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STATEMENT OF THE ATTORNEY GENERAL

ON THE

PROPOSED CIVIL RIGHTS LEGISLATION

Before The

SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS

OF THE

SENATE JUDICIARY COMMITTEE

FEBRUARY 14, 1957

On April 9, 1956, I transmitted to the Vice President and to the Speaker of the House a four-point program recommended by the Administration to protect the civil rights of our people. I am appearing before you today in support of this same program.

As you will remember, President Eisenhower, in his State of the Union Message delivered to the Congress on January 19, 1957, reemphasized that we in this nation have much reason to be gratified at the progress our people are making in mutual understanding. He reiterated that we are steadily moving closer to the goal of fair and equal treatment of all citizens without regard to race or color. The President observed, however, that "unhappily, much remains to be done." As a substantial step toward achieving this goal he urged passage of the Administration program.

This program includes:

(1) Creation of a bipartisan commission to investigate asserted violations of law in the field of civil rights, especially involving the right to vote, and to make recommendations;

(2) Creation of a civil rights division in the Department of Justice in charge of a Presidentially appointed Assistant Attorney General;

(3) Enactment by the Congress of new laws to aid in the enforcement of voting rights;

(4) Amendment of the laws so as to permit the Federal Government to seek from the civil courts preventive relief in civil rights cases.

Proposed bills to carry out the Administration program were submitted to the Congress last year. These bills in the form submitted by us are contained in S. 83, which was introduced into this Congress by Senator Dirksen and 36 other distinguished members of the Senate and which is now before this Subcommittee for consideration. S. 83 also contains some additional provisions relating to the proposed bipartisan commission on which I shall comment later.

Numerous other proposals, including the bill in Subcommittee print, which are before you have also been carefully studied by the Department. With your indulgence, however, I should like to address myself first to the administration program. Thereafter, I will comment on the other bills.

I. Authorization of Civil Remedies

I should like to discuss first those portions of our program which would give to the Department the authority to use civil remedies in voting and other civil rights cases. These are the matters which appear under Part III and Part IV of S. 83 on pages 14 to 17 of that bill.

The right to vote is the cornerstone of our representative form of government. It is the one right, perhaps more than any other, upon which all other constitutional rights depend for their effective protection. It must be zealously safeguarded.

The Federal Government has in the past and must in the future play a major role in protecting this essential right. It is true that under the Constitution the states are given the power, even with respect to elections for office under the Government of the United States, to fix the "qualifications" of voters. (Art. I, sec. 2; Amend. 17) But this power of the states is limited, with reference to the election of federal officers, by the express power given Congress to regulate the "manner" of holding elections (Art. I, Sec. 4), and, more importantly, by the provisions of the Fourteenth and Fifteenth Amendments. The Fifteenth Amendment provides that in any election, including purely state and local elections, the right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude. The Fourteenth Amendment prohibits any state from making or enforcing laws which abridge the privileges and immunities of citizens of the United States and from denying to any person

the equal protection of the laws. The courts have held that these prohibitions operate against election laws which discriminate on account of race, color, religion or national origin. And both of these Amendments expressly confer upon Congress the power to enforce them by appropriate regulations.

Beyond the provisions of the Fourteenth and Fifteenth Amendments, which inhibit only official action, Congress has the broad power to protect voters in elections for federal offices from action by private individuals which interferes with the right of the people to choose federal officials. As the Supreme Court said in 1941 in United States v. Classic (313 U.S. 299, 315) this right to choose "is a right secured by the Constitution . . . And since the constitutional command is without restriction or limitation, the right, unlike those guaranteed by the Fourteenth and Fifteenth Amendments, is secured against the action of individuals as well as of states."

Congress passed many years ago statutes, now 42 U.S.C. 1971 and 1983, under which private persons claiming that they had been deprived of the right to vote on account of race or color by persons acting under color of state law have been able to bring civil suits for damages and preventive relief. In fact, it is in a long series of cases brought by private individuals under these statutes that the courts have held that the constitutionally protected right to vote extends beyond the general election to any primary or special election which is either a recognized part of the state's election machinery or which is, in fact, the only election which counts in the ultimate selection of the elected officials.

