INCREASING VIOLENCE AGAINST MINORITIES

HEARING

BEFORE THE

SUBCOMMITTEE ON CRIME

OF THE

COMMITTEE ON THE JUDICIARY

HOUSE OF REPRESENTATIVES

NINETY-SIXTH CONGRESS

SECOND SESSION

ON

INCREASING VIOLENCE AGAINST MINORITIES

DECEMBER 9, 1980

Serial No. 78

Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1981

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WITNESSES

INCREASING VIOLENCE AGAINST MINORITIES

TUESDAY, DECEMBER 9, 1980

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIME
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:30 a.m., in room 2237, Rayburn House Office Building, Hon. John Conyers (chairman of the subcommittee) presiding.

Present: Representatives Conyers, Volkmer, and Sensenbrenner.

Also present: Hayden W. Gregory, counsel; Deborah K. Owen, associate counsel.

Mr. CONYERS. The Subcommittee on Crime of the Committee on the Judiciary will please come to order.

This is the first in a series of hearings that the House Judiciary Subcommittee will hold on what appears to be an increasing incidence in recent years of criminal violence against minority groups.

We will also examine the activities of violence-prone organizations, which have been stepping up their efforts of late, and of their members who have committed acts of criminal violence against minorities.

The hearings will focus on the nature, causes, and the extent of racial violence, the adequacy of local, State, and Federal law enforcement efforts, and on the steps that might be taken to prevent further violence in the future.

The hearings also will look at any links, as reported in the news media, that may exist between official bodies, such as local law enforcement agencies and units of the Armed Forces, on the one hand, and violence-prone organizations, such as the Ku Klux Klan, on the other, particularly as regards the overlooking of violations of Federal gun laws, the possible transfer of weaponry to such organizations, and the limited efforts that have been made to prosecute violations of the law by members of such organizations.

I want to emphasize strongly that these hearings will focus on criminal violence and threats of violence committed by members of violence-prone organizations and by the organizations acting collectively, and not their exercise of constitutional rights that are protected under the first amendment.

It is our purpose to launch a careful, objective, and thorough study of such violence, and we have asked a number of distinguished citizens from across the Nation to appear before the subcommittee, including representatives from civil rights organizations, the university community, and officials from the U.S. Department of Justice.

There is abundant evidence of a marked increase in the incidence of criminal violence directed against minority groups. Recent studies by the Anti-Defamation League of B'nai B'rith, the National Education Association, and the U.S. Commission on Civil Rights, among others, all have documented and reported on the disturbing trends in intergroup violence and of the increased recruiting, training, and organizational activity of hate groups and violence-prone organizations.

For example, among the incidents documented are:

Random violence, sniper attacks, and shootings against black citizens in a dozen cities.

The killing of six black citizens by sniper attacks and other acts of violence in Buffalo, N.Y. and the brutal attack on a black patient in a Buffalo area hospital.

The murder of 11 black children in Atlanta, Ga. and disappearance of several others.

The critical wounding of Vernon Jordan, president of the National Urban League, in a sniper attack in Fort Wayne, Ind., and threats of violence directed against other civil rights leaders.

Violence-prone organizations appear to have stepped up their activities in recruiting new members and in training members in the techniques of violence. There also are numerous reports of increased Ku Klux Klan recruitment in the U.S. Armed Forces, in local law enforcement agencies, and among prison guards. Among the areas of recruitment and techniques utilized, according to a recent Anti-Defamation League report, are:

Recruitment on board Navy vessels; for example, the U.S.S. *Concord,* a supply ship based in Norfolk, Va.; the aircraft carriers, *Independence* and *America;* the U.S.S. *Canopus,* a submarine tender, operating out of Charleston, S.C.

Incidents at military installations, for example, Fort Hood, Tex.; Fort Carson, Colo.; the U.S. Marine Corps Base at Camp Pendelton, Calif.; the Yuma Proving Grounds in Arizona, including the appearance of military personnel in military dress as security guards at local Klan rallies, and the use of official equipment for the printing of literature.

In the penal institutions in Texas, New York, and the State of Washington, and within local law enforcement agencies. The Pennsylvania Legislature approved several months ago a resolution for investigating Klan infiltration within the Harrisburg, Pa., police department;

The operation of youth camps in San Diego, San Bernadino and Los Angeles, Calif.; Peoria and Chicago, Ill.; Jeffersonville, Ind.; Oklahoma City, Okla.; Denver and Hillsborough, Colo.; Birmingham, Tuscumbia, Tuscaloosa, and Decatur, Ala.

The operation of paramilitary and psychological warfare training camps in Alabama, California, Connecticut, Illinois, North Carolina, and Texas.

The active recruitment among high school students through meetings and dissemination of literature in Oklahoma, Louisiana, on university campuses, and even the recruitment of the very young through the publication of comic books touting the hate group ideology.

Besides the incidents of violence that have taken place, there has arisen a dangerous psychological climate and set of attitudes and perceptions that can only reinforce violence. Hate groups appear to have reached the conclusion that their activities no longer are so disreputable, and violence-prone organizations have been conducting their activities more openly and flagrantly.

As a result, growing numbers of citizens have come to believe that conspiracies exist and that their lives are endangered, and some have sought ways to defend themselves. These attitudes and perceptions warrant an objective and thorough study of the underlying realities, lest they exceed all reasonable bounds and generate a dangerous spiral of self-reinforcing and self-fulfilling violence.

This situation confirms the view that Government authorities have done less than an adequate job at investigating the causes of racial violence, monitoring its extent, and punishing the offenders. The number of prosecutions of members of hate groups who have committed violence has been few.

The U.S. Commission on Civil Rights has raised serious questions about the investigative efforts of the FBI in surveying violence-prone organizations. The Commission noted that the FBI has kept no investigative files, except for those implicated in violent acts and, therefore, of course, after the fact.

Apparently, the Justice Department now is reviewing its domestic security guidelines, as adopted in 1976, in order to find ways to be able to deal more flexibly before, as well as after, with acts of criminal violence against minority groups.

The restraint on the part of Federal law enforcement agencies in dealing with intergroup violence against minorities is especially noteworthy, given the history of active FBI surveillance against radical groups, particularly during the 1960's, yet its historic avoidance of any major efforts of investigation directed against conservative or reactionary groups.

We begin these hearings with questions, rather than with conclusions. We intend to approach these questions fairly, with open minds, and in a nonpartisan manner. We are anxious to amass as much pertinent information as is available so as to form a reliable record.

I am convinced that the great majority of Americans, black and white, liberal and conservative, Democrat and Republican, find such violence, and the denial of basic civil rights of their fellow citizens that such violence entails, reprehensible.

I call as the first witness before the Subcommittee on Crime Ted Robert Gurr, a professor of political science at Northwestern University, who was the chairman of that political science department from 1977 to 1980. His research has focused on political conflict, public order and political change.

He has been a research associate at the Center of International Affairs at Princeton University, taught also at New York University, and has written and lectured extensively on the subject matter before this subcommittee this morning.

In 1970 he was a visiting fellow at the Richardson Institute of Peace and Conflict Research in London. In 1976 he was at the Institute of Criminology at Cambridge. His current research focuses on the responses of complex systems to crisis and decay.

We welcome you, Professor Gurr, before the subcommittee.

We know that you have prepared your remarks and will, without objection, have them introduced entirely into the record, and you may proceed in your own way.

TESTIMONY OF TED ROBERT GURR, PAYSON S. WILD PROFESSOR OF POLITICAL SCIENCE, NORTHWESTERN UNIVERSITY

Mr. GURR. Thank you, Mr. Chairman.

I would like to begin by pointing out that the contemporary Ku Klux Klan, National Socialist Party, and similar extremist groups are distinctively anti-democratic in their political beliefs and practices. They have two characteristics that set them sharply apart from almost all other groups on the right of the American political spectrum.

First, they reject some basic principles of democratic American society:

They are prepared to deny equality of treatment or opportunity to ethnic and religious minorities, and;

They oppose the free expression of political and social opinions which contradict their own views.

Second, they are prepared, collectively, if not in all individual instances, to use violence and to provoke violent confrontations in order to promote their objectives.

Throughout this testimony I will refer to this distinctive combination of beliefs and tactics as anti-democratic.

Let me speak briefly to the historical precedents of contemporary rightwing extremism. There is an enduring tradition of violent, anti-democratic action in this country. From the Revolutionary War to the present, groups like the vigilantes, the Ku Klux Klans, lynch mobs and others have repeatedly engaged in illegal violence.

Anti-democratic groups in defense of the status quo:

These violent episodes have ebbed and flowed and the scene of action has shifted from one part of the country to another, but there have been very few decades in the last two centuries which lacked major outbreaks of anti-democratic group violence. This historical tradition sanctions the use of private violence in the pursuit of social and political ends by contemporary anti-democratic groups.

It also provides evidence on the consequences which give rise to such groups and provides insights into the conditions which contribute to their demise.

I am not going to review the detailed historic record of these groups. That is covered in my written testimony.

Let me draw out several general observations about them.

Mr. CONYERS. Would you, though, make a brief summary of the history and development of the Klan in particular?

Mr. GURR. Yes, Mr. Chairman.

I would point out that we are now entering the fourth wave of Klan activity during the last 115 years. The first Klan was founded in 1867 by white Southerners who used it to resist the Reconstruction policies.

The second Klan flourished during and after World War I. It was founded in 1915, nourished by the general climate of antagonism to wartime-induced economic and political change.

Another point about that second Klan was that it was a nationwide movement. It encompassed the Eastern, Mid-Western, and Pacific States as well as the South. While Klan propaganda focused on blacks, Catholics, and Jews, it has been suggested that white Protestants who failed to abide by the moral code of small-town America were its principal victims.

Closer to the present, the third Klan arose in the South in the 1950's among working class and lower-middle class Southerners, mainly in the Southern rural areas, people who feared the effects of improved civil rights for black Americans on their own precarious economic and social status.

Mr. CONYERS. Why do you number them? Did it grow and disappear and then constitute a reemergence?

Mr. GURR. There is a continuity in the tradition of the Klan as a form of organization.

The only organizational continuities of any consequence are those between the third wave of Klan activity in the 1950's and 1960's and the present resurgence of Klan activity.

I think what is more important than the existence of ongoing organizations is the tradition of Klan activity to oppose social change and the belief, rooted especially in the Southern United States, that Klan activities are an appropriate way to act upon a variety of social grievances.

I might mention also that violent anti-democratic group action is by no means limited to the Klan. The lynch mobs flourished in the South and elsewhere in the country from the period after the Civil War down to immediately preceding World War I.

Few of those lynch mobs, only a small proportion of those lynch mobs, were organized by people who called themselves Klansmen.

Again, we are dealing with a tradition of violent group action, especially for racial purposes.

I would make several general points about this history of violent anti-democratic action. The victims of anti-democratic violence have not been limited to ethnic or religious minorities. Whites of Protestant backgrounds often have been victimized as well because of their alleged criminality, immorality, or their radical political views.

I suggest black Americans are not the only ones who need fear the resurgence of anti-democratic groups.

Second, I would point out that most anti-democratic violence in the past has occurred in rural and small town America. Antidemocratic groups have rarely gotten a toehold in or attracted significant followings in the larger cities.

There are a number of reasons for that, which I won't go into now, but if that interpretation is correct, it may help explain why the neo-Nazis who have been attempting to mobilize support in the Northern industrial cities have been successful only in attracting public hostility.

Third, and I regard this as the most important of these three points, anti-democratic groups usually have thrived in times and places where the general climate of opinion favored their purpose.

The vigilantes were active in areas where there was a heartfelt desire to impose law and order. The Southern Klans and lynch mobs were active where attitudes of white supremacy prevailed.

The moral policing which the Klan engaged in during the 1920's, was encouraged by the traditional moral code of small-town America.

I can go on from this to say something about the conditions under which these kinds of groups faded away. Their traditions have remained. The willingness of people to act on those traditions is very considerable. But organized activities based on these traditions have been episodic, not continuous.

Historically, anti-democratic groups that have used violent means have been able to flourish under two conditions: when their cause was supported by public opinion, and when local and Federal officials followed a policy of benign-neglect toward them.

In those circumstances they often achieved their immediate objectives. They lost ground when public sympathies shifted against them and when Government took concerted counteraction.

It is clear that anti-democratic groups cannot flourish without the tacit support or at least the tolerance of public officials. It has been shown, for example, that reactionary violence in the Reconstruction South after the Civil War flourished in just those States, and at those times, when State officials gave it the tacit encouragement.

Once law enforcement agencies and the courts began to take strong and consistent action against the illegal acts of these groups, they began to lose their credibility and their effectiveness.

It seemed evident, for example, that the decline of the activities of the most recent Klan in the 1960's was due in substantial measure to the concerted efforts of Federal and, to a lesser degree, State and local enforcement agencies, prosecutors and courts.

Second, I point out that the successes of these groups usually were won because public officials, especially at the State and local levels, were either supportive of them or ambivalent.

In those circumstances, violent action and the threat of violent action often achieved significant local purposes. People who violated the moral code were thrashed, recalcitrant blacks were lynched, robbers hanged, radicals beaten and run out of town, and Jews and Catholics intimidated in very large numbers.

Third, it is also clear that anti-democratic groups sometimes overstep the bounds of public acceptability. The use of violence itself has often led to public revulsion and loss of support. In other cases, anti-democratic groups lost credibility because they violated some of the standards they were sworn to uphold.

The death knell of the Klan of the 1920's was sounded when some of its most prominent leaders were accused, and in several cases imprisoned, for moral and financial wrongdoing.

Now, I have suggested that anti-democratic groups lost ground when public sympathies shifted against them and when Government took concerted counteraction. I would maintain Government counteraction is the most important of these two factors. It continues to be not a necessary cause but a sufficient cause for the decline of anti-democratic groups. It also helps mobilize local and national opinion against the purposes and the tactics of these groups and thus ultimately undercuts their attempt to recruit followers.

I have intended this historical survey to provide a background against which to explain the rise and the prospects of contemporary anti-democratic groups.

Let me focus on four factors which are relevant to their resurgence.

First, I would point out to the persistence of anti-democratic sentiments in the American public. I regret to say that a significant minority of Americans have social and political views which are contradictory to mainstream American values and constitutional principles.

This minority does not believe in equality of opportunities for racial minorities nor in Government policies which have that objective.

On the contrary, many of them regard nonwhite minorities as inherently inferior and advocate social policies built on the premise of unequal treatment. They do not believe that full civil rights should be enjoyed by all social groups. In varying degrees, they believe minorities and Jews have had an unfair advantage and that their exercise of rights and enjoyment of benefits and privileges should be curtailed.

They are prepared to deny the right of open political expression to others, especially to those whose values and interests they regard as threatening to their own.

Finally, they believe that it is legitimate, acceptable to use forceful means, including violence and the threat of violence, both to protect themselves against other groups and to promote their own values.

These views have been part of the underside of American political beliefs for a very long time. Historically, the evidence we have for them includes the testimony of the leaders and the spokesmen of anti-democratic groups.

More recently it includes the results of opinion surveys which have asked substantial samples of Americans about their attitudes about civil liberties, their opinions toward minority rights, and their views about the justifiability of using violence to promote or defend their own interests.

I have, in an appendix to this testimony, summarized some of the results of opinion surveys about the prevalence of these kinds of views. Now, the presence of people who hold these views constitutes a potential for violent anti-democratic action. The more immediate question is what kinds of conditions, what kinds of social, economic, political changes cause those beliefs to be translated into collective action?

I have identified three factors, three general conditions in the remainder of my testimony.

First is the impact of economic crisis. Recovery from the current recession is not likely to dispel anti-democratic beliefs. It would, however, remove one immediate source of grievance that helps mobilize people to action. It takes only a little social insight to recognize that whites in a precarious economic position would be less hostile toward minorities if their own economic prospects were brighter.

We know that most of the historical episodes of anti-democratic action occurred in times, in places and among people who suffered

from economic dislocation. They often suffered from or feared some combination of the loss of their means of livelihood, job competition from minorities, rises in prices, shortage of goods and decline in their economic status.

The evidence suggests that people who hold antidemocratic beliefs today are more likely than not to be economically marginal. They also tend to live in rural and small town America, areas where wages tend to be lower and economic opportunities fewer. These are the people who are most likely to be especially hard-pressed by current inflation, by rising unemployment, and by static or declining real wages.

Their grievances in those circumstances tend to focus on the Federal Government and on minorities: on the Federal Government because of tax policies. and because they believe Federal spending policies have contributed to inflation; and on minorities because they are believed to receive unfair advantage from Government programs.

The next factor I would identify is the resurgence of conservatism in the United States. Both opinion polls and election outcomes document a distinctive shift from liberal toward conservative social and political views during the last several years. I believe, although I cannot demonstrate it conclusively, that the prevalence of conservative views provides a climate which is more favorable to the expression of extreme right wing views than did the liberal attitudes that dominated public discussion and public policy during most of the 1960's.

I want to make it very clear that anti-democratic attitudes of the kinds I have identified are not part of the American conservative philosophy.

At best they are a perversion, an extremist formulation of some aspects of conservative thought. In general it has become more widely acceptable to oppose equal rights for women, to support legislation against forced busing, to restrict affirmative action programs and to oppose government intervention in social and economic affairs. These policy preferences all are associated in the public's eye with conservatism. Why not go several steps further and retaliate against the liberals, the blacks, the public officials who are responsible for, or who benefit from, these kinds of programs and activities?

I am suggesting that this is the kind of mental processes going on among people whom I have called anti-democratic. Right wing anti-democratic views probably are not more common now than they were 15 years ago. What has changed is that the shift in general public opinion has led extremists to feel that it has become more acceptable to express their views openly and to act upon them.

The final factor I want to discuss is the nature of official response to the activities of anti-democratic groups.

In my view, a vigorous official response within the framework of law is essential if the resurgence of anti-democratic activities in the United States is to be checked. Historically, these kinds of organizations have flourished when they were tolerated by politicians and officials but have withered away when they were subject to investigation, public condemnation and prosecution for violations of civil

and criminal law. Organizations such as the Klan and the National Socialist Party can and do operate largely within the legal boundaries most of the time, which means that officials ordinarily have no warrant for taking action against them, but their chances of attracting public attention, their chances for recruiting new members depend to a significant degree on their willingness to take dramatic public actions, some of which are violent or otherwise illegal.

What is problematic, at least for members of these anti-democratic organizations, is how much the police, prosecutors, judges, and juries are prepared to let them accomplish without imposing legal sanctions.

What the Klans and the neo-Nazis are doing now can be regarded as a kind of testing, both of public opinion and of official response.

Official responses which are tolerant, apathetic or simply ineffective are likely to encourage more extremist action. Such responses also signal potential supporters that it is acceptable to join such groups.

Several dramatic events have occurred during recent months which may well give encouragement to anti-democratic organizations. I refer specifically to the widely publicized failures of several grand juries to return indictments against police who appeared to use excessive deadly force against blacks; and, most recently, to the decision late last month of the Greensboro, N.C., jury which freed six Klansmen and neo-Nazis involved in the killing of five activists of the Communist Workers Party. One effect of these decisions, whether or not justified by the evidence, is to encourage extremist groups. It is equally important to know whether there is a trend in lesser cases toward jury or judicial decisions which give the benefit of doubt to racists and anti-democratic organizations. I do not know what the answer is, although Professor Kinoy may have more precise information on that kind of question. If there is such a general tendency, it is not only likely to encourage such groups, but also discourage enforcement and prosecutors from vigorous action.

Let me end my prepared remarks at that point and answer any questions that you may have.

[The statement of Ted Gurr follows:]

TESTIMONY PREPARED FOR THE U.S. HOUSE SUBCOMMITTEE ON CRIME

HEARINGS OF DECEMBER 9, 1980, ON EXTREMIST POLITICAL MOVEMENTS

by Ted Robert Gurr
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The Ku Klux Klan and neo-Nazis as Anti-Democratic Groups

The contemporary Ku Klux Klan, National Socialist Party, and similar extremist groups are distinctively anti-democratic in their political beliefs and practices. They have two characteristics that set them sharply apart from almost all other groups on the right of the American political spectrum.

First, they reject some basic principles of democratic American society:

--they are prepared to deny equality of treatment or opportunity to ethnic and religious minorities, and

--they oppose the free expression of political and social opinions which contradict their own views.

Second, they are prepared, collectively if not in all individual instances, to use violence and to provoke violent confrontations in order to promote their objectives.

Throughout this testimony I will refer to this distinctive combination of beliefs and tactics as "anti-democratic."

Historical Precedents of Contemporary Right-Wing Extremism

There is an enduring tradition of violent, anti-democratic action in this country. From the Revolutionary War to the present, groups like the vigilantes, the Ku Klux Klans, lynch mobs, and others have repeatedly engaged in illegal violence

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in defense of the status quo. These violent episodes have ebbed and flowed and the scene of action has shifted from one part of the country to another, but there have been very few decades in the last two centuries which lacked major outbreaks of anti-democratic group violence. This historical tradition sanctions the use of private violence in the pursuit of social and political ends by contemporary anti-democratic groups.

Let me review some of the historical episodes which contribute to this tradition and draw some conclusions from them which are applicable to the present situation.

We are now entering the fourth wave of Klan activity during the last 115 years. The first Klan was founded in 1867 by white Southerners who used it to resist the Reconstruction policies imposed by Northern authorities. The first Klan used political pressure, coercion, threats, and widespread violence in a ten-year campaign which gradually subsided once blacks were resubjugated and their Northern Republican sympathizers relinquished control of Southern state governments.

The second Klan flourished during and after World War I. It was founded in 1915, nourished by the general climate of antagonism to wartime-induced economic and political change. It flourished especially in the 1920's, capitalizing on a backlash of conservative social views against changing standards of social conduct. It s strength was nationwide, encompassing Eastern, Midwestern, and Pacific states as well as the South. Most of its targets were not the blacks, Catholics, or Jews who were the objects of Klan propaganda, but white Protestants who failed to abide by the Victorian moral code of small-town America.

The third Klan arose in the 1950's among working-class and lower-middle-class Southerners, mainly in towns and rural areas, who feared the effects of improved civil rights for black Americans on their own precarious economic and social

positions. Support for this third wave of Klan activity withered in the 1960's in the face of concerted federal and state action, especially by law enforcement and judicial agencies. Some Klan organizations remained intact, though with reduced membership, and have provided inspiration and a nucleus of leaders for the current resurgence of Klan activity.[1]

The vigilantes provide another kind of precedent for the use of violence to prevent threatening change. The vigilantes of the American frontier were not necessarily anti-democratic in their beliefs, but were nonchalant about the civil rights of their enemies and willing to use violence in order to impose their conceptions of order. Vigilantism had its roots in Revolutionary America, where its most serious manifestations occurred in the Carolinas. The doctrine and practice of vigilantism spread across the Alleghenies with the first settlers into the midwest and, later, swept on across the Western frontier. Richard Maxwell Brown, the leading historian of American vigilantism, says that there were as many as 500 vigilante movements from the Revolution to 1909 and has documented their execution of 729 persons.[2]

Another, violent side of anti-democratic political action in America is illustrated by the use of lynch law, "the practice or custom by which persons are punished for real or alleged crimes without due process of law." The Klans and the vigilantes both used lynch law as one of their tactics. So did many other groups, especially after the Civil War, when lynch-mob violence was employed frequently in all sections of the country, against whites as well as blacks. Southern blacks were the most common victims during this period: from 1882 to 1903 a total of 1,985 of them died at the hands of Southern lynch mobs.[3]

Still another widespread manifestation of the attitudes which gave rise to lynch law was the White Cap movement, virtually a nation-wide phenomenon from the

1880's to the years immediately before World War I. White Cappers preferred flogging to lynching as a method of punishing and intimidating their opponents. They applied it to blacks, to Mexicans, and to "immoral and shiftless" whites, depending on the time and place in which they were active.[4]

The Klan, vigilantes, lynch mobs, and White Cappers were concerned more with social than political issues. There also have been a number of historical episodes of anti-democratic violence used against political targets. Political assassinations are one kind of example, though historically they usually were acts of individuals, not groups. Usually the targets of right-wing political violence have been private individuals, especially activists for unpopular causes: labor organizers, political radicals, leaders of minority group organizations. The 1968 assassination of Dr. Martin Luther King evidently was an example of a killing whose motivations were both racial and political. During World War I there were a great many episodes in which groups of self-styled patriots attacked and sometimes murdered opponents of the war and others whose only offense was to be of German origin. The rise of radical opposition to American involvement in Vietnam also triggered patriotic counteraction, for example an attack by union members on anti-war demonstrators on New York's Wall Street in May 1970.

These are some observations about the history of anti-democratic violence which may have some bearing on the contemporary situation.

First, the victims of anti-democratic violence have included, but were not limited to, ethnic minorities (blacks, Mexican-Americans) and religious minorities (Catholics, Jews). Whites of Protestant background also were often victimized because of their alleged criminality, immorality, or radical political views. Black Americans are not the only ones who need fear the resurgence of anti-democratic groups.

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Second, most anti-democratic violence in the past has occurred in rural and small-town America, distant from major urban and (later) industrial centers. Anti-democratic groups rarely have gotten a toe-hold in or attracted significant followings in larger cities. The homogeneity of small-town and rural life may make it easier for anti-democratic groups to take hold. On the other hand the heterogeneity of American cities tends to make city dwellers tolerant enough of ethnic, religious, and political diversity that they are not prepared to support anti-democratic action. If this interpretation is correct it may help explain why neo-Nazis, attempting to mobilize support in Northern industrial cities, have been successful only in attracting public hostility.

Third, anti-democratic groups usually have thrived in times and places where the general climate of opinion favored their purposes, if not necessarily their beliefs and violent tactics. The vigilantes were active in areas where there was a heartfelt desire for an end to lawlessness; indeed, many vigilantes were among the leaders of their communities. The Southern Klans and lynch mobs were active where attitudes of white supremacy prevailed. The "moral policing" of the Klan of the 1920's and the White Cappers was encouraged by the traditional moral code of small-town America. The private use of violence against political activists peaked during World War I and the Vietnam War when the climate of national opinion and the statements of national leaders emphasized conservative and nationalistic themes.

Historical Evidence on the Decline of Anti-Democratic Groups

Historically, anti-democratic groups using violent means have been able to flourish when their causes were supported by public opinion and when local and federal officials followed a policy of "benign neglect" toward them. In these circumstances anti-democrats often achieved their immediate objectives. They lost ground when public sympathies shifted against them and when governments took concerted

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counter-action. Let me elaborate these points.

First, anti-democratic groups cannot flourish without the tacit support or tolerance of public officials. It has been shown, for example, that reactionary violence in the Reconstruction South flourished in those states, and at those times, where state officials gave it tacit encouragement. Once law enforcement agencies and the courts take strong and consistent action against the illegal acts of these groups, however, they begin to lose their credibility and effectiveness. This happened in parts of the Reconstruction South, for example.[5] It also seems evident that the decline of Klan activities in the 1960's was due in substantial measure to the concerted efforts of federal, state, and local law enforcement agencies, prosecutors, and courts.

Second, the successes of anti-democratic groups usually were won because public officials, especially at the state and local levels, were either supportive or ambivalent. Officials either accepted or were unwilling to oppose public opinion which supported the purposes of the groups. In these instances violent action and its threat often achieved significant local purposes: people who violated the moral code were thrashed, recalcitrant blacks were lynched, robbers hanged, radicals beaten and run out of town, Jews and Catholics intimidated. The success of the first Klan in reversing the effects of Reconstruction probably is the most dramatic single example of the effective use of defensive, anti-democratic violence in American history.

Third, anti-democratic groups sometimes lost the public support upon which they initially depended. This happened when they overstepped the bounds of public acceptibility, something which occur in either of two ways. The use of violence itself sometimes led to public revulsion and loss of support. This happened to many vigilante groups, for example. In other cases anti-democratic groups lost credibility because they violated some of the standards they were sworn to uphold. The

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deathknell of the Klan of the 1920's was sounded when some of its most prominent leaders were publically accused of moral and financial wrongdoing.

In general, anti-democratic groups lost ground when public sympathies shifted against them and when governments took concerted counteraction. I maintain that government counteraction is the more important of these two factors. It was, and continues to be, not a necessary but a sufficient cause for the demise of anti-democratic groups. It also helps mobilize local and national opinion against the purposes and tactics of these groups, which ultimately undercuts their attempts to recruit followers.

* * * *

This historical survey provides a background against which to explain the rise and prospects of contemporary anti-democratic groups. Four main factors should be taken into account when seeking to explain their contemporary resurgence. These are (1) the persistence of anti-democratic attitudes among a significant minority of American citizens; (2) the effect of economic crisis on these people, many of whom are in precarious circumstances; (3) the general shift of public opinion and policy in a conservative direction, which unintentionally encourages anti-democrats to act on their views; and (4) a pattern of official inaction which makes it possible for them to mobilize and act.

Persistence of Anti-Democratic Sentiments

A significant minority of Americans have social and political views which are contradictory to mainstream American values and constitutional principles.

--They do not believe in equality of opportunities for minorities, or in government policies which have that objective. On the contrary, they

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regard non-white minorities as inherently inferior and advocate social policies built on the premise of unequal treatment.[6]

—They do not believe that full civil rights should be enjoyed by all social groups. In varying degrees they believe that minorities and Jews have unfair advantages and that their exercise of rights, and enjoyment of benefits or privileges, should be curtailed.

—They are prepared to deny the right of open political expression to others, especially to those whose values and interests they regard as inimical to their own.[7]

--They believe that it is legitimate to use forceful means, including violence, to protect themselves against other groups and to promote their own values.[8]

These views have been part of the underside of American political culture for a very long time. Historically the evidence for them includes the testimony of the leaders and spokesmen of anti-democratic groups and the actions they have carried out. More recently it includes the results of opinion surveys which have asked samples of Americans about their attitudes about civil liberties, their opinions toward minority rights, and their views about the justifiability of using violence to promote or defend their interests. (For documentation see the surveys referred to in notes 6, 7, and 8.)

People may hold some of these views and not others. They hold them with varying degrees of intensity. There is no social accounting procedure which enables us to say how many people subscribe to all of these views, though they are almost surely less widely held now than 60 years ago, for example. We cannot pinpoint precisely where they are in the social structure, either, thought they are (a) more likely to be poor than prosperous, (b) more likely to be found in Southern states than elsewhere, and (c) more likely to live in towns than cities. And we cannot know, except after the fact, which of these people, and how many of

them, are ready to act on their beliefs.

The presence of anti-democrats constitutes a potential for violent anti-democratic action. The more immediate question is what socioeconomic and political changes cause them to be translated into collective action, and of what shape and kind.

The Impact of Economic Crisis

Recovery from the current recession is not likely to dispel anti-democratic beliefs, but it would remove one immediate source of grievance that helps mobilize people to action. It takes only a little social insight to recognize that whites in a precarious economic position would be less hostile toward minorities if their own economic prospects were brighter.

Many historical episodes of anti-democratic action occurred in places and among people who suffered from economic dislocation (caused by war, for example). They often suffered, or feared, some combination of loss of their means of livelihood, job competition from minorities, rising prices, shortages of goods, and decline in their economic status. I made the point above that contemporary anti-democrats are more likely than not to be economically marginal: wages tend to be lower and economic opportunities fewer in small-town America. Therefore these people are likely to be especially hard-pressed by current inflation, rising unemployment, and static or declining real wages. Their grievances, in this instance, tend to focus on the federal government and on minorities. On the federal government, because of tax policies and because they believe its spending policies have contributed to inflation. On minorities, because they are believed to receive unfair advantages from government programs.

The Resurgence of Conservatism

Opinion polls and election outcomes document a distinct shift from liberal toward conservative social and political views during the last several years. In general this has meant a reaffirmation of traditional values, including the reassertion of individualism and self-reliance, reaffirmation of moral values, minimization of the government's role in society and economy, and greater reliance on the private sector and market forces to provide for the public good.

I believe, without being able to demonstrate it conclusively, that the prevalence of conservative views provides a climate more favorable to the expression of extreme right-wing views than the liberal attitudes that dominated public discussion and policy during most of the 1960's. Anti-democratic attitudes of the kinds identified previously are not part of American conservative philosophy. They are at best a perversion, an extremist formulation of some aspects of conservative thought. It has become more widely acceptable to oppose equal rights for women, to support legislation against forced busing, to restrict affirmative-action programs, and to oppose government "intervention" in social and economic activities generally. These policy preferences all are associated, in the public's eye, with conservatism. Why not, then, go several steps further and retaliate against the liberals, blacks, and officials who are responsible for, or benefit from, these kinds of programs and activities?

The extreme right has taken heart from the revival of resistance to liberal opinion and policies. Right-wing, anti-democratic views probably are no more common now than 15 years ago. What has changed is that extremists feel that it has become more acceptable to express them openly and to act upon them. One kind of direct evidence is the rash of anti-black incidents which has hit Northern college campuses in recent months, including anonymous messages and cross-burnings.[9]

(11) Anti-democratic groups

Official Toleration of Anti-Democratic Organizations

A vigorous official response, within the framework of law, is essential if the resurgence of anti-democratic activities in the United States is to be checked. Historically, anti-democratic organizations have flourished when tolerated by politicians and officials, but withered away when subjected to investigation, official condemnation, and prosecution for violations of civil and criminal law. Organizations such as the Klan and the National Socialist Party can and do operate largely within the legal boundaries most of the time, which means that officials ordinarily have no warrant for taking action against them. But their chances of attracting public attention and recruiting new members depend to a significant degree on their willingness to take dramatic public actions, some of which are violent or otherwise illegal.

What is problematic, at least for members of anti-democratic organizations, is how much the police, prosecutors, judges, and juries are prepared to let them accomplish without imposing legal sanctions . What the Klans and the neo-Nazis are doing now can be regarded as a kind of testing, both of public opinion and of official response. Official responses which are tolerant, apathetic, or simply ineffective are likely to encourage more extremist action. Such responses also signal potential supporters that it is acceptable to join such groups.

Several dramatic events have occurred during recent months which may well give encouragement to anti-democratic organizations. I refer specifically to the widely-publicized failures of several grand juries to return indictments against police who appeared to use excessive, deadly force against blacks; and to the decision of a Greensboro, North Carolina, jury which freed six Klansmen and neo-Nazis involved in the killing of five activists of the Communist Workers Party.

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One effect of such decisions, whether or not justified by the evidence, is to encourage extremist groups.

It is equally important to know whether there is a trend in lesser cases toward jury or judicial decisions which give the benefit of doubt to racists and anti-democratic organizations. I do not know what the answer is. But if there is such a general tendency, it is not only likely to encourage such groups, it may also discourage law enforcement officers and prosecutors from vigorous action.

Notes

1. This summary is drawn from Hugh Davis Graham and Ted Robert Gurr, eds., Violence in America: Historical and Comparative Perspectives, revised edition (Beverly Hills: Sage, 1979) and from David M. Chalmers, Hooded Americanism: The History of the Ku Klux Klan (Chicago: Quadrangle Books, 1968).

2. From Richard Maxwell Brown, "The American Vigilante Tradition," in Graham and Gurr, op. cit., chap. 6. Also see H. Jon Rosenbaum and Peter C. Sederberg, eds., Vigilante Politics (Philadelphia: University of Pennsylvania Press, 1976).

3. Summarized by Richard Maxwell Brown in Graham and Gurr, op. cit., p. 31.

4. Ibid., p. 33.

5. See G. David Carson and Gail O'Brien, "Collective Violence in the Reconstruction South," in Graham and Gurr, op. cit., chap. 8.

6. On white attitudes toward blacks in the 1960's see, among others, William Brink and Louis Harris, Black and White (New York: Simon and Schuster, 1967), chaps. 5 and 6. The results of polls taken throughout the 1970's are reported in "Opinion Roundup," a regular feature in the bi-monthly journal Public Opinion. Poll results reported in the October/November 1980 issue show, for example, that about 12% of the population still do not think that blacks and whites should go the same schools and a substantially larger percentage favor laws prohibiting interracial marriage. Similarly, at least a quarter of white respondents believe that whites have the right to keep blacks out of their neighborhoods. Most striking of all, only 20% of white respondents blieve that government should help improve the social and economic position of minorities. Public Opinion, 3, No. 5 (October/November 1980), pp. 28-30.

7. An early study which shows the qualified nature of Americans' support for civil liberties is James W. Prothro and Charles M. Grigg, "Fundamental Principles of Democracy: Bases of Agreement and Disagreement," Journal of Politics, 22 (1960), 276-294.

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(note 7, continued) The latest issue of Public Opinion, cited above, shows that at least 30% of Americans polled at various times in the 1970's are prepared to deny freedom of speech in their communities for people who are "against church and religion," "admitted Communists," or "homosexual." A majority of Americans believe that people who hold these views should not be allowed to teach at colleges and universities. (In part these answers reflect people's discomfort with unpopular views: they also are prepared to deny speaking privileges and teaching positions to people who believe that blacks are genetically inferior, in roughly the same proportions.) Public Opinion, op. cit., pp. 26-27.

8. A national survey taken in the United States in 1974 found that 2% of people generally approved the use of personal violence for political purposes, 1% said they had participated in violent political acts, and another 5% said they might be willing to do so. Moreover a substantial 11% thought that violence used as a political tactic was either very effective or somewhat effective. (Samuel H. Barnes and Max Kaase, Political Action: Mass Participation in Five Western Democracies, Beverly Hills: Sage, 1979, pp. 543-552.)

Another survey, conducted in 1969 and limited to adult male Americans, identified a group characterized by a distinctive set of attitudes that the authors call "vigilantism." Specifically, these were people who recommended the use of deadly force against racial protest by blacks and against student protestors, but sharply disagreed that disruptive protest or violence by blacks or students would help bring about social change. These "vigilantes" made up about 12% of all respondents. As a group they were somewhat older than other respondents and they were almost entirely white (98%). They were more likely to have been raised in Southern states (41%) than other respondents (33%). They were also substantially more likely to have been in military service (62% v. 48%). These respondents also were considerably more likely than others to take strong law-and-order positions. (Monica D., Blumenthal et al., Justifying Violence: Attitudes of American Men, Ann Arbor: Institute for Social Research, 1972, 179-210.)

9. See the summary in Time, December 8, 1980, p. 28.

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BIOGRAPHICAL SKETCH FOR TED ROBERT GURR

TED ROBERT GURR is Payson S. Wild Professor of Political Science at Northwestern University and served as chairman of the Department of Political Science from 1977 to 1980. His research has focused on political conflict, public order, and political change since 1965, when he received his Ph.D. from New York University. He was a research associate of the Center of International Affairs at Princeton University and taught at Princeton and New York University before joining the Northwestern faculty in 1970. His 1970 book Why Men Rebel (Princeton University Press), received the American Political Science Association's Woodrow Wilson Prize as the year's best book in political science. He is author or editor of a dozen other books and monographs among them Politimetrics (Prentice-Hall, 1972); Patterns of Authority, coauthored with Harry Eckstein (Wiley-Interscience, 1975); Rogues, Rebels, and Reformers (Sage Publications, 1976); The Politics of Crime and Conflict; coauthored with Peter N. Grabosky and Richard C. Hula (Sage Publications, 1977), and Handbook of Political Conflict: Theory and Research (The Free Press, 1980). In 1968-1969 he codirected the Historical and Comparative Task Force of the National Commission on the Causes and Prevention of Violence with Hugh Davis Graham and/coauthored the task force report, Violence in America: Historical and Comparative Perspectives (Bantam Books, Praeger, 1969; revised edition, Sage Publications, 1979). In 1970 he was a visiting fellow of the Richardson Institute of Peace and Conflict Research (London), and in 1976 was a visiting fellow at the Institute of Criminology, University of Cambridge. He has held a Ford Faculty Fellowship, a Guggenheim Fellkowship, and a Senior Fellowship from the German Marshall Fund of the United States. His current research focuses on the responses of complex systems to crisis and decay.

Mr. CONYERS. Thank you very much, Professor Gurr, I now recognize the gentleman from Wisconsin, Mr. Sensenbrenner.

Mr. SENSENBRENNER. I have no questions, Mr. Chairman.

Mr. CONYERS. Professor Gurr, if you were called in by the next Attorney General of the United States, what would you tell him in response to this question that he might ask you?

I think, having read your testimony in this Subcommittee on Crime, and being generally in agreement with it, we want to begin a new method and a new approach in terms of law enforcement. Relating to violence-prone organizations and what is apparently increasing violence directed toward minorities, I am about to draw up an initial directive to the Civil Rights Division of the Department of Justice, to the Community Relations Service, to the Director of the Federal Bureau of Investigation, and to the several offices of the U.S. Attorney spread across the United States, and I need the benefit of your long experience in this area, and I would like you to suggest to me how we might best undertake this.

Mr. GURR. I would prefer to defer an answer to that question to Professor Kinoy. I am not an expert on the specifics of law enforcement tactics.

I would endorse that general approach very strongly, because as I suggested, that is precisely the kind of general approach that will undercut the activities of these groups.

As for the specifics of it, other than urging that it be applied systematically and consistently, I would defer to others more expert.

Mr. CONYERS. Well, are there any matters in this whole subject matter of understanding the focus, scope, and operation of Klan and other organizations, neo-Nazi organizations, individual, spontaneous groups of people that are organized around a theory of racial hatred? Are there any understandings that you would further impress upon those of us in Government that we may not be fully aware of?

Mr. GURR. I would emphasize again that there are many potential members of these groups in the United States. What is absolutely vital is a program of public condemnation, investigation, and law enforcement activity that discourages people from joining these organizations. You have a dual problem, one is to discourage people from joining anti-democratic organizations and the other is to discourage people who are already active members of these organizations from taking illegal action.

A vigorous general policy of enforcing existing law achieves both effects, I believe, that is, it brings sanctions to bear on those members of those groups who overstepped the legal bounds and discourages potential supporters from joining those organizations.

Mr. CONYERS. Are there any other areas other than legal action that could be helpful in this kind of a problem which is also in some respects social; that is, are there other things that could be done? Assume we had a law enforcement apparatus at the Federal and State level that would satisfy yourself and myself, would there be other things that would be necessary that you could think of now to recommend?

Mr. GURR. There are other actions that would be supportive.

We know that one consequence of extensive civil rights legislation and a great deal of public discussion of that issue during the 1960's was to undercut some of the racism prevalent in the United States. That can be documented by reference to changes in public opinion on a number of racial issues.

In the very long run, the undermining of racist views in the United States, of course, removes the basis for any kind of group action of the sort that we are confronted with today. It is equally clear that that is a very long range process and one which a variety of people in private life, people who have the attention of the media, people who teach in schools and universities have more influence over than do public officials.

Mr. CONYERS. How important financially is it that there be a larger understanding of the nature and dimension of race relations and race problems in America?

Mr. GURR. I do not see how anyone could have lived through the last 20 years in this country without having an understanding of them. I think what is needed now is a reaffirmation of our commitment to action, publicly and privately.

Mr. CONYERS. Well, thank you very much, Professor Gurr. You have been a very helpful lead-off witness.

VOICE. Mr. Chairman. Pardon me for interrupting.

Mr. CONYERS. Would you sit down, sir, or you will be ejected. No one can interrupt the hearings of a subcommittee that are now in process, and if you do not sit down and discontinue your discussion, you will be asked to leave this hearing. I do not intend to repeat that again. I want it to serve as the first and final statement on the subject of the order that will be observed in this committee while I am the chairman.

Again, thank you, Professor Gurr, and our next witness is Prof. Arthur Kinoy, who is professor of law at Rutgers University School of Law. He is vice president of the Center for Constitutional Rights, and a member of the National Executive Board of the National Lawyers Guild.

He has represented various persons and organizations in civil rights and military cases. Several of his cases have been argued successfully before the U.S. Supreme Court. One such case, *Dombrouski* v. *Pfister,* is now recognized as a landmark decision in extending Federal protection to the rights of the first amendment.

We welcome you, Professor Kinoy, and without objection, introduce your statement into the record, and you may then proceed in your own way.

TESTIMONY OF ARTHUR KINOY, PROFESSOR OF LAW, STATE UNIVERSITY OF NEW JERSEY, RUTGERS UNIVERSITY SCHOOL OF LAW, NEWARK, N.J.; ACCOMPANIED BY MARILYN CLEMENT, DIRECTOR, CENTER FOR CONSTITUTIONAL RIGHTS; FRANK DEALE, STAFF ATTORNEY, CENTER FOR CONSTITUTIONAL RIGHTS; AND DORIS PETERSON, STAFF ATTORNEY, CENTER FOR CONSTITUTIONAL RIGHTS

Mr. KINOY. With the permission of the committee, I would like to introduce Marilyn Clement, the director of the Center for Constitutional Rights, and Doris Peterson, staff attorney at the center, and Frank Deale, staff attorney at the center who have worked with

me on this testimony; and with the committee's permission, they will sit up here with me if there is no objection.

Shall I proceed, Mr. Chairman?

Thank you, Mr. Chairman and members of the subcommittee.

My name is Arthur Kinoy. I am a professor of constitutional law at Rutgers University School of Law, vice president of the Center for Constitutional Rights, and a member of the legal task force of the National Anti-Klan Network. I have practiced for many years as an attorney in the field of constitutional and civil rights law. I have been asked to testify before this Subcommittee on Crime of the House Committee on the Judiciary concerning the serious questions of law enforcement arising out of the nationwide upsurge of violence and threats of "race war" against black, Third World, and minority peoples.

As this committee knows, the frightening rise in violence against black and minority peoples and the rapid escalation of activities of organizations openly committed to the incitement and perpetration of this violence has become a countrywide phenomena. Only 2 weeks ago, on November 30, 1980, the New York Times reported on its front page that there is a growing perception among black people that the series of violent incidents against blacks is a result of a national conspiracy to terrorize and kill them. As the Times stated:

> In such cities as Atlanta, Buffalo, Cincinnati, Indianapolis, Portland, Oreg., and Salt Lake City, violent and highly publicized attacks on blacks and increasing activity by the Ku Klux Klan and other white extremist groups have created or heightened the perception of conspiracy.

The media reports almost daily on cross burnings, bombings, racist assaults, mutilations, and murders inflicted upon black people. Time permits the mention of only a few of these incidents illustrating the intensity of these developments throughout the country. It is necessary for the committee to view the problem it faces within this context.

For example, in Decatur, Ala., in May 1979, the Southern Christian Leadership Conference (SCLC) was holding a demonstration in support of Tommy Lee Hines, a mentally retarded black youth convicted of rape, when suddenly robed Klansmen opened fire on the defenseless demonstrators severely wounding several and almost killing Mrs. Lowery, wife of the president of SCLC.

VOICE. Those Klansmen were exonerated, and a Negro was convicted of attempting murder on that date. This is a lie.

Mr. CONYERS. Eject that visitor.

VOICE. I will not stand and listen to lies like that.

Mr. KINOY. I will continue and show that not a single word developed here is a lie.

In April 1980, a group of Klansmen burned a cross at a prominent location in the black community of Chattanooga, Tenn., and then drove through the community armed with shotguns with which they shot five elderly black women.

On November 3, 1979, in Greensboro, N.C., a motor vehicle caravan of admitted Klansmen and Nazis arrived at an anti-Klan demonstration on that day, and persons in that caravan proceeded to coldly, methodically, in plain view of television cameras, and in broad daylight remove weapons from the trunks of their vehicles

and open fire on the assembling demonstrators. Five people were brutally slain.

Only 2 days ago an official survey of 12 U.S. Army bases reported that recent anti-black and anti-Jewish activity on U.S. military bases in Germany has deeply divided American troops along racial lines and is threatening combat readiness. According to the December 7, 1980 Bergen Record, the author of the study, Sfc. James Tarver of Philadelphia and a person I recommend this committee talk to, said, the incidents showed a sharp rise of extremist and racist activities at the bases in the past 18 months.

In September, as this committee knows, four blacks were killed in Buffalo by sniper fire within 36 hours by an assailant who witnesses said was white. The next week, 2 black taxi drivers were murdered and their hearts were cut out. Later, animal hearts were left in a locker room used mostly by black workers at the Bethlehem Steel Co. and in a bathroom used mostly by blacks at a downtown public library.

These are but a few of the many episodes of violence and terror against blacks and minority peoples which have been publicized from one end of the country to the other during the past months. The New York Times article of two weeks ago set forth as examples frightening recent incidents of such violence in Cincinnati, Atlanta, Chattanooga, Salt Lake City, Buffalo, Florida, Detroit, and Youngstown, Ohio.

As this committee knows, these are just a handful of the developments erupting all over the country. And certainly the most alarming revelation is that this studied wave of violence is now being consciously planned in Klan-run paramilitary training camps all over the country. On October 6, 1980, Newsweek, in an article entitled "the KKK Goes Military," reported that on the mountainside north of Birmingham, Ala. each month Klansmen wearing camouflage and military fatigues, prowl the remote ravines with M-16 rifles, practicing search-and-destroy missions. Newsweek said these secret soldiers of the KKK study guerrilla war tactics and talk openly of fighting blacks in the coming race war. The report stated that a Klan member said there were similar units training in Mississippi, Georgia, Tennessee, and two unnamed northern States. The New York Times on September 28, 1980, in an article by Wendell Rawls, Jr., entitled "Klan Group in Alabama Training for 'Race War'," also reported on the development of Klan paramilitary training. See also, a report entitled "Ku Klux Klan Paramilitary Activities" prepared by the Anti-Defamation League of B'nai B'rith on October 23-26, which I would hope this committee would study carefully.

This exploding pattern of violence directed against blacks and other minority peoples, unless checked and repudiated, threatens the Nation with the disaster warned against so forcefully over a decade ago in the Kerner Commission Report of 1968. We are on the edge of a national crisis of untold dimension if this spreading pattern of violence is not halted firmly and decisively. The problem posed is as serious and as grave as the country has faced in many years. It is a national, countrywide development and requires national, countrywide remedies of a swift and compelling nature.

What must we say now? It is clear. Such remedies are available for use. They were first fashioned by the Republican Congress in the years immediately following the Civil War to meet the threat of wholesale violence and terror designed to undermine and destroy the solemn commitments of the Nation to freedom and equality for the emancipated black people. What must be recognized is that the Federal statutes shaped first in the Reconstruction period for this very purpose, offer the opportunity for the development of a powerful two-pronged strategy to avert the disaster which otherwise faces the Nation.

For the convenience of the committee, I have attached as appendix A copies of the Federal statutes and constitutional provisions involved.

The first prong of such a strategy lies in the immediate full-scale and sweeping enforcement of the Federal criminal civil rights statutes. Two of these criminal statutes, 18 USC sections 241 and 242, were first enacted by the post-Civil War Congress, and then strengthened and amplified in the 1960's when section 245 was enacted to meet precisely the dangers presently being generated by the Klan and similar groupings throughout the country. Known historically as the KKK statutes, these laws provide an immediate criminal remedy against conspiracies to use violence and threats of violence against citizens exercising their elementary constitutional rights.

Federal grand juries should be swiftly used wherever these acts of violence have occurred to hear evidence upon which indictments for violation of the KKK statutes can be returned. This was precisely the approach which was taken in the early 1960's after the brutal murders of the three civil rights workers—Michael Schwerner, Andrew Goodman, and James Chaney—in Philadelphia, Miss., in 1964.

There were loud and insistent demands from the civil rights movements all over the country, and the institution of private citizen actions seeking court protection for elementary constitutional rights in the absence of effective Federal intervention. See complaint in *Council of Federated Organizations, et al.,* v. *L. C. Rainey and Cecil Price, individually and as Sheriff and Deputy Sheriff of Neshoba County, Mississippi, et al.,* attached hereto as appendix B.

Finally, after a year of pressing, the Department of Justice invoked the Federal criminal anti-Klan statutes, 18 USC sections 241 and 242, and obtained indictments and convictions of the Klan murderers. These were ultimately sustained by the Supreme Court of the United States as absolutely proper exercises of the legislative and judicial power to enforce the 13th, 14th and 15th Amendments to the United States Constitution. *United States* v. *Price (and Rainey),* 383 U.S. 787 (1966).

