RG60: Assistant Attorney General John Doar

Background Notebook #2

BACKGROUND NOTEBOOK

NUMBER 2

Interference with Rights through Welfare

C. INTERFERENCE
WITH RIGHTS

INTERFERENCE WITH RIGHTS PROPOSAL NO. I

Legislation (substantially similar to Title V of the proposed Civil Rights Act of 1966) to make it a criminal offense to intimidate or interfere by force or threat of force with persons engaging or seeking to engage in certain activities specified in detail.

Department of Justice
Civil Rights Division Staff

SUPPLEMENTARY MEMORANDUM CONCERNING
INTERFERENCE WITH RIGHTS PROPOSAL NO. 1

I. DESCRIPTION OF PROPOSAL

The principal features of the proposal are adequately described in the outline. The proposal is deliberately not phrased in terms of "rights" to nondiscriminatory treatment with respect to the protected activities for two reasons: (1) by describing the protected activities in concrete terms -- rather than, for example, by a cross-reference to Title II of the 1964 Civil Rights Act, which prohibits discrimination in places of public accommodation -- the proposal would give clear warning to the kinds of persons against whom it is directed and should therefore have a greater deterrent effect; (2) by eschewing any reference to "rights", the possibility that the courts may require proof of a "specific intent" to interfere with a particular "right", (as under present law, see Screws v. United States, 325 U.S. 91) is avoided.

II. NEED

The need for the proposal is generally recognized. In addition to the most widely publicized recent instances of racial violence, there has been a host of other acts of such violence in the recent past, frequently involving serious bodily injury and property damage.

There are encouraging signs that the administration of justice by State and local police and other law enforcement officials is becoming more even-handed. In some areas where Negroes have not in the past received police protection and prosecutions have not been brought for interracial crimes against Negroes, the situation is showing a marked improvement. With the elimination of racial discrimination in voting and greater participation by Negroes at the polls, it is reasonable to expect continuous improvement in this area. But in a few hard-core areas, law enforcement officers still fail to protect Negroes who attempt to assert their rights and, in some cases, police have participated in unlawful acts of violence. Recent incidents of racial violence in Neshoba County, Mississippi illustrate this problem.

The inadequacies in the present federal criminal laws dealing with racial violence that are indicated in the outline are described more fully below.

1. Violence by Private Persons. The most serious defect in these statutes is that they do not cover acts of violence by private individuals that interfere with the exercise of Fourteenth and Fifteenth Amendment rights unless such acts involve "State action" in one way or another. Section 242 by its terms applies only when public officials are involved. In the recent case of United States v. Guest, 383 U.S. 745, Justice Stewart's opinion for the Court appears to construe section 241 as not reaching purely private interference with Fourteenth Amendment rights. Acts of violence against Negroes seeking equal treatment frequently do not involve official participation or connivance.

2. The "Specific Intent" Requirement. The Supreme Court has read a strict "scienter" requirement into both sections 241 (United States v. Price, 383 U.S. 787) and 242 (United States v. Screws, supra) where the defendant is charged with depriving his victim of a so-called "Fourteenth Amendment" right. In such cases, the government is required to prove a "specific intent" on the part of the defendant to deprive his victim of a particular Fourteenth Amendment right.

The extent to which the "specific intent" requirement actually hinders federal prosecutions under sections 241 and 242 is very difficult to estimate, but a recent case illustrates the problem. Last June, the government secured convictions against two persons involved in the highway slaying of Colonel Lemuel Penn in Georgia in 1964. In that case, the government was required to prove that the defendants actually intended to interfere with Colonel Penn's "right" to travel in interstate commerce. Obviously, any very direct proof of such an intent is difficult to produce. Four of the defendants were acquitted -- only the actual slayers were convicted. The Penn killing was actually a case of a racially-motivated assault intended to discourage the victim and other Negroes from asserting their rights, a case which would be covered by the proposal, but which is frequently not covered by section 241.

3. Inadequacy of Penalties. The inadequacy of penalties under present law is illustrated by the successful federal prosecution of three Klansmen for the killing of Mrs. Viola Liuzzo in connection with the Selma-to-Montgomery march in 1965. For this brutal slaying, the judge imposed the maximum penalty under section 241 -- ten years imprisonment. Life imprisonment would have been appropriate and would be authorized under the proposal where a violation results in death.

4. The Conspiracy Limitation. The highway shooting of James Meredith last summer illustrates the remaining defect in section 241. Since it appears that Meredith's assailant acted alone, he could not be prosecuted under section 241, which applies only to conspiracies.

III. ADVANTAGES AND OTHER CONSIDERATIONS

1. Effect of Enactment. The proposal would meet all of the deficiencies in the present law that are described above. Although enactment of the proposal would not end racial violence, vigorous enforcement should have a very substantial deterrent effect. The recent successful prosecutions by the Department of Justice against the slayers of Mrs. Liuzzo and Colonel Lemuel Penn prove that federal juries in the South will sometimes indict and convict for interracial crimes of violence against Negroes and white civil rights workers. Moreover, even if the petit jury deadlocks or acquits in such cases, forcing lawless whites to go to trial is itself a substantial deterrent. Reform of the system for selecting federal jurors nationwide (see federal jury reform proposal) should, over the long run, make prosecutions for federal racial crimes less difficult.

2. Constitutionality. The constitutionality of the proposal does not rest on any single source of Congressional power. Rather, the constitutional bases for its several prohibitions depend upon the nature of the activity with respect to which forcible interference would be prohibited. It is clear that Congress may provide criminal sanctions for interference with the exercise of rights arising out of the relationship

between the citizen and the federal government, or arising from statutes enacted pursuant to Article 1, Section 8, of the Constitution, which grants various powers including the power to regulate interstate commerce. See, e.g., Ex parte Yarbrough, 110 U.S. 651; United States v. Guest, supra. These sources of Congressional power provide ample bases for the proposal's prohibition of interference with such activities as voting in Federal elections, use of interstate carriers, employment, and access to public accommodations.

As indicated in the outline, the fundamental constitutional issue raised by the proposal is whether Congress can reach private interference with Fourteenth (and Fifteenth) Amendment rights. These Amendments by their terms limit only State action. Several old Supreme Court cases indicate or hold that Congress lacks this power. See, e.g., United States v. Harris, 106 U.S. 629. However, in the recent Guest decision, six members of the Supreme Court expressed the view that Congress can reach purely private action under the implementing clause of the Fourteenth Amendment. Although these statements are technically dicta, they afford a sufficient basis for enactment of the proposal.

With respect to the "specific intent" and "vagueness" problems discussed above, it should be noted that Mr. Justice Brennan, speaking for himself and two other Justices in the Guest case, invited Congress to enact a proposal phrased in more specific terms, saying (383 U.S. at 786):

> Since the limitation of the statute's effectiveness derives from Congress' failure to define -- with any measure of specificity -- the rights encompassed, the remedy is for Congress to write a law without this defect. . . . If Congress desires to give the statute more definite scope, it may find ways of doing so.

The proposal is a response to this invitation.

Title V of the "Civil Rights Act of 1966" making it a criminal offense to intimidate or interfere by force or threat of force with persons engaging in certain activities specified in detail, or to discourage such activities or in reprisal for engaging in them, including demonstrations. Certain technical modifications would be made. In addition, economic coercion also would be prohibited.

I. Description of Proposal

This proposal would provide criminal sanctions against private individuals or public officials who by force or threat of force, or threat of economic coercion, injure, intimidate or interfere with any person because of his race, color, religion or national origin while such person is engaged or seeking to engage in any of certain enumerated activities (voting, public education, public services and facilities, employment, housing, jury service, use of common carriers, use of any road or highway in interstate commerce, participation in federally assisted programs, public accommodations). The proposal would apply to the use of force or threats of force or threats of economic coercion to deter participation in the protected activities or in retaliation for having so participated. It also would prohibit the use of force or threats of force or threats of economic coercion against persons who have encouraged others to exercise their right to participate in the protected activities. Finally, it would protect public officials and other persons who have duties to carry out with respect to the protected activities, against violence or intimidation which is intended to discourage them from affording, or is in retaliation for having afforded, equal treatment. 1/

The proposal would provide for penalties graduated according to the seriousness of the crime, and for amendments to 18 U.S.C. 241 and 18 U.S.C. 242 to permit more appropriate penalties under those laws where bodily injury or death results from a violation.

1/ This proposal essentially is Title V of the proposed Civil Rights Act of 1966, supplemented by sanctions against economic coercion.

II. Need

A. Description of the nature and seriousness of the problem the proposal is designed to cure or alleviate.

The nature and seriousness of the problem has been documented at some length in several studies prepared by the Commission. In its 1961 "Justice" Report the Commission set out in detail acts of racial violence by private persons, including an analysis of the mob violence in Birmingham, Alabama which attended the Freedom Rides to that city, a history of such violence in Alabama from 1954 to 1961, and violence in Jacksonville, Florida in August of 1960. 2/

In its 1963 Report on Civil Rights the Commission documented the use of official violence against Negroes and others who sought to achieve equal access to public facilities for Negro Americans. 3/

In its 1965 report "Law Enforcement, A Report on Equal Protection in the South" the Commission observed that recent and earlier investigations indicated that "problems of racial violence and discrimination existed in a number of States" although it thought that the problem was "most serious and widespread" in Mississippi. 4/ The Commission's report concluded with these findings:

1. During 1963 and 1964 severe outbreaks of racial violence occurred in several communities in Mississippi. In many cases, law enforcement

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2/ The 1963 Commission study "Freedom to the Free: 1863 Century of Emancipation 1963" (at p. 184) referred to the report "Intimidation, Reprisal and Violence in the South's Racial Crisis" I (1959), published jointly by the American Friends Service Committee, the National Council of the Churches of Christ and the Southern Regional Council, which documented 530 cases of violence and reprisal against, and intimidation of, Negroes between 1955 and 1959.

3/ The Commission based its conclusions primarily on its studies of Jackson, Mississippi and Birmingham, Alabama and, to a lesser extent, Baton Rouge, Louisiana, pp. 113-14.

4/ Id. at 2.

officials failed in their duty to prevent or punish acts of racial violence. Specifically, law enforcement officers:

(a) failed to protect Negroes from preventable acts of violence;
(b) failed to conduct adequate investigations of incidents of violence;
(c) arrested or abused victims of violence who reported incidents to them;
(d) allied themselves or publicly expressed sympathy with extremist racist groups; and
(e) failed to prosecute adequately cases in which arrests were made.

2. These failures were primarily the result of hostility to the assertion of rights by Negroes or to the civil rights movement -- a hostility which was also evidenced in the frequent arrest of civil rights workers, both white and Negro, for petty offenses or on unsubstantiated charges.

4. Local officials in communities studied by the Commission in Mississippi, Alabama, Florida, and Georgia did not permit persons to exercise the right to assemble peaceably to make known their grievances. Civil rights demonstrators were repeatedly arrested, dispersed, or left unprotected before angry crowds, without regard for the right to public protest assured by the Constitution.

6. The Federal Constitution requires local officials to be bound by oath or affirmation to support it, and State laws generally enforce this obligation by requiring such an oath. Nevertheless, many local officials in Mississippi and in the other communities studied by the Commission violated their duty to uphold the Constitution by failing to provide Negroes and civil rights workers protection from violence; by interfering with the exercise of Federal rights, including the right of public protest; and by abusing discretion in the administration of justice.

The perpetrators of the triple murder in Neshoba County, Mississippi during the summer of 1964, and the killings of Jonathan Daniels in Lowndes County, and Reverend James Reeb in Selma, Alabama, are still unpunished.

Since the time of the Commission's investigation, law enforcement has improved in some parts of the South. In many places, political and community leaders have spoken out clearly against violence and have directed law enforcement officials to provide protection for people and ideas they do not like.

But racial violence continues. On January 11, 1966, Vernon Dahmer, a Negro leader who had encouraged and assisted Negroes to pay their poll taxes and register to vote was killed during the fire bombing of his house in Hattiesburg, Mississippi. There have been numerous other recent acts of violence in some areas of the deep South which have gone and continue to go unnoticed by the national news media. The Southern Regional Council, in a report issued in May of 1966, collected newspaper and other published reports listing nearly a hundred incidents of racial violence in a number of Southern States occurring between September 1965 and February 1966. It appears that in many areas the responsible state and local officials are still not completely willing or able to carry out their duties.

In this situation, there is a clear Federal responsibility for protecting the rights of citizens to be secure against violence and intimidation. Congress, in the last century, enacted laws to fulfill this responsibility, but these laws have not proved effective.

Our proposal would prohibit economic as well as physical coercion. Title V of the proposed 1966 Act applied only to acts involving "force or threats of force". In fact, as submitted by the Administration, the Bill would have narrowed existing law by repealing provisions in the Voting Rights Act which make intimidation and coercion by state registration officials and private persons, by any means including threat of firing or eviction, a crime. Yet economic coercion, as Congress recognized in connection with the Voting Rights Act of 1965, remains a serious impediment to the exercise of Federal rights. Since September 1965, newspapers have reported that 100 Negroes in St. Francisville, Louisiana, and 20 in Lowndes County, Alabama, have been evicted from their homes for registering to vote. The Commission found in February of this year that in some areas of the South where Negroes have elected to attend formerly all-white schools, the Negro community has been subjected to evictions and loss of jobs as well as to other forms of intimidation. For example, the mother of a Negro student who selected a white school in Sumter County, Georgia, was fired from her job as a maid within 24 hours after submission of the choice form. In Webster County, Mississippi, two Negro families who had selected formerly all-white schools for three children scheduled to enter the first grade in September 1965 were told by their white landlords to move out of their houses. Evictions of Negro families enrolling their children in previously all-white schools have been reported in Thomas County, Georgia, and Merigold, Mississippi. Parents of such children have been reported threatened with, or actually subjected to, job loss in Baker County and Waynesboro, Georgia, Rolling Fork, Anguilla and West Point, Mississippi, and Demopolis, Alabama.

Such practices are properly treated as criminal acts, for they are deliberate and often effective efforts to interfere with the exercise of Federal rights. Since economic coercion is by its very nature a calculated act, it may be susceptible to deterrence by criminal sanctions even more than violence, which frequently is irrational. Acts of economic intimidation directed against the exercise of any of the rights protected by Title V should be covered. And surely there is no warrant for taking the retrogressive step of repealing the criminal sanction against economic intimidation presently contained in the Voting Rights Act.

1. Statistical data

There is only limited statistical data available; it is set out above.

2. Summary of available studies

The studies of which we are aware are set out above.

3. Indication of any need for further study

__ There is no need for further study.

B. Description of related ongoing programs, including people reached and costs

The only related on-going "program" is the bringing of criminal prosecutions by the Department of Justice under 18 U.S.C. § 241 and 18 U.S.C. § 242. These are discussed below.

C. Inadequacies of present laws or programs

As early as 1961, the Commission was commenting on the "difficulties involved in the enforcement" 5/ of the only two Federal laws available for relief against both official and unofficial violence (18 U.S.C. § 241 and 18 U.S.C. § 242). This conclusion was reiterated in the Commission's 1963 report entitled "Civil Rights." 6/

The weaknesses of these statutes were summarized again in 1965 in the report "Law Enforcement, A Report on Equal Protection in the South." There, the Commission noted that "significant barriers" to obtaining convictions under these statutes "arise from the connection required between the violent or unlawful action and the Constitutional or statutory rights of the victim." 7/

5/ "Justice," at 45.

6/ Id. at 116.

7/ Id. at 107.

Thus, to obtain a conviction under 18 U.S.C. § 242, the jury must find that the defendant acted with specific intent to deprive the victim of recognized constitutional rights. The complexity of the proof problem was discussed on pages 107-08 of the report. 8/

> Thus, an indictment under section 242 must charge and the prosecution prove that the defendant acted not merely from malice but "in open defiance or in reckless disregard of a constitutional requirement which has been made specific and definite."
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> This leads both to curious distinctions and unfortunate results. Since "an officer of the law undoubtedly knows that a person arrested by him for an offense has the constitutional right to a trial under the law," the principal issue before the jury is whether the officer acted in defiance of such right (in which case he is guilty), or solely because of malice (in which case he is innocent), or for both reasons (in which case he is guilty). In one significant case the jury felt compelled by the judge's instructions on specific intent to acquit the defendant officer even though in the opinion of its members he was guilty of murder or manslaughter.
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> As the mere statement of the issue indicates, whether specific intent exists is an elusive question which requires the jury to manipulate subtle distinctions concerning motive.

And, in discussing 18 U.S.C. § 241, the Commission noted that:

> The problem of connecting the violent and unlawful act with the Federal right arises in a different context in prosecutions under section 241. The lower Federal courts have held that section 241 punishes conspiracies to interfere with only a limited class of Federal rights--those which arise from the relationship of the individual and the Federal Government, rather than those rights only secured against State infringement. Some of these special Federal rights which have been defined by the Supreme Court are the right to pass freely from State to State, the right to petition Congress for a redress of grievances, the right to vote for national officers, the right to be protected against violence while in lawful custody of a United States marshal, and the right to inform United States authorities of violations of its laws. But section 241 has not yet been held to encompass protection for those constitutional rights to due process of law and equal protection of the laws which are protected from State interference by the 14th amendment. 8a/

8/ Footnotes omitted.

8a/ In United States v. Price, infra, the Supreme Court held that Section 241 does protect Fourteenth Amendment rights, but in United States v. Guest, infra, the Court held that Section 241 does not reach interference by individuals with

Title V, unlike 18 U.S.C. § 242, does not require the Federal Government to prove that the assailant specifically intended to deprive the victim of a specific constitutional right. Instead, the Government need only prove that the assailant intended illegal violence which had the effect of depriving the victim of a Federal right. The statute would cover acts by private individuals when such acts are directed at any of the enumerated rights (not just rights of national citizenship), whether or not they conspire together and regardless of whether local government officials also are involved.

The Commission's investigations in Mississippi in 1964 and 1965 revealed that much of the violence that occurred was aimed at persons selected at random, and that such violence intimidated the Negro community as effectively as if directed at a person actually engaged in civil rights activities.

At its Jackson hearing, the Commissioners heard testimony from one Negro resident of Adams County, Mississippi, describing a beating he had received from eight hooded men. The witness testified that he was not registered to vote and had never been involved in civil rights activity of any kind. He said " . . . they pulled my clothes off . . . shoved me down on my stomach, then they started beating. . . . (They said:) 'we know you're the leading nigger in Natchez, the NAACP and the Masonic Lodge' . . . then they got me to my knees and put a double-barrelled shotgun right at the end of my nose . . . and said, 'Well, now, you're going to tell a white man the truth.' Then . . . he hit me in the face until he knocked me over. And he said 'Nigger run . . .' and when I fell . . . they clamped the light out and they shot right where they seen me last. . . ."

This kind of attack to terrorize the Negro community would be dealt with expressly by Section 501(b)(1). This section will strengthen existing laws by covering random acts of violence against persons who have not attempted to exercise any of the rights enumerated in Section 501(a), when such violence is intended to discourage other persons from exercising these rights.

Title V makes other improvements in existing law. The Commission's 1965 Law Enforcement Report recommended that the FBI make on-the-scene arrests when civil rights violations are committed in their presence. One objection that has been raised against this proposal is that because of the vagueness of Sections 241 and 242 of Title 18, FBI agents would be required to make complicated determinations about the intent of the assailants, Title V, by making specific the conduct prohibited, should remove this obstacle to on-the scene arrests.

III. Advantages and Disadvantages

The proposal meets the existing need to provide more effective criminal sanctions against race or prejudice-motivated private individuals or public officials who by force or threat of force or threat of economic coercion interfere with important Federal constitutional and statutory rights. Existing practical and constitutional barriers to effective prosecution and conviction are done away with by eliminating the need to find a "specific intent" to deprive the victim of particular statutory or constitutional rights, by obviating the need to prove a conspiracy in the case of interference by private persons, and by putting potential violators on notice of prohibited conduct through an enumeration of the rights protected. The penalties proposed for this statute are sufficiently flexible to permit the trial judge to "make the punishment fit the crime."

There should now be no serious questions regarding the constitutionality of such a proposal. In a recent civil rights case, six of the nine Justices of the Supreme Court indicated that Congress was empowered by the Fourteenth Amendment to pass such legislation. 9/ However, two other arguments may be made against the proposal: one, that the proposed legislation is unnecessary in that existing law is adequate to deal with the problem; and two, that such legislation is undesirable because it violates traditional notions of federalism and raises fundamental questions of Federal-State relationships.

As to the first, it may be argued that there exists adequate authority in statutes already on the books to protect all the rights enumerated in the proposal with which Congress has constitutional power to deal. Under existing law, specifically 18 U.S.C. § 242, State officials and private persons joining with them who act "under color of law" to deprive white or Negro persons of rights secured by all of the Constitution and all of the laws of the United States "in open defiance or in reckless disregard of a constitutional requirement which has been made specific and definite" 10/ may be subjected to a maximum punishment of $1,000 fine or one year imprisonment. While the requirement of "specific intent," given in the last quoted section above, is often cited as a serious impediment to conviction under this statute, the U.S. Commission on Civil Rights in its 1965 report on "Law Enforcement" admitted that

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9/ United States v. Guest, 383 U.S. 745 (1966) (concurring opinions of Mr. Justice Clark and Mr. Justice Brennan).

10/ This is the requirement of "specific intent" first enunciated in Screws v. United States, 325 U.S. 91, at 105 (1945). It has also been read into the conspiracy provision of section 241 to save that statute from being void for vagueness as well. United States v. Guest, supra; United States v. Williams, 341 U.S. 70, 93-95 (opinion of Mr. Justice Douglas).

> The requirement of proof of "specific intent" does not materially affect the nature of the evidence presented by the prosecution in section 242 cases. With or without this requirement, the prosecution must still prove that the officer acted without justification, and the evidence adduced for this purpose is the same evidence relied on to prove specific intent. 11/

Thus, it may be argued (1) that the reluctance of the Justice Department to bring more prosecutions under this section and the failure of Federal juries to render more convictions in most cases arises not so much from the requirements of proof under the existing statutes but rather from the widespread exclusion of Negroes from Federal juries; 12/ and (2) this is an evil which must be remedied by enforcement of present Federal jury nondiscrimination statutes or through the enactment of additional jury legislation.

Regarding interference with civil rights by exclusively private persons, the present statute (18 U.S.C. § 241) now extends to conspiracies by private parties to interfere with all of the rights and privileges secured to citizens by all of the Constitution and all of the laws of the United States and provides for maximum punishment of $5,000, or 10 years imprisonment. Recently, in United States v. Price, a unanimous Supreme Court finally put to rest the notion that the rights protected by section 241 were not intended by Congress to encompass Fourteenth Amendment rights:

> We cannot doubt that the purpose and effect of § 241 was to reach assaults upon rights under the entire constitution, including the Thirteenth, Fourteenth, and Fifteenth Amendments and not merely under part of it.

In the Guest case, the Supreme Court ruled that section 241 does not cover interferences by individuals with Fourteenth Amendment rights although a majority indicated that Congress would have the power to reach such interferences. These arguments may be answered as follows: The elusive and complex question of specific intent can create difficulties even for the most conscientious jury composed of a cross-section of the community. 13/ The failure of existing legislation to spell out the rights and privileges protected and thus to put persons on notice of the conduct it makes criminal, continues to put existing law

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11/ United States Commission on Civil Rights, "Law Enforcement, A Report on Equal Protection in the South," p. 108 (Washington, D. C. 1965).

12/ The most recent case pointing up this widespread discrimination in the selection of Federal juries is Rabinowitz v. United States, No. 21256, 5th Cir., decided July 20, 1966.

13/ In one significant case the jury felt compelled by the judge's instructions on specific intent to acquit the defendant officer even though in the opinion of its members he was guilty of murder or manslaughter. United States v. Minnick, Crim. No. 8466-M, S.D. Fla., June 23-26, 1953. See Shapiro, Limitations in Prosecuting Civil Rights Violations, 46 Cornell L.Q. 532 (1961).

"close to the danger line of being void for vagueness." 14/ In addition, section 241 applies only to conspiracies and no interpretation by the Supreme Court can circumvent that express requirement of proof. Thus, there exists a need to provide for punishment of similar action by a single individual not involving any other person. Finally, the existing penalties provided for violations of sections 241 and 242 fail to account for the seriousness of the deprivation, especially when it results in death or serious injury to the victim.

The second arguable objection to the proposal is that its enactment would encroach upon what has traditionally been regarded as the primary obligation of the States to maintain law and order within their boundaries. For example, by punishing in Federal courts the blocking of a Negro trying to enter a hot dog stand (which may not even be covered by Title II of the Civil Rights Act of 1964), the proposal makes a Federal crime punishable by 10 years imprisonment that which has traditionally been regarded as common law assault and battery, thus increasing the power of centralized government. This, it has been argued, serves as precedent for making any State crime a Federal crime, and paves the way for a national, Federal police force.

An adequate answer to this argument should be that it is the responsibility of the Federal Government to protect those Federal rights and privileges granted or secured by the Constitution and laws of the United States. This is true regardless of how mundane or common law-like the proscribed conduct seems to be. In a majority of cases the necessity of such remedial legislation is dictated by the failure of the States themselves to take adequate remedial or preventative action. In the face of inaction by the States, and armed with the broad enforcement powers granted by section 5 of the Fourteenth Amendment, 15/ Congress has the responsibility and clear constitutional power to enact any approrpriate legislation to enforce the substantive guarantees.

IV. Alternative Courses of Action

An alternative course simply would be to amend present sections 241 and 242 to provide for graduated penalties depending upon whether actual physical harm or death results from the criminal conduct. Thus, if no one is actually harmed, penalties would remain the same. If bodily injury results, the amendments would provide for maximum penalty of $10,000 fine or 10 years imprisonment, or both. If death results, the penalty would be imprisonment for any term of years or life.

14/ Mr. Justice Brennan in United States v. Guest, supra. In his concurring opinion in the Guest case, Mr. Justice Brennan as much as invited Congress to enact the proposed legislation: "/S/ince the limitation on the statute's effectiveness derives from Congress' failure to define--with any measure of specificity--the rights encompassed, the remedy is for Congress to write a law without this defect. . . . /I/f Congress desires to give the statute more definite scope, it may find ways of doing so."

15/ See South Carolina v. Katzenbach, 383 U.S. 301, 326-27; Katzenbach v. Morgan, 384 U.S. 641 (1966).

Department of Justice
Office of the Solicitor
General's Staff

I. RACIAL VIOLENCE

1. The proposal

A criminal statute patterned on Title V of the proposed "Civil Rights Act of 1966", appropriately modified to punish any person (whether or not acting officially or "under color of law") who forcefully interferes with participation, free of discrimination on account of race, religion or national origin, in a comprehensive list of activities protected by the Constitution or federal law. The provision would reach any forceful conduct which has the purpose or effect of working the prohibited interference, including acts of intimidation or reprisal directed against participants or would-be participants. Additionally, it would punish purposeful interference with two categories of non-participants: those who are peacefully advocating the exercise of the enumerated rights or protesting their denial, and those (typically public officials) who control participation in the protected activity.

2. The problem

The proposed legislation is addressed to the continuing problem of resort to force to defeat or deter the exercise of the right of equal treatment in public activities. Primarily, the statute is aimed at unofficial intimidation -- typically by Klan members -- against Negroes and their supporters. The problem is sufficiently illustrated by the extreme instances: the murders of Medgar Evers, Colonel Penn,

Reverend Reeb, Mrs. Liuzzo, and Vernon Dahmer; the shooting of James Meredith, the assaults on schoolchildren in Grenada, Mississippi. But there are, of course, a host of lesser cases in which the default of local authorities suggests federal intervention.

3. Discussion

The opinions of Mr. Justice Clark and Mr. Justice Brennan (speaking together for six members of the Court) in United States v. Guest, 383 U.S. 745, 761-762, 774-786, leaves no doubt concerning the constitutionality of the proposal insofar as it reaches private interference with exercise or enjoyment of Fourteenth and Fifteenth Amendment rights to non-discrimination. There are no other serious constitutional questions. Possible objections on the ground of vagueness are met by particularizing the protected activities. Likewise, the cumbersome requirement imposed by Screws v. United States, 325 U.S. 91, that the assaulter must know that he is interfering with one of the defendant's specific rights and so intend, is avoided here by shunning all reference to "rights" and defining the protected relationships in concrete terms. On the other hand, the comprehensive character of the categories of activities enumerated tends to assure that all proper cases for federal action are covered.

To be sure, the present proposal does not deal with all racially (or religiously or ethnically) motivated assaults: here the assault must be meaningfully connected with the exercise of protected federal

rights. But this limitation is justified by several considerations. First, it is questionable if constitutional boundaries permit any broader reach. Moreover, there are strong reasons for confining federal intervention to the most urgent area of concern. And, finally, it is doubtful whether there are, today, many racially motivated assaults that cannot be tied to the exercise of one or more of the activities listed in the proposed statute.

There are, of course, reasons to doubt the efficacy of any federal criminal statute to deal with racial violence in those areas where hostility to the exercise of civil rights by Negroes leads local authorities to withhold appropriate action under State law. Where indictment is necessary (as it would be under the proposed statute when death or bodily injury results), the grand jury may present an obstacle. And, in every case, conviction may be difficult. Yet, the existence of a federal criminal sanction will doubtless have a wholesome deterrent effect -- assuming it does not lie dormant and unenforced for decades, like 18 U.S.C. 241 until recently, or 18 U.S.C. 243 for the last three-quarters of a century. Moreover, even in the worst areas, grand juries do occasionally indict (see e.g., United States v. Price, 383 U.S. 787; United States v. Guest, 383 U.S. 745), and petit juries will convict, witness the cases arising out of the murders of Colonel Penn and Mrs. Liuzzo. Presumably, jury reform will

improve the prospects of successful prosecution. In any event, the obvious inadequacy of civil relief to deal with violent criminal conduct -- whether by award of damages or the issuance of an injunction -- leaves no reasonable alternative.

4. Inadequacy of existing remedies

With respect to interference with the exercise of civil rights by public officials and others acting "under color of law" Section 242 of the Criminal Code is an adequate provision in most respects -- now that it has been held applicable to violations of Fourteenth (and presumably Fifteenth) Amendment rights (United States v. Price, supra). Even here there are burden of proof problems resulting from the Screws decision. But the existing statutes are wholly insufficient with respect to private acts of violence. The holding in United States v. Guest, supra, that Section 241 of the Criminal Code does not reach private interference with the exercise of Fourteenth Amendment rights leaves a large area of constitutional rights without federal protection. The proposed statute would fill the void created when the criminal provision of Ku Klux Klan Act of 1871 was invalidated in United States v. Harris, 106 U.S. 629.

5. Cost

The proposal itself entails little, if any, additional expenditure. A change in enforcement procedures, including capacity for on-the-scene arrests, with respect to the implementation of criminal civil rights statutes generally might involve increased appropriations for a larger force of marshalls or F.B.I. agents.

6. Rejected alternatives

An unconfined racial assault statute. See supra.

7. Areas for study

No further study is necessary. The problem is well known and its solution -- so far as legislation can provide a remedy -- seems obvious.