The Congress has also authorized Federal criminal prosecutions in the voting field. Actions by private individuals which interfere with the right to vote for federal officials may be prosecuted under 18 U.S.C. 241 or 594. Persons who act under color of law to deprive individuals of their right to

vote in any election, state or federal, because of race, color, religion, or national origin may be prosecuted under 18 U.S.C. 242. A number of prosecutions have been had under these provisions.

The major defect in this statutory picture, however, has been the failure of Congress thus far to authorize specifically the Attorney General to invoke civil powers and remedies. Criminal prosecutions of course cannot be instituted until after the harm actually has been done yet no amount of criminal punishment can rectify the harm which the national interest suffers when citizens are illegally kept from the polls. Furthermore, criminal prosecutions are often unduly harsh in this peculiar field where the violators may be respected local officials. What is needed, and what the legislation sponsored by the Administration would authorize, is to lodge power in the Department of Justice to proceed in civil suits in which the problem can often be solved in advance of the election and without the necessity of imposing upon any official the stigma of criminal prosecution.

Let me now give you some examples of situations which have come before us in the Department in which we think the proposed legislation would have been of great assistance in protecting the right to vote.

First, let me refer to the situation which developed last year in Ouachita Parish, Louisiana.

In March, 1956, certain members and officers of the Citizens Council of Ouachita Parish commenced an examination of the register of the voters of Ouachita Parish. Thereafter, they filed approximately 3,420 documents purporting to be affidavits but which were not sworn to before either the registrar or deputy registrar, as required by law. In each purported affidavit it was alleged that the affiant had examined the records on file with the registrar, that the registrant's name therein was believed to be illegally

registered and that the purported affidavit was made for the purpose of challenging the registrant to remain on the roll of registered voters. Such affidavits were filed challenging every one of the 2,389 Negro voters in Ward 10. None of the 4,054 white voters in that ward were challenged. With respect to another ward, Ward 3, such affidavits were filed challenging 1,008 of the 1,523 Negro voters. Only 23 of the white voters in Ward 3 were challenged. The registrar accepted their affidavits even though she knew that each affiant had not examined the registration cards of each registered voter he was challenging. On the basis of these affidavits, citations were mailed out in large groups requiring the challenged voters to appear within ten days to prove their qualifications. Registrants of the Negro race responded to these citations in large numbers. During the months of April and May large lines of Negro registrants seeking to prove their qualifications formed before the registrar's office, starting as early as 5:00 a.m. The registrar and her deputy refused to hear offers of proof of qualifications on behalf of any more than 50 challenged registrants per day. Consequently, most of the Negro registrants were turned away from the registrar's office and were denied any opportunity to establish their proper registration. Thereafter, the registrar struck the names of such registrants from the rolls. With respect to those registrants who were lucky enough to gain admission to the registrar's office, the registrar imposed requirements in connection with meeting the challenge which were in violation of Louisiana law. The registrar refused to accept as witnesses, on behalf of challenged voters, registered voters of the parish who resided in a precinct other than the challenged voter or who had themselves been challenged or had already acted as witnesses for any other challenged voter. By these means the number of registered Negro voters in Ouachita Parish was reduced by October 4, 1956 from approximately 4,000 to 694.

On October 10, 1956, Assistant Attorney General Warren Olney III testified concerning the facts regarding Ouachita Parish before the Senate Subcommittee on Privileges and Elections and recommended that the Subcommittee hold public hearings in advance of the general election. The Subcommittee took no action with respect to the situation. Had the Administration's program been in effect the Department would have been able to initiate a civil action for the purpose of restoring the Negro voters to the rolls of registered voters in time to vote in the November election.

Our investigation has revealed similar situations in several other Louisiana parishes. Related problems have developed in other states. For example, our investigations disclosed the following situations in North Carolina just prior to the North Carolina primary elections of May 1956.

The North Carolina Constitution (Article VI, Section 4) and statutes (Gen. Stats. 1943, Ch. 163, Art. 6, Sec. 28) provide that a person, to become a registered voter, must be able to read and write any section of the North Carolina Constitution to the satisfaction of the Registrar. The Constitution and Statute also contain a "grandfather clause" exempting any male person (or his lineal descendent), entitled to vote January 1, 1867, from this requirement if such person registered prior to December 1908.