I put it to the committee. There is a pressing urgent need for the immediate sweeping enforcement of these Federal criminal anti-Klan statutes. As in the Reconstruction days, and in the period of the 1960's, local and State criminal procedures are proving to be utterly useless in punishing or deterring the wave of violence against black and minority peoples.

The recent acquittal of the Klansmen and Nazis charged with the killings in Greensboro, N.C., as well as the acquittals in Chattanooga, and the collapse of the State criminal proceedings in Miami, Fla., are but a few examples of the total failure of local and State attempts at the protection of the elementary civil rights of citizens. This is precisely the situation the Federal criminal anti-Klan statutes were designed to meet. The Department of Justice has in fact turned to the utilization of these statutes in very limited situations in the past year, but what is now required is full-scale, immediate, and sweeping enforcement of the Federal statutes wherever and whenever such violence occurs.

I put it to the committee, an emergency national task force of the Department of Justice needs to be established immediately. There must be appropriation of emergency funds permitting the enlistment of the talents of the most skillful and experienced women and men throughout the country to form emergency teams to enforce these statutes. These emergency teams should be sent immediately into any community where acts of intimidation and violence against black and minority peoples occur. A national atmosphere of emergency Federal response to such violence or threatened violence must be created. This could serve as a critically needed deterrent to the encouragement and stimulation of such violence. Such emergency Federal enforcement teams should be—now, today—dispatched immediately into Greensboro, Wrightsville, Chattanooga, Atlanta, Buffalo, and wherever the signs of such violence and intimidation break out.

Such a national plan for immediate Federal response to acts of violence and intimidation against black and minority peoples is essential to meet the national crisis which flows from the almost universal widespread lack of knowledge of even the existence of these Federal criminal statutes. Virtually no one, and I include judges, lawyers, police people, virtually no one knows about these laws making it a Federal crime to plan and conspire to use violence and threats of violence to undermine the elementary equal constitutional rights of citizens, black and white. Even lawyers, judges and I include legislators, are hardly aware of their existence. This is no accident.

Since 1877, when the infamous Hayes-Tilden compromise resulted in the abandonment of Federal enforcement of the wartime promises of equality and freedom for the supposedly emancipated black people, there has been a conscious burial of the criminal and civil Federal anti-Klan statutes. This burial resulted in a climate which allowed the Klan to lynch, murder, castrate, burn, bomb, and terrorize black people back into virtual slavery. For a brief period in the 1960's these statutes were momentarily unburied.

Once again, the moment has come when there is a crying need for a massive national campaign which utilizes every conceivable avenue of approach to educate the Nation. Everyone in this country must be made aware that it is a serious Federal crime to participate in acts of violence or intimidation against black and minority people, and that such crimes will be vigorously prosecuted. Such, if I may use this word, resurrection of the Federal criminal anti-Klan statutes could serve as a massive and effective deterrent to the spreading of these acts of violence and harassment.

The second prong of the strategy also developed in the early 1960's would be the immediate seeking of national Federal injunc-

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tions by the Federal Government itself against the developing conspiracies to violate the civil provisions of the Federal anti-Klan and civil rights statutes. I have set out these statutes from 1971 USC to 1989 in the appendix.

These statutes, first passed after the Civil War and then amplified and strengthened in the 1960's, prohibit any action or conspiracy to use violence or intimidation to interfere in any way with the exercise of constitutionally protected rights of citizens. They provide for the issuance of Federal injunctions against any activities designed to interfere with the exercise of these constitutional rights.

The Justice Department ought to know about this, although, as I have pointed out, they haven't brought a single action in the last 2 years seeking these injunctions, because in 1965 an injunction was obtained by the Justice Department in an action entitled "The United States Against the Original Knights of the Ku Klux Klan," 250 Federal Supp. 330 (E.D.La. 1965, 3 judge court).

In a historic opinion written by Circuit Judge John Minor Wisdom of the United States Court of Appeals for the Fifth Circuit, an opinion incidentally which I strongly suggest every member of this subcommittee read—I would like to see every Member of the Congress of the United States read it, I would like to see every member of the Department of Justice read this opinion. In this opinion the Federal Court held that the U.S. Government had the power and the duty to seek Federal injunctive relief to restrain and stop Ku Klux Klan activities designed to harass and intimidate the black people who were demanding enforcement of their most elementary constitutional rights of equality, as well as white people in the South and throughout the country who were supporting their demands.

The opinion of Judge Wisdom, one of the most respected members of the Federal Judiciary, goes directly to the heart of the grave problem which was then erupting in the early 1960's and which has now reemerged in such serious dimensions. Judge Wisdom described the action instituted by the Department of Justice in these terms, and these are words I would like to see emblazoned in every court, every school, every institution throughout the country.

What did Judge Wisdom say? Judge Wisdom said:

> This is an action by the nation against a klan. The United States of America asks for an injunction to protect Negro citizens in Washington Parish, Louisiana, seeking to assert their civil rights. The defendants are the Original Knights of the Ku Klux Klan, an unincorporated association; the Anti-Communist Christian Association, a Louisiana corporation, and certain individual klansmen.

And then in sweeping terms, which should be read from one end of this country to the other, Judge Wisdom sets forth the heart of the court's conclusion as to why the injunction requested by the Department of Justice had to be issued. What did he say?

> In deciding to grant the injunction prayed for, we rest our conclusions on the finding of fact that, within the meaning of the Civil Rights Acts of 1957 and 1964, the defendants have adopted a pattern and practice of intimidating, threatening, and coercing Negro citizens in Washington Parish for the purpose of interfering with the civil rights of the Negro citizens.

I suggest the committee listen to these words of Judge Wisdom. He says:

> The compulsion within the Klan to engage in this unlawful conduct is inherent in the nature of the Klan. This is its ineradicable evil. We, the Court, find that to attain its ends, the Klan exploits the forces of hate, prejudice, and ignorance. We find that the Klan relies on systematic economic coercion, varieties of intimidation, and physical violence in attempting to frustrate the national policy expressed in civil rights legislation. We find that the klansmen, whether cloaked and hooded as members of the Original Knights of the Ku Klux Klan, or skulking in anonymity as members of a sham organization, the Anti-Communist Christian Association, or brazenly resorting to violence on the open streets of Bogalusa, are a "fearful conspiracy against society . . . (holding) men silent by the terror of (their acts) and (their) power for evil". (Wisdom opinion *supra* at page 334.)

Based upon these fundamental conclusions, the Federal three-judge court composed of Judges Wisdom, Christenberry and Ainsworth, issued a sweeping injunction against—

> assaulting, threatening, harassing, interfering with, or intimidating, or attempting to assault, threaten, harass, interfere with or intimidate . . . Negro citizens from exercising their equal rights under the laws and Constitution of the United States.

For the benefit of the committee, I have attached a copy of this historic injunction as appendix C to this statement.

I put it to the committee, under the powerful principles set down by Judge Wisdom and the other judges of the fifth circuit in 1965, injunctive actions should be immediately brought by the Department of Justice nationally, regionally, and locally. No such actions have been instituted by the Department of Justice as of the present time.

It is essential to emphasize the lesson of the 1960's as to the central importance of such injunctive actions as a principal deterrent to Klan and other violent activities and threats against black and minority peoples. Such injunctions dealing with prospective conduct have the potential of performing an invaluable service in the first instance in educating and teaching entire communities about the Federal mandate against the perpetration of such violence and harassment.

Judge Wisdom's original injunction contained a mandate that a copy of the injunction—I will never forget the impact of this order upon communities throughout the entire country—be posted conspicuously at all meeting places of the enjoined organizations. The order was to "be posted at all times and during all meetings." Such orders are available to be publicly distributed in the hundreds of thousands of copies all over a town, a city, a State. They can become the basis for public meetings in schools, colleges, and every community organization. They will say loudly and clearly what needs to be heard from one end of this land to the other—that the wave of rising violence and intimidation against black and minority peoples is in total violation of the Constitution and laws of the United States and will be rejected and repudiated by every American committed to the deepest principles and promises of this country.

Moreover, the issuance of these injunctive orders permits an immediate and swift Federal legal response to any eruption whatsoever of such violence or harassment. Using the Federal contempt power and instituting immediate proceedings enforced by Federal marshals and the Federal subpena power offers a tremendously important opportunity to assert a Federal presence into every situation developing anywhere in the country in which such violence or harassment occurs. Once again this would accomplish the des-

perately needed deterrent impact of a forceful, widespread public recognition of the fact that there will be Federal intervention to protect the equal rights of all Americans.

The apparent hesitation of the Department of Justice to follow the clear mandate of this Congress, of the anti-Klan and civil rights statutes and institute widespread civil injunctive actions which would have sweeping deterrent and educational impact must be immediately overcome. In the 1960's the department was similarly reluctant to invoke the Federal authority available in the anti-Klan and civil rights statutes. Only after the greatest pressure from civil rights organizations in the South, national civil rights, and civil liberties organizations throughout the country, and from national religious, labor, and civic organizations did the Department resort to the power mandated to it in Federal law to institute either criminal actions or civil injunctive proceedings against Klan and other organizations and individuals engaged in violence against black and minority peoples.

Once again we are at a crucial turning point. Faced with Federal governmental inaction, and State or local inaction or even sometimes complicity in such actions and harassment, in certain localities where this violence has erupted most openly, faced with this inaction, private citizens and their organizations using private attorneys, have brought actions in Federal courts seeking injunctive protection and relief.

A few examples are the Federal actions recently initiated in Chattanooga, Tenn.; Decatur, Ala.; Greensboro, N.C., and Wrightsville, Ga.

For the use of the committee, I have attached appendix D, describing these actions.

The Center for Constitutional Rights and the Southern Poverty Law Center have been deeply involved as private counsel in bringing these actions which seek to invoke the Federal power created in the anti-Klan and civil rights statutes.

In the early 1960's, actions brought by the Council of Federated Organizations of Mississippi, the Student Nonviolent Coordinating Committee, the Southern Christian Leadership Conference, the Congress for Racial Equality, and the National Association for the Advancement of Colored People, began the process of resurrecting the power of civil rights remedies. These actions are being pressed in these communities, but these actions must be the occasion for demanding that the national government meet its responsibilities under the Constitution and statutes of the Congress to invoke immediately the Federal power present in this two-pronged strategy based upon the existing anti-Klan and civil rights statutes.

And I call upon the Department of Justice immediately to do what we did in 1965 when we brought a civil action against the conspiracy to murder civil rights workers in Philadelphia, Miss. and all throughout the South; what finally did the Department of Justice do? They intervened in behalf and support of the private people and the black organizations bringing those suits.

Let the Department of Justice come in and assist these actions immediately or we face a serious problem. The reluctance of the Government to enforce the statute is especially dangerous when it is juxtaposed to the frightening information revealed just this year

by the New York Times in what has come to be known as the Rowe Task Force Report. And that is what is so frightening.

These articles reveal that there is a secret report in the Department of Justice that they won't release to anybody and I hope this committee demands that report, revealing what, says the New York Times, is grave government complicity and misconduct in connection with episodes of Klan violence and misconduct in the past.

The Times has reported that four attorneys assigned by the Attorney General to investigate charges involving one Gary Thomas Rowe, Jr., a person this committee should be talking to, a former paid informant working for the FBI, that these four lawyers filed a report with the Department of Justice and this 302-page report reveals that the FBI knew about, condoned, and covered up its own informers' role inside the Ku Klux Klan in the early 1960's, who participated in and incited violent attacks upon black people and civil rights activists.

Two years ago in a report asked for by Senator Kennedy, the New York Times reported that they are hiding a number of conclusions. I give the committee some examples:

> J. Edgar Hoover blocked prosecution of four Ku Klux Klansmen identified by agents of the Federal Bureau of Investigation as the bombers who killed four black children at the 16th Street Baptist Church here in 1963.

Second:

> Mr. Hoover's office had also been informed that Mr. Hall (an FBI Klan informant) had once volunteered to kill the Reverend Fred L. Shuttlesworth, Birmingham's leading black civil rights leader, as a part of a Klan assassination plot exposed by Mr. Rowe.

And yet the Department did nothing about this. The conclusions are enormous. We know just about the ones that the New York Times talks about. They have 302 pages of it. For example, they say:

> Agents of the Federal Bureau of Investigation knew about and apparently covered up involvement in violent attacks on blacks, civil rights activists and journalists by its chief paid informer inside the Ku Klux Klan in the early 1960s.

It goes on and on. Field agents told the task force, violence against blacks was "essential if regrettable to maintaining an informer's cover as a militant segregationist."

The Rowe Task Force report apparently reveals many facts which raise grave questions concerning possible Federal governmental misconduct and complicity with respect to the Klan-instigated violence in the 1960's, including: (1) the deliberate blocking of prosecution of the perpetrators of serious racial violence, (2) deliberate use of informants with knowledge that such informants had a history of violence and continued to engage in violence, (3) failure to protect against and/or warn about violence against civil rights demonstrators which the FBI knew would occur, and (4) cover-up of the violent and criminal acts of FBI informants.

And I say to this committee, in the face of the revelation of the existence and contents of the Rowe Task Force Report—which I suggest this committee must ask for immediately—the recent announcement a week ago, on December 4, in the New York Times concerning new Justice Department guidelines allowing government informers to participate in some crimes while assisting in

Federal investigations, assumes potentially frightening proportions. They say that informers are not to engage in actual acts of violence. However, in light of the Rowe Task Force Report, it is important to determine, and this committee should ask, whether the new guildelines sanction participation by informers, like Rowe, in the crimes of planning and instigating acts of violence in violation of the anti-Klan and civil rights statutes.

And in light of these startling revelations, what are the conclusions to be drawn concerning the recent indications that an agent of the Federal Bureau of Alcohol, Tobacco and Firearms, as well as a Greensboro police informant, participated in the planning and carrying through of the recent shootings and murders of the anti-Klan demonstrators in Greensboro at the November 3, 1979 rally? Incredible.

These indications of governmental misconduct and complicity in the instigation and perpetration of violence and harassment against black and minority peoples are especially serious within the framework of governmental failure and reluctance to fully enforce the Federal remedies in the anti-Klan and civil rights statutes.

The inference begins to emerge, and there are hundreds of thousands if not millions of people throughout the country who begin to believe that the Federal Government is committed to looking the other way, if not actually, quietly approving this course of conduct when the violence against black and minority peoples occurs. You have this national news about government complicity and failure to enforce the statutes. What are the people going to conclude? It is essential that this dangerous illusion be erased at once.

There is the urgent necessity for an immediate full-scale investigation into and public exposure of any governmental misconduct in respect to such violence, including failure to prosecute under Federal statutes any such participation in or toleration of conduct condemned under the anti-Klan and civil rights statutes.

This committee should institute such an investigation at once and demand the immediate production of the Rowe Task Force report. The committee should inquire into whether there is any intention to prosecute those in the Government responsible for allowing participation of Government agents and informers in the instigation and perpetration of crimes of violence against black and minority peoples. Only such a full-scale public disclosure and prosecution of past crimes that are revealed, and prohibition of any such future misconduct, will restore any confidence that the Federal Government is in fact committed to the enforcement of the Federal laws guaranteeing the equality and freedom promised by the Constitution.

The problem being examined here today highlights the critical importance of the role of this committee. There is an urgent need at this moment in the Nation's history to unearth the remedies first fashioned by the Reconstruction Congress to meet the threat of planned conspiracies to undermine the constitutional guarantees of equality and freedom to all people in this country. There is a pressing need to educate the Nation and all its peoples that these remedies do exist and will be enforced.

Most fundamental of all, and I put it to the committee, is the need to alert the Nation to the danger of a new 1877, the danger of another attempt to bury the elementary promises of freedom and equality set forth in the 13th, 14th, and 15th amendments.

I would urge, and I welcome the announcement of the chairman of this subcommittee at the beginning of this hearing that this be but the first of an extended series of hearings. The committee should hold hearings in areas of the country where the conspiracies to violate the anti-Klan and civil rights statutes have been most overt. Further hearings should be held in Washington, D.C. to explore fully the questions which will be raised at the regional hearings.

Just as the historic hearings of the Congress of the United States after the Civil War into the rise and impact of the organized efforts to use massive violence against the newly emancipated black people led to the enactment of the anti-Klan and civil rights statutes, so these hearings which I congratulate this committee for calling over 100 years later must lead to a deep and full consideration of methods for massive and effective enforcement of the remedies created more than 100 years ago for the protection of the constitutional guarantees of freedom and equality contained in these statutes. I thank this committee for the opportunity to be present here.

[Statement of Mr. Kinoy and attachments follow:]

STATEMENT OF PROF. ARTHUR KINOY BEFORE THE SUBCOMMITTEE ON CRIME OF THE HOUSE COMMITTEE ON THE JUDICIARY SUBMITTED DECEMBER 9, 1980

My name is Arthur Kinoy. I am a Professor of Constitutional Law at Rutgers University School of Law, Vice-President of the Center for Constitutional Rights, and a member of the legal task force of the National Anti-Klan Network. I have practiced for many years as an attorney in the field of constitutional and civil rights law. I have been asked to testify before this Subcommittee on Crime of the House Committee on the Judiciary concerning the serious questions of law enforcement arising out of the nationwide upsurge of violence and threats of "race war" against Black, third world, and minority peoples.

The frightening rise in violence against Black and minority peoples and the rapid escalation of activities of organizations openly committed to the incitement and perpetration of this violence has become a country-wide phenomena. Only two weeks ago, on December 1, 1980, the New York Times reported on its front page that there is a "growing perception" among Black people that the "series of violent incidents against Blacks is a result of a national conspiracy to terrorize and kill them". As the Times reported, "in such cities as Atlanta; Buffalo; Cincinnati; Indianapolis; Portland, Ore.; and Salt Lake City, violent and highly publicized attacks on Blacks and increasing activity by the Ku Klux Klan and other white extremist groups have created or heightened the perception of conspiracy".

The media reports almost daily on cross burnings, bombings, racist assaults, mutilations, and murders inflicted upon Black people Time permits the mention of only a few of these incidents illustrating the intensity of these developments throughout the country.

1. In Decatur, Alabama in May 1979, the Southern Christian Leadership Conference (SCLC) was holding a demonstration in support of Tommy Lee Hines, a mentally retarded Black youth convicted of rape, when suddenly robed klansmen opened fire on the defenseless demonstrators severely wounding several and almost killing Mrs. Lowery, wife of the President of SCLC.

2. In April of 1980, a group of klansmen burned a cross at a prominent location in the Black community of Chattanooga, Tennessee, and then drove through the community armed with shotguns with which they shot five elderly Black women.

3. On November 3, 1979 in Greensboro, N.C., a motor vehicle caravan of admitted klansmen and nazis arrived at an anti-klan demonstration on that day, and persons in that caravan proceeded to coldly, methodically, in plain view of television cameras, and in broad daylight remove weapons from the trunks of their vehicles and open fire on the assembling demonstrators. Five anti-klan demonstrators were brutally slain in the barrage of klan-nazi bullets and many more were injured.

4. Only two days ago an official survey of 12 U.S. Army bases reported that "recent anti-black and anti-Jewish activity on United States military bases in Germany has deeply divided American troops along racial lines and is threatening combat readiness." According to the December 7, 1980 Bergen Record, the author of the study, Sgt. First Class James Tarver of Philadelphia, said "the incidents showed a sharp rise of extremist and racist activities at the bases in the past 18 months".

5. In September four Blacks were killed in Buffalo by sniper fire within 36 hours by an assailant who witnesses said was white. The next week, two Black taxi drivers were murdered and their hearts were cut out. Later, animal hearts were left in a locker room used mostly by Black workers at the Bethlehem Steel Co. and in a bathroom used mostly by Blacks at a downtown public library.

These are but a few of the many episodes of violence and terror against Blacks and minority peoples which have been publicized from one end of the country to the other during the past months. The New York Times article of two weeks ago set forth as examples frightening recent incidents of such violence in Cincinnati, Atlanta, Chattanooga, Salt Lake City, Buffalo, Florida, Detroit, and Youngstown, Ohio.

As this Committee knows, these are just a handful of the developments erupting all over the country. And certainly the most alarming revelation is that this studied wave of violence is now being consciously planned in klan-run para-military training camps all over the country. On October 6, 1980, Newsweek, in an article entitled "the KKK Goes Military", reported that on the mountainside north of Birmingham, Alabama each month klansmen "wearing camouflage and military fatigues, prowl the remote ravines with M-16 rifles, practicing search-and-destroy missions". Newsweek said these secret soldiers of the KKK study guerilla war tactics and "talk openly of fighting blacks in the coming'race war'". The report stated that a klan member said there were similar units training in Mississippi, Georgia, Tennessee, and two unnamed northern states. The New York Times on September 28, 1980, in an article by Wendell Rawls, Jr., entitled "Klan Group in Alabama Training for 'Race War'", also reported on the development of klan para-military training. See also, a report entitled "Ku Klux Klan Paramilitary Activities" prepared by the Anti-Defamation League of B'Nai Brith on October 23-26, 1980.

This exploding pattern of violence directed against Black and other minority peoples unless checked and repudiated, threatens the Nation with the disaster warned against so forcefully over a decade ago in the Kerner Commission Report of 1968. We are on the edge of a national crisis of untold dimension if this spreading pattern of violence is not halted firmly and decisively. The problem posed is as serious and grave as the country has faced in many years. It is a national, country-wide development and requires national, countrywide remedies of a swift and compelling nature.

Such remedies are available for immediate use. They were first fashioned by the Republican Congress in the years immediately following the Civil War to meet the threat of wholesale violence and terror designed to undermine and destroy the solemn commitments of the Nation to freedom and equality for the emancipated Black people. What must be recognized is that the federal statutes shaped first in the Reconstruction period for this very purpose, and then strengthened in the 1960's, offer the opportunity for the immediate development of a powerful two-pronged strategy to avert the disaster which otherwise faces the Nation. (For the convenience of the Committee, I have attached as Appendix A copies of the federal statutes and Constitutional provisions involved.)

The first prong of such a strategy lies in the immediate full scale and sweeping enforcement of the federal criminal civil rights statutes. These criminal statutes, 18 USC §241, 242, and 245, were first enacted by the post-Civil War Congress, and then strengthened and amplified in the 1960's to meet precisely the dangers presently being generated by the klan and similar groupings throughout the country. Known historically as the "KKK Statutes", these laws provide an immediate criminal remedy against conspiracies to use violence and threats of violence against citizens exercising their elementary constitutional rights. Federal grand juries should be swiftly used wherever these acts of violence have occurred to hear

evidence upon which indictments for violation of the KKK Statutes can be returned. This was precisely the approach which was taken in the early 1960's after the brutal murders of the three civil rights workers, Michael Schwerner, Andrew Goodman, and James Chaney, in Philadelphia, Mississippi in 1964. There were loud and insistent demands from the civil rights movements all over the country, and the institution of private citizen actions seeking court protection for elementary constitutional rights in the absence of effective federal intervention. See complaint in Council of Federated Organizations et al., v. L.C. Rainey and Cecil Price, individually and as Sheriff and Deputy Sheriff of Neshoba County, Mississippi, et al., attached hereto as Appendix B.

Finally, the Department of Justice invoked the federal criminal anti-klan statutes, 18 USC §241 and 242, and obtained indictments and convictions of the klan murderers. These were ultimately sustained by the Supreme Court of the United States as absolutely proper exercises of the legislative and judicial power to enforce the 13th, 14th, and 15th Amendments to the United States Constitution. United States v. Price (and Rainey), 383 U.S. 787 (1966).

There is a pressing urgent need for the immediate sweeping enforcement of these federal criminal anti-klan statutes. As in the Reconstruction days, and in the period of the 1960's, local and state criminal procedures are proving to be utterly useless in punishing or deterring the wave of violence against Black and minority peoples. The recent acquittal of the klansmen and nazis charged with the killings in Greensboro, N.C., as well as the acquittals in Chattanooga and the collapse of the state criminal proceedings in Miami, Florida, are but a few examples of the total failure of local and state attempts at the protection of the elementary civil rights of citizens. This is precisely the situation the federal criminal anti-klan statutes were designed to meet. The Department of Justice has in fact turned to the utilization of these statutes in certain limited situations in the past year but what is now required is full-scale, immediate, and sweeping enforcement of the federal statutes wherever and whenever such violence occurs.

An emergency national task force of the Department of Justice needs to be established immediately. There must be appropriation of emergency funds permitting the enlistment of the talents of the most skillful and experienced women and men throughout the country to form emergency teams to enforce the statutes. They should be sent immediately into any community where acts of intimidation and violence against Black and minority peoples occur. A national atmosphere of emergency federal response to such violence or threatened violence must be created. This could serve as a critically needed deterrent to the encouragement and stimulation of such violence. Such emergency federal enforcement teams should be dispatched immediately into Greensboro, Wrightsville, Chattanooga, Atlanta, Buffalo, and wherever the signs of such violence and intimidation break out.

Such a national plan for immediate federal response to acts of violence and intimidation against Black and minority peoples is essential to meet the national crisis which flows from the almost universal widespread lack of knowledge of even the existence of these federal criminal statutes. Virtually no one knows about these laws making it a federal crime to plan and conspire to use violence and threats of violence to undermine the elementary equal constitutional rights of citizens, Black and white. Even lawyers, judges, and legislators are hardly aware of their existence. This is no accident. Since 1877 when the infamous Hayes-Tilden "compromise" resulted in the abandonment of federal enforcement of the wartime promises of equality and freedom for the supposedly emancipated Black people, there has been a conscious "burial" of the criminal and civil federal anti-klan statutes. This "burial" resulted in a climate which allowed the klan to lynch, murder, castrate, burn, bomb, and terrorize Black people back into virtual slavery. For a brief period in the 1960's, these statutes were momentarily "unburied".

Once again, the moment has come when there is a crying need for a massive national campaign which utilizes every conceivable avenue of approach to educate the Nation. Everyone in the country must be made aware that it is a serious federal crime to participate in acts of violence or intimidation against Black and minority people, and that such crimes will be vigorously prosecuted. Such a "resurrection" of the federal criminal anti-klan statutes could serve as a massive and effective deterrent to the spreading of these acts of violence and harassment.

The second prong of the strategy also developed in the early 1960's, would be the immediate seeking of national federal injunctions by the federal government itself against the developing conspiracies to violate the civil provisions of the federal anti-klan and civil rights statutes 42 USC §1971, 1981, 1982, 1983, 1985, 1986, 1988, and 1989. (See Appendix A.) These statutes, first passed after the Civil War and then amplified and strengthened in the 1960's, prohibit any action or conspiracy to use violence or intimidation to interfere in any way with the exercise of constitutionally protected rights of citizens. They provide for the issuance of federal injunctions against any activities designed to interfere with the exercise of these constitutional rights. Such an injunction was obtained by the Justice Department in 1965 in an action entitled, "The United States Against the Original Knights of the Ku Klux Klan". United States v. Original Knights of the Ku Klux Klan, 250 F. Supp. 330 (E.D. La. 1965, 3 judge court). In a historic opinion written by Circuit Judge John Minor Wisdom of the United States Court of Appeals for the Fifth Circuit, the federal court held that the United States government had the power and the duty to seek federal injunctive relief to restrain and stop Ku Klux Klan activities designed to harass and intimidate the Black people who were demanding enforcement of their most elementary constitutional rights of equality, as well as white people in the South and throughout the country who were supporting their demands. The opinion of Judge Wisdom, one of the most respected members of the federal judiciary, goes directly to the heart of the grave problem which was then erupting in the early 1960's and which has now re-emerged in such serious dimensions. Judge Wisdom described the action instituted by the Department of Justice in these terms, "This is an action by the Nation against a klan. The United States of America asks for an injunction to protect Negro citizens in Washington Parish, Louisiana, seeking to assert their civil rights. The defendants are the Original Knights of the Ku Klux Klan, an unincorporated association; the "Anti-Communist Christian Association, a Louisiana Corporation; and certain individual klansmen..." And then in sweeping terms, Judge Wisdom sets forth the heart of the Court's conclusion as to why the injunction requested by the Department of Justice had to be issued:

> "In deciding to grant the injunction prayed for, we rest our conclusions on the finding of fact that, within the meaning of the Civil Rights Acts of 1957 and 1964, the defendants have adopted a pattern and practice of intimidating, threatening, and coercing Negro citizens in Washington Parish for the purpose of interfering with the civil rights of the Negro citizens. The compulsion within the klan to engage in this unlawful conduct is inherent in the nature of the klan. This is its ineradicable evil.
>
> We find that to attain its ends, the klan exploits the forces of hate, prejudice, and ignorance. We find that the klan relies on systematic economic coercion, varieties of intimidation, and physical violence in attempting to frustrate the national policy expressed in civil rights legislation. We find that the klansmen, whether cloaked and hooded as members of the Original Knights of the Ku Klux Klan, or skulking in anonymity as members

> of a sham organization, 'The Anti-Communist Christian Association', or brazenly resorting to violence on the open streets of Bogalusa, are a "fearful conspiracy against society * * * [holding] men silent by the terror of [their acts] and [their] power for evil'." (Wisdom opinion supra at p.334) (emphasis added)

Based upon these fundamental conclusions, the federal three-judge court composed of Judges Wisdom, Christenberry, and Ainsworth, issued a sweeping injunction against "assaulting, threatening, harassing, interfering with or intimidating, or attempting to assault, threaten, harass, interfere with or intimate ... Negro citizens from exercizing their equal rights under the laws and Constitution of the United States". (For the benefit of the Committee, I have attached a copy of this historic injunction as Appendix C to this statement.)

Under the powerful principles set down by Judge Wisdom and the other judges of the Fifth Circuit in 1965, injunctive actions should be immediately brought by the Department of Justice nationally, regionally, and locally. No such actions have been instituted by the Department of Justice as of the present time. It is essential to emphasize the lesson of the 1960's as to the central importance of such injunctive actions as a principal deterrent to klan and other violent activities and threats against Black and minority peoples. Such injunctions dealing with prospective conduct have the potential of performing an invaluable service in the first instance in educating and teaching entire communities about the federal mandate against the perpetration of such violence and harassment. Judge Wisdom's original injunction contained a mandate that a copy of the injunction be posted "conspicuously" at all meeting places of the enjoined organizations. The order was to "be posted at all times and during all meetings". Such orders are available to be publicly distributed in the hundreds of thousands of copies all over a town, a city, a state. They can become the basis for public meetings in schools, colleges, and every community organization. They will say loudly and clearly what needs to be heard from one end of this land to the other -- that the wave of rising violence and intimidation against Black and minority peoples is in total violation of the Constitution and laws of the United States and will be rejected and repudiated by every American committed to the deepest principles and promises of this country.

Moreover, the issuance of these injunctive orders permits an immediate and swift federal legal response to any eruption whatsoever of such violence or harassment. Using the federal contempt power and instituting immediate proceedings enforced by federal marshalls and the federal subpoena power offers a tremendously important opportunity to assert a federal presence into every situation developing anywhere in the country in which such violence or harassment occurs. Once again this would accomplish the desperately needed deterrent impact of a forceful, widespread public recognition of the fact that there will be federal intervention to protect the equal rights of all Americans.

The apparent hesitation of the Department of Justice to follow the clear mandate of the anti-klan and civil rights statutes and institute widespread civil injunctive actions, which would have sweeping deterrent and educational impact, must be immediately overcome. In the 1960's, the Department was similarly reluctant to invoke the federal authority available in the anti-klan and civil rights statutes. Only after the greatest pressure from civil rights organizations in the South, national civil rights and civil liberties organizations throughout the country, and from national religious, labor, and civic organizations, did the Department resort to the power mandated to it in federal law to institute either criminal actions or civil injunctive proceedings against klan and other organizations and individuals engaged in violence against Black and minority peoples.

Once again we are at a crucial turning point. Faced with federal governmental inaction, (and state or local inaction or even sometimes complicity in such actions and harassment, in certain localities where this violence has erupted most openly), private citizens and their organizations, using private attorneys, have brought actions in federal courts seeking injunctive protection and relief. A few examples are the federal actions recently initiated in Chattanooga, Tenn.; Decatur, Ala.; Greensboro, N.C.; and Wrightsville, Ga. (For the use of the Committee, I have attached Appendix D, describing these actions.) The Center for Constitutional Rights and the Southern Poverty Law Center have been deeply involved as private counsel in bringing these actions which seek to invoke the federal power created in the anti-klan and civil rights statutes. In the early 1960's, actions brought by the Council of Federated Organizations of Mississippi, the Student Non-Violent Coordinating Committee, the Southern Christian Leadership Conference, the Congress for Racial Equality, and the National Association for the Advancement of Colored People, began the process of resurrecting the powerful civil rights remedies. In the same way these new actions (see Appendix D) presently being pressed in Chattanooga, Decatur, Greensboro, and Wrightsville, and in other localities must be the occasion for demanding that the national government meet its responsibilities under the Constitution and statutes of the Congress to invoke immediately the federal power present in this two-pronged strategy based upon the existing anti-klan and civil rights statutes.

The Rowe Task Force Report dramatizes the seriousness of the reluctance of the executive branch of government to move swiftly and decisively to utilize the existing criminal and civil remedies against the rising tide of violence and harassment against Black and minority people. That reluctance is especially dangerous when it is juxtaposed to the frightening information contained in the Rowe Task Force Report revealed in articles appearing in the New York Times on February 17 and 18 of this year. These articles reveal grave government complicity and misconduct in connection with episodes of klan violence and misconduct in the past. These articles reported that four attorneys assigned by the Attorney General to investigate charges involving one Gary Thomas Rowe, Jr., a paid informant working for the FBI, filed a report with the Department of Justice. The 302 page report reveals that the FBI knew about, condoned, and covered up its own informers role inside the Ku Klux Klan in the early 60's and participated and incited violent attacks upon Black people and civil rights activists. Despite the extraordinary fact that the Department has refused to release this report for public consideration, the New York Times reported the following conclusions from the Rowe Task Force Report:

> "J. Edgar Hoover blocked prosecution of four ku klux klansmen identified by agents of the Federal Bureau of Investigation as the bombers who killed four black children at the 16th Street Baptist Church here in 1963,..."
>
> "Mr. Hoover's office had also been informed that Mr. Hall [(an FBI klan informant)] had once volunteered [to] kill the Rev. Fred L. Shuttlesworth, [Birmingham's] leading black civil rights leader, as part of a klan assassination plot exposed by Mr. Rowe..."
>
> "The report also criticized the bureau for failing to protect the Freedom Riders after its Director, J. Edgar Hoover, was informed in advance about the ambush and ... that Mr. Rowe, armed with a leadweighted baseball bat, would lead one of the klan attack squads."

"Agents of the Federal Bureau of Investigation knew about and apparently covered up involvement in violent attacks on blacks, civil rights activists and journalists by its chief paid informer inside the ku klux klan in the early 1960's..."

"The report is more conclusive as to Mr. Rowe's involvement in nonfatal klan attacks. In general, the investigative force supports Mr. Rowe's contention that bureau agents initially warned him not to become involved in violence but later ignored or accepted his participation ... as essential to maintaining his cover. Field agents apparently covered up Mr. Rowe's violence, by failing to report it to their superiors and by disregarding indications of illegal conduct."

"Field agents told the task force that violence against blacks was essential, if regrettable, to maintaining an informer's cover as a militant segregationist..."

The Rowe Task Force Report apparently reveals many facts which raise grave questions concerning possible federal governmental misconduct and complicity with respect to the klan-instigated violence in the 1960's, including: (1) deliberate blocking of prosecution of the perpetrators of serious racial violence, (2) deliberate use of informants with knowledge that such informants had a history of violence and continued to engage in violence, (3) failure to protect against and/or warn about violence against civil rights demonstrators which the FBI knew would occur, and (4) cover up of the violent and criminal acts of FBI informants.

In the face of the revelation of the existence and contents of the Rowe Task Force Report, the recent announcement on December 4th by the Department of Justice that under guidelines just issued, government informers may participate in "some crimes" while assisting in federal investigations, assumes potentially frightening proportions. The guidelines purport to bar informers from actually engaging in "acts of violence". However, in light of the Rowe Task Force Report, it is important to determine whether the new "guidelines" sanction participation by informers, like Rowe, in the crimes of planning and instigating acts of violence in violation of the anti-klan and civil rights statutes. And in light of these startling revelations, what are the conclusions to be drawn concerning the recent indications that an agent of the Federal Bureau of Alcohol, Tobacco, and Firearms, as well as a Greensboro police informant, participated in the planning and carrying through of the recent shootings and murders of the anti-klan demonstrators in Greensboro at the November 3, 1979 rally?

These indications of governmental misconduct and complicity in the instigation and perpetration of violence and harassment against Black and minority peoples are especially serious within the framework of governmental failure and reluctance to fully enforce the federal remedies in the anti-klan and civil rights statutes. The inference begins to emerge that the federal government is committed to "looking the other way", if not actually "quietly" approving this course of conduct, when the violence against Black and minority peoples occurs. It is essential that this dangerous illusion be erased at once. There is the urgent necessity for an immediate full-scale investigation into and public exposure of any governmental misconduct in respect to such violence, including failure to prosecute under federal statutes any such participation in or toleration of conduct condemned under the anti-klan and civil rights statutes.

This Committee should institute such an investigation at once and demand the immediate production of the Rowe Task Force Report. The Committee should inquire into whether there is any intention to prosecute those in the government responsible for allowing participation of government agents and informers in the instigation and perpetration of crimes of violence against Black and minority peoples. Only such a full scale public disclosure, prosecution of past crimes that are revealed, and prohibition of any such future misconduct, will restore any confidence that the federal government is in fact committed to the enforcement of the federal laws guaranteeing the equality and freedom promised by the Constitution.

The problem being examined here today highlights the critical importance of the role of this Committee. There is an urgent need at this moment in the Nation's history to unearth the remedies first fashioned by the Reconstruction Congress to meet the threat of planned conspiracies to undermine the contitutional guarantees of equality and freedom to all people in this country. There is a pressing need to educate the Nation and all its peoples that these remedies do exist and will be enforced. Most fundamental of all is the need to alert the Nation to the danger of a new 1877, the danger of another attempt to bury the elementary promises of freedom and equality set forth in the 13th, 14th, and 15th Amendments.

I would urge that this be but the first of an extended series of hearings. The Committee should hold hearings in areas of the country where the conspiracies to violate the anti-klan and civil rights statutes have been most overt. Further hearings should be held in Washington, D.C. to explore fully the serious questions which will be raised at the regional hearings.

Just as the historic hearings of the Congress after the Civil War into the rise and impact of the organized efforts to use massive violence against the newly emancipated Black people led to the enactment of the anti-klan and civil rights statutes, so these hearings over a hundred years later must lead to a deep and full consideration of methods of massive and effective enforcement of the remedies for the protection of the constitutional guarantees of freedom and equality contained in these statutes.

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§ 1971. Voting rights—Race, color, or previous condition not to affect right to vote; uniform standards for voting qualification; errors or omissions from papers; literacy tests; agreements between Attorney General and State or local authorities; definitions

(a)(1) All citizens of the United States who are otherwise qualified by law to vote at any election by the people in any State, Territory, district, county, city, parish, township, school district, municipality, or other territorial subdivision, shall be entitled and allowed to vote at all such elections, without distinction of race, color, or previous condition of servitude; any constitution, law, custom, usage, or regulation of any State or Territory, or by or under its authority, to the contrary notwithstanding.

(2) No person acting under color of law shall—

(A) in determining whether any individual is qualified under State law or laws to vote in any election, apply any standard, practice, or procedure different from the standards, practices, or procedures applied under such law or laws to other individuals within the same county, parish, or similar political subdivision who have been found by State officials to be qualified to vote;

(B) deny the right of any individual to vote in any election because of an error or omission on any record or paper relating to any application, registration, or other act requisite to voting, if such error or omission is not material in determining whether such individual is qualified under State law to vote in such election; or

(C) employ any literacy test as a qualification for voting in any election unless (i) such test is administered to each individual and is conducted wholly in writing, and (ii) a certified copy of the test and of the answers given by the individual is furnished to him within twenty-five days of the submission of his request made within the period of time during which records and papers are required to be retained and preserved pursuant to sections 1974 to 1974e of this title: *Provided, however,* That the Attorney General may enter into agreements with appropriate State or local authorities that preparation, conduct, and maintenance of such tests in accordance with the provisions of applicable State or local law, including such special provisions as are necessary in the preparation, conduct, and maintenance of such tests for persons who are blind or otherwise physically handicapped, meet the purposes of this subparagraph and constitute compliance therewith.

(3) For purposes of this subsection—

(A) the term "vote" shall have the same meaning as in subsection (e) of this section;

(B) the phrase "literacy test" includes any test of the ability to read, write, understand, or interpret any matter.

Intimidation, threats, or coercion

(b) No person, whether acting under color of law or otherwise, shall intimidate, threaten, coerce, or attempt to intimidate, threaten, or coerce any other person for the purpose of interfering with the right of such other person to vote or to vote as he may choose, or of causing such other person to vote for, or not to vote for, any candidate for the office of President, Vice President, presidential elector, Member of the Senate, or Member of the House of Representatives, Delegates or Commissioners from the Territories or possessions, at any general, special, or primary election held solely or in part for the purpose of selecting or electing any such candidate.

Preventive relief; injunction; rebuttable literacy presumption; liability of United States for costs; State as party defendant

(c) Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice which would deprive any other person of any right or privilege secured by subsection (a) or (b) of this section, the Attorney General may institute for the United States, or in the name of the United States, a civil action or other proper proceeding for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order. If in any such proceeding literacy is a relevant fact there shall be a rebuttable presumption that any person who has not been adjudged an incompetent and who has completed the sixth grade in a public school in, or a private school accredited by, any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico where instruction is carried on predominantly in the English language, possesses sufficient literacy, comprehension, and intelligence to vote in any election. In any proceeding hereunder the United States shall be liable for costs the same as a private person. Whenever, in a proceeding instituted under this subsection any official of a State or subdivision thereof is alleged to have committed any act or practice constituting a deprivation of any right or privilege secured by subsection (a) of this section, the act or practice shall also be deemed that of the State and the State may be joined as a party defendant and, if, prior to the institution of such proceeding, such official has resigned or has been relieved of his office and no successor has assumed such office, the proceeding may be instituted against the State.

Jurisdiction; exhaustion of other remedies

(d) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this section and shall exercise the same without regard to whether the party aggrieved shall have exhausted any administrative or other remedies that may be provided by law.

Order qualifying person to vote; application; hearing; voting referees; transmittal of report and order; certificate of qualification; definitions

(e) In any proceeding instituted pursuant to subsection (c) of this section in the event the court finds that any person has been deprived on account of race or color of any right or privilege secured by subsection (a) of this section, the court shall upon request of the Attorney General and after each party has been given notice and the opportunity to be heard make a finding whether such deprivation was or is pursuant to a pattern or practice. If the court finds such pattern or practice, any person of such race or color resident within the affected area shall, for one year and thereafter until the court subsequently finds that such pattern or practice has ceased, be entitled, upon his application therefor, to an order declaring him qualified to vote, upon proof that at any election or elections (1) he is qualified under State law to vote, and (2) he has since such finding by the court been (a) deprived of or denied under color of law the opportunity to register to vote or otherwise to qualify to vote, or (b) found not qualified to vote by any person acting under color of law. Such order shall be effective as to any election held within the longest period for which such applicant could have been registered or otherwise qualified under State law at which the applicant's qualifications would under State law entitle him to vote.

Notwithstanding any inconsistent provision of State law or the action of any State officer or court, an applicant so declared qualified to vote shall be permitted to vote in any such election. The Attorney General shall cause to be transmitted certified copies of such order to the appropriate election officers. The refusal by any such officer with notice of such order to permit any person so declared qualified to vote to vote at an appropriate election shall constitute contempt of court.

An application for an order pursuant to this subsection shall be heard within ten days, and the execution of any order disposing of such application shall not be stayed if the effect of such stay would be to delay the effectiveness of the order beyond the date of any election at which the applicant would otherwise be enabled to vote.

The court may appoint one or more persons who are qualified voters in the judicial district, to be known as voting referees, who shall subscribe to the oath of office required by Revised Statutes, section

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1757; to serve for such period as the court shall determine, to receive such applications and to take evidence and report to the court findings as to whether or not at any election or elections (1) any such applicant is qualified under State law to vote, and (2) he has since the finding by the court heretofore specified been (a) deprived of or denied under color of law the opportunity to register to vote or otherwise to qualify to vote, or (b) found not qualified to vote by any person acting under color of law. In a proceeding before a voting referee, the applicant shall be heard ex parte at such times and places as the court shall direct. His statement under oath shall be prima facie evidence as to his age, residence, and his prior efforts to register or otherwise qualify to vote. Where proof of literacy or an understanding of other subjects is required by valid provisions of State law, the answer of the applicant, if written shall be included in such report to the court; if oral, it shall be taken down stenographically and a transcription included in such report to the court.

Upon receipt of such report, the court shall cause the Attorney General to transmit a copy thereof to the State attorney general and to each party to such proceeding together with an order to show cause within ten days, or such shorter time as the court may fix, why an order of the court should not be entered in accordance with such report. Upon the expiration of such period, such order shall be entered unless prior to that time there has been filed with the court and served upon all parties a statement of exceptions to such report. Exceptions as to matters of fact shall be considered only if supported by a duly verified copy of a public record or by affidavit of persons having personal knowledge of such facts or by statements or matters contained in such report; those relating to matters of law shall be supported by an appropriate memorandum of law. The issues of fact and law raised by such exceptions shall be determined by the court or, if the due and speedy administration of justice requires, they may be referred to the voting referee to determine in accordance with procedures prescribed by the court. A hearing as to an issue of fact shall be held only in the event that the proof in support of the exception disclose the existence of a genuine issue of material fact. The applicant's literacy and understanding of other subjects shall be determined solely on the basis of answers included in the report of the voting referee.

The court, or at its direction the voting referee, shall issue to each applicant so declared qualified a certificate identifying the holder thereof as a person so qualified.

Any voting referee appointed by the court pursuant to this subsection shall to the extent not inconsistent herewith have all the powers conferred upon a master by rule 53(c) of the Federal Rules of Civil Procedure. The compensation to be allowed to any persons appointed by the court pursuant to this subsection shall be fixed by the court and shall be payable by the United States.

Applications pursuant to this subsection shall be determined expeditiously. In the case of any application filed twenty or more days prior to an election which is undetermined by the time of such election, the court shall issue an order authorizing the applicant to vote provisionally: *Provided, however,* That such applicant shall be qualified to vote under State law. In the case of an application filed within twenty days prior to an election, the court, in its discretion, may make such an order. In either case the order shall make appropriate provision for the impounding of the applicant's ballot pending determination of the application. The court may take any other action, and may authorize such referee or such other person as it may designate to take any other action, appropriate or necessary to carry out the provisions of this subsection and to enforce its decrees. This subsection shall in no way be construed as a limitation upon the existing powers of the court.

When used in the subsection, the word "vote" includes all action necessary to make a vote effective including, but not limited to, registration or other action required by State law prerequisite to voting, casting a ballot, and having such ballot counted and included in the appropriate totals of votes cast with respect to candidates for public office and propositions for which votes are received in an election; the words "affected area" shall mean any subdivision of the State in which the laws of the State relating to voting are or

have been to any extent administered by a person found in the proceeding to have violated subsection (a) of this section; and the words "qualified under State law" shall mean qualified according to the laws, customs, or usages of the State, and shall not, in any event, imply qualifications more stringent than those used by the persons found in the proceeding to have violated subsection (a) of this section in qualifying persons other than those of the race or color against which the pattern or practice of discrimination was found to exist.

Contempt; assignment of counsel; witnesses

(f) Any person cited for an alleged contempt under this Act shall be allowed to make his full defense by counsel learned in the law; and the court before which he is cited or tried, or some judge thereof, shall immediately, upon his request, assign to him such counsel, not exceeding two, as he may desire, who shall have free access to him at all reasonable hours. He shall be allowed, in his defense to make any proof that he can produce by lawful witnesses, and shall have the like process of the court to compel his witnesses to appear at his trial or hearing, as is usually granted to compel witnesses to appear on behalf of the prosecution. If such person shall be found by the court to be financially unable to provide for such counsel, it shall be the duty of the court to provide such counsel.

Three-judge district court; hearing, determination, expedition of action, review by Supreme Court; single-judge district court; hearing, determination, expedition of action

(g) In any proceeding instituted by the United States in any district court of the United States under this section in which the Attorney General requests a finding of a pattern or practice of discrimination pursuant to subsection (e) of this section the Attorney General, at the time he files the complaint, or any defendant in the proceeding, within twenty days after service upon him of the complaint, may file with the clerk of such court a request that a court of three judges be convened to hear and determine the entire case. A copy of the request for a three-judge court shall be immediately furnished by such clerk to the chief judge of the circuit (or in his absence, the presiding circuit judge of the circuit) in which the case is pending. Upon receipt of the copy of such request it shall be the duty of the chief judge of the circuit or the presiding circuit judge, as the case may be, to designate immediately three judges in such circuit, of whom at least one shall be a circuit judge and another of whom shall be a district judge of the court in which the proceeding was instituted, to hear and determine such case, and it shall be the duty of the judges so designated to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited. An appeal from the final judgment of such court will lie to the Supreme Court.

In any proceeding brought under subsection (c) of this section to enforce subsection (b) of this section, or in the event neither the Attorney General nor any defendant files a request for a three-judge court in any proceeding authorized by this subsection, it shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or, in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

It shall be the duty of the judge designated pursuant to this section to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited.

R.S. § 2004; Pub.L. 85-315, Pt. IV, § 131, Sept. 9, 1957, 71 Stat. 637; Pub.L. 86-449, Title VI, § 601, May 6, 1960, 74 Stat. 90; Pub.L. 88-352, Title I, § 101, July 2, 1964, 78 Stat. 241; Pub.L. 89-110, § 15, Aug. 6, 1965, 79 Stat. 445.

§ 1981. Equal rights under the law

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

R.S. § 1977.

§ 1982. Property rights of citizens

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

R.S. § 1978.

§ 1983. Civil action for deprivation of rights

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

R.S. § 1979.

§ 1985. Conspiracy to interfere with civil rights—Preventing officer from performing duties

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

Obstructing justice; intimidating party, witness, or juror

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

Depriving persons of rights or privileges

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

R.S. § 1980.

§ 1986. Same; action for neglect to prevent

Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action; and if the death of any party be caused by any such wrongful act and neglect, the legal representatives of the deceased shall have such action therefor, and may recover not exceeding $5,000 damages therein, for the benefit of the widow of the deceased, if there be one, and if there be no widow, then for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued.

R.S. § 1981.

§ 1988. Proceedings in vindication of civil rights

The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this chapter and Title 18, for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty.

R.S. § 722.

§ 1939. United States magistrates; appointment of persons to execute warrants

The district courts of the United States and the district courts of the Territories, from time to time, shall increase the number of United States magistrates, so as to afford a speedy and convenient means for the arrest and examination of persons charged with the crimes referred to in section 1987 of this title; and such magistrates are authorized and required to exercise all the powers and duties conferred on them herein with regard to such offenses in like manner as they are authorized by law to exercise with regard to other offenses against the laws of the United States. Said magistrates are empowered, within their respective counties, to appoint, in writing, under their hands, one or more suitable persons, from time to time, who shall execute all such warrants or other process as the magistrates may issue in the lawful performance of their duties, and the persons so appointed shall have authority to summon and call to their aid the bystanders or posse comitatus of the proper county, or such portion of the land or naval forces of the United States, or of the militia, as may be necessary to the performance of the duty with which they are charged; and such warrants shall run and be executed anywhere in the State or Territory within which they are issued.

R.S. §§ 1983, 1984; Mar. 3, 1911, c. 231, § 291, 36 Stat. 1167; Oct. 17, 1968, Pub.L. 90-578, Title IV, § 402, 82 Stat. 1118.

CONSTITUTIONAL AMENDMENTS

AMENDMENT XIII.—SLAVERY ABOLISHED

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2. Congress shall have power to enforce this article by appropriate legislation.

