh-Healy Act		Indictments Obtained	Penalties Assessed
	1944	4	
	1945	1	$ 1,500

Signal Inspection Act		Cases referred to U. S. Attorneys for prosecution	Penalties Assessed
	1946	2	$ 200.00
	1947	2	200.00
	1948	7	400.00

Accidents Report Law		Cases received	Penalties Assessed
	1948	1	$ 100.00

Merchant Seaman Statute		Cases received
	1948	1