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April 10, 1956

The White House
Washington

THE CABINET

The Civil Rights Program -
Letter and Statement by the Attorney General

The attached approved paper, and its appendix, are circulated for the information of the Cabinet.

The approved paper is the letter which was sent on April 9, 1956 by the Attorney General to the Vice President and to the Speaker of the House, and released to the press on the same day.

This letter was approved by the President subsequent to the Cabinet meeting of March 23, 1956 (of RA - 56-48, Item 2).

As an appendix to the letter, there is also circulated a copy of the Attorney General's statement on the civil rights program, given on Tuesday April 10, 1956 before the House Judiciary Committee.

Maxwell M. Rabb
Secretary to the Cabinet

CABINET PAPER
For Action

The Vice President
United States Senate
Washington, D. C.

Dear Mr. Vice President:

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

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

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

I

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

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

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

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

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

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

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

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

II

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

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

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

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

III

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

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

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

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

primary, concerning candidates for federal office.

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

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

IV

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

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

Sincerely,

Attorney General

STATEMENT BY THE ATTORNEY GENERAL ON LEGISLATIVE PROPOSALS FOR THE CREATION OF A CIVIL RIGHTS COMMISSION, THE CREATION OF A CIVIL RIGHTS DIVISION IN THE DEPARTMENT OF JUSTICE AND FOR THE AMENDMENT OF THE VOTING AND CIVIL RIGHTS STATUTES IN CERTAIN RESPECTS INCLUDING THE ADDITION TO BOTH OF PROVISIONS FOR THEIR ENFORCEMENT BY CIVIL REMEDIES IN THE DEPARTMENT OF JUSTICE.

BEFORE HOUSE JUDICIARY COMMITTEE
TUESDAY, APRIL 10, 1956 AT 10:00 A.M.

In his State of the Union Message, President Eisenhower said that his administration would recommend to the Congress a program to advance the efforts of the Government, within the area of Federal responsibility, to the end that every person may be judged and measured by what he is, rather than by his color, race or religion. Recently I transmitted to the Speaker of this House and to the President of the Senate our proposals on this subject. I am grateful for the opportunity to appear before this Committee to discuss these proposals and to comment, as well, upon other proposals relating to this same subject which are already pending before this Committee.

My letters to the Speaker of the House and to the President of the Senate recommend Congressional legislation on four matters: First, creation of the Bipartisan Commission on Civil Rights recommended by the President in his State of the Union Message; second, creation of an additional office of Assistant Attorney General to head a new Civil Rights Division in the Department of Justice; third, amendment of existing

statutes to give further protection to the right to vote and to add civil remedies in the Department of Justice for their enforcement; and fourth, amendment of other civil rights laws to include the addition of civil remedies in the Department of Justice for their enforcement.

I. Civil Rights Commission.

In recommending the creation of a bipartisan civil rights commission, President Eisenhower said in his State of the Union Message:

> "It is disturbing that in some localities allegations persist that Negro citizens are being deprived of their right to vote and are likewise being subjected to unwarranted economic pressures. I recommend that the substance of these charges be thoroughly examined by a bipartisan commission created by the Congress."

A bill detailing the Commission proposal was submitted with my letters to the Speaker of the House and the President of the Senate. It provides that the Commission shall have six members, appointed by the President with the advice and consent of the Senate. No more than three shall be from the same political party. The Commission shall be temporary, expiring two years from the effective date of the statute, unless extended by Congress. It will have authority to subpoena witnesses, take testimony under oath and request necessary

data from any executive department or agency. It may be required to make interim reports pending completion of a comprehensive final report containing findings and recommendations.

The Commission will have authority to hold public hearings. It will investigate the allegations that certain citizens of the United States are being deprived of their right to vote or are being subjected to unwarranted economic pressures by reason of their color, race, religion or national origin. It will study and collect information concerning economic, social and legal developments constituting a denial of equal protection of the laws. It will appraise the laws and policies of the Federal Government with respect to equal protection of the laws under the federal constitution.