AMENDMENT XIV.—CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPORTIONMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

AMENDMENT XV.—UNIVERSAL MALE SUFFRAGE

Section 1. 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.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF MISSISSIPPI

JACKSON DIVISION

COUNCIL OF FEDERATED ORGANIZATIONS; MRS. RITA SCHWERNER, and MRS. FANNIE LEE CHANEY, individually and on behalf of MICHAEL SCHWERNER and JAMES CHANEY; MRS. FANNIE LOU HAMER, MRS. PEGGY JEAN CONNOR, MRS. MARY ROBINSON and JOHN GOULD, SR., individually and on behalf of others similarly situated; ROBERT P. MOSES, R. HUNTER MOREY, RUTH SCHEIN and DORIE LADNER, individually and on behalf of others similarly situated; the REV. R. EDWIN KING, individually and on behalf of others similarly situated; NATHAN HAUSFATHER, EDITH HAUSFATHER, GLENN TRIMBLE and ELEANOR TRIMBLE, individually and on behalf of others similarly situated,

Plaintiffs,

versus

L. C. RAINEY and CECIL PRICE, individually and as Sheriff and Deputy Sheriff of Neshoba County, Mississippi, and as representative of the Sheriffs and Deputy Sheriffs of the 82 Counties of Mississippi; T. B. BIRDSONG, individually and as Commissioner of Public Safety in charge of the Mississippi State Highway Patrol, and as representative of the members of the Mississippi State Highway Patrol; KU KLUX KLAN, an association with members in the State of Mississippi; AMERICANS FOR THE PRESERVATION OF THE WHITE RACE, an association with members in the State of Mississippi; WHITE CITIZENS COUNCILS OF MISSISSIPPI, an association with members in the State of Mississippi; JOHN DOE and RICHARD ROE, and others whose identity is presently to the plaintiffs unknown, members of state and local law enforcement agencies in Mississippi, and members of KU KLUX KLAN and/or AMERICANS FOR THE PRESERVATION OF THE WHITE RACE, and/or WHITE CITIZENS COUNCILS OF MISSISSIPPI, and JOHN SMITH and PAUL JONES, and others whose identity is presently to the plaintiffs unknown, private white citizens of the State of Mississippi.

Defendants.

JACKSON DIVISION
CIVIL ACTION
NO. 3599 (J)(M)

COMPLAINT

Plaintiffs, for their verified complaint, say:

(Kinoy)

APPENDIX B

PARTIES:

A. Plaintiffs:

1. Plaintiff, COUNCIL OF FEDERATED ORGANIZATIONS, hereinafter referred to as "COFO," is a coordinated organization of all civil-rights organizations in the State of Mississippi. It is dedicated to the achievement, through lawful and constitutional means, of the freedom and equality of Negro citizens of the State of Mississippi guaranteed to them by the Thirteenth, Fourteenth and Fifteenth Amendments to the Constitution of the United States. Plaintiff COFO sues for itself and on behalf of all of its constituent affiliates and cooperating organizations and on behalf of all citizens of the United States, Negro and white, in the State of Mississippi who are endeavoring to assist in its program of activities designed to achieve the full rights of American citizenship for the Negro citizens of Mississippi, including the right to vote and to participate equally in the processes of political democracy guaranteed to them by the Constitution of the United States.

2. Plaintiff MRS. RITA SCHWERNER is a citizen of the United States. Plaintiff MRS. FANNIE LEE CHANEY is a citizen of the United States. MRS. SCHWERNER sues individually and on behalf of her husband, MICHAEL SCHWERNER, and MRS. CHANEY sues individually and on behalf of her son, JAMES CHANEY, both citizens of the United States, and presently unable to assert their rights under the Constitution of the United States by reason of the wrongful actions of the defendants, or some of them, acting in unlawful conspiracy with each other and other persons presently to the plaintiffs unknown.

3. MRS. FANNIE LOU HAMER, MRS. PEGGY JEAN CONNOR, MRS. MARY ROBINSON, and JOHN GOULD, SR. are citizens of the United States and residents of the State of Mississippi. Plaintiff Hamer resides in Sunflower County, Mississippi; plaintiff Connor resides in Forrest County, Mississippi; plaintiff Robinson resides in Madison County, Mississippi; plaintiff Gould resides in Forrest County, Mississippi. They are members of the Negro race. They sue individually and on behalf of all Negro citizens of the State of Mississippi, which class is too numerous to bring before the Court.

4. Plaintiff ROBERT P. MOSES, R. HUNTER MOREY, RUTH SCHEIN and DORIE LADNER are citizens of the United States. Plaintiff Moses and plaintiff Ladner are members of the Negro race and plaintiff

Norey and plaintiff Schein are white. Plaintiff Moses is a resident of the State of Mississippi and is program director for plaintiff COFO. He is director of the Summer Project of plaintiff COFO. Plaintiffs Moses, Norey, Schein and Ladner are staff and volunteer workers, approximately 1,000 in number, participating in the lawful, constitutional activities of the Mississippi Summer Project of plaintiff COFO. They have volunteered to assist, through lawful and constitutional means, the efforts of the Negro citizens of the State of Mississippi to achieve equality, freedom and the right to vote, which rights are guaranteed by the Constitution of the United States and presently denied to the Negro citizens of that state by the authorities of the state in open defiance of the Constitution of the United States and the law of the land. Plaintiffs Moses, Norey, Schein and Ladner sue individually and on behalf of all other staff and volunteer workers, Negro and white, similarly situated throughout the State of Mississippi, which class is too numerous to bring before the Court.

5. Plaintiff REVEREND R. EDWIN KING is a citizen of the United States and a resident of the State of Mississippi. He is a white citizen and is actively concerned with assisting the efforts of the Negro citizens of this state to achieve freedom, equality and the right to vote. He sues individually and on behalf of all other white citizens of Mississippi similarly situated.

6. NATHAN HAUSFATHER, EDITH HAUSFATHER, GLENN TRIMBLE and ELEANOR TRIMBLE are citizens of the United States. They are parents of young staff and volunteer workers presently assisting in the lawful and constitutional activities of the Mississippi Summer Project of plaintiff COFO. They sue individually and on behalf of all other parents of such volunteer and staff workers similarly situated.

B. Defendants:

7. Defendant L. C. RAINEY is the Sheriff of Neshoba County, Mississippi. He is a citizen of the United States and a resident of Philadelphia, Mississippi. Defendant CECIL PRICE is the Deputy Sheriff of Neshoba County, Mississippi. He is a citizen of the United States and a resident of Philadelphia, Mississippi. They are sued individually and as representative of each and every one of the sheriffs and deputy sheriffs of the 82 counties of the State

of Mississippi. This class is too numerous to bring them all before the Court.

8. Defendant T. B. BIRDSONG is the Commissioner of Public Safety of the State of Mississippi and in charge of the Mississippi State Highway Patrol. He is a citizen of the United States and a resident of the State of Mississippi. He is sued individually and as representative of all of the members of the Mississippi State Highway Patrol, which class is too numerous to bring before the Court.

9. Defendant KU KLUX KLAN is an association with members in Neshoba County, Mississippi, Lauderdale County, Mississippi and, on information and belief, in each of the 82 counties of the State of Mississippi. On information and belief it is a clandestine, terroristic organization whose members are committed to the use of force, violence and terroristic acts to deter, punish and intimidate all American citizens, Negro and white, who seek to utilize constitutional means to obtain equality, freedom and the right to vote for the Negro citizens of the State of Mississippi.

10. Defendant AMERICANS FOR THE PRESERVATION OF THE WHITE RACE is an association with members in Neshoba County, Mississippi, Lauderdale County, Mississippi, and, on information and belief, with members in many of the 82 counties of the State of Mississippi. On information and belief it is a clandestine, terroristic organization whose members are committed to the use of force, violence and terroristic acts to deter, punish and intimidate all American citizens, Negro and white, who seek to utilize constitutional means to obtain equality, freedom and the right to vote for the Negro citizens of the State of Mississippi.

11. Defendant WHITECITIZENS COUNCILS OF MISSISSIPPI is an association with members throughout the State of Mississippi. It is an organization dedicated to impeding and deterring by all means the lawful efforts of Negro citizens of Mississippi to achieve the federal constitutional objectives of freedom, equality and the right to vote.

12. Defendant JOHN DOE and RICHARD ROE are members of the State Police of the State of Mississippi and/or the State Highway Patrol of the State of Mississippi, and/or the Sheriff's offices of the various counties of the State of Mississippi, and/or the local police

forces in the towns and municipalities throughout the State of Mississippi, and/or the auxiliary police organizations and other public or quasi-public law enforcement organizations residing both in Neshoba and Lauderdale Counties and throughout the State of Mississippi. On information and belief they are members of defendant KU KLUX KLAN and/or defendant AMERICANS FOR THE PRESERVATION OF THE WHITE RACE and/or defendant WHITE CITIZENS COUNCILS.

13. Defendants JOHN SMITH and PAUL JONES, whose true names are unknown to plaintiffs, are private white citizens of the State of Mississippi who, on information and belief, are either not members of the defendants KU KLUX KLAN, AMERICANS FOR THE PRESERVATION OF THE WHITE RACE or WHITE CITIZENS COUNCILS or, if so, are not acting in such capacity, but who are committed to the use of force, violence and terroristic acts to deter, punish and intimidate all American citizens, Negro and white, who seek to utilize constitutional means to obtain equality, freedom and the right to vote for the Negro citizens of the State of Mississippi.

Jurisdiction

14. The jurisdiction of this Court arises under the Constitution of the United States and, in particular, under Article IV thereof, and the First, Thirteenth, Fourteenth and Fifteenth Amendments thereto, and under the laws of the United States and, in particular, Title 28, U.S.C., Sections 1331, 1343 and Title 42 U.S.C., Sections 1971, 1981, 1983, 1985, 1988 and 1989, as well as under the Civil Rights Act of 1964.

Cause of Action

15. The defendants, together with numerous persons presently to the plaintiffs unknown, for many years up to and including the present date, have combined and conspired under color of statutes, ordinances, regulations, customs and usages of the State of Mississippi to subject or cause to subject the plaintiffs, being citizens of the United States, to the deprivation of rights, privileges and immunities secured by the Constitution and laws of the United States.

16. Furthermore, the defendants, together with numerous persons presently to the plaintiffs unknown, for many years up to and including the present date, have combined and conspired for the purpose of depriving the plaintiffs and the classes of persons they represent,

of the equal protection of the laws and of equal privileges and immunities under the law, including their right to register and vote in elections for, among others, the President, Vice-President and members of Congress, and for the purpose of preventing, persuading, hindering or subverting the constituted authorities of the State of Mississippi from giving and securing to all persons within the State of Mississippi the equal protection of the laws.

17. Pursuant to this conspiracy, the defendants, for many years up to and including the present day, have planned and conspired to, and did in fact, utilize illegal force, violence and terroristic acts to intimidate and deter the Negro citizens of the State of Mississippi from exercising their constitutional rights to associate together in efforts to achieve the constitutional objectives of freedom and equality as American citizens and the fundamental right to register and vote guaranteed under the Constitution of the United States to all American citizens regardless of race or color.

Pursuant thereto, the defendants, or some of them, including defendants acting under the color and authority of the State of Mississippi, have engaged in widespread terroristic acts including beatings, arson, torture and murder in a concerted effort to intimidate, punish and deter the Negro citizens of the State of Mississippi as well as any white persons who have dared to assist them in their efforts to achieve the federal constitutional objectives of freedom, equality and the right to register and vote regardless of race and color. This concerted, planned and organized conspiracy to utilize these terroristic acts of violence has continued and accelerated up to and including the present date. The existence of this concerted plan to utilize acts of violence has been reported by agencies of the United States government and by personal representatives of the President of the United States and is well-known throughout the State of Mississippi.

18. Prior to 1955, Negroes in most rural communities and in many urban communities of Mississippi did not offer themselves as voters and did not seek to register or participate actively in political life in Mississippi because of the accepted pattern of life in Mississippi reinforced by the terroristic acts of these defendants. Beginning shortly after 1954, in part as a result of the decision of the Supreme Court of the United States in Brown v.

Board of Education, the Negro citizens of Mississippi began efforts to participate in the political processes of the state. In response to this development from 1955 until the present time, various members of the executive and legislative branches of the government of the State of Mississippi, who controlled and dominated the same, have engaged in numerous attempts, through legislation and otherwise, to bar or greatly limit any increase in Negro participation in the political life of Mississippi. Similarly these defendants and others acting in concert with them have intensified their conspiracy to utilize force, violence and terroristic acts to intimidate and deter the Negro citizens of Mississippi from exercising their rights of American citizenship. Nevertheless, the Negro citizens of this State have courageously continued their efforts to participate in the democratic processes of government, and this summer plaintiff COFO has organized a Summer Project consisting of many hundreds of young American citizens, Negro and white, who have volunteered their services to assist the Negro citizens of Mississippi in their efforts to register to vote and to exercise their fundamental rights of citizenship guaranteed by the Constitution of the United States. At some date recently, the defendants, or some of them, met, planned and conspired to accelerate and intensify their terroristic acts of force and violence in an attempt to deter the plaintiffs, including the Negro citizens of Mississippi, from carrying through to its conclusion this lawful and constitutionally protected Summer Project. Accordingly, pursuant to the aforesaid conspiracy, the defendants, together with others presently unknown to plaintiffs, have recently planned and conspired to utilize illegal force, violence and terroristic acts to intimidate and deter these young American citizens, Negro and white, who have volunteered their services this summer through the Summer Project of plaintiff COFO, to assist the Negro citizens of the State of Mississippi in achieving their constitutionally promised and secured objectives of freedom, equality and the right to registor and vote, regardless of race or color.

19. Furthermore, the defendants, together with numerous persons presently to the plaintiffs unknown, have recently planned and conspired to utilize these acts of violence in an effort to deter these volunteer workers, together with the Negro citizens of the State of Mississippi, from exercising their fundamental, federally protected

constitutional rights of free speech, free press, freedom of assembly and of association and the right to petition their government for redress of grievances, all of which rights are guaranteed to these volunteer workers and to the Negro citizens of the State of Mississippi under the First Amendment to the Constitution of the United States. In open defiance of the Constitution of the United States and of the laws of the United States, these defendants, with numerous persons presently to the plaintiffs unknown, have conspired to organize and set up clandestine terroristic organizations throughout the various counties of the State of Mississippi for the purpose of planning, preparing and carrying out illegal terroristic acts of violence against the plaintiffs and all citizens, Negro and white, in the State of Mississippi who are presently attempting to utilize their federally protected rights to achieve their federally protected goal of freedom, equality and the right to vote.

20. Plaintiffs further state that pursuant to the intensification of this continuing conspiracy and as an overt act thereof, the defendants, or some of them, together with persons presently to the plaintiffs unknown, did, on the evening of June 19, 1964, conspire, plan and did, in fact, go secretly and in disguise upon the highways of Neshoba County, Mississippi, and with force and violence and the use of armed weapons did brutally and with malice aforethought and without any justification whatsoever, beat and inflict serious injuries upon several Negro citizens of Neshoba County, and did then and there burn to the ground a Negro house of worship, all of which illegal and terroristic acts were solely for the purpose of intimidating and deterring these Negro citizens and the Negro citizens of Neshoba County from exercising any of their fundamental rights under the Constitution of the United States. This terroristic act committed by the defendants or some of them, and others presently to the plaintiffs unknown, was in open defiance and violation of the Constitution and laws of the United States.

21. Plaintiffs further allege that in pursuance of this conspiracy and as an overt act thereof, the defendants, or some of them, together with persons presently to the plaintiffs unknown, did, on the evening of June 21st, 1964, conspire, plan and, in fact, did, under color of the laws of the State of Mississippi, contrive without lawful reason or warrant of law to arrest three young persons,

volunteer and staff workers in the Summer Project of plaintiff COFO, namely MICHAEL SCHWERNER, ANDREW GOODMAN, and JAMES CHANEY, being members of the classes of plaintiffs herein, solely and exclusively because they were engaged in peaceful and lawful activities seeking to implement the guarantees of the Constitution of the United States. The defendants or some of them, acting with others presently to the plaintiffs unknown, thereupon did plan and conspire and did, in fact, utilize this illegal and unwarranted arrest and detention under color of the laws of Mississippi, to contrive, plan and bring about the illegal seizure of MICHAEL SCHWERNER, ANDREW GOODMAN and JAMES CHANEY. Pursuant to this plan and conspiracy the defendants, or some of them, together with persons presently to the plaintiffs unknown, continued to hold MICHAEL SCHWERNER, ANDREW GOODMAN and JAMES CHANEY forcibly and secretly in their custody and control, against their will. On information and belief the defendants or some of them, together with persons presently to the plaintiffs unknown, conspired to utilize force and violence to remove the said MICHAEL SCHWERNER, ANDREW GOODMAN and JAMES CHANEY from the jailhouse in Philadelphia, Mississippi, and to cause other illegal forcible action to be taken against them, the precise nature of which is presently unknown to the plaintiffs.

These terroristic acts were for the sole purpose of attempting to deter, punish and impede these young American citizens, the Negro citizens of Neshoba County, Mississippi, and throughout the state, as well as the volunteer and staff workers of the Mississippi Summer Project of plaintiff COFO, and all of the plaintiffs in this action, from continuing to exercise their fundamental rights as American citizens to freedom of speech, press, assembly and association in their lawful efforts to implement and enforce the federal constitutional guarantees of equality, freedom, and the right to vote.

22. The defendants and others presently to the plaintiffs unknown, continue to conspire to utilize force, violence and terroristic acts to impede, deter, frighten and harass the plaintiffs and the classes they represent from exercising their fundamental rights under the First, Thirteenth, Fourteenth and Fifteenth Amendments. Unless this illegal conspiracy is restrained by this Court and proper relief granted, the plaintiffs will imminently suffer immediate and

irreparable injuries and continue to suffer immediate and irreparable injuries.

Remedies

23. There is no adequate remedy at law either in the state courts of Mississippi or the federal courts. The immediate invocation of the powers of a federal court of equity are urgently required to protect fundamental federal constitutional rights, privileges and immunities from immediate and irreparable injury.

24. Furthermore, this Court has authority and is required under the facts here set forth in this complaint, to take immediate action pursuant to Title 42 U.S.C. s.1989 to implement and enforce equitable relief against the imminently threatened acts of the conspirators here charged. Title 42 U.S.C. s.1989 provides as follows:

> S. 1989 Commissioners; appointment of persons to execute warrants
>
> The district courts of the United States and the district courts of the Territories, from time to time, shall increase the number of commissioners, so as to afford a speedy and convenient means for the arrest and examination of persons charged with the crimes referred to in section 1987 of this title; and such commissioners are authorized and required to exercise all the powers and duties conferred on them herein with regard to such offenses in like manner as they are authorized by law to exercise with regard to other offenses against the laws of the United States. Said commissioners are empowered, within their respective counties, to appoint, in writing, under their hands, one or more suitable persons, from time to time, who shall execute all such warrants or other process as the commissioners may issue in the lawful performance of their duties, and the persons so appointed shall have authority to summon and call to their aid the bystanders or posse comitatus of the proper county, or such portion of the land or naval forces of the United States, or of the militia, as may be necessary to the performance of the duty with which they are charged; and such warrants shall run and be executed anywhere in the State or Territory within which they are issued. R.S. Sections 1983, 1984; Mar. 3, 1911, c. 231 2 291, 36 Stat. 1167.

The facts set forth in this complaint revealing a widespread conspiracy between clandestine terroristic organizations, and members and officers of state and local law enforcement agencies for the purpose of terrorizing, punishing, intimidating and deterring Negro citizens from exercising federally protected rights of citizenship are identical to those contemplated by the Congress of the United States in enacting Title 42 U.S.C., Section 1989. This statute places upon the federal judiciary a duty and responsibility to enforce the laws prohibiting crimes against the exercise of the elective franchise and the civil rights of citizens as set forth in

Title 42 U.S.C., Section 1937, under circumstances as here revealed. This duty, prescribed by the Congress, is supplementary to, and in no way a substitute for, the duties and responsibilities of the Executive Branch of the Government to enforce these laws and to protect the exercise of fundamental rights of citizenship, and the Legislative Branch of the Government to investigate the need for new legislation in the area of civil rights and, where necessary, to enact the same.

Accordingly, the facts set forth herein require that this Court shall forthwith order the increase of the number of United States Commissioners with such appointed deputies as may be required, with the power to arrest as provided by law any persons threatening to violate the orders of this Court or any of the laws of the United States protecting the civil rights of citizens of the United States and the elective franchise, and that these emergency United States Commissioners or their deputies be ordered to be stationed at all times in every Sheriff's office in the State of Mississippi in every one of the 82 counties of Mississippi, as well as in all such other places as their presence may be required to enforce obedience to the orders of this Court and to the laws of the United States protecting the civil rights of citizens and the elective franchise.

25. No previous application for the relief sought herein has been made to this or any other court.

WHEREFORE plaintiffs pray:

1. That a permanent and temporary injunction issue enjoining and restraining the defendants, each of them, their agents and representatives, and all others acting in concert with them, from in any way conspiring to utilize or in any way utilizing force, violence or any terroristic act in attempts to deter, impede or punish the plaintiffs and all classes of citizens they represent from exercising their rights, privileges and immunities as citizens of the United States.

2. That during the pendency of such injunctive decrees, pursuant to Title 42 U.S.C. 1989,

(a) an order issue ordering and directing the increase of the number of United States Commissioners in the State of Mississippi and ordering and directing that a United States Commissioner or

Deputy Commissioner with full powers of arrest pursuant to law, be assigned and stationed in each and every office of Sheriff in the 82 counties of Mississippi;

(b) and that said special United States Commissioners be directed as provided by law to protect the lawful civil rights and elective franchise activities of citizens of the United States and to provide for the speedy arrest of any persons in the State of Mississippi engaged or threatening to engage in activities in violation of the laws of the United States which protect the civil rights of citizens and the elective franchise; and that

(c) pursuant to Title 42 U.S.C. 1989, the said special United States Commissioners be ordered and directed to appoint in writing one or more suitable persons who shall be required to serve and execute any such warrants of arrest; and that

(d) wherever required to afford reasonable protection to all persons in their constitutional rights of equality and the exercise of the elective franchise, the said special United States Commissioners or their deputies be temporarily assigned to be stationed in any public buildings or other places throughout the State of Mississippi where their presence may be required; and that

(e) the said special United States Commissioners be ordered to report to this Court at regular intervals any and all incidents of violation of the orders of this Court and any and all arrests, pursuant to Title 42 U.S.C. 1989, for activities of the defendants or others acting in concert with them for violations of laws of the United States protecting the civil rights of citizens and the elective franchise.

3. And for such other and further relief as may be proper and may be prayed for by the plaintiffs as the situation may urgently require.

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IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

UNITED STATES OF AMERICA,)
Plaintiff,)
)
Vs) CIVIL ACTION NO. 15793
)
ORIGINAL KNIGHTS OF THE)
KU KLUX KLAN, et al.,)
Defendants.)

PRELIMINARY INJUNCTION

Pursuant to the Opinion, the Findings of Fact and Conclusions of Law entered in this cause, it is the ORDER, JUDGMENT and DECREE of this Court that:

1. The defendants Original Knights of the Ku Klux Klan, Anti-Communist Christian Association, Charles Christmas, Saxon Farmer, Russell Magee, Dewey Smith, Virgil Corkern, Albert Applewhite, E. J. (Jack) Dixon, Dales Williams, Hardie Adrian Goings, Jr., Esley Freeman, Arthur Ray Applewhite, James A. Hollingsworth, Jr., James A Hollingsworth, Sr., Randle C. Pounds, Ray Risner, Billy Alford, Rawlin Williamson, Lattimore McNeese, Ira Dunaway, Doyle Tynes, Franklin Harris, Charles McClendon, James D. Terrell, Delton Graves, Milton Earl Parker, Van Day, Mervin Taylor, J. D. Jones, Richard E. Krebs, Michael R Holden, James (Jimmie) Burke, Albert Simmons, Jr., Noel Ball, Jr., their agents, employees, officers, members, successors, and all those in active concert or participation with them be preliminarily enjoined from:

(a) Assaulting, threatening, harassing, interfering with or intimidating, or attempting to assault, threaten, harass, interfere with or intimidate any Negro in the exercise of his right to the equal use and enjoyment of public facilities and places of public accommodation, of the exercise of his right to vote free from racial discrimination, or of his right to equal employment opportunity; or assaulting, harassing, interfering with, or intimidating, any other person for the purpose of discouraging Negro citizens from exercising such rights;

(b) Injuring, oppressing, threatening or intimidating any official or employee of the City of Bogalusa or Washington Parish on account of his having accorded or sought to accord Negroes equal treatment in the use of public facilities in Washington Parish;

(c) Injuring, oppressing, threatening or intimidating any businessman, proprietor or other person having accorded or sought to accord Negroes equal treatment in the use and enjoyment of any restaurant, theatre, hotel, motel or other place of public accommodation, or in employment;

(d) Physically assaulting or beating any civil rights demonstrators or inflicting upon any person harassment or intimidation which prevents or discourages or is intented to prevent or discourage his exercise of his right to picket, assemble peaceably or advocate equal civil rights for Negroes, or otherwise interfere with the duty of the city and its officials under this Court's order of July 10, 1965, in the case of Hicks v. Knight.

2. The defendant Original Knights of the Ku Klux Klan, Anti-Communist Christian Association, Charles Christmas, Saxon Farmer and all unit or group heads of said organization shall during the pendency of this action maintain membership records.

3. Defendants Original Knights of the Ku Klux Klan, Anti-Communist Christian Association, Charles Christmas, and Saxon Farmer shall during the pendency of this action post conspicuously at all meeting places of said organizations a copy of this Court's decree. Said decree shall be posted at all times and during all meetings. Said defendants shall file with the clerk of this court, 15 days from the date of this decree, a report, with a copy to the plaintiff, that postings required by this paragraph have been made, and thereafter said defendants shall file such report on or before the 15th day of each month during the pendency of this action stating that the decrees are posted in accordance with this paragraph and have been continuously posted since the date of the last reporting period.

It is further Ordered that the United States Marshal or Deputy Marshal for this District serve a true copy of this decree upon each of the defendants enjoined by this decree, upon Louis Applewhite, James M. Ellis, Sidney August Warner, and upon each of the persons listed in Attachment B attached to this decree.

This Court retains jurisdiction of this cause to grant such additional relief as may be required and grants costs and disbursements of this action against the defendant organizations and individual defendants enjoined, for which execution may issue.

John Minor Wisdom
CIRCUIT JUDGE

Herbert W. Christenberry
DISTRICT JUDGE

R. L. A. Ainsworth
DISTRICT JUDGE

I. TENNESSEE

Fannie Crumsey, et al. v. The Justice Knights of the Ku Klux Klan, et al., Civil Action No. 1-80-287 (E.D. Tenn. 1980) is a class action lawsuit filed in the federal district court for the Eastern District of Tennessee by the victims of klan violence -- five elderly Black women who were wounded by shot gun blasts fired from the weapons of an admitted klansman. The lawsuit is also brought on behalf of the entire Black community of Chattanooga, Tennessee. The defendants are the three klansmen who participated in the violence of April 19, 1980, when the women were shot, and the ku klux klan organization to which they belonged at the time of the shooting.

The class action suit seeks to enjoin the defendants or any of the members of the Justice Knights of the Ku Klux Klan from intimidating, harassing, assaulting, or otherwise threatening Black residents of Chattanooga in the exercise of their constitutionally and statutorily protected rights. Plaintiffs are also seeking damages for the injuries which they sustained as a result of the violent actions of defendants. The suit arose out of the events of April 19, 1980, when members of the Justice Knights of the Ku Klux Klan determined to burn a cross in the heart of the Black community. After setting the cross on fire, they drove in vehicles through the community, armed with shotguns, and brutally shot down five elderly Black women.

The lawsuit is being handled by lawyers from the Center for Constitutional Rights (CCR), and the National Association for the Advancement of Colored People (NAACP), in conjunction with Charles Victor McTeer, Greenville, Mississippi, and A. C. Wharton, Memphis, Tennessee.

II. ALABAMA

The People's Association of Decatur, et al. v. The Invisible Empire, Knights of the Ku Klux Klan, et al., Civil Action No. 80C1449S (N.D. Ala. 1980) is a class action lawsuit filed in the federal district court for the Northern Division of Alabama by the People's Association of Decatur, an unincorporated association of Black citizens of Morgan County, Alabama, organized to seek equality for Black citizens. The lawsuit is also brought on behalf of all Black citizens of Morgan County and Decatur, Alabama, who seek redress of their grievances by lawful public protests, such as marches, demonstrations and other actions. The defendants include Bill Wilkinson and his klan organization, the Invisible Empire, Knights of the Ku Klux Klan.

The lawsuit seeks declaratory and injunctive relief for a series of intimidating and violent acts committed by members of the Invisible Empire, Knights of the Ku Klux Klan, its Alabama Klavern, its Decatur Klavern, as well as its national, state and local leaders. The most notable incident involved in the suit occurred on May 26, 1979, when members of the above-named klan group blocked and attacked a peaceful march of Black residents of Morgan County held in Decatur, Alabama. The marchers were forced to flee for their lives as they were brutally attacked and

assaulted by the klansmen. During the attack, the wife of the Reverend Joseph Lowery was almost killed by a klan bullet. The lawsuit seeks a nationwide injunction to prohibit the klan groups sued from engaging in violent actions which would deprive Black people of their constitutionally and statutorily protected rights.

The suit is being handled by lawyers from the Southern Poverty Law Center (SPLC).

III. NORTH CAROLINA

James Waller, et al. v. Bernard Butkovich, et al., Civil Action No. 80-605G is a civil action for damages filed in the United States District Court for the Middle District of North Carolina. Plaintiffs are a class of militant anti-racist labor organizers who were endeavoring to organize both Black and white workers when they were attacked while holding a rally in Greensboro, North Carolina. Five anti-klan demonstrators were slain in the attack on them by klansmen and nazis. The complaint alleges that a number of private and governmental officials on the local, state and national level engaged in an unlawful, class-based, invidious, discriminatory, anti-civil rights conspiracy in violation of 42 U.S.C. 1985(c), 42 U.S.C. 1983, 42 U.S.C. 1986, 42 U.S.C. 1981, federal common law, and North Carolina state tort law.

Among the overt acts alleged in the conspiracy are clandestine electronic and physical surveillance, illegal methods designed to stop meetings and rallies held by members of the targeted class, and physical violence against members of the targeted class including killings, beatings, and clubbings.

The suit is being handled by a team of lawyers from Washington, D. C., Chicago, Illinois, New York City, and Durham, North Carolina.

IV. GEORGIA

(1) John Martin, et al. v. Samuel Roland Attaway, individually and in his capacity as Sheriff of Johnson County, Georgia, et al., Civil Action No. 380-71 (S.D. Ga. 1980) is a class action lawsuit filed in the federal district court for the Southern District of Georgia by Black residents of Johnson County against high ranking County and City officials including the sheriff, chief of police, mayor, and district attorney seeking to have U. S. Magistrates stationed in the offices of the Sheriff of Johnson County and of the Chief of Police of Wrightsville, Georgia, and in other public places to protect the constitutional rights of equality and registration and voting rights of all persons in those places. The suit also seeks to enjoin State criminal prosecutions of 16 civil rights activists and their supporters.

Plaintiffs in the civil suit are leaders and supporters of the Johnson County Justice League which engaged in peaceful activities designed to achieve equality of

treatment for Black citizens, including voting rights, equal municipal services, access to municipal facilities, and protection against intimidation and harassment by law enforcement officials. The complaint sets forth recent incidents in which members of the Black community of Johnson County have had to defend themselves against arson, assault and other unlawful acts committed by roving bands of white racists which included members of the Ku Klux Klan, including incidents where Blacks were attacked by white racists directed by Sheriff Attaway.

The plaintiffs in the action include Reverend E. J. Wilson of the Neeler Chapel A.M.E. Church in Wrightsville, who, together with another plaintiff, John Martin, had led peaceful civil rights demonstrations. The two face such charges as inciting to riot. The complaint charges that the State criminal prosecutions against the defendants were brought in bad faith and for the purpose of harassment and in retaliation for the plaintiffs' exercise of constitutionally-protected rights.

Among the things complained of was that Black citizens were rounded up, held in jail, sometimes for days, and then released without ever being charged; barred from access to counsel while under arrest; and intimidated while attempting to assist Black citizens to register to vote, and not only denied protection by law enforcement officials but assaulted by such officials.

Wrightsville, Georgia, is the county seat of Johnson County, and was unaffected by the civil rights movement of the 1960s. Blacks in Johnson County who have been demonstrating during recent months to secure equal rights and municipal services have been faced with official intimidation and violence led by local law enforcement officials of the type encountered by civil rights demonstrators during the 1960s. Members of the Black community have been beaten, clubbed, jailed without charges, and threatened by law enforcement officials who have led vigilante-type mobs against the Black community reminiscent of an earlier era. The complaint states that the sheriff of Johnson County has been a leader of the violence against the Black community and has bands of white citizens to beat up Black demonstrators.

The lawsuit is being handled by Georgia attorney Edward Augustine and other Georgia attorneys together with attorneys from the Center for Constitutional Rights (CCR) in New York, which has a 15-year history of doing similar litigation.

(2) Dearest Davis, et al. v. Roland Attaway, Individually and as Sheriff of Johnson County, Georgia, et al., Civil Action No. 380-65 (S.D. Ga. 1980) is a class action lawsuit filed in the federal district court for the Southern District of Georgia on behalf of nine Black residents of Georgia and a Southern Christian Leadership Conference (SCLC) field worker against the sheriff of Johnson County and other county and city officials of Johnson County seeking damages and injunctive relief.

The events mainly complained of in the suit include pretextural arrests of Blacks, detention of Blacks without charges, and discriminatory enforcement of the law. The suit also seeks to have a United States Magistrate stationed in the office of the sheriff of Johnson County, Georgia, and in the office of the police department

of Wrightsville, Georgia. Prior to May 19, 1980, there had been a series of marches and protest activities organized by two of the plaintiffs and others against racial discrimination faced by Black citizens of Johnson County and Wrightsville, Georgia. Those persons had formed the Johnson County Justice League, an unincorporated private association for the purpose of furthering the desire of Black citizens for equal rights and political justice. Following a report of a fire in the Black community, Sheriff Attaway and other defendants in this suit conducted house-to-house searches in the Black community, without warrant of any kind, seeking out and arresting some of the plaintiffs and other Black citizens who were known to have been involved in civil rights activities or associated with the Johnson County Justice League. Sheriff Attaway and members of the police agencies invaded the Needler A.M.E. Church of Wrightsville, arrested individuals who were there, without search or arrest warrants, and Sheriff Attaway demanded that the Black citizens "Get their God damn Black asses out" of the church.

This suit is being handled by Attorney Brian Spears of Atlanta, Georgia.

(3) Robert Folsom, et al. v. Danny Oskey, et al., Civil Action File No. 380-66 (S.D. Ga. 1980) is an action for damages and injunctive relief filed by members of the Folsom family. The defendants are two men charged with firing shots into the Folsom family trailer after a klan rally on April 19, 1980. Prior to the assault on his trailer, the father of the child who was injured had spoken with a number of people in Johnson County about his interest in becoming a candidate for sheriff of Johnson County, Georgia.

The suit seeks injunctive relief to protect the family from future assaults.

This suit is being handled by Attorneys Brian Spears and Celeste Owens of Atlanta, Georgia.

(4) E. J. Wilson, et al. v. Roland Attaway, Individually and as Sheriff of Johnson County, Georgia, et al., Civil Action No. CV 380-24 (S.D. Ga. 1980) is a civil damage suit brought by Black residents of Georgia. The defendants are the sheriff and two deputy sheriffs of Johnson County, Georgia, the City of Wrightsville, Georgia, and the mayor, chief of police, and three police officers of Wrightsville, Georgia.

This suit concerned the events of April 8, 1980, when the sheriff and other defendants came out of the courthouse and attacked a group of peaceful protesters who were praying, singing, and requesting that the sheriff come out and talk with them. The officials were joined in the assault on Black citizens by a group of about 200 whites who had gathered around the courthouse square, armed with shotguns, baseball bats, and clubs. The sheriff and his deputy, Tanner, were seen beating on plaintiff Turner until he was knocked to the ground. While Turner was on the ground, Sheriff Attaway kicked and stomped on him yelling, "I told you to stay out. This is my God-damned town. You black son of a bitch." The Mayor of Wrightsville saw these beatings of Black citizens taking place and did nothing to stop his police officers from assaulting the peaceful protesters. A majority of the peaceful protesters were physically abused.

This suit is being handled by Attorney Robert E. Steele, Jr. of Macon, Georgia.

(5) Linda Worthen v. Roland Attaway, et al., Civil Action No. 680-54 (S.D. Ga. 1980) is a suit by a 28-year old Black woman. She charges false arrest and imprisonment for a period of 15 days, without a warrant and without probable cause for her arrest. The defendants in the suit include Sheriff Roland Attaway of Johnson County and the Georgia Bureau of Investigation.

The complaint alleges that because of Sheriff Attaway's conduct in this case and other cases, his "conduct is so morally bankrupt that the department should be put in receivership and placed within the operation of the Federal Court." The complaint also alleges that members of the Georgia Bureau of Investigation had full knowledge of the conspiracy to violate plaintiff's civil rights, and that rather than acting to prevent such violation, conspired to violate her civil rights. The plaintiff seeks damages as well as injunctive relief against the Sheriff's Department and the Georgia Bureau of Investigation.

Attorneys Bobby L. Hill and Robert E. Robinson of Savannah, Georgia, are handling the case for the plaintiff.

Mr. CONYERS. Thank you, Professor Kinoy.

You have taken your civil rights experience and translated it into the present situation I think with great vigor, great perception and great conviction. We are deeply grateful to you for the very exhaustive legal analysis of the dilemma that the Nation is confronted with, and ways that law enforcement can deal with this problem.

As I understand your two-pronged approach, it deals with, first, using the gand jury as an investigative tool in conspiracy to violate civil rights, which would have the effect of intervening before the violence occurs. It would not be merely prosecuting after the violence had taken place?

Mr. KINOY. Right.

Mr. CONYERS. And it is your suggestion that that technique was developed during the civil rights era by the Department of Justice and the Federal courts, and that it has since then lain dormant.

Mr. KINOY. Yes.

Mr. CONYERS. And that your second suggestion is that we use civil injunctive relief as a basis for, again, interfering with organizational activities before it can be accomplished? And your assertion is that that is not being used at the present time and under the present circumstances?

Mr. KINOY. Correct; absolutely.

Mr. CONYERS. Now, do you have any recommendations for how we may treat the political situation that we are confronted with now? We have a Department of Justice whose office expires in several weeks, and we have a new administration with a yet unnamed Attorney General. It seems to me that that would present some reflection on your part as to how we may handle that.

Mr. KINOY. If I could give, Mr. Conyers, a direct response to that question, I would say at this moment the present Department of Justice has taken an oath of office to uphold the Constitution of the United States, and that is until—when is inauguration, January 17? They are in power now. They could and should bring these civil injunction actions.

Mr. CONYERS. January 20.

Mr. KINOY. January 20, pardon me. I don't want to give them 3 more days.

Mr. CONYERS. I don't want anybody to show up early.

Mr. KINOY. I am kidding my Republican friends. It took us, in 1964, 2 days and 1 night to bring the most sweeping civil injunctive action against the organizations and individuals, including the sheriffs in Mississippi who were involved in a conspiracy against black people resulting in the murders of three people. It took us 2 and a half days.

I say to the Department of Justice, you are as good lawyers as we were then. You bring these civil injunctive actions now. We will help you. We have files; we have material and information. Bring those civil injunctive actions this week and next week. There is no excuse for not acting now.

Second, to the new Attorney General, we will say to him: You will swear to uphold the law. The law requires and mandates you to bring these actions. If you do not, we will do what we have done in the past when the Attorneys General have not fulfilled their

responsibilities; we will raise before the people in Congress the problem of their inaction; we will ask you to supervise and call upon them to act, and we will then urge and help and participate with labor organizations, religious organizations, black organizations, people's organizations all over the country in bringing actions which the Federal civil rights statutes permit and authorize where government agencies fail to meet their responsibilities under the law. There are provisions for citizens, private citizens, to bring those actions in the name of the people, in the name of the Nation.

So, I am saying, Mr. Congressman, we are not helpless in this situation, and we must plan to move forward immediately.

Mr. CONYERS. Your emergency task force idea reminds me of the strike force against organized crime that frequently we find necessary in law enforcement, to create a special agency, frequently working independently of the normal bureaucracy of a department to bring about its aim.

It would seem to me that this is a very appropriate analogy.

Could not we begin the implementation of the techniques that have lain dormant so long, even while such an emergency task force is being organized?

Mr. KINOY. Precisely. And I would think that such a task force, and I would say this now: Lawyers all over the country experienced in the civil rights activity, many of us who were experienced with this in the 1960s, we are prepared and ready to assist and to help in even the first temporary steps of such a task force, the Center for Constitutional Rights, the legal task force of the National Anti-Klan Network, all kinds of organizations are ready.

I am sure the NAACP would help. They have to speak for themselves. I am sure they would—a number of other organizations will also help. We are ready to help and assist. And if this committee can take the first steps in urging the setting up of such a beginning, of a task force, my statement to you, Mr. Chairman, is, let's get to work tonight. What we see around us in this country does not permit us any delay whatsoever. We are ready.

Mr. CONYERS. Well, the first thing I am going to do, as the subcommittee chairman, within an hour after these hearings adjourn, is request from the Attorney General at the Department of Justice the Rowe Task Force Report—which has been already publicly reported and commented on—that it be made available to myself and the members of this subcommittee forthwith. I appreciate your bringing this matter so forcibly to our attention.

Now, are there any areas in terms of activity of organized violence-prone organizations going on in which we can begin to determine whether their conduct, as reported, may be violative of the law as we understand it? For example, I have had numerous requests about the legality and the lawfulness of the paramilitary camps, the training camps, the guerrilla warfare camps, that—apparently combined with overt statements—there are preparations for a race war? Sometimes there are statements that accompany them suggesting that they are preparing for defense or some other kind of approach. But what kind of an analysis can be drawn as to the propriety and appropriateness and validity of such operations?

Mr. KINOY. I think, Mr. Chairman, you would find a beautiful insight into that problem in Judge Wisdom's original opinion, the one I have referred to, the U.S. against the original Knights of the Ku Klux Klan, where Judge Wisdom points out, and the rest of the court, that acts which are in perpetration of, and part of a conspiracy to plan in the future, violence against citizens exercising fundamental constitutional rights, elementary constitutional rights, that these acts are overt acts in a conspiracy to violate Federal law, section 1971, Federal law, sections 1983 and 1985, and require immediate injunctive relief.

I think the greatest mistake that can be made at this moment is to sit back and say we don't know what these camps are going to do. We have to just sit and wait until they kill a thousand black people.

What has to be done now—there is no reason under the law why immediate injunctive action shouldn't be instituted against these paramilitary camps by the Department of Justice under existing statutes. And if they fail to do so, they have to explain to the Nation why they failed to do so. Then organizations, national organizations, representatives of this Congress who are sworn to enforce the Constitution of the United States, should institute such actions.

Mr. CONYERS. Thank you.

Mr. Sensenbrenner?

Mr. SENSENBRENNER. Yes.

Professor Kinoy, I would like to preface my question by saying that I find the activities of the Ku Klux Klan absolutely abhorrent and contrary to all of the principles on which this country was founded. I have no problem with your suggestion that grand juries be used with increasing frequency as an investigative tool into illegal activities of the Klan.

However, I do have a slight problem with your suggestion that injunctive relief be utilized. My question to you is this: Doesn't the use of the injunctive remedy present a greater risk of infringing upon first amendment rights than do specific criminal prosecutions against those who are responsible for violating the criminal statutes on the books?

Mr. KINOY. My answer to Mr. Sensenbrenner would be, again, exactly the answer that I gave to——

Mr. CONYERS. I would like to interrupt the witness. Excuse me for interrupting my colleague. But there is a person sitting in the front row with a sign, and I would like to ask her to—I don't know what it says, but would you please remove that sign? No permission has been given for citizens to demonstrate or conduct themselves by advertising or other means at these hearings.

I would appreciate it if you would cooperate with that. Excuse the interruption.

Mr. KINOY. I was just saying, without taking the time of the committee, once again, the answer to your question about the appropriateness under the Federal Constitution and under the first amendment to the injunctive relief is fully spelled out and developed by Judge John Minor Wisdom in the opinion I have referred to. I should say this: There is no greater champion in the Federal judicial system over the last 30 years than Judge John Minor

Wisdom, no greater champion of the first amendment. He has defended the first amendment from one end of the country to the other.

What is the point that Judge Wisdom and the other judges make? That to defend the elementary democratic rights of the first amendment, it is necessary to stop conspiracies to use violence against people exercising those rights. And this was long established by the greatest defenders of the first amendment this country has ever seen, Oliver Wendell Holmes and Mr. Justice Brandeis, when they pointed out that any activity which is a clear and present danger of a serious substantive evil within congressional or governmental power must be stopped in protection of first amendment values and rights. It would undermine the concept of the first amendment not to permit protection against those people conspiring to destroy the elementary democratic rights of people.

And I would suggest to the committee that the analysis which Judge Wisdom and the other members of the fifth circuit developed, fully explain why it is that injunctive relief is essential at this time if elementary democratic rights are to be protected.

There is not a single thing in the Wisdom opinion and the injunction issued—and for the committee's benefit I have attached as an exhibit a document people find very hard to find, the original injunction, the actual injunction issued by Judge Wisdom, and if you read it carefully, you will see there is not a single word in it that interferes with anybody's first amendment rights.

I would request, incidentally, because I think it would be helpful if the committee is able to, perhaps the committee would like to print as part of my testimony Judge Wisdom's opinion. I have a copy of the opinion here if the committee would like to see it.

Thank you.

Mr. SENSENBRENNER. I do not think that all of the men and women who presently serve on the Federal bench, have the wisdom and foresight of Judge John Minor Wisdom. Other Federal judges might wish to use these injunctive remedies, not against the Ku Klux Klan in blatantly anti-democratic activities, as our last witness called them, but against other organizations that might be exercising first amendment rights.

I do not think that you have answered my specific question on whether the vast injunctive power that the courts have in this kind of a situation poses a greater danger to the exercise of first amendment rights than a specific criminal prosecution against people who are conspiring to commit acts of violence.

Mr. KINOY. Many of us have been spending the last 30 or 40 years in the courts fighting against excessive use of injunctive power, labor situations, and other kinds of situations.

What happens when some member of the Federal bench goes overboard on this? Well, that is what the Constitution of the United States is there for, to stop them up. We get up; there we fight against them; we argue against them, and we win over and over again. What do you do? You can always say—anything can be turned upside down and used to excess.

If the anti-Klan statutes were distorted totally, if any statute is distorted totally, if the grand jury, itself, as often it is, and I have

gotten up before courts and argued against the use of grand juries in certain circumstances, you argue against the distortions.

We have a written Constitution. The written Constitution provides for both; and the most dangerous thing in the world would be to permit a paralysis of the enforcement of statutes and enforcement of the Constitution on the fear that the use of these statutes might at another time hurt somebody else. That plays right into the hands of the Klan and the conspiracies developing all over the country.

The answer to this problem is found in the answer of this Congress, itself, in 1866, when the statutes were first passed. This Congress said what? And this Congress in 1866—people may disagree with that Congress in a lot of ways, but it was the Congress of the United States—they had just written the 13th amendment to the Constitution of the United States. It had written what it said was a universal charter of freedom. It was more dedicated than any Congress in many years had been to the elementary democratic and first amendment rights of people. Yet it said to protect the exercise of these rights we have to stop up conspiracies which are designed to destroy the most elementary protections of equality and freedom, because, without that, the first amendment, itself, means nothing.

So what we must do is enforce the rights of equality and freedom, enforce them with all the weapons available now. If anybody chooses to use that in a distorted way, not against the Klan and violence-prone organizations, but against labor unions or other people exercising their first amendment rights, you will find me as the first person out there fighting against that injunction, and you will find loads of other people fighting against that injunction.

So let's not paralyze ourselves by fear at this moment.

Thank you.

Mr. SENSENBRENNER. I have no further questions, Mr. Chairman.

Mr. CONYERS. We appreciate your testimony and will look forward to the attempts to implement the strategy that you have so cogently outlined.

Thank you.

Mr. KINOY. Thank you, Mr. Conyers.

Thank you, Mr. Sensenbrenner.

Mr. CONYERS. The next witness is Mr. Irwin Suall, Director, Fact-Finding Department, Anti-Defamation League, B'nai B'rith, New York. He is responsible for the investigation of organized anti-Semitism and other extremist and hate movements in the United States. Working with the league's 26 regional offices, his job is that of uncovering the facts about the promoters of bigotry, and anti-Semitic and hate-mongering extremists.

Mr. Suall is a graduate of Oxford University in England, which he attended on a Fulbright scholarship, and for many years has been involved in Jewish community relations as the author of numerous studies and articles on the above-mentioned topics.

We welcome you, Mr. Suall, on behalf of the Subcommittee on Crime. We know that you will be shortly furnishing us a more formal statement, but we welcome you here for the first of a series of hearings on organized violence.

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TESTIMONY OF IRWIN SUALL, DIRECTOR, FACT-FINDING DEPARTMENT, ANTI-DEFAMATION LEAGUE, B'NAI B'RITH, NEW YORK

Mr. SUALL. Thank you very much, Mr. Conyers. It is good to be here, Congressman Sensenbrenner.

The Anti-Defamation League is a national human relations agency founded in 1913 with the purpose of combating anti-Semitism, racism, and anti-democratic extremism of the far right and the far left.

As part of that general purpose, ADL monitors and counteracts the Ku Klux Klan. The present Klan is an outgrowth of the Klan of the 1960's, which all of us remember with such revulsion because of its violence and extremist activities.

Toward the end of the 1960's, the Klan began to decline in membership and influence and power for various reasons, which we can go into later if you like, Mr. Conyers. Their peak was in 1967, when the Anti-Defamation League estimated they had a nationwide membership of some 55,000 members.

Their decline began soon thereafter and continued throughout the early 1970's. It was not until 1975 that ADL, in the course of its routine work of monitoring the Klan and other extremist groups, began to notice some blips on our radar screen, indicating that the Klan was once again coming out of hiding and becoming active. There was some growth of membership; there was an increase in the amount of visibility; there was increased activity.

Our survey in 1975 indicated a nationwide membership, and I am talking now of all the national Klans combined. We speak of the Klan, but, in fact, there is no single Klan; there are many national Klan organizations, each competitive with the other.

But the combined membership of the various national Klans in 1975 we estimated was approximately 6,500. By 1978, our survey indicated that that figure had risen to about 8,000.

Our most recent survey was conducted in November 1979, approximately 1 year ago, and we found at that time that the Klan had about 10,000 members throughout the country.

We are now conducting a further survey which we are not yet ready to make public because it is not completed. This survey is being conducted in connection with a contract which has been given us by the U.S. Commission on Civil Rights to do a study of the Klan and other violence-prone racist organizations. That report will be presented to the Commission, I believe, sometime in the early spring, and it will include our most recent figures on national Klan membership.

I said before that there is not one Klan, but several competing Klan organizations. The largest single group is the United Klans of America, which also happens to be the organization that was largest in the 1960's. It is headed by Robert Shelton and is headquartered in Tuscaloosa, Ala. In the late 1960's, you may recall, Robert Shelton served a term in a Federal penitentiary after he was found in contempt of Congress in connection with a request by the House Committee on Un-American Activities for him to submit membership information to that committee. He and two other national leaders of the UKA served time in a Federal penitentiary.

Another national organization is called the Invisible Empire, Knights of the Ku Klux Klan, whose grand dragon, Bill Wilkinson, was outside the door a few minutes ago.

The third Klan organization is called the Knights of the Ku Klux Klan. It was founded by David Duke, of Metairie, La., who not long ago resigned and turned over the imperial wizardship to Don Black, of Tuscumbia, Ala., who is now the leader of this organization.