1. Camden County, (Courthouse Township Precinct). In this precinct, the Registrar gave the reading and writing tests to Negro applicants, but not to white applicants. The latter were permitted to register upon showing the necessary residence etc.

In giving the reading and writing tests to Negroes, the Registrar demanded that they write the preamble to the Constitution from her dictation. She required in this connection that all spelling, punctuation and capitalization be correct. The complainants, 4 Negro high school graduates, failed the test, although 2 later memorized the preamble and passed another test.

The Registrar recently resigned. During the two years she was in office (1954-1956), she registered a total of 4 Negroes. During the same period, she registered 55 white persons. The population of the precinct is roughly 2 to 1--about 1,200 whites and 600 Negroes.

2. Brunswick County, (Bolivia Precinct). In this precinct, the practice of the Registrar, according to his own statement, is to qualify Negroes under the "educational tests" (reading and writing a section of the Constitution), and to register whites under the "grandfather clause."

3. Greene County, (Snow Hill Precinct). In this precinct, the Registrar omitted as to both races the requirement pertaining to reading and writing a part of the Constitution. However, as to Negro registrants, he demanded that they answer a list of 20 questions. The questions required them to name all candidates running for office in the county, to define Primary and General Elections, to state whether they were members of the NAACP, and whether they would support the NAACP should that organization attack the United States Government, etc. White applicants were required to answer no such questions.

In most of these situations civil remedies would enable the Government to take affirmative action to deal with attempts at what amount to mass disenfranchisement of Negroes in time to be effective. In a civil proceeding for preventive relief or for a declaratory judgment the constitutionality of the election practice could be quickly determined and appropriate relief awarded. Criminal remedies at best come after the harm has been done. Jurors are reluctant to indict and convict local officials in a criminal prosecution even though they recognize the illegality of what has been done. As a result, not only are the election officials freed but also the Government is not able to get an authoritative determination regarding the constitutionality of what was done.

The proposals of the Administration would, of course, go beyond the voting cases and give to the Department the authority to invoke civil remedies in other cases of civil rights violations. Here, as in the voting situation, private persons have long been able to bring civil suits where civil rights violations have occurred. Much of the large body of judicial precedent and decision which has been built up in the courts defining constitutionally protected rights has been handed down in such suits. Yet the federal government is limited to criminal prosecutions which, as in voting cases, are cumbersome, difficult, and in situations not involving brutality and violence often unduly harsh.

Our experience over the years in civil rights cases demonstrates that in many situations civil remedies would go far toward permitting the government to arrive at the most rational and fair solution of the problems presented. Let me give you an example of what I mean. The United States Supreme Court recently reversed the conviction of a Negro sentenced to death by a State court because of a showing that Negroes had been systematically excluded from the panels of the grand and petit juries that had indicted and tried him. In so doing the Supreme Court stated that according to the undisputed evidence in the record before it systematic discrimination against Negroes in the selection of jury panels had persisted for many years past in the county where the case had been tried. In its opinion the Court mentioned parenthetically, but we thought pointedly, that such discrimination was a denial of equal protection of the laws, and it would follow that it was a violation of the Federal civil rights laws.

Accordingly, the Department of Justice had no alternative except to institute an investigation to determine whether in the selection of jury panels in the county in question the civil rights laws of the United States were being

violated, as suggested by the record before the Supreme Court. I think it must be clear to you that the mere institution of this inquiry aroused a storm of indignation in the county and State in question. This is understandable since, if such violations were continuing the only course open to the Government under the laws as they stand now, was criminal prosecution of those responsible. That might well have meant the indictment in the Federal court of the local court attaches and others responsible under the circumstances.

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

Supposing, however, that on investigation, the facts had proved otherwise. The necessarily resulting prosecution would have stirred up such dissension and ill will in the community that it might well have done more harm than good. Such unfortunate collisions in the criminal courts between Federal and State officials can be avoided if the Congress would authorize the Attorney General to apply to the civil courts for preventive relief in civil rights cases. In such a proceeding the facts can be determined, the rights of the parties adjudicated and future violations of the law prevented by proper order of the court without having to subject State officials to the indignity, hazards and personal expense of a criminal prosecution in the Federal courts.