INTERFERENCE WITH RIGHTS PROPOSAL NO. 2

Legislation to prohibit interstate travel with the intent to incite to riot, followed by acts of rioting or incitement to riot.

Department of Justice
Civil Rights Division
Staff

PROPOSAL NO. 2

On August 8, 1966, in the course of the House debate on Title V of the proposed Civil Rights Act of 1966, Representative Cramer introduced legislation which provides federal criminal penalty for those who travel in interstate commerce for inciting, organizing or participating in a riot. (Representative Cramer's proposal is Attachment A.) 112 Cong. Rec. 17651, (August 8, 1966). It was approved as an amendment to Title V by a substantial majority of the House; and immediately thereafter the House approved another amendment establishing concurrent jurisdiction of the states over all matters covered by Title V, including the anti-riot provisions. 112 Cong. Rec. 17651. Representative Cramer's amendment and the concurrent jurisdiction amendment appeared as sections 502 and 504 respectively of H.R. 14765, the version of the proposed Civil Rights Act of 1966 transmitted to the Senate.

Once it appeared unlikely that the bill would not be passed by the Senate in the 2d Session of the 89th Congress, Representative Cramer and others re-introduced proposals dealing with interstate travel to incite, organize and participate in riots. (A list of the bills introduced is Attachment B.) Some proposals made the anti-riot provision as an integral part of a statute covering violence against those exercising equal civil rights, what was formerly Title V of the proposed Civil Rights Act of 1966. Others treated the anti-riot provisions as completely separate. For the first time committee hearings on this legislation were held and Assistant Attorney General Doar appeared on behalf of the Department of Justice before Subcommittee No. 5 of the House Judiciary Committee. (A copy of his statement and testimony is Attachment C.) In the course of his appearance, he stressed the importance of further study and consideration of the need, utility, and

constitutional problems of the proposed legislation. He was asked by the subcommittee to assist it in analyzing the language of the bills in question, and he complied with that request in a letter to Chairman Celler dated October 11, 1966. (A copy of that letter is Attachment D.) No further action was taken by the 89th Congress prior to convening its second session on October 22, 1966.

I. Description of the Proposal

Most of the proposed bills are modeled after Representative Cramer's bill. Essentially, his bill would make it a federal crime, punishable by fine of $10,000 and imprisonment of up to 5 years, to travel in interstate commerce with an intent to incite, organize, or participate in a riot, and to thereafter to do or attempt to do acts in furtherance of that intent. The general structure and much of the language of the bill has been adopted from the Anti-Racketeering Act, 18 U.S.C. 1952, and some concepts have been borrowed from the Fugitive Felon Act, 18 U.S.C. 1703. The bill does not contain a definition of such critical terms as "inciting to riot," "riot", and it covers those who travel in interstate commerce to facilitate the incitement of a riot, or to attempt to facilitate the incitement of a riot, to assist, encourage or instruct others to incite a riot or facilitate the incitement of a riot, or to attempt to assist, encourage, or instruct others to incite a riot or facilitate the incitement of a riot. The bill contains an explicit provision preserving the concurrent jurisdiction of the States, and the language of that particular provision has been adopted from section 1104 of the Civil Rights Act of 1964, 42 U.S.C. §20001-4.

II. Need: Undetermined

The proposals in question have emerged in response to the series of riots that have erupted in cities throughout the nation during the past year. They are predicated on the hypotheses that persons travelling to the situs of the

riot from out of the State are, to some significant degree, responsible for the riots, and that a federal criminal statute is necessary to deter such activity. Neither hypothesis has yet been supported by any systematic factual inquiry, congressional or otherwise, and such a study must be undertaken before such legislation can be enacted. This study as to the need for the proposed legislation would include the following questions:

(1) What are the principal causes of riots and can they be eliminated through federal criminal statutes?

(2) To what extent are the riots attributable to incitement, organization, or participation from persons travelling in interstate or foreign commerce, or to those using the facilities of interstate commerce such as the mails?

(3) Is the presence of a federal criminal sanction likely to deter such activity?

(4) Are the existing laws, both federal and state, inadequate to deter such activity, and in what respects are they inadequate?

(5) In this area have local law enforcement officers abdicated their primary responsibility to maintain law and order so as to warrant federal legislation?

III. Advantages and Disadvantages

Since the need for such legislation has not been adequately formulated or substantiated, it is impossible at this time to assess the proposed legislation in terms of whether or not it adequately meets a genuine social need. However, it is possible to recognize several problems that would have to be confronted before such a law could be enacted:

(1) The proposal is not likely to be an effective prosecutorial tool. It requires proof that the accused had the intent to incite or participate in a riot at the time of travelling from one state to another. There is no statutorily created presumption to relieve the prosecution of this burden of proof, or to assist it in discharging that burden. It is true that the Anti-Racketeering Act has a similar intent requirement and that the burden of proving the intent has not rendered that law ineffective; but that statute primarily covers interstate travel in connection with unlawful business enterprises, where the regularity of the interstate travel to the situs of the business enterprise entitles the jury to infer the requisite intent. In contrast, interstate trips to incite or participate in a single riot are likely to be sporadic and infrequent.

(2) The proposal is vulnerable to the charge that many of the terms are unduly vague and do not provide an ascertainable standard of guilt, all in violation of the due process clause of the Fifth Amendment. Critical terms are not defined, and certain terms, such as "facilitation" and "promote", are taken from the Anti-Racketeering Act. While such terms may have a traditional and readily ascertainable meaning when used in the Anti-Racketeering Act with respect to business transactions or business enterprises, they do not necessarily have the same clarity or significance when used in connection with inciting or participating in a riot.

(3) The proposal is vulnerable to the charge that it is overly broad in that it includes within its reach activity that is protected by the First Amendment. The Supreme Court has required criminal statutes in the area of First Amendment freedoms to be drawn with narrow specificity since the mere presence of an overly broad statute is likely to inhibit the exercise of those freedoms, see. e.g., NAACP v. Button, 371 U.S. 415; Drombrowski v. Pfister, 380 U.S. 479. It is questionable whether Representative

Cramer's proposal would meet this stringent requirement. Incitement to riot is not a protected activity under the First Amendment, see, e.g., Kingsley International Pictures Corp. v. Regents, 360 U.S. 684, 689; Cantwell v. Connecticut, 310 U.S. 296, 308; but the proposal also covers someone who does no more than to attempt to instruct a person to facilitate the incitement of a riot, and such activity might well be protected by the First Amendment. See generally Herndon v. Lowry, 301 U.S. 242.

(4) The most immediate effect of enacting such a proposal would consist of an increase of the FBI investigative program, and the necessity or wisdom of that remains to be demonstrated. The additional burden placed on the Bureau might interfere with the discharge of its responsibility in another area. More importantly, the Bureau involvement might effectively impede the pace of social reform. It was the intent of the sponsors that the statute would commit the Bureau to investigating the programs and activities of many organizations advocating unpopular ideas, see 112 Cong. Rec. 17663 (August 8, 1966). Many such organizations are engaged in vital and legitimate programs to bring about social reform, and it is conceivable that extensive investigations by the Bureau into their activities would have the effect of dampening or interfering with these programs.

(5) The relationship between the proposal and other statutes, both federal and state, is not altogether clear. For example, conduct punishable under Representative Cramer's proposal apparently is also punishable under two other federal criminal statutes, sections 837 and 2383 of Title 18. Section 238 provides for up to 10 years imprisonment and $10,000 in fines of persons who incite, assist or engage in rebellion or insurrection against the authority of the United States, and such a rebellion or insurrection might be embraced within the meaning of the phrase "riot, or other violent

civil disturbance" as used in Representative Cramer's bill. Similarly, section 837, which generally pertains to the interstate transportation of explosives with intent to damage certain buildings, would embrace activities that might be covered by Representative Cramer's proposal. The relationship between these existing laws and the proposed bill must be analyzed so as to assure that the provisions do not conflict, that the severity of the sanctions are harmonized, and that undue discretion is not vested in the prosecuting attorneys.

IV. Alternative Courses of Action

(1) Revise the language of Representative Cramer's proposal and define the critical terms so as to eliminate the threat to the First Amendment freedoms. An example of such a revision, embodying the suggestions made in Assistant Attorney General Doar's letter of October 11, 1966 to Chairman Celler, is Attachment E.

(2) Consider some of the proposals submitted by other congressmen, see Attachment F.

(3) Consider, propose and enact non-criminal measures to eliminate the social causes of riots, to facilitate the employment of federal resources when needed to supplement state resources to bring riots under immediate control, and to provide the resources, financial and other, needed by a community to recover from the damage inflicted in the course of a riot.

V. Estimated Costs of Implementation: Undetermined

No effort has been made to estimate the financial costs of implementing the proposal embodied in Representative Cramer's bill, and it is difficult to see how such an estimation could be made at this stage with any meaningful

degree of accuracy. In a memorandum dated October 10, 1966 to the Acting Attorney General, the Director of the FBI stated:

> With regard to the burden the enactment of such legislation would impose upon this Bureau, it is not possible, based on the information available, to make an intelligent budgetary evaluation at this time. There is no question it would be an added burden, the extent of which would depend upon the specific provisions of the statute agreed upon, the number of riots or disturbances that may occur, and the extensiveness of the investigations that would be required.

ATTACHMENT A

Attachment A

Sec. 502. Whoever moves or travels in interstate or foreign commerce or uses any facility in interstate or foreign commerce, including the mail, with intent to -

(1) incite, promote, encourage, or carry on, or facilitate the incitement, promotion, encouragement, or carrying on of, a riot or other violent civil disturbance; or

(2) commit any crime of violence, arson, bombing, or other act which is a felony or high misdemeanor under Federal or State law, in furtherance of, or during commission of, any act specified in paragraph (1); or

(3) assist, encourage, or instruct any person to commit or perform any act specified in paragraphs (1) and (2); and thereafter performs or attempts to perform any act specified in paragraphs (1), (2), and (3), shall be fined not more than $10,000 or imprisoned not more than five years, or both.

ATTACHMENT B

Other Bills Introduced in
The House During the 2nd
Session of the 89th Congress

Attachment B

H.R. 714 (Abernethy)
H.R. 4523 (Whitten)
H.R. 17151 (Roush)
H.R. 17642 (Cramer)
H.R. 17720 (Andrews, ND)
H.R. 17721 (Cabell)
H.R. 17722 (Cunningham)
H.R. 17723 (Ellenborn)
H.R. 17724 (Harvey, Ind.)
H.R. 17725 (Hutchinson)
H.R. 17726 (Johnson, Pa.)
H.R. 17727 (Kluczynski)
H.R. 17728 (Minshall)
H.R. 17729 (Reid, Ill.)
H.R. 17730 (Scott)
H.R. 17731 (Sikes)
H.R. 17732 (Bolton)
H.R. 17733 (Findley)
H.R. 17734 (Martin, Ala.)
H.R. 17735 (Roncalio)
H.R. 17743 (Bow)
H.R. 17744 (Callaway)
H.R. 17748 (Hechler)
H.R. 17767 (Adair)
H.R. 17768 (Battin)
H.R. 17769 (Berry)
H.R. 17770 (Boggs)
H.R. 17771 (Buchanan)
H.R. 17772 (Fulton, Pa.)
H.R. 17773 (Michel)
H.R. 17774 (Mize)
H.R. 17775 (Rhodes (Ariz.)
H.R. 17776 (Sweeney)
H.R. 17777 (Taylor)
H.R. 17778 (Williams)
H.R. 17812 (Shriver)
H.R. 17814 (Teague)
H.R. 17818 (Walker)
H.R. 17820 (Whitten)
H.R. 17822 (Burleson)
H.R. 17823 (MacGregor)
H.R. 17824 (O'Neal)
H.R. 17852 (Laird)
H.R. 17858 (Fountain)
H.R. 17862 (Dickinson)
H.R. 17886 (Secrest)
H.R. 17898 (Morton)
H.R. 17914 (DeLaGarza)
H.R. 17921 (Fascell)
H.R. 17923 (Fino)
H.R. 17927 (Hansen)
H.R. 17928 (Kornegay)
H.R. 17931 (Pirnie)
H.R. 17934 (Watson
H.R. 17935 (Clausen)
H.R. 17961 (Langen)
H.R. 17967 (Slack)
H.R. 17996 (Derwinski)
H.R. 18001 (Hagen
H.R. 18006 (Morris)
H.R. 18011 (Roudebush)
H.R. 18024 (Reinecke)
H.R. 17805 (Poff)
H.R. 17849 (Hamilton)

H.R. 17912 (Celler)
H.R. 18023 (McCulloch)
H.R. 18045 (Latta)
H.R. 18046 (Corman)
H.R. 18088 (Rogers)
H.R. 18090 (St. Onge)
H.R. 18092 (Stratton)
H.R. 18098 (Willis)
H.R. 18103 (Whalley)

ATTACHMENT C
(Part I)

Department of Justice

STATEMENT

by

ASSISTANT ATTORNEY GENERAL JOHN DOAR

Attachment C

before

SUBCOMMITTEE NO. 5, HOUSE JUDICIARY COMMITTEE

on

H.R. 17642, H.R. 18023, H.R. 17912,
and Related Bills

Wednesday, October 5, 1966

Mr. Chairman and Members of the Sub-Committee:

I am pleased to be here today to discuss a number of bills proposing federal criminal prosecution of persons who travel interstate to incite riots, some of which also propose federal criminal penalties for acts of violence directed at persons who seek to exercise federal rights to equal treatment in various areas of public life. My statement will be addressed particularly to H.R. 17642, H.R. 18023 and H.R. 17912, and other substantially similar bills.

I turn first to the proposals -- derived from Title V of the "Civil Rights Act of 1966" which passed the House in August -- to protect Negroes and civil rights workers from acts of violence related to their exercise of federal rights. As former Attorney General Katzenbach stated in testimony before this Sub-committee on May 4, 1966, these outrages have been perpetrated by a small minority which seeks to deny by force those rights to equality secured by the Fourteenth and Fifteenth Amendments and the recent legislation put on the books since 1957. The existing statutes dealing with violence against racial groups are very inadequate. They prescribe unduly lenient penalties for what are often very serious crimes resulting in physical injury or death. They require proof of "specific intent", which in some cases may complicate or frustrate effective prosecution. Most important of all, they simply do not reach certain crimes of racial violence against Negroes and civil rights workers. Thus, in the Guest decision, handed down by the Supreme Court just last term, it was made fairly clear that an act of violence by a private person, not acting in concert with state officials, who seeks to interfere with the exercise of a right based on the Fourteenth Amendment, is not covered by section 241 of Title 18. Nor is it covered by section 242, which, of course, is restricted to acts done under color of law.

Title V of the proposed "Civil Rights Act of 1966" was intended to compensate for the abdication in some areas of the local responsibility to arrest, prosecute, and convict -- where the evidence warrants conviction -- perpetrators of acts of racial violence. As the Sub-committee is aware, this situation has been the subject of extensive study by various committees of Congress. It has been the subject of hearings by the United States Commission on Civil Rights, which issued

a report on the matter and recommended the enactment of new Federal criminal laws. We have had nearly a century of experience in enforcing the existing Federal criminal statutes which seek to vindicate Federal rights, and their weaknesses have been illustrated by a number of court decisions. There is, then, an impressive factual background which amply confirms the judgment that new criminal legislation in this area is necessary.

Of course, if all states and cities were actually providing equal protection of the laws to all of their inhabitants there would be no need for this proposal. But the studies to which I have referred make it amply clear that we have not yet arrived at that hoped-for day. Until that day comes the Federal Government must fill the gap by assuming the prosecutor's responsibility where Federal rights are flouted and local agencies seem incapable of carrying out their historic law enforcement functions.

I turn now to consideration of the proposals to deal with riots. These bills are a response to a grave national problem -- the outbreak of riots and other violent incidents in a good number of cities in various sections of the country.

These harmful events are of great concern to the Department of Justice and to the Administration. President Johnson expressed this concern in Indianapolis, Indiana, on July 23, 1966:

> Riots in the streets will never bring lasting reform. They tear at the very fabric of the community. They set neighbor against neighbor. They create walls of mistrust and fear among fellow citizens. They make reform more difficult by turning away the very people who can and who must support their reforms. They start a chain reaction the consequences of which always fall most heavily on those who begin this chain reaction.
>
> So it is not only to protect the society at large that we refuse to condone riots and disorders. It is to serve the real

interests of those for whose cause we struggle. Our country can abide by civil protest. It can improve the lives of those who mount that protest. But it cannot abide by civil violence.

There must be an end to these riots. But it would be unfortunate if the impression is conveyed that this kind of law is a panacea for the riots. Nor would it be desirable to suggest that the Federal Government is about to assume major responsibility for either riot control, riot prevention, or the punishment of rioters. These are essentially local functions which should be handled primarily on the local level.

Indeed, state and local law enforcement agencies are generally to be commended for the manner in which they have handled the riots. They have acted promptly and vigorously to maintain and restore law and order. They have arrested, prosecuted and convicted persons who have resorted to violence.

The question the Sub-committee may wish to pursue is whether there is a need for a Federal criminal statute to assist the states in carrying out their primary obligation to uphold law and order. Further data ought to be gathered on this subject; it would be useful for the Sub-committee to hear testimony from the mayors and chiefs of police and perhaps other state officials to ascertain whether they believe there is a need for a Federal criminal statute in this field.

Another question is whether the proposals for Federal action would aid in controlling riots at the local level. These bills necessarily require the Government to prove an intent to incite a riot at the very time the inciter crosses a state line. This requirement would present a serious obstacle to successful prosecution. Considering that a state may convict a person for inciting a riot without delving into that sort of intent, there is a real question whether the proposals before you add materially to existing law enforcement tools.

Lastly, I would suggest that if the Sub-committee, after appropriate study, should determine that a criminal statute of the sort we have been discussing should be enacted, the language of the bills now before the

Committee should be tightened to effect the legislative purpose. These bills seek to provide punishment for both conduct and speech contributing to certain types of civil disorder. Any statute restricting speech touches on an area which, as required by the First Amendment to the Constitution, the Federal courts have been vigilant to protect. By appearing to reach too far, or by using vague or uncertain language in defining the crime sought to be punished, the Congress can place the entire bill in jeopardy. As the Supreme Court has said:

> The objectionable quality of vagueness and overbreadth does not depend upon absence of fair notice to a criminally accused or upon unchanneled delegation of legislative powers, but upon the danger of tolerating, in the area of First Amendment freedoms, the existence of a penal statute susceptible of sweeping and improper application. Cf. Marcus v. Search Warrant, 367 U.S. 717, 733. These freedoms are delicate and vulnerable, as well as supremely precious in our society. The threat of sanctions may deter their exercise almost as potently as the actual application of sanctions. Cf. Smith v. California, supra, at 151-154; Speiser v. Randall, 357 U.S. 513, 526. Because First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity. Cantwell v. Connecticut, 310 U.S. 296, 311.

NAACP v. Button, 371 U.S. 415, 432-433.

Accordingly, where conduct protected by the First Amendment may be at hazard, very careful consideration should be given to terms of uncertain application, such as "facilitate", "promotion", "encouragement", "instruct", and "civil disturbance". The Sub-committee should determine whether more specific language can be used. Tightening the language of the bill will help avoid constitutional problems. It will also, in my judgment, provide a statute that will be more serviceable as a prosecutive instrument by having a clear application that will not be misunderstood by judges, juries, or prosecutors.

ATTACHMENT D

October 11, 1966

Congressman Emanuel Celler
Chairman, Judiciary Committee
House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

On October 5, 1966, I appeared before your subcommittee on behalf of the Department of Justice to discuss H.R. 17601, H.R. 13932, H.R. 17918 and related bills, which provide criminal punishment for persons who forcibly interfere with the exercise of rights to equal treatment or who travel from one state to another for the purpose of inciting, organizing or participating in riots.

In the course of my testimony I discussed certain difficulties which the Department had with the language of the pending bills insofar as they deal with interstate travel to incite, organize, or participate in a riot. During the discussion the subcommittee asked the Department to assist it in analyzing the language of these bills. It is in response to this request that I am writing this letter.

At the outset, I should state the several principles that have guided me in commenting on the language in the proposed bills:

First, although incitement to riot is not a protected activity under the First Amendment, see, e.g., Kingsley International Pictures Corp. v. Regents, 360 U.S. 684, 689; Cantwell v. Connecticut, 310 U.S. 296, 308, efforts to curb an incitement necessarily involve restrictions on expression and thereby create the risk that First Amendment freedoms might be violated. Care must be taken to assure that the advocacy of unpopular ideas, protected by the First Amendment, is neither deterred nor punished in attempting to punish incitement to riot.

Second, courts have required legislation in the area of First Amendment freedoms to be more narrowly drawn than legislation in other areas, since, as the Supreme Court declared, the First Amendment freedoms are at once both "supremely precious in our society" and extremely "delicate and vulnerable", NAACP v. Button, 371 U.S. 415, 432-433. More stringent standards would be applied in determining whether a law that relates to incitement would be overly broad than those standards applied to gambling or racketeering. Accordingly, our concern as to the over-breadth of the legislation proposed by the subcommittee has not been put to rest by the fact that the constitutionality of the Anti-Racketeering Act, 18 U.S.C. 1952, had been sustained and that many of the bills in question adopt the structure and language of that act.

Third, even apart from constitutional considerations of over-breadth, a satisfactory pattern for a statute punishing incitement to riot cannot be found in a statute such as the Anti-Racketeering Act. That act primarily deals with unlawful business enterprises, and quite appropriately uses words which relate to activity common in business enterprises -- e.g., "promotion", "establishment", "management", and "carrying on". Most of the reported decisions regarding Section 1952 involve convictions for engaging in the interstate business of gambling. See, for example, United States v. Zizzo, 338 F.2d 577 (7th Cir. 1964); Turf Center, Inc. v. United States, 325 F.2d 793 (9th Cir. 1963); Bass v. United States, 324 F.2d 168 (8th Cir. 1963); United States v. Barrow, 227 F.Supp. 722 (E.D. Pa. 1964); United States v. Feemer, 214 F.Supp. 952 (N.D. W.Va. 1963). While the terms used in the Anti-Racketeering Act have a traditional and readily ascertainable meaning when used with respect to business transactions or business enterprises, they do not necessarily have the same clarity or significance when used in connection with incitement to riot.

Fourth, the Department suggests that the constitutional problem of over-breadth should be dealt with by the legislature. Because of the importance and vulnerability of First Amendment

freedoms, the legislature should not enact an overly broad statute regulating expression in the expectation that the courts will cure the defect by giving the statute an acceptable narrowing construction in the course of prosecutions under it. In Dombrowski v. Pfister, 380 U.S. 479, 486-487, for example, the Supreme Court enjoined the enforcement of an overly broad state law and stated that '[b]ecause of the sensitive nature of constitutionally protected expression , those subject to an overbroad statute regulating expression will not be required to risk prosecution to test their rights . The mere prospect or threat of prosecution could deter the exercise of First Amendment rights, without regard to the likelihood of success of the prosecution. The vague and critical terms in the pending bills should be defined by the legislature. In this regard, it should be noted that even in drafting the Anti-Racketeering Act Congress deemed it necessary to define the critical phrase of that statute 'unlawful activity .

On the basis of these general principles, the subcommittee might wish to consider revising the language of the proposed bills in these particulars:

(a) A definition of the term 'riot' should be included, limiting the term to public disturbances that involve unlawful acts of violence attributable to assemblages of persons and which pose an immediate danger of damage or injury to property or persons. This is the type of public disturbance that is the subject of your immediate concern, and the Supreme Court has held a state breach-of-peace statute unconstitutional when the term 'breach of the peace' was defined by the State court to mean merely 'to agitate, to arouse from a state of repose, to molest, to interrupt, to hinder, to disquiet'. Cox v. Louisiana, 379 U.S. 536, 551. See also, Terminiello v. Chicago, 337 U.S. 1; Edwards v. South Carolina, 372 U.S. 229.

Such an appropriate definition might consist of the following:

> A riot is a public disturbance which involves unlawful acts of violence by assemblages of persons and which poses an immediate danger of damage or injury to property or persons.

I also question whether it is necessary or advisable to include the phrase "or other violent civil disturbance" once the term "riot" is appropriately defined.

(b) The term "inciting a riot" should be defined in the Act. The definition must recognize that incitement is a form of expression, and should specifically state that expression protected by the First Amendment -- the mere advocacy of ideas and the mere expression of belief -- is not included within the scope of the Act. In light of Herndon v. Lowry, 301 U.S. 242, such a definition might be structured along the following:

> Inciting a riot shall mean urging or instigating other persons to riot, where such urging or instigating is done at a time and place and under such circumstances as to create an imminent danger of a riot occurring, and shall not mean the mere advocacy of ideas or the mere expression of belief.

(c) The phrase "crime of violence, arson, bombing or other act which is a felony or high misdemeanor under federal or state law" introduces an unnecessary element into the legislation. Those concepts are appropriate in a law like the Fugitive Felon Act, 18 U.S.C. 1073, but not in legislation such as this, where any act of violence in furtherance of a riot would be proscribed.

(d) The subcommittee may wish to include a definition of interstate or foreign commerce so as to delineate the scope of the Federal concern. I understand that the sponsors are primarily concerned with drafting a statute aimed at individuals that move from one state to another. Accordingly, the

bills could be written to cover only those persons who travel in interstate or foreign commerce and to provide that a person travels in interstate or foreign commerce when he travels from one state to another, or from a foreign country to a state. In such a provision, the term "state" should be defined so as to include the District of Columbia, the Commonwealth of Puerto Rico and any possession or territory of the United States.

(e) The internal structure of many of the proposed bills might be simplified in such a way so as to avoid constitutional problems and at the same time effectuate the purposes of the sponsors. For example, the language might be revised so as to prohibit any person from traveling in interstate or foreign commerce with an intent to incite a riot, or to organize a riot, or to commit any act of violence in furtherance of a riot, or to aid or abet any person in organizing a riot, or committing any act of violence in furtherance of a riot, and who thereafter incites a riot, or organizes a riot or commits or attempts to commit any act of violence in furtherance of a riot, or aids or abets any person organizing a riot, or committing or attempting to commit any act of violence in furtherance of a riot.

I do not mean to say that the suggestions offered here are the last word in statutory drafting. They represent a preliminary effort to think through the problem and come up with a constitutional proposal. I am sure that further improvements and refinements can be made.

As I indicated in my testimony, the proposed riot bills raise other problems apart from the First Amendment. A statute of this type would not be a panacea for riots. The need for enactment of this kind of bill, and its utility, could warrant further study and consideration before it is decided that a Federal criminal statute should be enacted to assist the states and cities in carrying out their primary responsibility to maintain law and order.

The Department would be pleased to provide whatever additional assistance the subcommittee might desire in this matter.

Sincerely,

JOHN DOAR
Assistant Attorney General
Civil Rights Division

ATTACHMENT E

DRAFT - ANTI-RIOT BILL

Section 1. Whoever (a) travels in interstate or foreign commerce with intent to incite a riot, or to organize a riot, or to commit any act of violence in furtherance of a riot, or to aid or abet any person organizing a riot or committing any act of violence in furtherance of a riot, and (b) who thereafter incites a riot, or organizes a riot, or commits or attempts to commit any act of violence in furtherance of a riot, or aids or abets any person organizing a riot or committing or attempting to commit any act of violence in furtherance of a riot, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

Attachment E

Section 2. For purposes of this Act:

(a) A person travels in interstate or foreign commerce when he travels from one State to another, or from a foreign country to a State; and, as used in this Act, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and any possession or territory of the United States.

(b) A riot is a public disturbance, which involves unlawful acts of violence by assemblages of persons and which poses an immediate danger of damage or injury to property or persons.

(c) Inciting a riot shall mean urging or instigating other persons to riot, where such urging or instigating is done at a time and place and under such circumstances as to create an imminent danger of a riot occurring, and shall not mean the mere advocacy of ideas or the mere expression of belief. The phrases "to incite a riot" and "incites a riot" shall be construed in accordance with this definition.

Section 3. Nothing contained in this Act shall be construed as indicating an intent on the part of Congress to occupy the field in which any provisions of the Act operate to the exclusion of State or local laws on the same subject matter, nor shall any provision of this Act be construed to invalidate any provision of State law unless such provision is inconsistent with any of the purposes of this Act or any provision thereof.

ATTACHMENT F

Other Proposals for a Federal
Criminal Statute Regarding Riots

Representative Ashmore's Proposal (112 Cong. Rec. 17651 (August 8, 1966):

Sec. 501A. Whoever, participating with one or more persons in any public demonstration, march, parade, or other public activity the purpose of which is to assert the free exercise by any ethnic group of the rights, privileges, and immunities under the Constitution and laws of the United States, knowingly and willfully -

(1) injures, intimidates, or interferes with, or attempts to injure, intimidate, or interfere with, any other person conducting himself in a lawful manner, or

(2) damages, destroys, or steals, or attempts to damage, destroy, or steal, any real or personal property,

shall be fined not more than $1,000 or imprisoned not more than one year, or both; and, if bodily injury results, shall be fined not more than $10,000 or imprisoned not more ten years, or both; and, if death results, shall be subject to imprisonment for any term of years or for life.

Attachment F

Representative Corman's Proposal (112 Cong. Rec. 17656 (August 8, 1966):

Sec. 502. Whoever travels in interstate or foreign commerce or uses any facility in interstate or foreign commerce, including the mail, in furtherance of a conspiracy to commit any act of violence, arson or bombing which is a crime under Federal or State law in order to

incite or carry on a riot and thereafter commits or attempts to commit or induces another to commit any such act of violence, arson, or bombing shall be fined not more than $1,000 or imprisoned not more than one year, or both; and if bodily injury results shall be fined not more than $10,000 or imprisoned not more than ten years, or both; and if death results shall be subject to imprisonment for any term of years or for life."

INTERFERENCE WITH RIGHTS PROPOSAL NO. 3

Legislation (part of Title III of the CRA of 1964 as passed by the House) to empower the Attorney General to institute proceedings to protect persons exercising First Amendment rights directed at obtaining equal treatment regardless of race, color, religion, or national origin.

Civil Rights
Division Staff

INTERFERENCE WITH RIGHTS PROPOSAL NO. 3

I. DESCRIPTION OF PROPOSAL

The Civil Rights Commission has proposed a statute to authorize the Attorney General and aggrieved persons to institute a civil action for preventive relief whenever there are reasonable grounds to believe that any person is about to engage or continue to engage in any act or practice which would deny or hinder another in the exercise of such other's lawful right to speak, assemble, petition, or otherwise express himself for the purpose of securing recognition of or protection for equal enjoyment of rights, privileges, and opportunities free from discrimination on account of such other's race, color, religion, or national origin.

II. NEED

A. Nature and seriousness of the problem the proposal is designed to alleviate

The proposal is directed at preventing reasonably anticipated official and non-official interference by distinct groups or individuals with lawful, peaceful exercises of First Amendment rights in the civil rights area. Thus, for example, the previously announced intention by local police officials to apply a local parade ordinance to prevent a planned civil rights march or the reasonably anticipated resumption of Klan interference with a civil rights rally would be included. Sporadic, spontaneous acts of violence by unknown persons, such as the recent shooting of James Meredith, would be outside the scope of the proposal.