The need for more knowledge and greater understanding of these most complex and difficult problems is manifest. A full scale public study of them conducted over a two year period by a competant bipartisan commission, such as is recommended by the President, will tend to unite responsible people of good will in common effort to solve these problems. Such a study will bring clearer definition of the constitutional boundaries between Federal and State governments and will insure that remedial proposals are within the appropriate areas of Federal and State responsibility. Through greater public understanding of these matters the Commission may chart a course of progress to guide the nation in the years ahead.

For a study such as that proposed by the President, the authority to hold public hearings, to subpoena witnesses, to take testimony under oath and to request necessary data from executive departments and agencies is obviously essential. No agency in the Executive Branch of Government has the legal authority to exercise such powers in a study of matters relating to civil rights.

II. Civil Rights Division in the Department of Justice.

In 1939 the present Civil Rights Section was created in the Criminal Division of the Department of Justice. Its function and purpose has been to direct, supervise and conduct criminal prosecutions of violations of the federal constitution and laws guaranteeing civil rights to individuals. As long as its activities were confined to the enforcement of criminal laws it was logical that it should be a section of the Criminal Division.

Recently, however, the Justice Department has been obliged to engage in activity in the civil rights field which is non-criminal in character. An example is the recent participation of the Department, as amicus curiae, in a civil suit to prevent by injunction unlawful interference with the efforts of the school board at Hoxie, Arkansas, to eliminate racial discrimination in the school in conformity with the Supreme Court's decision. The non-criminal activity of the Department in the civil rights field is constantly increasing in importance as

well as in amount. If my recommendations, discussed subsequently, for legislation to provide civil remedies in the Department of Justice for the enforcement of voting and other civil rights are followed, the Department's duties and activities in the civil courts will increase even more rapidly than in the past.

It is essential that all the Department's civil rights activity, both criminal and non-criminal, be consolidated in a single organization, but it is not appropriate that an organization with important civil as well as criminal functions should be administered as a part of the Criminal Division.

Consequently, I most earnestly recommend that the appointment of a new assistant attorney general be authorized by the Congress in order to permit the proper consolidation and organization of the Department's civil and criminal activities in the area of civil rights into a division of the Department and under the direction of a highly qualified lawyer with the status of an assistant attorney general. A draft of legislation to effect this result was transmitted with my letters to the Speaker of the House and the President of the Senate.

III. Amendments to Give Greater Protection to the Right to Vote and to Provide Civil Remedies in the Department of Justice for their Enforcement.

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

Article I, Sections 2 and 4, of the Constitution place in the Congress the power and the duty to protect by appropriate laws elections for office under the Government of the United States. With respect to elections for state and local office, the Fifteenth Amendment to the Constitution 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. And the Fourteenth Amendment prohibits any state from making or enforcing laws which abridge the privileges and immunities of citizens of the United States and from denying to any person the equal protection of the laws. The courts have held that these prohibitions operate against election laws which discriminate on account of race, color, religion or national origin.

To implement these provisions of the Constitution Congress passed many years ago a voting statute, 42 U.S.C. 1971 (R.S. 2004), which provides that all citizens shall be entitled and allowed to vote at all elections, state or federal, without distinction based upon race or color. It was the duty of Congress under the Constitution and its amendments to pass legislation giving full protection to the right to vote and undoubtedly it was the intent of Congress to provide such protection by passing 42 U.S.C. 1971.

However, in the years since its enactment, a number of serious defects in the statute have become plainly apparent, most of them having been pointed out in judicial decisions. The most obvious defect in the law is that it does not protect the voters in federal elections from unlawful interference with their voting rights by private persons. It applies only to those who act "under color of law", which means to public officials. The activities of private persons and organizations designed to disfranchise voters in federal or state elections on account of race or color are not covered by the present wording of 42 U.S.C. 1971 and the statute fails, therefore, to afford voters the full protection from discrimination contemplated and guaranteed by the Constitution and its amendments.