I should like to add a few words regarding the relationship of these proposals to the school segregation situation. As you all know the Supreme Court recognized the many difficulties involved in making the transition from segregated to nonsegregated education. The Court said that "School authorities have the primary responsibility for elucidating, assessing, and solving these

problems; courts will have to consider whether the action of school authorities constitutes good faith implementation of the governing constitutional principles." Civil suits brought by private individuals are bringing the school situation before the federal courts in increasing numbers of areas where segregation has been practiced. Because of the discretion vested in the district courts in solving these questions the Department has not become aware of any case in which the exercise of its existing criminal jurisdiction is warranted. For similar reasons we would not expect often to be faced with the necessity of taking affirmative action in civil suits were the legislation now adovcated by us enacted.

There is, however, one type of situation in which these civil remedies might be useful in the school segregation area, illustrated by the Hoxie, Arkansas case. There you will remember that the school board, in compliance with the United States Supreme Court ruling and without waiting for a law suit to be brought to compel them to do so, went ahead and desegregated the school. They were proceeding peacefully with an unsegregated school, as is the case of course in overwhelming areas of our country. Then outside individuals came in and, as the court record shows, threatened the superintendent and the members of the school board with violence, and threatened some of the parents with violence, in case the unsegregated school proceeded.

In that case the school superintendent and the members of the board filed a suit in the federal district court seeking to restrain the defendants from interfering with the operation of the school in the district on an unsegregated basis. An injunction was issued and on the appeal the Department of Justice came in as a friend of the court and filed a brief in support of the plaintiffs. The Court of Appeals upheld the District Court and the school is now back on an unsegregated basis with everything proceeding peacefully.

The school board in the Hoxie case was courageous and forthright in taking the case into court. There may well develop other situations in which after voluntary desegregation the pressures placed upon the local school authorities are so great as to prevent their taking the initiative in instituting legal action. In this situation the Department under this legislation would be authorized to take the initiative in filing a suit for an injunction against any individuals seeking to interfere with the school authorities in their attempt to comply with the ruling of the Supreme Court.

There is another area related to the school segregation issue in which the Department has been involved and may be involved in future cases--but for reasons unrelated to the legislative proposals now before you. In the Clinton, Tennessee situation the Federal District Judge after much litigation entered an order in a civil suit brought by private individuals ordering the school officials to admit Negro students. This order became final and the school officials admitted the Negro children. Thereafter, various private individuals sought by threats of force to compel the school authorities to violate the court order and exclude the Negro children. In this situation, the school authorities appealed to the federal judge and he issued an order charging a number of private individuals with contempt of court. Trial of this action is now pending. The Department, through the local United States Attorney, will handle the prosecution in which it will be determined if the acts charged actually constituted contempt.

I wish to impress on you at this time that the court in the Clinton situation already had full power to proceed and that the pending legislation will have no bearing on such cases. I want also to impress on you that the problem of the Clinton case extends beyond civil rights cases into all areas of federal law enforcement. Ours is a government of laws. The remedy for disagreement

with an order of the federal district court is an appeal. Once such an order becomes final the Federal Government must have authority to protect persons acting pursuant to the order from outside interference. This protective power has long been recognized and must exist if federal law is to be made effective, if private individuals are not to be permitted to make a mockery of federal courts.

In concluding my presentation of the reasons why we urge the Congress to provide the Government with civil remedies in civil rights cases, I should like to make three general observations. First, we are not asking for new and untried powers. The use of civil remedies as a means of enforcing federal rights is not uncommon and exists in a number of areas. For over 60 years, as a matter of fact, the Department of Justice itself has had experience in the coordinated use of civil and criminal remedies in the anti-trust field. Ever since its adoption the Sherman Act has provided that the district courts should have jurisdiction to prevent and restrain violations of the criminal sections of the act and has made it the duty of the Department of Justice to "institute proceedings in equity to prevent and restrain such violations." Much of the success of the Department in antitrust work is directly attributable to the availability of civil remedies since here, as in the civil rights cases, criminal prosecution of violators sometimes is unduly harsh and too restrictive.