There is a question whether the conduct sought to be prevented by this statute is at present such a significant problem that additional legislation is warranted. As exemplified by the Meredith March, there is an increasing, if grudging, willingness of State and some local officials to afford the required protections. Also, private litigation to obtain protection (sometimes with U. S. intervention) has been successful.

It may be agreed that effective legal remedies should exist for the vindication of the rights involved here. The question there is whether such remedies currently exist.

B. Related ongoing programs

1. Private remedies -

(a) 42 U.S.C. 1983 authorizes suit for preventive relief to redress deprivations by persons acting under color of law of rights including First Amendment rights and rights created by any Federal statute;

(b) 42 U.S.C. 1985 authorizes suit for damages against conspirators for the deprivation of the equal protection of the laws;

(c) 42 U.S.C. 2000a-3 authorizes suit for preventive relief to redress deprivations or reasonably anticipated deprivations of "public accommodation" rights created by Sections 201 and 202 of the Civil Rights Act of 1964 (42 U.S.C. 2000a-1, a-2);

(d) 42 U.S.C. 2000e-5(e), (f), (g) authorizes suit for preventive relief to redress deprivations of "fair employment" rights created by Sections 703 and 704 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-2, e-3).

2. Public enforcement of private rights -

(a) 42 U.S.C. 1971(c) authorizes the Attorney General to sue for preventive relief to redress deprivation of and interference with voting rights set out in 42 U.S.C. 1971(a), (b);

(b) 42 U.S.C. 1973j(d) authorizes the Attorney General to sue for preventive relief to redress deprivations and interferences or reasonably anticipated deprivations of and interferences with voting rights set out in the Voting Rights Act of 1965 (42 U.S.C. 1973);

(c) 42 U.S.C. 1973i(c), (d) and 1973j(a), (b), (c) make it Federal crimes to deny or interfere with voting rights established by the Voting Rights Act of 1965;

(d) 42 U.S.C. 2000a-5 authorizes the Attorney General, under certain circumstances, to sue for preventive relief to redress pattern or practice deprivations of "public accommodation" rights created by Sections 201 and 202 of the Civil Rights Act of 1964;

(e) 42 U.S.C. 2000b and c-6 authorize the Attorney General, under certain circumstances, to sue for preventive relief to redress deprivations based on race of the equal utilization of public facilities including public schools and colleges;

(f) 42 U.S.C. 2000e-5(e) authorizes the Attorney General to seek to intervene in any "fair employment" action instituted by a private person pursuant to that Section. 42 U.S.C. 2000e-6 authorizes the Attorney General, under certain circumstances, to sue for preventive relief to redress deprivations of "fair employment" rights created by Sections 703 and 704 of the Civil Rights Act of 1964;

(g) 42 U.S.C. 2000h-2 (Section 902 of the Civil Rights Act of 1964) authorizes the Attorney General to intervene in actions in the Federal courts brought by individuals seeking preventive relief to redress deprivations of rights under the equal protection clause of the Fourteenth Amendment;

(h) 18 U.S.C. 241 makes it a Federal crime for individuals to conspire to injure, oppress, threaten or intimidate any citizen in the free exercise of First Amendment rights insofar as such rights are protected against state action by the Fourteenth Amendment;

(i) 18 U.S.C. 242 makes it a law, to deprive, with specific intent, any inhabitant of the rights described in (h) above.

C. Inadequacies of present laws or programs

The problem is one of effectively progecting the rights involved. The related ongoing programs are not completely adequate. It should be noted, however, that these programs are more adequate than the Commission's outline leads one to believe.

The 1964 and 1965 legislation has afforded the Negro many of the substantive rights for which he protested, thus reducing the degree to which further protest is necessary. And the 1965 legislation, to a large extent, already authorizes equitable suits to protect First Amendment rights directed at voting equality. As a result of recent Supreme Court interpretations of and successful prosecutions under 18 U.S.C. 241 and 242, these statutes should deter more of the activity at which the proposal is aimed. And if the Title V as proposed this year is enacted, the degree and scope of the deterrent should be increased.

42 U.S.C. 1983 already authorized aggrieved persons to sue for preventive relief to redress deprivations of First Amendment rights. Defendants are limited, however, to persons acting under color of law. Indemnity Proposal No. 2 would extend this remedy to purely private interference.

Under Title IX of the 1964 Act, the Attorney General could intervene in a suit under 42 U.S.C. 1983 if a denial of equal protection was involved; it is unclear whether denial of First Amendment rights to a class of civil rights supporters or by the initial application of some local ordinance would constitute an equal protection claim.

III. DISADVANTAGES OF AUTHORIZING SUITS BY THE ATTORNEY GENERAL

A. Assuming 42 U.S.C. 1983 is amended to reach purely private conduct, private parties alone would be able to seek and obtain the judicial protection they might need. Deprivations here do not exist in a widespread, systematic manner, but arise periodically in response to isolated manifestations of protest. The aggrieved party will usually be a group or organization rather than an individual, there is lacking here the discouragement to sue based on financial and administrative burden and fear of physical or economic reprisal which warrants Department of Justice action in the substantive areas of racial discrimination.

The Commission's proposal is broader than those provisions in the 1964 Act which give the Attorney General

power to sue for preventive relief. There are no limitations here based on inability to sue, pattern or practice, or public interest which may be found in Titles II, III, IV and VII of that Act.

2. vindication of personal constitutional rights has been the role of the aggrieved private party. Where deprivations have occurred in the area of substantive civil rights, a limited departure has been made from this tradition based on the considerations mentioned immediately above. These considerations are lacking from the First Amendment area and particularly from that well organized aspect of the First Amendment area which is the civil rights movement today. In opposing "Part III" legislation in the 1963 Civil Rights Bill (which legislation was broader than this proposal), Attorney General Kennedy stated:

> One assumption of the proposal is that Federal court injunctive processes can eliminate or at least curtail in some way official opposition to racial demonstrations and the abuses that such opposition at times creates. First, this does not go to the heart of the problem which is the elimination of the injustices demanding the demonstrations and is our major task for the future. Hearings, House Judiciary Comm., on H.R. 7152 as amended by Subcomm. No. 5, 88th Cong., 1st Sess., p. 2657 (Oct. 15, 1963).

3. It would be a mistake to assume that all demonstrations are protected because their aims are consistent with national policy and are supported by the majority of American people. Limitations may be constitutionally imposed upon the time of demonstrations, their duration, place and number of people. The proposal would necessarily involve the Attorney General and the Federal courts in difficult, unclear questions of First Amendment constitutional law. These questions would be made more difficult by their abstractness in suits directed at deprivations "about" to occur. And an injunction directed against private interference might, in view of the broad statutory language ("hinder"), have a chilling effect on the exercise of First Amendment rights by counter-demonstrators. It is dubious whether the Attorney General should have to make or ask the courts to make constitutional determinations under these various circumstances.

Determinations such as these, moreover which involve the practical appraisal of local conditions, have historically been made in the first instance by local officials in the exercise of the police power. To shift this initial determination to the Attorney General and allow him to reject the local judgment as to when, where and under what circumstances a demonstration should be held, might jeopardize a proper Federal-state balance. Attorney General Kennedy emphasized this point in 1963 and went on to say (ibid, p. 2658):

> These difficulties point to the basic danger of relying on injunctions to control in advance the actions of local police. One result might be that State and local authorities would abdicate their law enforcement responsibilities, thereby creating a vacuum in authority which could be filled only by Federal force. This in turn . . . would require a national police force.

Finally, if the Attorney General had the power to sue, private parties might be less willing to seek meaningful accords with local officials in an area where such accords have proven to be possible.

COMMUNITY RELATIONS SERVICE

II. RACIAL VIOLENCE

The need for legislation to combat racial violence certainly is not less than it was when the 1966 Bill was submitted, and every indication is that the need is greater. Much of the evidence of this need is the same as that set forth in our discussion of Indemnification.

A. Legislation

Accordingly, we strongly recommend resubmission of Title V of the 1966 Bill as part of the 1967 civil rights legislation. That legislation should be strengthened by the enactment of an indemnification program such as that proposed under the heading of "Indemnification."

B. Anti-Riot Legislation

We are strongly opposed to combining any such racial violence legislation with anti-riot legislation similar to that enacted by the House.

This Administration knows that riots are not the basic problem; the basic difficulty is rather the conditions under which Negroes live in the ghetto. We would be poorly serving the needs of the country if we adopted the least enlightened view in this area. If an anti-riot provision is nonetheless enacted, it should certainly not be enacted without the Administration's going forward with a legislative program attacking the basic problems of the ghetto and the disparities in the lives of minorities.

Violence

Attach. 1

ATTACHMENT

Justice

U.S. DEPARTMENT OF COMMERCE
COMMUNITY RELATIONS SERVICE

Form CD-121
(1-63)
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UNITED STATES GOVERNMENT

Memorandum

TO : Mr. Roger W. Wilkins
Director

DATE: July 19, 1966

In reply refer to:

FROM : Mr. John W. Purdy
Assistant Counsel

SUBJECT: Report on the Extent of Reprisal Activity

As a result of Executive Staff consideration of recommendations concerning possible CRS action to get Federal help for reprisal victims, John Purdy and Douglas Baker, summer research assistant, were assigned to investigate the extent of the problem. Our consideration was limited largely to cases of reprisals against persons who exercised school integration rights or registered to vote, but a few instances of reprisals and intimidation involving more general involvement in the civil rights movement were disclosed by our investigation.

Extensive information as to allegations of reprisals is available in the files of the Civil Rights Division, Department of Justice, the Office of Equal Educational Opportunity in HEW, the American Friends Service Committee, 41 Exchange Place, Atlanta, Georgia, and the Legal Defense Fund office in Jackson, Mississippi. Additional information can be obtained from individuals involved in the civil rights movement such as Unita Blackwell, Mayersville, Mississippi, John Buffington, West Point, Mississippi, and Mrs. Charles Braxton, Demopolis, Alabama.

FINDINGS

The investigation disclosed that there have been numerous, indeed dozens, of cases of eviction, dismissals and other less significant acts of intimidation or reprisal in the last year. The attached excerpt from "The Continuing Crisis," published by the Southern Regional Council and the American Jewish Committee, is but a mere suggestion of the whole problem. The attached listings from the Civil Rights Division are a more thorough indication of the extent of the problem. The tabulation of reprisals and rights involved are based on all of the information available.

At the outset it should be stated that at best the research is limited, primarily because of time, personnel and availability of records. The statistics that resulted have primarily come from

the docket cards and files of the Civil Rights Division of the Justice Department. However, during the period of research, many of the docket cards and files were in use and not available for our examination. A compilation of information from the Office of Education in HEW would probably be redundant, since most of the complaints received by Justice have also been referred to HEW.

THE FOUR VARIABLES

As kinds of civil rights activity, three (voter registration, public accommodation and school integration) probably need no explanation. General civil rights activity includes membership and/or participation in various civil rights organizations, civil rights boycotts and demonstrations, and the other day-to-day exercise of one's rights which does not fall specifically into either of the first three categories. Here again the research has been limited to just four kinds of civil rights which have caused increased reprisals since the passage of the 1964 Civil Rights Act.

The files of the Civil Rights Division are heavily laden with what is called cases of Summary Punishment. Summary Punishment refers to the hundreds of cases which involved police officers who in one or many ways have penalized a Negro subject for exercising or attempting to exercise a civil right.

Material on intimidation during civil rights demonstrations is not included.

THE EXTENT OF REPRISALS

It is of primary interest to show that in many cases of reprisal, some material or legal action is necessary to help the victim. For illustrative purposes, the attached case studies in most instances concern victims actually visited and interviewed.

Reference to the State charts reveals that the problem is most serious in Mississippi, Alabama, Georgia, and Louisiana. In Mississippi the plight is indeed a "continuing crisis." We have been advised that the Justice Department has been receiving numerous reports of dismissals or evictions as a result of the recent march in Mississippi. There are many instances in which adequate law enforcement is the most important remedial act to punish and prevent continuing intimidation. Especially is this so in the area of general harassment which results from attempts to exercise freedoms covered by the public accommodations section of the Civil Rights Act.

But the area on which our attention is focused is that area where victims are in need of assistance to get them on their feet again.

In North Carolina, at least 31 Negro teachers allege loss of their jobs as a result of integration. In some cases such persons remain unemployed.

In Georgia, there is the striking example of Sam Hill - Docket No. 10-275-6...196-19M, Civil Rights Division. After Mr. Hill enrolled his children in a previously all-white school, he lost his job in the small town of Thomasville, Georgia. His house was shot into on September 5, 1965, less than a week after the enrollment of his children. Lucius and Estus Taylor (brothers), upon investigation, denied the shooting. Three days later, on the eighth of September, Sam Hill was evicted by his landlord. According to the Civil Rights Division, after finding what can under no circumstances be called a decent place to live, Mr. Hill was forced to dispose of the excess of his furniture and appliances in another house. Finally, on December 12, 1965, just three days before Christmas, this house burned to the ground. Mr. Hill's case is presently under investigation by the Criminal Division of the Justice Department. But in the meantime, Mr. Hill is a victim of the "Tragic Gap," unemployed, virtually without a home because he enrolled his two children in a previously all-white school.

In Alabama the extent of the problem is even more widespread. The chart for the State of Alabama reveals no eviction for school integration, but there are over 107 instances of eviction for general civil rights activity, which in this instance includes voter registration and school integration. It must also be remembered that in the rural Southland, eviction from the plantation is generally equivalent to firing or loss of employment. Further, in the rural setting, an attempt to exercise one civil right generally causes a series of reprisals. The setting is intimate. Sharecroppers and tenants (despite the wall that separates the races) are known by the whites in authority and position. Consequently, the eviction of a family - if not the occasion of actual loss of job - is followed by futile attempts to be employed in the white community.

Roosevelt Bracey - Case Study 1 - is another example of the "multiple factor" associated with civil rights activity. After enrolling two daughters in the previously all-white Wetumpka High School, the family was firebombed. They are presently housed in the most pathetic unsanitary shanty. Mr. William Seabron at the Department of Agriculture said that apparently the Braceys are "too poor" to obtain an FHA loan or any other financial assistance from his Department. Sitting at dusk in the middle of a cotton field, one is astonished that the family can still laugh under such conditions.

Some families now live in tent cities. In Forkland, Alabama, eight families were evicted from a single plantation, and four of these families now live in five tents. Case Study 2 further describes the plight of these four families.

Perhaps the most revealing situation occurred in Sharkey-Issaquena Counties. Case Studies 4 through 11 illustrate the problem. Ten families were summarily evicted from their plantations when they enrolled their children in Fielding Wright School. In one fell swoop, approximately 40 people were homeless and jobless. The life of the sharecropper or tenant farmer is precarious at best. But destitution is immediate to the poor man with no one or no place to turn to. These people may truly be called displaced persons.

There are many cases in which criminal suits are a proper course of action. And, it is important that such suits be encouraged, at least to serve as a deterrent to the growth of such intimidations. But in the meantime, Mrs. Pearl Sanders, Case Study 5, wonders whether she can send her children back to Fielding Wright School in September 1966. In many of the cases in Sharkey-Issaquena Counties, it may be noted that the women, if presently employed, are employed by Child Development Group, a Headstart Program, in Mississippi (CDGM). This will last until September. There are virtually no employment opportunities for the men of the families.

It is probably significant that despite the limitations of this report, there is the implication of a trend of reprisal activity. Unquestionably, further and much needed research (especially in the area of Summary Punishment which involved police officers) would reveal a higher incidence of intimidations and reprisals. The files of the Legal Defense fund, Jackson, Mississippi, would probably be an excellent starting point, or American Friends Service Committee, Atlanta, Georgia.

Miss Marion Wright offered us access to the files of her office concerning reprisals in Mississippi. Mrs. Winifred Falls has indicated that we might be given access to the AFSC files in Atlanta concerning reprisal cases.

CONCLUSION

The investigation reported herein discloses a situation calling for affirmative action by the Federal Government. Accordingly, it is recommended that the CRS proceed to implement the proposals previously made which generated this investigation.

The principal recommendation was the convening of a task force of Federal agencies to bring all available resources to bear on the

D. JURY REFORM

JURY REFORM PROPOSAL NO. 1

Legislation (similar to Title I of the CRA of 1966 as passed by the House) to establish an uniform and nondiscriminatory system for the selection of grand and petit jurors in all federal district courts from a broad cross-section of the District or Division. Selection is to be primarily from voter registration lists.

Department of Justice
Civil Rights Division Staff

SUPPLEMENTARY MEMORANDUM CONCERNING
FEDERAL JURY REFORM

I. DESCRIPTION OF PROPOSAL

The basic features of the proposal -- Title I of the 1966 civil rights bill (with minor technical modifications) -- are set forth in the outline. The basic policy considerations embodied in Title I and a brief description of the selection machinery it would establish are described below.

A. Policy Judgments Embodied in Title I. The draftsmen of the proposal endeavored to set up a juror selection system that would automatically produce, over time, federal jury panels that actually represent a broad cross-section of the persons residing in the judicial districts from which they are drawn, in terms of race, religion, national origin, sex and economic status. To accomplish that overall objective, the following policy judgments are embodied in the Title:

1. Names of all potential federal jurors must be selected from a uniform and representative source -- voter registration lists.

2. Random selection must govern the taking of names from the basic sources and, where appropriate, each successive narrowing step in the selection process.

3. Qualified persons residing in all parts of every judicial district must have an equal opportunity to serve as jurors.

4. The federal jury officials must follow detailed uniform procedures which do not vest in them any substantial degree of discretion.

5. Determinations of whether a person is qualified to serve must be based upon objective criteria. The basic assumption here is that the average voter, including a person with little formal education but possessing simple literacy, is qualified to serve as a federal juror.

6. The power of the court to excuse and exclude individuals and classes of persons from jury service must be circumscribed to assure implementation of the cross-section policy.

B. Mechanics of the Title I Selection System. The Title I selection procedure is, in essence, as follows:

1. The jury commission for each district or division would obtain copies of all of the voter registration lists of persons registered in the district or division from the appropriate election officials.

2. They would select the required number of names from the voter lists, in accordance with a random selection procedure prescribed by the chief judge of the district -- for example, every hundreth name on the lists.

3. They would write each name on a card or slip of paper and place it in a "master jury wheel."

4. As a need for jurors arises, they would draw at random from the master wheel such number of names as it is anticipated may be required.

5. They would summon each person whose name is drawn from the master wheel to appear before the clerk to fill out a juror qualification form. (In areas where such a "personal appearance" procedure would be unduly inconvenient for prospective jurors, the forms could be mailed to them, executed, and returned to the clerk by mail.)

6. Each prospective juror would execute a juror qualification form that would provide all of the information necessary to determine whether he satisfies the statutory qualifications, which would be:

a. citizenship, age 21, one year residence in the district;

b. ability to read, write, speak and understand English;

c. freedom from serious mental or physical defects;

d. freedom from felony convictions.

7. The jury commission would determine, solely on the basis of the executed form (with certain minor exceptions), whether a person is qualified to serve.

8. The names of all persons determined to be qualified would be placed in a "qualified juror wheel."

9. As jury panels are needed, the required number of names would be taken from the qualified juror wheel, persons would be assigned to panels, and summoned to serve.

Title I provides a special challenge procedure to assure that the principal mechanical provisions of the Title are complied with. It would be available to criminal defendants, private civil litigants and the Attorney General. Upon the filing of a challenge motion the challenger would be entitled to present in support of his motion the testimony of the jury commission and, where there is some evidence that there has been a failure to comply with the prescribed procedures, any relevant records of the jury commission that are not public or otherwise available. If the court then finds that there has been a substantial failure to comply with the procedures, it would be required to dismiss the indictment or stay the proceedings, as appropriate.

II. NEED

In his 1966 State of the Union Message, President Johnson called for reform of the federal jury system. The need for such reform, substantially as stated in the outline, has been described by Representative Celler, Chairman of the House Judiciary Committee, in his Statement of Additional Views filed with the House Judiciary Committee's Report concerning the 1966 civil rights bill. Further elaboration of the need for reform is unnecessary here.

III. ADVANTAGES AND SPECIAL CONSIDERATIONS

As stated in the outline, Title I will operate to produce truly representative and competent juries and its provisions are administratively feasible. This is evidenced by the fact that the essential features of the Title I selection system are currently in use in a number of federal judicial districts in various parts of the country which have jurisdiction over both urban and rural areas. For example, at least twelve federal district courts now rely on random selection of names from voter registration lists to some extent or exclusively as their basic source of jurors. The Title will involve some increased expense, but this would be due primarily to a proposed increase in fees and subsistance and mileage allowances for jurors, which even the critics of the Title agree are now inadequate. Of course, many districts will encounter administrative problems in making substantial changes in their present selection systems, but this is inevitable if any uniform selection system is to be prescribed. In short, there are no substantial disadvantages to the enactment of Title I.

IV. ALTERNATIVES CONSIDERED AND REJECTED

1. Attempt to improve existing selection procedures through consultations with the Judicial Conference, federal judges and clerks of court.

This approach is being followed with respect to district courts in the Fifth Circuit, due to the problems generated by the recent decision in United States v. Rabinowitz, No. 21256, C.A. 5, decided July 20, 1966. In Rabinowitz, the Fifth Circuit held that the objective qualifications of present law are the maximum that may be required by federal jury officials. This has the effect of outlawing the selection of "blue ribbon" juries in that circuit and makes continued use of the "key man" system impracticable. However, as indicated in the outline, this approach does not appear to offer an acceptable, long-term solution to the problem. Because the present law leaves so much to local determination, there appears to be little hope that uniformity can be achieved in this way, particularly in view of the wide disagreements among the federal judges as to desirable methods for selecting jurors.

2. Codification of the "key man" system with safeguards designed to make federal juries more representative.

Senator Tydings and Chief Judge Thomsen of the United States District Court in Maryland have submitted to the Committee on the Operation of the Jury System of the Judicial Conference similar proposals that would incorporate some of the features of Title I, but would change two fundamental features of the Title.

First, a five or seven-man panel of jury commissioners would be appointed for each judicial district. To the extent practicable, they would be representative of the various identifiable ethnic, social and economic groups in the district and the panel would be free to select names of potential jurors from a wide variety of sources.

- Second, in determining the qualifications of a juror, the panel of jury commissioners could consider his "intelligence", "probity" or "common sense" and disqualify him if they find him so lacking in these qualities "as to be unable to render satisfactory jury service."

These proposals are unacceptable for two reasons: (1) the objective of uniformity would be sacrificed; and (2) the jury officials would be authorized to make subjective judgments about the competence of jurors and this would unnecessarily open the door to the appearance, if not the substance, of unfairness. There are numerous other practical objections to these proposals.

3. A "trigger" mechanism to make Title I effective in districts where racial discrimination has occurred, leaving other districts free to follow their present systems.

Senator Tydings submitted a proposal of this kind to the Judicial Conference Jury Committee. The clerk for each district court would be required to submit an annual report to the Attorney General showing the race of persons summoned for jury service in the preceding

three years. The Attorney General would be authorized to bring proceedings in the reporting courts (or if no report was filed, in non-reporting courts) and if the report showed that Negroes were proportionally under-represented by more than 50 per cent (as compared to the number of age-eligible Negroes in the district) or, with respect to non-reporting courts, if the clerk failed to prove that the court's juries represent a fair cross-section of the community, the court would be required to order implementation of the Title I system for the district. The Title I system would also be automatically triggered upon a finding of racial discrimination in the selection system in civil or criminal cases in a particular district.

This proposal was rejected because it would not achieve uniformity in the selection systems for all federal district courts and because of the problem of underrepresentation of persons of low income, a national problem, would remain unsolved. Moreover, there are practical objections to the trigger mechanism.

4. Authorizing the Administrative Office of the United States, with the assistance of the Bureau of the Census, to process and approve juror selection plans prepared by the jury commissioners for each district; abolition of the literacy requirement, except in complicated civil cases.

Senator Douglas introduced a federal jury reform bill (Title I of S. 2923) sponsored by the Leadership Conference on Civil Rights which incorporated those features. This proposal was rejected because, again, the objection of uniformity would have been sacrificed and because it appeared to be impractical. Among other deficiencies of the Leadership Conference bill did not spell out in any detail the features of the "sampling plans" that were to be adopted in the various districts. Moreover, literacy should be required of jurors in all kinds of cases.

5. Designation of the voter rolls as the uniform source of names for jurors, and providing an objective test for the present literacy qualification (sixth grade

education), but leaving most of the present law on federal juries unchanged.

Congressman Mathias and other Republican Representatives introduced a federal jury bill this year (H.R. 13323) incorporating these features. This proposal has some merit, but it is inadequate to insure uniformity of selection procedures and truly representative juries because it does not deal at all with many of the problems covered by Title I. Moreover, the enforcement procedure under this proposal -- supervision of jury selection by the chief judges of the circuits and, if necessary, by a Justice of the Supreme Court -- are impractical.

V. COSTS

As noted in the outline, the estimated annual cost for Title I is $7,250,000. The proposed increase in fees for witnesses would amount to $2,250,000, and the proposed increases in fees for jurors and jury commissioners would amount to $5,000,000. Some federal judges and clerks of court have expressed the view that administration of Title I will require additional clerical personnel. While this is probably true with respect to some districts, it is believed that such need as there may be for additional personnel will not involve substantial expense.

U.S. COMMISSION ON CIVIL RIGHTS

Administrative-Confidential

Federal - Title I of the 1966 bill, with changes suggested by hearings and debates in Congress. This proposal prescribes a detailed uniform system for the selection of grand and petit juries in all federal district courts. It designates voter registration lists as the basic source of names of potential jurors and specifies procedures for each subsequent step in the selection process. Its implementation would assure that federal jury panels would represent a broad cross-section of the population of the judicial district.

I. Description of proposal

Under Title I of the proposed Civil Rights Act of 1966 each Federal district court would establish a jury commission which would be required to maintain a master jury wheel from which the names of potential jurors would be selected. The names in the master wheel would be selected at random from voter registration lists, unless the judicial council of the circuit should prescribe otherwise. All persons whose names were drawn from the master wheel by the jury commissioners would be required to fill out a juror qualification form which would elicit the person's name, address, age, sex, education, race, and occupation. In criminal trials the defendant could move to dismiss an indictment for failure to comply with the above procedures. In civil cases, either party could so move.

II. Need

A. Description of the nature and seriousness of the problem the proposal is designed to cure or alleviate

It was one of the central purposes of the Fourteenth Amendment to do away with a dual standard in the administration of justice for whites and Negroes. One hundred years have elapsed but we have failed to achieve that purpose in some areas of this country. In parts of the South the instrumentalities of justice have been used, in the words of Commissioner Erwin N. Griswold, "to perpetuate a system of social control". Exclusion of Negroes from juries is one of the ways in which this social control is exercised. Crimes or civil wrongs of certain types, committed against Negroes or whites believed to sympathize with Negroes, cease to be crimes or wrongs at all. Disproportionately large penalties are imposed on Negroes believed to have flouted prevailing social mores. And it is not difficult to appreciate the effect that knowledge by Negroes of racial discrimination in the selection of juries may have in deterring them from seeking civil remedies in just causes.

Titles I and II of the proposed Civil Rights Act of 1966 were designed to deal more effectively with discrimination in the selection of juries and thereby make inroads upon the dual standard. These titles also could help to end racial violence by increasing the likelihood that offenders will be made to answer for their crimes.

Title I would provide for a uniformity in jury selection in the Federal system that is now lacking. Present systems of Federal jury selection often lead to the empaneling of "blue ribbon" juries, resulting in the exclusion of large numbers of minority groups and blue collar workers.

In the recent Rabinowitz case, the United States Court of Appeals for the Fifth Circuit struck down the "key man" system of selecting Federal jurors, under which persons were named to the lists from which juries were chosen by outstanding citizens in each community. The court found that this system of jury selection had the effect of excluding virtually all Negroes from Federal juries. The court ruled that jury panels must be broadly representative of the community. Title I would expedite the actual achievement of that objective. Under Title I in areas where the judicial council finds that voter registration lists do not provide a broad representation of the community, it could authorize the jury commission to supplement the voter registration lists. Thus, in certain areas of the deep South, where there are still large numbers of Negroes who remain disenfranchised, other lists could be used.

1. Statistical data

Not available.

2. Indication of any need for further study

No further study is required.

B. Description of related ongoing programs

Criminal prosecution of an official who is guilty of racial discrimination in the selection of juries is available under 18 U.S.C. 243.

C. Inadequacies of present laws or programs

Proof of jury discrimination now requires an extraordinary amount of effort. The protagonist must show that over a period of time a particular group has been excluded from jury panels. This cumbersome procedure will be greatly simplified by the proposed bill. It will now be necessary to prove only that the required procedures have not been followed in selecting the jury panel.

Criminal sanctions against jury discrimination have not been used. Even if they were, the criminal process would not afford the advantages of the detailed procedures which Title I directs Federal jury officials to follow.

III. Advantages and disadvantages

C. Legal problems raised by proposal

No legal problems are raised by Title I of the proposed bill as passed by the House of Representatives. An earlier question was raised concerning the constitutionality of a provision in the administration's original bill submitted to Congress, which would have required a person to list his religion on the juror qualification form, but this was stricken by the House.

D. Other considerations in favor of and in opposition to the proposal

The provisions of Title I could be carried out with little additional administrative work. Many districts already use voter registration lists to obtain names for their jury panels.

JURY REFORM PROPOSAL NO. 2

Legislation (Title II of the CRA of 1966) to proscribe jury discrimination in State courts through authorization of civil suits by the Attorney General and through provision of a discovery procedure to enable the Attorney General and private complainants to determine whether such discrimination exists; and to require State courts to keep race data on potential jurors.

Department of Justice
Civil Rights Division Staff

SUPPLEMENTARY MEMORANDUM
CONCERNING STATE JURY REFORM

I. DESCRIPTION OF PROPOSAL

The substance of the proposal -- Title II of the 1966 civil rights bill with a provision added to require maintenance of race identification records -- is adequately described in the outline. The proposal is a moderate one. Two policy questions are discussed below.

Representation of Women on State Juries. There are five categories of State laws concerning jury service by women:

(1) laws which disqualify women altogether (3 States);

(2) laws which require women, but not men, to volunteer to serve (3 States);

(3) laws which grant women excuses from service based solely on sex (13 States);

(4) laws which grant women an excuse if they have family responsibilities (9 States);

(5) laws expressly providing that women are eligible for service on the same basis as men (22 States).

Title II of the 1966 bill as introduced would have superceded the first two categories of laws described above. The House adopted an amendment to Title II under which the making of "any distinction" based on sex in relation to jury service would have been illegal. The effect of this would have been to override the third category of laws described above, those which grant women an absolute right to an excuse from service based solely on sex. The legislative history indicates that the House amendment would not have superceded the "family responsibility" laws of nine States (category 4).