Section 1971 of Title 42, United States Code, is clearly defective in another important respect. It fails to lodge in the Attorney General any authority to invoke civil remedies for enforcement of voting rights and is particularly lacking in any provision authorizing the Attorney General to apply to the courts for preventive relief against violation of voting rights. We think this is a major defect. The ultimate goal of the Constitution and of Congress is the safeguarding of the free exercise of the voting right, acknowledging the legitimate power of the states to prescribe necessary and fair voting qualifications. Civil proceedings by the Attorney

General to forestall illegal interference and denial of the right to vote would be far more effective in achieving this goal than the private suits for damages presently authorized by the statute or the criminal proceedings authorized under other laws which can never be instituted until after the harm is done.

Consequently, I think that Congress should now recognize that in order to properly execute the Constitution and its amendments, and in order to perfect the intended application of the statute, Section 1971 of Title 42, United States Code, should be amended by:

First, the addition of a section which will prevent anyone, whether acting under color of law or not, from threatening, intimidating or coercing an individual in his right to vote in any election, general, special or primary, concerning candidates for federal office.

Second, authorization to the Attorney General to bring civil proceedings on behalf of the United States or any aggrieved person for preventive or other civil relief in any case covered by the statute.

Third, express provision that all state administrative and judicial remedies need not be first exhausted before resort to the federal courts.

IV. Amendment of Other Civil Rights Laws to Include the Addition of Civil Remedies in the Department of Justice for their Enforcement.

In attempting to achieve the constitutional goal of respect for and observance of the civil rights of individuals, it has been, in my opinion, a mistake for the Congress to have relied so heavily upon the criminal law and to have made so little use of the more flexible and often more practical and effective processes of the civil courts. Although the Attorney General, under present statutes, can prosecute after violations of the civil rights laws have occurred, he cannot seek preventive relief in the courts when violations are threatened or, in spite of an occasional arrest or prosecution, are persistently repeated.

Criminal prosecution can never begin until after the harm is done and it can never be invoked to forestall a violation of civil rights no matter how obvious the threat of violation may be. Moreover, criminal prosecution for civil rights violations, when they involve state or local officials as they often do, stir up an immense amount of ill feeling in the community and inevitably tend to cause very bad relations between state and local officials on the one hand and the federal officials responsible for the investigation and prosecution on the other. A great deal of this could be avoided if the Congress would authorize the Attorney General to seek preventive and other appropriate relief from the civil courts in civil rights cases.

Let me illustrate:

In 1952, several Negro citizens of a certain county in Mississippi submitted affidavits to us alleging that because of their race the Registrar of Voters refused to register them. Although the Mississippi statutes at that time required only that an applicant be able to read and write the Constitution, these affidavits alleged that the Registrar demanded that the Negro citizens answer such questions as "What is due process of law?" "How many bubbles in a bar of soap?", etc. Those submitting affidavits included college graduates, teachers and businessmen yet none of them, according to the Registrar, could meet the voting requirements. If the Attorney General had the power to invoke the injunctive process, the Registrar could have been ordered to stop these discriminatory practices and qualify these citizens according to Mississippi law.

Another illustration:

The United States Supreme Court recently reversed the conviction of a Negro sentenced to death by a state court because of a showing that Negroes had been systematically excluded from the panels of the grand and petit juries that had indicted and tried him. In so doing the Supreme Court stated that according to the undisputed evidence in the record before it systematic discrimination against Negroes in the selection of jury panels had persisted for many years past in the county where the case had been tried. In its opinion the Court mentioned parenthetically but pointedly that such discrimination

was a denial of equal protection of the laws and it would follow that it was a violation of the federal civil rights laws.

Accordingly, the Department of Justice had no alternative except to institute an investigation to determine whether in the selection of jury panels in the county in question the civil rights laws of the United States were being violated, as suggested by the record before the Supreme Court. The mere institution of this inquiry aroused a storm of indignation in the county and state in question. This is understandable since, if such violations were continuing, the only course open to the Government was criminal prosecution of those responsible. That might well have meant the indictment in the federal court of the local court attaches and others responsible under the circumstances.