The fourth national Klan organization is called the Confederation of Independent Orders, Knights of the Ku Klux Klan, headquartered in Indiana. Its imperial wizard, Robert Chaney, is presently serving time in a Federal penitentiary on a fire bombing charge.

In addition to these four organizations, there are a number of other competing Klans, miscellaneous Klans—the California Klan, Ohio Klan, the National Knights of the KKK, Federated Knights of the KKK, et cetera.

Above and beyond the growth in membership which we have traced, the fact is that the Klan is not a substantial organization in terms of numbers. This is important, Mr. Chairman.

It is true the Klan has grown, but we are a country of some 230 million people. When one considers we are talking about an organization of approximately 10,000 members, it is a fairly small organization. It poses serious problems, in my judgment, but the problems it poses are not the result of mass membership; it is not a mass organization in a country, as I say, of 230 million people.

One of the problems posed is that it does have a fairly substantial number of sympathizers, that is, people who have what has been called a Klan mentality. That can be a quite serious problem.

We estimate that the number of sympathizers across the country at between 75,000 and 100,000, and we judge active sympathizers by the kinds of activities in which they engage, that is, those who attend Klan rallies and crossburnings, those who contribute money to the Klan, those who subscribe to Klan publications.

Beyond that inner core of active sympathizers there is another layer to this Klan union, which is even more significant. I refer to that segment of the American population which found it possible to vote in the most recent elections for publicly-identified leaders of the Ku Klux Klan for Congress.

As you know, Mr. Chairman, there were several elections in 1980 in which publicly-identified Klansmen ran for public office. In the San Diego area Tom Metzger, who is the imperial wizard of the California Knights of the KKK, ran for Congress and won the Republican nomination for Congress—I am sorry, the Democratic nomination for Congress.

Mr. SENSENBRENNER. Thank you.

Mr. SUALL. Correction. I will come back to the Republicans in a minute, though.

Mr. Metzger then ran in the general election, and while he was overwhelmingly defeated—I want to make that quite clear—he garnered only 14 percent of the total vote; but that 14 percent happened to consist of 35,000 voters in the congressional race, and they were voting for this man for Congress, not for dogcatcher; they wanted him to represent them in Washington—35,000 people

voted for an outspoken publicly-identified Klansman, and his Klan membership was probably the major single issue in that campaign.

Now to the Republicans: In Michigan, in the Dearborn area of Michigan, another publicly-identified white supremacist by the name of Gerald Carlson, who had been an active Klansman and active neo-Nazi and continued to openly identify himself with Klan and neo-Nazi beliefs, ran for Congress and won the Republican nomination. And in the general election, Mr. Carlson got even more votes than did Mr. Metzger. Carlson got 53,000 votes. He was defeated, but he did win 53,000 votes, again in an election in which his Klan and Nazi sympathies were highlighted in the press and during the course of the campaign.

There was a third election in which a candidate who was an openly identified neo-Nazi, the leader of the National Socialist Party of America, Harold Covington, ran for the Republican nomination for attorney general for the State of North Carolina last spring. In that election he won some 43 percent of the total votes cast in that Republican primary.

In addition to that, Mr. Chairman, there have been public opinion surveys done on attitudes toward the Klan. Just this past year, the Gallup Poll did a survey on the Klan. While, as is to be expected, the overwhelming majority of Americans expressed opposition to the Klan, 10 percent expressed favorable attitudes toward it. Well, 10 percent—again, given the fact we are a country of 230 million people—is a disturbing figure, in my judgment.

Clearly, these attitudes are not going to be dealt with by laws or injunctions or anything else that requires law enforcement. These are problems—the problems I just referred to—that require education, and education is an extremely important part of the job of countering the Ku Klux Klan and other hate groups—education in the schools, in the first place; education in the churches; education throughout mass media, on television, so on.

And the Anti-Defamation League does carry on a widespread campaign of education, working with other organizations such as the NAACP, National Education Association, church groups, labor unions, business organizations, and so on. Clearly, more is needed. We have not done all that needs to be done yet.

But, as I said before, the main problem presented by the Klan is not its numbers. I think American society could live with those numbers easily. The main problems presented by the Klan is its propensity for violence and intimidation against minority groups. And to engage in violence, it is not necessary to have a mass organization. To engage in terrorism, you don't have to have large numbers. That is precisely the problem of the Klan: The tendency of the Klan to engage in terrorism and violence is a matter of public record.

Throughout the history of the hooded empire from its very inception in 1866 in Pulaski, Tenn., its members have systematically terrorized minority groups, black people, but also Jews, Hispanics, Catholics, and others, through lynchings, beatings, bombings, and shootings. That today's Klan continues the same pattern of violence and intimidation is evidenced by its record over the past several years.

For example, in Maryland, three Klan members were tried and found guilty of a July 1978 attempt to bomb a Jewish synagogue, Congregation B'nai Jacob. According to Maryland State Police, they had also plotted to bomb the home of Congressman Parren J. Mitchell.

In April 1978, two Klansmen in California were sentenced following their conviction in a plot to kill Irving Rubin, a Jewish activist in Los Angeles.

In Tupelo, Miss., in the summer of 1978, hooded and armed members of the Bill Wilkinson's Ku Klux Klan attacked a group of black demonstrators who were marching and conducting a business boycott to protest the alleged beating of a black suspect by local police and to demand more job opportunities.

In Okolona, Miss., a similar episode occurred shortly thereafter in which black demonstrators were attacked by Klansmen following a black protest demonstration against police inaction regarding the beating of a black youngster by a group of whites.

In Decatur, Ala., on May 26, 1979, an SCLC parade in support of Tommy Hines, a 26-year-old mentally retarded black man, who had been charged with raping three white women, was confronted by a crowd of some 100 Klansmen. Participants on both sides were armed with various kinds of weapons. Suddenly shots rang out and four persons, two blacks and two whites, fell wounded on the street. In all, some 30 shots were fired. Five persons, three blacks and two whites, were arrested, although only one individual, a black man, was subsequently convicted.

On January 15, 1980, an officer of the Cullman, Ala., klavern of Wilkinson's Klan was convicted in Federal court of violating the civil rights of two Vietnamese refugees. He had held a knife to the refugees, warned them to quit their jobs and threatened to kill them if they told anyone about it.

In July 1980, one of three Klansmen charged with shooting four black women on the street in Chattanooga, Tenn., was found guilty and sentenced to a term of 20 months in prison.

In February 1980, two Klan members in New Jersey were charged with firing guns into the home of a black family in Barnegat. One of the Klansmen had been the national organizer of David Duke's Knights of the Ku Klux Klan. The accused are presently awaiting trial.

Five Klansmen were indicted in U.S. district court in Detroit, Mich. in September 1980 on charges of harassing black persons during a series of shooting incidents in which the Klan attempted to intimidate blacks to prevent them from patronizing a Detroit club and moving into a previously white neighborhood. Four of the five have pleaded guilty.

On January 10, 1980, two Alabama Ku Klux Klan members were indicted and subsequently convicted of intimidating and injuring two black ministers who had been drinking coffee in a restaurant in Muscle Shoals, Ala. After leaving the restaurant, the ministers were attacked and beaten in a parking lot.

In April 1979, a Birmingham Federal grand jury indicted 20 members of the United Klans of America in connection with violent episodes in Talladega County, Ala. They were charged with shooting into the homes of NAACP leaders and into a house occu-

pied by a racially mixed couple. Three of the accused pleaded guilty and 10 others were subsequently found guilty in Federal court and sentence to terms in Federal prison.

The list that I have just read from is not an exhaustive list. There have been other episodes including episodes in which there have been convictions. You will notice too, Mr. Chairman, I limited the episodes I recited to those cases where there was a clear attempt on the part of the Klan to intimidate innocent, ordinary folk, and I did not make mention, because there is controversy surrounding those conflicts, that have arisen between anti-Klan demonstrators and Klansmen, in which both make charges against each other. Those are more complex cases. I have limited myself very carefully to cases in which simple, ordinary folk have been attacked and violence imposed upon them by the Klan for racist reasons.

A second serious problem presented by the rise of the Klan is the steady increase in the number of episodes of intimidation and terrorism directed against ordinary American citizens, mostly blacks, Jews, and Hispanics.

I refer to the burning of crosses at the homes, on the lawns of black or Hispanic homeowners, the smearing of swastikas on Jewish homes and houses of worship and even more serious episodes of desecration, arson, and fire bombings of synagogues and black churches.

The Anti-Defamation League does not maintain statistics on all such race-related episodes. Our resources don't permit it. But we do conduct an annual survey of the anti-Jewish episodes and have found them definitely to be on the rise.

Last year we recorded 129 such episodes: the highest figure of anti-Jewish desecrations since the great swastika epidemic of 1959 and 1960 when the figure was in the area of 800 to 900.

Our audit this year is not yet complete, but our preliminary findings indicate that it will reveal a very substantial rise in the number of these episodes, probably more than double last year's figure.

While not all such acts of terrorism are attributable to members of hate organizations such as the Klan, and neo-Nazis, although some of them unquestionably are, there can be no doubt about the fact in Klan klaverns across the country, informally as well as formally, planning takes place for engaging in such acts of intimidation and violence in the dark of night where the perpetrator cannot be seen.

Furthermore, there can be no doubt that these hate groups share in the moral responsibility for such acts, since it is their behavior, and their symbols that inspire those who perpetrate such acts as the burning of crosses and the daubing of swastikas, and there should be no confusion as to the quality of these acts. Mr. Chairman, this is important, these are not pranks. I am not talking about pranks. There have been newspaper reports referring to such episodes as pranks. That is a complete misnomer.

The families and institutions victimized by such episodes are being terrorized. An ordinary person who walks out in front of his home in the morning and finds a swastika smeared all over his house, if that person is Jewish, is being traumatized by that experience; and obviously a black homeowner who finds a cross burning or simply planted on his lawn is experiencing an act of terror, because there is an implicit threat in that act, and therefore these are not to be regarded in any way as mere pranks, as some of the press refers to them.

Finally, perhaps the most serious problem presented by the rise of the Klan and other extremist, violence-prone groups is the proliferation of paramilitary training activities in which they are now engaged.

The Anti-Defamation League released a report in October of this year, a copy of which I have with me, which cited activities of this kind in five separate States, Alabama, Connecticut, Illinois, North Carolina, and Texas.

We also reveal that the Ku Klux Klan in California is distributing manuals and instructions in terrorism and guerrilla warfare, including the manufacture of bombs, grenades and other explosive devices for the maiming and killing of people.

Since our report was released, another violence-prone extremist group, the Minutemen, under the leadership of ex-convict Robert De Pugh, conducted a paramilitary training session in Kansas City, Mo. This was the first indication in more than a decade of the revival of the paramilitary Minutemen organization. That session, by the way, while it was not attended by any large number of people, 50 people, was a matter of real concern because of the extremely violent history of the Minutemen and the session itself made it quite clear they are preparing to engage in serious acts of violence.

I would like to point out, Mr. Chairman, that in addition to the right wing extremist groups mentioned in my remarks, there have been and presently are other violently inclined organizations operating on the American scene whose activities should be of concern to all persons of good will.

I refer to such groups as the Weather Underground, the New World Liberation Front, the Black Army of Liberation, the Islamic Guerrillas in America, Omega Seven, FNLA, and, above all, the Palestine Liberation Organization, including its component factions, Al Fatah, the Peoples Front for the Liberation of Palestine and the Democratic Front for the Liberation of Palestine.

All of these organizations have a proven record of violence and terrorism and some, especially the PLO, pose a serious potential threat to innocent American citizens.

Finally, in connection with the release of our report on paramilitary training activity, ADL's national director Nathan Perlmutter entered into the following correspondence with Attorney General Benjamin Civiletti, and I will read from it.

On October 21, Mr. Nathan Perlmutter wrote to the Attorney General as follows:

> The Anti-Defamation League of B'nai B'rith, in its ongoing research and monitoring of extremist hate organizations, has received information on Ku Klux Klan paramilitary activity clearly constituting a dangerous potential for terrorism and violence in the United States. This situation arises against a background of recent Klan lawlessness in many parts of the country as well as a disturbing increase in worldwide terrorism.
>
> We enclose a copy of a report we have just prepared which summarizes our findings on Klan and associated paramilitary operations. These include guerrilla warfare training programs in Texas, Alabama, North Carolina, Illinois and Con-

necticut. In California the Klan is distributing manuals which contain detailed instructions on the manufacture and deployment of explosive devices and other instruments of terrorism.

Based on the available evidence we urge that you authorize the Federal Bureau of Investigation to undertake systematic surveillance of the Ku Klux Klan and other violently inclined organizations with a view to developing information which will help law enforcement agencies protect American citizens from further terrorism and violence.

We request that you give our proposal your earnest consideration and would be pleased to hear from you.

Yours truly, Nathan Perlmutter.

The Attorney General replied on October 30:

Dear Mr. Perlmutter:

I have received your letter of October 21, 1980 and a copy of your report Ku Klux Klan Paramilitary Activities. I will be reviewing the report myself as well as asking the Criminal Section of our Civil Rights Division to take a close look at the information in the report.

Thank you for bringing this matter of great concern to my attention.

In reply our National Director sent the following letter:

Thank you for your reply to our Octopber 21, 1980 letter concerning Ku Klux Klan paramilitary activities. We are appreciative that you have asked the Criminal Section of the Civil Rights Division to review this matter.

I am including for the Criminal Section's reference a citation to 18 U.S.C. Sec. 231(a) which makes it unlawful to teach or demonstrate to any other person the use, application or making of any firearm or explosive or incendiary device, "knowing or having reason to know or intending that the same will be unlawfully employed for use in, or in furtherance of, a civil disorder. . ." This statute has been successfully employed against the threat to society posed by an organization known as the Black Afro Militant Movement in circumstances strikingly similar to those described in ADL's recent Klan report. *United States* v. *Featherstone,* 461 F2d 119 (5th Cir. 1972) cert. den. 409 U.S. 991 (1972).

I hope that this information is helpful in your review and consideration of this matter.

Now, as I indicated, Mr. Chairman, I am not an attorney and therefore I am not anxious to have legal questions thrown at me, but I do have, I hope, some good judgment and understanding of the problem that your committee is dealing with.

Mr. CONYERS. I want to thank you very much.

Does the PLO operate domestically?

Mr. SUALL. Yes, indeed. They are a very active force in the American scene, both aboveground and underground.

Mr. CONYERS. Do they operate violently?

Mr. SUALL. Yes indeed, Mr. Chairman. In my opinion the PLO is by its very nature just as the Ku Klux Klan, as President Carter has stated, a violence-prone terrorist organization. Its entire history has been one of terrorism and nothing but terrorism.

Mr. CONYERS. You have acts you can cite that have occurred domestically?

Mr. SUALL. There have been acts against Jews and Israelis in the United States.

In not all cases were the culprits found.

The acts were conducted in such a manner that in my judgment the PLO was very likely involved.

Mr. CONYERS. How many such acts?

Mr. SUALL. I don't have the figures in front of me. I didn't come prepared to discuss the terrorism of the PLO, but I did make reference to it because I thought it was very important that we not have a double standard of justice in this country.

Mr. CONYERS. Just a moment. We are going to talk back and forth. I didn't expect you to come to talk about the PLO either, but you did, and that is why I raised the question, and am very surprised to hear about the domestic PLO whose violence I was not aware of, and that is why I asked you the simple question, how many numbers of incidents do you have in mind?

Mr. SUALL. Once again, Mr. Chairman, I don't have the figures in front of me and therefore I don't want to speak merely off the top of my head. The Anti-Defamation League doesn't operate that way. I do know the PLO is active in the United States, both above and underground. It raises funds for terrorist activities in the United States and its front organizations receives funds from the Middle East.

Mr. CONYERS. I think you are perfectly aware that the question was, what is the number, and you said you don't know. You don't want to be irresponsible, so let's leave the subject at that.

Now, you mentioned some other organizations that are working cooperatively with you. Does the American Federation of Teachers work with your organization?

Mr. SUALL. Yes, we have a friendly relationship with the AFT.

Mr. CONYERS. Are there any particular kinds of organizations that are more violent or more prone to violence in terms of the kinds of research that you have engaged in?

Mr. SUALL. I am not quite sure I understand the question, Mr. Chairman.

Mr. CONYERS. Well, I was going to separate out the Klan, but I suppose I should not. You mentioned that there are many different kinds of Klan organizations and there are other violence-prone organizations which are not Klan organizations, and so I was thinking that there may be some propensity for violence that has been detected or observed in some organizations more than in others.

Mr. SUALL. Among the racist, violence-prone organizations, clearly the most offensive have been the Klan, the National States Rights Party, and the various neo-Nazi groups in the United States.

The national chairman of the National States Rights Party, J. B. Stoner, has been convicted in connection with the bombing of a church in Alabama, and has been sentenced to 10 years in prison and is now out on appeal.

The NSRP has had a record of violence and its members are involved in some of the paramilitary training activities cited in our report, as are members of the neo-Nazi groups. Those three categories of racist-motivated groups tend to be the most violent.

Mr. CONYERS. Are you or your organization satisfied with the Federal effort to combat the apparent increase in violence-prone organizational activity?

Mr. SUALL. No; we are not. We think more can be done. I don't think the record is terrible. I have observed particularly in Alabama, last year especially, a number of cases in which there were Federal indictments of Klansmen and convictions, a far better record than used to be the case in some of our Southern States back in the 1960's when there wasn't Federal intervention availa-

ble, and there were so many trials that took place on the State level.

There is more that can and should be done. We cite in our letter to the Attorney General a statute which I believe does apply to paramilitary training activities which are being conducted in preparation for an alleged forthcoming race war. That is virtually a word-for-word quotation from the Klansmen who operate these camps and our law department assures us that the case that was successfully prosecuted against the black militant in Florida was almost identical with the kinds of activities that the Klan is presently conducting, and this statute is very relevant.

In addition to that, we do believe that the FBI has been hamstrung in conducting investigations of the Ku Klux Klan. I know that the Attorney General issued modified guidelines the other day, but am not quite sure yet what those guidelines mean.

We will have to see what they mean in practice. Our law department is studying them, but the guidelines do need modification. The Klan, for the past several years, has been ignored, virtually ignored by the FBI.

They have had a twofold policy. They will engage in investigations of the Klan when there is evidence that a crime has been committed or where there is evidence that a crime is about to be committed, but the question arises obviously, how are they going to know that a crime is about to be committed if they are not in a position to know what the Klan is doing, what it is planning?

Mr. CONYERS. Are they in such a position?

Mr. SUALL. No; they are not. To the best of my knowledge they are not monitoring the Klan; they are not even collecting newspaper clippings of Klan activities.

If my information is correct—and I know there are those who say yes, sure the FBI keeps saying this, but in fact it is not so—I have not seen the slightest evidence that they are keeping track of what the Klan is doing except where, as I did indicate, where crime has been committed.

I was in Decatur, Ala. last spring, after the acts of violence, when a bunch of Bureau fellows came down and served a valuable purpose and they helped to put a damper in the climate.

They helped to avoid the sort of thing, and incidentally, I didn't say it in my prepared remarks, but it is important, we should remember what happened in Chattanooga, Tenn., when four ordinary, innocent black women were walking along the street and attacked from behind by Klansmen with shotguns and the episode itself was bad enough. It triggered an absolutely understandable sense of outrage in the black community and there was, as we all know, rioting and violence in Chattanooga.

We should learn something from what happened there.

The Klan engaged in violence; there is a black reaction to the violence in which blacks take to the streets, and then the Klan goes around and says, now, you got to join the Ku Klux Klan to contain the blacks. Such provocation becomes generative of further support and clearly there is a law enforcement problem.

I am not saying all law enforcement agencies have not been on the ball. Many of them have, but I think there definitely is a need

for greater FBI surveillance of the Klan so that we will know what it is doing.

I think one can do a very fine job of monitoring Klan activities. Frankly, we in the Anti-Defamation League, with a tiny proportion of the resources that the Bureau would have available to it, do what we are fairly proud to say is accurate, respectful-of-civil-liberties kind of monitoring, and I see no reason why the FBI under the control of the Justice Department with reasonable regulations, with adequate respect for First Amendment freedoms, cannot keep track of these organizations with proven records of violence, because, if they don't, there will be more violence.

There is going to be more violence. As long as the Klan is active, as sure as shooting, there is going to be more violence. The question is, are we going to know in advance and be able to protect some people before they get shot and killed, or are we going to be in the dark?

Mr. CONYERS. Would you have any recommendations for an enlarged role of the Community Relations Service or the Civil Rights Commission in helping to deal with the problem and the challenge of education?

Mr. SUALL. I am not really an expert on the functions of those two agencies, and again, I don't want to fly by the seat of my pants. We are working together with the U.S. Commission on Civil Rights.

As I mentioned, they have asked us to prepare a report for them. I have also testified before the U.S. Commission on Civil Rights.

Education is absolutely essential if the Klan is to be counteracted. You are not going to educate some fellow sitting in his basement putting bullets in his weapons to go out hunting people, but education in terms of, not the hard core members of the Klan, but the sympathizers and those who really don't understand what the Klan, and similar organizations are all about. I am referring to the kinds of people we identified as sympathizers, as well as those who voted for Klansmen for public office, as well as ordinary Americans.

There is a need for education. An awful lot of young people today don't know what the holocaust is all about. When you talk to them about 6 million Jews having been murdered by Hitler in the 1940's, many of them simply don't know anything about it. Similarly with regard to the Klan's activities in the 1960's, so education is necessary and these two commissions have an important responsibility in that regard.

Mr. VOLKMER. What specific evidence do you have, or, if you do not wish to disclose it, you could make it available to the committee at a later time, as to an actual conspiracy by the Klan, by neo-Nazi groups with nationwide conspiracy?

Mr. SUALL. Mr. Congressman, as I told the chairman of this committee, I am not an attorney myself, so I am not quite sure in legal terms what constitutes a conspiracy.

Mr. VOLKMER. Let's put it this way: Do we have any evidence that there have been meetings of Klans throughout the United States, discussions on how do we get rid of blacks, Jews, Catholics, anybody else, let's go out and start shooting?

Mr. SUALL. I have evidence that a Klan convention which took place on Labor Day, 1979 in New Orleans, La., there was a good deal of discussion about—now, I am not quite sure whether it was conspiracy. There was a good deal of discussion.

Mr. VOLKMER. Leave that word out of it.

Mr. SUALL. About the need for weaponry, and "the final solution to the problems confronted by white people in America," obviously I am paraphrasing, "cannot be solved without violence."

There were expressions that were clearly intended to indicate that a violent revolution is necessary in this country. Again, whether that was a conspiracy in terms of law, I don't know, but this convention did take place, and I have the evidence as to what I am reporting.

As for other possible conspiracies, none come to my mind at the moment.

Mr. VOLKMER. The other thing I would like to go into a little more in detail with you is the role of the FBI. You have suggested they should do more monitoring of newspaper clippings. You mentioned also that you are quite concerned that first amendment rights are to be protected for all persons.

Knowing that, do you have any other suggestions other than clipping newspapers? What else?

We are not surely going to get on the telephone and surely we are not going to use insiders, are we?

Mr. SUALL. I would hope we wouldn't get on the telephones without a court order, no, and I don't think there is any need to violate any law in order to effectively and intelligently monitor the Ku Klux Klan and you don't have to limit it to newspaper clippings. There are a number of things that can be done. Let me tell you what the Anti-Defamation League does. I am not saying we are setting examples for the FBI.

We have observers present at public activities, cross burnings, Klan rallies, Klan demonstrations. We have an observer present, peacefully stands on the sidelines and, if possible, makes notes.

We publish materials about the Klan as a result of which defectors come to us, fellows who have had a change of heart or maybe they are angry with a fellow Klansman, because he went out with his wife; they will come to us and provide us with information, and we will accept the information and evaluate it in as sophisticated a way as possible.

Sometimes Klansmen, because they compete with each other—there are a number of rival groups—know that the Anti-Defamation League is a door to go to when you want to provide some information that your rival organization is doing or failing to do which will embarrass the other fellow.

We will accept information of that kind.

Researchers and students will, in a given area, do a study of the Ku Klux Klan in southern Illinois, let us say, and write to us for information. And we in turn will say: We are delighted to provide you with the information, would you be good enough to send us a copy of your report when you are through with it. We will get a report which, in some instances, will provide us with useful information, and so on and so forth. These are things that don't require any violations of law, you don't have to tap any telephones or plant

any bugs. In my opinion, the FBI using simple methods can do an adequate job, obviously not 100 percent but a reasonably good job of monitoring the Klan's activities, and hopefully it will result in the saving of lives.

In my opinion, if it results in the saving of just one life it is worthwhile. I think it can be done without violating any civil liberties.

Mr. VOLKMER. Thank you very much, Mr. Suall. I have no further questions. On behalf of the chairman, who had to leave—he had conflicting engagements—we wish to thank you for coming and presenting your testimony.

Mr. SUALL. I thank you for giving me the opportunity, on behalf of the Anti-Defamation League.

Mr. VOLKMER. We will now hear from the Hon. Drew Days III, Assistant Attorney General, Civil Rights Division, U.S. Department of Justice.

Mr. Assistant Attorney General, on behalf of the subcommittee I welcome you. If you have a prepared statement, it will be made a part of the record.

TESTIMONY OF DREW S. DAYS III, ASSISTANT ATTORNEY GENERAL, CIVIL RIGHTS DIVISION, U.S. DEPARTMENT OF JUSTICE

Mr. DAYS. Mr. Volkmer, I do not have a prepared statement. I think, as counsel will attest, I have been involved in a number of matters over the last couple of days and since I received the invitation sometime on Friday it was not possible to put together a prepared statement.

Mr. VOLKMER. Very well. You may make your statement at this time.

Mr. DAYS. I have the distinct impression that the balance of the time might be better spent on my answering your questions than my making a statement for a long period. But let me say a few things as a form of introduction to what has been going on in the Justice Department.

Certainly in this administration there has been a profound commitment to enforcing all the civil rights laws that the Attorney General is responsible for enforcing. That includes not only the civil statutes that we have responsibility for but the criminal statutes.

We have used those criminal statutes, I believe, judiciously but effectively, to get at police misconduct and brutality. We have also used those statutes to get at private violence directed against people who are attempting to exercise their constitutionally protected or statutorily protected rights.

With respect, particularly, to Ku Klux Klan activity, the Civil Rights Division has conducted approximately 50 investigations of Klan activity during the last 3 years. Approximately eight investigations are still pending. The number of prosecutions involving Klan activity has increased steadily in the past 3 years. This recent increase was not due to lack of concern for Klan activity; it was simply because, as new people in town in the administration, we had to make certain that we understood what was going on and

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what types of resources we would have available to us, what types of statutes we could rely upon in dealing with this problem.

There were no prosecutions, for example, in 1977 and 1978. But there were two prosecutions in 1979. In 1980, we had five indictments. We obtained pleas or convictions in four of those cases.

There was one remaining case but I am happy to report that only a few weeks ago we got guilty pleas from several Klan members in the Detroit area. They had been charged with conspiracy to violate the rights of blacks in that area. I think that our prosecutions and investigations demonstrate that we have been thorough in our investigations, and that we have properly used the statutes that are available to us. And when we went to court we made the charges stick.

These cases have been brought not only in the South—although much of the activity has been in the State of Alabama—we have had investigations all over the country and prosecutions in Michigan, for example, and California.

So we have recognized the extent to which we have a national responsibility to look into allegations of racial violence, including Klan activity or neo-Nazi party or any white supremacist activity in the country that might be in violation of Federal law.

Thus far during 1980 we have initiated approximately 24 investigations of potentially Klan-related activity. As I indicated earlier, eight of these remain open. Now, the difficulty we have found since we initiated investigations into Klan activity of various types is that in many cases we cannot effectively identify the persons who engaged in the arguably illegal conduct.

For example, there have been situations in Alabama, particularly, and also in Mississippi, where people have been intimidated, they have been beaten, but they were not in a position to give us the type of identification that would allow us to conduct an effective investigation and prosecution, although we certainly tried. It wasn't a situation where we asked the victim whether the victim knew the names and addresses of the Klansmen or people associated with the Klan. When they couldn't give us that information, we did not just walk away and rinse our hands, wash our hands of the entire problem. We made very active efforts to pursue these investigations to the point where we didn't feel we could make an adequate identification.

The problem is compounded by the fact that where there are identification problems, there are also reasonable doubt problems in terms of criminal prosecution. We are not in the practice of going before Federal courts with criminal prosecutions arguing that either X or Y did the act. There has to be a specificity, as you gentlemen and lady recognize, in terms of bringing criminal actions.

In some cases, where subjects have been identified, there are jurisdictional problems which exist. We do not, I think our record reflects, categorically reject the possibility of Federal jurisdiction in situations where there appears to be some racial violence.

We explore those possibilities and if we think there is adequate jurisdiction we proceed. But I want to underscore the fact that while we enforce sections 241 and 242 and 245 and some other criminal provisions of the Federal Code, there are some instances

when our best judgment tells us those statutes cannot reach the conduct that we have been made aware of.

The Greensboro situation in North Carolina, apart from making any final determination about jurisdiction, was a situation where the State was willing and able to go forward first. In Greensboro, as has been true in some of the other instances, we have provided support for local prosecutions. There are several reasons for that.

One is that in most instances State officials can move much more quickly than can the Federal Government. It is just a question of the number of prosecutors, number of investigators, number of judges, and so forth. The State systems tend to have more resources available for quick reaction. In many States it is not necessary to get an indictment from a grand jury in order to proceed. It can be done by information. Our practice is to go by indictment because we think that that allows us to test out our case in a grand jury and make effective prosecutions.

The gentleman who testified just before me, whose name I don't know, I am sorry to say—Mr. Suall—made reference to the fact that his organization was receiving information from people who were affiliated with the Klan, who were malcontents of some type or disaffected with the organization.

Implicit in his statement was the assertion that we don't accept that type of information. That is an incorrect assertion. While the guidelines that control the FBI place some limitations on the use of informants and the extent to which these organizations can be infiltrated, we have on a number of occasions accepted information from people who were in a position to know that crimes had been committed, or were about to be committed, and we used that information to make successful prosecutions.

I have provided in the materials that you set out for these hearings the list of prosecutions that we brought. For example, in the *United States* v. *Bishop* case, the Detroit case, that was a situation where we were able to rely upon an informant in an organization for other purposes, to obtain information about a plan to violate the rights of blacks in that area.

That information was made available to us and we were able to prevent a violation of the law and a violation of people's rights.

I don't know whether the prosecution in Ohio is on this list, but I think it ought to be noted. About a year and a half ago, during a great deal of controversy in Columbus, Ohio, over school desegregation, we became aware of a plot to blow up a public school attended by the daughter of a Federal district judge in Columbus, who is black and who had sat on that school desegregation case. Once we became aware of that conspiracy to blow up the public school, we worked with local officials to provide Columbus Police Department and Columbus Fire Department and informants and undercover people to go and play out that scenario.

As a consequence of our cooperation, that is, the Civil Rights Division, the United States Attorneys Office there, the FBI, and local officials, we were able to tape, not only tape record but video tape discussions between the undercover agents and two former members of the Klan who were still very sympathetic to the Klan and to white supremacist organizations who were planning to blow up that school.

On the day that the blowing up of the school was to take place, we were not too concerned that the event would actually occur, because the person who was supposed to put the explosives together was in fact an undercover agent. So we were certain that that explosion would never take place. And when the conspirators joined the undercover agents to take the last step, they were put under arrest, they were indicted, they were tried very promptly, convicted, and they are now enjoying the hospitality of the Federal penitentiary.

In Alabama, when we indicted a large group of Klan members for various acts of intimidation against blacks and whites, we were able to, with the help of the FBI, turn to members of the Klan group, "turn" meaning we were able to get them to provide us with information about how the organization operated, how the plans were put together, how many people were actually involved in it, and what in fact was designed to come out of all this activity. And as a result of that effort, with people who were inside we were able to make a successful prosecution. We convicted 10 of the defendants; 3 were acquitted and 3 pled guilty. And I am pleased to report that for those who were convicted, the judge and jury felt it appropriate to sentence them to the maximum allowed under Federal law.

I won't go into all these other prosecutions but, with all due respect to some of the comments that have been made earlier, the Attorney General stands by this record, and I stand by this record because I think it represents a responsible and vigorous effort to get at violations of people's civil rights by persons associated with the Klan or by persons associated with neo-Nazi organizations.

Of course, we can do more, and we are trying to do more in this regard. But I respectfully submit that we are not in a situation where the Justice Department is conducting 50 or 60 investigations and there are 2,000 that should be conducted. I think that we have responded whenever and wherever there have been sufficient indications of an actual violation or a planned violation of the law.

You also have a list here of incidents regarding criminal violence against minorities. I would just like to go down that list to give you some sense of how we have responded to those situations because, once again, I think our record is one not of inaction but action, not only at the staff level but at the very high levels of the Civil Rights Division and the Justice Department.

You make reference to the January 14, 1979, shooting of a 22-year-old deaf black male in Chico, Calif. We investigated that case and we closed the investigation after we determined that there was no basis under Federal law for our proceeding.

Now this brings up, Mr. Volkmer, a very sad truth about the jurisdiction that the Congress has given to the Justice Department and to the Civil Rights Division.

It is my considered judgment that that Chico, California, situation was one that is not reached by Federal law at this point. The black man who was shot and killed in the coldest of blood was not engaged in any activity that is federally protected. One would think, and I think most people in the United States do believe, that it is a federally protected and constitutional right to live, and that if one's life is taken by another person because one is black or

Hispanic or some minority group, then that constitutes a violation of Federal law.

I know Professor Kinoy is here. I regard him as a friend, a leader for many years, a mentor for an entire generation of civil rights lawyers, in which I include myself. He may have a different view on this, but it is my considered judgment, and it is a harsh commentary perhaps, that this type of violence can take place in the United States without running afoul of Federal statute, without resulting in a vigorous and prompt Federal prosecution.

Regarding the Decatur, Ala., incident in May of 1979, we investigated that matter and closed it as well. That was one of the most thorough investigations I think we have ever conducted. It ran to literally hundreds of pages. If you are concerned about the level of interest and involvement in the Justice Department with respect to these matters, I want you to know that Director Webster, personally, and I, personally, supervised that investigation, right from the start. Almost the day after those shootings occurred, Director Webster and I were in his conference room reviewing television videotape, and getting firsthand reports from people who were in a position to know about that incident.

In terms of the September 1979 Boston situation, I am not aware—although I would like to have an opportunity to perhaps respond in writing to some of these situations after I have a chance to check with my staff—I am not aware of any action that we took with regard to that situation.

The Oklahoma City case, that is one that we are investigating, along with shootings that are mentioned, January 1980 in Indianapolis, the Fort Wayne, Ind., shooting of Vernon Jordan, and on the next page, Cincinnati, Ohio, shooting, Johnstown, Pa., shooting. Those are all part of a major investigation by the Federal Bureau of Investigation and by the Civil Rights Division.

Let me drop down to Greensboro, N.C. You, of course, know there was a prosecution by State officials. You are probably already aware, but let me underscore the fact that the Federal Government provided a very high level of technical assistance to the local prosecutors in that case, who relied upon the FBI lab, expert witnesses, and so forth.

But I would like to talk about Greensboro before there was a State prosecution. The day that that shooting happened, Director Webster and I were on the telephone talking to the U.S. attorney in that area, talking to our staffs, and within a day there were, I believe, at least 36 FBI agents in Greensboro conducting that investigation.

We are, of course, reviewing the Greensboro situation in light of the fact the State action has gone its course and the local prosecutor has indicated that he intends to take no further action.

I have met with lawyers for the families of the persons who died in that shootout and I regard it as a major investigation within the Civil Rights Division.

The April 19, 1980, shooting of four black females in Chattanooga is a matter that we have been investigating since it occurred. There was action taken at the local level. That action resulted in, according to many people in Chattanooga and outside of Chattanoo-

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ga, a less than satisfactory result, in that no significant action was taken against the persons who did the shooting.

Not only have we been investigating it since it started—we upgraded the investigation after the State trial. I personally went to Chattanooga the day after the verdict came down—and there was, as you will recall, Mr. Volkmer, a great deal of turmoil and civil protest in Chattanooga—to do two things: First, to demonstrate that the Federal Government was not turning its back on a situation of this kind; and second, to make certain that our investigation was being conducted in a professional, responsible and effective manner.

I met with the mayor of Chattanooga and I met with police officials. I met with representatives of black organizations as well as black elected officials to make certain that we were doing the right thing.

Let me suggest with respect to the May 1980 Boston, Mass., stabbing of a black male factory worker and the 1979 Boston situation, the elements are very much like the Chico, Calif., situation. We essentially have what ordinarily would be regarded as a homicide, which is traditionally a matter for local law enforcement, with the exception that there is a racial element, there is a black victim and a white assailant. That may or may not lead to a basis for Federal action. But as an initial matter, there is no reason to conclude based upon the statutes that we have to work with, that there is a violation of Federal law, a presumptive violation of Federal law.

We investigated the August 20, 1980, Salt Lake City, Utah, matter in which two black males were murdered by sniper attack. We identified a suspect in the case, Joseph Paul Franklin. We tracked Joseph Paul Franklin across the country and captured him, and he is now in Salt Lake City. He has been indicted by the Federal Government and he will be brought to trial and convicted, if we do what we think we can do, and that is, demonstrate that there has been a violation and that the person charged is the person responsible for that.

Of course, he will have to be tried by a judge and jury, and they will make the ultimate determination. But the point I am trying to make, Mr. Volkmer, is not to reindict Joseph Paul Franklin before you, but simply to point out that we have not been resting on our laurels. We have not been moribund and in a position where we let matters take their course without our doing all we could under Federal law to deal with the situation.

Hello, Mr. Chairman.

Mr. CONYERS. Thank you very much.

Mr. DAYS. I was talking to Mr. Volkmer and counsel about the Salt Lake City situation, in which we have identified a person we think is responsible for the shootings. We have indicted him and plan to take him to trial.

The thrust of my comments, Mr. Chairman, is essentially to demonstrate, going through your list, that the Justice Department has been there. It has not been locked up in our offices down there in the main Justice building while other forces were at work. We have tried to be on the spot, looking into these matters as immediately as possible.

You make reference in the list to the Buffalo situation. Once again I personally went to Buffalo and spent over 2 days meeting with a number of officials, investigators, the county prosecutor, FBI officials, to make certain that everything was being done to locate the persons responsible for these horrible, shocking crimes.

There was a feeling in the black community that had whites been executed the way these six blacks were executed, that the response from law enforcement officials in that area would have been swift and draconian, that there would have been literally hundreds of investigators traveling through the community to find out who committed these crimes. I can understand that perception.

But, Mr. Chairman, I left Buffalo confident that the investigation was being conducted in a professional way. There were some serious and I think legitimate concerns about the way in which the officials up their responded to questions about the investigation, because I think in some instances they showed a lack of sensitivity to the fact that there was not just another killing or another series of killings, because certainly there have been killings by organized crime that the officials up there felt they had dealt with effectively and they tended to analogize this situation to those crimes.

The point that the blacks were trying to make and I tried to help make was: You are not talking about ordinary murders; you are talking about gratuitous execution of people because of the color of their skins.

Mr. CONYERS. Well, I was there myself and I would be interested in your relating to the committee how the investigations were being conducted in Buffalo.

Mr. DAYS. Well, I cannot give you details that are not public, but let me say that I arrived in Buffalo prepared to be convinced, if people came forward and showed me evidence, that they were actually doing what needed to be done, but I did not go to Buffalo with the assumption that things were being handled in a responsible fashion. And of course, that concern that I had was reinforced when I met, as the first matter of business, with, I think, a cross-section of blacks in Buffalo, Democrats, Republicans, Baptists, Methodists, elected officials, heads of civil rights organizations, and so forth.

I pursued the concerns that they had through meetings with the prosecutors, with the county executive, with other religious leaders in the community. I met with not only the county DA, but I met with the persons conducting the line investigations. Of course, as you know, it is not just a Buffalo problem, it is a Buffalo area problem, since these crimes occurred not just in the city of Buffalo but in some of the surrounding communities.

I met with FBI officials up there. There had been a visit by a Charles Monroe, who is a high official of the FBI here in Washington, that preceded mine, in which he looked into the investigation with a special eye—a special investigator, which I am not. I met with the investigators to talk generally about the investigation and then I had a 2-hour detailed briefing in which I was made aware of every avenue being pursued, the technology being used, the leads that were available, the connections that might or might not exist between the set of four shootings and the two—I don't know how to characterize them—brutal killings that were done not with guns

but with what appears to be a grab bag of tools: ball-peen hammers, blunt instruments, knives, screwdrivers, and so forth—one of the most outrageous violations of a human being I think I have ever heard of. I am told Michael Baden, who conducted the autopsy on the two taxi drivers, said it was beyond anything he had ever seen before, and I am sure you are aware of the experience Dr. Baden has as a forensic pathologist. In any event, we did go through that with the people from the FBI on the scene.

Mr. CONYERS. Well, am I to infer that the State investigation, which is what I would like to find out your evaluation of, was it adequate, were there sufficient numbers of people working on it? Was it being pursued in a systematically rational way? Did it meet the test of urgency?

Mr. DAYS. The answer to that question, Mr. Chairman, is yes, but with the following qualifier. I saw a slice of life; I was there only for a few days. I could not say confidently 2 weeks before I got there things were going well. A week after I left they were going well.

The point I left the people of Buffalo with, the message was, we will be watching very carefully what goes on in this investigation and in fact we sent a civil rights investigator from the FBI up to Buffalo, so that he could watch it on a day-to-day basis, go out and talk to the investigators, go to the command post, see how evidence was pursued.

We set up another method by which blacks particularly could get information to the investigators, because there was a feeling that somehow blacks who called up using the special hotline that was set aside for tips from the community caused them to be interrogated when they called up.

Blacks recounted to me calling up that number and reporting that they had seen a van with a man in it who resembled the composite that we had developed with the assistance of an FBI artist. They reported that they were asked questions like, well, what is your name, where do you live, how do you know that, and they felt very intimidated, as one would understand them to be intimidated.

They thought they were being helpful and suddenly felt that they were on the defensive, that somehow they had to explain their reason for calling up the hotline to provide information.

We arranged with a number of black groups and civil rights groups in Buffalo to notify the community that they would receive tips. We worked out a format so that the information they collected would be systematic and that information could be brought to the attention of the U.S. attorney, Richard Arcara, up there, and he would have the responsibility for insuring that that information got to the local prosecutors and to the FBI.

Now to demonstrate, I think, additionally, the level of concern that we had for the situation up there, Richard Arcara, who was supposed to leave his position to become a deputy attorney general in the State of New York, decided at the request of the Attorney General of the United States to stay on the job during this crisis period in Buffalo so that there would be no indication that somehow the Federal Government was going through musical chairs while the people of Buffalo felt themselves under siege.

It was an act demonstrating the fact that when people brought tips or information to the U.S. attorney, there was going to be somebody sitting in that chair.

Mr. CONYERS. You have not described what the subsequent result has been.

Mr. DAYS. The subsequent result has been that, first, almost on a daily basis, the FBI has been providing the type of expert assistance that only it can provide.

There is a technique called VIA, which is a computer analysis technique for looking at all the information that has been gathered in a complex investigation, and playing out through a computer the logical sequences of those leads so that one can visually and, forgive me if I am not telling you what it is about precisely accurately, because I am not a VIA specialist but, as a lawyer, I am giving you what I understand is the technique, that it is possible visually to identify where gaps have developed in pursuing a particular line of investigation, to identify when one is at point F what point G looks like, what is the next question to ask, what is the next person to investigate, so we have been doing that, the forensic work.

Mr. CONYERS. I don't know if we are missing like ships in the night. I am not trying to find out about the VIA mechanism, which you admit that you are not able to describe accurately.

Mr. DAYS. I don't admit to it; I was suggesting if I made an error it was not an intentional error, Mr. Chairman.

Mr. CONYERS. You are familiar with it; it is really not that, Drew. What I am trying to find out, if you said that you didn't know that people were dissatisfied before you got there, which I can tell you they were, you identified that they were dissatisfied when you arrived and you worked out methods subsequently and persuaded the U.S. attorney to stay on, what have been the results since then?.

What do the people feel there now?

Mr. DAYS. Let me say quickly, first, I tried to make the point that I was aware of the concerns of blacks in Buffalo before I got there. That was reinforced as a result of the meeting that I had with those leaders upon my arrival.

I was there because I got telegrams and calls from blacks in Buffalo, and the attorney general did also. The short answer to your question is, the people who committed those crimes have not been found, and while there is a recognition among blacks and whites in Buffalo that the Federal Government is doing all that it can to assist in those investigations, the fact is they want the killers caught and they have not been caught.

Mr. CONYERS. Well, are you satisfied with the State investigative machinery that is now ongoing as a result of your visit?

Mr. DAYS. Mr. Chairman, let me say that, based upon the information I had when I went there and shortly after I went there and based upon my dealings with the FBI, I have no reason to believe that the local investigation is being pursued in other than a professional and responsible fashion.

I might be wrong, and if I leave this room and call the U.S. attorney in Buffalo and ask him for a report he might give me a different report. I am here to say that I have no sense that there is

an ongoing feeling that that investigation is somehow being bungled or not being pursued with vigor.

Mr. CONYERS. Well, of course, you went there not at the request of the U.S. attorney but at the request of black citizens who felt they were not doing their job. It would seem to me it would be appropriate for you to do an additional check with the black citizens who caused your visit in the first place.

They might have a different view from the U.S. attorney sitting in Buffalo.

Mr. DAYS. That is a fair enough point, but I am not absolving myself of any responsibility; but I am confident that they know how to reach me and they know that they can reach me and that I will respond.

Mr. CONYERS. So I infer that they have not contacted you?

Mr. DAYS. That is correct.

Mr. CONYERS. Now we turn to the Federal portion of the investigation in Buffalo, which you have only briefly mentioned. Let me ask you, what is the Federal responsibility for the kinds of acts that you have described in your testimony?

Mr. DAYS. Well, as I said earlier, Mr. Chairman, normally homicides of this type would not create a presumption that there has been a violation of a federally protected right. That is a harsh thing to say, but that is the truth.

I think I made sufficient claims earlier on when I was talking about the shooting in California, but the fact of the matter is the law that we enforce does not say when whites kill blacks or blacks kill whites or there is an interracial murder that that thereby constitutes a violation of Federal law.

Mr. CONYERS. You mean murders based on color are not federally protectable?

Mr. DAYS. That is right; that is the law.

Mr. CONYERS. Well, the Klan is certainly a private party or their organization and members are; is that not correct?

Mr. DAYS. That is correct. I am making a simple point, Mr. Chairman.

Mr. CONYERS. Well, it is a very important simple point.

Mr. DAYS. I hope sufficiently sobering to you and everybody who is in this room or anybody who hears this testimony.

If I walk out of this door right now and a white person comes up to me and shoots me and kills me, that may not be a violation of a Federal law. Putting aside the fact that I am a Federal official, but that is not a violation of Federal law as a presumptive matter.

Mr. CONYERS. Let's take a real incident and not a hypothetical. Here we have six blacks murdered and one who is attempted, they were killed in a most vicious and brutal and apparently racially motivated manner, and you tell me that there is no protection from the Federal Government for the crime of murder?

Mr. DAYS. That is correct.

Mr. CONYERS. Their civil rights are not involved in those kinds of killings?

Mr. DAYS. That is correct.

Mr. CONYERS. And 18 U.S.C. 241, 242, and 245 do not apply?

Mr. DAYS. In situations where one cannot identify the federally protected right, that is correct.

Mr. CONYERS. And that is what you perceive to be the problem?

Mr. DAYS. Yes, to put it mildly, Mr. Conyers.

Mr. CONYERS. Well, could you elaborate on that a little bit? Take as much time as you need.

Mr. DAYS. The statutes that we enforce most frequently are 241, 242, and 245; 241 and 242 are Reconstruction era statutes; 241 makes it unlawful to conspire to violate in essence the civil rights of persons; 241 has been a difficult statute to enforce for many years, because the courts had a very hard time and in many instances they weren't interested, it seems, in looking at some of their actions, in discerning what the federally protected right was.

Statute 241, as I understand it, does not get at interference with the exercise of any right. For example, suppose before certain Federal statutes were passed the State allowed illiterates to vote, and there was a conspiracy to vote in State or local elections not having to do with Federal elections.

Suppose there were a conspiracy by a group of whites to prevent blacks, black illiterates from voting in State or local elections.

I think, looking at 241 under those circumstances, courts would and have had trouble trying to identify what the federally protected right is.

I am moving to something, Mr. Chairman. You allowed me as much time as necessary, and I am trying to use it in an effective way.

Mr. CONYERS. The original question I posed to you was do not take a hypothetical of you getting shot but take the actual circumstances of Buffalo.

Mr. DAYS. That is the hypothetical that scares me most, but I understand the point you are making.

The point that I wanted to make about 241 was that Congress in 1968 recognized that 241 was a problem, that it left to the courts a duty which they did not appear to be willing to exercise of identifying what the federally protected rights were. So in 1968, Congress set out to identify what types of activities were federally protected. That has allowed us much greater latitude in enforcing the Federal law against people who are racist, who are prone to violate people's rights because of the color of their skin; but it does not list every right. It talks about the right to go to a desegregated school, the right to apply for certain employment on a nondiscriminatory basis, protection of voting rights. But it is not a laundry list. It is an indication of what Congress thought were clearly federally protected rights.

Mr. CONYERS. The three statutes do not protect against the harm of being murdered or being assaulted? We included voting. We included housing, but we did not include the most fundamental of all rights, not only in 1968 but even prior to 1968. You mean the right to stay alive and not be murdered is unfortunately left to be proven?

Mr. DAYS. That is right. It is not covered.

Mr. CONYERS. Well then, how did we proceed under the Federal Government, under the Schwerner, Chaney, and Goodman prosecutions of 1964 or 1965?

Mr. DAYS. Those were situations where the prosecutions were essentially designed to get at conspiracy that involved the violation of those rights.

Mr. CONYERS. Mr. Days, section 241 does not suggest that the person has to be involved with the Federal Government. It says, and I want to read it, "If two or more persons conspire to injure, oppress, threaten or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution," and then they merely go on to describe other language. I am hard pressed to determine, as opposed to perhaps 242, how there would have to be a color of law which is specifically excluded from 241. Where in there does it suggest there has to be governmental involvement?

Mr. DAYS. It does not suggest that. I am suggesting that 242 was used in those prosecutions to get at the local officials as well as private parties, because they were acting in concert with one another, and that was the important issue in that case. Schwerner, Chaney, and Goodman were engaged in activities that were related to the exercise by people of federally protected rights, such as voter registration.

Mr. CONYERS. We do not have any Government involvement required in 241, you agree to that?

Mr. DAYS. I do.

Mr. CONYERS. So Government involvement does not apply?

Mr. DAYS. Section 241 can be used to get at State officials.

Mr. CONYERS. But I am saying it is not necessary.

Mr. DAYS. That is correct; 241 can be used to get at purely private conspiracy.

Mr. CONYERS. Precisely, so we do not need Government involvement in the Buffalo matter for it to potentially come within the purview of Federal statute?

Mr. DAYS. That is right, but you have to identify what the right being violated is, and I am saying to you that the right to live has not been recognized as a federally protected right.

Mr. CONYERS. You mean the right not to be murdered is not a federally protected right?

Mr. DAYS. Mr. Chairman, you have made that statement and I have responded to it four or five times.

My answer is the same.

Mr. CONYERS. Well then, let me ask you this then. How would you determine what are the federally protected rights then if two or more persons conspired to injure. I presume injure means physical, physical means assault, does it not?

Mr. DAYS. Yes; it does.

Mr. CONYERS. Assault means hurting and that could lead to death, does it not?

Mr. DAYS. Yes; that is right.

Mr. CONYERS. How could a physical assault that results in death not be covered by 241?

Mr. DAYS. I repeat what I have said before. It is not an action in the abstract that creates Federal jurisdiction.