It is undoubtedly true that laws granting excuses based solely on sex result in underrepresentation of women on juries. On the other hand, the courts probably would not hold that these laws violate the Fourteenth Amendment, standing alone. Cf. Hoyt v. Florida, 368 U.S. 57. But Congress would have the power to override these laws if it deemed them inconsistent with the Fourteenth Amendment. Katzenbach v. Morgan, 384 U.S. 641. The House amendment broadening the prohibition of discrimination on account of sex was adopted by a wide margin and appears to be sound as a matter of policy.

Requiring Maintenance of Race Identification Records. Title II of the 1966 bill required State jury officials to preserve such records as they prepared or obtained in the performance of their duties for a period of four years after use, but it did not require them to maintain any particular records. While comprehensive federal record-keeping requirements might well impose an undue burden on State jury officials, it would not be unreasonable to require such officials to keep a record of the race of persons whose names are placed in the jury box or wheel and who are assigned to jury panels. Race identification of persons in the jury wheel or on panels over a period of time is frequently critical to proof of a claim of systematic exclusion of Negroes from jury service. See, e.g., White v. Crook, 251 F. Supp. 401 (M.D. Ala. 1766). Unless records of the race of jurors are maintained and made available to litigants, it would often be difficult, particularly for a private litigant, to prove what may well be a meritorious claim of exclusion. The federal jury reform proposal would require federal jury officials to maintain a record of the race of all persons whose names are drawn for testing of qualifications. A similar provision should be included in the State jury reform proposal.

II. NEED

The need for federal legislation to eliminate discrimination in State court juries is indicated in the outline. This need has been similarly acknowledged in the Congress in connection with consideration of the 1966

civil rights bill. See, Additional Views of Representative Celler to Accompany H.R. 14765, House Report No. 1678, Part 2, 89th Cong., 2d Sess., pp. 7-10; Joint Statement by Ten Members of the Senate Judiciary Committee Supporting Adoption of H.R. 14765, 112 Cong. Rec. 20925-20926 (daily ed.).

JURY REFORM

State - Title II of the 1966 bill, with certain modifications. This proposal outlaws discrimination in State juries on account of race, color, religion, national origin, sex and economic status. It authorizes the Attorney General to bring civil actions against State jury officials to enforce the prohibition of discrimination and provides a discovery procedure to facilitiate determinations of whether discrimination has occurred. A provision requiring maintenance of race identification records could be added.

I. DESCRIPTION OF PROPOSAL

Title II of H.R. 14765 as passed by the House prohibits discrimination in State jury selection processes because of race, color, religion, national origin, sex or economic status. It authorizes the Attorney General to enforce the prohibition by civil injunctive proceedings against state jury officials. It also provides a special discovery procedure. Whenever it is asserted in an appropriate case that discrimination has occurred in the jury selection process, local officials would be required to furnish specified information concerning their jury selection procedures. The bill would authorize the court, if it makes a finding of discrimination, to grant relief, which could include the suspension of the use of any objectionable qualification and the appointment of a master to operate a state court jury system.

II. NEED

A. Description of the nature and seriousness of the problem the proposal is designed to cure or alleviate.

The United States Commission on Civil Rights found in 1961 that "the practice of excluding Negroes from juries on account of their race still persists in a few states." In recent years there have been judicial findings of discrimination in jury selection in State courts in Alabama, Arkansas, Georgia, Kentucky, Louisiana, Mississippi and North Carolina. In 1966 a Federal court found that Negroes had been systematically excluded from jury service in Lowndes and Macon Counties, Alabama.

The burden of combating such racial exclusion from juries now rests entirely on defendants in criminal cases and putative private plaintiffs. Under present law, the Federal Government may not initiate action to eliminate jury discrimination in State courts, but can only intervene in suits already begun by others. Since not many private persons are willing and financially able to bring a suit challenging discrimination in jury selection, the criminal defendant bears the brunt of proving such discrimination, often in a climate hostile to the assertion of the nondiscrimination right involved. Even if he raises the claim of unlawful

exclusion, the very records necessary to proving his claim may not have been preserved by jury officials. Even where the records are available, they may be so voluminous that their examination requires an expenditure of time and resources which only the rarest litigant can bear.

While Title II, as introduced and as it passed the House, would facilitate proof of jury discrimination, it still would place a tremendous burden on the party attempting to prove discrimination in jury selection.

The most critical problem in proving discrimination in the selection of juries is to establish the racial composition of the jury rolls and boxes and the race of the persons actually selected as jurors. The basic element of a prima facie case of discriminatory jury selection is under-representation of Negroes on the rolls, in the boxes, or on the juries themselves. The availability of reliable statistics obviously is crucial to the litigant who attempts to prove such under-representation. Without such records, racial identification of the substantial numbers of persons involved would be a difficult, expensive and time-consuming procedure. In rural counties it may be possible, by dint of extraordinary effort, to find persons who know the name and race of almost every resident of the county. Even in such counties, however, the problem of proof is staggering. In White v. Crook, decided February 7, 1966 by the United States District Court for the Middle District of Alabama, the plaintiff challenged the alleged exclusion of Negroes from juries in Lowndes County, Alabama. The effort was successful only because the United States intervened and devoted an enormous number of man hours, at great expense, to the analysis of jury records and the racial identification of those who had served on juries in the county.

The problem is compounded where it is necessary to prove discriminatory jury selection in a large city. In Billingsley v. Clayton, 5th Cir., decided April 5, 1966, the plaintiffs complained of exclusion of Negroes from juries in Jefferson County, Alabama, which includes the cities of Birmingham and Bessemer. In that case the private litigants were faced with the task of ascertaining the race of each of more than 40,000 persons whose names were on the jury rolls. The district court concluded that the plaintiffs had failed in their proof and the Fifth Circuit agreed. The Court of Appeals quoted from the amicus curiae brief submitted by the Department of Justice as follows (slip op, pp. 18-19, fn. 6):

> "The difficult problem in this case is that a critical link in the evidence--the racial composition of the jury boxes--is missing. If for example the plaintiff could have proved

that the jury boxes contain extremely low percentages of names of Negroes, or that some precincts heavily populated with Negroes are grossly under-represented, these facts would cast considerable doubt upon the credibility of the testimony of members of the Jury Board explaining their system for selection. If on the other hand the proof showed that there was a substantial or reasonable proportion of names of Negroes in the jury boxes the plaintiff would lose his case as to these defendants.

As the record stands, this Court could conclude that the plaintiff had failed in his proof, since the racial composition of the jury boxes was not proved."

In a letter dated June 9, 1966, to the United States Commission on Civil Rights, Charles Morgan, attorney for the plaintiffs in Billingsley, cites a case now pending in the United States District Court for the Southern District of Mississippi which questions the racial makeup of Federal court juries in that district. He states: "There the United States District Court maintained no racial records, and we have been put to the task of recruiting individuals in more than 40 Mississippi counties to ascertain the race of those persons who have been utilized as jurors in that court during the past several years. Since thousands of names are involved, the almost prohibitive cost of such a procedure is readily apparent."

Many, perhaps most, Southern courts do not maintain records of the race of jurors. Title II did not require state jury officials to maintain such records.

To require state jury officials to identify the race of persons on the master jury list, or of persons whose names are in the jury wheel or box, or of persons summoned for jury service, might prove burdensome in those areas where jury officials do not know the race of such persons. In a large city, for example, where the jury list is composed of all persons in the telephone directory, state jury officials would not know the race of all persons in the directory. It would be a relatively simple matter, however, for state jury officials to record the race or color of each person who (1) appears before a state jury official for the purpose of having his qualifications as a juror tested; (2) responds to a summons for service as a juror; (3) is found qualified to serve as a juror, and (4) actually serves on a grand or petit jury. Such records would serve two important functions. First, they would enable the Department of Justice to determine readily, by examining the records under section 205(b), whether Negroes were substantially under-represented

in the suggested categories. Secondly, the records would enable the Department or a private litigant to establish, under section 204(c), probable cause to believe that the nondiscrimination right had been denied or abridged, without the expensive, time-consuming, and difficult task which the absence of racial records presently imposes. Thus, the Supreme Court long has allowed litigants to establish a prima facie case by proof of the objective results of the jury selection procedure. Norris v. Alabama, 294 U.S. 587; Pierre v. Louisiana, 306 U.S. 354; Smith v. Texas, 311 U.S. 128; Patton v. Mississippi, 332 U.S. 463; Hernandez v. Texas, 347 U.S. 475; Reece v. Georgia, 350 U.S. 85; Arnold v. North Carolina, 376 U.S. 773. Once it is established that there is probable cause to believe that the nondiscrimination right has been denied or abridged, the burden of proof would shift to the State, and it would be the State's responsibility to show that there were valid reasons why Negroes were under-represented among the persons in the category involved.

In addition, it would impose no unreasonable burden on State courts to record (1) the name of each juror who is challenged peremptorily and whether that juror was challenged by the prosecution or the defense--thus affording a means of establishing a practice by the prosecutor--if one exists--of excluding, and thereby discriminating against Negroes by improper use of the peremptory challenge. See Swain v. Alabama, 380 U.S. 202 (1965).

Proof of jury discrimination also would be facilitated by creating a rebuttable presumption of discrimination where there is a recent court decree finding such discrimination or disproportionately low participation of any protected class over a period of time.

III. ADVANTAGES AND DISADVANTAGES

B. Legal problems raised by proposal.

Questions have been raised as to whether Congress has power to require States affirmatively to revise their criminal procedures. But just as the Supreme Court has required the state courts to observe Fourteenth Amendment, due process procedural guarantees in their criminal trials, so Congress, which shares responsibility for implementing the amendment, can require state courts to observe Fourteenth Amendment equal protection guarantees.

E. INDEMNITY

INDEMNITY PROPOSAL NO. 1

Legislation to create a federal administrative agency (or use an existing agency) to hold hearings and award payments to persons injured as a result of federal crimes, including civil rights crimes; the federal government would pay the claim and have a cause of action for reimbursement against the wrongdoer.

CIVIL DIVISION STAFF

Memorandum on Compensation for
Victims of Federal Crimes

1. Description of proposed legislation.

This proposal would provide compensation for personal injuries or death caused by persons committing crime under the laws of either the United States or the District of Columbia. The amount of compensation payable to victims of federal crime or their dependents would be geared to the Federal Employees Compensation Act, which presently covers both Government and District of Columbia employees for work-connected injuries, and claims would be administered by the Bureau of Employees Compensation under existing procedures. Proof of a criminal conviction would be considered conclusive evidence, in the compensation proceedings, that the offense had been committed; however, the claims for compensation may be asserted prior to any criminal proceeding. Compensation could be denied or reduced by reason of the victim's conduct at the time of injury or death. The offender's family and members of his household would be excluded from the plan's coverage. As provided in the Federal Employees Compensation Act, the Government could require the claimant to assign to the United States any right of action against a third-party or to prosecute any such action in his own name, and the Government would be reimbursed out of any third-party recovery by the claimant.

2. Discussion of proposed legislation.

(a) Compensation of victims of federal crimes. On two recent occasions, the Civil Division has taken the position of favoring "the principle of society assuming an obligation to compensate victims of violent crimes", (memo to Deputy dated Nov. 29, 1965, re S. 2155 89th Cong.; memo to Deputy dated June 6, 1966 re legislative proposal, 89th Cong., of Council of State Governments); on each occasion, reservations were expressed concerning the form of the legislative proposal.

This proposal, which would take the form of separate legislation for the United States and for the District of Columbia, draws heavily on the Great Britain, New Zealand and California plans, the Yarborough bill (S. 2155, 89th Cong.) and a 1966 Maryland proposal (S. 151). If affords, through a

prompt and informal administrative procedure, compensation to victims or their dependents for pecuinary losses suffered because of personal injury or death. Property damage is excluded for the generally agreed upon reasons that insurance coverage often is present, fraudulent claims would be difficult to defend, and the staggering amount of property damage caused annually by crime would render the cost of such a compensation plan prohibitive. The Federal Bureau of Investigation estimates that, in 1965, the total value of property stolen by burglary was $284 million and of stolen motor vehicles not recovered was in excess of $60 million.

Unlike the Yarborough proposal (S. 2155, §303), this proposal would not compensate for pain and suffering of the victim. The purpose of this victim-compensation plan is not to make the victim whole, but rather to alleviate pecuniary loss. Any analogy to tort damages, with its controversial element of pain and suffering, should be eliminated, as is done in workmen's compensation statutes. ~~awards~~. From a cost standpoint alone, inclusion of pain and suffering as an element of compensation could render the compensation program unfeasible.

To insure maximum uniformity in awards, and to make clear that no analogy to tort damages is to be made, the proposal adopts the compensation schedules of the Federal Employees Compensation Act. Compensation will be in the form of payments periodically disbursed and under constant review so as to bear close relation to damages actually suffered. The advantages of such a compensation plan over that of predetermining damages in a tort action is best illustrated by the case of the wife who remarries shortly after an award for the death of her husband. A jury award could properly be based on a finding that the widow would not remarry, whereas compensation would terminate upon remarriage. Benefits under the FECA, as recently amended, are generous. Minimum monthly benefits to a disabled victim would amount to $245 plus hospital and medical expenses. As is presently done in cases of federal prisoners whose earnings are negligible, the unemployed victim would receive compensation at the minimum rate. The victim's widow under this plan,

would receive 45% of her husband's earnings or $245, whichever is less, until death or remarriage. Because the compensation act itself has built-in limitations on the amount of any award, we consider it unnecessary to provide in this proposal for any arbitrary ceiling on compensation.

Unlike the Yarborough plan (S. 2155, §201) and the Douglas plan (S. 2923, 89th Cong., §501), this compensation plan would be administered through the Department of Labor's Bureau of Employees Compensation, whose nationwide operations lends itself perfectly to this broad program. The use of an existing organization and its established procedures will facilitate the introduction of this statutory innovation; its administrators, its standards and its procedures will be "old hat" to both the bar and the public.

The offender's family and members of his household are excluded from coverage under this compensation plan because of difficulties in establishing family involvement in the criminal act. According to the FBI's 1965 Uniform Crime Report, killings within the family constituted 31% of all murder; nearly two-thirds of aggravated assaults involved persons within the same family unit or acquaintances. The exclusion of this broad category of victims will have a direct effect, of course, on the overall cost of this compensation plan.

Persons who are responsible for their own inquiries likewise will not be eligible for compensation. Thus, the conduct of the victim at the time of his injury or death will be relevant on the issues of whether compensation should be awarded or reduced. This factor, too, should help keep program costs within reasonable limits.

This plan, unlike other proposals, would not be limited to victims of violent crimes and would not compensate only those losses in excess of a minimum amount. Including all federal crimes will afford this needed remedy to any victim, whether injured or killed in a civil rights disturbance or a back-alley assault on federal territory. Because of the generally non-violent nature of federal crimes, as opposed

to District of Columbia crimes, there is no need to enumerate criminal acts to which the federal compensation plan is applicable; at the same time, until, experience is obtained, it may be best to limit compensation, in the District of Columbia bill, to victims of enumerated "violent" crimes.

The inclusion of all claims, regardless of amount, takes into consideration the fact that often greater hardship is imposed when a small loss is suffered by the poor, who are the most frequent victims of crime and the least able to suffer any economic loss. Nominal claims by victims can easily be handled administratively by a workmen's compensation procedure which routinely administers nominal compensation claims.

As is presently provided in the Federal Employees Compensation Act, the Government could require the victim, to whom a compensation award has been made, to assign to the United States any right of action he might have against a third-party, or to prosecute any such action in his own name. The Government would be reimbursed out of any third-party recovery and the refusal of the victim to assign his cause of action or to prosecute a tort suit would terminate his right to compensation. In practice, the Bureau of Employees Compensation rarely takes an assignment; the beneficiary invariably prosecutes the third-party action himself, voluntarily or at the Bureau's request. Since the plaintiff's bar operates on a contingent fee basis, no hardship is imposed upon the beneficiary. Such a practice is highly desirable in the case of victims compensation. The same Government attorney should not be placed in a position of prosecuting both civil and criminal proceedings against the same party, and Government efforts to obtain a criminal conviction should be free from any attack that they are financially motivated.

3. Existing Remedies.

(a) Tort. Every criminal act also constitutes a tort. The effectiveness of any tort remedy is another matter. The particular offender may be immune or financially irresponsible; his identity or whereabouts may be unknown. None of these inadequacies, however, are particularly susceptible to cure by legislation.

(b) Restitution. A sentencing federal judge can condition probation upon the offender's making restitution to the victim. Obviously useful in cases of stolen property, 18 U.S.C. § 3651 ordinarily will be of little value to an injured victim or the dependents of a killed victim.

4. Cost of Proposal.

It is difficult to estimate program costs for the reason that no data exists on the dollar value of personal injuries or death caused by crime. While the Federal Bureau of Investigation estimates the value of goods stolen in robberies, burglaries, larcenies and auto thefts to be in excess of $1 billion, it considers these "staggering" figures to be "overshadowed by the inestimable loss of human life as well as the other costs involved to the victims of crime of violence." As discussed above, costs can be kept to a minimum by excluding property loss claims and claims of the victim's family, by reducing awards based on the degree of victim culpability, and by utilizing existing administrative machinery.

Evidence available indicates that the cost of compensation will not be great. New Zealand awarded less than $10,000 in 1965; Great Britain awarded slightly under $1 million in the first 18 months of its program; and California has limited expenditures during the first year to $100,000.

Considering the rather limited scope of this proposal, and taking into account other cost factors discussed in this memorandum, we would estimate that annual costs would not exceed $500,000.

5. Proposals considered but rejected.

(a) Compensation to victims only of civil rights crimes, as proposed by the Leadership Conference and as outlined in the Douglas proposal (S. 2923, 89th Cong.), was rejected as too narrow an approach to what must be viewed as a broad social problem.

(b) Creation of a federal tort remedy against all federal offenders may insure a more uniform tort remedy and access to federal courts, but cannot overcome the problem of the offender's financial irresponsibility and would merely serve to provide a duplicate remedy already available under state law and through state courts.

(c) Creation of a compensation board to administer a victim-compensation program was rejected as uneconomical. If victims of federal crimes are to be compensated for pecuniary loss, that compensation might be awarded promptly and at the local level. It is too much to ask that a California victim process his claim in the District, similarly it is too much to expect the new administrative board to establish local offices to process infrequent claims. Use of the existing organization of the Bureau of Exmployees Compensation satisfies are demands for economy.

CRS

E. Indemnification

Proposal 1

As indicated on page 6 of our submission of October 3, 1966, we prefer the use of an existing agency or department, rather than the establishment of a new administrative agency, to administer the benefits of an indemnification program. It is our view that to produce meaningful results the administration of such a program must be made as simple as possible, so that our response to the needs of the victims will be sufficiently timely to offset the negative effects of reprisals and intimidation on the realization of the newly established or recognized civil rights.

REPRISAL STATISTICS

On page 3 of our October 3 memorandum, we suggest that the pervasive syndrome of fear related to acts of reprisal and intimidation calls for enactment of legislation pertaining to racial violence and indemnification. In addition to the statistics discussed in that memorandum and the reprisal investigation report attached to it, the following item from the New York Times of October 17, 1966 indicates the extent of the problem:

> A survey by the Human Relations Council of Mississippi shows that such fears may not be unrealistic. After talking with a cross-section of Negro parents who sent their children to predominantly white schools last year, the Council found that -
>
> 28% were "pressured or fired" by their employers
>
> 7% lost their housing
>
> 22% lost their credit at the bank
>
> 5% reported a cutback or an outright loss of welfare assistance
>
> 47% said they were intimidated by threatening phone calls, flaming crosses or direct physical assault.

INDEMNITY PROPOSAL NO. 2

Legislation to give victims of federal crimes a conventional civil action for damages and injunctive relief against private wrongdoers.

CIVIL DIVISION STAFF

CREATION OF FEDERAL TORT ACTION AGAINST FEDERAL OFFENDERS

I. Description of Proposal. To create a federal cause of action for victims of federal crimes against offenders, for money damages for death or injury to property and person.

II. Need. Each criminal act also constitutes a tort under state law. In addition, certain criminal acts give rise to a civil cause of action for money damages under §1983. Hence, for every federal crime there presently exists a civil remedy theoretically capable of compensating victims of crime.

The adequacy of such tort remedies is quite another matter. Criminal offenders are for the most part financially irresponsible; their present whereabouts or even their identity may be unknown. None of these problems are solved by the creation of a new remedy.

Simply stated, tort remedies exist; their inadequacies cannot be cured through the creation of new tort remedies. Victim suffering can be alleviated, however, administratively through a compensation program.

III. Disadvantages. Creation of a federal tort remedy, enforceable in the federal courts, would only serve to increase the business of the district courts in those areas of litigation where the Judicial Conference has for years sought a counter effort. By increasing jurisdictional amounts in diversity of citizenship cases and broadening concepts of corporate residence, Congress has attempted to restrict personal injury litigation to state courts. This trend should be halted only in the light of clear evidence that state forums are substantially unavailable to personal injury plaintiffs. There appears to be no indication that such is the case.

INDEMNITY PROPOSAL NO. 3

Legislation to limit 1 or 2 above to specified kinds of crimes, for example civil rights crimes, or damages (e.g., only physical injury) (similar to a proposal of the Leadership Conference on Civil Rights to the 89th Congress.) (This is an alternative to Indemnity Proposal 1.)

Create a federal administrative agency (or use an existing agency) to hold hearings and award payments to persons injured as a result of federal crimes; the federal government would pay the claim and have a cause of action against the wrongdoer.

I. DESCRIPTION OF PROPOSAL

Under this proposal, Congress would enact legislation to provide compensation by the Federal Government to any person injured in his person or property or deprived of his life (i) because of race or color, while exercising, attempting to exercise, or advocating, or assisting another in the exercise of, any right, privilege or immunity granted, secured, or protected by the Constitution or laws of the United States, or for having so exercised, attempted, advocated or assisted or (ii) by any act, the purpose or design of which is to intimidate him or any other person from seeking or advocating equality of persons or opportunity free from discrimination based on race or color. A claim could be made regardless of whether the wrongdoer is identified. Such legislation would give the Government a cause of action for recovery of the amount of such payments against the perpetrators of the offenses. The right of recovery would be exclusive of any criminal penalties which might be provided by statute for the same offense. Hearing examiners of the Social Security Administration, or hearing examiners of another Federal agency, would be designated to hear and adjudicate claims for compensation brought by injured parties. The hearing examiner would be required to request an investigation by the Department of Justice (if one has not been conducted) and would be authorized to obtain from the Department the results of its investigation, which would be made available to the complaining party. Indigents would be provided with counsel if they were unrepresented. The alleged wrongdoer and the Attorney General would have the right to intervene. An heir or next of kin could bring a wrongful death proceeding if racial violence killed the decedent. If there were a pending indictment in the matter, the claim proceeding would be deferred until determination of the criminal case.

Appeals from final decisions of the hearing examiner would be to the Social Security Board of Appeals and then to the U.S. Court of Claims. Suits by the United States for recovery of the amount of such payments would be the responsibility of the Department of Justice.

This proposal is similar in certain respects to the Douglas bill (introduced this year in Congress), which would have established a 3-man board within the Commission on Civil Rights to adjudicate claims which have been investigated by the Commission, or which the Commission has requested the Attorney General to investigate. Our proposal vests the adjudicatory function in Social Security Administration hearing examiners. It is our view that this function is more appropriately vested in the Social Security Administration because of its experience in adjudicating claims.

II. NEED

For information on the extent of the problem of racial intimidation, violence and reprisal, see discussion in the outline of our Title V proposal. The instant proposal would provide a more effective remedy for assuring compensation to those who are injured by racial violence than is available under existing law. Present statutes affording a right of action for money damages to redress invasions of civil rights (42 U.S.C. 1983, 1985) are inadequate because they are limited to actions against persons acting under color of law (Section 1983) or pursuant to conspiracies to deprive individuals of protected rights (Section 1985). They require the victim, moreover, to bear the expense of a judicial proceeding, including legal fees, and to bring his lawsuits in what may be a hostile forum.

III. ADVANTAGES AND DISADVANTAGES

This proposal would have the advantage of providing stronger discouragement to wrongdoers because of the possibility of money damage suits against them by the United States. The victim could bring his claim in a more objective forum than is now provided by a Southern jury, and in a less costly, more readily available and more expeditious proceeding.

An objection raised against the proposal may be that, if the federal government compensates victims of federal civil rights crimes, it should compensate victims of all federal crimes, either as a constitutional equal protection matter, or in the name of equity. In this connection, a 1966 New York State statute (chapter 894, 189th session) provides for compensation by the State to persons who are victims of crimes of violence. While we would not object to a federal statute compensating victims of federal crimes generally, obviously the costs of such a measure would be greater. Consider, for example, the expense of compensating victims of "federal" crimes in the District of Columbia. Since the perpetrators of such crimes are typically indigent, the Federal Government rarely would be able to recoup the amount of compensation to the victim. On balance, and at least until more is known about cost, we would limit the proposal to federal civil rights crimes, on the theory that it is appropriate for the Federal Government to make special provision for protecting Federal rights. "Legislation need not deal with all phases of a problem in the same way, so long as the distinctions drawn have some basis in practical experience." South Carolina v. Katzenbach, 383 U.S. 301, Williamson v. Lee Optical Company, 348 U.S. 483, 488-489, Railway Express Agency v. New York, 336 U.S. 106.

In light of the views expressed by six concurring Justices in the Guest case, to the effect that Congress would have the constitutional power to reach private action intended to interfere with fulfillment of Fourteenth Amendment rights, and the clear power of Congress to enact legislation reaching private action interfering with rights of national citizenship and rights established by federal statute,/ we see no constitutional objection to the proposed legislation.

/ See, e.g. United States v. Waddell, 112 US 76, U.S. v. Classic, 313 US 299, Logan v. United States, 144 US 263; In re Quarles, 158 US 532.

IV. ALTERNATIVE COURSES OF ACTION

An alternative would be to give persons who suffer physical injury or property loss as the result of exercising any of the specific civil rights protected by Title V of the proposed Civil Rights Act of 1966, including the right to urge or aid others to exercise such rights, a right of action for money damages in Federal court against those responsible for the injury or loss. This proposal has the disadvantage of requiring the victim to present his case to a Southern jury, and to bear the expense and delay of legal proceedings. */ It also would require identification of the wrongdoer. Affixing of liability should not be required as a prerequisite to compensating persons who suffer loss because of the denial of federal rights.

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*/ The extent that success is achieved in attaining fair representation of Negroes on Federal juries in the South, the first problem will be ameliorated. Recent indictments and convictions for crimes of racial violence in the South hold out promise that Southern juries will rule more fairly in civil damage cases brought by civil rights victims.

INDEMNITY PROPOSAL NO. 4

Legislation to amend 42 U.S.C. 1983 to make political subdivisions liable for damages when police violate federal rights or fail to protect citizens (overrule Monroe v. Pape, 365 U.S. 167).

CIVIL DIVISION
STAFF

AMENDMENT OF 42 U.S.C. 1983
TO SUBJECT POLITICAL SUBDIVISIONS
OF A STATE TO LIABILITY

I. Description of Proposal. To amend §1983 to include political subdivisions of a State, State agencies, and possibly even the state itself.

II. Need. This proposal is designed to overcome the decision of the Supreme Court in Monroe v. Pape, 365 U.S. 167, holding that §1983 applies only to individuals. It seeks to fix liability on a financially responsible party.

While it may be assumed that individuals "acting under color of State law" are less financially responsible than the political subdivision employing them, it by no means follows that the political subdivision, under principles of respondent superior, will be held liable for the excessive conduct of its employee. The burden of proof is substantial. See B. F. Goodrich Tire Co. v. Lyster, 328 F.2d 411 (C.A. 5, 1964).

Subjecting political subdivisions of a state, and possibly even state agencies, to tort liability under §1983 presents no constitutional problem, Hopkins v. Clemson, 221 U.S. 636 (1911), despite the fact that efforts to similarly amend the original bill were defeated ostensibly on constitutional grounds, 365 U.S. 167, 187 (1961). The 11th Amendment, however, would appear to bar any such tort remedy under §1983 against a state, Parden v. Terminal Railroad Co., 377 U.S. 184, 186 (1964).

III. Disadvantages. Any legislative proposal to subject the political subdivisions of a state to tort liability under §1983 should be accompanied by one to subject the United States to suit under the Federal Tort Claims Act. Presently, such suits are excluded from the Act's general

waiver of sovereign immunity. 28 U.S.C. 2680(h). Experience indicates that tort actions based on allegedly overzealous conduct of law enforcement officers and other governmental officials are often of a harassing nature, difficult to defend and disruptive of the orderly conduct of government business. The potential harm to local government outweighs any financial advantage to a victim, particularly where that victim is protected in fair measure by an administrative compensation plan. Certainly, the Department, with its experience in the several tort suits arising out of the Oxford, Mississippi disturbance, should approach any such proposal with the utmost caution and only after an opportunity for careful deliberation.

U.S. COMMISSION ON CIVIL RIGHTS

Administrative - Confidential

Amend 42 U.S.C. 1983 to make political subdivisions liable for damages when police (or other agents) violate federal rights 1/ or fail to protect citizens (overrule Monroe v. Pape, 365 U.S. 167).

I. DESCRIPTION OF PROPOSAL.

It is proposed that 42 U.S.C. 1983 be amended to impose liability on political subdivisions for the wrongful acts of their agents (including law enforcement officials).

II. NEED

A. Description of the nature and seriousness of the problem the proposal is designed to alleviate.

As indicated in detail in our outline of the Title V proposal, official invasion of Federal civil rights still is a problem in this country. This proposal--recommended by the Commission on Civil Rights in 1961 and again in 1965--would not only assure the recovery of sufficient funds to compensate for the loss, but would encourage local governmental entities to hire more responsible law enforcement officials. Several States, either by statute or judicial decision, already make local governments liable for the wrongful acts of their agents. But federal remedies for violation of federal rights should not be dependent on State law.

B. Inadequacies of present laws or programs.

In Monroe v. Pape, 365 U.S. 167, the Supreme Court, in the context of a suit for damages against a city under 42 U.S.C. 1983, held that municipal corporations are not "persons" covered by that section as presently written.

1/ See related proposal and discussion on federal indemnification.

F. FINANCIAL ASSISTANCE

FINANCIAL ASSISTANCE PROPOSAL NO. 1

Legislation to authorize direct federal operation of public assistance and employment services programs, where state and/or local agencies have failed to comply with the nondiscrimination standards in Title VI and where there are no other alternative means of continuing the service and securing compliance.

OPTIONAL FORM NO 10
MAY 1962 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

OFFICE OF THE GENERAL COUNSEL:OS

TO : Mr. Alanson W. Willcox
General Counsel

DATE: October 28, 1966

FROM : Joel Cohen, Assistant General Counsel
Welfare and Rehabilitation Division

SUBJECT: Relation Between "Pinpoint" Provision of Title VI of the Civil Rights Act of 1964 and Statewideness Provisions of Program Legislation

You ask about situations where the so-called "pinpoint" provision in Title VI of the Civil Rights Act of 1964 (i.e., the "but clause quoted in the next paragraph) may appear inconsistent with Statewideness provisions of program legislation, e.g., the requirement that a State public assistance plan shall be in effect in all political subdivisions of the State.