Second, these proposals would not extend or increase the area of civil rights jurisdiction in which the Federal Government is entitled to act. These rights are now protected by amendments to the Constitution, and when they are violated the Government may act already under the criminal law. Enactment of our proposals would add civil remedies which would not enlarge or in any way clash, as we see it, with the constitutional limitations on Federal Government action in this field. Rather it would permit us to take civil remedial action

instead of having to depend solely on criminal proceedings. In many cases, I am convinced, it would make the difference between success and failure in the meaningful protection of the civil rights of our citizens.

Third, it has consistently been the policy of the Department over the years not to prosecute criminally under the civil rights statutes where remedial action has been taken locally. But in those areas where the local community completely fails to respect federal rights, the Federal Government must have power to act, and to act effectively, if the Federal Constitution and the federal laws are to be, in the words of the Constitution, the "supreme law of the land."

II. Civil Rights Division in the Department of Justice

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

Recently, however, the Justice Department has been obliged to engage in activity in the civil rights field which is non-criminal in character, such as the litigation arising out of the situations in Hoxie, Arkansas, and Clinton, Tennessee. Adoption by Congress of the Administration proposals for giving civil remedies to the Government in these cases will cause the Department's duties and activities in the civil courts to increase even more rapidly than in the past. It is important that all of the Department's civil rights activities be conducted in a single division, but it is not appropriate that an organization with important civil as well as criminal functions should be administered as a part of the Criminal Division.

Hence, for these reasons alone we urge the Congress to authorize the appointment of an additional Assistant Attorney General and the creation of a new Division in the Department to handle all civil rights matters. But even more important reasons make such action imperative. The civil rights field is extraordinarily complex. Nearly every case involves subtle problems of constitutional interpretation along with delicate problems of federal-state relationships. Every day as I deal with these problems, along with the myriad others which cross my desk, I become more conscious of the need to have responsibility centered in a well qualified lawyer with the status of a presidential appointee who will be able to devote his full time and attention to the legal aspects of civil rights problems within the area of Federal jurisdiction.

III. Civil Rights Commission.

Above and beyond the need for improving the legal remedies for dealing with specific civil rights violations is the need for greater knowledge and understanding of all of the complex problems involved. The proposal before you would create a bipartisan Executive Commission for the express purpose of making a full scale study of the problem and of reporting within a two year period. It would be a temporary body designed to obtain information and not a continuing agency. In order that it would be able to be effective it would be given the authority to subpoena witnesses, take testimony under oath in public hearings, and request necessary data from any executive department or agency. A full scale public study by such a Commission will, we hope and expect, tend to unite responsible people of good will in common effort to solve these problems.

It should be remembered that under existing law there is no agency anywhere in the executive branch of the federal government with authority to

investigate general allegations of deprivation of civil rights, including the right to vote. The Federal Bureau of Investigation has an investigative jurisdiction in this subject matter, but its authority is limited to investigating specific charges of violations of federal criminal statutes. Thus the services of the FBI can be utilized in this field only in gathering information and evidence in connection with specific charges which, if proven, can lead to criminal prosecution.

Throughout the government there are excellent agencies that compile information on business and labor statistics, living costs, agricultural problems, weather conditions - almost every facet of our daily life. There is no agency authorized to gather information concerning the most vital function of our governmental life - our federally-protected constitutional rights, the most important of which is the right to vote. They are rights without which government under the Constitution could not exist. The right to vote is itself the very life-blood of representative government. This is a vital function about which all citizens, and Members of Congress particularly, should have full and complete information. Yet we do not have either the information or adequate means of securing it.

The Commission proposed by the President would present the means of securing this vitally needed information.

At the outset of my statement I noted that S. 83 contained with reference to the proposed Commission some provisions additional to those recommended by the Administration. One of these, the addition of the word "sex" on line 7, page 11, would make it the duty of the Commission to investigate allegations that citizens are being subjected to unwarranted economic pressures by reason of their sex. This provision is not germane to the purpose of the legislation and should be stricken. If it is felt that there are serious problems of

discrimination based on sex which should be investigated, they should certainly be dealt with separately from discriminations based on color, race, religion, or national origin.