Fortunately the Department was never faced with so difficult and disagreeable a duty. The investigation showed that, whatever the practice may have been during the earlier years with which the Supreme Court's record was concerned, in recent years there had been no discrimination against Negroes in the selection of juries in that county.

Supposing, however, that on investigation, the facts had proved otherwise. The necessarily resulting prosecution would have stirred up such dissention and ill will in the community and in the state that it might well have done more harm than good. Such unfortunate collisions in the criminal courts between federal and state officials can be avoided if the Congress would authorize the Attorney General to apply to

the civil courts for preventive relief in civil rights cases. In such a civil proceeding the facts can be determined, the rights of the parties adjudicated and future violations of the law prevented by order of the court without having to subject state officials to the indignity, hazards and personal expense of a criminal prosecution in the courts of the United States.

Congress could authorize the Attorney General to seek civil remedies in the civil courts for the enforcement of civil rights by a simple amendment to Section 1985 of Title 42, United States Code (R.S. 1980). That statute presently authorizes civil suits by private persons who are injured by acts done in furtherence of a conspiracy to do any of the following things: (1) to prevent officers from performing their duties; (2) to obstruct justice; (3) to deprive persons of their rights to the equal protection of the laws and equal privileges under the laws.

A subsection could be added to that statute to give authority to the Attorney General to institute a civil action for redress or preventive relief whenever any persons have engaged or are about to engage in any acts or practices which would give rise to a cause of action under the present provisions of the law.

Such an amendment would provide a procedure for enforcement of civil rights which in my opinion would be far simpler, more flexible, more reasonable and more effective

than the criminal sanctions which are the only remedy now available.

V. Comment on Other Proposals Relating to Civil Rights Now Pending Before this Committee.

There must certainly be grave doubt as to whether it is wise to propose at the present time any further extension of the criminal law into the extraordinarily sensitive and delicate area of civil rights. Because of this doubt and because of my conviction previously expressed as to the importance of civil remedies in this field, the Department of Justice is not proposing at this time any amendments to sections 241 and 242 of Title 18, United States Code, which are the two principal criminal statutes intended for the protection of civil rights. Whether the present moment is appropriate for such legislation is, of course a question for the Congress to determine.

Nevertheless, it must be conceded that all question of timeliness aside and considered strictly from a law enforcement point of view both statutes have defects. I have observed that H.R. 627 would amend them both and, if they are to be amended, I have a few comments and suggestions to offer.

First: Section 241 of Title 18, United States Code, makes it unlawful for two or more persons to conspire "to injure, oppress, threaten or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same." The statute

fails to penalize such injury, oppression, threats or intimidation when committed by a single individual, which not infrequently occurs. This should be corrected.

Second: The word "citizen" now appearing in the statute should be changed to "person" and the words "right or privilege secured to him by the Constitution" should be changed to "right, privilege or immunity secured or protected by the Constitution." The purpose of the suggested changes is to protect more completely the interests guaranteed to all persons by the 14th and 15th Amendments.

Third: The penalty in ordinary cases should be left as it is, a misdemeanor, but more substantial penalties should be provided for unlawful conduct prohibited by this statute which results in maiming or death.

The amendment of Section 242 of Title 18 would be so extraordinarily complicated that I do not recommend that it be attempted at the present time. In the case of Screws vs. U.S. 325 U.S. 91 the statute was upheld by a closely divided court only because of the construction placed by the court upon the word "willfully" as it appears in the statute. Yet it is the construction placed upon that word by the Supreme Court that causes the most serious practical difficulties in enforcement and other amendments would be of little avail without changing the word "willfully." However, to make the change would seriously jeopardize once more the constitutionality of the entire statute. Consequently, it is recommended that amendments should not be attempted at the present time.