Thus, section 602 of the Civil Rights Act provides that after it has been found, in accordance with the statutory procedures, that a recipient of Federal financial assistance has failed to comply with a requirement pursuant to the statute, compliance may be effected by the termination of or refusal to grant or to continue assistance, "but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made and, shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found,. . ." It seems clear from the words of the statute and from the debates on Title VI that the Congress intended to limit cutoff of Federal funds under that title as much as possible.

There also seems to be no question but that the procedures set forth in section 602 for termination of funds, including the pinpoint provision, are applicable to any failure to comply with a requirement pursuant to Title VI, even though under a particular Federal assistance law the procedures otherwise applicable to cutoff of funds because of violation of Federal requirements are not so limited or, indeed, cannot be so limited. For example, if in the administration of a State plan for old-age assistance there is a failure to comply substantially with any provision required by section 2(a) of the Social Security Act to be included in the plan, the only sanction authorized under the Social Security Act (see sec. 4) is for the Secretary of Health, Education, and Welfare to notify the State that no further payments will be made to the State for carrying out the plan. With respect to a failure to comply with a Title VI requirement, however, it seems clear that the pinpoint provision of section 602 is superimposed upon, and unrestricted by, any limitation in the cutoff provisions of the Social Security Act.

It can perhaps be argued that the pinpoint provision would likewise prevail over the requirement in the Social Security Act that the plan shall be in effect in all political subdivisions of the State, e.g., sec. 2(a) of the Act. If the operation of the Statewideness provision were directly contrary to, and necessarily operated to defeat the purposes of, the pinpoint provision in section 602, arguably the pinpoint provision should prevail. If, for example, a State had fifty counties and noncompliance with a Title VI requirement were found in eight of the counties, section 602 would require that Federal payments cease only with respect to the eight counties. If the State's discontinuance of the program in those eight counties, or if the operation of the program in those eight counties at a lower level than elsewhere in the State, would then subject the State to termination of Federal funds for the entire program throughout the State, because of violation of the Statewideness requirement, the purpose of the pinpoint plan would be thwarted. This direct conflict between two Federal statutes would arguably best be resolved in favor of the latter, more specific provision under section 602 of the Civil Rights Act.

On balance, however, we do not believe that Congress intended to amend by implication provisions of Federal grant statutes simply because they might, as a consequence of the termination of Federal funds under section 602, result in the imposition of greater or different sanctions than those permitted under section 602 itself. The law does not favor repeal or amendment by implication. We think section 602 and Statewideness provisions are not irreconcilable.

While the Congress obviously intended to limit the cutoff of Federal funds pursuant to Title VI, the Congressional debates did not, so far as we are aware, expressly consider a conflict between the pinpoint provision of section 602 and Statewideness provisions under the program statutes. In the following colloquy, the Senators discussed a "Statewide" program, but the reference seems to have been merely to a program which in fact operates throughout the State and not to the express Federal statutory requirement of Statewideness:

> "Mr. Ribicoff. By way of further amplification of the question raised by the distinguished Senator from Mississippi, may I ask the distinguished Senator from Rhode Island whether it is not correct to say that if a State was administering a program and there was discrimination in one part of that program, under appropriate rules and regulations it would be possible to disallow the expenses and the allotment that would go to that section of the program where the discrimination was taking place, but to allow the expenses and allotments to areas where there was no discrimination.

> "Mr. Pastore. Under the broadness of the statute, that would be correct. It would depend upon the rule or regulation in that case.
>
> "Mr. Ribicoff. That is correct.
>
> "Mr. Pastore. The Senator from Mississippi was referring to a statewide program.
>
> "Mr. Ribicoff. But even with a statewide program, funds used in a nondiscriminatory way need not be disallowed." 110 Cong. Rec. 7060 (1964).

Generalizations about the inevitable conflict between the pinpoint provision and the Statewideness provision will be more difficult to sustain under the specific facts of the cases that may actually arise. If the particular program is State-administered, as many of them are, the State agency itself is unlikely to be discriminating on a selective basis. As Senator Humphrey stated:

> "All of the foregoing suggestions assume that the State itself is endeavoring to comply with Title VI, and that noncompliance is limited to a particular locality or situation. If the State itself refuses to agree to comply with Title VI, or issues instructions or policies which are in violation to that title, there may be no alternative available except a statewide cutoff." 110 Cong. Rec. 8930 (1964).

Where the program is locally-administered, and one or more localities are out of compliance, additional factors will be involved under the public assistance laws. The State agency is designated in the State plan as the single State agency for supervision of the administration of the plan by the localities. The single State agency must have authority which is birding on the localities for carrying out the plan, authority, for example, to directly administer the program in a locality, if necessary, or to obtain a mandatory court order for the locality to comply with Title VI requirements if this is necessary to carry out the State plan. Therefore, noncompliance by a locality with a Title VI requirement usually would also involve a failure of the single State agency to carry out its responsibilities, including its responsibility to effectuate the Statewideness requirement.

In addition, in the case of Title VI noncompliance by a locality, if problems arise because of withdrawal of Federal funds from the program in that locality, the locality or the State, or both, can make up the funds withdrawn by substituting their own funds. In this connection the Social Security Act requirement of financial participation by the State is pertinent, e.g., section 2(a)(2) of the Act. Pursuant to this provision, the State plan must provide that substantial amounts of State funds will be used in the program, and that State and Federal funds will be apportioned among the political subdivisions on a basis consistent with equitable treatment of individuals in similar circumstances throughout the State. Handbook of Public Assistance Administration II-3000. Thus, Federal funds still available combined with State resources may be able to make up for any loss of Federal funds under Title VI and to sustain the program throughout the State, or, if the lost Federal funds are not replaced, to sustain a reduced program in all localities. In a different kind of situation, where lack of Statewideness arises in the furnishing of medical care because it has not been possible to obtain cooperation from vendors in certain localities, the State agency may be required to use alternate methods and sources for providing the care, including payment of transportation for clients to such other sources.

A requirement in a Federal assistance law that all Federal funds for an entire State must be withdrawn in the case of withdrawal of Federal funds from any locality would probably be in hopeless conflict with the section 602 pinpoint provision and deemed repealed or amended by that provision. The pinpoint provision does not, however, require that the noncomplying program be abandoned and the Statewideness provision does not require that the program be Federally-aided in each locality. Instead, one requires the withdrawal of Federal funds and the other requires continued maintenance of the program. Both can co-exist. If partial withdrawal of Federal funds under Title VI ultimately results in total withdrawal of Federal funds under a Federal assistance law, the result is directly caused by the unwillingness or economic inability of the States and localities involved to maintain the program in the absence of the lost Federal funds, and only indirectly by the Federal fund withdrawal itself.

PROPOSAL TO ALLOW FOR DIRECT FEDERAL OPERATION OF
PUBLIC ASSISTANCE PROGRAMS WHERE THERE HAS
BEEN NON-COMPLIANCE WITH TITLE VI

I. Description

The proposal as stated would amend existing legislation so as to allow direct operation by the Federal Government of all public assistance and employment services program where state and/or local agencies have failed to comply with the nondiscrimination standards in Title VI.

These comments have been restricted to the public assistance programs.

II. Need

While there are no available statistical data or studies relating to Title VI compliance, there is evidence that some State public assistance practices -- unconscionably low payments, restrictive practices such as "man in the house" rules -- while not directly discriminatory, are aimed primarily at minority groups.

The Alabama public welfare case is a clear example of outright discrimination on the basis of race. A hearing has been held on that State's non-compliance with Title VI. A field survey has been made in the State of Mississippi.

The Alabama example demonstrates the need for alternatives to suspension of aid as reprisal for non-compliance with Title VI. We must seek other ways to offset non-compliance than methods which are punitive to those who need help badly.

III. Advantages and Disadvantages

The proposal, while appearing to be quite limited in scope actually points one route to the solution of most present inadequacies in public assistance programs, namely total or substantive Federalization of these

programs over a period of time.

On a short-term basis, the proposal would presumably enable the Federal Government to deal with acute situations.

The State public welfare agency is the only structure in any State capable of administering the welfare program today. There is no alternative organization or agency with whom the Secretary could contract for the operation of the program. There is no Federal machinery in existence today which would directly move in to administer a State program. And if the Secretary, in effect, contracted with the existing agency to operate the program, there is serious question as to whether there would be any significant advantage over leaving the program in State hands with strengthened Federal controls.

Currently, States and localities contribute about $2.5 billion annually to public assistance programs. It is not apparent how these contributions could be maintained in any State where the program is federalized. If the Federal government undertakes to pay the whole bill, the economic pressures on other States to federalize would be substantial. New problems of enforcement and coordination are unlikely under the proposed legislation; rather, these areas might be simplified.

The proposal would require substantial new legislation. Existing law does not define a program or program level. It simply defines certain conditions which must be incorporated in a State program. The level at which a federalized program would operate must certainly be higher than the very low levels of assistance in most States today. There would be little incentive for States to maintain their contribution to existing programs if a federalized program were more adequate.

IV. Alternative Courses of Action

An alternative to federalization in response to non-compliance would be a strengthening of existing public assistance through stricter Federal standards, elimination of categories, and revised Federal financing arrangements to enable the maintenance of reasonably adequate programs. The basic recommendations of the Advisory Council on Public Welfare provide a sound basis for action.

At the same time, controls contained in Title VI of the Civil Rights Act might be strengthened.

V. Estimated Costs of Implementation

It is impossible to estimate the magnitude of the costs of the proposal without more precise specifications. The existing poverty gap, however, is approximately $10.5 to $11 billion. In addition, there are about $2 1/2 billion in State and local contributions to public assistance programs if one assumes that, as a result of the proposal, all public assistance programs would ultimately be federalized, these figures represent a conservative measure of the cost.

Proposal for Legislative Action: An amendment to Title VI of the Civil Rights Act of 1964 (P.L. 88-352)

Description of Proposal:

The proposed amendment to Title VI of the Civil Rights Act of 1964 is designed to achieve greater compliance in Federally financed programs of public assistance and employment service.

The amendment provides that the head of Federal department or agency may limit or cut-off funds to a State or local program where such programs, or parts thereof, fail to comply with the provisions of Title VI. Further, it provides that the head of the Federal department or agency may contract with public or private agencies or institutions, or otherwise provide for, the carrying out of those operations affected by such failure. Provisions for judicial review and appeal are considered in the amendment and conform to provisions contained in Title VI.

Proposed Amendment:

Civil Rights Act of 1964, Title VI--Nondiscrimination in Federally Assisted Programs---new Section 603, and re-number thereafter.

"In the event that a State or local agency receiving Federal funds for public assistance and/or employment service programs fails to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency responsible for the allocation of such funds shall notify the State or local agency that further payments will be limited to categories under or parts of the program not affected by such failure (or in his direction, that no further payments will be made to the State or local agency); and he may enter into contracts with public or private agencies or institutions, or otherwise provide for, the carrying out of such operations or parts thereof as are subject of his determination."

(We suggest that the following language also be included in this amendment in order to conform to other provisions contained in Title VI):

"Provided, however, that no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report."

Amend re-numbered Section 604 - to include new section 603 in provisions for Judicial Review.

Need for Proposed Action:

TITLE VI of the Civil Rights Act of 1964 requires nondiscrimination in the operation of all programs or activities receiving Federal financial assistance. Section 601 of the Act states:

> No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Section 602 of the Act provides that each Federal agency empowered to extend financial assistance to programs and activities is authorized and directed to effectuate the provisions of section 601 by issuing rules, regulations, or orders of general applicability which shall be consistent with the objectives of the statute authorizing the financial assistance. This section further provides that such rules, regulations, or orders must be approved by the President to become effective.

Pursuant to the requirements of section 602, Regulations of the Secretary of Labor to effectuate the provisions of section 601 of the Act were formulated. The Regulations have been duly approved by the President and promulgated in 29 Code of Federal Regulations, Part 31.

The Regulations of the Secretary provide the general standards to be observed by recipients in the conduct or operation of programs and activities which receive, in whole or in part, Federal financial assistance from the Department of Labor. They further provide specific standards for the conduct or operation of specific Bureau of Employment Security Programs. In addition, among other provisions, periodic compliance reviews and investigations of complaints are required for the purpose of determining the recipient's compliance.

The compliance review, therefore, is a legally essential part of the Department's program to carry out its responsibility for assuring compliance with the provisions of Title VI.

The purpose of the compliance review is to determine, through a comprehensive and thorough examination of all Federally assisted programs and activities of a recipient, whether the recipient is in compliance or in what way and to what extent he fails to comply. The results of this review not only afford the Department information on the compliance of the recipient, but also provides the recipient with information on the effectiveness of its efforts to assure compliance.

Compliance reviews of local offices of State employment security agencies are performed by a trained staff of investigators. Reviews have been conducted in all regions and in almost all States. Priority has been given to reviewing operations in those areas where there are large or significant minority group populations and in those offices against which complaints

have been filed.

In carrying out local office compliance reviews, the investigators study the industrial, racial, and ethnic make-up of the community, the practices of employers, the traditional employment patterns for workers of various groups, and the community's school system. They observe the organization, arrangement and staffing of services in the local office, and review local office procedures and records. They also interview local office staff and applicants, minority group community leaders, and other persons who may be able to contribute relevant information concerning discrimination in the programs or activities of the local office.

Compliance reviews conducted thus far have uncovered practices or activities that are discriminatory in their effect. No region has been found to be completely free of discrimination. Moreover, a striking similarity has been found in the nature and type of discriminatory practices observed. Many such practices have been uncovered.

Upon completion of local office reviews, they are examined for evidence of possible violations of Title VI. If such evidence is found, the Regulations require that the recipient be informed that he is not in compliance and that he must achieve compliance. Such notice has been given to State agency officials in informal meetings with Department representatives.

The Department has chosen to approach the problem of having State and local agencies move into compliance, where violations have been found, in the most informal and conciliatory manner possible. The procedure now being followed is for a team of Department representatives to meet with the agency to discuss the findings of the investigations and steps which should be taken to eliminate discriminatory practices or conditions. We are pleased to say that this informal method for bringing about compliance so far has resulted in the agreement by State or local agencies to take actions necessary to bring about the changes required for compliance with the Civil Rights Act of 1964. However, if such actions by State and local agencies were not forthcoming, an alternative avenue of action would be necessary.

Extent to Which the Proposal Meets the Need:

The withholding of funds from a State or local agency which fails to comply with Title VI is by itself an insufficient means of assuring compliance. The Department of Labor has an obligation and responsibility to provide a continuing program of employment services to job seekers, employers, and the community. Therefore, authority is necessary to allow the Department to continue providing such services.

The proposed amendment would provide a means for assuring compliance and also authority for continuing to provide necessary services.

1) It authorizes the limiting or withholding of funds to States or local agencies which fail to comply with Title VI (allowing for the continued funding of those operations not affected by such noncompliance);

2) It authorizes the Federal department or agency to directly provide, or through contracts with public or private institutions or agencies, for a continuation of services affected by noncompliance.

Office of Legal Counsel Staff

Item 1. Proposal to Amend Title VI of the Civil Rights Act to Allow for Operation by the Federal Government of Employment Services Programs Where State and/or Local Agencies Have Failed to Comply with the Nondiscrimination Standards Contained in Title VI.

The proposal would amend Title VI of the Civil Rights Act of 1964 to provide expressly for a total or partial cut-off of federal financial assistance for public assistance and/or employment service programs which practice discrimination and to authorize the federal government to make other provisions for carrying on such programs.

The Labor Department's material on this proposal does not follow the general format of an outline with supporting memorandum. It does, however, offer specific language for an amendment to carry out the proposal. The language offered appears to be broader than the Item description or the program detailed in the "description of need." The latter appears to be confined primarily to State and local employment services receiving federal funds, but the proposed statutory language would apply to all federally-assisted public assistance programs as well as to employment services. It would appear that the material relating to the proposal should be revised to clarify the actual scope intended.

Any revision of the material relating to Item L. should also follow the format used with respect to other proposals. This should include a discussion of the advantages and disadvantages of the proposal, as well as a reference to the alternatives, if any, and the estimated cost of the proposal. It might also discuss the relationship of Title VI action relating to employment services with action authorized under Title VII to prevent discrimination by federally-assisted employment agencies.

VIII. FEDERAL FINANCIAL ASSISTANCE

Despite the current protest over the school desegregation guidelines, Title VI has largely become, in the southern states, the dead letter of the Civil Rights law. The entire subject should be thoroughly studied, as suggested in VIII C of the memorandum of "Proposals for Consideration." We can, however, from the Agency's experience state that there is a great need to make Title VI more effective, and that alternatives B2 and B3 enabling the federal agencies to bypass the states and to defer payment in appropriate cases are warranted. It seems, also, attention should be given to the manner in which the different Departments interpret the provisions of Title VI, and that it not be done without proper coordination, or in a manner which could defeat the clear purpose of the law.

FINANCIAL ASSISTANCE PROPOSAL NO. 2

Administrative action to improve coordination of Title VI enforcement within and between federal agencies in an effort to insure uniformity of approach, conservation of manpower, total community compliance and consistent federal action.

F. Federal Financial Assistance

Proposal 2

General. The present structure for operations and the assignment of program responsibility seems to be sound, but there is concern that responsibility for coordination of Federal Government effort at the national level may be too diffuse. There is no one point, aside from the White House, to which people or agencies can turn to seek policy guidance, concerted action, or improved coordination of effort in the civil rights field. Based on the current assignment of responsibilities to the Department of Justice -- particularly its new roles in conciliating disputes and coordinating Title VI enforcement -- that Department might be a logical candidate for assignment of such responsibility. Also, efforts dealing with civil rights and the disadvantaged at the local level -- both Federal and community efforts -- suffer even more from fragmentation and lack of communications. Bureau staff experience this summer in Los Angeles indicates a need at the local level for a Federal watchdog activity -- one which can observe and expedite Federal agency action, while at the same time working with the Federal agencies concerned to generate community response. The Bureau of the Budget is currently studying this problem.

Coordination. Justice needs to exercise greatly increased leadership in the Government-wide coordination of Title VI activities. Executive Order 11247 contemplated a broad role, dealing with compliance reports and investigations, uniformity in the interpretation of regulations, and consistency in determining what constitutes compliance.

FINANCIAL ASSISTANCE PROPOSAL NO. 3

Administrative and budgetary action to strengthen Title VI enforcement staffs of federal agencies which administer programs of financial assistance.

G. PUBLIC SCHOOLS
& PUBLIC FACILITIES

PUBLIC SCHOOLS AND PUBLIC FACILITIES
PROPOSAL NO. 1

Legislation (similar to Title VI of the CRA of 1966 as reported by 10 members of the Senate Judiciary Committee) to amend Titles III and IV of the Civil Rights Act of 1964 to eliminate necessity of a complaint for the Attorney General to file suit to desegregate public schools or other public facilities, and to authorize the Attorney General to bring civil actions against persons, public or private, who threaten, coerce, or interfere with the desegregation of public schools or facilities.

Civil Rights Division Staff

SUPPORTING MEMORANDUM ON
SCHOOL DESEGREGATION LITIGATION

I. DESCRIPTION OF PROPOSAL

The proposal is adequately described in the outline.

II. NEED

A. The Complaint Requirement. The requirement of Title IV of the 1964 Civil Rights Act that the Attorney General receive a written complaint from an aggrieved person before initiating ~~sent~~ suit to desegregate a public school now prevents the federal government from acting in many areas where action is most needed. In Alabama there are more than 30 school districts for which the Department of Justice has information of non-compliance with HEW "Guidelines" but from which no Title IV complaints have been received. In Georgia there are also more than 30 such districts, and in South Carolina more than 10 such districts. No Title IV complaints have been received from 6 districts in Mississippi and 13 districts in Louisiana which have not filed any voluntary desegregation plans with HEW. The complaint requirement has also prevented action to a lesser extent in several border States.

The complaint requirement prevents the federal government from pursuing a uniform enforcement policy. And the successful resistance by one school district to integration tends to stiffen resistance to desegregation in neighboring districts. The complaint requirement not only hampers enforcement, but also restricts the investigatory process. There is presently no authority for Departmental investigation into the conditions existing in a school system until a complaint has been received. The elimination of the complaint requirement would permit the Department to keep fully informed on the progress, or lack thereof, towards desegregation in all recently-segregated school systems.

Many Negroes are understandably reluctant to file a complaint. Violence and intimidation have often accompanied their assertion of constitutional rights. One complainant even feared to use the mails and insisted upon writing the complaint in the presence of a Justice Department attorney. In addition, many Negro families are unaware of the need to submit a complaint before the Department can act, or are not familiar with the technicalities involved in filing one. Generally speaking,

it is from those communities in which public school litigation is most needed that a Title IV complaint is least likely to be received.

Although the complaint requirement is presently a serious obstacle to a uniform federal enforcement policy with respect to desegregation of public schools, nonetheless, the Department of Justice is presently involved in more than 90 school desegregation suits in Southern states. During the 1966 fiscal year, the Department received more than 100 Title IV complaints, filed or intervened (pursuant to Title IX of the 1964 Civil Rights Act) in 44 school desegregation suits, and entered eight others as amicus curiae. The possibility of increasing activity by private individuals and organizations in Southern communities may make the elimination of the complaint requirement of greater importance in the immediate future than in the long-term.

B. Interference With School Desegregation. The statutory policy of orderly desegregation is frustrated when Negroes seeking to exercise their rights to equal educational opportunities are intimidated or harassed, either by public officials or private individuals. Cross-burnings, dismissals from employment, eviction[5], and

bomb-threats, to cite only a few, are examples of pressures that have been directed against Negro parents to deter them from enrolling their children in formerly all-white schools. School officials and Negro teachers have also been subjected to harassment and abuse.

Under present law, the United States has authority to seek to enjoin interference with court-ordered desegregation, but has no authority to bring suit to enjoin interference with a voluntary plan of desegregation. There is no rational basis for distinguishing between interference with voluntary and court-ordered desegregation. The process of desegregation is disrupted in both instances, and in both cases rights to equal educational opportunities are threatened or denied. The Attorney General should have the authority to sue to enjoin interference with school desegregation where no court order is involved.

III. ALTERNATIVE COURSE OF ACTION

The Attorney General could be authorized to bring civil proceedings against desegregation by adding such a provision to the racial violence criminal legislation proposal. This would make it unnecessary to amend Title IV of the 1964 Act which is a very sensitive Title politically. The disadvantage of this approach would be retention of the complaint requirement.

Title III of the "Civil Rights Act of 1966" as introduced (repeal of complaint requirement and authority to sue private individuals for interference)

I. DESCRIPTION OF PROPOSAL

Title III of the proposed "Civil Rights Act of 1966" would amend Title III of the Civil Rights Act of 1964 to permit the Attorney General to bring civil actions against public officials to desegregate public schools and other public facilities without the necessity for a signed complaint from private parties who are unable to bring suit. The Attorney General would also be authorized to institute civil actions against persons, whether or not they are public officials, who intimidate, threaten, coerce or interfere with persons attending or helping others to attend public schools or any other public facility.

II. NEED

A. Description of the nature and seriousness of the problem the proposal is designed to cure and alleviate

The present requirement of a written complaint as a prerequisite to a suit by the Attorney General, and the intimidation of Negro parents and children, have combined to disrupt the orderly progress of desegregation (the express statutory purpose of TitlesIII and IV of the Civil Rights Act of 1964).

As the Attorney General stated before a subcommittee of the House Judiciary Committee, many Negroes are not familiar with the complaint procedure and do not know how to comply with it. _/ He also said that even after a complaint is filed, he must make a determination that local residents or other interested groups will be unable to bear the burden of litigation. This requirement is a difficult and time consuming process._/ In addition, the burden should not rest upon individuals deprived of rights--whether or not they are indigent--to pit their resources against the far more formidable resources of the state or local government which is failing to comply with well settled constitutional obligations.

_/ Statement by Attorney General Nicholas deB. Katzenbach before Subcommittee No. 5, House Judiciary Committee in support of the proposed "Civil Rights Act of 1966" (H.R. 14765).

_/ Ibid.

The Commission has found that fear, intimidation and harassment of Negro parents are still substantial deterrents to desegregation of public schools in the South. _/ In a recent report on School Desegregation in the Southern and Border States, the Commission found numerous instances of intimidation, harassment and violent attacks on children and parents of children who attempted to attend formerly all-white schools. For example, in one county in Georgia, bottles, stones, toilet paper and paint were thrown at the home of a family whose daughter was one of the first four Negro children to attend the county high school which formerly had been all-white. The family of another of these four children had lived under such attacks for a year. These families continued to send their children to the desegregated schools, but many others gave up. In another Georgia county, all of the Negro children who selected white schools under a desegregation plan approved by the Office of Education changed their choice. The father of one Negro student said that within 48 hours of submitting the choice form designating a white school, he was told by his employer, who was also his landlord, that he would lose his job and home if his child attended a white school. In a county in Mississippi, two families who had chosen white schools and had altered their choice were nevertheless evicted by their white landlords. This confirmed the belief of other Negro families in that county that they could not afford to send their children to the white schools.

Such acts of intimidation and harassment constitute an important reason why school desegregation in the Deep South continues to be restricted to token numbers of children. It was this finding that led the Commission to recommend legislation similar to that embodied in Title III.

1. Statistical data

Not available.

_/ United States Commission on Civil Rights, Survey of School Desegregation in the Southern and Border States 1965-66. See also the Southern Regional Council and the American Jewish Committee, The Continuing Crisis: An Assessment of New Racial Tensions in the South (May 1966); American Friends Service Committee and NAACP Defense and Educational Fund, Report on the Implementation of Title VI of the Civil Rights Act of 1964 in Regard to School Desegregation (Nov. 15, 1965); Southern Regional Council, School Desegregation: Old Problems Under a New Law (Sept. 1965); Student Nonviolent Coordinating Committee, Special Report on School Desegregation (Sept. 30, 1965).

2. Summary of Available Studies

The studies cited in Section A above indicate that intimidation of Negroes in connection with the exercise of their federal rights -- especially the right to attend a desegregated school -- has been widespread.

3. Indication of any need for further study

There is no indication that further study is needed.

B. Description of related on-going programs

The Department of Justice can intervene in school desegregation suits and suits to desegregate public facilities under Title IX of the Civil Rights Act of 1964. Title IX, however, requires that there be a pending lawsuit brought by a private party. Title IX does not in terms confer authority upon the Attorney General to bring suit to restrain intimidation of those exercising the right to attend desegregated public schools.

The Title VI Compliance program of the Office of Education also seeks to achieve the orderly desegregation of public schools. Title IV of the Civil Rights Act of 1964 provides for technical and financial assistance and inservice teacher training to assist desegregating school districts. These provisions are effective only up to a point. Title IV contains no sanctions. Title VI does contain the important sanction of withholding federal funds, but it also is important for a school district to realize that it cannot avoid desegregation by foregoing federal funds, and that the federal government has the unfettered power to institute a law suit to compel the very school district which is in defiance under Title VI to desegregate its schools. Neither Title IV nor Title VI is effective in meeting the problem of intimidation.

C. Inadequacies of present laws or programs

Title III of the Civil Rights Act of 1964 provides that the Attorney General, upon receiving a complaint in writing to the effect that an individual has been "denied equal utilization of any public facility which is owned, operated, or managed by or on behalf of any State or subdivision" other than a public school or college, may file appropriate legal proceedings for relief. The Attorney General must believe that

the complaint is meritorious and certify that the signer or signers are unable to initiate or maintain appropriate legal proceedings for relief, i.e., (1) the signer or signers, or other interested persons or organizations, cannot bear the expense or (2) "such litigation would jeopardize the personal safety, employment, or economic standing of such person or persons, their families or their property." Further, the Attorney General must certify that the legal proceeding instituted "will materially further the orderly progress of desegregation in public facilities."

Sections 407 through 410 of Title IV of the Civil Rights Act of 1964 provide that when the Attorney General receives a written complaint "signed by a parent or a group of parents" to the effect that his or their minor children are being deprived of the equal protection of the laws by a school board or a written complaint signed by an individual or his parent to the effect that he has been denied admission or not permitted to continue his education at a public college because of his race, color, religion or national origin, he may institute appropriate legal proceedings for relief. The same limitations on bringing suit found in Title III (involving the merit of the complaint, the ability of complainants to institute the proceedings themselves and the orderly achievement of desegregation) are also contained in Title IV.

Titles III and IV of the Civil Rights Act of 1964 are inadequate for the reasons stated in II, supra, and because they do not clearly afford the Attorney General the right to sue to restrain intimidation in connection with the exercise of the rights involved.

III. ADVANTAGES AND DISADVANTAGES

A. Extent to which the proposal meets the need

The release from rigid complaint requirements would free the Attorney General to make more flexible use of legal proceedings to insure orderly desegregation. The power to bring civil proceedings to stop intimidation of Negroes seeking to attend public schools or make use of other public facilities appropriately would supplement the Attorney General's power under Title V of the proposed Civil Rights Act of 1966 (as amended by our own proposal), imposing criminal penalties for such interference. The Attorney General then would have civil as well as criminal sanctions in his arsenal and could select the one most appropriate in the particular circumstances.

B. Feasibility

Although, owing to manpower limitations, the Attorney General might not be able to file legal proceedings in every case where he would have the power, he would be able to bring those suits which would have the most impact in furthering desegregation.

C. Legal problems raised by the proposal

There would appear to be no legal problems raised by the proposal. It is competent for Congress to make the Attorney General the guardian of a constitutional right. Cf. United States v. Raines, 362 U.S. 1,17 (1960). And in United States v. Guest, 16 L ed 2d 239 (1966), six Justices of the Supreme Court indicated that Congress has the constitutional power under Section 5 of the Fourteenth Amendment to reach private intimidation intended to interfere with a Fourteenth Amendment right.

D. Other considerations in favor of and in opposition to the proposal

Senator Sam Ervin of North Carolina opposes enactment of Title III. He maintains that the Attorney General controls the procedures for filing complaints and that this procedure should be tailored for the many people who do not know how to file a complaint. It is doubtful, however, that the Department of Justice could make the complaint procedure any clearer than it now is. The complaint must contain the facts upon which the grievance is based and the signature of the complainant.

Senator Ervin also says that there are many civil rights organizations working in the South and that they are capable of handling desegregation litigation. Civil rights organizations, however, are unable to handle the large number of cases because they lack the financial and manpower resources.

Senator Ervin rejects the Attorney General's view that the requirement that he determine an individual is unable to bear the burden of the litigation is difficult and time consuming. He bases this on the fact that the Department of Justice has over 600 attorneys and that they handle many such complicated judgments in anti-trust, corporate and tax matters. But the fact that the Department of Justice does handle other complex matters does not make the particular determination here involved any less difficult or time consuming. Six hundred attorneys may seem an impressive figure, but not when viewed in the light of the numerous responsibilities of the Department. There are, of course, less than a hundred attorneys in the Civil Rights Division.