The other additional provisions are the Rules of Procedure, contained in Section 102 on pages 2 to 10 of S. 83. These rules are considerably more restrictive than those imposed on regular committees of the House and Senate. There is much in them which clearly would be desirable. We have not as yet had any experience with the use of rules such as those proposed here and we cannot predict the extent to which they might be used to obstruct the work of the Commission. Favoring as I do the imposition of proper rules of procedures upon all governmental committees and commissions which conduct public hearings in order adequately to protect the individuals called before them, I am reluctant to take a stand opposing the imposition of the rules here involved. Yet I feel that the task to be given to this Commission is of such great public importance that it would be a mistake to make it the vehicle for experimenting with new rules--especially in view of the limited time which it will have to make its study. Furthermore I am confident that the caliber of the men whom the President would appoint to the Commission would be such that they would give the fairest opportunity to witnesses, and protect all of their legitimate rights. Hence, I would suggest the deletion of those rules from the bill. I have here a copy of S. 83 marked to show the deletions which I am recommending which I can make available to you, Mr. Chairman,if you would care to have it.

IV. Comment On Other Legislative Proposals

1. Voting rights.

S. 427 and S. 500 and Title I of the bill in Subcommittee print form contain provisions dealing with the protection of voting rights. We in the Department favor the draft contained in S. 83 rather than that contained in

these other bills for the reason that it is limited to filling the important gap now present in the laws covering voting rights. Private citizens have long had civil remedies against persons acting under color of law in voting cases. Hence we see no pressing need for statutory amendments directed to private litigation. As to amendment of the Criminal sections, our experience has been that criminal sanctions are at best of limited value in civil rights voting cases. It is our recommendation that at least until we have had experience to determine whether we can fully vindicate the federal interest in voting cases by use of civil remedies that the criminal statutes be left as they are.

2. Commission on Civil Rights.

The proposal for a Commission contained in Title II of the bill in Subcommittee print is substantially similar to that supported by the Administration with the exception that it adds to the Commission's duties the investigation of claims of discrimination based on sex. For the reasons given earlier I would recommend the deletion of that provision.

3. Authorization of Civil Rights Division.

With reference to the appointment of a new assistant attorney general we believe that the language contained in the bill in Subcommittee print, and in S. 428 and S. 502, is unnecessarily detailed. The Attorney General, as the chief officer of the Department of Justice, has the responsibility for the administration of the Department and the enforcement of the federal laws. He should be given the discretion to assign responsibilities within his Department in the manner which from time to time seems most useful. Similarly, the provisions with respect to the Federal Bureau of Investigation seem needless. We have the fullest cooperation from the Bureau in Civil Rights Cases and to the extent that new personnel is needed to keep up with increased civil rights activity I am certain that Congress will approve appropriate budget requests

made for that purpose. And the Bureau now has an extensive program of civil rights training not only for its own agents but also for local law enforcement officers.

4. The Antilynching Proposals.

Title IV of the bill in Subcommittee print as well as S. 429 and S. 505 would set up a Federal Antilynching Act. We in the Department of Justice are, of course, not opposed to legislation which would bring a complete end to anything so repugnant to all our principles of law and justice as lynchings.

The bill proposed, however, goes to the extent of making it a federal crime whenever "two or more persons shall knowingly in concert . . . commit or attempt to commit violence upon any person or persons or on his or their property because of his or their race, creed, color, national origin, ancestry, language, religion, or for any other reason which denies due process of law." Serious constitutional objections have been raised by responsible authorities to such an extension of federal power over private citizens.

Furthermore, doubts have been expressed as to the wisdom of such an extension of federal jurisdiction apart from constitutionality. All of us here are shocked, I am sure, at cases such as that of Emmet Louis Till, where it was charged that two private individuals seized a Negro teenage boy and killed him because he had "wolf-whistled" the wife of one of them. All of us here are also shocked by the situation in Montgomery, Alabama, where private citizens have been shooting at Negro riders on buses and planting bombs in the houses of Negro citizens.