Mr. CONYERS. You mean a threat to beat up a person does not create Federal jurisdiction.

I want to get this on the record. You mean that if a person threatens to beat up somebody to intimidate them in the exercise of any privilege or right secured to them by the Constitution, and that beating up results in a murder, that that does not come within the purview of 241?

Mr. DAYS. That is correct.

Mr. CONYERS. Well, why is that and can you cite me any authority besides your own?

Mr. DAYS. *United States* v. *Classic*, a case that gets at the definition of 241, and what are federally protected rights, says that there are not many things that are federally protected rights and that is why Congress passed legislation in 1968.

Mr. CONYERS. Was it cured?

Mr. DAYS. It was cured in part by the 1968, legislation but I am suggesting that the fault lies not in the Justice Department, but in the failure of the Congress to legislate as fully as perhaps you would think appropriate.

Mr. CONYERS. Before the 1968 legislation a person who was conspired against to be injured, including being beat up and even perhaps killed, could not be the object of a 241, even if death resulted? You are repeating yourself, I know for many, many times, but am I correct in that?

Mr. DAYS. That is right.

Mr. CONYERS. Well, what does injury mean then within the definition of 241 as you understand it and as the courts have interpreted it?

Mr. DAYS. It means the same things as you said.

Mr. CONYERS. Well, wait a minute. You tell me what it means.

Mr. DAYS. It can mean physical injury. Well, injury means physical injury. To oppress, threaten or intimidate does not have to involve physical attack on somebody.

Mr. CONYERS. We are talking about injury now. The injury could result in death.

Mr. DAYS. That is right.

Mr. CONYERS. It could be murder.

Mr. DAYS. That is right. It is murder.

Mr. CONYERS. But then you then cite the *Classic* case and notwithstanding the 1968 laws to say that murder in the context of the Buffalo situation does not apply.

Mr. DAYS. Now, let me get the record straight for both of us.

Mr. CONYERS. Do you understand that question?

Mr. DAYS. I understand the question, but I want you to understand my position. I have said that when one looks at the murders of six blacks in Buffalo, that does not automatically communicate to me or to people in the Justice Department or people who are familiar with these statutes that there has been a presumptive violation of Federal law.

It is presumptively a violation of a State homicide statute.

Mr. CONYERS. What does it communicate to you, sir?

Mr. DAYS. It communicates that the Justice Department ought to get up to Buffalo as quickly as possible to try to go below the surface to determine whether the people who were killed within the process of protecting their rights, and so thereby arises the

predicate for Federal grand jury proceedings and prosecution, and that is what we did in Salt Lake City.

Mr. CONYERS. We are in Buffalo right now.

Mr. DAYS. I was in Salt Lake City also.

Mr. CONYERS. We are in Buffalo for the purposes of this discussion. What did you do in Buffalo? You went there, but that did not launch a Federal investigation?

Mr. DAYS. It did launch a Federal investigation. In fact we initiated an investigation from the start, because we felt that there was some indication that one or more of the persons who were murdered might have been in the process of exercising rights to use facilities of public accommodation shortly before they were killed. But we did not go into Buffalo because we decided that the murders of four black men by a white assailant indicated that there was a violation of a federally protected right. With respect to the taxi drivers, we have no information of the caliber of information that we have on the other killings with respect to the identity of the assailant or of the person who committed those crimes, so in the taxi murders, we are not even certain we know that it was an interracial murder.

Mr. CONYERS. Well, have you heard that there were witnesses that identified the assailants as being white?

Mr. DAYS. I am just making a distinction.

Mr. CONYERS. Respond to the question as well, please.

Mr. DAYS. I do not think there were any witnesses to the murders of the two taxi drivers. No; I am not aware that there were people that identified whites as having committed those crimes.

Mr. CONYERS. I did not say that they committed the crimes, but they were identified as being nearby or present or somehow involved. Witnesses reported that.

Mr. DAYS. That may be the case. I do not have that information at this point. There is information obviously about the assailant in the hospital, and that person was identified as being white, we know that, and the question becomes what nexus can be established between that attack and the murders of the two taxi drivers, but I was trying to make the distinction as to the quality of evidence that we have on the two groups of murders. On the shootings, we have in each case an identification of a white assailant engaged in essentially the same type of conduct resulting in death.

Mr. CONYERS. We have identified now so far that injury even leading to death and murder can come within the provisions of 241?

Mr. DAYS. That is right, that is certainly possible.

Mr. CONYERS. And therefore, the question then becomes, did the death or the injury transpire because of any attempt to threaten or abridge the exercise of certain constitutional rights?

Mr. DAYS. That is correct.

Mr. CONYERS. That cannot be determined without an investigation?

Mr. DAYS. That was certainly our view with respect to Buffalo.

Mr. CONYERS. The investigation at the Federal level to determine the violation of Federal rights would be conducted by whom?

Mr. DAYS. By the FBI.

Mr. CONYERS. Has that been done in Buffalo?

Mr. DAYS. It has been done in Buffalo, but let me make a distinction between the nature of the local investigation and the nature of the FBI investigation or the Federal investigation.

There are violations of the law that fall into a category that is clearly a matter of Federal concern, if not preemptive Federal concern. There are situations where there may or may not be a base for Federal action. In the former situation, for example, when we are talking about 242 investigations and an allegation that a police officer has beaten up someone, we know from the start that we have a clear jurisdictional authority to investigate, go to the grand jury, to indict and to prosecute, if facts prove out consistent with the allegations.

There are other situations, for example, under 245, where there may be some indication of jurisdiction but we are not certain.

We normally do not go into those investigations, particularly where there are local investigations going on, and duplicate or supplant the local investigation.

Mr. CONYERS. What have you done or what has the FBI done in Buffalo?

Mr. DAYS. The FBI has essentially relied upon local street investigators to collect the basic information, but the FBI has been involved in, for example, the 24-hour command post. There is an FBI agent on duty 24 hours a day so that any information that comes from the street is made available to the FBI immediately. It is evaluated by the FBI, there are meetings to determine the extent to which some leads are not being pursued.

As I said, we sent up a special investigator from the FBI to see what the situation was. The FBI office up there, headed by the special agent in charge, is in a position to review what has been collected and determine whether there is any basis for going further in the investigation. My sense was that particularly based upon the visit by Charles Monroe, the visit by me, the sending of a special agent, that the locals have the message, that we must be involved on a day-to-day basis. We have to have enough information to make our determination and if we think something is going on to tell them, and if they are not responsive to that perhaps other measures will have to be taken.

Mr. CONYERS. Then the question I originally asked, has there been an FBI investigation of the possible violation of constitutional rights of those blacks that were murdered in Buffalo, is what?

Mr. DAYS. Yes.

Mr. CONYERS. There has been?

Mr. DAYS. There is.

Mr. CONYERS. It is currently undergoing an investigation?

Mr. DAYS. That is right.

Mr. CONYERS. And it is of the nature of what you have just described immediately preceding?

Mr. DAYS. That is right.

Mr. CONYERS. There are State investigators and you are collecting State investigative information?

Mr. DAYS. That is correct.

Mr. CONYERS. Do you know when this investigation may be completed?

Mr. DAYS. I do not have the answer to that.

Mr. CONYERS. Do you know what period of time, the duration of these murders that have occurred in terms of months?

Mr. DAYS. These occurred a couple of months ago, in Buffalo.

Mr. CONYERS. Have not some of them occurred longer than 2 months ago?

Mr. DAYS. Well, let me check your list, but I thought October is when they took place.

Mr. CONYERS. I thought September was the first one.

Mr. DAYS. Yes; you are right.

Mr. CONYERS. But the point that I am working toward now is, now that I have been told by you that there is a Federal investigation going on, I am trying to determine how long it will be before this determination is made.

Mr. DAYS. What determination are you seeking, Mr. Chairman.

Mr. CONYERS. The determination that I presume is what motivates the FBI to conduct the investigation in the first place. The only one I can think of is that there would be a possible violation of Federal law.

Mr. DAYS. Well, that is certainly part of it, but the other determination we might make is assuming that the persons who committed these crimes or the suspects with respect to these crimes are apprehended, whether it is appropriate for the Federal Government to go forward or for the local government to go forward in terms of prosecution.

Mr. CONYERS. You are assuming they are apprehended?

Mr. DAYS. Yes.

Mr. CONYERS. Well, can't you make—unless you make the investigation, you can't arrest anybody to determine who is going to prosecute. It seems to me the initial question, Mr. Days, would occur as to whether there should be a Federal investigation.

Mr. DAYS. No. That determination has already been made, Mr. Chairman. We made the determination to cite 245, section 245 as the predicate for an FBI investigation. So we made the determination early on.

Mr. CONYERS. I see.

Mr. DAYS. The real question will be, how much evidence can we collect? What will happen when the suspects are apprehended, and what all that looks like in terms of our ability to make successful prosecution?

Mr. CONYERS. I see.

Mr. DAYS. I think Salt Lake City, you want to stay in Buffalo, I am sure, but I think Salt Lake is a good example of how this process works. We made an initial determination in Salt Lake to conduct an investigation. That investigation identified a person who was probably responsible for those crimes and we tracked that man day-by-day across this country and finally apprehended him. And we decided, based upon information that was collected during that investigation and during that pursuit of Joseph Paul Franklin, that we had enough to go forward and seek an indictment. That is where that case stands. And we did not stand by and wait for some indication by the locals. We made our own determination.

Mr. CONYERS. Did you decide or was the decision made to send the FBI to investigate in Buffalo before you went there or after you went there?

Mr. DAYS. Well, the incident occurred. We investigated and determined, based upon that initial investigation, that there was enough to warrant seeking a 245 indictment, if we apprehended the person. We thought we had a legal theory that would justify our proceeding.

Mr. CONYERS. Is this Buffalo you are referring to?

Mr. DAYS. No, no, no, I am talking about Salt Lake.

Mr. CONYERS. I see.

Mr. DAYS. In Buffalo we made the decision at the outset and when you talk about sending somebody——

Mr. CONYERS. You made which decision at the outset?

Mr. DAYS. We made the decision that there was a Federal jurisdictional predicate for conducting an investigation.

Mr. CONYERS. In Buffalo?

Mr. DAYS. That is right.

Mr. CONYERS. And you made that based on someone, possibly, conspiring to injure or press or intimidate someone in the free exercise of federally constituted rights?

Mr. DAYS. Not really. We looked more at 245 interference with the exercise of the right to enjoy public accommodations. I do not have the exact situation.

Mr. CONYERS. So there is a right that is federally protected in Buffalo involving the murder of the blacks who have been killed there?

Mr. DAYS. No; we have not reached that conclusion. The conclusion we reached was there was sufficient basis for us to investigate; not that there was an absolute matter, a clear violation of Federal law.

Mr. CONYERS. That is what remains to be determined?

Mr. DAYS. That is correct. And that is going to be evidentiary. It is not something that we can create out of whole cloth. It is not, to go back to my earlier statement, based upon the fact that there was an interracial killing, that blacks were killed by whites.

Mr. CONYERS. Well, does the fact that there is an increase in Klan terrorism impact upon the kinds of primary inferences that are engaged in at the Department of Justice?

Mr. DAYS. I do not understand the question, Mr. Chairman.

Mr. CONYERS. Well, the fact that there appears to be an increase in Klan violence directed toward minorities, does that observation affect your judgment as to whether or not there may be sufficient reason to conduct the investigation?

Mr. DAYS. That can have some bearing. If we take Buffalo, for example, it was not the central reason why we became involved. But we did, along with the locals, explore the question of whether there were white supremist groups in the area, whether the Klan was there, whether there was a neo-Nazi party, who were the operatives in those groups, where were they, was there any indication they might have been involved in this type of activity?

I might add, we also were looking at the various sniping deaths that had occurred over the country. So we were looking at all of those shootings as I think I indicated earlier, looking at them to

try to determine whether there was some pattern, looking at them not piecemeal but as a totality, whether there appeared to be more than just a series of local violations or, instead, a violation of Federal law that would be actionable and that would justify our moving into all of those and trying to tie them together as one particular series of Federal offenses.

So the answer is, indeed we do think more readily in those terms, given what we have seen about racial violence in the last couple of years.

Mr. CONYERS. Are you aware of the suggestions that have been made that the grand jury investigative technique be used as opposed to the regular investigation of the FBI to determine whether or not there have been Federal violations in these kinds of murders, and other violence.

Mr. DAYS. I was in briefly earlier, Mr. Chairman. Let me apologize to you and to the other members of the subcommittee for my being late to start with and coming in briefly and then leaving again.

As I told counsel, I have been very much involved in efforts over on the Senate side to get a fair housing amendments bill through in this session. I regret to say that that effort failed and the bill went down in a cloture vote shortly before my testimony began. But that was my reason for not being here throughout.

I did hear Professor Kinoy briefly and I heard a recapitulation of some of the points that he made. I understood him to be talking about the grand jury as an investigative tool. I, of course, agree with that and we do use the grand jury for purposes of investigation, but the grand jury investigations are very focused in my estimation.

In other words, we do not convene grand juries to look into, for example, whether the Klan in Northwestern New York has been engaged in violations of federally-protected rights in the abstract. We must have some indication that people who have been trying to vote, people trying to use public accommodations, children who are going to desegregated schools for the first time, and other types of federally protected activities are being interfered with by the Klan.

We do not convene grand juries. We had four grand juries this year already; there may be a fifth. But those grand juries have been designed not to find out whether bad things were being done. We had a pretty good sense that bad things were being done or were about to be done and we wanted to pin down the information in the grand jury, test out its sufficiency, so that when we went to the point of seeking an indictment and then to trial, we could make our cases.

I think our record reflects the fact that that thorough process works and we do it whenever and wherever there appears to be a basis for conducting grand juries. But grand juries are extremely unwieldy tools in the hands of prosecutors.

Mr. CONYERS. That is just the opposite from the testimony that we have taken in the Criminal Justice Subcommittee, that usually the prosecutor dominates the grand jury.

Mr. DAYS. I know that is the case.

Mr. CONYERS. As a matter of fact, no other attorney can be present in a grand jury hearing.

Mr. DAYS. That is why I feel confident in saying, since I have been in those grand juries, that unless they are focused toward the fleshing out of a theory of criminality, of a violation, they can be difficult things to control. I do not mean difficult to control in terms of the interests of the Federal Government narrowly defined; there are things called runaway grand juries that simply decide that they are going to do a variety of things, even though what they plan to do is not in accordance with the law.

Mr. CONYERS. You are talking about one-man grand juries?

Mr. DAYS. No, I am talking about grand juries lawfully constituted, 16 people.

Mr. CONYERS. Can you remind me of one instance in the recent past where you were confronted with a runaway Federal grand jury?

Mr. DAYS. Well, I would not tell you even if I could because that matter is confidential. I would have to have a court order to provide you with that information.

Mr. CONYERS. Just a moment. You would not have to have a court order to give me your impression of whether you confronted a runaway grand jury, would you?

Mr. DAYS. Well, runaway is perhaps an inadvisable term. Certainly, I have not had that experience with a runaway grand jury.

Mr. CONYERS. Have you heard about it recently? I mean do you know—does this go on?

Mr. DAYS. Let me put it affirmatively, Mr. Chairman——

Mr. CONYERS. You know the results of a runaway grand jury, Mr. Days, would become public?

Mr. DAYS. I don't want to engage in a debate with you over those words. Let me make my point again and I hope more carefully.

My point simply is that in carrying out my responsibilities I have not gone before a grand jury unless I knew what I was about. I say I, I am talking about people on our staff, 40 or so lawyers that handle these cases from time to time. I am not here speaking for the entire Justice Department in terms of how the Criminal Division uses grand juries or the Antitrust or Tax Division uses grand juries; I am describing to you the process that we follow.

I am confident in that process. I feel comfortable, I feel it is responsible to use the grand jury, not to have a hearing like something that the Civil Rights Commission would conduct or even a hearing that a committee of Congress would conduct.

A grand jury proceeding is designed to, I think, determine, first, what the case looks like and then if the case looks like it is a solid case to get an indictment and be able to proceed to trial.

Mr. CONYERS. But is it not true that in many instances you don't know whether you have a solid case until you convene the grand jury to determine that?

Mr. DAYS. That is not true. Our experience has been that, using investigative techniques, we can come pretty close to figuring out whether we have a case that deserves to go forward.

We go to the grand jury only when we think that the secrecy of the grand jury, the fact that people before the grand jury have to testify under oath, is necessary to test out the case, to get people who have made certain statements to our investigators, to say, under oath, what they have already said—"Yes, I was beaten up by

such and so," or "No, I wasn't at the scene of that incident, so I am not responsible." Those are the types of things we have to test out in the grand jury.

If we think, for example, that there is evidence that can be obtained only through a grand jury subpena, then we use the grand jury for that purpose. But never in the time that I have been running the Civil Rights Division have we convened a grand jury to look into the possibility of whether there has been a violation of federally protected rights in some abstract sense. All right?

Mr. CONYERS. Well, let me ask you about this possibility: Can you use injunctive or could you use the grand jury more frequently than you do? Which is, I think, the essential recommendation that is being made, that it is being greatly underutilized.

Mr. DAYS. That is certainly a possibility. I am not going to quarrel with whether we could use grand juries more. But let me suggest another consideration when we talk about grand juries. Whether it is right or wrong, the convening of a grand jury raises enormous expectations in a community. That is, that the Feds have got something, and they have not only got something but they are going to run with it. I think it is an irresponsible act, it tends more to dash people's hopes and produce cynicism.

Mr. CONYERS. That is what happens anyway.

Mr. DAYS. Well, let me just suggest that while we can't figure out whether the number is 10 when we have done 5 or 20, when we have done 5, let me suggest that that is a consideration and one that I try to be sensitive to, that we should not go into grand juries when we don't really have anything. You know grand juries are not the places where you get people to tell the truth when they have been lying in many instances before or where they provide no information at all.

Mr. CONYERS. Well, I hardly think that the suggestion was made that we call in people when you didn't have anything, to merely have an idle search.

Mr. DAYS. I don't know what the suggestion is, Mr. Chairman. I am simply saying that I have a view toward the use of grand juries and it is to use them in a focused fashion. If that is not inconsistent with the suggestion, then I am very pleased.

Mr. CONYERS. Well, there is a tremendous concern, I found out yesterday, in Detroit, about a civil rights case in which—it was plea-bargained, and the agreement was that there would be a limitation of sentencing to no more than 4 years' prison sentence and a fine of up to $15,000 for several of the parties who would have otherwise been eligible for a great deal more in the rather violent acts. The *Bishop-Echelin* case.

The headline in the Michigan Chronicle, that I just inadvertently looked at yesterday evening, had the lead story, "Klan Plea-Bargain Deal Too Lenient." They went into great detail to point out the fact that there had been, for the kinds of offenses that had been conspired and some of the acts that had been conducted, that it seemed there was a far too lenient resolution of the problem.

The U.S. attorney there, Mr. Leonard Gilman, pointed out that difficulties rose in the case that made him have to opt between the risk of losing the case or accepting some smaller plea. So, that we get the phenomenon of people's expectations being greater than

frequently what occurred in a number of cases, even when you don't expect it to happen because of the fortuitous events that can always occur in the course of a trial, the vagaries of the witnesses, no matter how carefully prepared or whatever they may have said before.

So, it would seem to me that the use of a grand jury could certainly—since they have only been used four or five times in the last several years—that that could be a basis for them being used far more frequently in the future without violating the kinds of objectives that you have described as befitting to the grand jury.

Mr. DAYS. That is a fair point, Mr. Chairman. I don't want to quarrel with that. I think if more grand juries are necessary to help us conduct these prosecutions, then they should be convened. I don't agree with your premise that we have failed to convene grand juries when they appropriately should have been convened. But you and I can disagree about that. I mean, that is a reasonable basis for disagreement. That is all I mean to say.

Mr. CONYERS. Let me turn to the other part of the situation that we seek more injunctive civil remedies in the fashion of Judge Wisdom. Are you familiar with that process?

Mr. DAYS. I am probably less familiar than I should be, but I did hear Professor Kinoy talk about the Bogalusa situation. Let me just say without going into a detailed response about the cases that as I look at the preliminary injunction in *United States of America* v. *Original Knights of the Ku Klux Klan,* the injunction relates to interference with the exercise by blacks of what are clearly publicly or federally protected rights.

I am talking about the equal use and enjoyment of public facilities, places of accommodation, exercise of the right to vote, the right to equal opportunity, discouraging Negro citizens from exercising those rights. So I would suggest that this litigation reflects the reality of a different era and that to the extent that we identify, in 1980 or 1981—and I hope, although I have no reason to speak with certainty, that I speak for the next administration in this regard—that where Klansmen or other whites, white supremacist groups interfere with the exercise by blacks or other minorities of these rights, that the Government will be in court bringing either criminal or civil actions to make certain that that conduct doesn't continue.

But that is a far cry, unfortunately, a far cry from a situation where we have the death of six blacks in Buffalo and we don't know quite what the nexus is between their deaths and their exercising of federally protected rights. So while I am not rejecting *United States* v. *The Original Knights of the Ku Klux Klan* as an approach, I think it may well be limited to the historical context and the particular facts that grew out of that context. I don't mean to foreclose it all.

I want to say in addition to what I have said that with respect particularly to the private action that has been filed in Alabama, against the Klan, I have spoken to Morris Dees, who is a lawyer on the case. We have now received the papers and we are evaluating those papers to determine what, if any, role the Federal Government can play in that private civil action. So we are not rejecting those possibilities out of hand. But I want to make the distinction

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between the types of problems I think we are confronting now and the ones that were confronted by civil rights lawyers in the private sector in the U.S. Government in 1965.

Mr. CONYERS. Well, let me try this hypothetical. We have a Klan leadership at meetings publicly and privately articulating that they will use violence upon black citizens to frustrate their activity. It may be randomly motivated, it may be purely racial in character. And that they urge their membership to use violence, and that this come to the attention of the Federal official.

Question: Would not a Federal injunction lie against the Klan's leaders for conspiring to interfere with the rights of American citizens under one of the several statutes under discussion?

Mr. DAYS. Not for speaking about things of that kind. The real question is whether there has been any action.

Mr. CONYERS. What about a conspiracy?

Mr. DAYS. What about it? What is a conspiracy? I think one has to look at more than the exercise of first amendment rights to determine if there is a conspiracy.

Mr. CONYERS. This is very interesting.

Mr. DAYS. I am finding it interesting also, Mr. Chairman.

Mr. CONYERS. Tell me what would constitute a possible basis for injunctive relief if my hypothetical could not in your judgment.

Mr. DAYS. Injunctive relief?

Mr. CONYERS. Yes.

Mr. DAYS. What the courts, apart from what relief would be sought, what the courts have tried to do, as I read the decisions, is make a distinction between the exercise of first amendment rights, albeit abrasive, albeit obnoxious to the values that we cherish in this country, which are indeed protected by the first amendment, and something more than that, that tilts in the direction of not just advocating violence or discrimination or intimidation in the abstract, but an ability, and in fact a plan to carry out those views in a way that will violate the rights of blacks because they are exercising certain types of rights.

Mr. CONYERS. What more would have to be done in the hypothetical that I placed before you?

Mr. DAYS. What more would have to be done?

Mr. CONYERS. Yes, sir.

Mr. DAYS. I think that the Detroit case is an example of what we think is sufficient to go forward. Private parties get together and they say, "We are going to kill that black man because he goes to a bar that we frequent. We don't like what he stands for. We are white supremacists. We are going to kill blacks so they will know not to come in this neighborhood again," or "we will blow up a house where a black lives, so they will not move into our neighborhood. Not only those, but blacks who are considering moving into this neighborhood will forget about it."

So there are two things going on, not only a plan to harm an individual, but a plot to create an environment that intimidates people who would otherwise exercise rights to live wherever they wanted to live.

Mr. CONYERS. How is that different from my hypothetical?

Mr. DAYS. Because we have facts; we don't have just statements. We have people in that back room, if you will, who are not just

talking about theories of government; they are saying, "Now you are the one who is going to have to get the explosives, you are the one who is going to drive the car."

Mr. CONYERS. You just added that dimension of the planning, but if at a Klan rally it was publicly made known that the leaders urged that blacks be visited with violence and death through any means necessary, it seems to me that that would create a sufficient environment that is quite similar to the one that you described in the bar case, that the acts are clearly threatening and it certainly constitutes a conspiracy, it seems to me, and that therefore it would be within the framework of the possibility of a preventive civil injunction, a restraining order.

Mr. DAYS. I disagree.

Mr. CONYERS. I know it; but I am trying to find out where your example succeeds.

Mr. DAYS. The first amendment allows people to say very outrageous and intimidating things in this country. I am as intimidated as anybody by what the Klan may say about their plans for black people.

It is not a pleasant thing for me to say that they have a right to make those types of statements, but I believe it to be the law. I believe that their statements are protected and I will fight to allow them to say things like that.

Mr. CONYERS. Please don't fight.

Mr. DAYS. I am a passive fighter; I mean fight from the courts.

Mr. CONYERS. Can a conspiracy occur without overt acts?

Mr. DAYS. An actionable conspiracy? There has to be a plan, an overt act in furtherance of that conspiracy. It does not have to be effectuated. You don't have to have the home blown up before you have an actual conspiracy.

Mr. CONYERS. In the case of the Klan having its member commit violence and the members go get guns and move on the unsuspecting black citizen asleep at his home, is that not the overt act that would be required?

Mr. DAYS. If we can make a closer nexus——

Mr. CONYERS. Would that fail, too, the one I have presented? Would that give you the action you want?

Mr. DAYS. I am reluctant to answer some of these questions, Mr. Chairman, and I will tell you why. You are asking me hypotheticals that may come up in court, and I may be in a position arguing whatever it is you want me to argue, and yet we have a colloquy that raises questions about my belief in that theory.

I don't like to talk about hypotheticals.

Mr. CONYERS. I have no way of assuring any hypotheticals you or I talk about or anybody before this committee has ever talked about are going to actually be realized. I hope that they are not.

We can't guarantee them for the several weeks that you have in office. I can't for the life of me figure out that a hypothetical that might become actualized would block or interfere with whatever judgment you would pass on it. If you don't want to answer the question, you are perfectly privy. You are not under oath.

Mr. DAYS. I am not the best person to talk about this, but we did have an informal meeting with you and other members of the Congressional Black Caucus about what was going on in the Justice

Department. You know the Attorney General was there. Director Webster was there and I don't think it is now any great secret that there have been domestic security investigations conducted with respect to certain forms of racial violence and white supremist groups in this country.

Why were those investigations mounted? They were mounted because we have reason to believe that more than free speech was going on, that there was indeed a nexus between certain statements and the carrying out of illegal acts or the planning to carry out illegal acts.

A public speech can send many messages. It can send the message, you remember when I told you when we met in private the other day about what we ought to do. It is simply a restatement of a direction that has already been given in a more private and a more effective way, and it is simply the signal to carry out the plan.

On the other hand, there can be public statements that do not have any plan behind them as such. They are making statements and they are saying, well, look, we think that blacks should be shot and killed and their houses should be burned down but, while there are no scholars of the first amendment, they know that they can go up to a certain point.

If violence occurs, as long as there is not an immediate nexus, they can say, "Well, we are just exercising our first amendment rights."

If those crazies want to shoot somebody, that is their own problem, and that is the dilemma, if you will, or the tension that is caused in our country between trying to anticipate acts of violence or punish acts of violence and the ability to say, as I indicated earlier, very abrasive, outrageous, intimidating, and vile things and still be cloaked in first amendment protections.

Mr. CONYERS. Well, now, I don't see anything embarrassing about our hypotheticals. I consider them first year questions in terms of liability.

Mr. DAYS. Except if you are the prosecutor.

Mr. CONYERS. I am not asking you to apply them or interpret them in terms of anything more specific than that, but I want to reiterate this hypothetical because it is helping elucidate your views on what is criminal behavior and what is not.

We have had a hate organization rally, its leader exhorting its members to violence against a particular ethnic group to use whatever means necessary. He does not specifically enumerate who it is that should become the victims.

Is there any question that that conduct, or let me ask you neutrally, is that conduct violative of any kinds of laws, State or Federal, conspiratorial or actual?

Mr. DAYS. I am not going to answer that question directly. I will simply say as I have said before that advocacy of violence is protected in some cases by the first amendment, and there is a close question of whether it is more than just an exhortation or whether it is in fact the quelling of the charge, if you will, to go forward and actually carry out that, where it is apparent that people have a willingness and an ability to carry out that violence.

That is my answer and, as to the many hypotheticals you gave me, that is going to be my response.

Mr. CONYERS. What basis in the law do you use to make that statement?

Mr. DAYS. All the cases that I have read on the first amendment.

Mr. CONYERS. Namely, which ones, or any one?

If none come to mind, I would be happy that they be submitted.

Mr. DAYS. I can give you the cases, *Feiner* v. *New York* is an example of first amendment rights in a public setting.

Terminiello v. *Chicago* is another. There is a long line, and Professor Kinoy, if he is here, can probably give you the cases and the citations; but I am not creating the law.

Mr. CONYERS. The reason that I ask you for the citations is that when I research this discussion that I would have at least thought to ask you what you were basing it on, and there is the remote possibility there may be some difference in how we interpret the cases.

Mr. DAYS. Certainly. Of course, we have, Mr. Chairman, examples that are embarrassing to me and probably to you. They are examples that come out of the fifties when certain people who were alleged to be Communist were prosecuted, and the question was whether they were expressing their first amendment views or in fact engaging in conspiracies that were designed to violate Federal law. *United States* v. *Dennis* is an example of such a case.

Mr. CONYERS. Are you citing that case as an example?

Mr. DAYS. I am citing it as an example of the analysis that goes on in the courts between mere advocacies of violent views as opposed to advocacy that goes beyond that and reflects a present ability and willingness to engage in illegal conduct.

Mr. CONYERS. I want to read this sentence, or it is a part of a sentence.

> That the wave of rising violence and intimidation against black and minority people is in total violation of the Constitution and laws of the United States, and will be rejected and repudiated by every American committed to the deepest principles and promises of this country.

Mr. DAYS. Are you quoting Jimmy Carter?

Mr. CONYERS. I wish that I were.

Mr. DAYS. He said something like that.

Mr. CONYERS. The question that I raise here is that is there any doubt in your mind in your official capacity that there is a wave of rising violence in intimidation against black and minority people?

Mr. DAYS. I am not comfortable with the language. Let me say that for reasons that I have not been able to identify exactly, clearly there appears to be more gratuitous violence where death has come to blacks around the country, for reasons that appear to have nothing to do with what we traditionally associate with racial violence, that is, people trying to cross the Pettis Bridge or the folks in Birmingham marching for their rights and being hosed down and attacked with police dogs. There is not that type of setting. You and I have been in it. We have gone into situations where we expected to have our heads handed to us. We knew that we were challenging the status quo and the segregation laws that existed in this country; but people are being killed today who are just minding their own business. One of the things that is so intimidating and so frightening about a Buffalo is that the four

people who were shot were literally just walking along the street. Two of them were shot as they walked down the street. There is no indication that they were acting to challenge a segregation practice or moving into a neighborhood where blacks had not previously lived. I think it is the fact that there is a connection between a black and a victim of a murder in the mind of the person who committed this crime, and we have seen it in other places, so I think what I call gratuitous random killing of blacks is new. It is different and that is what makes it frightening and, I must say when I visited Buffalo, I do not know what your sense was, I felt totally vulnerable, because I knew, irrespective of who I was and why I was there, I could have my brains blown out because I am a black man.

Mr. CONYERS. Well, does that not suggest that it may be racially motivated killings?

Mr. DAYS. I am willing to accept that they are racially motivated killings, but I am not willing to accept that that thereby violates Federal law.

Mr. CONYERS. Well, then you are concerned and aware of an increase of racially motivated killings that are going on in the United States of America?

Mr. DAYS. That I have not seen this type of activity certainly not in the first 2 years I was in office. I certainly have seen it the last 2 years.

Mr. CONYERS. And that is gives rise to the fact that persons of colors constitutional rights may be violated in the process of the wake of this increasing rise of violence?

Mr. DAYS. That is right. That is why we indicted in the Salt Lake City, Utah situation.

Mr. CONYERS. And that it gives rise to the fact that persons of necessarily more investigations covering those black assassinations, because they may in fact be racially motivated which in turn may be a violation of some Constitutional privilege?

Mr. DAYS. That is correct. I think we have done that.

Mr. CONYERS. And that is being done?

Mr. DAYS. That is right.

Mr. CONYERS. Sufficiently?

Mr. DAYS. We have tried to respond in every instance where there was this indication of random killings or injuring of blacks by whites, or in fact where other minorities were victimized. For example, the Vietnamese in Texas, the Cambodian refugees in certain types of attacks that they experience.

Mr. CONYERS. Thank you very much. I appreciate your patience here, but I think this was sufficiently important for it to consume both of our time.

Mr. DAYS. One other case, *Branzburg* v. *Ohio* is a case that is worth looking at in terms of this whole question of first amendment rights versus the right to prevent violence or punish violence.

Mr. CONYERS. Counsel has one question.

Mr. GREGORY. I have one question concerning the Southern Poverty Law Center in the Decatur, Ala., case. Have you had a chance to read the pleadings in that case?

Mr. DAYS. I have looked at them briefly. I provided them to my staff for analysis.

Mr. GREGORY. You earlier characterized the 1965 case as being a part of another era, the Bogalusa atmosphere as being from another era. The current Decatur case seems to belie the suggestion that it is a different era. It does not read like a different era and certainly the first amendment rights there, both factually and constitutionally were on the other side.

Mr. DAYS. Counsel, I hope I did not communicate to you or to the chairman or anybody else in this room that I am trivializing what is going on in this country in terms of racial intimidation and violence. That is not my intent. I am simply suggesting that in the 1960's, there was an effort, as we all know, by blacks to take advantage of newly afforded opportunities under the 1964 Civil Rights Acts, for example, and we were talking about massive efforts to exercise those rights and massive efforts to interrupt the exercises of those rights. That is my only suggestion. I have no doubt that as part of the demented character of much of this Klan and neo-Nazi activity that there is a desire to make blacks and some other minorities perhaps feel they are very uncomfortable about demanding equality in this country, but it is, I think, as bad as it is, it has a level of subtlety that makes it different from the situation in 1965.

Mr. CONYERS. Thank you, Mr. Days. The subcommittee stands adjourned.

[Whereupon the subcommittee adjourned at 1:45 p.m.]

APPENDIX

STATEMENT

of

ALTHEA T. L. SIMMONS, DIRECTOR

WASHINGTON BUREAU, NAACP

ON

VIOLENCE AGAINST MINORITIES

before the

SUBCOMMITTEE ON CRIME OF THE

HOUSE OF REPRESENTATIVES COMMITTEE

ON THE JUDICIARY

UNITED STATES HOUSE OF REPRESENTATIVES

December 10, 1980

In a recent plea to President-elect Reagan, Dr. Benjamin L. Hooks, executive director of the National Association for the Advancement of Colored People, called on Mr. Reagan to disavow any connection between his election and the expanded activities of the Ku Klux Klan. He noted that there is a state of hysteria in the black community arising from the resurgence of the Klan and other terrorist groups and the numerous wanton killings of blacks in various areas of the country. As one who frequently meets with grass-roots members of our Association throughout the country, I can assure you that Dr. Hooks did not exaggerate. There is a strong feeling among our people that we are entering into a period that could duplicate that of the post-Reconstruction era, in which hard-won gains of blacks were taken from them, often with the aid of Klan-perpetrated or inspired physical violence. When blacks read or hear of boy scouts being given rifle training by Klan members, of training camps preparing Klan members for terrorist activities, of widespread Klan activities among our military forces in Germany and on our Navy's ships on the high sea, they must be concerned. Their concerns can only be allayed by strong action by all branches of government that will provide the utmost protection from Klan and other hate group activity.

One of the issues this Subcommittee is addressing is the adequacy of law enforcement efforts. The NAACP has frequently addressed this subject and has concluded that on the federal level, strong enforcement of civil rights laws has been lacking, regardless of the political party in power. Accordingly, we have pressed for a strengthening of the Civil Rights Division of the Department of Justice and an adequate budget for its operation. However, we have not stopped here. We have pressed the Department to better utilize the resources it has to meet the problem of violence against blacks and other minorities. It was our position that the policy of the Department of deferring prosecution to state and local officials was a selective prosecution arrangement that discriminated against blacks because of the long-standing antipathy of local prosecutors to take a strong stand against denial of civil rights of blacks.

To that end, we instituted a law suit against the Department to require it to equitably enforce the laws it administers that provide criminal penalties for denial of civil rights by violence or threats of violence. (NAACP v Levi, 418 F.Supp. 1109 [D.C., 1978]). Our case was eventually mooted by the adoption by the Department of a new policy (in our opinion because of the suit) under which it agreed to handle each civil rights case on its own merits. A copy of the memoranda establishing this policy is attached hereto as an exhibit.

We wish we could say that the matter ended there and that the Department is vigorously pursuing its stated objectives. Unfortunately, our observations lead us to conclude otherwise. In most instances, it appears that the Department still defers to local prosecutorial judgment and acts only when that judgment or the results are so faulty or cause such public furor as to mandate federal action. Witness the McDuffie case in Miami and the Greensboro Klan case. In the former, it is highly possible that had the Department of Justice moved to prosecute rather than leave the matter to local authorities, the results could have been different and the riots avoided. The policy of deferral in the Greensboro situation will, at a minimum, give the communists a propaganda victory, leaving them free to proclaim that the federal government lacks interest in prosecuting those who oppose the Klan and Nazis.

We ask the Subcommittee to ascertain if, in fact, the Department is adhering to the policy proclaimed by Attorney General Bell shortly after he took office as the nation's chief law officer.

While we feel that the Department of Justice has not done all it can under existing law, we must also express our concern that the Congress likewise has not fully exercised its full authority to protect blacks and other racial minorities from violence.

In 1968, the Congress, following the assassination of Dr. Martin Luther King, Jr., did improve the law in this respect, adopting those provisions of 18.U.S.C. 245 that make it a criminal offense to interfere by violence or threats of violence with the exercise of specified civil rights, such as

voting, receiving federal assistance, attending a desegregated school, travelling in interstate commerce, etc. What it failed to do was make it a crime to kill, injure or intimidate a person solely because of the person's race.

To demonstrate the problem the law fails to address, we should consider the recent federal indictment of John Paul Franklin for alledgedly killing two young black men in Salt Lake City (a copy of which is attached). The indictment charges that he, "Did, by force and threat of force, willfully injure, intimidate, and interfere with Theodore Tracy Fields, a black person, because of his race and color and because he was enjoying benefits, privileges, and facilities provided and administered by Salt Lake City, a subdivision of the State of Utah, to wit: Liberty Park, by firing a rifle at said Theodore Tracy Fields with the result that Theodore Tracy Fields died; in violation of Title 18, United States Code, Section 245(b) (2) (B). (Emphasis added). A similar charge was brought as to the other victim, David Loren Martin.

The problem under the statute and the indictment is that the government has the burden of proving not only that the victims were killed because they were black, but also because they were enjoying the facilities of Liberty Park. The latter was probably irrelevant to the killer. In all probability, he killed the two black men because they were in the company of two white females. In all likelihood, he would have done so no matter where he found them. Thus, it would be legally possible for Franklin to confess in open court that he did kill them but that it was not because they were in the park. If the court accepted this as true, it would be legally bound to find him not guilty under the indictment and the law.

We believe that this situation can and should be remedied, as we ask the Subcommittee to consider legislation that will accomplish this objective. We submit that there is ample constitutional authority in the second clause of the 13th Amendment and the fifth clause of the 14th Amendment for Congress

(4)

to make the violation of a person's rights because of race a criminal act. If the Subcommittee so desires, we would submit a memorandum on this issue.

The NAACP and the Black Community demand that the senseless killing of blacks because of their race be ended. We know this Subcommittee shares their views on this subject. We believe that it has the authority and the duty to draft and approve legislation that would close the gaps in existing law. We urgently request that it do so.

We realize our request comes too late in the session to be effectively implemented this year. Accordingly, we request that it be made a priority item on the Subcommittee's agenda when it reconvenes for the 97th Congress.

Exhibit A

MEMORANDUM TO ALL UNITED STATES ATTORNEYS AND
ALL HEADS OF OFFICES, DIVISIONS, BUREAUS
AND BOARDS OF THE DEPARTMENT OF JUSTICE

SUBJECT: Dual Prosecution Policy in Cases Involving Violations of Civil Rights

By memorandum dated April 6, 1959, former Attorney General Rogers set forth Department of Justice policy guidelines regarding federal prosecution of an individual where there has already been a state prosecution of that individual for substantially the same act or acts.

I have reviewed this policy as it applies to cases involving the violation of federal statutes pertaining to civil rights. It is my belief that these statutes protect interests which merit enforcement in their own right, regardless of whatever related enforcement action has been taken by the states. Accordingly, the policy which I shall follow in considering recommendations from U.S. Attorneys regarding separate federal prosecutions is that each and every allegation of a violation of the civil rights laws shall be evaluated on its own merits, with the determining factor being whether or not a federal prosecution is likely to vindicate rights sought to be protected by those laws. The April 6, 1959 guidelines are hereby modified to the extent they are inconsistent with this policy.

GRIFFIN B. BELL
Attorney General

On this 13 day of July, 1977.

RONALD L. RENCHER, United States Attorney
STEVEN W. SNARR, Assistant United States Attorney
200 U. S. Post Office and Courthouse
350 South Main Street
Salt Lake City, Utah 84101
801/524-5682

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff,	:	CR-80-125 J
vs.	:	I N D I C T M E N T
JOSEPH PAUL FRANKLIN, aka JAMES CLAYTON VAUGHN, JR., aka B. BRADLEY, aka HERBERT, aka JAMES A. COOPER, aka ED GARLAND, aka JOSEPH R. HAGMAN, aka JOSEPH H. HART, aka WILLIAM R. JACKSON, aka MICHAEL LARSON, aka CHARLES PITTS, aka JOHN TAYLOR, aka JOSEPH R. WILLIAMS, Defendant.	:	Vio. 18 U.S.C. § 245(b)(2)(B) DEPRIVATION OF CIVIL RIGHTS (BY KILLING) WHILE ENJOYING PUBLIC FACILITIES

The Grand Jury charges:

COUNT I

On or about August 20, 1980, in Salt Lake City, Utah, Central Division of the District of Utah, JOSEPH PAUL FRANKLIN, aka JAMES CLAYTON VAUGHN, JR., aka B. BRADLEY, aka HERBERT, aka JAMES A. COOPER, aka ED GARLAND, aka JOSEPH R. HAGMAN, aka JOSEPH H. HART, aka WILLIAM R. JACKSON, aka MICHAEL LARSON, aka CHARLES PITTS, aka JOHN TAYLOR, aka JOSEPH R. WILLIAMS, did, by force and threat of force, wilfully injure, intimidate, and interfere with Theodore Tracy Fields, a black person, because of his race and color and because he was enjoying benefits, privileges, and facilities provided and administered by Salt Lake City, a subdivision of the State of Utah, to wit: Liberty Park, by firing a rifle at said Theodore Tracy Fields with the result that

Theodore Tracy Fields died; in violation of Title 18, United States Code, Section 245(b)(2)(B).

COUNT II

On or about August 20, 1980, in Salt Lake City, Utah, Central Division of the District of Utah, JOSEPH PAUL FRANKLIN, aka JAMES CLAYTON VAUGHN, JR., aka B. BRADLEY, aka HERBERT, aka JAMES A. COOPER, aka ED GARLAND, aka JOSEPH R. HAGMAN, aka JOSEPH H. HART, aka WILLIAM R. JACKSON, aka MICHAEL LARSON, aka CHARLES PITTS, aka JOHN TAYLOR, aka JOSEPH R. WILLIAMS, did, by force and threat of force, wilfully injure, intimidate, and interfere with David Loren Martin, a black person, because of his race and color and because he was enjoying benefits, privileges, and facilities provided and administered by Salt Lake City, a subdivision of the State of Utah, to wit: Liberty Park, by firing a rifle at said David Loren Martin with the result that David Loren Martin died; in violation of Title 18, United States Code, Section 245(b)(2)(B).

A TRUE BILL:

FOREMAN OF THE GRAND JURY

RONALD L. RENCHER
United States Attorney

STEVEN W. SNARR
Assistant United States Attorney

JOHN CONYERS, JR.
1ST DISTRICT, MICHIGAN

COMMITTEES:
JUDICIARY
CHAIRMAN
SUBCOMMITTEE ON CRIME
GOVERNMENT OPERATIONS

Congress of the United States
House of Representatives
Washington, D.C. 20515

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WASHINGTON, D.C. 20515
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231 W. LAFAYETTE
DETROIT, MICHIGAN 48226
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1979 - 1980 Partial Listing of Incidents Regarding Criminal Violence Against Minorities

DATE	CITY	INCIDENT
January 14, 1979	Chico, California	A twenty-two year old deaf black male was shot and killed by two white males. According to press reports, the assailants were alleged to have murdered their victim because they could not find any animals to shoot on a hunting trip.
May 26, 1979	Decatur, Alabama	One-hundred Ku Klux Klansmen attacked a march protesting the conviction of a retarded black male in the rape of a white woman. Two black citizens and two white citizens were shot and wounded during this clash.
September 28, 1979	Boston, Massachusetts	A black male teenager was shot and wounded by a white male sniper. The victim was left a quadriplegic.
October 21, 1979	Oklahoma City, Oklahoma	A black male and a white female companion were murdered by a sniper attack. Oklahoma City police said that the suspect is a white male.
November 3, 1979	Greensboro, North Carolina	A march protesting the Ku Klux Klan was attacked by Ku Klux Klansmen and Nazis. Five demonstrators including three white males, one black female and one Hispanic male were murdered.
January 1, 1980	Indianapolis, Indiana	A retarded black male was murdered by a sniper attack.
January - 1980	Indianapolis, Indiana	A black male was murdered by a sniper attack.
April 19, 1980	Chattanooga, Tennessee	Four black females were shot and wounded by a Ku Klux Klansman.
May - 1980	Boston, Massachusetts	A black male factory worker was fatally stabbed allegedly by a gang of white youths.

DATE	CITY	INCIDENT
May 24, 1980	Fort Wayne, Indiana	Vernon Jordan, President, National Urban League, was critically wounded by a sniper attack.
June 8, 1980	Cincinnati, Ohio	Two black teenagers were murdered by a sniper attack.
June 15, 1980	Johnstown, Pennsylvania	A black male and a white female companion were murdered by a sniper attack.
August 20, 1980	Salt Lake City, Utah.	Two black males were murdered by a sniper attack while jogging through a park with two white female companions. A white male has been indicted for these murders.
August 1980	Boston, Massachusetts	A black male was stabbed fatally allegedly by two white youths.
September 22-September 24, 1980	Buffalo, New York	Three black males and a black teenager were murdered by sniper attacks or shooting incidents. Witnesses [redacted] described the gunman as a white male.
October 8-October 9, 1980	Buffalo, New York	Two black males were murdered and their hearts cut out.
October 10, 1980	Buffalo, New York	A black hospital patient survived an attempted strangulation as he lay in a hospital bed. The assailant was described by a witness as a white male.
October 25, 1980	Chattanooga, Tennessee	A black teenager was wounded allegedly by two white males in a shooting incident.
November 1, 1980	Youngstown, Ohio	A black teenager was murdered in a shooting incident. The alleged assailants were three white youths.
December 4, 1980	Weldon, North Carolina	A black female was raped and murdered allegedl by a white male assailant.
1979-1980	Atlanta, Georgia	Eleven black children have been found murdered during the past sixteen months. Four other black children are still missing.

77-590 O—81——9

Anti-Defamation League of B'nai B'rith
823 United Nations Plaza, New York, NY 10017 ☆ 212-490-2525 Telex 649278

LYNNE IANNIELLO
Director, Communications

L PRESS OFFICE: Wednesday, October 22,
through Sunday, October 26
Bluebonnet Room
The Hilton Hotel
Dallas, Texas
214-747-2011

CONTACTS: Lynne Ianniello
Jay Axelbank

OCT 24 1983

EMBARGO: For Release Friday, Oct. 24

Dallas, TX, Oct. 23....The Anti-Defamation League of B'nai B'rith today made public a report of Ku Klux Klan paramilitary activities in six states and urged the U.S. Attorney General to undertake regular FBI surveillance of the Klan "to protect American citizens from further terrorism and violence."

The findings of the ADL report and its letter (Oct. 21) to Attorney General Benjamin R. Civiletti were revealed by Nathan Perlmutter, national director of the League, at a session of the agency's National Executive Committee meeting here, October 23-36, at the Dallas Hilton.

FBI monitoring of the Klan was sharply curtailed in 1976 by guidelines -- issue in response to charges of FBI abuse of its powers -- which required evidence of actual or imminent violence before probing the actions of domestic groups.

ADL, whose investigative files on the Klan go back to the 1920's, was commissioned this month by the U.S. Commission on Civil Rights to prepare an analysis of the Klan and other extremist groups. Mr. Perlmutter said the report on the paramilitary activities, which is being forwarded to Attorney General Civiletti, will be part of that analysis.

Describing the Klan as consisting of "armed racists, pathological haters of blacks, Jews and other minority groups," Mr. Perlmutter warned that KKK camps and clandestine training sites in various parts of the country present "a clear danger of new Klan violence more serious than ever before."

(more)

-2-

The report named Alabama, Connecticut, Illinois, North Carolina and Texas as the sites of Klan paramilitary training and cited California as a Klan distribution center for instructional manuals and handbooks on terrorism and guerrilla warfare.

The rundown is as follows:

-- Alabama: Bill Wilkinson's "Invisible Empire, Knights of the KKK," the most violent of today's KKK groupings, operates a campsite near Cullman, AL, which has been dubbed "My Lai" and where training includes target practice with M-16 semiautomatic rifles, obstacle course proficiency, study of guerrilla tactics and practicing search and destroy missions. Trainees -- including at least one woman -- wear military-style fatigues. While the exact site of the "My Lai" camp is unknown, there is a possibility that it is on the 47 acre property in north Jefferson County owned by Alabama Grand Dragon Roger Handley.

-- Connecticut: The Grand Dragon of the relatively new branch of the "Invisible Empire" Klan, Gary Piscottano, a 27-year-old security guard from Southington, admits that practice shooting and paramilitary training are being conducted at secret "guerrilla camps." His KKK unit drew 1,000 persons to rallies held this year in Scotland, CT, on property of Francis Rood, a former member of the paramilitary Minutemen who was involved in a 1968 shooting raid on a Connecticut pacifist camp.

-- Illinois: Although its members do not don hoods and robes, many of the members of the Louisville, IL-based Christian Patriot Defense League (CPDL) are members or former members of the Klan and share the Klan's belief that "white Christians" should arm themselves for an impending racial war -- with the "enemy" blacks, Cubans, Mexicans, Haitians, Southeast Asians "and other migrants and racially impure Americans." CPDL leader John Harrell regularly sponsors gatherings on his estate, and this year his self-described "defense" arm -- the Citizens Emergency Defense System -- conducted so-called "survival" training for the 400 to 500 persons in attendance. Included were courses on weapons; combat medics; marksmanship; guard dog training; assault teams; knife fighting; archery, crossbow and black powder guns, and street action. A camouflaged team of commandos demonstrated guerrilla warfare maneuvers on the final day of the gathering.

(more)

-- North Carolina: Prospective members of the KKK Security Guard are trained in guerrilla warfare at a paramilitary camp in Johnstown County, owned by Glenn Miller, a former Green Beret sergeant and county leader of the neo-Nazi National Socialist Party of America (NSPA). The training, in army fatigues, includes brandishing of semiautomatic weapons and handguns. In addition to the Klan, members of the NSPA and the National States Rights Party (NSRP) also train at the camp. The three hate groups -- the Ku Klux Klan, NSPA and NSRP -- formed an alliance, "The United Racist Front," in September, 1979, two months before the Greensboro shooting episode in which five people were killed. Some of the members of the groups which train at the camp were arrested in connection with the Greensboro shootings.