Senator Ervin denies that widespread intimidation exists except in Northern cities. Published reports indicate, however, that there is widespread intimidation with respect to public school desegregation.

Senator Ervin argues that the rights which would be litigated are personal, constitutional rights, and that the Attorney General therefore should not be allowed to bring a suit without a complaint. But Negro parents and children who are being denied the right to attend a desegregated school or a desegregated public facility typically are not in a position to vindicate their "personal" constitutional right.

Senator Ervin also argues that the dictum of the six Justices in the Guest case is erroneous. The Supreme Court, of course, has the last word on this issue.

Finally, Senator Ervin argues that Title V of the proposed Civil Rights Act of 1966 provides criminal penalties for such interference. But to rely solely on criminal penalties proposed in Title V of the Civil Rights Act of 1966 would limit the Attorney General's power to deal effectively with private intimidation.

IV. ALTERNATIVE COURSES OF ACTION

An alternative course of action would be to rely completely on Title V of the proposed Civil Rights Act of 1966 (as amended by our proposal to reach economic intimidation), and thereby forego any civil proceedings. This would limit the Attorney General's power to deal with the problem effectively, however.

V. ESTIMATED COSTS OF IMPLEMENTATION

/Information not available/

III. SCHOOLS

A Government's Power to Sue

Title III of the 1966 Bill should be reintroduced. Litigation by the Attorney General appears to have been fairly substantial. In view, however, of the continuing resistance, and the telling statistic that less than 10% of Negro school children in the South are in desegregated schools, it is only logical to strengthen the Attorney General's ability to effect change. The authority of the Attorney General to sue without receipt of a complaint could be used in his discretion in the manner determined most effective in each situation.

Need for Other Measures

Probably no action undertaken would have greater long-range effect in improving the lives of minorities in this country than to improve the quality of their education. Desegregation of the school systems is part of the answer to this problem, but this will take time. Some metropolitan areas, such as the District of Columbia, may be, because of population distribution, beyond the possibility of complete or meaningful desegregation. More important, the dominant white communities, North and South, have massively and persistently resisted more than token desegregation. The only visible alternative is to improve the schools within the Negro communities.

It appears, however, that here, too, there has been thus far a refusal to take action. The National Teachers Corps, for example, which would afford communities an additional resource to improve the quality of education for the disadvantaged, has not yet been able to emerge from the Congress. The country is thus far in the rather awkward position of neither achieving desegregation, nor making the necessary effort to improve the ghetto schools.

We feel that efforts to desegregate our school systems must continue. In the meanwhile, intensive study should be made of ways in which the Federal Government can effect an improvement in schools which do not receive the local attention, and money, or effort to make them adequate.

PUBLIC SCHOOLS AND PUBLIC FACILITIES
PROPOSAL NO. 2

Legislation to amend Title IV of the Civil Rights Act of 1964 to authorize technical and training assistance and grants to school districts for projects and services designed to deal with problems of de facto as well as de jure school desegregation.

PUBLIC SCHOOLS AND PUBLIC FACILITIES
PROPOSAL NO. 3

Legislation to provide for grants by the Commissioner of Education (not allocated by state) to meet the extra costs of constructing new schools, including special education centers and educational parks, which insure a student body representative of a cross-section of the community.

PUBLIC SCHOOLS AND PUBLIC FACILITIES
PROPOSAL NO. 4

Denial of exemption and qualification for charitable contributions for purposes of Federal income, estate and gift taxes in the case of organizations whose purposes or activities involve racial segregation, such as private nonprofit schools operated on a segregated basis.

PROPOSAL No. 4

Denial of exemption and qualification for charitable contributions for purposes of Federal income, estate and gift taxes in the case of organizations whose purposes or activities involve racial segregation, such as private nonprofit schools operated on a segregated basis.

EXPLANATION OF PROPOSAL

The stated proposal is concerned with organizations which claim charitable status for Federal tax purposes and use tax-exempt income and deductible charitable contributions to finance functions conducted on a racially segregated basis. The objective is to assure that the tax laws are not improperly used in a way that will frustrate efforts of the Federal government to combat the abuses of segregation.

INCREASING INCIDENCE OF SEGREGATION IN CHARITABLE FUNCTIONS

The Service has no formal data on increased incidence of use of charitable forms of organizations for the conduct of activities of a segregated character. However, judging from the number of applications for

exemption rulings for private, nonprofit schools it is apparent that as increased judicial pressure is brought to bear against segregation in the public sector, efforts are being made to find means by which the functions may be carried on in the so-called private sector. It is obvious that the charitable form of organization, with its potential for financing the activity through deductible charitable contributions and tax-exempt income, provides a particularly attractive device for such purpose. 1/

Educational and recreational activities are two of the principal areas in which judicial attention has focused on racial segregation. Both classes of activity are readily adaptable to charitable forms of organization and operation, and it is in these two areas that attempts to use charitable forms of organizations to perpetuate racial segregation are likely to become most controversial.

1/ This attractiveness may be more illusory than real in the long run; the financial burden of operating schools without governmental assistance is probably much greater than many would be organizers of such private schools realize.

CONTROLLING PRINCIPLES OF APPLICABLE LAW

Whether and to what extent limitation of benefits of an activity to members of a particular race affects charitable qualification for Federal tax purposes turns principally upon application of four basic propositions:

1. The term "charitable" in the exemption and charitable contribution deduction provisions of Federal income tax law is used in its generally accepted legal sense (Reg. §1.501(c)(3)-(1)(d)(2)); as such it is interpreted as having reference to those purposes recognized as charitable in the general body of law relating to charitable uses.

2. In that general body of law, certain purposes have been deemed to be beneficial to the community as a whole even though the class or classes of possible beneficiaries eligible to receive a direct benefit from the dedication of property to the particular purpose do not include all the members of the

community. These groups of charitable purposes include at least the relief of poverty, the advancement of education, and the advancement of religion. When property is dedicated to such purposes, a sufficient public purpose has been found to justify treating the dedication as charitable even though the possible beneficiaries are limited to a relatively small group. See in that regard Restatement (Second), Trusts (1959) §368, comment b, §§369-373; IV Scott on Trusts, (2nd ed. 1956) §368. Thus it is commonly accepted in the general law of charity that advancement of education may constitute a valid charitable purpose although beneficiaries are limited to a particular class on the basis of race, religion, sex, social class, geographical location, etc., provided the class is not so small that the purpose is not of benefit to the community. See IV Scott on Trusts, (2nd ed. 1956) §370.6;

Bogert on Trusts, §375; Restatement (Second) Trusts, §370, comment j (1959).

3. Dedication of property for use as a community recreational facility is not a purpose within the foregoing rule permitting limitation of beneficiaries. It is instead in the general class of purposes which are recognized as charitable only where the members of the community as a whole are eligible for direct benefits. See opinion of Mr. Justice White in Evans v. Newton, 382 U.S. 296 308-309 (1966), and authorities cited therein; also, Brunyate The Legal Definition of Charity, The Law Quarterly Review, 268, 275-285 (1945).

4. A charitable trust cannot be created for a purpose which is illegal. See Restatement (Second) Trusts, §377.

APPLICATION OF CONTROLLING PRINCIPLES

On the basis of research to date relatively definite conclusions in respect to two aspects of the broad issue involved have been reached. They concern charitable qualifications of nonprofit organizations devoted to providing so-called community recreational facilities to members of a community and to operation of schools in which there is no element of state support nor any violation of a statutory prohibition involved in their conduct.

The conclusions may be briefly summarized as follows:

1. An organization which provides recreational facilities without charge to residents of a community is not charitable where the use of the facilities is restricted to less than the entire community on the basis of race, religion, nationality, belief, occupation or other qualification having no relationship to the character of the facility or charitable qualification of the class benefited.

2. Under heretofore accepted principles of charitable trust law, an otherwise qualified nonprofit private school cannot be denied exemption or qualification for deductible charitable contributions under Federal tax law solely by reason of the fact that it limits its students to members of a particular race or religion where state action is not involved in its operations and conduct of its activity in such manner is not in violation of any express statutory prohibition.

COLLATERAL ASPECTS OF THE SEGREGATED SCHOOL ISSUE

A basic question in regard to the broad issues of Federal tax law involved in the question of charitable status of segregated private schools is whether or not change in legal climate in recent years in regard to racial segregation in the public sector has been such as to invalidate prior concepts of charitable purpose in which certain forms of segregation are present.

The predicate of such proposition would be that racial segregation in education has become so inconsistent with widely shared and publicly espoused moral values of our society that its practice in any kind of formal education is incompatible with the accomplishment of community benefit necessary to characterization of a purpose as charitable; also that a trust or organization which practices racial discrimination in the conduct of an educational activity must be regarded as having as one of its purposes the maintenance of segregation in the essentially public function of education and therefore is not organized and operated exclusively for charitable purposes.

To date, judicial and legislative developments respecting racial segregation do not provide a basis for administrative action premised on such proposition.

In regard to the issue of segregated schools, extensive consideration also has been given to the question of whether the nature of the involvement of a segregated private school in a constitutional violation resulting from state action in its activities is such as

to defeat charitable qualification under the rule respecting illegality of purpose. It appears, however, that the nature of the involvement of the private organization in such circumstances is not of such character as to constitute illegal purpose or course of conduct on the part of the organization itself since the element of illegality involved in reference to the constitutional limitation, relates to acts of a state denying individuals equal protection of the law.

Similar difficulties exist with respect to the implications of Federal statutes, such as Title IV of the Civil Rights Act of 1964, making limited provision for initiation of actions by the Attorney General on behalf of aggrieved individuals to compel desegregation in the case of segregated school operations. The section appears to impose substantial limitations upon the commencement of action by the Attorney General. For example, the school must be one that receives a preponderance of support from the state, action can be initiated only upon written complaint by aggrieved

individuals, and the school must be given opportunity to correct the situation. Thus, the question again is whether such a provision is a statutory prohibition of segregation, the violation of which constitutes an illegal act, or whether it is essentially designed to provide a procedural means for redress of individuals rights which are impaired by state action.

LEGISLATION

There appears to be no necessity for legislation implementing existing law in regard to federal income tax treatment of organizations seeking charitable qualification on the basis of purpose to provide segregated community recreational facilities. Existing limitations of the tax law appear to prevent charitable qualification of such organizations.

Legislation is undoubtedly the sounder approach, however, to the problem of tax treatment of segregated private schools. It would not only provide far more effective and decisive means of curtailment of the abuse implicit in the use of charitable organizations to perpetuate and finance racial segregation, but would

have the advantage of providing certainty of authority in respect to what is manifestly a highly complex and litigious issue. One compelling reason favoring legislative solution is that it would permit resolution of the problem of racial segregation without involvement of the religious and other areas. Any interpretative approach, on the other hand, immediately raises serious questions of equal applicability to limitations imposed on the basis of religion, nationality, belief, etc.

Framing such legislation so as to have application to less than all private, nonprofit schools would be extremely difficult. Legislative standards seeking to limit its application to purposes to "evade" or "frustrate" desegregation orders or to perpetuate segregation as an end in itself would be so indeterminate as to be impossible of uniform administration.

OPTIONAL FORM NO 10
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UNITED STATES GOVERNMENT

Memorandum

TREASURY DEPARTMENT
Washington, D.C.

TO : Stephen J. Pollak
First Assistant, Civil Rights Division
Department of Justice

DATE: NOV 9 - 1966

FROM : Jerome Kurtz
Tax Legislative Counsel
Department of Treasury

SUBJECT: Tax Exempt Status of Segregated Charitable Institutions

I am enclosing a memorandum discussing the problems that confront us in dealing with private schools, hospitals and similar charitable organizations that discriminate on the basis of race. In view of the fact that we are still studying our position, the memorandum was not put in the form of a definite proposal. However, I think it is clear that we have a significant problem in this area and I would be happy to have any suggestions or comments you might care to make.

Enclosure

The Treasury Department, in recognition of the role played by the tax exemption in maintaining and encouraging private segregated institutions, is currently re-evaluating the tax exempt status of charitable institutions that discriminate on the basis of race, color or national origin. Under present law it is clear that certain limited types organizations, those whose charitable status depends on their service to the community at large, will not qualify for an exemption from tax unless they are open to the public on a non-discriminatory basis. However, most organizations, including private schools and hospitals, derive their charitable status from the type of specific activities which they perform and the denial of an exemption in such cases presents a more difficult legal problem. Although the present re-examination of the Treasury's position on this question has not been concluded, it is clear that any decision to deny the exemption of segregated institutions by regulation or ruling will result in substantial litigation over the Treasury's authority to take such action.

The Treasury Department is also aware of the fact that any positive action, either legislative or administrative, to withdraw the tax benefits currently available to segregated charitable institutions will create the identical enforcement and compliance problems that presently confront those agencies extending federal financial assistance by way of grant, loan or contract. The fact remains, however, that the financial significance of the incentives and assistance provided by our tax law make them an extremely important instrument of national policy. To the extent that the tax benefits currently extended continue to be available to segregated institutions, they result in the federal government playing an important role in encouraging and financing discriminatory educational institutions and hospitals.

TAX EXEMPT STATUS OF PRIVATE CHARITABLE INSTITUTIONS WHICH DISCRIMINATE ON THE BASIS OF RACE, COLOR OR NATIONAL ORIGIN

Under our present tax laws charitable institutions such as private schools and hospitals are exempt from federal tax and contributors to such institutions may deduct their contributions in computing their own federal income or estate tax. In these two ways the federal government both encourages and gives financial support to the operation of private schools and hospitals. The financial benefits that are conferred through our tax laws have not been denied to otherwise qualified institutions which discriminate on the basis of race. However, this situation puts the federal government in the incongruous position of both helping to maintain existing segregated educational and medical facilities and of providing positive financial inducements to the creation of new segregated facilities.

In many respects, our tax laws dealing with schools and hospitals reflect a basic governmental decision to encourage private initiative to create institutions which supplement governmental activities in these same areas. However, the decision to extend federal financial aid in any form should carry with it the responsibility of insuring that the funds involved are used to promote rather than frustrate national policies. Recognition of this responsibility is reflected in Title VI of the Civil Rights Act of 1964 which declares as a national policy that "No person. . . shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." However, by limiting the operative provisions of Title VI to grants, loans, or contracts, the Act seems to ignore the significant federal financial assistance that is currently extended to educational, medical and similar charitable organizations by the tax laws.

A recent survey conducted by the Department of Health Education and Welfare reveals that at least 122 private segregated schools have been founded since the passage of the Title VI. Presumably the founders of such schools feel that they can be operated without direct federal or state financial assistance; however, the tax deductibility of contributions would seem particularly important to their formation.

H. ORGANIZATION OF
CIVIL R'TS EFFORTS

ORGANIZATION OF FEDERAL GOVERNMENT CIVIL
RIGHTS EFFORTS PROPOSAL NO. 1

Administrative action to improve and simplify coordination of civil rights activities among various federal agencies.

BUREAU OF THE BUDGET

ORGANIZATION OF CIVIL RIGHTS FUNCTIONS

Existing Organization and Functions

Civil rights functions of Federal agencies arise from civil rights laws, chiefly the Civil Rights Act of 1964, and three executive orders: No. 11063 of November 20, 1962, "Equal Opportunity in Housing;" No. 11246, "Equal Employment Opportunity;" and No. 11247, "Providing for the Coordination by the Attorney General of Enforcement of Title VI of the Civil Rights Act of 1964."

Statutory Functions

1. The Department of Justice is directly responsible for administering legislation relating to voting rights; public accommodations; public facilities; suits for desegregation of public education; suits involving a "pattern or practice of resistance" to fair employment practices; intervention in court cases of general public importance which involve equal protection under the laws; and the Community Relations Service.

2. The Commission on Civil Rights, a temporary agency, makes investigations of allegations of denial of voting rights; collects information and serves as a national clearinghouse concerning legal developments involving denial of equal protection under the laws; appraises the laws and policies of the Federal Government with respect to civil rights; and reports its fundings and recommendations to the President and the Congress.

The Commission is empowered to hold public hearings and to subpoena witnesses or records.

3. The Equal Employment Opportunity Commission administers Title VII of the 1964 Act relating to equal employment opportunity.

4. Over twenty Federal departments and agencies are responsible for enforcing, in their respective programs, the provisions of Title VI of the 1964 Act, which prohibits discrimination in Federally-assisted programs (except those involving insurance or guaranty).

Executive Order Functions

1. Operating responsibilities: Executive Order 11063 requires all departments and agencies which have functions relating to the provisions, rehabilitation, or operation of housing and related facilities to take appropriate action to prevent discrimination.

Executive Order 11246 prohibits discrimination in direct Federal employment or in employment resulting from a contract with the Federal Government. Enforcement is a responsibility of all departments and agencies.

2. Government-wide Coordinating Responsibilities: Responsibility for coordination of action in areas where all or many departments and agencies have operating responsibilities are assigned as follows:

a. Housing--to the President's Committee on Equal Opportunity in Housing.

b. Federal employment--to the Civil Service Commission.

c. Federal Contract employment--to the Secretary of Labor.

d. Title VI--to the Attorney General.

Comments

1. General. The present structure for operations and the assignment of program responsibibility seems to be sound, but there is concern that responsibility for coordination of Federal Government effort at the national level may be too diffuse. There is no one point, aside from the White House, to which people or agencies can turn to seek policy guidance, concerted action, or improved coordination of effort in the civil rights field. Based on the current assignment of responsibilities to the Department of Justice--particularly its new roles in conciliating disputes and coordinating Title VI enforcement--that Department might be a logical candidate for assignment of such responsibility. Also, efforts dealing with civil rights and the disadvantaged at the local level--both Federal and community efforts--suffer even more from fragmentation and lack of communications. Bureau staff experience this summer in Los Angeles indicates a need at the local level for a Federal watchdog activity--one which can observe and expedite Federal agency action, while at the same time working with the Federal agencies concerned to generate community response. The Bureau of the Budget is currently studying this problem.

2. Coordination. Justice needs to exercise greatly increased leadership in the Government-wide coordination of Title VI activities. Executive Order 11247 contemplated a broad role, dealing with compliance reports and investigations, uniformity in the interpretation of regulations, and consistency in determining what constitutes compliance.

3.a. Transfer of Functions. The President's Committee on Equal Opportunity in Housing, which has not exercised leadership, might be abolished, and its government-wide coordinating responsibility assigned to the Secretary of HUD, using the occasion for a strong Presidential directive to the Secretary.

b. At present, under Executive Order No. 11246, the Secretary of Labor is responsible for administration of parts 2 and 3 of the order which provide for nondiscrimination in employment by government contractors and subcontractors and nondiscrimination provisions in federally assisted construction contracts. The Office of Federal Contracts Compliance in the Department of Labor is directly responsible for administration of the Secretary's duties under the Executive Order to assure nondiscrimination in employment by government contractors and subcontractors.

Under Title VII of the Civil Rights Act of 1964, the Equal Employment Opportunity Commission was established and made responsible for investigation of charges of unlawful employment practices by employers, employment agencies or labor organizations for issuance of findings with respect to such charges and for conduct of conciliation to eliminate such practices.

The objectives of both the OFCC and the EEOC are to eliminate discrimination in employment. The EEOC has no enforcement sanctions while the OFCC possesses authority to cancel, terminate or suspend in whole or in part a government contract upon a finding of noncompliance with the provisions of the Executive Order or the regulations issued pursuant to it.

It has been suggested that responsibility for administration of the nondiscrimination in employment provisions of the Executive Order now assigned to OFCC and of Title VII now assigned to EEOC be consolidated in a single agency. In considering this proposal, attention should be given to the question of whether the consolidated agency should be located within the Department of Labor or some other department or continued as the EEOC or created in some other form. Legal research must be done to determine whether the President possesses powers under the Reorganization Act to effect the consolidation through a reorganization plan and whether any other legal impediments to consolidation exist.

It seems that this proposal is premature. EEOC was established by the Civil Rights Act of 1964 only a year ago to administer Title VII--seeking by conciliation or persuasion (or through the Attorney General in court action) to obtain for all employees equal opportunity in private employment. It is so new that it has had no chance to prove its worth. Prospects are good that it may be given cease and desist order powers by the Congress in the next session--thus increasing its effectiveness. Finally, the President has just named a new chairman and clothed him with the aura of strong Presidential support.

A less sweeping, but potentially useful alternative, might be to begin to designate staff of the EEOC to perform compliance inspection work for Labor's Office of Federal Contracts Compliance so as to minimize duplication of effort.

4. Extension of Commission on Civil Rights. The President's 1967 legislative program should include a four-year extension of the Commission on Civil Rights.

5. Community Relations Service. The current legal basis for functions of the Service is adequate but there may be a need to administratively enlarge the scope of its field activities, with an appropriate budget increase.

ORGANIZATION OF FEDERAL GOVERNMENT CIVIL RIGHTS EFFORTS PROPOSAL NO. 1B

Administrative action to establish an Office of Civil Rights Coordination in the Department of Justice to coordinate federal government civil rights programs and enforcement policies and procedures.

II. ORGANIZATION OF FEDERAL GOVERNMENT CIVIL RIGHTS EFFORT

Proposal 1

PROPOSAL FOR IMPROVED COORDINATION OF FEDERAL CIVIL RIGHTS EFFORTS

INTRODUCTION

In his February 10, 1966, message to Congress transmitting Reorganization Plan 1 of 1966, President Johnson identified the Justice Department as having a civil rights coordinating responsibility in addition to the Attorney General's Title VI coordinating function established in Executive Order 11247 (September 24, 1965). He specifically referred to the appropriateness of several Federal agencies coordinating their civil rights programs through a single agency, the Justice Department. He said that the Department should have "the responsibility for coordinating major government activities under the Civil Rights Act aimed at voluntary and peaceful resolution of discrimatory practices... ."

I. DESCRIPTION OF PROPOSAL

It is proposed that the Attorney General establish within the Department an Office of Civil Rights Coordination. The function of the Office would be to assist Federal departments and agencies to coordinate their programs and activities, and adopt consistent and uniform policies and procedures with respect to the enforcement of Federal civil rights statutes. The Department's Title VI coordination function would be integrated into the broader responsibilities of the new Office.

The Office of Civil Rights Coordination would consist of three units:

A. Compliance. A central office would be established to avoid overlap and duplication, and to assist departments and agencies in coordinating the total Federal approach to compliance.

Functions of the Compliance section would include:

--assist departments and agencies in coordinating the processing of complaints for the most effective compliance impact in the communities involved;

--provide a channel for input from all Federal departments and agencies to the Attorney General and the Civil Rights Division to aid the Department in determining patterns of discrimination and the timing of law suits;

--facilitate a coordinated civil rights task force approach to discrimination in particular communities;

--assist departments and agencies in developing a comprehensive appraisal of the alternative sanctions available to them to deal most effectively with non-compliance.

B. Technical Assistance. This section would:

--assist Federal departments and agencies in developing and coordinating affirmative programs and action in communities directed to preventing racial discrimination and difficulties;

--help coordinate the Federal approach to equal opportunity through Federal Executive Boards and Associations and the Department of Housing and Urban Development.

C. Program Information and Review. Functions would include:

--coordinate the gathering and dispersal of vital information on communities (which is now being done independently and repetitiously by the various departments and agencies);*

--assist the Civil Service Commission in planning and implementing a comprehensive civil rights training program for Federal employees;

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*The Commission on Civil Rights does not supply this kind of community data on an on-going basis, but rather works on a research project basis. The Office of Economic Opportunity has made a significant start toward the kind of information system needed under a contract with General Analytics to develop a national data bank.

--based on comparative analysis of compliance audits of departments and agencies by the Commission on Civil Rights, recommend internal administrative steps which can be taken regarding in-house and contract compliance.

II. NEED

The need for coordination of Federal civil rights activities is explained in Executive Order 11247, and in the President's Message to the Congress transmitting Reorganization Plan 1 of 1966 (February 10, 1966):

> "To be effective, assistance to communities in the indentification and conciliation of disputes should be closely and tightly coordinated. Thus, in any particular situation that arises within a community, representatives of Federal agencies whose programs are involved should coordinate their efforts through a single agency...
>
> In this, as in other areas of Federal operations, we will move more surely and rapidly toward our objectives if we improve Federal organization and the arrangements for inter-agency coordination."

As indicated in Chart 1 (attached) there are at least nine Federal departments and agencies with specific civil rights functions, and all the departments are responsible for in-house and contract compliance under Title VI and Executive Order 11246. Yet problems do not arise in the community on a one-at-a-time basis, and thus do not reflect the Federal departmental structure for dealing with them. There is overlap of information-gathering; often 10 different departments or agencies have independent profiles on the same community. Community leaders often complain to CRS that they have been visited by a succession of Federal officials all concerned with "discrimination," each of whom is unaware of the operations of the others. There are, for instance, at least a dozen separate agencies working in unemployment and manpower problems, ranging from OEO and EEOC to MDTA and the Department of Labor.

The one question most frequently asked CRS by Federal, state, municipal and private community relations personnel concerns intensified coordination of Federal civil rights activity. Title VI compliance officers, in particular, have

expressed frustration to CRS about lack of coordination.

In short, present programs are inadequate because no agency is assigned the specific responsibility for coordination of the total Federal civil rights effort. The President's statements indicate, however, that he sees the Attorney General as the major coordinator -- at least informally. This proposal aims to overcome the present inadequacy of coordination by formalizing that role and locating its function in in the Department of Justice.

III. ADVANTAGES AND DISADVANTAGES

Consolidation and cutting-down of waste and duplication make the proposal sound from an administrative point of view. We foresee no administrative problems. Enforcement problems would be minimal, if the office is given strong authority lines from the Attorney General and adequate budget and staff as requested.

While a lack of authority in the Attorney General to direct the various compliance programs may be a disadvantage, the objective of this proposal is coordination and cooperation, rather than unified direction.

IV. ALTERNATIVE COURSES OF ACTION

Alternative courses of action include:

A. Create a Department of Civil Rights (Cabinet-level).

B. Create an Agency for Civil Rights below Cabinet level, but with specific mandate to coordinate all Federal civil rights and community relations activities.

C. The President could create a coordinating body by Executive Order.

D. Create an "umbrella" agency -- a parent agency to coordinate existing functions.

E. An Executive Order could be issued to create an interagency council of heads of civil rights agencies.

These alternatives are rejected mainly because (1) the legal authority already exists for an in-Justice Office of Civil Rights Coordination, as proposed, and (2) it is the apparent policy of the Administration to retain responsibility for enforcement in the several Departments. Therefore, this proposal is designed essentially to achieve coordination among the departments, within the existing framework.

ORGANIZATION OF FEDERAL GOVERNMENT CIVIL
RIGHTS EFFORTS PROPOSAL NO. 2

To decide if there should be any transfer of civil rights functions from one agency to another.

H. Organization of Federal Government Civil Rights Efforts

Proposal 2

Transfer of Functions. The President's Committee on Equal Opportunity in Housing, which has not exercised leadership, might be abolished, and its government-wide coordinating responsibility assigned to the Secretary of HUD, using the occasion for a strong Presidential directive to the Secretary.

At present, under Executive Order No. 11246, the Secretary of Labor is responsible for administration of parts 2 and 3 of the order which provide for nondiscrimination in employment by government contractors and subcontractors and nondiscrimination provisions in federally assisted construction contracts. The Office of Federal Contracts Compliance in the Department of Labor is directly responsible for administration of the Secretary s duties under the Executive Order to assure nondiscrimination in employment by government contractors and subcontractors.

Under Title VII of the Civil Rights Act of 1964, the Equal Employment Opportunity Commission was established and made responsible for investigation of charges of unlawful employment practices by employers, employment agencies or labor organizations for issuance of findings with respect to such charges and for conduct of conciliation to eliminate such practices.

The objectives of both the OFCC and the EEOC are to eliminate discrimination in employment. The EEOC has no enforcement sanctions while the OFCC possesses authority to cancel, terminate or suspend in whole or in part a government contract upon a finding of noncompliance with the provisions of the Executive Order or the regulations issued pursuant to it.

It has been suggested that responsibility for administration of the nondiscrimination in employment provisions of the Executive Order now assigned to OFCC and of Title VII now assigned to EEOC be consolidated in a single agency. In considering this proposal, attention should be given to the question of whether the consolidated agency should be located within the Department of Labor or some other department or continued as the EEOC or created in some other form. Legal research must be done to determine whether the President possesses powers under the Reorganization Act to effect the consolidation through a reorganization plan and whether any other legal impediments to consolidation exist.

It seems that this proposal is premature. EEOC was established by the Civil Rights Act of 1964 only a year ago to administer Title VII -- seeking by conciliation or persuasion (or through the Attorney General in court action) to obtain for all employees equal opportunity in private employment. It is so new that it has had no chance to prove its worth. Prospects are good that it may be given cease and desist order powers by the Congress in the next session -- thus increasing its effectiveness. Finally, the President has just named a new chairman and clothed him with the aura of strong Presidential support.

A less sweeping, but potentially useful alternative, might be to begin to designate staff of the EEOC to perform compliance inspection work for Labor's Office of Federal Contracts Compliance so as to minimize duplication of effort.

Community Relations Service
October 18, 1966

H. Organization of Federal Government Civil Rights Efforts

Proposal 2

In view of the dispersion of the Government's programs with regard to equal employment opportunity, the question of the distribution and location of these functions might well be reconsidered.

ORGANIZATION OF FEDERAL GOVERNMENT CIVIL RIGHTS EFFORTS PROPOSAL NO. 3

Legislation to make the United States Commission on Civil Rights a permanent agency or in the alternative, to extend it for five years.

BUREAU OF THE BUDGET STAFF PAPER

H. Organization of Federal Government Civil Rights Efforts

Proposal 3

Extension of Commission on Civil Rights. The President's 1967 legislative program should include a four-year extension of the Commission on Civil Rights.

Community Relations Service
October 18, 1966

H. Organization of Federal Government Civil Rights Efforts

Proposal 3

The Community Relations Service considers the Commission on Civil Rights to be a constructive and valuable influence in the Government's arsenal of weapons in the drive to achieve equal rights for all Americans. Extension of the Commission's authorization should be an important goal of the Administration's legislative effort in the coming year.

It is highly desirable that the Commission be placed on a permanent basis, or at least, if it is not made permanent, that some means be found to avoid the quadrennial death throes it has experienced since its creation.

The United States Commission on Civil Rights should be made a permanent agency. In addition, its statute should be amended to provide additional authority to implement its statutory duty to appraise the laws and policies of the Federal Government. Certain technical amendments also are required.

I. DESCRIPTION OF PROPOSAL

The United States Commission on Civil Rights should be made a permanent agency. 1/

II. NEED

A. Description of the nature and seriousness of the problem the proposal is designed to alleviate

Contrary to the expectations of all persons of goodwill who have supported the Commission on Civil Rights in the past and who hoped, as did the Commission, that there would not be a continuing need for the function served by the Commission, Negro Americans and other minority groups continue to suffer denials of their civil rights in many areas of American society in which government is either directly or indirectly involved. The seriousness of these denials today is clouded in an atmosphere of hostility that not only forestalls progress but might well result in regression. Much of the current unfortunate racial climate stems from misinformation or lack of information. The extent and nature of the grievances of minority groups is not clear to large segments of the American population nor is the scope and character of the needed remedies. In a very real sense, the facts required by the American people to appreciate the problems and to form a determination to deal with them are not available.