But consider for a moment the consequences of extending federal jurisdiction under language such as that contained in this bill. There must be literally thousands of cases each year (North and South) involving violence to person or property in which the claim could be made that two or more persons conspired to

commit the violence because of prejudices based on race, religion, or national origin. The Federal Bureau of Investigation would have the duty of investigating such complaints. Ultimate federal jurisdiction would turn on an issue of fact exceedingly difficult to determine--whether the defendants knowingly in concert committed the violence because of antipathy based on race, religion, or national origin. Such federal interference with local law enforcement would, I fear, greatly exacerbate federal and state relations throughout the country.

Furthermore, it should be remembered that we must depend upon local communities to enforce the laws regarding violence to person and to property--even when federal jurisdiction exists. As we in the Department know by bitter experience, if the local community is not desirous of their enforcement in particular situations federal juries will be as reluctant as state to indict and to convict. The attempt to use the federal law as a routine matter in such cases might well have the additional unfortunate effect of relieving the local communities of any feeling of responsibility in such matters--which would tend to take us away from the ultimate goal of enlightened and responsible local enforcement of the criminal laws in all cases, whether or not racial prejudice is involved.

The vital concern of this Administration is to secure the passage at this session of Congress of a legislative program which is adequate to deal with the most pressing problems before us. We feel that any attempt to press for the antilynching bill at this time would serve only to divert attention from the basic, middle-of-the-road program which we have proposed, to add the weight of substantial constitutional and policy objections to the flood of determined opposition which already exists toward any form of civil rights legislation, and to destroy any chance for affirmative action by the Senate.

5. Other Provisions of the Bill in Subcommittee Print.

Title V of the bill in Subcommittee print is substantially identical with the Administration proposal as contained in Part III of S. 83. It does contain the additional provision that in civil actions the United States shall be liable for costs the same as private persons. While it would be preferable if costs were not to be assessed against the United States in such actions, the inclusion of such a provision is not a matter of major importance.

Title VI of the bill in Subcommittee print along with S. 463 and S. 504 propose an amendment to 18 U.S. Code, section 1114, to add to the long list of federal officials the assaulting or killing of which while performing his official duties constitutes a federal crime uniformed members of the Army, Navy, Air Force, and Marine Corps. It seems to us that such a provision is only remotely related to the subject of civil rights and that such legislation should be considered separately on its own merits. Whether or not the bill should be enacted constitutes a question of policy concerning which the Department of Justice prefers to make no comment.

6. Other Bills Before the Subcommittee.

We are opposed to any such "Omnibus" bill as S. 510. It seems to us that the inevitable result of including so many different kinds of proposals in a single package is to insure its defeat.

S. 509 would make minor amendments to the existing criminal statutes dealing with peonage, slavery, and involuntary servitude. The Department has no objection to the enactment of such legislation, although we see no urgent need for it at this time and hence would prefer to concentrate efforts on securing the passage of the proposals which we have made.

S. 508 would among other things amend sections 241 and 242 of title 18, United States Code. While recognizing that there are some inadequacies in the

present statutes, we are not recommending amendment of them at this time. The area of civil rights, always a sensitive and delicate one, has become even more so in recent months. Convictions in criminal cases, even with the best of statutes, are extremely difficult to obtain. There is grave doubt in our minds, as I know there must be in yours, whether any further extension of the criminal law into this area would at the present time be wise. There are reasonable grounds, founded in current experiences of federal investigative agencies and federal prosecutors, to fear that much more harm than good would be accomplished. Furthermore, we are hopeful, as I have stated, that the addition of civil remedies will enable the Department to accomplish much that never could be done in criminal prosecutions. Perhaps after a period of experience with the civil remedies we will be in a position to come back to Congress seeking amendments to the criminal statutes to cover specifically any areas which such experience shows can be satisfactorily dealt with only by criminal prosecutions.

S. Con. Res. 5 proposes the establishment of a Joint Committee of the Congress on Civil Rights. We of course have no objection to the creation of such a Committee if Congress desires it. I want to add, however, that we do not feel that such a Committee should be considered a substitute for the Executive Commission proposed by the Administration.