-- Texas: A KKK paramilitary unit calling itself the Texas Emergency Reserve (TER) conducts training activities two weekends each month at various sites in rural East Texas, including one in the vicinity of Anhuac, which has been temporarily shut down. The TER has an estimated membership of from 200 to 500, many veterans of various branches of the Armed Forces, including some members of the Army stationed at Fort Hood. Drills, under instruction by Louis Beam, Grand Dragon of the Texas KKK, include tactical maneuvers, map reading, weapons proficiency and use of Colt AR-15 assault rifles with grenade launchers. Beam has boasted that the Klan military training is more rigorous than that received at Fort Hood.

-- California: While there is no evidence that the Klan here is itself conducting paramilitary training, it encourages and promotes such activities. The White Point Publishing Company of Fallbrook, CA, which is the Klan's book service, carries works on paramilitary subjects for do-it-yourself terrorists. Among them are U.S. Army manuals on making bombs, grenades mines, chemical explosives, fuses and detonators. A manual on "incendiaries" is described by the book service as "a must" for "all students of pyrotechnics." Also distributed are instructions and guides to explosives and bomb disposal, boobytraps, unconventional warfare, fortifications, explosives and demolition.

Report to National Executive Committee
Anti-Defamation League of B'nai B'rith
October 23-26, 1980 Dallas, Texas

Ku Klux Klan Paramilitary Activities

The propensity for violence and lawlessness of the Ku Klux Klan is a matter of public record. Over the years, members of the hooded order have been convicted of acts of racial terrorism, including murder, bombings, assault with deadly weapons and arson. Even now, Klansmen are on trial or serving prison sentences for crimes committed in the recent past. Indeed, the record shows that the current KKK organizations, despite the spurious claim of some of their spokesmen that they represent a "new Klan," have behaved no less lawlessly than did earlier generations of Klansmen.

There now arises evidence of the danger of new Klan violence of an even more serious kind. In camps and clandestine training sites in various parts of the country, members of the KKK and other Klan-like racist groups are engaged in paramilitary training programs. Some of these activities have been labelled by their sponsors as training for "defense," and others have been called "survival" courses. Regardless of the label applied, it is clear that armed racists, pathological haters of blacks, Jews and other minority groups, are engaged in paramilitary training for guerrilla warfare against their purported enemies. The outcome can only be more violence and tragedy.

What follows is a rundown of known paramilitary training programs operated by the Ku Klux Klan and similar racist groups.

Alabama - The Klan paramilitary organization in Alabama is conducted by the Invisible Empire, Knights of the KKK, which is headed nationally by Bill Wilkinson, of Denham Springs, La. "The Invisible," as it is called, is the most violence-prone of the several national Klan groupings. It first gained national attention in May, 1979, when some 100 of its members engaged in a violent confrontation with members of the Southern Christian Leadership Conference in Decatur, Ala., at which four persons were shot.

In September, 1980, Wilkinson's organization revealed a paramilitary campsite it operates somewhere (unspecified) not far from Cullman, Ala. The "Commander" of the Klan trainees is Terry Tucker, the Exalted Cyclops of the Cullman KKK Klavern.

Activities at the camp, which is named "My Lai," include target practice with M-16 rifles, running and crawling through an obstacle course, studying guerilla warfare tactics and practising search-and-destroy missions. Ten men and one woman were seen at the camp, all dressed in military-style fatigues. The full squad, according to the Klan, consists of 15 persons.

Roger Handley, Grand Dragon of "The Invisible" in Alabama, has said that the Cullman paramilitary unit is but one of several in the state, and that campsites are changed every three months.

The exact location of the "My Lai" camp is unknown, but it may be a 47 acre property in North Jefferson County owned by Grand Dragon Roger Handley which has been used as a Klan youth camp. Some 30 boys and girls were given Klan

training there in the summer of 1979. The training consisted of indoctrination in racism and lessons in the use of guns.

Terry Tucker, the "Commander" of the special forces unit, has claimed that similar Klan paramilitary units are training in Mississippi, Georgia, Tennessee, and two unnamed Northern states. He did not specify where they are located. State and federal law enforcement officials in Georgia have said they are unaware of any Klan military-style training camp in that state.

California - There is no evidence that the California Ku Klux Klan is itself conducting paramilitary training activities, but it encourages and promotes them by distributing manuals and handbooks of instruction in terrorism and guerrilla warfare. No fewer than eleven different works on the subject are sold by the KKK's book service, the White Point Publishing Co., 308 Sunbeam Lane, Fallbrook, CA. Among them are various U.S. Army manuals containing instructions on how to make bombs, grenades, mines, chemical explosives, fuses and detonators. One of the army manuals, entitled "Incendiaries," is described by the Klan's book service as a "must" for "all students of pyrotechnics." Among the other titles offered are "Explosives and Bomb Disposal Guides," "Bombs and Bombing," "Boobytraps," "Unconventional Warfare Devices and Techniques," "Field Fortifications," "The Chemistry of Powder and Explosives" and "Explosives and Demolitions." Another manual offered is "The Anarchist Cookbook," which has also been a favorite of various far-left terrorists. The Saturday Review wrote of the "Anarchist Cookbook" that "this book, quite literally, is a manual for murder. It provides specific information for the home manufacturer of bombs, grenades, and other devices for killing and maiming people."

The KKK book service also promotes German Nazi propaganda, including works by Hitler and Goebbels.

The California KKK, under the leadership of Grand Dragon Tom Metzger, currently a candidate for Congress in the 43rd Congressional district, has an armed, uniformed and helmeted "security" force which repeatedly has been involved in violent clashes with the police and anti-Klan demonstrators.

Connecticut - The Ku Klux Klan in Connecticut is a relatively new branch of Bill Wilkinson's Invisible Empire. Its first public activities consisted of two rallies and crossburnings on a weekend in September, 1980, in Scotland, Connecticut, attended by 800-1000 persons, most of them supporters of the Klan. Some 100 new members were signed up at the rallies, where the main speaker was Wilkinson himself. Some violence occurred at the rallies, and arrests occurred when anti-Klan demonstrators attempted to confront the Klan supporters.

Shortly after the rallies, the Connecticut Grand Dragon, Gary Piscottano, a 27-year-old security guard from Southington, announced that the KKK had begun to operate "guerrilla camps" in the state, where practice shooting and other paramilitary training activities were taking place. He stated that the training in Connecticut was not as military-like as that in Alabama, and claimed "we're strictly defensive." He refused to divulge the site(s) of the training activities.

The September Klan rallies in Scotland took place on the property of Francis Rood, a former member of the paramilitary Minutemen who took part in a 1968 shooting raid on a pacifist camp in Voluntown, Conn.

Illinois - The small central Illinois town of Louisville -- located about 100 miles east of St. Louis on Route 45 -- is the headquarters site of a national organization known as the Christian Patriots Defense League (CPDL). The League, under the leadership of John R. Harrell, has in its ranks some current members and former members of the Ku Klux Klan. It also shares with the Klan a racist ideology and a belief that white, Christian Americans should arm themselves in preparation for a forthcoming cataclysmic racial war. The enemy, Harrell and his followers believe, will be blacks, Cubans, Mexicans, Haitians, Southeast Asians and other immigrants and racially "impure" Americans. The CPDL is more cautious about openly expressing its animosity toward Jews, but there is abundant evidence that it is anti-Semitic.

CPDL members do not wear robes and hoods, but the group's similarity to the Klan was illustrated by a violent episode that occurred in March, 1980 in Orlando, Florida, where a unit of the United Klans of America (UKA) broke away and joined the CPDL en masse. The violence broke out when the UKA invaded a meeting of the defectors and attempted forcibly to show them the error of their ways.

The Christian Patriots Defense League sponsors regular gatherings of hundreds of its members on John Harrell's 55-acre estate in Louisville, at which paramilitary "survival" lessons are taught. The "survival" instructions are conducted under the aegis of the Citizens Emergency Defense System, the "defense" arm of Harrell's "patriotic" movement. Recent gatherings occurred in the early summer and fall of 1980. The summer meeting, from June 27th to July 1st, brought some 400-500 persons, mainly from Midwestern states, where they received courses in Guns and Reloading; Camouflage, Demolition and Chemical Warfare; Survival Weapons; Combat Medics; Marksmanship; Guard Dog Training; SWAT (Personal, Home and Community Defense); Knife Fighting; Archery, Crossbow and Black Powder Guns; and Street Action. The paramilitary instructions were interspersed with lectures on such topics as Racial Problems and Solutions; Health and Natural Foods; Women's Responsibility to God and Country; The Real Enemy: Zionism, Communism, Socialism, etc.; Bible Answers to Racial Questions; and, The Holocaust: Design to Destroy Christianity.

On the final day of the program, there was a demonstration of guerrilla warfare maneuvers by a team dressed in camouflage uniforms, with their faces blackened.

Heading the Citizens Emergency Defense System is B. F. M. von Stahl, a retired U.S. Army colonel who saw active duty in World War II and Vietnam. Some of the instructors were also retired military officers.

An example of the content of the courses taught at the conference was one on Emergency Tools and Weapons, given by Charles E. Kehrberg, of Michigan, who was described as "an alert, informed American who recognizes the jeopardy in which Christianity and the White Race in general finds (sic) themselves." Kehrberg told his listeners, "Your basic survival weapon is a .12 gauge shotgun. It's

legal, it's deadly and the ammunition is easy to obtain." He taught his course dressed in combat fatigues with "survival" equipment displayed on a table in front of him, which included a bullet-proof vest, a first-aid kit, a canteen, a field pack.

The course on Survival Weapons was given by Robert Lisenby, of North Carolina, a Vietnam veteran listed in the printed program as "qualified to instruct and train in weaponry, patrolling, map reading, explosives, SWAT, family survival, mountain warfare..." Lisenby illustrated his instructions with semi-automatic weapons and demonstrated how they could be made fully automatic with a conversion kit which he displayed.

Harrell's Louisville estate, the site of these CPDL gatherings, contains the CPDL headquarters building, which is an enlarged replica of George Washington's home in Mt. Vernon, plus 16 other buildings. It also has a lake and a 1400-ft. airstrip.

In addition to the Christian Patriots Defense League and the Citizen's Emergency Defense System, Harrell also heads two other groups, the Christian Conservative Churches of America and the Paul Revere Clubs. Harrell was a successful businessman and a one time candidate for U.S. Senate from Illinois. He says he has been repeatedly charged with evasion of taxes by IRS, which he claims still has a $500,000 tax lien against him. In the 1960's, Harrell was arrested, charged and convicted of harboring a U.S. Marine deserter and resisting federal officers. He was sentenced to 10 years in federal prison, of which he actually served four, in the federal penitentiaries at Terre Haute, Indiana and Leavenworth, Kansas.

Harrell is attempting to purchase or obtain the free use of property in other states for "survival" and paramilitary training activities. Some property has already been acquired in Missouri, 25 miles from Fort Lenord Wood.

North Carolina - There is a paramilitary training camp in Johnstown County, North Carolina where members of the Ku Klux Klan, the neo-Nazi National Socialist Party of America (NSPA) and the National States Rights Party (NSRP) practice guerrilla-warfare dressed in army fatigues and brandishing semi-automatic weapons and handguns. The facility is operated by the NSPA, whose Johnstown County leader, Glenn Miller, of Angier, N.C., a former master sergeant in the Green Berets, owns the property. The North Carolina Nazis refer to their paramilitary program as "storm trooper training" and those who go through it become members of the party's Security Division (SD). The SD uniform consists of black shirts with swastika armbands. Klansman who train at the camp are members of the KKK Security Guard, who wear grey uniforms and tall black boots. The Johnstown County camp is located on state road 1312, near Benson, N.C.

Some of the members of the groups which train at the camp were arrested in connection with the Greensboro shooting episode in which five members of the Communist Workers Party were killed in November, 1979. The three hate groups involved, the KKK, NSPA and NSRP, forged an alliance, the "United Racist Front," in September, 1979, two months before the Greensboro shootings occurred. The alliance was formed at a lodge in Lo burg, N.C. owned by Millard Weston, a cal NSRP leader. Some 100 member the three organizations were in attendance, many of them armed.

In addition to the Johnstown County camp, there is a paramilitary training facility in Davies County, N.C. used solely by the neo-Nazis. The camp is located south of Winston-Salem and those who train there are from the Winston-Salem NSPA unit. Training takes place every Saturday.

Texas - The paramilitary arm of the Ku Klux Klan in Texas calls itself the "Texas Emergency Reserve" (TER) and includes in its ranks members of two Klan groups, the Knights of the Ku Klux Klan and the smaller Original Knights of the KKK. The TER conducts training activities two weekends each month at various sites in rural East Texas. One such encampment is located "roughly 10 miles outside Anhuac." On the first and third Sundays of the month, Klansman gather in Deer Park, a Houston suburb, from which they are transported to the camp.

The TER is believed to have a membership of from 200 to 500, many of them veterans of various branches of the armed forces. Some have been active-duty members of the U.S. Army stationed at Fort Hood, who were observed wearing fatigues and bearing firearms while serving as security guards at a Klan rally in Euless, Texas in June, 1979 and at the national convention of the Knights of the KKK in New Orleans, over the 1979 Labor Day weekend.

The Anhuac Camp is a 50 acre plot where guerrilla warfare is taught to armed TER members by two instructors, one of them Louis Beam, Grand Dragon of the Texas KKK. The training includes tactical maneuvers, military drills, map reading and weapons proficiency. The weapons include Colt AR-15 assault rifles with a special grenade launch attachment.

Grand Dragon Beam has stated that the Klan military training is more rigorous than that which is given at Fort Hood.

The Anhuac camp was temporarily shut down recently because of the publicity it has received.

Anti-Defamation League
of B'nai B'rith
October, 1980

tween appellant and subversive activities in New Hampshire which the Court found to exist in Uphaus v. Wyman, supra, 360 U.S. at 79, 79 S.Ct. at 1045. New Hampshire's interest on this record is too remote and conjectural to override the guarantee of the First Amendment that a person can speak or not, as he chooses, free of all governmental compulsion.

Reversed.

Mr. Justice HARLAN, whom Mr. Justice STEWART and Mr. Justice WHITE join, dissenting.

The Court appears to hold that there is on the record so limited a legislative interest and so little relation between it and the information sought from appellant that the Constitution shields him from having to answer the questions put to him.* New Hampshire in my view should be free to investigate the existence or nonexistence of Communist Party subversion, or any other legitimate subject of concern to the State without first being asked to produce evidence of the very type to be sought in the course of the inquiry. Then, given that the subject of investigation in this case is a permissible one, the appellant seems to me a witness who could properly be called to testify about it; I cannot say as a constitutional matter that inquiry into the current operations of the local Communist Party could not be advanced by knowledge of its operations a decade ago. Believing that "[o]ur function * * * is purely one of constitutional adjudication" and "not to pass judgment upon the general wisdom or efficacy" of the investigating activities under scrutiny, Barenblatt v. United States, 360 U.S. 109, 125, 79 S.Ct. 1081, 1092, 3 L.Ed.2d 1115, I would affirm the judgment of the Supreme Court of New Hampshire.

* No plea of a privilege against self-incrimination was interposed by the witness.

383 U.S. 787

UNITED STATES, Appellant,

v.

Cecil Ray PRICE et al.

Nos. 59, 60.

Argued Nov. 9, 1965.

Decided March 28, 1966.

Defendants were charged with conspiracy to injure three men in exercise of right not to be deprived of life or liberty without due process of law by persons acting under color of laws of state and with willfully subjecting the three men to deprivation of their right, not to be summarily punished without due process of law by persons acting under color of laws of state. The United States District Court for the Southern District of Mississippi dismissed in part the indictments and direct appeals were taken. The Supreme Court, Mr. Justice Fortas, held that, if release of three men from county jail, interception of them on highway and assault and murder of them was joint activity of state officers and nonofficial defendants, nonofficial defendants were acting under color of law in violation of statute and that indictment alleging that sheriff, deputy sheriff and patrolmen, under color of law, participated in conspiracy to punish three persons in custody in county jail without due process of law alleged state action bringing conspiracy within ambit of Fourteenth Amendment.

Reversed and remanded.

1. Criminal Law ⇐4

Congress has power to enforce by appropriate criminal sanction every right guaranteed by due process clause of the Fourteenth Amendment. U.S.C.A.Const. Amend. 14.

2. Civil Rights ⇐15

Misdmeanor, under color of law, statute, ordinance, regulation or custom, of willfully subjecting any inhabitant of any state to deprivation of any rights, privileges, or immunities secured or protected by Constitution or laws of United States is properly stated by allegations of willful deprivation, under color of law, of life and liberty without due process of law. 18 U.S.C.A. § 242; U.S.C.A. Const. Amend. 14.

3. Civil Rights ⇐15

Private persons, jointly engaged with state officials in prohibited action, are acting "under color of law" for purposes of statute prohibiting, under color of law, willfully subjecting any inhabitant of any state to deprivation of any rights, privileges or immunities secured or protected by Constitution or laws of United States. 18 U.S.C.A. § 242; U.S.C.A.Const. Amend. 14.

See publication Words and Phrases for other judicial constructions and definitions.

4. Civil Rights ⇐15

To act "under color" of law for purposes of statute prohibiting, under color of law, willfully subjecting any inhabitant of any state to deprivation of any rights, privileges or immunities secured or protected by Constitution or laws of United States does not require that accused be officer of state and it is enough that he is a willful participant in joint activity with state or its agents. 18 U.S.C.A. § 242; U.S.C.A.Const. Amend. 14.

5. Civil Rights ⇐15

If release of three men from county jail, interception of them on highway and assault and murder of them was joint activity of state officers and nonofficial defendants, nonofficial defendants were acting under color of law, in violation of statute providing punishment for whoever, under color of law, subjects any inhabitant of any state to deprivation of rights, privileges, or immunities secured or protected by Constitution or laws of United States. 18 U.S.C.A. § 242.

6. Civil Rights ⇐15

In view of specific allegation in each count of indictment that all of defendants, official and nonofficial, were acting under color of laws of state, indictment sufficiently charged private individuals with acting under color of law for purposes of statute prohibiting under color of law, willfully subjecting any inhabitant of any state to deprivation of rights, privileges or immunities secured or protected by Constitution or laws of United States. 18 U.S.C.A. § 242.

7. Courts ⇐385(1½)

Supreme Court had jurisdiction to consider on direct appeal question whether statute, which prohibits, under color of law, willfully subjecting any inhabitant of any state to deprivation of any rights, privileges or immunities secured or protected by Constitution or laws of United States, requires that each offender be an official or that he act in an official capacity. 18 U.S.C.A. § 242.

8. Conspiracy ⇐29

Statute prohibiting conspiracy to injure, oppress, threaten or intimidate any citizen in free exercise or enjoyment of any right or privilege secured to him by Constitution or laws of United States extends to conspiracies with respect to rights and privileges protected by Fourteenth Amendment and extends to conspiracies, otherwise in scope of section, participated in by officials alone or in collaboration with private persons. 18 U.S.C.A. § 241; U.S.C.A.Const. Amend. 14.

9. Conspiracy ⇐43(8)

Indictment alleging that defendants conspired together to injure, oppress, threaten and intimidate three persons in free exercise and enjoyment of rights and privileges secured to them by Fourteenth Amendment to Constitution not to be deprived of life or liberty without due process of law by persons acting under color of laws of state properly charged conspiracy in violation of statute. 18 U.S.C.A. § 241; U.S.C.A.Const. Amend. 14.

10. Conspiracy ⇐43(8)

Indictment alleging that sheriff, deputy sheriff and patrolmen, under color of law, participated in conspiracy to punish three persons, without due process of law, under plan to release the persons from county jail at such time that official and nonofficial defendants could and would intercept them and threaten, assault, shoot and kill them alleged state action bringing conspiracy within ambit of Fourteenth Amendment. 18 U.S.C.A. § 241; U.S.C.A.Const. Amend. 14.

11. Constitutional Law ⇐268(1)

Fourteenth Amendment clearly denounces denial of any trial at all to accused. U.S.C.A.Const. Amend. 14.

12. Constitutional Law ⇐254

Fourteenth Amendment protects individual against state action, not against wrongs done by individuals. U.S.C.A. Const. Amend. 14.

13. Conspiracy ⇐29

Statute prohibiting conspiracy to injure, oppress, threaten or intimidate any person in free exercise or enjoyment of any right or privilege secured to him by Constitution or laws of United States embraces all of rights and privileges secured to citizens by all of Constitution and all of laws of United States and was not intended to be confined to rights that are conferred by or flow from federal government as distinguished from those secured or confirmed or guaranteed by Constitution. 18 U.S.C.A. § 241; U.S.C.A.Const. Amend. 14.

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Thurgood Marshall, Sol. Gen., for appellant.

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H. C. Mike Watkins, Meridian, Miss., for appellees.

Mr. Justice FORTAS delivered the opinion of the Court.

These are direct appeals from the dismissal in part of two indictments returned by the United States Grand Jury for the Southern District of Mississippi. The indictments allege assaults by the accused persons upon the rights of the asserted victims to due process of law under the Fourteenth Amendment. The indictment in No. 59 charges 18 persons[1] with violations of 18 U.S.C. § 241 (1964 ed.). In No. 60, the same 18 persons are charged with offenses based upon 18 U.S.C. § 242 (1964 ed.). These are among the so-called civil rights statutes which have come to us from Reconstruction days, the period in our history which also produced the Thirteenth, Fourteenth, and Fifteenth Amendments to the Constitution.

[1] The sole question presented in these appeals is whether the specified statutes make criminal the conduct for which the individuals were indicted. It is an issue of construction, not of constitutional power. We have no doubt of "the power of Congress to enforce by appropriate criminal sanction every right guaranteed by the Due Process Clause of the Fourteenth Amendment." United States v. Williams, 341 U.S. 70, 72, 71 S.Ct. 581, 582, 95 L.Ed. 758.[2]

1. One of the defendants charged in the two indictments, James E. Jordan, is not a party to the present appeal. His case was transferred under Rule 20, Fed.Rules Crim.Proc., to the United States District Court for the Middle District of Georgia.

2. Cf. Mr. Justice Holmes in United States v. Mosley, 238 U.S. 383, 386, 35 S.Ct. 904, 905, 59 L.Ed. 1355 (a federal voting rights case under an earlier version of § 241): "It is not open to question that this statute is constitutional * * *." The source of congressional power in this case is, of course, § 5 of the Fourteenth Amendment, which reads: "The Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

There are three "Williams" cases arising from the same events. The first, with no bearing on the present appeal is United States v. Williams, 341 U.S. 58, 71 S.Ct. 595, 95 L.Ed. 747, involving a prosecution for perjury. The second, United States v. Williams, 341 U.S. 70, 71 S.Ct. 581, was a prosecution for violation of § 241; it will be referred to hereinafter as *Williams* I. The third, Williams v. United States, 341 U.S. 97, 71 S.Ct. 576, 95 L.Ed. 774, was a prosecution for violation of § 242; it will be referred to as *Williams* II.

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The events upon which the charges are based, as alleged in the indictments, are as follows: On June 21, 1964, Cecil Ray Price, the Deputy Sheriff of Neshoba County, Mississippi, detained Michael Henry Schwerner, James Earl Chaney and Andrew Goodman in the Neshoba County jail located in Philadelphia, Mississippi. He released them in the dark of that night. He then proceeded by automobile on Highway 19 to intercept his erstwhile wards. He removed the three men from their automobile, placed them in an official automobile of the Neshoba County Sheriff's office, and transported them to a place on an unpaved road.

These acts, it is alleged, were part of a plan and conspiracy whereby the three men were intercepted by the 18 defendants, including Deputy Sheriff Price, Sheriff Rainey and Patrolman Willis of the Philadelphia, Mississippi, Police Department. The purpose and intent of the release from custody and the interception, according to the charge, were to "punish" the three men. The defendants, it is alleged, "did wilfully assault, shoot and kill" each of the three. And, the charge continues, the bodies of the three victims were transported by one of the defendants from the rendezvous on the unpaved road to the vicinity of the construction site of an earthen dam approximately five miles southwest of Philadelphia, Mississippi.

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These are federal and not state indictments. They do not charge as crimes the alleged assaults or murders. The indictments are framed to fit the stated federal statutes, and the question before us is whether the attempt of the draftsman for the Grand Jury in Mississippi has been successful: whether the indictments charge offenses against the various defendants which may be prosecuted under the designated federal statutes.

We shall deal first with the indictment in No. 60, based on § 242 of the Criminal Code and then with the indictment in No. 59, under § 241. We do this for ease of exposition and because § 242 was enacted by the Congress about four years prior to § 241.[3] Section 242 was enacted in 1866; § 241 in 1870.

I. No. 60.

Section 242 defines a misdemeanor, punishable by fine of not more than $1,000 or imprisonment for not more than one year, or both. So far as here significant, it provides punishment for "Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any inhabitant of any State * * * to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States * * *."

The indictment in No. 60 contains four counts, each of which names as defendants the three officials and 15 nonofficial persons. The First Count charges, on the basis of allegations substantially as set forth above, that all of the defendants conspired "to wilfully subject" Schwerner, Chaney and Goodman "to the deprivation

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of their right, privilege and immunity secured and protected by the Fourteenth Amendment to the Constitution of the United States not to be summarily punished without due process of law by persons acting under color of the laws of the State of Mississippi." This is said to constitute a conspiracy to violate § 242, and therefore an offense under 18

3. In the interest of clarity, we shall use the present designation of the statutes throughout this discussion. Reference is made to the Appendix to Mr. Justice Frankfurter's opinion in *Williams* I, 341 U.S., at 83, 71 S.Ct., at 588, which contains a table showing major changes in the statutes through the years.

U.S.C. § 371 (1964 ed.). The latter section, the general conspiracy statute, makes it a crime to conspire to commit any offense against the United States. The penalty for violation is the same as for direct violation of § 242—that is, it is a misdemeanor.[4]

On a motion to dismiss, the District Court sustained this First Count as to all defendants. As to the sheriff, deputy sheriff and patrolman, the court recognized that each was clearly alleged to have been acting "under color of law" as required by § 242.[5] As to the private persons, the District Court held that "[I]t is immaterial to the conspiracy that these private individuals were not acting under color of law" because the count charges that they were conspiring with persons who were so acting. See United States v. Rabinowich, 238 U.S. 78, 87, 35 S.Ct. 682, 684, 59 L.Ed. 1211.

The court necessarily was satisfied that the indictment, in alleging the arrest, detention, release, interception and killing of Schwerner, Chaney and Goodman, adequately stated as the purpose of the conspiracy, a violation of § 242, and that this section could be violated by "wilfully subject[ing the victims] * * * to the deprivation of their right, privilege and immunity" under the Due Process Clause of the Fourteenth Amendment.

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No appeal was taken by the defendants from the decision of the trial court with respect to the First Count and it is not before us for adjudication.

The Second, Third and Fourth Counts of the indictment in No. 60 charge all of the defendants, not with conspiracy, but with substantive violations of § 242. Each of these counts charges that the defendants, acting "under color of the laws of the State of Mississippi," "did wilfully assault, shoot and kill" Schwerner, Chaney and Goodman, respectively, "for the purpose and with the intent" of punishing each of the three and that the defendants "did thereby wilfully deprive" each "of rights, privileges and immunities secured and protected by the Constitution and the laws of the United States" —namely, due process of law.

The District Court held these counts of the indictment valid as to the sheriff, deputy sheriff and patrolman. But it dismissed them as against the nonofficial defendants because the counts do not charge that the latter were "officers in fact, or de facto in anything allegedly done by them 'under color of law.' "

[2] We note that by sustaining these counts against the three officers, the court again necessarily concluded that an offense under § 242 is properly stated by allegations of willful deprivation, under color of law, of life and liberty without due process of law. We agree. No other result would be permissible under the decisions of this Court. Screws v. United States, 325 U.S. 91, 65 S.Ct. 1031; *Williams* II.[6]

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[3, 4] But we cannot agree that the Second, Third or Fourth Counts may be dismissed as against the nonofficial defendants. Section 242 applies only where a person indicted has acted "under color"

4. "If * * * the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor." 18 U.S.C. § 371 (1964 ed.).

5. This is settled by our decisions in Screws v. United States, 325 U.S. 91, 107–113, 65 S.Ct. 1031, 1038, 89 L.Ed. 1495, and *Williams* II, 341 U.S., at 99–100, 71 S.Ct., at 578.

6. "* * * where police take matters in their own hands, seize victims, beat and pound them until they confess, there cannot be the slightest doubt that the police have deprived the victim of a right under the Constitution. It is the right of the accused to be tried by a legally constituted court, not by a kangaroo court." *Williams* II, 341 U.S., at 101, 71 S.Ct., at 579.

of law. Private persons, jointly engaged with state officials in the prohibited action, are acting "under color" of law for purposes of the statute. To act "under color" of law does not require that the accused be an officer of the State. It is enough that he is a willful participant in joint activity with the State or its agents.[7]

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[5] In the present case, according to the indictment, the brutal joint adventure was made possible by state detention and calculated release of the prisoners by an officer of the State. This action, clearly attributable to the State, was part of the monstrous design described by the indictment. State officers participated in every phase of the alleged venture: the release from jail, the interception, assault and murder. It was a joint activity, from start to finish. Those who took advantage of participation by state officers in accomplishment of the foul purpose alleged must suffer the consequences of that participation. In effect, if the allegations are true, they were participants in official lawlessness, acting in willful concert with state officers and hence under color of law.

[6, 7] Appellees urge that the decision of the District Court was based upon a construction of the indictment to the effect that it did not charge the private individuals with acting "under color" of law. Consequently, they urge us to affirm in No. 60. In any event, they sub-

7. "Under color" of law means the same thing in § 242 that it does in the civil counterpart of § 242, 42 U.S.C. § 1983 (1964 ed.). Monroe v. Pape, 365 U.S. 167, 185, 212, 81 S.Ct. 473, 483, 5 L.Ed. 2d 492 (majority opinion) (Frankfurter, J., dissenting). In cases under § 1983, "under color" of law has consistently been treated as the same thing as the "state action" required under the Fourteenth Amendment. See, e. g., Smith v. Allwright, 321 U.S. 649, 64 S.Ct. 757, 88 L. Ed. 987; Terry v. Adams, 345 U.S. 461, 73 S.Ct. 809, 97 L.Ed. 1152; Simkins v. Moses H. Cone Memorial Hospital, 323 F.2d 959 (C.A.4th Cir.), cert. denied, 376 U.S. 938, 84 S.Ct. 793, 11 L.Ed. 2d 659; Smith v. Holiday Inns, 336 F. 2d 630 (C.A.6th Cir.); Hampton v. City of Jacksonville, 304 F.2d 320 (C.A.5th Cir.), cert. denied, Ghioto v. Hampton, 371 U.S. 911, 83 S.Ct. 256, 9 L.Ed.2d 170; Boman v. Birmingham Transit Co., 280 F.2d 531 (C.A.5th Cir.); Kerr v. Enoch Pratt Free Library, 149 F.2d 212 (C.A.4th Cir.), cert. denied, 326 U.S. 721, 66 S.Ct. 26, 90 L.Ed. 427.

The contrary view in a § 242 context was expressed by the dissenters in Screws, 325 U.S., at 147–149, 65 S.Ct., at 1057 and was rejected then, later in *Williams* II, and finally—in a § 1983 case—in Monroe v. Pape, supra. Cf. Peterson v. City of Greenville, 373 U.S. 244, 250, 83 S.Ct. 1119, 1133, 10 L.Ed.2d 323 (separate opinion of Harlan, J.). Recent decisions of this Court which have given form to the "state action" doctrine make it clear that the indictments in this case allege conduct on the part of the "private" defendants which constitutes "state action," and hence action "under color" of law within § 242. In Burton v. Wilmington Parking Authority, 365 U.S. 715, 81 S.Ct. 856, 6 L.Ed.2d 45, we held that there is "state action" whenever the "State has so far insinuated itself into a position of interdependence [with the otherwise 'private' person whose conduct is said to violate the Fourteenth Amendment] * * * that it must be recognized as a joint participant in the challenged activity, which, on that account, cannot be considered to have been so 'purely private' as to fall without the scope of the Fourteenth Amendment." 365 U.S., at 725, 81 S.Ct., at 862. Cf. Pennsylvania v. Board of Directors of City Trusts, 353 U.S. 230, 77 S.Ct. 806, 1 L.Ed.2d 792; Evans v. Newton, 382 U.S. 296, 86 S.Ct. 486, 15 L. Ed.2d 373; Peterson v. City of Greenville, 373 U.S. 244, 83 S.Ct. 1119; Lombard v. State of Louisiana, 373 U.S. 267, 83 S.Ct. 1122, 10 L.Ed.2d 338; Robinson v. State of Florida, 378 U.S. 153, 84 S.Ct. 1693, 12 L.Ed.2d 771; Griffin v. State of Maryland, 378 U.S. 130, 84 S.Ct. 1770, 12 L.Ed.2d 754; American Communications Ass'n v. Douds, 339 U.S. 382, 401, 70 S.Ct. 674, 685, 94 L.Ed. 925; Public Utilities Comm'n of District of Columbia v. Pollak, 343 U.S. 451, 72 S.Ct. 813, 96 L.Ed. 1068; Smith v. Allwright, 321 U.S. 649, 64 S.Ct. 757; Terry v. Adams, 345 U.S. 461, 73 S.Ct. 809; *Williams* II, 341 U.S., at 99–100, 71 S.Ct., at 578.

mit, since the trial court's decision was based on the inadequacy of the indictment and not on construction of the statute, we have no jurisdiction to review it on direct appeal. United States v. Swift & Co., 318 U.S. 442, 63 S.Ct. 684, 87 L.Ed. 889. We do not agree. Each count of the indictment specifically alleges that all of the defendants were acting "under color of the laws of the State of Mississippi." The fault lies not in the indictment, but in the District Court's view that the statute requires that each offender be an official or that

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he act in an official capacity. We have jurisdiction to consider this statutory question on direct appeal and, as we have shown, the trial court's determination of it is in error. Since each of the private individuals is indictable as a principal acting under color of law, we need not consider whether he might be held to answer as an "aider or abettor" under 18 U.S.C. § 2 (1964 ed.), despite omission to include such a charge in the indictment.

Accordingly, we reverse the dismissal of the Second, Third and Fourth Counts of the indictment in No. 60 and remand for trial.

II. No. 59.

No. 59 charges each of the 18 defendants with a felony—a violation of § 241. This indictment is in one count. It charges that the defendants "conspired together * * * to injure, oppress, threaten and intimidate" Schwerner, Chaney and Goodman "in the free exercise and enjoyment of the right and privilege secured to them by the Fourteenth Amendment to the Constitution of the United States not to be deprived of life or liberty without due process of law by persons acting under color of the laws of Mississippi." The indictment alleges that it was the purpose of the conspiracy that Deputy Sheriff Price would release Schwerner, Chaney and Goodman from custody in the Neshoba County jail at such time that Price and the other 17 defendants "could and would intercept" them "and threaten, assault, shoot and kill them." The penalty under § 241 is a fine of not more than $5,000, or imprisonment for not more than 10 years, or both.

Section 241 is a conspiracy statute. It reads as follows:

"If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the

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United States, or because of his having so exercised the same; or

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

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

The District Court dismissed the indictment as to all defendants. In effect, although § 241 includes rights or privileges secured by the Constitution or laws of the United States without qualification or limitation, the court held that it does not include rights protected by the Fourteenth Amendment.

It will be recalled that in No. 60 the District Court held that § 242 included the denial of Fourteenth Amendment rights—the same right to due process involved in the indictment under § 241. Both include rights or privileges secured by the Constitution or laws of the United States. Neither is qualified or limited. Each includes, presumably, *all* of the Constitution and laws of the United States. To the reader of the two sections, versed only in the English language, it may seem bewildering that the two sections could be so differently read.

But the District Court purported to read the statutes with the gloss of *Williams* I. In that case, the only case in which this Court has squarely confronted

the point at issue, the Court did in fact sustain dismissal of an indictment under § 241. But it did not, as the District Court incorrectly assumed, hold that § 241 is inapplicable to Fourteenth Amendment rights. The Court divided equally on the issue. Four Justices, in an opinion by Mr. Justice Frankfurter, were of the view that § 241 "only covers conduct which interferes with rights arising from the substantive powers of the Federal Government"—rights "which Congress can beyond doubt

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constitutionally secure against interference by private individuals," 341 U.S., at 73, 77, 71 S.Ct., at 582, 535. Four other Justices, in an opinion by Mr. Justice Douglas, found no support for Mr. Justice Frankfurter's view in the language of the section, its legislative history, or its judicial interpretation up to that time. They read the statute as plainly covering conspiracies to injure others in the exercise of the Fourteenth Amendment rights. They could see no obstacle to using it to punish deprivations of such rights. Dismissal of the indictment was affirmed because Mr. Justice Black voted with those who joined Mr. Justice Frankfurter. He did so, however, for an entirely different reason—that the prosecution was barred by *res judicata*—and he expressed no view on the issue whether "§ 241, as applied, is too vague and uncertain in scope to be consistent with the Fifth Amendment." *Williams* I thus left the proper construction of § 241, as regards its applicability to protect Fourteenth Amendment rights, an open question.

[8, 9] In view of the detailed opinions in *Williams* I, it would be supererogation to track the arguments in all of their intricacy. On the basis of an extensive reexamination of the question, we conclude that the District Court erred; that § 241 must be read as it is written—to reach conspiracies "to injure * * * any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States * * *"; that this language includes rights or privileges protected by the Fourteenth Amendment; that whatever the ultimate coverage of the section may be, it extends to conspiracies otherwise within the scope of the section participated in by officials alone or in collaboration with private persons; and that the indictment in No. 59 properly charges such a conspiracy in violation of § 241. We shall confine ourselves to a review of the major considerations which induce our conclusion.

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1. There is no doubt that the indictment in No. 59 sets forth a conspiracy within the ambit of the Fourteenth Amendment. Like the indictment in No. 60, *supra*, it alleges that the defendants acted "under color of law" and that the conspiracy included action by the State through its law enforcement officers to punish the alleged victims without due process of law in violation of the Fourteenth Amendment's direct admonition to the States.

[10] The indictment specifically alleges that the sheriff, deputy sheriff and a patrolman participated in the conspiracy; that it was a part of the "plan and purpose of the conspiracy" that Deputy Sheriff Price, "while having [the three victims] * * * in his custody in the Neshoba County Jail * * * would release them from custody at such time that he [and others of the defendants] * * * could and would intercept [the three victims] * * * and threaten, assault, shoot and kill them."

[11] This is an allegation of state action which, beyond dispute, brings the conspiracy within the ambit of the Fourteenth Amendment. It is an allegation of official, state participation in murder, accomplished by and through its officers with the participation of others. It is an allegation that the State, without the semblance of due process of law as required of it by the Fourteenth Amendment, used its sovereign power and office to release the victims from jail so that they were not charged and tried as re-

quired by law, but instead could be intercepted and killed. If the Fourteenth Amendment forbids denial of counsel, it clearly denounces denial of any trial at all.

[12] As we have consistently held "The Fourteenth Amendment protects the individual against *state action*, not against wrongs done by *individuals*." *Williams* I, 341 U.S., at 92, 71 S.Ct., at 593 (opinion of Douglas, J.). In the present case, the participation by law enforcement officers, as

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alleged in the indictment, is clearly state action, as we have discussed, and it is therefore within the scope of the Fourteenth Amendment.

2. The argument, however, of Mr. Justice Frankfurter's opinion in *Williams* I, upon which the District Court rests its decision, cuts beneath this. It does not deny that the accused conduct is within the scope of the Fourteenth Amendment, but it contends that in enacting § 241, the Congress intended to include only the rights and privileges conferred on the citizen by reason of the "substantive" powers of the Federal Government—that is, by reason of federal power operating directly upon the citizen and not merely by means of prohibitions of state action. As the Court of Appeals for the Fifth Circuit in *Williams* I, relied upon in the opinion below, put it, "the Congress had in mind the federal rights and privileges which appertain to citizens as such and not the general rights extended to all persons by the * * * Fourteenth Amendment." 179 F.2d 644, 648. We do not agree.

[13] The language of § 241 is plain and unlimited. As we have discussed, its language embraces *all* of the rights and privileges secured to citizens by *all* of the Constitution and *all* of the laws of the United States. There is no indication in the language that the sweep of the section is confined to rights that are conferred by or "flow from" the Federal Government, as distinguished from those secured or confirmed or guaranteed by the Constitution. We agree with the observation of Mr. Justice Holmes in United States v. Mosley, 238 U.S. 383, 387–388, 35 S.Ct. 904, 905–906, that

> "The source of this section in the doings of the Ku Klux and the like is obvious, and acts of violence obviously were in the mind of Congress. Naturally Congress put forth all its powers. * * * [T]his section
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> dealt with Federal rights, and with all Federal rights, and protected them in the lump * * * [It should not be construed so] as to deprive citizens of the United States of the general protection which on its face § 19 [now § 241] most reasonably affords." [8]

We believe, with Mr. Justice Holmes, that the history of the events from which § 241 emerged illuminates the purpose and means of the statute with an unmistakable light. We think that history leaves no doubt that, if we are to give § 241 the scope that its origins dictate, we must accord it a sweep as broad as its language. We are not at liberty to seek ingenious analytical instruments for excluding from its general language the Due Process Clause of the Fourteenth Amendment—particularly since the violent denial of legal process was one of the reasons motivating enactment of the section.[9]

8. See also Mr. Justice Rutledge, concurring in result, in Screws v. United States, 325 U.S. 91, 120, 65 S.Ct. 1031, 1044.

9. It would be strange, indeed, were this Court to revert to a construction of the Fourteenth Amendment which would once again narrow its historical purpose—which remains vital and pertinent to today's problems. As is well known, for many years after Reconstruction, the Fourteenth Amendment was almost a dead letter as far as the civil rights of Negroes were concerned. Its sole office was to impede state regulation of railroads or other corporations. Despite subsequent statements to the contrary, nothing in the records of the congressional debates

Section 241 was enacted as part of what came to be known as the Enforcement Act of 1870, 16 Stat. 140.[10] The Act was passed on May 31, 1870, only a few months

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after ratification of the Fifteenth Amendment. In addition to the new § 241, it included a re-enactment of a provision of the Civil Rights Act of 1866 which is now § 242. The intended breadth of § 241 is emphasized by contrast with the narrowness of § 242 as it then was.[11] Section 242 forbade the deprivation, "under color of any law," of "any right secured or protected by this act." The rights protected by the Act were narrow and specific: "to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of person and property as is enjoyed by white citizens [and to] be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and none other." Act of May 31, 1870, § 16, 16 Stat. 144, re-enacting with minor changes Act of April 9, 1866, § 1, 14 Stat. 27. Between 1866 and 1870 there was much agitated criticism in the Congress and in the Nation because of the continued denial of rights to Negroes, sometimes accompanied by violent assaults. In response to the demands for more stringent legislation Congress enacted the Enforcement Act of 1870. Congress had before it and re-enacted § 242 which was explicitly limited as we have described. At the same time, it included § 241 in the Act using broad language to cover not just the rights enumerated in § 242, but all rights and privileges under the Constitution and laws of the United States.

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It was not until the statutory revision of 1874 that the specific enumeration of protected rights was eliminated from § 242. The section was then broadened to include as wide a range of rights as § 241 already did: "any rights, privileges, or immunities, secured or protected by the Constitution or laws of the United States." The substantial change thus effected was made with the customary stout assertions of the codifiers that they had merely clarified and reorganized without changing substance.[12] Section 241 was left essentially unchanged, and neither in the 1874 revision nor in any subsequent re-enactment has there been the slightest indication of a congressional intent to narrow or limit the original broad scope of § 241. It is clear, therefore, that § 241, from original enactment through subsequent codifications, was intended to deal, as Mr. Justice Holmes put it, with conspiracies to interfere with "Federal rights, and with all Federal rights." We find no basis whatsoever for a judgment of Solomon which would give to the statute less than its words command.[13]

or the Joint Committee on Reconstruction indicates any uncertainty that its objective was the protection of civil rights. See Stampp, The Era of Reconstruction, 1865–1877, 136–137 (1965).

10. The official title is "An Act to enforce the Right of Citizens of the United States to vote in the several States of this Union, and for other Purposes."

11. The substantial difference in coverage of the two sections as they were in the Act of 1870 precludes the argument that § 241 should be narrowly construed to exclude Fourteenth Amendment rights because otherwise it would have been duplicative of § 242 taken in conjunction with the general conspiracy statute, 18 U.S.C. § 371. If, as we hold, § 241 was intended to cover all Fourteenth Amendment rights, it was far broader in 1870 than was § 242. For other reasons for rejecting the duplication argument, see the opinion of Mr. Justice Douglas in *Williams* I, 341 U.S., at 83, n. 2, 71 S.Ct., at 591.

12. See 14 Stat. 74; 17 Stat. 570; S.Misc. Doc. No. 101, 40th Cong., 2d Sess.; H. Misc. Doc. No. 31, 40th Cong., 3d Sess.; S.Misc.Doc. No. 3, 42d Cong., 2d Sess.; 2 Cong.Rec. 646, 648, 1029, 1210, 1461.

13. The opinion of Mr. Justice Douglas in *Williams* I, 341 U.S., at 83, 71 S.Ct. at 591, disposes of the argument that the words of § 241 themselves suggest the narrow meaning which the opinion of Mr. Justice Frankfurter found in the section.

The purpose and scope of the 1866 and 1870 enactments must be viewed against the events and passions of the time.[14] The Civil War had ended in April 1865. Relations between Negroes and whites were increasingly turbulent.[15] Congress had taken control of the entire

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governmental process in former Confederate States. It had declared the governments in 10 "unreconstructed" States to be illegal and had set up federal military administrations in their place. Congress refused to seat representatives from these States until they had adopted constitutions guaranteeing Negro suffrage, and had ratified the Fourteenth Amendment. Constitutional conventions were called in 1868. Six of the 10 States fulfilled Congress' requirements in 1868, the other four by 1870.

For a few years "radical" Republicans dominated the governments of the Southern States and Negroes played a substantial political role. But countermeasures were swift and violent. The Ku Klux Klan was organized by southern whites in 1866 and a similar organization appeared with the romantic title of the Knights of the White Camellia. In 1868 a wave of murders and assaults was launched including assassinations designed to keep Negroes from the polls.[16] The States themselves were helpless, despite the resort by some of them to extreme measures such as making it legal to hunt down and shoot any disguised man.[17]

Within the Congress pressures mounted in the period between the end of the war and 1870 for drastic measures. A few months after the ratification of the Thirteenth Amendment on December 6, 1865, Congress, on April 9, 1866, enacted the Civil Rights Act of 1866, which, as we have described, included § 242 in its originally narrow form. On June 13, 1866, the Fourteenth Amendment was proposed, and it was ratified in July 1868. In February 1869 the Fifteenth Amendment was proposed,

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and it was ratified in February 1870. On May 31, 1870, the Enforcement Act of 1870 was enacted.

In this context, it is hardly conceivable that Congress intended § 241 to apply only to a narrow and relatively unimportant category of rights.[18] 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.

This is fully attested by the only statement explanatory of § 241 in the recorded congressional proceedings relative to its enactment. We refer to the speech of Senator Pool of North Carolina who introduced the provisions as an amendment to the Enforcement Act of 1870. The Senator's remarks are printed in full in the Appendix to this opinion.[19] He urged that the section was needed in order to

14. See generally, Stampp, The Era of Reconstruction, 1865–1877 (1965); Nevins, The Emergence of Modern America 1865–1878 (1927).

15. See H.R.Rep. No. 16, 39th Cong., 2d Sess., p. 12 et seq.

16. Cf. Nevins, op. cit. supra, at 351.

17. See, id., at 352; Morison, Oxford History of the American People 722–723 (1965).

18. See, for example, United States v. Waddell, 112 U.S. 76, 5 S.Ct. 35, 28 L.Ed. 673 (right to perfect a homestead claim); United States v. Classic, 313 U.S. 299, 61 S.Ct. 1031, 85 L.Ed. 1368 (right to vote in federal elections); Logan v. United States, 144 U.S. 263, 12 S.Ct. 617, 36 L.Ed. 429 (right to be secure from unauthorized violence while in federal custody); In re Quarles, 158 U.S. 532, 15 S.Ct. 959, 39 L.Ed. 1080 (right to inform of violations of federal law). Cf. also United States v. Cruikshank, 92 U.S. 542, 552, 23 L.Ed. 588; Hague v. Committee for Industrial Organization, 307 U.S. 496, 512–513, 59 S.Ct. 954, 962, 83 L.Ed. 1423 (opinion of Roberts, J.); Collins v. Hardyman, 341 U.S. 651, 660, 71 S.Ct. 937, 941, 95 L.Ed. 1253.

19. We include these remarks only to show that the Senator clearly intended § 241 to cover Fourteenth Amendment rights.

punish invasions of the newly adopted Fourteenth and Fifteenth Amendments to the Constitution. He acknowledged that the States as such were beyond the reach of the punitive process, and that the legislation must therefore operate upon individuals. He made it clear that "It matters not whether those individuals be officers or whether they are acting upon their own responsibility." We find no evidence whatever that Senator Pool intended that § 241 should not cover violations

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of Fourteenth Amendment rights, or that it should not include state action or actions by state officials.

We conclude, therefore, that it is incumbent upon us to read § 241 with full credit to its language. Nothing in the prior decisions of this Court or of other courts which have considered the matter stands in the way of that conclusion.[20]

The present application of the statutes at issue does not raise fundamental questions of federal-state relationships. We are here concerned with allegations which squarely and indisputably involve state action in direct violation of the mandate of the Fourteenth Amendment—that no State shall deprive any person of life or liberty without due process of law. This is a direct, traditional concern of the Federal Government. It is an area in which the federal interest has existed for at least a century, and in which federal participation has intensified as part of a renewed emphasis upon civil rights. Even as recently as 1951, when *Williams* I was decided, the federal role in the establishment and vindication of fundamental rights—such as the freedom to travel, nondiscriminatory access to public areas and nondiscriminatory educational facilities—was neither as pervasive nor as intense as it is today. Today, a decision interpreting a federal law in accordance with its historical design, to punish denials by state action of constitutional rights of the person can hardly be regarded as adversely affecting "the wise adjustment between State responsibility and national control * * *." *Williams* I,

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341 U.S., at 73, 71 S.Ct., at 582 (opinion of Frankfurter, J.). In any event, the problem, being statutory and not constitutional, is ultimately, as it was in the beginning, susceptible of congressional disposition.

Reversed and remanded.

Mr. Justice BLACK concurs in the judgment and opinion of the Court except insofar as the opinion relies upon United States v. Williams, 341 U.S. 58, 71 S.Ct. 595; United States v. Williams, 341 U.S. 70, 71 S.Ct. 581; and Williams v. United States, 341 U.S. 97, 71 S.Ct. 576.

APPENDIX TO OPINION OF THE COURT.

Remarks of Senator Pool of North Carolina on sponsoring Sections 5, 6 and 7 of the Enforcement Act of 1870 (Cong.Globe, 41st Cong., 2d Sess., pp. 3611–3613):

MR. POOL. Mr. President, the question involved in the proposition now before the Senate is one in which my section of the Union is particularly interested; although since the ratification of the fifteenth amendment, which we are now about to enforce by appropriate legislation, other sections of the country have become more or less interested in the same question. It is entering upon a new phase of reconstruction; that is, to enforce by appropriate legislation those great principles upon which the reconstruction policy of Congress was based.

I said upon a former occasion on this floor that the reconstruction policy of

20. This Court has rejected the argument that the constitutionality of § 241 may be affected by undue vagueness of coverage. The Court held with reference to § 242 that any deficiency is cured by the requirement that specific intent be proved. Screws v. United States, 325 U.S. 91, 65 S.Ct. 1031. There is no basis for distinction between the two statutes in this respect. See *Williams* I, 341 U.S., at 93–95, 71 S.Ct., at 593 (Douglas, J.).