The Commission has played a significant role in providing facts to guide legislative and executive judgment. Since the passage of the Civil Rights Act of 1957, which created the Commission, the store of hard data available to legislators has grown tremendously. Much of this fact-gathering was done by the Commission on Civil Rights. Debates on each of the three civil rights acts passed by Congress since 1957 - as well as the debate surrounding the proposed Civil Rights Act of 1966 - contain numerous and extensive references to the

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1/ Strengthening amendments to provide the Commission with additional authority to carry out its duty to appraise the laws and policies of the Federal Government are set out in Appendix A.

findings and studies of the Commission on Civil Rights. In short, this Commission has played a significant role in bringing forth the facts essential for a proper exercise of the legislative function.

Today, the facts which require elucidation are not the blatant denials associated with many Southern States - denials which the recent civil rights acts have sought to remedy. To be sure, there continues to be a pressing need to appraise and evaluate recent civil rights legislation and the manner in which it is administered. But equally important is the need to uncover the facts related to the more subtle, insidious and sophisticated problems of our urban ghettos.

Recently through the vehicle of public hearings, the Commission has sought to elicit, under oath, the testimony of interested and concerned citizens as well as public officials on state, local and federal levels, on topics of vital importance to urban dwellers. In Cleveland, Boston and Rochester, the Commission has been exploring the myriad and complex issues facing minority groups in urban centers. The findings and conclusions in Boston and Rochester will be incorporated into a larger study of racial isolation in the Nation's schools undertaken at the President's request.

The Cleveland, Boston and Rochester hearings demonstrate the continuing and present need for further factfinding. In each of these cities, there was wide interest in the Commission's proceedings and the facts that were uncovered. Newspaper and television coverage was extensive. In Cleveland, a subcommittee of the Commission's State Advisory Committee followed up the hearing and succeeded in effectuating many changes called for by the facts disclosed. In Rochester, The Times Union commented editorially:

> The United States Commission on Civil Rights served Rochester--and the nation--well in its hearing on racial "isolation" in the schools.
>
> These were no irresponsible, inflammatory probers. They brooked no nonsense from extremists on any side. The Commission's staff work was thorough and accurate; its approach was calm and business-like.

There continues also to be an imperative need to have an impartial agency at work which can provide the facts to the American people to counter racism and racist attitudes and which can supply information to State and local officials and to community leaders and organizations to aid them in solving the problems at the local level.

Prior to the Civil Rights Act of 1964 the Commission was responsible principally for providing facts and information to the President and the Congress.

The 1964 Act added national clearinghouse responsibilities in civil rights to the Commission's jurisdiction. As a national clearinghouse, the Commission is responsible for disseminating information in fields, including but not limited to, "voting, education, housing, employment, the use of public facilities, transportation and the administration of justice." A major purpose of the clearinghouse program has been to promote a better understanding of constitutional and statutory requirements relating to civil rights. The effective performance of this function is of major importance to the success of the Nation's increasing efforts to secure civil rights for all citizens.

Pursuant to this clearinghouse function, the Commission collects, publishes and makes information available through conferences, meetings, publications (such as Equal Employment Opportunity Under Federal Law and Voting Rights Act of 1965), the activities of the Commission's State Advisory Committees, and staff services performed in Washington and in the field. An example of the Commission's role as a disseminator of information is the 8 conferences, attended by 6,000 persons, that were held to explain the 1966 school desegregation guidelines.

The Commission hopes to enlarge this clearinghouse function in the future in terms of both audience and subject matter. As recent developments in the civil rights area clearly have indicated, the need for an effective fact-finding agency will continue into the future.

Term of extension--As we have shown, serious civil rights problems will remain with us for the foreseeable future. A permanent agency is needed to deal with these problems.

The Commission has been disadvantaged in certain respects by its temporary status. As the end of its statutory term approaches, employment of the best qualified personnel becomes more difficult and serious limitations are placed on the scope and depth of projects which the Commission can undertake in view of the possible near-term expiration of the agency. Moreover, the development of a truly efficient and thorough clearinghouse service with modern information retrieval equipment requires an investment of time and money most appropriate for a permanent agency.

The question of making the Commission a permanent agency has been raised previously. In 1961 when the life of the Commission was extended for two years, Senator Clark proposed amendments making the Commission a permanent agency, and in 1963, bills were introduced in both the House (H.R. 3131) and Senate (S.1219). At that time, however, the Commission was given only a one year extension.

During the debate on what was to become the 1964 Civil Rights Act, Senator Kuchel argued that the Commission should be made a permanent agency.

> All too often in the last several Congresses we have been confronted with an extensive junior grade filibuster as to whether or not the Commission should be extended for 4, 2 or 1 additional year, or at all.

> ...Constant bickering and caustic debate over the work of an agency which has performed unparalleled and constructive and thoughtful services does not serve the public interest.

Senators Saltonstall and Scott also argued that the Commission should be made permanent.

Senator Scott argued:

> The extension of the Commission /for a 4 year period/ serves no known purpose except to keep the Commission "shook up" or uncertain of its tenure, and unable to secure and hold the highest quality of technical assistants. This is no reflection on the Commission. It is remarkable how well they have done in spite of these limitations. However, a permanent Commission could plan far more cohesively and constructively and could thereby attract and hold personnel of the caliber which it should have.

President Kennedy also recommended that the Commission be "placed on a more stable and more permanent basis" if it were to carry out its responsibilities in the most effective manner. The legislation he sent to Congress provided for a four year extension. The House Judiciary Committee reported out a bill which gave the Commission permanent status. This provision was altered on the floor, but not at the suggestion of the Administration.

Experience has shown that the Commission is uniquely qualified to find the facts, to report publicly on these findings through written reports and public hearings and to make recommendations to the President and the Congress which are available at the same time to the public. Further, the dissemination of these facts helps to reduce tensions and promote calm, reasonable solutions.

The deeply rooted problems of minority groups require the attention of an independent, bipartisan agency such as the Commission on Civil Rights. Today, more than ever, there is need for a well established, experienced, respected factfinding agency. The Commission has established its credibility, particularly among civil rights groups where there is a vast mistrust of the Federal Government. As an Agency which does not have a program to defend, we can inspire trust in members of minority groups at a time when such groups are becoming more and more disenchanted with the role government plays in the solution of their problems.

1. Statistical data

At an appropriate time, the Commission is prepared to submit a full analysis of its accomplishments, listing its hearings, studies, conferences, meetings, complaints processed, etc.

2. Summary of available studies

None

3. Indication of any need for further study

The Commissioners presently are considering the possibility of requesting legislation giving the Commission a continuing responsibility to investigate individual complaints of discrimination by Federal agencies or of failure of a Federal agency properly to carry out its civil rights responsibilities. This would place the Commission in the role of an Ombudsman - a role which the Commission performs in a limited sense now - with respect to a limited class of complaints, guaranteeing that there would be an agency to which each individual could bring his complaint with the assurance that reasoned investigation would be undertaken by an impartial agency to determine whether the complaint is meritorious and the further assurance of a reasoned recommendation by that agency, and, if the recommendation is not followed, a public report by the impartial agency and a public response by the agency which is the subject of the complaint. In effect, this would formalize and regularize current Commission policy and procedures. A possible difficulty with such a proposal is that too much of the Commission's time might have to be devoted to responding to citizen complaints at the expense of Commission projects which are deemed to be of more general importance. In addition, there may be some technical amendments to its statute which the Commission will propose.

B. Description of related ongoing programs

There is no other agency in the Federal government which is performing a function duplicating that of the Commission. Because of its independent, bipartisan nature, the expertise it has acquired, and the fact that it has no vested interest in any particular Federal program or project, it is far better qualified to perform its functions than any other agency.

C. Inadequacies of present laws or programs

The inadequacies of the Commission's statute, including its temporary status, are set out in A above and in Appendix A.

III. ADVANTAGES AND DISADVANTAGES

A. Extent to which the proposal meets the need

1. Long-term benefits

Long-term and short-term benefits include greater flexibility in planning and employment, greater independence, and avoidance of situations, such as those which have occurred in the past, in which trained staff has been lost because of uncertainty about whether the Commission's life would be continued.

B. Feasibility

The proposal would create no forseeable administrative, enforcement or coordination problems.

C. Legal problems raised by the proposal

There would be no significant legal problems raised by the proposal.

IV. ALTERNATIVE COURSES OF ACTION

As indicated above, the Commissioners are still considering the possibility that the Commission be empowered to act in the capacity of Ombudsman with respect to certain kinds of individual complaints.

As an alternative to making the Commission a permanent agency, the life of the Commission could be extended for a five year period to June 1973, with the proviso that the President shall submit recommendations concerning the future of the Commission to Congress no later than January 1972, and unless Congress disapproves or modifies these recommendations no later than June 1972, the life of the Commission automatically will be extended for another five year period. This would enable the Commission to increase its flexibility in planning and employment and would avoid last minute uncertainty on the part of its trained staff.

Among other proposals that have been made for enlargement of the Commission's functions have been (1) a proposal that a separate indemnification board be established within the Commission to indemnify victims of racial violence, and (2) that the Commission have the role of enforcing Title IV of the proposed Civil Rights Act of 1966. An advantage of these proposals is that they would tend to halt the increasing proliferation of civil rights responsibility in government. A disadvantage is that proposals which would vest operating and enforcement responsibility in the Commission might detract from its role of independently appraising federal laws and policies in the civil rights area.

ORGANIZATION OF FEDERAL GOVERNMENT CIVIL
RIGHTS EFFORTS PROPOSAL NO. 4

Legislation to authorize the Civil Rights Commission to require all agencies of the federal government to furnish such records and information as the Commission may require; to further amend the Commission's statute to require federal agencies whose civil rights policies or practices have been criticized by a Commission report to respond publicly in writing to the Commission's findings.

ORGANIZATION OF FEDERAL GOVERNMENT CIVIL
RIGHTS EFFORTS PROPOSAL NO. 5

To assign to the Community Relations Service responsibility for leadership of federal programs designed to alleviate ghetto problems.

RESPONSIBILITIES OF THE COMMUNITY RELATIONS SERVICE
(A Proposal Regarding Item #5)

INTRODUCTION

Very few institutions or organizations in the United States have demonstrated a capacity to deal effectively with the problems of the American racial ghettoes and to help the people who are forced to live there. Very few institutions and very few people on the outside have demonstrated a capacity even to understand the slum ghetto or to develop a continuing relationship of any real significance with the people who live there. The ignorance, indifference, callousness and ineptitude which characterize American society's approach to the ghetto have fostered a state of isolation and powerlessness on the part of ghetto residents. The feelings of resentment and bleak hopelessness which sometimes spawn violence in the ghetto flow naturally from this kind of treatment by society at large.

It is quite clear that the nation can no longer afford the luxury of ignoring our ghettoes or of dealing ineffectually with their problems.

I. DESCRIPTION OF PROPOSAL

It is proposed that CRS be authorized to assume a leadership role in sharpening the effectiveness of Federal and local efforts to solve ghetto problems. The ultimate aim of such CRS activities would be to hasten the dissolution of slum ghettoes. The short-range aim will be to enlarge the knowledge, understanding and contacts of the greater community with the ghetto and to stimulate activities at the local level designed to open opportunities for ghetto residents.

This leadership would be exercised under three specific types of authority:

A. To convene representatives from Federal departments and agencies to plan and carry out coordinated attacks on ghetto problems, and to evaluate the Federal approach to such

problems. Such authority would obviously not extend to such statutorily-based activities as the Demonstration Cities program.

B. To design and implement substantive short-range projects which have hitherto been carried out on an ad hoc basis such as the summer programs conducted in 1965 and in 1966.

C. To serve as community relations consultants particularly on ghetto problems to Federal agencies in Washington and in various communities through Federal Executive Boards and Associations, and their Critical Urban Problems Committees.

The CRS's ongoing role as community relations consultant to local governments and private organizations would continue and would be enhanced by these mandates.

Through these mechanisms the CRS would attack the basic problems blocking solution of the pressing problems of American ghettoes:

-- the greater community's lack of knowledge and understanding of the ghetto and of the people who live there;

-- lack of ongoing significant contacts between the greater community and the ghetto community;

-- consequent lack of effective and aggressive action to improve the quality of life in the ghetto; and

-- consequent lack of aggressive and effective action against the forces and structures maintaining ghettoes.

The program proposed here is essentially the program which the Service has proposed to the Bureau of the Budget for FY 1968. The new element is the proposal that CRS be specifically authorized to undertake coordination and leadership authority in inter-departmental

activities directed at solving ghetto problems. The increase proposed for FY 68 is that 85 people be added to the CRS staff.

This will permit the Agency to expand and intensify the services it is already beginning to provide in large cities across the country. Because this request is contained in the FY 68 budget, it cannot be anticipated that the expanded service will be available for the summer of 1967. If an expansion for the summer of 1967 is deemed desirable, a supplemental appropriation will have to be sought.

II. NEED

A. The most serious defect in the dealings of American society with the ghettoes has been lack of knowledge of and empathy for their problems and their people. Every indicator shows that the situation is getting worse for non-white Americans, yet the great mass of white Americans is uninformed and, at best, indifferent -- at worst, openly hostile.

Gaps between Negro and white achievement indices show the growing disparities:

-- a measurable Negro unemployment rate which has recently risen to 2 1/2 times that of the white unemployment;

-- a non-white infant mortality rate which in 1950 was 60% higher than the white rate, but which is now 90% higher;

-- a proportion of Negroes living in substandard housing that is twice that of whites living in such housing;

-- an unemployment rate for Negroes which is greater than the rates for whites during any of the past three recessions;

-- 27% of Negro youths are unemployed as against 12% of white youth;

-- a Negro male median income of 51% of the white male median income, just as it was in 1951.

Yet, ironically, whites seem less informed and more hostile than ever before. Fifty-two percent -- the highest figure ever -- said in a recent poll that the Administration is "pushing integration too fast". Many whites seem incapable of making the simple distinction between demonstrations and riots: In October 1966, 85 percent said they felt "demonstrations for civil rights" hurt the Negroes' cause -- compared to 1963 when more than half said demonstrations helped the cause.

Other indicators are even more dramatic: the irrational "backlash" reaction of a majority of whites to the frustration-bred violence of a very small minority of non-whites trapped in American ghettoes; the nomination of openly racist candidates for public office in many states North and South; Congressional attacks on desegregation policies of the Department of Health, Education and Welfare, to name a few. All of this while more than half of all Negroes are still poor by the most meager criterion.

B. There are no Federal programs directed specifically at dissolution of the ghetto. The only Federal educational and communications approaches to the problem are those of the U.S. Commission on Civil Rights and the Community Relations Service. To date they have been inadequate because there has not been sufficient concentration of efforts or sufficient coordination of these approaches with Federal programs at the regional, state and community level. The Field Services Division of the Civil Rights Commission services all 50 states with only 19 staff members, and the Office of Conciliation and Field Services of the CRS services 40 communities with only 23 staff members, at a total cost to both of $615,235 in FY 1966.

Yet, most Federal programs -- all of which have implications for equal opportunity and ghetto dissolution -- proceed without any contacts with these two primary but limited resources. There have been two ad hoc summer efforts: one in 1965 directed by the CRS and a second in the summer of 1966 directed by the Vice President. Both efforts suffered from being crash operations and there was too little continuity from one year to the next.

Some of the programs of the Department of Housing and Urban Development touch the ghetto, but the general thrust of the activities of that Department are broader than the ghetto and are more deeply concerned with the physical aspects of urban development than with human renewal efforts.

III. ADVANTAGES AND DISADVANTAGES

A. The proposal has the major long-range benefit of integrating the Federal approaches to the dissolution of American ghettoes and infusing them with the sensitivity, knowledge and experience CRS has gained and will continue to accumulate by working with the people in such areas across the country.

The major short-term benefit is the reduction of tension through providing understanding to whites and hope-producing communication and new opportunities for ghetto residents. Already, despite serious limitations in size of staff, CRS has demonstrated an ability to get into the ghettoes, to deal with the real leaders there, to understand the issues and problems and to interpret these issues and problems to the greater community.

B. The administrative problems in developing and coordinating any interdepartmental effort are myriad. The problems can be substantially alleviated if the need for this kind of activity in solving ghetto problems is crystal clear and if the grant of authority to CRS is explicit and supported by the White House. Although it appears that the authority sought here is consistent with the thrust of the President's Message to the Congress transmitting Reorganization Plan No. 1 of 1966, a renewed and more explicit grant of authority to the Attorney General would be highly desirable.

C. No foreseeable legal problems are raised by the proposal.

D. Other considerations supporting the proposal include:

-- such a strong response to the expressed ignorance and indifference of white Americans to the plight of ghetto residents is mandatory (a) to demonstrate that strong opposition cannot turn back the Government's commitment, and (b) to demonstrate to minority people and the Movement that there is progress being made and that the Federal Government intends to honor its commitments;

-- the 16 Federal Executive Boards and 61 Federal Executive Associations now being activated for broad-scale community problem-solving provide a convenient vehicle for local coordination of some phases of the ghetto-dissolution mandate.

IV. ALTERNATIVE COURSES OF ACTION

For the CRS, the alternative is continuing a broad and general approach to every facet of the problems of discrimination in communities, but without as clear a focus on ghetto dissolution.

For the proposed coordinated Federal attack on ghettoes, alternatives include:

-- allowing the Federal approach to remain as is, with the continued operation of many individual programs which affect the ghetto -- but no coordinated attack for dissolution;

-- vesting the proposed convenor, programming and consulting functions in the convenor role in the Department of Housing and Urban Development;

-- authorizing the CRS and the Commission on Civil Rights to cooperate in a Ghetto Task Force effort to assume the proposed functions;

-- establishing the position of Special Advisor on Ghetto Problems on the White House staff, with parts of the staffs of CRS, HUD, CRC, OEO and other agencies detailed to his office for program design and implementation;

-- vesting the proposed functions in the Community Action Program of OEO.

These alternatives are rejected for three reasons:

A. The CRS already is geared to efficient work within the ghetto and the larger community, and the Agency's Field Representatives have already established the contacts needed to understand the problems, interpret to the larger community and stimulate the seeking of solutions. It would take many man-years to rebuild such rapport through other channels.

B. The urgency of the problem demands an immediate, wide-scale Federal approach through structures already existing. CRS provides such structures ready for the task without delay.

C. Legal authority already exists in the responsibilities of the Attorney General, as noted above.

V. ESTIMATED COSTS OF IMPLEMENTATION

This program and its estimated cost, $2.6 million, is contained in the CRS program submission to the Bureau of the Budget for FY 68. That amount represents an increase of $1.1 million above the CRS FY 67 budget. CRS can assume the leadership role outlined herein in FY 67, but the breadth of its field coverage and the intensity of its backup work will be limited by the extent to which its manpower resources are limited. Its ability to provide broad and substantial coverage during the summer of 1967 will also be limited by the amount of funds available in its FY 67 budget.

Community Relations Service
October 18, 1966

H. Organization of Federal Government Civil Rights Efforts

Proposal 5

GRANT LEGISLATION

A legislative proposal to give the Attorney General authority, which it is contemplated would be delegated to CRS, to make studies and give grants and technical assistance to human relations commissions and organizations is being considered in the office of the Acting Attorney General as a part of the Department's overall legislative program for 1967. Therefore, that proposal will not be resubmitted to the task force for consideration. A copy of the proposed bill, however, is attached.

CONTINUING ROLE

Although no other immediate proposals for legislation or executive action pertaining to the responsibilities of CRS are presented at this time, it is appropriate to note that the need for the work of the CRS is expected to grow substantially in the next few years. The problems of the urban environment on which CRS is increasingly focusing its attention are expected to worsen, as the white residents continue to move to the suburbs and the cities become poorer and blacker. The role of the Community Relations Service becomes at once more difficult and more necessary as these problems become more severe.

H. Organization of Federal Government Civil Rights Efforts

Proposal 5

Community Relations Service. The current legal basis for functions of the Service is adequate but there may be a need to administratively enlarge the scope of its field activities, with an appropriate budget increase.

ORGANIZATION OF FEDERAL GOVERNMENT CIVIL
RIGHTS EFFORTS PROPOSAL NO. 6

Legislation to amend Civil Rights Act of 1964 to provide for grants by the Attorney General (Community Relations Service) to facilitate the participation of State and local public and private agencies in community relations programs.

COMMUNITY RELATIONS SERVICE STAFF
Proposal No. 6

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I. DESCRIPTION OF PROPOSAL

INTRODUCTION

The Community Relations Service believes in Federal assistance and local responsibility as indispensable components for meeting the growing human relations problems in American communities. CRS is specifically charged with providing ". . . assistance to communities . . . in resolving disputes, disagreements or difficulties relating to discriminatory practices." Based on evidence summarized in this paper, the CRS concludes that a most effective way to stimulate progress in intergroup relations and encourage local responsibility for solving problems would be the providing of grants for two types of service to local human relations organizations:

A. Supporting human relations organizations.

1. Creating New Organizations - municipal, metropolitan, county, and regional

2. Program and project development and support

B. Developing human relations leadership skills.

1. Community seminars and workshops

2. Institutional training programs

3. Improvement of communications in the human relations profession

There is ample precedent for funding local projects in this way. Virtually all Federal programs for the community are administered through local agencies who have day-to-day contact with the community and its problems. Outstanding current examples are urban renewal, public housing, the Law Enforcement Assistance Act and the various programs of the Office of Economic Opportunity. All such programs are aimed at strengthening local institutions -- which is precisely the purpose of the proposed grants authority of the Community Relations Service. While official commissions have functional and symbolic importance in communities, it is not the intent of this legislation to limit these grants exclusively to commissions. In some communities there are also private groups and unofficial human relations councils working toward the same goals that are worthy of support.

Of the functions performed at the city level in the community relations field, it is not as appropriate for the Community Relations Service to provide grants for regulatory activities. This would be more appropriate and within the interest of the Equal Employment Opportunity Commissions and the Housing agencies. Secondly, local communities should be expected to provide basic funding for the community relations function. Activities created around this function could be grouped around three areas:

1. Programs to promote equal opportunity

2. Programs to promote neighborhood and community organization.

3. Programs to promote governmental services contributing to equal opportunity.

Where cities are unable to provide financial support for diversified activities of this kind, specific project proposals might be funded through a special grant-in-aid program.

The area in which the community relations function at the city level receives the least financial support is one in which there is critical need. This need is for study, information, and planning services in the human resources field with special emphasis on the racial and ethnic factors involved. Such services have generally been beyond the financial and technical capabilities of the cities. Here again on the basis of specific project proposals, Federal grants could be made to strengthen these study and planning activities at the local level. (The study of the Watts areas after the fact could and should have been made before the fact.)

A. SUPPORTING HUMAN RELATIONS ORGANIZATIONS

Grants in the field of community relations would be aimed at (a) strengthening local community institutions and (b) creating local resources for better community relations where none exist. In every type of assistance, the aim would be the eventual assumption of support of the activity by the local community. Toward this end, many of the grants may be made on a matching or contributing basis to secure the commitment of the community to the program in its earliest stages.

1. Creating New Organizations

Examples of specific types of organizations, the establishment of which might be supported by grants and technical assistance are the following:

a. Metropolitan Community Relations Councils ($300,000)

Such councils could be established to assist municipal agencies which are customarily legally limited to official jurisdiction within corporate city limits, to render staff assistance to contiguous suburban communities for establishment of official or voluntary community relations agencies. At an estimated cost of $300,000, ten metropolitan urban areas experiencing interrelated problems in education, employment, housing, health and welfare services, interracial tensions, etc., would mount demonstration programs to multiply acquaintances and to consult and advise on mutual problems. Coordinated efforts between suburban and city officials, civic and religious and business and industry leaders; and city dwellers and commuters would be mobilized. Official and voluntary community relations organizations would be organized and strengthened within the metropolitan area. Establishment of suburban-urban community relations councils would be encouraged - especially wherever individual commissions require members to be residents of the local municipality.

A full grant of $30,000 to each of ten agencies, for a two-year period, would provide salaries for one full-time professional ($8,000 p. a.) and one part-time clerical ($2,000 p. a.) staff and further provide($5,000 p. a.) for postage, telephone, stationary and office supplies, travel expenses and contingency fund. In addition to establishing such metropolitan councils, established commissions could be given grants to enable them to assist nearby communities in resolving disputes, disagreements and difficulties, as well as in establishing official or unofficial agencies.

b. Municipal Community Relations Commissions ($150,000)

To assist local suburban and small town communities (less than 60,000 population) experiencing rapid growth, suburban sprawl and some ghettoization to employ competent professional and clerical staff and to become programmatically operative, on an experimental basis. Five communities with at least five percent minority group (Negro, Spanish speaking and/or American Indian) population concentration would

become experimental laboratories for determining feasibility, need, and practicable use of structured and staffed community relations commissions in the many localities of similar size and problems in the nation. Public and private leadership potential would be discovered, encouraged and developed from within indigenous groups. Pertinent data analyses and detailed record keeping processes would be designed and maintained for future maximum use in other cities. Procedures for assuring continuing operations by local funding would be explored and encouraged.

A grant of $22,500 to each of five communities, for an eighteen months period (with progress reviews at six months intervals) would provide salaries for one full-time professional ($7,500 p.a., and one full-time stenographic $4,000 p.a.) and one consultant for 36 days a year at $60.00 per day, and $1,590 for travel and contingencies. The local community would be expected to contribute office space, stationary and office supplies, utilities, local transportation, publications and subscriptions and other operational needs, as well to supplement salaries, as required. A report, with documents, would be required and would become the property of CRS.

c. Urban Coordinating Councils ($77,000)

To assist urban areas which have several established intergroup or race relations agencies, in addition to various significant community organizations, to benefit by increasing and continuous communication between and among these groups and with the community at large.

Five large urban centers (e.g., Los Angeles, Atlanta, Chicago, New York and Baltimore) would be encouraged to participate by providing part or all of a professional community organizer's time to developing and coordinating this needed communication. Varieties of approaches would be used to fit the differences as experienced in the different cities.

A participating (70-30) grant of $7,700 to each of five communities, for a two-year period (with progress reviews at 8-month intervals) would provide salary supplement (70% of $11,000) for one qualified community-organization professional. The local community would contribute all related cost.

2. Program and Project Development and Support

Existing agencies, including those established and supported as a result of the grants discussed above, could be given programmatic support in program and project development, as well as support for on-going programs and projects. On-going programs are considered to be those continuing activities of an organization which are judged to be necessary to fulfill its purpose. Such programs continue indefinitely and full-time, permanent staff is required for implementation -- in contrast to the "special project," which has more limited objectives and a specific completion date.

a. General Program Support

Typical on-going programs in human relations organizations work toward:

-- equal housing opportunities

-- equal job opportunities

-- a desegregated and equitable educational system

-- improved police-community relations

-- the combating of prejudice through education programs.

An examination of conditions in any community regarding these typical areas of concern clearly indicates that current programs are inadequate. The ghetto persists. Minority unemployment rates are from two to five times as high as whites -- and minority persons are not evenly distributed throughout the range of job-types. Urban schools are more segregated today than 10 years ago. Racial incidents sparked by antagonism to policemen have occurred in most major cities. Racist attitudes and stereotypes persist among white suburbanites -- and often spill over into the kind of violent activity seen in many cities this summer.

It is clear that a much larger effort must be devoted to these basic programs if there is to be substantial progress toward intergroup justice and the elimination of racial conflict in American communities. Adequate funds are either not available or not allocated at the local level for these necessary programs in official Human Relations Commissions. The investments of the private section from religion, labor, education and business are either too limited or not allocated for community relations concerns. As a result, cities continue to "get by" as they go from crisis to crisis.

A large investment of Federal grants to improve the scope and quality of the on-going programs of HRC's and other local organizations can yield a high return in American communities. Properly conceived, administered and evaluated, programs from such grants could dramatically demonstrate to communities the value of progress in intergroup relations for the total life of the community. The eventual goal is the recognition of this end by local officials and leaders, and the subsequent local strengthening of HRC's and other local resources for the job.

b. Decentralization of Large-City Commissions

The Philadelphia Commission of Human Relations has asked for funds for an "outreach project" to establish Neighborhood Centers on Human Relations. The Commission's base of operation thus would be expanded from downtown to reach the various ghetto areas where the need is greatest. Staff members would be readily accessible to persons in need of housing and job assistance or educational counseling. Many persons in need would receive these elementary forms of aid for the first time, no longer being blocked by lack of information, apprehension about "downtown" or transportation difficulties. $30,000 would support one center with adequate staff and resources for one year. $150,000 would support one center for five years -- or, five centers for one year, which would make a more immediate widespread impact on the city and provide more data for evaluation of the program in the crucial first year. An authorization of $300,000 would permit grants to support up to 20 such centers for various large cities on a contributing basis.

c. Statewide Service Centers

The Southwest Center for Human Relations Studies at the University of Oklahoma has proposed the establishment of a Community Tension Center to service commissions in every Oklahoma community over 5,000 population with the exception of Oklahoma City and Tulsa -- a total of 50. The center would specialize in helping these communities meet problems peculiar to fast-growing small towns and suburban areas: rapid immigration of minority persons in formerly all-white communities, demands for equal treatment and participation by the Indian residents of many such towns, etc. The well-conceived proposal has gone begging for lack of funds. An authorization of $150,000 would permit the support of 10 such proposals by grants of $15,000.

d. Development of Media Relations Projects

There are three types of activities in the field of media relations that would be funded: (1) workshops, seminars and short-courses on community relations problems for newsmen; (2) demonstration projects with educational television; and (3) training workshops in media relations for local human relations commissions.

(1) Workshops, etc. for newsmen

The workshop, seminar or short-course would be conducted for local newsmen (reporters, editors, photographers, cameramen, news directors, and newsmen for suburban, neighborhood and specialized newspapers). Separate workshops or courses would be desirable for (a) newsmen; (b) suburban newsmen; and (c) photographers and cameramen. The grants generally would be made to a college or university to conduct the training. Other possible training resources would be local media associations, and in larger cities, local human relations commissions.

The objective of the workshop, course or seminar would be to provide the newsmen with in-depth training in the practices and problems of news coverage of civil rights, human relations and community relations events.

The course would last from two days to a maximum of one week. The training staffs would be composed of prominent working newsmen, CRS staffers, intergroup relations professionals, civil rights leaders and university faculty. It has been determined that each such course would cost about $15,000. Twelve grants for these purposes would total $180,000 per year.

(2) Television Demonstration Projects

These would be grants to local educational television stations to help them establish projects to demonstrate how this medium can be used to help foster a greater understanding among minorities and majority communities, and to help educate the community on its community relations problems and needs.

The stations would be required to broadcast a series of programs for a specified period of time geared toward these objectives. The programming would be required to explore new techniques other than the standard television format to enlighten the general community and involve minority groups.

(3) Media Workshops for HRC's

These workshops would be designed to train persons with public education, public relations, public information and media relations responsibilities for local human relations commissions in how to be more effective in their areas of responsibilities.

The projects would be funded by grants to universities, state commissions, large city commissions or media associations. Staffing and procedure would be similar as for news media seminars and workshops. The CRS could provide technical assistance to the grantee in developing the programs.

An authorization of $330,000 for these purposes is proposed on the following basis:

(a) $60,000 for grants to four colleges to conduct training institutes in civil rights coverage for working newsmen.

(b) $60,000 for grants to four colleges to conduct training institutes in civil rights coverage for newsmen of suburban newspapers.

(c) $60,000 for grants to four colleges or associations to conduct training institutes in civil rights coverage for news photographers and cameramen.

(d) $150,000 for grants for the production of training films. Requests for CRS to conduct this type of programming have been ignored because of lack of funds. There are sporadic, and generally non-professional, efforts along these lines across the country. This would in effect be a pioneer effort. CRS simply does not have the resource to conduct this type of programming without grant-in-aid authority.

e. Printed and Other Audio-Visual Material

A great void exists in the portfolio of Government publications and films concerning the subject of human relations. Some of this nature has been produced by CRS, including pamphlets and motion pictures. The Agency could provide technical assistance to a local agency or group for the production of film strips, pamphlets and motion pictures about local community relations problems and accomplishments and defray with a grant the cost of producing the material. Use of the

material would then be determined by the recipients of the grant. Very few written materials are now being produced by private organizations which would have the potential acceptance and wide use of official publications.

The work of the CRS and benefit substantially from wide dissemination of locally-produced materials, such as pamphlet concerning the causes and solution of local disorders. Local commissions and other bodies could be given grants, plus technical assistance, in producing such materials for use locally, as well as use promoted by CRS on a regional or national basis through relationships with private organizations and other Departments of the Federal Government.

The cost of a 30-minute 16 mm motion picture would average $25,000. The cost of producing ten such pictures in one year would be $250,000.

It is estimated that a 32-page pamphlet describing successful local human relations programs would average $2,000, including $1,000 for research and writing, $500 art and photography and $500 for miscellaneous expenses, not including printing. Production of 50 such pamphlets in one year would cost $100,000.

It is conservatively estimated that an additional $50,000 per year could be spent beneficially by local commissions and agencies for the production and dissemination through various media, such as public service advertising, of posters and leaflets calling public attention to programs and problems. Grants for these purposes could be made incidental to larger grants for programs and staffing.

It is, therefore, proposed that $2,500,000 be authorized for support of human relations organizations during the first year. Subsequent budgetary requests will reflect the experience of that year and subsequent years.

B. DEVELOPING HUMAN RELATIONS LEADERSHIP SKILLS

1. Formal Training

The constructive uses to which formal training grants could be put are many:

-- Establishment of university or other training centers for intergroup relations personnel

-- Establishment of regional programs for community-wide training seminars

-- Training seminars for local commission staffs.

2. Improved Communications

Community relations is a relatively new field. It has broad boundaries drawing on the contributions of many disciplines. There is, therefore, minimal standardization of criteria and techniques and a rapidly changing body of knowledge in the field. As documented above, most professionals in the field have had very little training for their complicated jobs in urban communities.

This situation can be further improved by grants and technical assistance supporting opportunities for contact between human relations personnel. Often the budgets of local agencies and other organizations prevent their staff members from sharing problems, suggestions and successes with professionals in other communities. Funding state-wide or regional meetings of HRC's would help serve the need, as would the support of newsletters and a case reporter.

3. Informal Training

One of the most frequent requests received by CRS is for assistance in training. Local human relations organizations need assistance not only in training their own staff and board members, but in training other resources in the community as well. The Cleveland Community Relations Board, for example, requested funds to expand its police-community relations training program. The Ohio State Civil Rights Commission asked for support in conducting sectional human relations leadership workshops throughout the state. The Georgia Council on Human Relations requested funds and assistance in planning a state-wide training program for councils and other local groups. All of these requests are yet unmet.

Regional training projects for employees of human relations commissions conducted by one of the larger, better-funded and staffed commissions in the region, in cooperation with a university, could be supported by grants and technical assistance. Such a project developed for the San Francisco Bay area included regional training workshops, in-service training assistance for staffs and members of commissions, consultation and technical assistance for commissions operating without professional staffs and for other communities interested in developing commissions. This project also planned to facilitate cooperation between commissions in the region and to bring about joint action on regional human relations problems.

In such a program, periodic, e.g., monthly, sessions could be held during one year. The university or a host community could provide space for the sessions and materials and services could be provided by the participating organizations, all as contributions to the costs of the program. The program costs would include compensation to professional, administrative and clerical staff, instructors, speakers, lecturers, panelists and discussion leaders. Other costs include materials, subsistence, travel, communications, printing and services. The total cost estimated for the Bay area program was about $70,000 per year.

Similar projects might be supported for state-wide training of unofficial local councils in less sophisticated areas, such as southern states, where human relations problems are significant, but formal, official agencies are almost non-existent.

C. ADMINISTRATION OF GRANT PROGRAMS

It is contemplated that these programs will be directed by an administrator assisted by a review committee consisting of representatives of operating units of the Community Relations Service. The Attorney General would prescribe regulations pertaining to the administration of these programs of the Service. It is intended that formal procedures will be developed similar to those adopted by the OFFICE OF LAW ENFORCEMENT ASSISTANCE.

Criteria will be developed to service as a basis for selection among proposals with a minimum standard of serving the basic purpose of the type of grant or assistance involved. The availability of grants will be publicized to the extent necessary to elicit proposals. In some instances proposals may be solicited where particular needs are disclosed by Community Relations Service in its normal activities. A number of programs might be considered as demonstrations to test a variety of techniques and approaches to solving the complex human relations problems toward which this legislative proposal is directed.

It is likely that further staffing, in addition to an administrator, will be necessary for the program in order to assure the required expertise in evaluating various projects and program proposals. Such staffing would logically include persons with experience at the community level in human relations and community organizing.

SUMMARY

The proposed legislation will hopefully enable the Federal Government to give greater support to the efforts of local communities to resolve their human relations problems. This logical extension of the basic mandate of the Community Relations Service will likely save far more than the proposed modest expenditure by encouraging measures which will remove or lessen the causes of disputes, disagreements and difficulties.

A total cost of the proposed programs discussed in this paper will be $3,500,000 for which authorization is requested in Section 1007 of the proposed bill.

II NEED FOR PROPOSAL

A. Nature and Seriousness of Problem

The crisis in our cities is being recognized in Congress, in the "bricks-and-mortar" programs of various Federal agencies and departments, and across the nation as perhaps the most crucial test of our American system. No one can seriously deny that any realistic approach to meeting this crucial test must include efforts to face the difficult human relations problems inherent in the crisis. New organizations, official and private, new knowledge and techniques, and the personnel capable of manning these efforts and developing and utilizing the knowledge and techniques, are essential to any meaningful and lasting program to attack our critical urban problems.

During recent years, many social forces have combined to intensify the demands on persons and organizations with skills in intergroup relations. Rapid urbanization, immigration of unskilled minority groups to the central city, the flight of affluent whites to the suburbs, the growth of extremist organizations, the increasing militancy and immediacy of demands for justice by the civil rights movement -- all are factors forcing American communities to confront long-neglected problems.

Development of official local agencies, as well as private organizations, dedicated to dealing with the broad problems of community relations have not kept pace with these social developments. Furthermore, there is a serious and increasing shortage of adequately trained, highly-skilled intergroup relations specialists. Local human relations commissions now in existence are woefully understaffed and underbudgeted. There is no commission in any city in the United States which can adequately meet its task. A commission without an adequate professional staff is seriously handicapped in its efforts to serve the community's human relations needs. As a minimum every commission should have a full-time, trained professional staff member, a secretarial assistant and a permanent office.

An effective commission must know well the community it serves and must be known to that community as the agency to serve its human relations needs. To accomplish the former, surveys and studies of the community should be made to determine patterns of employment, housing, educational opportunity, and attitudes of racial groups. To establish its proper place in

the community, the commission should publicize its activities, establish relationships with the mass media, function within the local governmental structure as an advisor to community leaders, and communicate ideas and experience with other related organizations.

As statistical information set forth in this paper indicates, the number of cities with substantial human relations needs which have established and adequately funded commissions is appallingly small. Our experience has disclosed that most of the established commissions are not able to begin to make a sufficient affirmative effort to meet the human relations needs of their communities. As in many other fields, in view of the already heavily-burdened local revenues and the lack of private sources for the kinds of expenditures needed, the best remedy is a stimulus from Federal funds.

1. Statistical Data

a. Expenditures for Local Human Relations Agencies

Information furnished by the United States Conference of Mayors shows the following. Local communities are now spending between 4 and 5 million dollars a year specifically for a variety of community relations agencies and functions. At the present time there are some 70 communities with community relations agencies which have full-time professional staffs. There are nearly 200 additional communities which have established community relations commissions with either no staff at all or only part-time staff services.

Of the agencies with budget and staff, only 12 have budgets in excess of $50,000. With one exception, these agencies are located in cities of 500,000 population (the exception is New Haven, Connecticut). These 12 agencies all have more than 1 staff members providing a variety of community relations services ranging from regulatory actions through community organization services; equal opportunity program services; research, information, and planning services. Of the cities with budget below $50,000 (there are 58) only 20 have more than one professional staff member affording some measure of diversified services.

It is important to point out that there are only 202 cities in the United States which have more than 7,750 Negroes (12 of these communities, all Southern, are under 30,000 population). Sixty percent of the Negro population lives in these cities. 122 of the 202 already have community relations commissions and 70 of these have budgets. Of the 80 which do not have commissions, only 6 are in the North. Of the 400 communities above 30,000 in

population, which do not have at least 7,750 Negroes, 140 have nonetheless established community relations commissions.

2. Need for Developing Skills

Skilled workers in the field of human relations are and will continue to be in increasingly urgent demand all over the United States. The demand for such personnel from Federal, State and local agencies, national and local private organizations, and business and industry far exceeds the supply. There are as yet no training facilities commensurate with the growing need, and a serious manpower shortage is in the offing.

The following are striking illustrations of the problem:

a. Between 1961 and 1966, approximately 15 percent of all the intergroup relations professionals in the Nation (300 of 2,000) have been lured into the Federal service. Most of them came from the increasingly depleted ranks of such state and municipal agencies as the Michigan Civil Rights Commission, the New York Commission on Human Relations, the California FEPC, the Chicago Commission on Human Relations, etc., and from national organizations including the Anti-Defamation League, American Jewish Committee and the National Urban League.

b. Of the new directors of local commissions hired in 1966, more than three-fourths have no previous training in intergroup relations.

c. No commission in the Nation has a formal budget provision for training.

3. Inadequacy of other resources for training

Several universities offer courses in intergroup relations, but there are only a few degree programs. There is insufficient money available for training in the already strained budgets of the National Association of Intergroup Relations Officials and the U. S. Conference of Mayors. Civil rights organizations train only their own staffs. There is no Federal money now available for a systematic basis for training of intergroup relations personnel outside the government, even though many of the most skilled workers have been skimmed off for Federal jobs.

While many formal disciplines such as psychology, sociology, and social work contribute to the field of intergroup relations, at present it is usually up to the student

to piece together his own program, which would have to be overly loaded in one of the traditional disciplines to the exclusion of others in order to qualify for any kind of degree. More often than not, these "professionals" have taken their academic work in almost completely unrelated fields and have apprenticed or simply have been employed by a human relations organization on the basis of interest or personality. The responsibility many of these people have in responding to the needs of communities in human relations far exceeds their formal preparation and those who are aware of this have almost nowhere to turn because of the dearth of resources.

It seems proper that the Federal Government, because of its attraction of such a high percentage of the available personnel skilled in the field and in recognition of the need for additional personnel to staff the proposed new organizations, should take affirmative steps to provide needed support for the establishment of training programs. CRS is in an excellent position to appraise the relevance of proposed training programs to the community relations problems of the United States. One million dollars is proposed as a stimulus in this neglected educational field.

B. Description of ongoing programs

1. Assistance to existing commissions

The Service now responds to requests for assistance from mayors, directors and members of commissions, and others for advice and assistance to existing human relations commissions. Such assistance includes the development of affirmative programs and assistance in the identification of needs. This work is done primarily on an ad hoc basis in response to requests for assistance, but a limited amount of assistance has been given in the course of affirmative efforts to stimulate the work of commissions, generally.

2. Establishment of new commissions

Some effort has been devoted by CRS to responding, again on an ad hoc basis, to requests from local officials and interested citizens to provide assistance in the organization and establishment of new human relations commissions and bi-racial committees, both official and unofficial.

An advertising campaign developed in cooperation with the Advertising Council has succeeded in placing advertising

in various media to encourage interest in the creation of human relations commissions. The advertising solicited requests for a pamphlet, "How to Turn Talk into Action," prepared by CRS as a basic description of the need for and methods of establishing commissions.

3. Results of Ongoing Programs

Our efforts to date have achieved minimal success in the establishment and improvement of local commissions. Inadequate staffing and budget for these purposes because of higher priorities for other efforts within the limited capacity of a very small agency have been in part responsible for limited accomplishment. It is evident, however, from information discussed elsewhere in this proposal, that an infusion of Federal funding is needed to encourage greater efforts at the local level.

C. Inadequacy of Present Laws and Programs

The Federal Government has no programs offering substantial, direct, ongoing services to such commissions and other organizations. Commissions' requests to the Community Relations Service for assistance in the areas of program development, training and research have had to go largely unanswered because of the absence of funds and the lack of authority to give direct financial assistance. But more important, the experience of the Service has indicated that these requests are but a small reflection of much greater needs to which there has been no local response, because of the lack of organizations, sufficient in number and strength, dedicated to solving these problems.

III ADVANTAGES AND DISADVANTAGES

A. Extent to which the proposal meets the need

1. This proposal is a modest beginning for a program of an unknown and unforeseeable future. If the response is adequate on the part of local communities, future needs should be minimal.

2. Short term benefits consist largely of generating an initial step on the part of local communities to take a formal and comparatively sophisticated approach toward resolving human relations problems, and develops local mechanisms and local capacities to deal with these problems.

B. Feasibility

1. Administrative problems will be minimal in as much as the existing programs of the Agency are directed toward the same purposes.

2. Enforcement Problems

Inapplicable

3. Coordination with other programs

There should be no difficulty in coordinating these programs with related grants under the Law Enforcement Assistance Act or the Office of Economic Opportunity for the purpose of police-community relations programs. Grants under the proposed program will have their sole focus on intergroup relations in a generalist-community wide sense.

C. Legal Problems

None

D. Other considerations in favor of and in opposition to the proposal

None

IV ALTERNATIVE COURSES OF ACTION

The Agency considered the possibility of proposing amendments to the authority of other agencies, such as the National Institute of Mental Health, the Civil Rights Division and the Office of Law Enforcement Assistance.

It was concluded that none of these agencies have the advantages of locating the proposed authority in CRS with its established role in the field of human relations, or in focusing upon minorities in the ghettoes.

V ESTIMATED COSTS OF IMPLEMENTATION

It is proposed that an authorization of $3,500,000 be requested for the grant program, with an estimated requirement for an additional budget of $150,000 to support a staff of 10 professional, administrative and clerical personnel.

Note: The attached supportive material was not originally prepared with the Task Force's format in mind and is, accordingly, not so complete in some categories as might be desirable. The original document, however, has been reorganized to conform to the general format suggested.

A BILL

To amend the Civil Rights Act of 1964, to provide for grants to facilitate the participation of State and local public and private agencies in community relations programs

Title X of the Civil Rights Act of 1964 (78 Stat. 267; 42 U.S.C. 2000g-2000g-3), as amended by Reorganization Plan No. 1 of 1966, is hereby further amended to add new Sections 1005, 1006, and 1007, as follows:

"1005 (a) In order to assist local communities as provided in Section 1002 of this Act, the Attorney General is authorized to make grants to or to contract with State and local human relations commissions and other appropriate public or private agencies and organizations for the development, conduct and administration of programs designed to resolve disputes, disagreements or difficulties relating to discriminatory practices based on race, color or national origin.

"1005 (b) The Attorney General is authorized to provide either directly or through grants and other arrangements:

"(1) Training for specialized personnel needed to develop, conduct or administer programs designed to aid in the resolution of disputes, disagreements or difficulties relating to discriminatory practices based on race, color or national origin;

"(2) Technical assistance to communities in developing, conducting and administering such programs; and

"(3) Studies with respect to matters relating to improvement of organization, techniques and practices of professional and voluntary human relations organizations and agencies.

"1005 (c) The Attorney General is authorized to make grants to or contracts with educational institutions and appropriate public and private agencies for technical assistance, training and studies as defined in subsection 1005(b).

"1006 (a) The Attorney General or his delegate shall require, wherever feasible, as a condition of approval of a grant under this Title, that the recipient contribute or obtain from other sources other than the United States Government funds, facilities, or services for carrying out the purpose for which such grant is sought. The amount

of such contribution shall be determined by the Attorney General or his delegate.

"1006 (b) (1) The Attorney General is authorized to appoint such technical or other advisory committees to advise him in connection with the administration of this Title as he deems necessary.

"(2) The members of any such committee not otherwise in the employ of the United States, while attending meetings of their committee, shall be entitled to receive compensation at a rate to be fixed by the Attorney General, but not exceeding $50 per diem, including travel time, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law (5 U.S.C. 73f-2) for persons in the Government service employed intermittently.

"1007 In order to carry out the provisions of Sections 1005 and 1006 of this Title there is hereby authorized to be appropriated the sum of $3,500,000 for the fiscal year ending June 30, 1968, and for succeeding fiscal years, such sums as the Congress may hereafter authorize."

I. REMOVAL

REMOVAL PROPOSAL NO. 1

New York City Bar Association proposal for legislation (introduced by Senators Javits and Kennedy in 89th Congress) to permit removal of a broad spectrum of civil rights cases from State to federal courts.

Civil Rights Division Staff
Proposal No. 1

PROPOSALS FOR LEGISLATION BROADENING THE RIGHT OF REMOVAL OF STATE CRIMINAL PROSECUTIONS TO FEDERAL COURT

The Proposal of the Civil Rights Committee of the New York City Bar

I. Description

The Special Committee on Civil Rights Under Law of the Association of the Bar of the City of New York undertook a complete study of the effectiveness of existing federal remedies for denials of civil rights. In March 1966 it published a Summary of Report and Recommendation prior to completion of its underlying study. The Committee report examines existing habeas corpus, injunction and removal remedies and concludes with proposals to expand those dealing with removal and injunctions. The focus of the report and the legislative proposals is reflected in the following introductory statement:

> The problem is essentially one of modernizing the law governing Federal remedies so as to make them effective to prevent the exercise of Federally granted substantive civil rights within a State from being unlawfully frustrated by means of State action in the form of criminal prosecution.

The discussion and the proposals are directed entirely to the protection of persons exercising federal civil rights and do not purport to deal with the problem of prejudicial state trials of charges which, if removed, would have to be tried out in full in federal court.

The Committee's legislative proposals were included in the omnibus civil rights bill introduced by Rep. Gilbert in the House, H.R. 14770, and appeared

in an amendment proposed by Senator Javits to the administration's 1966 civil rights bill in the Senate S. 3296. Regarding removal, the legislation would add two categories of cases to the two already included in 28 U.S.C. §1443, thus allowing removal of any criminal prosecution or civil action:

> (3) for any exercise, or attempted exercise, of any right granted, secured, or protected by the Civil Rights Act of 1964, or of any other right granted, secured, or protected by the Constitution or laws of the United States against the denial of equal protection of the laws on account of race, color, religion, or national origin; or
>
> (4) for an exercise, or attempted exercise, of any right to freedom of speech or of the press or of the people to peaceable assembly secured by the Constitution or laws of the United States when committed in furtherance of any right of the nature described in subsection (3) of this section.

II. Need

The present removal statute, 28 U.S.C. §1443, was recently interpreted by the Supreme Court in the Peacock and Rachel cases to exclude removal of criminal prosecutions to federal court in all but the most obvious cases of unconstitutional state action. If the removal remedy is necessary to protect the exercise of federal civil rights, the present statute will therefore have to be amended.

The proponents of the above proposal have not demonstrated the practical necessity for the adoption of their statute. The situations to which they refer in their accompanying report arose prior to 1964 at a time when prosecutors in the deep South were still attempting to enforce the custom of segregation in public places. Moreover, the specific cases they refer to were for the most part removable under the old statute.

Many prosecutions against civil rights demonstrators and workers which were instituted in 1964 or prior years are still pending. One objective of removal proponents is to obtain pre-trial federal abatement of those pending prosecutions. But insofar as removal is intended efficiently to protect the exercise of a right at the time it is exercised, or at the time it is interfered with, retroactive application of a new removal statute is irrelevant.

No present studies are available to demonstrate the need for, or the absence of a need for, a broadened removal remedy. One indication that civil rights workers and demonstrators are no longer harassed to the same degree as was the case two years ago is that the Justice Department has not had occasion to bring an interference-type suit to attack state court prosecutions or convictions since the Dallas County litigation instituted in late 1964. The more current problem, it appears, is police inaction in the face of mob violence, such as that experienced this year in Philadelphia and Grenada, Mississippi.

III. Advantages and Disadvantages

The first of the proposed additions to the removal statute, dealing with rights under the Civil Rights Act of 1964, rather clearly would allow removal of criminal charges growing out of attempts to gain service at restaurants under Title II. This ground, however, is meaningless today because no one is arrested any longer for such conduct, even in the most defiant communities. The section could reasonably be read to cover criminal charges growing out of attempts to enjoy the benefits of decrees entered in suits brought under other sections of the Civil Rights Act, particularly public facility suits under Title III and school suits under Title IV. Again, arrests and harassing prosecutions where rights have been clearly established by judicial decree, as is the case with explicit statutory rights, simply do not occur today. The second clause of the first proposed section refers to "any exercise, or attempted exercise of. . . any other right granted, secured, or protected by the Constitution or laws of the United States against

the denial or deprivation of equal protection of the laws on account of race, color, religion, or national origin." No equal protection rights subject to being "exercised," the requirement of the statute, come to mind which are frequent targets of official prosecutorial harassment and which are not covered under the Civil Rights Act of 1964.

The second proposed removal section would be a significant addition to the current law. It would allow removal of criminal prosecutions against activities embracing rights of free speech or peaceful assembly "when committed in furtherance of" the civil rights covered by the first proposed removal section -- i.e., prohibitions against official and private acts of racial discrimination. This section would bring to the federal courts all questions of the reach of the free speech and peaceable assembly clauses in circumstances where the subject of protest is racial discrimination. The most troublesome aspect of this section is the allowance of removal for "any attempted exercise" of a First Amendment right. One plausible reading of the phrase is to allow removal where the state defendant engaged in some form of civil disobedience which he believed and which he asserts was protected by the First Amendment, even if as a matter of law it did not so qualify. Often such conduct is engaged in with the hope of establishing new law on the subject, and thus amounts to an "attempted exercise" of First Amendment rights.

There is a further troublesome ambiguity in these proposals. They permit removal of criminal prosecutions "for any exercise, or attempted exercise" of the enumerated rights. The language would seem to cover criminal charges having nothing directly to do with protected activity, but which the defendant alleges he brought because he exercised a covered right. A pertinent example is the charge of driving with improper license tags removed in the Peacock case without an allegation that at the time of the arrest the remover was actually engaged in protected activity. Other

examples of actual charges against civil rights leaders, such as burglary, bigamy, unlawful cohabitation, contributing to the delinquency of a minor, unlawful sale of alcoholic beverages, and noncompliance with housing codes are known to have been brought which on their precise facts had no apparent relationship to the defendant's civil rights activity, but which would never have been brought but for that activity. It is the potential for inclusion of such prosecutions, or what are alleged to be such prosecutions, that makes the proposed statute difficult to accept. If the only legislative history of the proposed sections was the Committee's report, one could conclude from the examples used by the Committee that criminal charges unrelated to conduct itself specifically protected by federal law are not embraced by the statute. The proposed language, as noted above, is not so limited.

Even if the substantive reach of the proposed statute could be settled as a matter of legal theory, the statute is silent as to how a federal judge should determine whether it applies to a particular case and what he must do if the factual questions are close. The ease with which a state defendant could allege that his case is covered is patent. The cases most obviously contemplated as being covered are not difficult procedually if at a hearing the removers clearly establish that the conduct out of which the charges arose was federally protected. If the facts are not clear and raise what would be jury questions in the state court, the proposed statute does not say whether the federal judge should resolve them himself and then dismiss or remand without resolving them, or hold a federal jury trial. Even more difficult is the removal based upon a discriminatory or harassing purpose on the part of the prosecutor but which involves facts otherwise showing a violation of valid state law. Present constitutional law itself does not clearly establish that the discriminatory motive of a prosecutor vitiates an otherwise unobjectionable prosecution. The case is only somewhat easier if the remover alleges that his conduct, although not specifically protected

by federal law, nonetheless was not in violation of state law and the prosecution was brought to harass him for exercising federally protected rights. There again, if the record is clear that the prosecutor possesses no facts justifying the charge, the federal decision is easy. But if the facts regarding (a) the conduct of the remover out of which the criminal charge grew or (b) the conduct of the remover for which he claims he is being harassed are disputed, the federal judge's disposition of the case is not specified. These difficulties alone -- which do not purport to exhaust the potential procedural ambiguities in the statute -- suggest that the proposals are unacceptable in their present form.

IV. Alternative Courses of Action

The injunction remedy against prosecutions which by their initiation have the effect of interfering with federal rights provides some protection against the more dramatic prosecutorial interferences with the exercise of equal protection and related First Amendment rights. This remedy was significantly broadened by the decision in Dombroski v. Pfister, 280 U.S. 479 (1965). Where arrests and prosecutions directly interfere with rights under Titles II or VII of the Civil Rights Act of 1964 or the Voting Rights Act of 1965 the United States may seek injunctive relief. Interference, through prosecutorial harassment, with rights under school desegregation decrees or other court orders may be protected in contempt actions brought either by the Government or private parties. Lastly, the continuing effort to insure fair jury selection in state courts and the full benefit of effective counsel in state cases should reduce the usefulness of state criminal processes as a means of harassing civil rights participants.

REMOVAL PROPOSAL NO. 2

Legislation to authorize removal where petitioner proves a "baseless" prosecution (this proposal is an alternative to Removal Proposal 1.)

Civil Rights Division

SUPPLEMENTARY MEMORANDUM
CONCERNING REMOVAL PROPOSAL NO. 2

I. DESCRIPTION

This proposal, which is too long to set out verbatim, would allow removal of state prosecutions which are "baseless" and would suppress the exercise of federal rights protecting against racial discrimination or the exercise of rights of free speech or assembly when invoked to protest unlawful racial discrimination.

"Baseless" prosecutions are defined as including those brought under a statute unconstitutional on its face, those in which there is no evidence that the accused committed the offense or did anything which could be treated as unlawful by the State, prosecutions which so depart from established prosecutive policy as to constitute a denial of equal protection, and those in which the conduct of the accused was authorized by federal court order.

The bill further establishes a procedure under which the federal judge must decide, after an initial hearing, whether to remand, dismiss the criminal charges, or retain jurisdiction while the state trial proceeds. The extent to which the remover is able clearly to prove his allegations determines the federal judge's action, with close cases going back to the state court.

II. NEED

The need, or lack of it, for any removal statute is discussed in the immediately preceding memorandum.

III. ADVANTAGES AND DISADVANTAGES

This bill has two distinct advantages over the New York City bar proposal: it limits its protection of substantive civil rights to situations in which there is not even a colorable basis for the prosecution, so that it is clear its sole purpose to harass the defendant, and it affords the district judges procedural guidance in dealing with removal petitions.

Pursuant to the procedural sections of the statute, in cases removed on claims of statutes being invalid on their face, or for no evidence, or for a discriminatory enforcement policy, or for conduct authorized by a court order, the federal judge would be directed to decide the question of law involved and either dismiss the state prosecution outright or remand it to the state court for trial. In the case of a prosecution where the defendant claims his conduct was constitutionally protected, the federal court would be directed either to (1) dismiss the prosecution if the conduct was in dispute and could not be made a crime consistent with the Constitution or laws of the United States, or (2) remand the prosecution if the conduct was not in dispute but as a matter of law it would be made a crime under federal law, or (3) if found that the conduct was in fact in dispute, so that the legal answer was not clear, the federal court would remand the prosecution to the state court for trial but retain jurisdiction to permit the claim to be reopened in the federal court immediately following trial and conviction in the state court. Essentially what this provides for is an accelerated habeas corpus proceeding -- a defendant could come into federal court after his conviction without resorting first to any state appellate or other post-conviction remedies, as he is presently required to do under 28 U.S.C. 2241, which governs habeas corpus by state prisoners.

IV. ALTERNATIVE COURSES OF ACTION

A proposal to add to "baseless" prosecution cases two other kinds of cases in which removal would be authorized;

A. Cases in which there will be discrimination in the selection of jurors, or in which the accused will be tried in an atmosphere of pervasive community hostility to the activity of the accused.

B. The disadvantage to permitting removal for alleged jury discrimination is that it provides a colorable basis for removal for every Negro charged with crime in a Southern State court. It is whatever the charge might be against him, calculated to force the states to adopt scrupulously fair jury selection procedures. However,

a specific statute addressed to that question might accomplish that goal about as efficiently, and even if jury selection was fair, the allegation of discrimination and the mechanics of removal could be resorted to simply for the sake of delay. The procedural section of the bill provides that if the claim is found to be meritorious, the federal court may give the respondents up to 90 days to correct the defect, and if it is corrected, the case should be remanded. The statute would thus allow the trial of the jury discrimination issue in federal court prior to the trial on the merits in every instance. For the sake of delay, it may be expected that most Negro defendants would seek this pre-trial hearing in federal court. A strong showing of need for this degree of disruption of the state criminal process should therefore accompany any formal proposal of this section of the bill alternative.

C. The "community hostility" basis for removal has the particular disadvantage of placing not just the community but the state court as well on trial. Criminal trial procedure in state as well as in federal courts has developed standard protections against "community hostility," including change of venue, voir dire examination of jurors, and strict rules of evidence. It may be expected that federal judges, aware of this theoretical tradition in the criminal law, would not, except in the most extreme cases, conclude that community hostility was so beyond the control of a state court that a case should be transferred to a federal court which itself encompasses the same community.

REMOVAL PROPOSAL NO. 3

Legislation to provide relief against unlawful state court proceedings by amending Section 1983 of Title 42 to permit a private party to seek injunctive relief, notwithstanding the anti-injunction statute, in cases where state prosecutions are brought against persons for exercising First Amendment rights directed at obtaining equal treatment for all citizens.

WELFARE PROPOSAL NO. 1

Legislation to increase federal assistance for construction and rehabilitation of public facilities in areas of high minority group concentration (cut matching requirements).

WELFARE PROPOSAL NO. 2

Legislation to amend existing federal welfare legislation to introduce general reforms in the treatment of welfare patients, increase benefits to the under-privileged and simplify the eligibility requirements for participation in welfare.