Congress had been progressive, and that it was necessary that it should be progressive still. The mere act of establishing governments in the recently insurgent States was one thing; the great principles upon which Congress proposed to proceed in establishing those governments was quite another thing, involving principles which lie at the very foundation of all that has been done, and which are intimately connected

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with all the results that must follow from that and from the legislation of Congress connected with the whole subject.

Mr. President, the first thing that was done was the passage of the thirteenth amendment, by which slavery in the United States was abolished. By that four millions of people were taken out from under the protecting hand of interested masters and turned loose to take care of themselves. They were turned loose and put upon their own resources in communities which were imbued with prejudices against them as a race, communities which for the most part had for years past—indeed from the very time when those who are now in existence were born—been taught and had instilled into them a prejudice against the equality which has been attempted to be established for the colored citizens of the United States.

Mr. President, the condition which that thirteenth amendment imposed on the late insurrectionary States was one which demanded the serious consideration and attention of this Government. The equality which by the thirteenth, fourteenth, and fifteenth amendments has been attempted to be secured for the colored men, has not only subjected them to the operation of the prejudices which had theretofore existed, but it has raised against them still stronger prejudices and stronger feelings in order to fight down the equality by which it is claimed they are to control the legislation of that section of the country. They were turned loose among those people, weak, ignorant, and poor. Those among the white citizens there who have sought to maintain the rights which you have thrown upon that class of people, have to endure every species of proscription, of opposition, and of vituperation in order to carry out the policy of Congress, in order to lift up and to uphold the rights which you have conferred upon that class. It is

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for that reason not only necessary for the freedmen, but it is necessary for the white people of that section that there should be stringent and effective legislation on the part of Congress in regard to these measures of reconstruction.

We have heard on former occasions on the floor of the Senate that there were organizations which committed outrages, which went through communities for the purposes, of intimidating and coercing classes of citizens in the exercise of their rights. We have been told here that perhaps it might be well that retaliation should be resorted to on the part of those who are oppressed. Sir, the time will come when retaliation will be resorted to unless the Government of the United States interposes to command and to maintain the peace; when there will be retaliation and civil war; when there will be bloodshed and tumult in various communities and sections. It is not only necessary for the freedmen, but it is important to the white people of the southern section, that by plain and stringent laws the United States should interpose and preserve the peace and quiet of the community.

The fifteenth amendment to the Constitution of the United States provides that the right of citizens of the United States to vote shall not be denied or abridged by the United States, or by any State on account of race, color, or previous condition of servitude. It speaks of "[t]he right of citizens * * * to vote." It has been said that voting is a privilege; but this amendment recognizes it as a right in the citizen; and this right is not to "be denied or abridged by the United States or by any State." What are we to understand by that? Can

individuals abridge it with impunity? Is there no power in this Government to prevent individuals or associations of individuals from abridging or contravening that provision of the Constitution? If that be so, legislation is unnecessary. If our legislation is to apply only to the

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States, it is perfectly clear that it is totally unnecessary, inasmuch as we cannot pass a criminal law as applicable to a State; nor can we indict a State officer as an officer. It must apply to individuals. A State might attempt to contravene that provision of the Constitution by passing some positive enactment by which it would be contravened, but the Supreme Court would hold such enactment to be unconstitutional, and in that way the State would be restrained. But the word "deny" is used. There are various ways in which a State may prevent the full operation of this constitutional amendment. It cannot—because the courts would prevent it—by positive legislation, but by acts of omission it may practically deny the right. The legislation of Congress must be to supply acts of omission on the part of the States. If a State shall not enforce its laws by which private individuals shall be prevented by force from contravening the rights of the citizen under the amendment, it is in my judgment the duty of the United States Government to supply that omission, and by its own laws and by its own courts to go into the States for the purpose of giving the amendment vitality there.

The word "deny" is used not only in this fifteenth amendment, but I perceive in the fourteenth amendment it is also used. When the fourteenth amendment was passed there was in existence what is known as the civil rights bill, a part of which has been copied in the Senate bill now pending. The civil rights bill recognized all persons born or naturalized in the United States as citizens, and provided that they should have certain rights which were enumerated. They are, "to make and enforce contracts, to sue, be parties, and give evidence, to inherit, purchase, lease, sell, hold and convey real and personal property," and to the "full and equal benefit of all laws and proceedings for the security of person and property."

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The civil rights bill was to be enforced by making it criminal for any officer, under color of any State law, to "subject, or cause to be subjected, any [citizen] * * * to the deprivation of any [of the] right[s] secured and and protected" by the act. If an officer of any State were indicted for subjecting a citizen to the deprivation of any of those rights he was not to be indicted as an officer; it was as an individual. And so, under the fourteenth amendment to the Constitution, "[n]o State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws." There the word "deny" is used again; it is used in contradistinction to the first clause, which says, "No State shall make or enforce any law" which shall do so and so. That would be a positive act which would contravene the right of a citizen; but to say that it shall not deny to any person the equal protection of the law it seems to me opens up a different branch of the subject. It shall not deny by acts of omission, by a failure to prevent its own citizens from depriving by force any of their fellow-citizens of these rights. It is only when a State omits to carry into effect the provisions of the civil rights act, and to secure the citizens in their rights, that the provisions of the fifth section of the fourteenth amendment would be called into operation, which is, "that Congress shall enforce by appropriate legislation the provisions of this article."

There is no legislation that could reach a State to prevent its passing a law. It can only reach the individual citizens of

the State in the enforcement of law. You have, therefore, in any appropriate legislation, to act on the citizen, not on the State. If you pass an act by which you make it an indictable offense for an officer

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to execute any law of a State by which he trespasses upon any of these rights of the citizen it operates upon him as a citizen, and not as an officer. Why can you not just as well extend it to any other citizen of the country?

It is, in my judgment, incumbent upon Congress to pass the most stringent legislation on this subject. I believe that we have a perfect right under the Constitution of the United States, not only under these three amendments, but under the general scope and features and spirit of the Constitution itself, to go into any of these States for the purpose of protecting and securing liberty. I admit that when you go there for the purpose of restraining liberty, you can go only under delegated powers in express terms; but to go into the States for the purpose of securing and protecting the liberty of the citizen and the rights and immunities of American citizenship is in accordance with the spirit and whole object of the formation of the Union and the national Government.

There are, Mr. President, various ways in which the right secured by the fifteenth amendment may be abridged by citizens in a State. If a State should undertake by positive enactment, as I have said, to abridge the right of suffrage, the courts of the country would prevent it; and I find that in section two of the bill which has been proposed as a substitute by the Judiciary Committee of the Senate provision is made for cases where officers charged with registration or officers charged with the assessment of taxes and with making the proper entries in connection therewith, shall refuse the right to register or to pay taxes to a citizen. I believe the language of the Senate bill is sufficiently large and comprehensive to embrace any other class of officers that might be charged with any act that was necessary to enable a citizen to perform any prerequisite to voting. But, sir, individuals may prevent the exercise of the right of

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suffrage; individuals may prevent the enjoyment of other rights which are conferred upon the citizen by the fourteenth amendment, as well as trespass upon the right conferred by the fifteenth. Not only citizens, but organizations of citizens, conspiracies, may be and are, as we are told, in some of the States formed for that purpose. I see in the fourth section of the Senate bill a provision for cases where citizens by threats, intimidation, bribery, or otherwise prevent, delay, or hinder the exercise of this right; but there is nothing here that strikes at organizations of individuals, at conspiracies for that purpose. I believe that any bill will be defective which does not make it a highly penal offense for men to conspire together, to organize themselves into bodies, for the express purpose of contravening the right conferred by the fifteenth amendment.

But, sir, there is a great, important omission in this bill as well as in that of the House. It seems not to have struck those who drew either of the two bills that the prevention of the exercise of the right of suffrage was not the only or the main trouble that we have upon our hands. Suppose there shall be an organization of individuals, or, if you please, a single individual, who shall take it upon himself to compel his fellow citizens to vote in a particular way. Suppose he threatens to discharge them from employment, to bring upon them the outrages which are being perpetrated by the Kuklux organizations, so as not to prevent their voting, but to compel them to vote in accordance with the dictates of the party who brings this coercion upon them. It seems to me it is necessary that we should legislate against that. That is a more threatening view of the subject than the mere preventing of registration or of entering men's names upon the assessment books for taxation

or of depositing the ballot in the box. I think the bill cannot be perfected to meet the emergencies of the occasion

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unless there be a section which meets that view of the case.

The Senator from Indiana [Mr. Morton] asks whether I have drawn an amendment to that effect. I have, but I cannot offer it at this time, for the simple reason that there is an amendment to an amendment pending.

MR. MORTON. Let it be read for information.

MR. POOL. It has been printed, and I send it to the desk to be read for information.

The Chief Clerk read the amendment intended to be proposed by Mr. Pool, as follows:

"Insert after section four of the Senate bill the following sections:

"Sec. 5. *And be it further enacted,* That it shall be unlawful for any person, with intent to hinder or influence the exercise of the right of suffrage as aforesaid, to coerce or intimidate, or attempt to coerce or intimidate any of the legally qualified voters in any State or Territory. Any person violating the provisions of this section shall be held guilty of a misdemeanor, and on conviction thereof shall be fined or imprisoned, or both, in the discretion of the court: the fine not to exceed $1,000, and the imprisonment not to exceed one year.

"Sec. 6. *And be it further enacted,* That if two or more persons shall band or conspire together, or go in disguise upon the public highway, or upon the premises of another, with intent to violate any provision of this act, or to injure, oppress, threaten, or intimidate any citizen with intent to prevent or hinder his free exercise and enjoyment of any right or privilege granted or secured to him by the Constitution or laws of the United States, such person shall be held guilty of felony, and on conviction thereof shall be fined and imprisoned; the fine not to exceed $5,000 and the imprisonment not to exceed ten years; and shall, moreover, be thereafter ineligible to and disabled from holding any office or place of honor,

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profit, or trust created by the Constitution or laws of the United States.

"Sec. 7. *And be it further enacted,* That if in the act of violating any provision in either of the two preceding sections, any other felony, crime, or misdemeanor shall be committed, the offender may be indicted or prosecuted for the same in the courts of the United States, as hereinafter provided, for violations of this act; and on conviction thereof shall be punished for the same with such punishments as are attached to like felonies, crimes, and misdemeanors by the laws of the State in which the offense may be committed.

"Strike out section twelve and substitute therefor the following:

"*And be it further enacted,* That the President of the United States, or such person as he may empower for that purpose, may employ in any State such part of the land and naval forces of the United States, or of the militia, as he may deem necessary to enforce the complete execution of this act; and with such forces may pursue, arrest, and hold for trial all persons charged with the violation of any of the provisions of this act, and enforce the attendance of witnesses upon the examination or trial of such persons."

* * * * *

MR. POOL. The Senator from Indiana asked if I had an amendment prepared which met the view of the case I was presenting in regard to the compelling of citizens to vote in a particular way. The first section of the amendment which I have offered uses this language:

"That it shall be unlawful for any person with intent to hinder or influence the exercise of the right of suffrage as aforesaid, to coerce or intimidate or attempt to coerce or intimidate any of the

legally qualified voters in any State or Territory."

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But, Mr. President, there is another view which seems to have been lost sight of entirely by those who have drawn both the House bill and the bill now pending before the Senate, and from which we apprehend very much danger. It is this: the oppression of citizens because of having voted in a particular way, or having voted at all. It may often happen, as it has happened up to this time already, that upon the close of an election colored persons will be discharged from employment by their employers. They may be subjected to outrages of various kinds because they have participated in an election, and cast their votes in a particular way. That is not done for the purpose of punishment so much as for the purpose of deterring them from voting in any succeeding election, or from voting in a way that those who perpetrate these outrages do not desire them to do. I find that branch of the subject is entirely left out of view in the bill.

There is another feature of my amendment which I deem of some importance. It is this:

"That if in the act of violating any provision in either of the two preceding sections any other felony, crime, or misdemeanor shall be committed, the offender may be indicted or prosecuted for the same in the courts of the United States."

I think the most effective mode of preventing this intimidation and these attempts at coercion, as well as the outrages which grow out of these attempts, would be found in making any offense committed in the effort to violate them indictable before the courts of the United States. As was said before, in the discussion of the Georgia question in the Senate, the juries in the communities where these outrages are committed are often composed of men who are engaged in them, or of their friends, or of those who connive at them, or of persons

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who are intimidated by them, and in many instances they dare not bring in a true bill when there is an attempt to indict, or if a true bill be found, they dare not go for conviction on the final trial. It is for that reason that I believe it will be better, it will be the only effective remedy, to take such offenders before the courts of the United States, and there have them tried by a jury which is not imbued with the prejudices and interests of those who perpetrate the crimes.

These are the principal features of the amendment which I have drawn in the effort to perfect this bill; and there is another one to which I will call the attention of the Senate. It is that in regard to calling out the military forces of the United States. I find that in the civil rights bill, as in the bill which has been introduced by the Senate Judiciary Committee, the President is authorized, either by himself or by such person as he may empower for that purpose, to use the military forces of the United States to enforce the act. There in both instances it stops. It has been objected to here that the expression, "or such other person as he may empower for that purpose," should not be in the bill; that it may be subject to abuse. I think it would have no good effect to keep that language in. The President may send his officers and he may empower whomsoever he pleases to take charge of his forces without any such provision.

But there is a use for these forces which seems not to have been adverted to in either the civil rights bill or in the bill that is now pending before the Senate. It is the holding of these offenders for examination and trial after they are arrested. Their confederates, if they are put in the common prisons of the State, will in nine cases out of ten release them. But more important still is it to use these forces to compel the attendance of witnesses; for a subterfuge resorted to is to keep witnesses away

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from the trial. In many instances witnesses are more or less implicated

in the commission of the offense. In other cases the witnesses are intimidated and cannot be obtained upon the trial. So in the amendment which I have prepared I have proposed that these forces may be used to enforce the attendance of witnesses both upon the examination and the trial. My purpose in introducing this was to perfect the Senate bill. I think, as I said yesterday, that that bill is liable to less objection than the House bill. I think it is more efficacious in its provisions. I think it is better that the Senate should direct its attention to perfecting that bill, in order that it may be made, when perfected, a substitute for the bill that came from the House.

That much being said upon the purpose of perfecting the bill and making it efficacious, I have very little more to say. I did not intend when I rose to say much upon the general power, which has been questioned here, to pass any law at all. I think it is better to do nothing than to do that which will not have the proper effect. To do that which will not accomplish the purpose would be worse than doing nothing at all. That the United States Government has the right to go into the States and enforce the fourteenth and the fifteenth amendments is, in my judgment, perfectly clear, by appropriate legislation that shall bear upon individuals. I cannot see that it would be possible for appropriate legislation to be resorted to except as applicable to individuals who violate or attempt to violate these provisions. Certainly we cannot legislate here against States. As I said a few moments ago, it is upon individuals that we must press our legislation. It matters not whether those individuals be officers or whether they are acting upon their own responsibility; whether they are acting singly or in organizations. If there is to be appropriate legislation at all, it must be that which applies to individuals.

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I believe that the United States has the right, and that it is an incumbent duty upon it, to go into the States to enforce the rights of the citizens against all who attempt to infringe upon those rights when they are recognized and secured by the Constitution of the country. If we do not possess that right the danger to the liberty of the citizen is great indeed in many parts of this Union. I think this question will come time and again as years pass by, perhaps before another year, in different forms before the Senate. It is well that we should deal with it now and deal with it squarely, and I hope that the Senate will not hesitate in doing so.

Mr. President, the liberty of a citizen of the United States, the prerogatives, the rights, and the immunities of American citizenship, should not be and cannot be safely left to the mere caprice of States either in the passage of laws or in the withholding of that protection which any emergency may require. If a State by omission neglects to give to every citizen within its borders a free, fair, and full exercise and enjoyment of his rights it is the duty of the United States Government to go into the State, and by its strong arm to see that he does have the full and free enjoyment of those rights.

Upon that ground the Republican party must stand in carrying into effect the reconstruction policy, or the whole fabric of reconstruction, with all the principles connected with it, amounts to nothing at all; and in the end it will topple and fall unless it can be enforced by the appropriate legislation, the power to enact which has been provided in each one of the great charters of liberty which that party has put forth in its amendments to the Constitution. Unless the right to enforce it by appropriate legislation is enforced stringently and to the point, it is clear to my mind that there will be no efficacy whatever in what has been done up to this time to carry out and to establish that policy.

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I did not rise, sir, for the purpose of arguing the question very much in detail.

I did not rise for the purpose of making any appeals to the Senate; but more for the purpose of asserting here and arguing for a moment the general doctrine of the right of the United States to intervene against individuals in the States who attempt to contravene the amendment to the Constitution which we are now endeavoring to enforce, and for the purpose of calling attention to the defects in the bill and offering a remedy for them.

383 U.S. 745

UNITED STATES, Appellant,

v.

Herbert GUEST et al.

No. 65.

Argued Nov. 9, 1965.

Decided March 28, 1966.

Prosecution for alleged conspiracy against rights of citizens. The United States District Court for the Middle District of Georgia, Athens Division, sustained defendants' motions to dismiss indictment, 246 F.Supp. 475, and the government appealed. The Supreme Court, Mr. Justice Stewart, held that dismissal of portion of indictment charging conspiracy to deprive Negroes of right to full and equal enjoyment of goods, services, facilities, privileges, advantages, and accommodations of motion pictures, restaurants, and other places of public accommodation, on ground that it was not alleged that defendants' acts were motivated by racial discrimination was not reviewable under Criminal Appeals Act; but that portion of indictment charging conspiracy to deprive Negroes of right to equal utilization of state owned, operated or managed facilities wherein it was expressly alleged that one of means of accomplishing object of conspiracy was "by causing the arrest of Negroes by means of false reports that such Negroes had committed criminal acts" contained allegation of state involvement sufficient to require denial of motion to dismiss; and that portion of indictment charging conspiracy to deprive Negroes of right to travel to and from state and to use state's interstate commerce facilities and instrumentalities charged offense under statute pertaining to conspiracy against rights of citizens, since right to travel from one state to another is constitutionally protected.

Reversed and remanded.

Mr. Justice Harlan, Mr. Justice Brennan, Mr. Chief Justice Warren and Mr. Justice Douglas dissented in part.

1. Courts ⇐385(1½)

Where United States District Court's judgment dismissing first paragraph of indictment was based at least alternatively upon its determination that paragraph was defective as matter of pleading, Supreme Court review of judgment on that branch of indictment was precluded, even though Court might have jurisdiction over appeal as to other paragraphs of indictment. 18 U.S.C.A. § 3731.

2. Courts ⇐385(1½)

Dismissal of portion of indictment charging defendants with conspiracy to deprive Negroes of right to full and equal enjoyment of goods, services, facilities, privileges, advantages, and accommodations of motion pictures, restaurants, and other places of public accommodation, on ground that it was not alleged that defendants' acts were motivated by racial discrimination, was not reviewable under Criminal Appeals Act. Civil Rights Act of 1964, § 201(a), 42 U.S.C.A. § 2000a(a); 18 U.S.C.A. §§ 241, 3731.

2. Stanton Construction Company is the principal debtor and its rights will be adjudicated in the within proceedings so that it is an indispensable party plaintiff.

3. Rockwood Equipment Leasing Company is allegedly the assignor of the claims for rental of equipment to Westinghouse as assignee, and its rights will be adjudicated in the within proceedings so that it is an indispensable party plaintiff.

The wherefore clause in the motion seeks a dismissal of the complaint or, in the alternative, to compel plaintiff, Westinghouse, to delete the Borough of Nanty-Glo and Lower Yoder Municipal Authority as named plaintiffs and join Rockwood and Stanton as parties plaintiff.

No affidavits were submitted.

[1] In our opinion, Westinghouse is the real party in interest and therefore the names of the municipalities should be stricken from the caption of the case. Rules 17(a) and 21, Fed.R.Civ.P.

[2] Further, in our opinion, Stanton Construction Company is not an indispensable party plaintiff. An examination of the bonds attached to the complaint discloses that they are contracts of suretyship. We are not aware of any authority nor has the defendant brought any to our attention in which it has been held, or even contended, that the principal as a matter of law is an indispensable party plaintiff in an action against the surety.

[3] Finally, in our opinion, Rockwood Equipment Leasing Company, the assignor of the leases to Westinghouse is not an indispensable party plaintiff. An assignor is generally neither a real party in interest nor an indispensable party. 2 Barron and Holtzoff, Federal Practice and Procedure, § 482, pp. 14–19; § 512, pp. 102–104; § 513.2, p. 111; 3 Moore, Federal Practice, ¶ 17.09, p. 1339; Wright, Federal Courts, pp. 257–258 (1963).

An appropriate order will be entered.

UNITED STATES of America, by Nicholas deB. KATZENBACH, Attorney General of the United States, Plaintiff,

v.

ORIGINAL KNIGHTS OF the KU KLUX KLAN, an unincorporated Association, et al., Defendants.

Civ. A. No. 15793.

United States District Court
E. D. Louisiana,
New Orleans Division.

Dec. 1, 1965.

Action by United States against klan for injunction to protect Negro citizens seeking to assert their civil rights. The three-judge District Court, Wisdom, Circuit Judge, held that evidence established that klan relied on systematic economic coercion, intimidation, and physical violence in attempting to frustrate national policy expressed in civil rights legislation and that such conduct must be enjoined.

Order accordingly.

1. Injunction ⇐114(3)

Private organizations and private persons are not beyond reach of civil rights act authorizing Attorney General to sue for injunction. Civil Rights Act of 1957, § 131 and (a) as amended 42 U.S.C.A. § 1971 and (a) and §§ 1983, 1985(3); 18 U.S.C.A. §§ 241, 242.

2. Injunction ⇐127

Evidence as to klan activities was admissible, in suit by United States against a klan for injunction to protect Negro citizens seeking to assert their civil rights. U.S.C.A.Const. Amends. 14, 15; Civil Rights Act of 1957, § 131 as amended and Civil Rights Act of 1964, §§ 201, 206, 701, 707, 42 U.S.C.A. §§ 1971, 2000a, 2000a–5, 2000e, 2000e–6; Voting Rights Act of 1965, § 1 et seq., 42 U.S.C.A. § 1973 et seq.; 28 U.S.C.A. § 1345.

3. Injunction ⇐128

Evidence established that klan and individual klansmen had adopted pattern and practice of intimidating, threaten-

ing, and coercing Negro citizens for purpose of interfering with their civil rights. U.S.C.A.Const. Amends. 14, 15; Civil Rights Act of 1957, § 131 as amended and Civil Rights Act of 1964, §§ 201, 206, 701, 707, 42 U.S.C.A. §§ 1971, 2000a, 2000a–5, 2000e, 2000e–6; Voting Rights Act of 1965, § 1 et seq., 42 U.S.C.A. § 1973 et seq.; 28 U.S.C.A. § 1345.

4. Injunction ⇐128

Evidence established that to attain its ends, klan exploited forces of hate, prejudice, and ignorance, relied on systematic economic coercion, varieties of intimidation and physical violence in attempting to frustrate national policy expressed in civil rights legislation. U.S.C.A.Const. Amends. 14, 15; Civil Rights Act of 1957, § 131 as amended and Civil Rights Act of 1964, §§ 201, 206, 701, 707, 42 U.S.C.A. §§ 1971, 2000a, 2000a–5, 2000e, 2000e–6; Voting Rights Act of 1965, § 1 et seq., 42 U.S.C.A. § 1973 et seq.; 28 U.S.C.A. § 1345.

5. Insurrection and Sedition ⇐1

Legal tolerance of secret societies must cease at point where their members assume supra-governmental powers and take law in their own hands.

6. Courts ⇐262.3(8)

Where it appeared that defendant klan, klan members, and klan's dummy front association had interfered with Negro citizens' rights derived from or protected by Constitution and recognized in various civil rights statutes, defendants would be enjoined from interfering with court orders and with civil rights of Negro citizens. U.S.C.A.Const. Amends. 14, 15; Civil Rights Act of 1957, § 131 as amended and Civil Rights Act of 1964, §§ 201, 206, 701, 707, 42 U.S.C.A. §§ 1971, 2000a, 2000a–5, 2000e, 2000e–6; Voting Rights Act of 1965, § 1 et seq., 42 U.S.C.A. § 1973 et seq.; 28 U.S.C.A. § 1345.

7. Courts ⇐262.3(8)

Federal district court had jurisdiction of action by United States against a klan for injunction to protect Negro citizens seeking to assert their civil rights. U.S.C.A.Const. Amends. 14, 15; Civil Rights Act of 1957, § 131 as amended and Civil Rights Act of 1964, §§ 201, 206, 701, 707, 42 U.S.C.A. §§ 1971, 2000a, 2000a–5, 2000e, 2000e–6; Voting Rights Act of 1965, § 1 et seq., 42 U.S.C.A. § 1973 et seq.; 28 U.S.C.A. § 1345.

8. Courts ⇐262.3(8)

In its sovereign capacity, the nation had proper interest in preserving integrity of its judicial system, in preventing interference with court orders, and in making meaningful both nationally created and nationally guaranteed civil rights. U.S.C.A.Const. Amends. 14, 15; Civil Rights Act of 1957, § 131 as amended and Civil Rights Act of 1964, §§ 201, 206, 701, 707, 42 U.S.C.A. §§ 1971, 2000a, 2000a–5, 2000e, 2000e–6; Voting Rights Act of 1965, § 1 et seq., 42 U.S.C.A. § 1973 et seq.; 28 U.S.C.A. § 1345.

9. Injunction ⇐128

Evidence established that defendant association was not a bona fide independent organization but was the defendant klan thinly disguised under respectable title. U.S.C.A.Const. Amends. 14, 15; Civil Rights Act of 1957, § 131 as amended and Civil Rights Act of 1964, §§ 201, 206, 701, 707, 42 U.S.C.A. §§ 1971, 2000a, 2000a–5, 2000e, 2000e–6; Voting Rights Act of 1965, § 1 et seq., 42 U.S.C.A. § 1973 et seq.; 28 U.S.C.A. § 1345.

10. Injunction ⇐128

Evidence established that defendant klan had appeared in action by United States for injunction to protect Negro citizens seeking to assert their civil rights contrary to contention that the klan did not exist, had ceased to exist, or had made no appearance in cause. U.S.C.A.Const. Amend. 14; Civil Rights Act of 1957, § 131 as amended and Civil Rights Act of 1964, §§ 201, 206, 701, 707, 42 U.S.C.A. §§ 1971, 2000a, 2000a–5, 2000e, 2000e–6; Voting Rights Act of 1965, § 1 et seq., 42 U.S.C.A. § 1973 et seq.; 28 U.S.C.A. § 1345.

11. Constitutional Law ⇐311

Inasmuch as defendant admitted that klan's methods were lawless, admissibility of list of officers and members of klan in action for injunction to protect Negro citizens in asserting their civil rights was not precluded on basis that rights of members of an association to pursue lawful interest privately and to associate freely with others are protected by the 14th Amendment. U.S.C.A.Const. Amend. 14; Civil Rights Act of 1957, § 131 and (a) as amended 42 U.S.C.A. § 1971 and (a) and §§ 1983, 1985(3); 18 U.S.C.A. §§ 241, 242.

12. Injunction ⇐128

Evidence established that defendants had intimidated, harassed, and otherwise interfered with Negroes exercising their civil rights, persons encouraging Negroes to assert their rights, public officials, police officers, and other persons seeking to accord Negroes their rights and that acts were part of pattern and practice of defendants to maintain total segregation of races in parish. U.S.C.A.Const. Amends. 14, 15; Civil Rights Act of 1957, § 131 as amended and Civil Rights Act of 1964, §§ 201, 206, 701, 707, 42 U.S.C.A. §§ 1971, 2000a, 2000a–5, 2000e, 2000e–6; Voting Rights Act of 1965, § 1 et seq., 42 U.S.C.A. § 1973 et seq.; 28 U.S.C.A. § 1345.

13. Courts ⇐262.4(11)

Acts otherwise lawful may become unlawful and be enjoined under Civil Rights Act of 1957 if purpose and effect of acts is to interfere with right to vote. Civil Rights Act of 1957, § 131 as amended 42 U.S.C.A. § 1971.

14. Civil Rights ⇐1
Elections ⇐319

Civil Rights Act of 1957 applies to private persons and applies to interfering with right to register and protects Negro citizens against coercion, intimidation and violence. Civil Rights Act of 1957, § 131 as amended 42 U.S.C.A. § 1971.

15. Civil Rights ⇐3, 4

Provisions of 1964 Civil Rights Act relating to places of accommodation, equal employment opportunities, and public facilities reach any person and any action that interferes with enjoyment of civil rights secured by the Act. Civil Rights Act of 1964, §§ 203, 206(a), 301, 701 et seq., 707, 42 U.S.C.A. §§ 2000a–2, 2000a–5(a), 2000b, 2000e et seq., 2000e–6.

16. Injunction ⇐127

Defendants' interference with rights of Negroes to use public facilities was relevant to cause of action of United States against klan and its members for injunction protecting Negro citizens seeking to assert their rights, where that interference was part of pattern and practice of total resistance to Negroes' exercise of civil rights. Civil Rights Act of 1964, §§ 203, 206(a), 301, 701 et seq., 707, 42 U.S.C.A. §§ 2000a–2, 2000a–5(a), 2000b, 2000e et seq., 2000e–6.

17. Equity ⇐55

The Nation has a responsibility to supply a meaningful remedy for right it creates or guarantees.

18. Elections ⇐9

Statute that is necessary and proper legislation to carry out power of Congress to regulate elections for federal office may also be appropriate legislation to enforce provisions of 15th, 14th, and 13th Amendments. U.S.C.A.Const. Amends. 13, 14, 15.

19. Elections ⇐4

Congress has authority to legislate concerning any and all elections affecting federal officers, whether general, special or primary, as long as they are an integral part of procedure of choice or primary effectively controls their choice. U.S.C.A.Const. art. 1, § 4.

20. Constitutional Law ⇐50

Under Constitution, Congress had choice of means to execute its powers. U.S.C.A.Const. art. 1, § 8, cl. 18.

21. Elections ⇐4

Under constitutional provision granting Congress authority to regulate manner of holding federal elections, Congress was authorized to enact statutes regulating registration of voters for such elections. U.S.C.A.Const. art. 1, § 4.

22. Elections ⇐4
Statute protecting against private interference before voting stage is necessary and proper legislation under constitution whenever it is reasonably related to protection of integrity of federal electoral process. U.S.C.A.Const. art. 1, § 4.

23. Elections ⇐11
Right to vote in federal election is privilege of national citizenship derived from constitution. U.S.C.A.Const. art. 1, § 4.

24. Elections ⇐4
Congress can by law protect act of voting, place where it is done, and man who votes, from personal violence or intimidation and election itself from corruption or fraud, even though state and federal officers are elected in the same election. Civil Rights Act of 1957, § 131 as amended 42 U.S.C.A. § 1971, U.S.C.A. Const. art 1, § 4.

25. Elections ⇐4
Section of Fifteenth Amendment to effect that right of citizens to vote shall not be denied or abridged by United States or by any state on account of race, color or previous condition of servitude clearly establishes constitutional basis for Congress to protect right of all citizens to vote in state elections free from discrimination on account of race. U.S.C.A.Const. Amend. 15, § 1.

26. Elections ⇐3
Protection of purity of federal political process may be extended against interference with any activity having a rational relationship with the federal political process. Civil Rights Act of 1957, § 131 as amended 42 U.S.C.A. § 1971; U.S.C.A.Const. art. 1, § 4.

27. Elections ⇐4
Congressional power over voting, though limited to federal elections, extends to voter registration activities, including registration rallies, voter education classes and other activities intended to encourage registration. Civil Rights Act of 1957, § 131 as amended 42 U.S.C.A. § 1971; U.S.C.A.Const. art. 1, § 4.

28. Elections ⇐317
Federal corrupt practice laws operate on campaigning stage rather than voting stage and apply to private persons having no part in election machinery. U.S.C.A.Const. art. 2, § 1.

29. United States ⇐25
States' power over manner of appointing presidential electors is similar to states' reserved power to establish voting qualifications. U.S.C.A.Const. art. 2, § 1.

30. Elections ⇐4
Congress has implied power to protect integrity of processes of popular election of presidential electors once that mode of selection has been chosen by the state. U.S.C.A.Const. art. 2, § 1.

31. Courts ⇐262.3(8)
Acts of defendant klan and defendant member of klan of economic coercion, intimidation and violence directed at Negro citizens in parish for purpose of deterring their registering to vote struck at integrity of federal political process and were therefore enjoinable. U.S.C.A. Const. art. 2, § 1; Civil Rights Act of 1957, § 131 as amended 42 U.S.C.A. § 1971; Voting Rights Act of 1965, § 1 et seq., 42 U.S.C.A. § 1973 et seq.

32. Elections ⇐98
Right to vote in federal elections, a privilege of national citizenship secured by United States Constitution, includes right to register to vote. U.S.C.A.Const. art. 2, § 1.

33. Elections ⇐98
Right to register to vote includes right to be free from public or private interference of activities rationally related to registering and to encouraging others to register. U.S.C.A.Const. art. 2, § 1.

34. Injunction ⇐114(3)
Public accommodations provisions of Civil Rights Act of 1964 may be enforced by injunctive relief against private persons seeking to frustrate statutory objective of statute. Civil Rights Act of 1964, §§ 201, 206, 701, 707, 42 U.S.C.A. §§ 1971, 2000a, 2000a–5, 2000e, 2000e–6.

35. Evidence ⇐265(2)
Defendants who admitted that they beat and threatened Negro pickets to prevent them from enjoying right of equal employment opportunity must be enjoined from such conduct. Civil Rights Act of 1964, §§ 201, 206, 701, 707, 42 U.S.C.A. §§ 1971, 2000a, 2000a–5, 2000e, 2000e–6.

Before WISDOM, Circuit Judge, and CHRISTENBERRY and AINSWORTH, District Judges.

WISDOM, Circuit Judge:

This is an action by the Nation against a klan.*

The United States of America asks for an injunction to protect Negro citizens in Washington Parish, Louisiana, seeking to assert their civil rights. The defendants are the "Original Knights of the Ku Klux Klan", an unincorporated association, the "Anti-Communist Christian Association," a Louisiana corporation, and certain individual klansmen, most of whom come from in and around Bogalusa, Louisiana.[1]

[1] The defendants admit most of the allegations of the complaint. Their legal position is that a private organization and private persons are beyond the reach of the civil rights acts authorizing the Attorney General to sue for an injunction. There is no merit to this contention.

[2] Seeking refuge in silence and secrecy, the defendants object to the admission of any evidence as to klan activities. We hold, however, that what the klan is and what the klan does bear significantly on the material issues and on the appropriate relief.

[3] In deciding to grant the injunction prayed for, we rest our conclusions on the finding of fact that, within the meaning of the Civil Rights Acts of 1957 and 1964, the defendants have adopted a pattern and practice of intimidating, threatening, and coercing Negro citizens in Washington Parish for the purpose of interfering with the civil rights of the Negro citizens. The compulsion within the klan to engage in this unlawful conduct is inherent in the nature of the klan. This is its ineradicable evil.

[4] We find that to attain its ends, the klan exploits the forces of hate, prejudice, and ignorance. We find that the klan relies on systematic economic coercion, varieties of intimidation, and physical violence in attempting to frustrate the national policy expressed in civil rights legislation. We find that the klansmen, whether cloaked and hooded as members of the Original Knights of the Ku Klux Klan, or skulking in anonymity as members of a sham organization, "The Anti-Communist Christian Association", or brazenly resorting to violence on the open streets of Bogalusa, are a "fearful conspiracy against society * * * [holding] men silent by the terror of [their acts] and [their] power for evil".[2]

As early as 1868 General Nathan Bedford Forrest, the first and only Grand Wizard of the original Invisible Empire, dismayed by mounting, uncontrollable violence laid to the klan, ordered the klan to disband and directed klansmen to burn their robes and hoods.[3] General Forrest was a Confederate cavalry hero, a man without fear and, certainly to most Southerners, a man beyond reproach. He an-

* Although this order is cast in the form of an opinion, it represents the Court's findings of fact and conclusions of law.

1. Counsel for the individual defendants take the position that the defendant klan does not exist. The proof shows that the klan continues to exist and to function as a klan in the benign name of the "Anti-Communist Christian Association". See Section II, A of this opinion.

2. Report of the Joint Select Committee to Inquire into the Condition of Affairs in the Late Insurrectionary States (Wash. 1872), p. 28 (Majority Report.)

3. Testimony of General Forrest before the Joint Select Committee. Note 2, p. 6–14, 449–51.

nounced that he would dissociate himself from all klansmen and cooperate with public officials and the courts in enforcing law and order. But the founders of the Invisible Empire had sown dragon's teeth.

The evil that led General Forrest to disband the original Ku Klux Klan was its perversion of purposes by undisciplined klans led by irresponsible leaders.[4] The evil we find in the Original Knights of the Ku Klux Klan is an absolute evil inherent in any secret order holding itself above the law: "the natural tendency of all such organizations * * * to violence and crime."[5] As history teaches, and as the defendants' admissions and the proof demonstrate in this case, violence and crime follow as the night the day when masked men conspire against society itself. Wrapped in myths and misbeliefs which they think relieve them of the obligations of ordinary citizens, klansmen pledge their first allegiance to their Konstitution and give their first loyalty to a cross in flames.

None of the defendant klansmen is a leader in his community. As a group, they do not appear to be representative of a cross-section of the community. Instead they appear to be ignorant bullies, callous of the harm they know they are doing and lacking in sufficient understanding to comprehend the chasm between their own twisted Konstitution and the noble charter of liberties under law that is the American Constitution.

[5, 6] Legal tolerance of secret societies must cease at the point where their members assume supra-governmental powers and take the law in their own hands. We shall not allow the misguided defendants to interfere with the rights of Negro citizens derived from or protected by the Constitution of the United States and now expressly recognized by Congress in various civil rights statutes. We enjoin the Original Knights of the Ku Klux Klan, its dummy front, the Anti-Communist Christian Association, and the individual defendants from interfering with orders of this Court and from interfering with the civil rights of Negro citizens in Washington Parish. Specifically, these rights include:

(1) the right to the equal use and enjoyment of public facilities, guaranteed by the Fourteenth Amendment;

(2) the right to the equal use and enjoyment of public accommodations, guaranteed by the Civil Rights Act, 42 U.S.C. § 2000a;

(3) the right to register to vote and to vote in all elections guaranteed by the Fifteenth Amendment, by 42 U.S.C. § 1971, and by the Voting Rights Act of 1965; and

(4) the right to equal employment opportunities, guaranteed by the Civil Rights Act, 42 U.S.C. § 2000e.

I.

[7, 8] The United States sues under authority of 42 U.S.C. § 1971; 42 U.S.C. §§ 2000a–5 and 2000e–6. Under those sections and under 28 U.S.C. § 1345, this Court has jurisdiction of the action. We resolve any doubt as to the reach of these sections in favor of the Government's standing to sue in a case of this kind. In its sovereign capacity the Nation has a

4. In January 1869 General Forrest issued an order to disband which began "Whereas, the order of the Ku Klux Klan is in some localities being perverted from its original honorable and patriotic purposes * * *" Davis, Authentic History: Ku Klux Klan, 125–28, (N.Y. 1928); Carter, The Angry Scar, 216 (N.Y.1959).

5. "There is no doubt about the fact that great outrages were committed by bands of disguised men during those years of lawlessness and oppression. The natural tendency of all such organizations is to violence and crime; hence it was that General Forrest and other men of influence in the state, by the influence of their moral power, induced them to disband." Report of the Joint Select Committee, Note 2, p. 463 (Minority Report.)

proper interest in preserving the integrity of its judicial system, in preventing klan interference with court orders, and in making meaningful both nationally created and nationally guaranteed civil rights.[6]

II.

We turn now to detailed findings of fact.

A. *Background.* The invisible realm of the Original Knights of the Ku Klux Klan coincides with the Sixth Congressional District of Louisiana. This district is composed of the "Florida" parishes, the area east of the Mississippi River and north of Lake Pontchartrain claimed by Spain until 1810.[7] The events giving rise to this action took place in Washington Parish and centered in Bogalusa, the largest municipality in the Parish. Bogalusa is on the Pearl River at a point where the river forms the boundary between Louisiana and Mississippi. It has a population of about 14,000 white persons and 7,500 Negroes.

The Grand Dragon of the Original Knights of the Ku Klux Klan and President of the Anti-Communist Christian Association is Charles Christmas of Amite in Tangipahoa Parish. Saxon Farmer, who seems to have an uncanny capacity for being present whenever there is racial trouble in Bogalusa, is the second in command of both organizations, Grand Titan of the Klan and Vice-President of the Anti-Communist Christian Association. In February 1955 he was elected to both offices simultaneously. He is also the Exalted Cyclops of one of the Bogalusa Klaverns (local units). In 1960 this Court entered an order in the case of United States v. McElveen et als. (C.A.No. 9146) against Saxon Farmer and others enjoining them from interfering with the rights of Negro citizens to vote.[8] That order restored to voter registration rolls of Washington Parish the names of 1,377 Negro citizens Farmer and others, then active in the Citizens Council, had unlawfully purged from the rolls.

[9] The evidence clearly establishes that the Anti-Communist Christian Association is not a bona fide, independent organization but is the defendant klan thinly disguised under a respectable title. At an earlier time, the klan's dummy organization was called the Bogalusa Gun Club. The defendants' efforts to appear respectable by association may also be reflected in the location of the klan's principal office in the Disabled American Veterans Hall.

[10] The officers, members, internal structure, and method of paying dues of the ACCA and the klan are identical. The corporate structure of the ACCA includes nothing but a charter. The governing rules and by-laws of the ACCA are the Klan Konstitution. The secret oath for admission and resignation in both organizations is the klan oath. Nothing is required of klan members to become members of the ACCA, except identifying to the secretary of the klan unit their assigned secret klan number. Klan members are then furnished a small green card with the name Anti-Communist Christian Association printed thereon. This Court finds that the defendant

6. In United States v. Raines, 1959, 362 U.S. 17, 27, 80 S.Ct. 519, 526, 4 L.Ed. 2d 524 upholding the constitutionality of the Civil Rights Act of 1957 in a suit on behalf of private persons against public officials, the Court said: "It is urged that it is beyond the power of Congress to authorize the United States to bring this action in support of private constitutional rights. But there is the highest public interest in the due observance of all the constitutional guarantees, including those that bear the most directly on private rights, and we think it perfectly competent for Congress to authorize the United States to be the guardian of that public interest in a suit for injunctive relief."

7. The parishes of Washington, Tangipahoa, St. Tammany, St. Helena, Livingston, Ascension, East Feliciana, West Feliciana, East Baton Rouge, West Baton Rouge, Pointe Coupee, and Iberville.

8. Aff'd, sub. nom. United States v. Thomas, 1962, 362 U.S. 58, 80 S.Ct. 612, 4 L.Ed.2d 535.

klan has appeared in this cause. The pretense that the klan does not exist, has ceased to exist, or has made no appearance in this cause is a sham.

Until recently Washington Parish was segregated from cradle to coffin. After Congress adopted the 1964 Civil Rights Act, however, the Negroes in Bogalusa began a broad scale campaign to gain recognition of their rights. Working through the Bogalusa Voters League, they conducted voter registration clinics, held mass meetings to call attention to their grievances, picketed places of public accommodations to protest racially discriminatory policies, and petitioned the Mayor of Bogalusa to accord equal rights in voting, public facilities, employment, and education.

The klan has been the center of unlawful activity in Washington Parish designed to interfere with the efforts of Negro citizens to gain equal rights under the law. Its objective has been to preserve total racial segregation in Bogalusa.

B. *Defendants' Admissions.* An unusual feature of this litigation is the defendants' damning admissions. The defendants *admit* that the klan's objective is to prevent Washington Parish Negroes from exercising the civil rights Congress recognized by statute. In their pleadings, the defendants concede that they further their objective by—

(a) assaulting, threatening, and harassing Negroes who seek to exercise any of their civil rights, and assaulting, threatening and harassing persons who urge that negroes should exercise or be accorded those rights;

(b) committing, threatening to commit, and urging others to commit cats of economic retaliation against Negroes who seek to exercise these rights, and against any persons who urge that Negroes should exercise or be accorded these rights, or who permit open, free and public discussion on the issue;

(c) threatening and intimidating public officials and businessmen who accord or seek to accord Negroes their rights without regard to race or color.

The reason for the admissions was evident at the trial and is evident in the defendants' brief. The United States subpoenaed over a hundred witnesses and, no doubt, was prepared to prove every allegation in the complaint. Because of the defendants' admissions, the disputed issues were few and only a few witnesses were called. As a result, the klan avoided an airing of its activities that necessarily would have occurred had a large number of witnesses testified. Not content with the success of this maneuver, the defendants objected to the introduction of "any evidence pertaining to the activities of the Ku Klux Klan" on the grounds that (a) the klan had ceased to exist and (b) "delv[ing] into these unrelated matters" was solely "to expose" the Ku Klux Klan, an invasion of the "privacy and individual freedoms of all these defendants".

As indicated earlier, however, the nature of the klan's activities bears directly on the existence of a pattern and practice of unlawful conduct and also on the sort of decree that should be issued.

The Government subpoenaed membership lists and records of the klan. The defendants failed to produce these records and at the hearing explained that all of the records of the klan had been destroyed as a matter of klan policy after suit was filed. The Court ordered Christmas, Farmer, and John Magee, the treasurer, to compile from memory lists of officers and members. Counsel for the defendants objected to the admissibility of the lists for the reasons that: (1) there were no lists and records in the custody of the defendants; (2) the requirement was an invasion of the rights of privacy and association. The defendants did not rely on the Fifth Amendment privilege against self-incrimination; they relied on NAACP v. State of Alabama, 1958, 357 U.S. 449, 78 S.Ct. 1163, 2 L.Ed.2d 1488. The Court overruled the objections.

[11] NAACP v. State of Alabama does not support the defendants' position. In that case Justice Harlan, speaking for a unanimous Court, held that the rights of the members of the NAACP to pursue their lawful interests privately and to associate freely with others were protected by the 14th Amendment. Accordingly, the NAACP was relieved of the necessity of turning over its membership list to the State of Alabama. In reaching that decision the Court distinguished People of State of New York ex rel. Bryant v. Zimmerman, 1928, 278 U.S. 63, 49 S.Ct. 61, 73 L.Ed. 184, a case involving a New York Chapter of the Ku Klux Klan. A New York statute required any unincorporated association which demanded an oath as a condition to membership to file with state officials copies of its "constitution, by-laws * * * a roster of its membership and a list of its officers". In Zimmerman the Court found that the statutory classification was reasonable, because of the "manifest tendency on the part of one class to make the secrecy surrounding its purposes and membership a cloak for acts and conduct inimical to personal rights and public welfare. * * * 'It is a matter of common knowledge that this organization [the klan] functions largely at night, its members disguised by hoods and gowns and doing things calculated to strike terror into the minds of the people' ". The Supreme Court reaffirmed this distinction in NAACP v. State of Alabama. Justice Harlan pointed out:

> "[In Zimmerman] the Court took care to emphasize the nature of the organization which New York sought to regulate. The decision was based on the particular character of the Klan's activities, involving acts of unlawful intimidation and violence * * * of which the Court itself took judicial notice."

Here the defendants admit that the klan's methods are lawless. Albertson v. Subversives Activities Board, Nov. 15, 1965, 86 S.Ct. 194 pretermits the question at issue in Zimmerman and NAACP v. State of Alabama.

C. *Out of Their Own Mouths.* (1) The Konstitution of the Original Ku Klux Klan embodies "the Supreme Law of the Realm". Article I states that one of the objects of the organization is to "protect and defend the Constitution of the United States"; but another object is to "maintain forever Segregation of the races and the Divinely directed and historically proven supremacy of the White Race". The preamble reaffirms "the principles for which our forefathers mutually pledged and freely sacrificed their lives, their fortunes, and their sacred honor two centuries ago"; but Article II limits the membership to "mature, Native-born, White, Gentile Men * * * who profess and practice the Christian Faith but who are not members of the Roman Catholic Church".

(2) Printed with the Konstitution is a Proclamation stating that it must be "STRICTLY ADHERED TO." The Proclamation states that "ALL REALM work is carried on by a chain of command", establishes the organization along military lines, defines the duties of the various officers and committees, and describes "The Way of the Klavern".

"All Klaverns will have at least five armed guards with flashlights posted during regular meetings." However, "No one will be allowed to carry a gun inside the Klavern during regular meetings except the Knight Hawk (Keeper of the Klavern)."

A Klokan's (Klavern Investigator's) duty is "to investigate all questionable matters pertaining to the Klavern". "Any Klansman who is known to violate our rules, especially those that give information to any aliens [non-members] shall be expelled immediately, then is to be watched *and visited by the Wrecking Crew if necessary*". (Emphasis added.) Moreover, each klan unit "will set up at least *one team of six men to be used for wrecking crew.* These men should be appointed by the Klokan in secrecy". As judges charged with the duty of

drawing inferences from the demeanor of witnesses, we observed that a former klansman exhibited uneasiness for fear of klan reprisals, when questioned as to the function of the klan "wrecking crew". The defendants' testimony relating to the purpose and functions of the wrecking crew was evasive. There is no doubt however that the wrecking crew performed disciplinary functions and that the discipline could be severe.

(3) The Oath of Allegiance requires faithful obedience to the "Klan's Konstitution and Laws", regulations, "rulings and instructions of the Grand Dragon". "PROVIDENCE ALONE PREVENTING". Klansmen must swear "forever" to "keep sacredly secret . . . all . . . matters and knowledge of the . . . [one asterisk is Klanese for 'Klan'; four asterisks mean "Original Knights of the Ku Klux Klan] . . . [and] never divulge same nor even cause same to be divulged to any person in the whole world". As if this were not enough, the Oath also requires klansmen to swear that they "solemnly vow and most positively swear" never "to yield to bribe, threats, passion, punishment, persecution, persuasion, nor any intice-ments (sic) whatever . . . for the purpose of obtaining . . . a secret or secret information of the XXXX." Section IV on "XXXX ISHNESS" goes a little further. In this section of the oath the klansmen must swear to "keep secret to [himself] a secret of a man committed to him in the sacred bond of * manship. *The crime of violating this oath, treason against the United States of America, rape, and malicious murder alone excepted.*" (Emphasis added.) In pure klanese, the klansman pledges his "life, property, vote, and sacred honor" to uphold "unto death" the Constitution and "*constitutional* laws". (Emphasis added.) But he ends by swearing that he will "zealously shield and preserve * * * free segregated public schools, white SUPREMACY."

(4) The "Boycott Rules" give a good idea of the Klan's coercive tactics. For example:

"The Boycott Committee (one member from each local unit appointed by the Exalted Cyclops) shall have exclusive investigative authority and it shall not act at any time with less than three members present. * * * (1) No person or subject upon whom a boycott shall have been placed shall be patronized by any member. * * * Boycotts shall be imposed upon subjects who are found to be violating the Southern traditions. * * * Boycotts shall be placed upon all members of the Committee who publicly served with Bascom Talley in his efforts to promote the Brooks Hays meeting. Boycotts shall be placed upon any merchant using Negro employees to serve or wait upon persons of the white race. (Service Stations using Negroes to pump gas are excluded.)

Boycotts shall be placed against a subject who serves Negroes and whites on an integrated basis.

Boycotts shall be placed upon a subject who allows Negroes to use White rest rooms. * * *

No member shall be punished for violation of the rules by a member of his family under twelve (12) years of age.

Any member who shall after a hearing have been found guilty of personally patronizing a subject listed on the boycott list shall be *wrecked by the wrecking crew* who shall be appointed by the Committee. (Emphasis added.) * * *

Second offense—If a member is found guilty of personally violating the boycott list he shall be wrecked and banished from the Klan."

It is not surprising that the attorneys for the United States had difficulty extracting from klansmen answers to questions.[9]

9. On two occasions, the Court found it necessary to warn the witnesses of the penalty for perjury. The Court recessed the hearing to allow time for the witnesses to refresh their recollection, and to find, if possible, any membership lists. On one occasion, a witness pleaded the 5th Amendment when, in a colloquy with the Court, it was apparent that he was afraid of klan reprisal for testifying as to klan records; he withdrew his plea of privilege and testified.

(5) In keeping with its false front and as bait for the devout, the Klan purports to perform its dirty work in the name of Jesus Christ. The first object stated in the "Objects and Purposes" clause of the Konstitution of this anti-Roman Catholic, anti-Semitic, hate-breeding organization is to "foster and promote the tenets of Christianity". The Proclamation requires the Kludd (Klavern Chaplain) to "open and close each meeting of the Klavern with prayer". Setting some kind of a record for sanctimonious cant, the Proclamation directs the Kludd to "study and be prepared to explain the 12th chapter of ROMANS at any time, as *this is the religious foundation of the Invisible Empire*". (Emphasis added)

Saint Paul, Apostle to the Gentiles, wrote his Epistle to the Romans in Corinth, midway between Rome and Jerusalem. Addressing himself to Jews and Gentiles, he preached the brotherhood of man: "Glory, honour, and peace, to every man that worketh good, to the Jew first, and also to the Gentile: For there is no respect of persons with God." [10] In the Twelfth Chapter of Romans, Paul makes a beautiful and moving plea for tolerance, for brotherly love, for returning good for evil:

9 Let love be without dissimulation. Abhor that which is evil; cleave to that which is good.

10 Be kindly affectioned one to another with brotherly love; in honour preferring one another; * * *

14 Bless them which persecute you: bless, and curse not. * * *

17 Recompense to no man evil for evil. Provide things honest in the sight of all men.

18 If it be possible, as much as lieth in you, live peaceably with all men.

19 Dearly beloved, avenge not yourselves, but rather give place unto wrath: for it is written, Vengeance is mine; I will repay, saith the Lord.

20 Therefore if thine enemy hunger, feed him; if he thirst, give him drink; for in so doing thou shalt heap coals of fire on his head.

21 Be not overcome of evil, but overcome evil with good."

These words must fall on stony ground in the Klaverns of a Klan.

D. *Specific Findings of Klan Intimidition and Violence.* We select the following examples of the defendants' acts of intimidation and violence.

(1) January 7, 1965, former Congressman Brooks Hays of Arkansas, at the invitation of religious, business, and civic leaders of Bogalusa, was scheduled to speak in Bogalusa at St. Matthews Episcopal Church Parish House on the subject of community relations. The meeting was to be open to both Negroes and whites and it was planned that seating would be on a racially non-segregated basis. After learning of the proposed appearance of Mr. Hays and the arrangements for an unsegregated meeting, the Klan and its members protested to the Mayor and the members of the Commission Council and, by means of threats of civil disorder and economic retaliation against local businessmen who supported the meeting, caused the withdrawal of the invitation to Mr. Hays to speak December 18, 1964, before the Hays invitation was withdrawn, the Mayor of Bogalusa and Police Commissioner Arnold Spiers, in an effort to head off possible civil disorder, appeared at a Klan meeting at the Disabled Veterans Hall. The show of force at this meeting by over 150 hooded Klansmen unquestionably intimidated public officials in Bogalusa and, later, hindered effective police action against Klan violence. On the stand, Mayor Cutrer admitted that *he*

10. Romans, Chap. II, v. 10–11.

was "frightened when he looked into 150 pairs of eyes".

(2) Since at least January 28, 1965, the defendants, including Saxon Farmer, Russell Magee, Dewey Smith, Randle C. Pounds, Billy Alford, Charles McClendon, James Burke, and other members of the defendant Klan, have made a practice of going to places where they anticipated that Negroes would attempt to exercise civil rights, in order to harass, threaten, and intimidate the Negroes and other persons. For this purpose, members of the defendant Klan have gone to Franklinton, Louisiana, when Negro citizens of Washington Parish were expected to apply to register as voters, have gone to restaurants in Bogalusa when Negroes were seeking or were expected to seek service, and have gone to locations in downtown Bogalusa and near the Bogalusa Labor Temple when Negroes were attempting or were expected to demonstrate publicly in support of equal rights for Negroes.

(3) William Yates and Stephen Miller, two CORE workers, came to Bogalusa in January 1965. The Grand Dragon and Grand Titan of the Klan, defendants Charles Christmas and Saxon Farmer, appeared at the Mayor's office to ask the Mayor to send William Yates and Stephen Miller out of Bogalusa. Mayor Cutrer indicated that he could do nothing. The next day, February 3, 1965, three Klansmen, James Hollingsworth, Jr., James Hollingsworth, Sr., and Delos Williams, with two other persons, Doyle Tynes and Ira Dunaway, attempted to insure Yates' and Miller's departure. This group followed Yates and Miller and assaulted Yates.

(4) February 15, 1965, defendant Virgil Corkern, Klansman, and approximately 30 other white persons attacked by Negro citizens and damaged the car in which they were riding. This occurred because the Negroes had sought service at a gasoline station in Bogalusa. On that same day, Corkern and other persons gathered at Landry's Fine Foods, a restaurant in Bogalusa, to observe Negroes seeking service at the restaurant. Corkern and one other entered the restaurant brandishing clubs, ordered the Negroes to leave and threatened to kill Sam Barnes, a member of the Bogalusa Voters League, who had come to the restaurant with six Negro women.

(5) March 29, 1965, defendants Hardie Adrian Goings, Jr., Klansman, and Franklin Harris, Klansman, shortly after meetings had been held at the Bogalusa Labor Temple, threw an ignited tear gas canister at a group of Negroes standing near the Labor Temple. Goings, Jr. then tried to disguise his car by repainting it and removing the air scoop from the top to prevent detection of this crime. Goings or other Klansmen used this same car in May of 1964 to burn a cross at the home of Lou Major, editor of the Bogalusa newspaper.

(6) April 7, 1965, defendants Lattimore McNeese and E. J. (Jack) Dixon, Klansman, threatened Negro citizens during the course of a meeting at the Labor Temple by brandishing and exhibiting a gun at Negroes standing outside the Labor Temple.

(7) April 9, 1965, defendants Billy Alford, Klansman, Randle C. Pounds, Klansman, Lattimore McNeese, Charles McClendon, and James Burke, Klansman, with other persons, went to the downtown area of Bogalusa where Negro citizens were participating in a march to the Bogalusa City Hall to protest denial of equal rights. Pounds, McClendon, and Burke, in a group, moved out to attack the marchers. Pounds assaulted the leader of the march, James Farmer, with a blackjack; McClendon and Burke were temporarily deterred from the threatened assault, but immediately thereafter assaulted a newsman and an FBI agent. Alford assaulted one of the Negroes participating in the march.

(8) May 19, 1965, Virgil Corkern, Klansman, two sons of Virgil Corkern, and other white persons went to Cassidy Park, a public recreation area maintained by the City of Bogalusa, for the purpose of interfering with the enjoyment of the park by Negroes and white CORE workers who were present at the park

and using the facilities for the first time on a non-segregated basis. The Corkern group entered the park and dispersed the Negro citizens with clubs, belts, and other weapons.

(9) Negro members of the Bogalusa Voters League, unable to exercise their civil rights and also unable to obtain from police officials adequate protection from the Klan, filed suit June 25, 1965, in the case of Hicks v. Knight Civ.Ac. No. 15,727 in this Court. The complaint asks for an injunction requiring officers of the City of Bogalusa to open the public parks and to operate such parks without racial discrimination, and also requiring law enforcement officers of the City, Parish, and State to protect the Negro plaintiffs and other Negroes from physical assaults, beatings, harassment, and intimidation at the hands of white citizens. July 10, 1965, this Court issued an injunction in Hicks v. Knight enjoining certain city and parish law enforcement officers from failing to use all reasonable means to protect the Negro plaintiffs and others similarly situated from physical assaults and beatings and from harassment and intimidation preventing or discouraging the exercise of their rights to picket, assemble peaceably, and advocate equal civil rights for Negroes. The preliminary injunction is still in full force and effect. Even after this Court issued its order July 10, 1965, the defendant Klansmen continued to interfere with Negro citizens exercising civil rights and interfered with performance of the duties of law enforcement officials under the injunction in Hicks v. Knight.

(10) July 11, 1965, during a Negro march in downtown Bogalusa, defendants Randle Pounds, Klansman, H. A. Goings, Jr., Klansman, Franklin Harris, Klansman, and Milton E. Parker were present. Harris and Goings passed out 25–30 2 x 2 clubs to youths and Pounds stationed the youths along the march route. Parker was arrested by a City policeman along the route of march for disturbing the peace.

(11) Included in the exhibits are a number of handbills bearing the caption, "Published by the Original Ku Klux Klan of Louisiana". These are crude, scurrilous attacks on certain Bogalusa citizens who advocated a moderate approach to desegregation. For example, in one handbill an Episcopal minister is accused of lying for having said that he had received calls threatening to bomb his church; the minister's son is said to be an alcoholic, to have faced a morals charge in court, and to have been committed to a mental institution. The handbill adds:

> "The Ku Klux Klan is now in the process of checking on Reverend ————'s [naming him] moral standards. If he is cleared you will be so informed. If he is not cleared, you will be informed of any and all misdeeds or moral violation of his in the past."

In the same handbill the Klan announced that it was "boycotting businesses which cater to integration such as Mobile Gas Stations, etc." Mobile Gas Station is a business competitor of the defendant, Grand Titan Saxon Farmer.

All of the handbills attempt to intimidate public officials, the Governor of Louisiana, the Congressman from the Sixth District, the Mayor of Bogalusa, and federal judges (by name). Sometimes the attempted intimidation is by threat of violence, sometimes by character assassination. We quote, for example:

(a) "On numerous occasions we have been asked by local officials to refrain from any acts of violence upon this outside *scum* that has invaded our city. Being a christian organization, we have honored these requests each time. How much longer can we continue??? Contrary to what the liberal element would have you think, this memorandum is not the work of racist and hate mongers or trouble makers, as Governor 'Big John' McKeithen calls us. We are God fearing white, southerners who believe in constitutional government and the preservation of our American heritage.

"If your governor would have done the right thing to start with, he would have refused to protect these local and outside agitators and did just what one great southern governor did. He refused to protect this outside element, (CORE, NAACP, SNICK, ETC.), at the expense of his state. He chose, instead, to let LBJ and Katzenbach protect them. Only after the city of Bogalusa had spent $96,000, did he (Big John McKeithen), make any effort to ease the situation in this city."

(b) "As the people tried to preserve our Southern way of life, the Mayor and Council were slowly selling the people out at every turn. The Mayor has repeatedly GIVEN in. James Farmer did not have the support of the local Negroes. Mayor Cutrer is not giving the city of Bogalusa to the negro citizens of Bogalusa. No. He is giving the city to James Farmer and a handful of Negro Teenagers. NO PRESSURE was put on James Farmer and Dick Gregory to keep them out of Bogalusa. Not by the Mayor, the State Representative, the State Senator, or Congressman Morrison. This was not so when the WHITE CONSERVATIVES wanted to stage a Rally. Pressure was exerted from all levels, even the invited guest speakers were 'leaned on'.

"The Governor, the Congressman, Jimmy Morrison, or his com-rats, Suksty Rayborn, and Buster Sheridan. John McKeithen asked for our vote and promised to serve the PEOPLE. We now ask, Big John, isn't this TRUE? What is happening under your administration?

"Here is the list of elected officials who COULD & AND SHOULD have helped the People of Bogalusa. All these should be tarred and feathered.

MAYOR JESSIE CUTRER
REPRESENTATIVE SHERIDAN
SENATOR SIXTY RAYBORN
SHERIFF DORMAN CROWE
CONGRESSMAN JIMMY MORRISON
GOVERNOR JOHN McKEITHEN
SENATOR RUSSELL LONG

"Now, the QUESTION. Why have these men, elected by the WHITE people turned their back on us in our time of need?

"Is Communism so close? Who bought them? Who bought their HONOR and FOR HOW MUCH?"

(c) "The Ku Klux Klan is strongly organized in Bogalusa and throughout Washington and St. Tammany Parishes. Being a secret organization, we have KLAN members in every conceivable business in this area. We will know the names of all who are invited to the Brooks Hayes meeting and we will know who did and did not attend this meeting. Accordingly, we take this means to urge all of you to refrain from attending this meeting. Those who do attend this meeting will be tagged as intergrationists and will be dealt with accordingly by the Knights of the KU KLUX KLAN."

[12] E. *Summary of the Facts.* We find that the defendants have admitted and the proof has shown that they intimidated, harassed, and otherwise interfered with (1) Negroes exercising their civil rights, (2) persons encouraging Negroes to assert their rights, and (3) public officials, police officers, and other persons seeking to accord Negroes their rights. These acts are part of a pattern and practice of the defendants to maintain total segregation of the races in Washington Parish. The pattern creates an effect extending beyond the effect of any particular act or practice. A Negro who is clubbed in a public park may fear to order coffee in a segregated sandwich shop or he may decide that it is the better part of valor not to exercise voting

rights. The owner of the sandwich shop who receives threatening calls for having served Negro patrons may conclude that taking care of his family comes ahead of hiring Negro employees. The intimidation or violence may be effective not only as to the particular individual against whom it is directed but also as to others who may be less courageous than the Negroes brave enough to parade in Bogalusa or register to vote in Franklinton. The acts of terror and intimidation admitted or proved in this case, acts characteristic of a masked, secret conspiracy, can be halted only by a broad order enjoining the defendants from unlawfully interfering with the exercise of civil rights by Negro citizens.

III.

The defendants contend that the complaint fails to state a claim upon which relief can be granted. They start with the doctrine that the 14th and 15th Amendments apply only to state action or action under color of state law. A. This moves them to conclude as a matter of statutory construction, that Congress did not purport to enforce civil rights against private persons. Moreover, so they argue, the 1957 Act applies to interference with "voting" not to interference with "registering". B. And, they say, if civil rights acts do authorize enforcement against private persons (not owners or managers of a place of public accommodation) the statutes are unconstitutional.

A.

(1) *The Civil Rights Act of 1957.* In the field of civil rights the problem of enforcement is more difficult than the problem of legislative definition. The choice of remedy determines whether an act of Congress simply declares a right or carries machinery for meaningful performance of the statutory promise. In the past, an obvious hiatus has been the lack of effective sanctions against private persons interfering with a citizen's exercise of a civil right. This lack may be explained by a number of reasons. (a) Congress has been reluctant to assert affirmatively by legislation its responsibility to protect the privileges and immunities of citizens of the United States, for fear of imperiling the balanced relationship between the states and the Nation.[11] (b) Courts have narrowly construed criminal sanctions available in Sections 241 and 242 of Title 18.[12] (c) Congress and the courts have been severely limited by the doctrine of state action, in spite of the trend toward an expansive view of what is state action.[13] (d) Congress has been wary of using an equitable remedy in civil rights legislation. The Constitution guarantees an accused in a criminal case the right to in-

11. See United States v. Cruikshank, 1875, 92 U.S. 542, 23 L.Ed. 588; Slaughter-House Cases, 1873, 16 Wall. 36, 21 L.Ed. 394.

12. In 1894 Congress repealed most of the provisions dealing with federal supervision of elections. Two general provisions for criminal sanctions were left standing: 42 U.S.C. § 241 (originally Section 6 of the Civil Rights Act of 1870, later Section 5508 of the Revised Statutes) providing criminal sanctions against conspiracies to deprive any citizen of any right secured by the Constitution and laws of the United States; and 42 U.S.C. § 242 (originally Section 2 of the Civil Rights Act of 1866, later Section 5510 of the Revised Statutes (1873), as amended in 1909, 35 Stat. 1092 by adding the word "wilfully") providing criminal sanctions against the deprivation of constitutional rights, privileges, and immunities under color of state law. See United States v. Williams, 1951, 341 U.S. 70, 71 S.Ct. 581, 95 L.Ed. 758 restricting Section 241 to those cases in which the right allegedly violated is an incident to national citizenship. See also Screws v. United States, 1945, 325 U.S. 91, 65 S.Ct. 1031, 89 L.Ed. 1495 construing Section 242 as requiring specific intent to deprive a person of the right made specific by the Constitution or laws of the United States. Sections 241 and 242 are now before the Supreme Court again. United States v. Price, Nos. 59, 60, October Term, 1965; United States v. Quest, No. 65, October Term, 1965.

13. See Civil Rights Cases, 1883, 109 U.S. 3, 3 S.Ct. 18, 27 L.Ed. 835; United States v. Reese, 1876, 92 U.S. 214, 23 L.Ed. 563.

dictment by a grand jury and trial by a jury of the vicinage. Enforcement of civil rights through the use of an injunction and the contempt power of the courts would by-pass the jury system.[14] However, in communities hostile to civil rights and resentful against "outside", that is, federal interference, injunctive relief may be the most effective method of enforcing civil rights.

Congress considered the pros and cons of these and many other issues when the Administration submitted an omnibus civil rights bill in 1956.[15] The focal issues—the contempt power, the jury system, and the relationship of the States with the Nation—produced one of the great debates in American parliamentary history. By the time the bill was cut down to a voting rights law, as the Civil Rights Act of 1957, 71 Stat. 634, Congress and the country thoroughly understood the significance of the legislation.[16] Congress had opened the door, then nearly shut, to national responsibility for protecting civil rights—created or guaranteed by the Nation—by injunction proceedings against private persons.

14. Hence the compromise affecting jury trials in the 1957 Act: criminal contempt cases arising under the act may be tried by district courts without juries, except where a person convicted is fined more than $300 or imprisoned for more than 6 months. 71 Stat. 638 (1957), 42 U.S.C. § 1995.

15. President Truman's Committee on Civil Rights submitted equally broad recommendations. See Report, To Secure These Rights, 151–161 (1947).

16. In a hearing before the House Judiciary Committee on the Civil Rights Bill, Attorney General Herbert Brownell explicitly explained the purposes and scope of the proposed amendments to Section 1971 of Title 42:

"The most obvious one of these defects in the law is that it does not protect the voters in Federal elections from unlawful interference with their voting rights by private persons—in other words, 1971 applies only to those who act 'under color of law' which means public officials, and the *activities of private persons and organizations designed to disenfranchise voters* in Federal or State elections on account of race or color are not covered by the present provisions of 1971. And so we say that the statute fails to afford the voters full protection from discrimination which was contemplated by the Constitution, especially the 14th and 15th amendments.

"Also this section 1971 is defective in another respect, because it fails to lodge in the Department of Justice and the Attorney General any authority to invoke civil remedies for the enforcement of voting rights. And it is particularly lacking in any provision which would authorize the Attorney General to apply to the courts for preventive relief against the violation of these voting rights.

"And we think that this is also a major defect. The ultimate goal of the Constitution and the Congress is the safeguarding of the free exercise of the voting right, acknowledging of course, the legitimate power of the State to prescribe necessary and fair voting qualifications. And we believe that civil proceedings by the Attorney General to stop any illegal interference and denial of the right to vote would be far more effective in achieving this goal than the private suits for damages which are presently authorized by the statute, and far more effective than the criminal proceedings which are authorized under other laws which, of course, can never be used until after the harm has been actually done.

"No preventive measures can be brought under the criminal statutes. So I think —and I believe you will agree with me—that Congress should now recognize that in order to properly execute the Constitution and its amendments, and in order to perfect the intended application of the statute, section 1971 of title 42, United States Code, should be amended in three respects:

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

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

"And third, an express provision that all State administrative and judicial remedies need not be first exhausted before resort to the Federal courts." [Hearings before Subcommittee No. 5 of the Committee on the Judiciary, 85th Cong., 1st Sess., p. 570 (1957)]

Part III of the Administration's bill, as originally proposed, would have authorized the Attorney General to file suit against any person who deprived or was about to deprive any citizen of any civil right. The compromise that became the Civil Rights Act of 1957 limits civil actions to protection of voting rights in special, general, or primary elections where federal officers are elected.

Before the 1957 Act, Section 1971 (now 1971(a)) was enforced either by an action for damages under 42 U.S.C. § 1983 and § 1985(3) or by a criminal action under 18 U.S.C. §§ 241, 242. The 1957 Act adds four subsections to Section 1971, including:[17]

"(b) *No person, whether acting under color of law or otherwise*, shall intimidate, threaten, coerce, or attempt to intimidate, threaten, or coerce any other person for the purpose of interfering with the right of such other person to vote or to vote as he may choose, or of causing such other person to vote for, or not to vote for, any candidate for the office of President, Vice President, presidential elector, Member of the Senate, or Member of the House of Representatives, Delegates or Commissioners from the Territories or possessions, at any general, special, or primary election held solely or in part for the purpose of selecting or electing any such candidate.

"(c) Whenever *any person* has engaged or there are reasonable grounds to believe that *any person* is about to engage in *any act or practice which would deprive any other person of any right or privilege secured by subsection (a) or (b)*, the Attorney General may institute for the United States, or in the name of the United States, a civil action or other proper proceeding for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order. In any proceeding hereunder the United States shall be liable for costs the same as a private person." (Emphasis added.)

The House Report on the Act—there was no Senate Report—clearly states the purpose of the amendments to 1971:

"[T]his section adds new matter. The provision is a further declaration of the right to vote for Federal offices. It states clearly that *it is unlawful for a private individual* as well as one acting under color of law to interfere or attempt to interfere with the right to vote at any general, special or primary election concerning Federal offices. This amendment, however, does not provide for a remedy. However, the succeeding subsection of the amendment, which is designated subsection (c), does provide a remedy in the form of a civil action instituted on the part of the Attorney General." House Report No. 291, to accompany H.R.6127, U.S.Code Cong. and Adm. News 1966, 1977 (1957) (Emphasis added)

Although Congress narrowed the subject matter of the statute to voting rights, there is nothing narrow about the scope of the Act as to interference with voting rights. The statute is not limited

17. Section 1971(a) derived from the Civil Rights Act of 1870, defined voting rights as follows:

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

to physical acts or to direct interference with the act of voting but applies to—

> "any act or practice which would deprive any other person of any right or privilege secured by subsection (a) or (b) * * *."

The statute applies to "any person" who shall—

> "intimidate, threaten, coerce, or attempt to intimidate, threaten, or coerce for the purpose of interfering with the right of such person to vote."

There is no doubt that this language applies to private individuals. And there is very little doubt that the Act protects the right to regiser and to engage in activities encouraging citizens to register. As discussed more fully elsewhere, registration is an integral, indispensable part of the voting process.[18] It is also a stage that is vulnerable to abuse by the registrar or to unlawful conduct by private persons. Ever since the Supreme Court outlawed the "white" primary, it has been apparent that the main battleground in the war over Negro suffrage would be the registration office.[19] See, for example, the description of the activities of the Citizens Councils and parish registrars in United States v. State of Louisiana, E.D.La.1963, 225 F.Supp. 353, 378–380. Congress was well aware that a major mischief to be combatted in the 1957 Act was economic coercion and threats of intimidation by private persons that would deny or interfere with the Negro's access to registration.[20]

More often than not, the economic coercion and intimidation by private persons are triggered by an educational campaign to encourage registration. United States v. Beaty, 6 Cir. 1961, 288 F.2d 653 is a case in point. The case arose in Haywood County, Tennessee, a county in which no Negroes were registered to vote. In the spring of 1959, a newly formed Civic and Welfare League, apparently similar to the Bogalusa Voters League, initiated a campaign in Haywood and in Fayette Counties to encourage Negroes to register. This led to the institution of a "white" primary in Fayette; later prohibited by a consent decree in April 1960. In the face of a renewed registration drive, white businessmen in both counties retaliated by circulating a "blacklist" containing the names of the Negroes who registered and white citizens who assisted them. The businessmen induced local merchants to boycott anyone whose name appeared on the list, by denying credit and the right to buy necessities through the usual business relations. White landowners evicted sharecroppers and tenant farmers who had registered or whose names appeared on the blacklist. The Attorney General sued the businessmen and landowners, under Section 1971, for immediate injunctive relief.[21] The district judge

18. See Section III, B, (1), (b) of opinion.

19. See Key, Southern Politics 555 (1949); Civil Rights Commission Report 133–38 (1961).

20. In a note, Beatty, Private Economic Coercion and the Civil Rights Act of 1957, 71 Yale L.Jour. 530, 543 (1962), the author points out:
"The Circuit Courts construction of the 1957 act to apply to *economic* coercion in general and to economic coercion involving contract and property rights in particular seems correct. In requesting legislation to protect voting rights, President Eisenhower noted: 'It is disturbing that in some localities allegations persist that Negro citizens are being deprived of their right to vote and are likewise being subjected to unwarranted economic *pressures*.' Senator Douglas, a sponsor of the bill, asserted that the legislation was directed at denials of voting rights *'by economic pressure' as well as by other means*. And Representative Celler, a House sponsor, indicated that if 'the milk dealer, the coal dealer, the butcher, the baker and the candlestick maker * * * agree * * * to boycott' persons who try to vote, the agreement would violate the proposed law."

21. The Attorney General brought a similar suit to enjoin "intimidation, threat, and coercion" in Fayette County. United States v. Atkinson, et als, Civ.Ac. 4121, 6 R.Rel.L.Rep. 200 (1962). See Mendelson, Discrimination (Pren.Hall 1962) 21. And see United States v. Ellis, W.D.S.C. 1942, 43 F.Supp. 321, 324.

granted a restraining order enjoining the businessmen from "interfering through intimidation and/or coercion", but refused to enjoin the landowners on the ground that the Civil Rights Act did not vest the court with authority "to adjudge contracts and property rights". 6 Race Rel.L.Rep. 200. The Sixth Circuit affirmed the judgment as to the businessmen and extended the injunction to the landlords.[22]

In East Carroll Parish, Louisiana, cotton growers refused to gin cotton for Negro farmers who had attempted to register to vote. The Attorney General again sued under the 1957 Act, asking for preventive relief, against owners, operators, and managers of cotton gin businesses and certain other businesses "refusing to gin * * * refusing to sell goods or services, and to conduct ordinary business transactions with, any person for the purpose of discouraging or dissuading such person from attempting to vote and * * * engaging in any attempted threats, intimidations, or coercion of any nature, whether economic or otherwise". Judge Dawkins entered an order, agreed to by the parties, staying proceedings for one year pending full compliance by the defendants with the terms of the proposed restraining order. United States v. Deal, W.D.La.1961, 6 Race Rel.L.Rep. 474.

[13] The parallel between the defendants' intimidation by economic coercion in *Beaty* and in *Deal*, and the defendants' boycott and other activities in this case is too patent to be spelled out. *Beaty* and *Deal* also illustrate a principle of enormous importance in the enforcement of civil rights: acts otherwise lawful may become unlawful and be enjoined under Section 1971, if the purpose and effect of the acts is to interfere with the right to vote.

In United States v. Board of Education of Greene County, Mississippi, 1964, 332 F.2d 40, the Fifth Circuit affirmed the holding below that the government failed to prove that the alleged intimidation was for the purpose of interfering with the right to vote. But, as Judge Tuttle explained in United States v. Bruce (decided Nov. 16, 1965, 353 F.2d 474), the Court in the *Greene County* case assumed:

> "Whereas a school board might, under the circumstances present in that case, have legally failed to renew a teacher's contract for any reason or for no reason at all, if it in fact declined to renew the [teacher's] certificate as a means of coercing or intimidating the teacher as to her right to vote, such conduct would be prohibited under the Act."

In United States v. Bruce twenty-eight white persons in Wilcox County, Alabama, notified Lonnie Brown, a Negro insurance collector, to stay off land owned or controlled by them. As a result Brown could not reach many of his policyholders. Brown had been active in urging his Negro neighbors and friends to register to vote in Wilcox County, a county where no Negroes were registered. The Court held that the trial court erred in dismissing the complaint:

> "The background allegations make a strong case upon which the trial court could infer the correctness of the conclusionary allegations that these defendants did in fact 'intimidate and coerce' the Negro citizens of Wilcox County, through the person of Lonnie Brown, for the purpose of interfering with their right to vote."[23]

22. The Sixth Circuit said:
"If sharecropper-tenants in possession of real estate under contract are threatened, intimidated or coerced by their landlords for the purpose of interfering with their rights of franchise, certainly the fact that the coercion relates to land or contracts would furnish no excuse or defense to the landowners for violating the law." 288 F.2d 653, 656.

23. Judge Tuttle added:
"Thus although the defendants here may have had an almost unrestricted right to invoke the Alabama trespass law to keep all persons from entering upon their property after warning, in

[14] We hold that the Civil Rights Act of 1957 applies to private persons, including the defendants impleaded in this case. We hold that the Act applies to interfering with the right to register as well as interfering with the right to vote; that the Act protects Negro citizens against the coercion, intimidation, and violence the defendants admitted or were proved to have committed in this case.

(2) *The Civil Rights Act of 1964.* The '64 Act creates new categories of civil rights and extends the authority of the Attorney General to protect such rights by a civil suit for injunctive relief against any person, public or private.

[15] For purposes of this proceeding, the most pertinent provisions are those relating to (a) places of public accommodation, (b) equal employment opportunities, and (c) public facilities. As clearly as words can say, these provisions reach any person and any action that interferes with the enjoyment of civil rights secured by the Act. Thus, 42 U.S.C. § 2000a–2 of Title II, is not limited to prohibiting discrimination or segregation by the owner or manager of a place of public accommodation. The section provides:

> "No person shall (a) withhold, deny, or attempt to withhold or deny, or deprive or attempt to deprive, any person of any right or privilege secured by section 2000a or 2000a–1 of this title, or (b) *intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person with the purpose of interfering* with any right or privilege secured by section 2000a or 2000a–1 of this title, or (c) punish or attempt to punish any person for exercising or attempting to exercise any right or privilege secured by section 2000a or 2000a–1 of this title."

And to enforce the law, Section 2000a–5 (a) allows the Attorney General to sue "any person or group of persons":

> "Whenever the Attorney General has reasonable cause to believe that *any person or group of persons* is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights secured by this subchapter, and that the pattern or practice is of such a nature and is intended to deny the full exercise of the rights herein described, the Attorney General may bring a civil action * * * requesting such preventive relief, including an application for a permanent or temporary injunction, restraining order or other order against the person or persons responsible for such pattern or practice, as he deems necessary to insure the full enjoyment of the rights herein described." [Emphasis supplied.]

Section 2000e–6 of Title VII, relating to equal employment opportunities, tracks the language of Section 2000a–5(a).

[16] This suit is not one to desegregate public facilities under Title VII of the Act. However, Section 2000–b is relevant, since it demonstrates again the broad Congressional objective of authorizing the Attorney General to sue as defendants "such additional parties as are or become necessary to the grant of effective relief". The defendants' interference with the right of Negroes to use public facilities in Bogalusa is relevant to the cause of action, for that interference was part of a pattern and practice of total resistance to the Negroes' exercise of civil rights.

(3) In sum, in the Civil Rights Acts of 1957 and 1964, Congress recognized that when a Negro is clubbed or coerced for having attempted to register or for having entered a "white" restaurant, the ac-

> the exercise of a desire to exercise exclusive ownership and proprietary interest in their property, they could not legally invoke the right of excluding Lonnie Brown, who had previously been given free access to the property, *as a threat or means of coercion for the purpose of interfering with his right or the right of others whom he represented in exercising their right to register and vote.*"

tion most likely to produce effective relief is not necessarily for the Negro to complain to the local police or to sue for damages or to make charges under 18 U.S.C. §§ 241, 242. The most effective relief for him and for all others affected by the intimidation may be an injunction by the Nation against the private persons responsible for interfering with his civil rights.

[17] Effectiveness of remedy is not the only reason for the Congressional grant of authority to the Attorney General of the United States. The Nation has a responsibility to supply a meaningful remedy for a right it creates or guarantees. As Justice Story wrote, in sustaining the constitutionality of the Fugitive Slave Act of 1793:

> "If, indeed, the constitution guarantees the right, and if it requires the delivery [of the fugitive slave] upon the claim of the owner * * *, the natural inference certainly is, that the national government is clothed with the appropriate authority and functions to enforce it. The fundamental principle, applicable to all cases of this sort, would seem to be, that when the end is required, the means are given. * *". Prigg v. Com. of Pennsylvania, 1842, 41 U.S. (16 Pet.) 539, 614, 10 L.Ed. 1060.

It is one thing when acts are mere invasions of private rights; "it is quite a different matter when congress undertakes to protect the citizen in the exercise of rights conferred by the constitution of the United States, essential to the healthy organization of the government itself". Ex parte Yarbrough, 1884, 110 U.S. 651, 666, 4 S.Ct. 152, 159, 28 L.Ed. 274. We turn now to the defendants' constitutional arguments.

B.

The defendants' constitutional arguments rest on a misunderstanding of the constitutional sources for the Civil Rights Acts of 1957 and 1964.[24]

[18] (1) *The Civil Rights Act of 1957: Protection of Right to Vote From Unlawful Interference.* (a) In upholding the constitutionality of the voting provisions of the 1957 Act, we need not consider the Civil War Amendments.[25] Section 1971(b), here enforced under 1971(c), is limited to prohibiting interference with the right to vote in elections for federal office. Article I, Section 4 of the Constitution is an express grant of authority to Congress to regulate federal elections:

> "The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators."

[19] As the House Committee pointed out in its report on the law, United States v. Classic, 1941, 313 U.S. 299, 61 S.Ct. 1031, 85 L.Ed. 1368, "establishes the authority in Congress to legislate concerning any and all elections affecting Federal officers, whether general, spe-

24. The Supreme Court has affirmed the constitutionality of various provisions of the 1957 Act on other grounds than those at issue here. United States v. Thomas, 1960, 362 U.S. 58, 80 S.Ct. 612, 4 L.Ed. 2d 535; United States v. Raines, 1960, 362 U.S. 17, 80 S.Ct. 519, 4 L.Ed.2d 524; Hannah v. Larche, 1960, 363 U.S. 420, 80 S.Ct. 1502, 4 L.Ed.2d 1307.

25. Although a statute that is "necessary and proper" legislation to carry out the power of Congress to regulate elections for federal office may also be "appropriate legislation" to "enforce" the provisions of the 15th, 14th, and 13th amendments. The predecessor of Section 1971 (a) withstood attack on constitutional grounds. In re Engle, C.C.D.Md.1877, 8 Fed.Cas. p. 716, No. 4,488. It was held to be a valid exercise of congressional power under the 15th Amendment. Chapman v. King, 5 Cir. 1946, 154 F.2d 460, cert. denied, 327 U.S. 800, 66 S.Ct. 905, 90 L.Ed. 1025; Kellogg v. Warmouth, C.C.D.La.1872, 14 Fed.Cas. p. 257, No. 7,667.

The Voting Rights Act of 1965 rests, in part, on Section 2 of the 15th Amendment.

cial, or primary, as long as they are 'an integral part of the procedure of choice or where in fact the primary effectively controls their choice.'" U.S.Code Cong. and Adm.News, 85 Cong.1957, p. 1977. The Supreme Court said, in *Classic:*

> "While, in a loose sense, the right to vote for representatives in Congress is sometimes spoken of as a right derived from the states, [citations omitted] this statement is true only in the sense that the states are authorized by the Constitution, to legislate on the subject as provided by § 2 of Art. I, to the extent that Congress has not restricted state action by the exercise of its powers to regulate elections under § 4 and its more general power under Article I, § 8, clause 18 of the Constitution 'To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers.'"

[20] (b) Under the "sweeping clause", Article I, Section 8, Clause 18, Congress may enact all laws "necessary and proper" to carry out any of its powers, including, of course, its power to regulate federal elections. This provision leaves to Congress the choice of the means to execute its powers. "Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution are constitutional". M'Culloch v. Maryland, 1819, 4 Wheat. 316, 421, 4 L.Ed. 579.

"There is little regarding an election that is not included in the terms, time, place, and manner of holding it". United States v. Munford, 1833, C.C.E.D.Va., 16 F. 223. The Supreme Court has said:

> "It cannot be doubted that these comprehensive words embrace authority to provide a complete code for congressional elections, not only as to times and places, but in relation to notices, *registration*, supervision of voting, protection of voters, prevention of fraud and corrupt practices, counting of votes, duties of inspectors and canvassers, and making and publication of election returns; in short, to enact the numerous requirements as to procedure and safeguards which experience shows are necessary in order to enforce the fundamental right involved." Smiley v. Holm, 1932, 285 U.S. 355, 366, 52 S.Ct. 397, 399, 76 L.Ed. 795.

[21] Two facts make it appropriate for Congress to reach registration as part of the "manner of holding elections". First, registering is a prerequisite to voting. Second, registration is a process for certifying a citizen as a qualified voter in both federal and state elections. A law protecting the right to vote could hardly be appropriate unless it protected the right to register.[26] In *Classic* language, registering is a "necessary step" and "integral" in voting in "elections". In *Classic* "interference with the effective choice of the voters" in a Louisiana Democratic primary was interference "at the only stage of the election procedure when their choice is of significance". Here, in terms of a meaningful right to vote, interference with Negro citizens' registering is interference at the most critical stage of the election procedure. It is true of course that the framers of the Constitution did not know about the registration process; but neither did they have in mind the selection of sena-

26. "An abundance of judicial dicta and holdings in analogous situations make clear that the federal power to regulate elections extends equally to the registration process. Any matter affecting the character or choice of the federal electorate is so integrally related to the election ultimately held as to come within the 'holding' of the election under article I, section 4." Van Alstyne, Anti-literacy Test Legislation, 61 Mich.L.Rev. 805, 815 (1963).

tors and representatives by the direct primary. In United States v. State of Louisiana, E.D.La.1963, 225 F.Supp. 353, 359, aff'd. on other grounds, 1965, 380 U.S. 145, 85 S.Ct. 817, 13 L.Ed.2d 709 this Court said:

> "Congressional authority [under Article I, § 4] extends to registration, a phase of the electoral process unknown to the Founding Fathers but today a critical, inseparable part of the electoral process which must necessarily concern the United States, since registration to vote covers voting in federal as well as in state elections."

In United States v. Manning, W.D.La. 1963, 215 F.Supp. 272, one of the constitutional attacks on the Civil Rights Act of 1960 was directed at the provision for federal registrars. In the opinion upholding the act, the Court considered it important that—

> "For purposes of accomplishing the constitutional objective the electoral process is indivisible. The act of casting a ballot in a voting booth cannot be cut away from the rest of the process. It is the last step in a process that starts with registration. Similarly, registration is an indivisible part of elections. * * * There is no separate registration for federal elections. Any interference with the qualified voter's right to register is therefore interference with a federal election." 215 F. Supp. at 283.

[22] (c) *Classic* relied on three important cases that construe the nature and extent of the power of Congress to regulate federal elections: Ex parte Siebold, 1880, 100 U.S. 371, 25 L.Ed. 717; Ex parte Yarbrough, The Ku Klux Klan cases, 1884, 110 U.S. 651, 4 S.Ct. 152, 28 L.Ed. 274; and Burroughs v. United States, 1934, 290 U.S. 534, 54 S.Ct. 287, 78 L.Ed. 484, 485. These cases point to the principle that a congressional statute protecting against private interference before the voting stage is necessary and proper legislation under Article I, Section 4, whenever it is reasonably related to "protection of the integrity" of the federal electoral process. *Classic*, 313 U.S. at 316, 61 S.Ct. at 1038.

Ex parte Siebold involved a conviction of state election officers for ballot-stuffing in a federal election. The Court had before it the Enforcement Act from which Section 1971 was derived. The statute contained a number of extensive voting and registration regulations, including a provision for the appointment of federal election supervisors. These supervisors were authorized "to cause such names to be registered as they may think proper to be so marked". In sustaining the validity of the legislation under Article I, Section 4, the Court commented:

> "It is the duty of the States to elect representatives to Congress. *The due and fair election of these representatives is of vital importance to the United States.* The government of the United States is no less concerned in the transaction than the State government is. *It certainly is not bound to stand by as a passive spectator, when duties are violated and outrageous frauds are committed.* It is directly interested in the faithful performance, by the officers of election, of their respective duties. Those duties are owed as well to the United States as to the State." 100 U.S. 388.

[23, 24] In *Yarbrough* the Court had before it the question whether Congress could protect civil rights against private interference, specifically klan aggression in the form of intimidation of voters. Yarbrough and eight other members of a Georgia klan were indicted for conspiring to intimidate a Negro in the exercise of his right to vote for a congressional representative. It was shown that they used physical violence and that they went in disguise upon the public highways. They were convicted under the section of the Enforcement Act of 1870, Revised Statutes Section 5508, that was the predecessor of 18 U.S.C. § 241; and also under Section 5520. These are the criminal law

counterpart to 42 U.S.C. § 1971. The Act forbade two or more persons to "conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States" or to "go in disguise on the highway, or on the premises of another, with intent to prevent or hinder [such citizen in] his free exercise or enjoyment" of any such right; or to "conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote" from voting for presidential electors or members of Congress. Justice Miller, in a powerful opinion for the Court, sustained the conviction and held the statute valid. The opinion made it clear that the right to vote in federal elections is a privilege of national citizenship derived from the Constitution. Congress therefore "can, by law, protect the act of voting, the place where it is done, and the man who votes from personal violence or intimidation, and the election itself from corruption or fraud." Nor does it matter that state and federal offices are elected in the same election. The congressional powers are not "annulled because an election for state officers is held at the same time and place". 110 U.S. at 662, 4 S.Ct. at 157.

[25–27] The heart of the *Yarbrough* decision is the Court's emphasis on the transcendent interest of the federal government.[27] The violence and intimidation to which the Negro was subjected were important because they alloyed the purity of the federal political process. The federal government "must have the power to protect the elections on which its existence depends from violence and corruption". 110 U.S. at 658, 4 S.Ct. at 155. *This* implied power arises out of governmental necessity. The Court said:

> "The power in either case arises out of the circumstance that the function in which the party is engaged or the right which he is about to exercise is dependent on the laws of the United States.
>
> "In both cases it is the duty of that government to see that he may exercise this right freely, and to protect him from violence while so doing, or on account of so doing. This duty does not arise solely from the interest of the party concerned, but from the necessity of the government itself that its service shall be free from the adverse influence of force and fraud practiced on its agents, and that the votes by which its members of congress and its president are elected shall be the *free* votes of the electors, and the officers thus chosen the free and uncorrupted choice of those who have the right to take part in that choice."

Since it is the purity of the federal political process that must be protected, the protection may be extended against interference with any activity having a rational relationship with the federal political process. Thus, the "rationale of Yarbrough indicates congressional power over voting, though limited to federal elections, extends to voter registration activities", including registration rallies, voter education classes, and other

27. Our silence with respect to the 15th Amendment carries no implied comment as to the scope of that amendment. We found it unnecessary to consider the 15th Amendment because of the Nation's manifest interest in the integrity of federal elections and the Supreme Court's approval of a constitutional basis for that interest. On its face, however, Section 1 of the Fifteenth Amendment clearly establishes a constitutional basis for Congress to protect the unabridged right of all citizens to vote in state elections free from discrimination on account of race. Given that basis, a congressional statute protecting citizens from state or private interference with the right to participate in any part of the voting process (registration, primary, pre-primary, etc.) would seem to be as "appropriate" for protection of voters in state elections, under Section 2 of the 15th Amendment, as it is "necessary and proper" for protection of voters in federal elections.

activities intended to encourage registration.[28]

[28] *Burroughs* is one of a number of cases dealing with corrupt election practices which go far beyond the act of voting in an election. The Federal corrupt practice laws operate on the campaigning stage rather than the voting stage and apply to private persons having no part in the election machinery. In *Burroughs* the contention was made that under Article II, Section 1 the states control the manner of appointing presidential electors; Congress is limited to prescribing the time of choosing electors and the day on which they cast their votes. In upholding the validity of the Federal Corrupt Practices Act of 1925, the Court, relying on *Yarbrough*, said:

> "While presidential electors are not officers or agents of the federal government * * *, they exercise federal functions under, and discharge duties in virtue of authority conferred by, the Constitution of the United States. The president is vested with the executive power of the nation. The importance of his election and the vital character of its relationship to and effect upon the welfare and safety of the whole people cannot be too strongly stated. To say that Congress is without power to pass appropriate legislation to safeguard such an election from the improper use of money to influence the result is to deny to the nation in a vital particular the power of self-protection. Congress undoubtedly, possesses that power, as it possesses every other power essential to preserve the departments and institutions of the general government from impairment or destruction, whether threatened by force or by corruption." 290 U.S. at 545, 54 S.Ct. at 290.

[29, 30] The states' power over the manner of appointing presidential electors is similar to the states' reserved power to establish voting qualifications. Notwithstanding this unquestioned power in the states, *"Burroughs* holds that 'Congress' has the implied power to protect the integrity of the processes of popular election of presidential electors once that mode of selection has been chosen by the state." There is an obvious parallel between corruption of the federal electoral process by the use of money and corruption of the same process by acts of violence and intimidation that prevent voters from getting on the registration rolls or, indeed, from ever reaching the registration office.

Classic involved federal indictments against state election commissioners for falsely counting ballots in a Democratic party primary. The Court held that under Article I, Section 4 and the necessary and proper clause, Congress had the implied power to regulate party primaries. The "interference [was] with the effective choice of the voters at the only stage of the election procedure when their choice is of significance * * *. The primary in Louisiana is an integral part of the procedure for the popular choice of Congressmen". The right to choose is a right "secured by the Constitution". 313 U.S. at 314, 61 S.Ct. at 1037. Moreover, "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.*" Ib. at 315, 61 S.Ct. at 1038 Mr. Justice Stone, for the Court, spelled out the rationale:

> "The right to participate in the choice of representatives for Congress * * * is protected just as is the right to vote at the election, where the primary is by law made an integral part of the election machinery * * *. Unless the constitutional protection of the integrity of 'elections' extends to pri-

28. Comment, Federal Civil Action Against Private Individuals for Crimes Involving Civil Rights, 74 Yale L.Jour. 1462, 1470 (1965). And see Maggs and Wallace, Congress and Literacy Tests, 27 Duke L. & Cont. Prob. 510, 517–521 (1962).

mary elections, Congress is left powerless to effect the constitutional purpose * * *." 313 U.S. at 318, 319, 61 S.Ct. at 1039.

The innumerable cases in this Circuit involving civil rights speak eloquently against the use of economic coercion, intimidation, and violence to inhibit Negroes from applying for registration. This interference with nationally guaranteed rights, whether by public officials or private persons corrupts the purity of the political process on which the existence and health of the National Government depend. No one has expressed this better than Judge Rives in United States v. Wood, 5 Cir. 1961, 295 F.2d 772, cert. denied 369 U.S. 850, 82 S.Ct. 933, 8 L.Ed.2d 9 (1962).[29] In *Wood* the interference was in the form of groundless prosecution of a Negro organizer who had set up a registration school in Walthall County, Mississippi, where no Negroes had ever registered. He was not even qualified to vote in the county where the intimidatory acts occurred; he was a resident of another county. In reversing the district judge's refusal to stay the state prosecution, the Fifth Circuit noted that the alleged coercion was of the kind the 1957 Act was intended to reach. Judge Rives, for the Court, said:

> "The foundation of our form of government is the consent of the governed. Whenever any person interferes with the right of any other person to vote or to vote as he may choose, he acts like a political termite to destroy a part of that foundation. A single termite or many termites may pass unnoticed, but each damages the foundation, and if that process is allowed to continue the whole structure may crumble and fall even before the occupants become aware of their peril. Eradication of political termites, or at least checking their activities, is necessary to prevent irreparable damage to our Government."

[31–33] *We hold that the defendants' acts of economic coercion, intimidation, and violence directed at Negro citizens in Washington Parish for the purpose of deterring their registering to vote strike at the integrity of the federal political process. The right to vote in federal elections, a privilege of national citizenship secured by the United States Constitution, includes the right to register to vote. The right to register to vote includes the right to be free from public or private interference with activities rationally related to registering and to encouraging others to register.*

(2) *The Civil Rights Act of 1964: Public Accommodation.* The Supreme Court has upheld the constitutionality of Title II as it applies to motels and restaurants. Heart of Atlanta Motel v. United States, 1964, 379 U.S. 241, 85 S.Ct. 348, 13 L.Ed.2d 258; Katzenbach v. McClung, 1964, 379 U.S. 294, 85 S.Ct. 377, 13 L.Ed. 2d 290.

[34] The defendants are left, therefore, only with the contention that the Act, for reasons not articulated, should not reach private persons.

The defendants are really arguing against the judgment of Congress in selecting injunctive relief against private persons as one method of enforcing congressional policy. Once it is conceded that Congress has the power, under the commerce clause, to forbid discrimination

29. In that case Hardy, a Negro resident of Tennessee, a member of the "Student Non-Violent Coordinating Committee", was in Walthall County, Mississippi for the purpose of organizing Negroes of that county to register and vote. Hardy engaged in an argument with the registrar. The registrar ordered him to leave the office. As he got to the door, the registrar struck him on the back of the head with a revolver. Hardy was arrested and charged with a breach of the peace. The Court hurdled (1) the fact that Hardy was not eligible to register and therefore *his* right to vote was not interfered with; (2) the appeal was from a denial of a request for a temporary restraining order, generally an unappealable order under 28 U.S.C. §§ 1291, 1292; (3) the prosecution was a state criminal court proceeding, protected by the doctrine of comity and Section 2283 severely restricting federal injunctions of state proceedings.

in public places, there is little doubt that injunctive relief against any person seeking to frustrate the statutory objective is appropriate.

In this Circuit, relying on In re Debs, 1895, 158 U.S. 564, 15 S.Ct. 900, 39 L.Ed. 1092, the courts have held that when private persons burden commerce to the detriment of the national interest, the Nation may enjoin such persons even without enabling legislation. On two occasions courts have issued injunctions against klans and klansmen engaged in intimidation and violence burdening commerce. United States v. U. S. Klans, M.D.Ala.1961, 194 F.Supp. 897; Plummer v. Brock, M.D.Fla.1964, 9 R.Rel.L. Rep. 1399. See also United States v. City of Jackson, 5 Cir. 1963, 318 F.2d 1.

(3) *The Civil Rights Act of 1964: Equal Employment Opportunities.* Title VII, like Title II, *is based upon the commerce clause.* The term "industry affecting commerce" used in Title VII parallels the definition of "industry affecting commerce" in the *LMRDA* (29 U.S.C. § 402(c)). This in turn incorporates the definition of "affecting commerce" in the NLRA (29 U.S.C. § 152 (7)). The National Labor Relations Act represents an exercise of congressional regulatory power to "the fullest jurisdictional breadth constitutionally permissible under the Commerce Clause," NLRB v. Reliance Fuel Oil Corp., 1963, 371 U.S. 224, 226, 83 S.Ct. 312, 313, 9 L.Ed.2d 279; Polish National Alliance of United States v. NLRB, 1944, 322 U.S. 643, 647, 64 S.Ct. 1196, 88 L.Ed. 1509, a conclusion equally applicable to Title VII.

The sweeping regulations in the NLRA and LMRDA covering the terms, conditions, and policies of hiring and bargaining do not differ in any essential respect from this legislation prohibiting discrimination in hiring practices and on the job assignments. The employer-employee relationship has, of course, direct effect upon the production of industries which are in commerce and upon the practical utilization of the labor force and the power of Congress to regulate these activities cannot be doubted. NLRB v. Jones & Laughlin Steel Corp., 1936, 301 U.S. 1, 57 S.Ct. 615, 81 L.Ed. 893; NLRB v. Fainblatt, 1939, 306 U.S. 601, 606, 307 U.S. 609, 59 S.Ct. 668, 83 L.Ed. 1014; Mabee v. White Plains Publishing Co., 1946, 327 U.S. 178, 66 S.Ct. 511, 90 L.Ed. 607.

[35] Defendants admit that they beat and threatened Negro pickets to prevent them from enjoying the right of equal employment opportunity. The effect of course is to prevent Negroes from gaining free access to potential employers. Such acts not only deter Negroes but intimidate employers who might otherwise wish to comply with the law but fear retaliation and economic loss. This is precisely what the klan's Boycott Rules are designed to do.

The United States has alleged, the defendants have admitted, and the proof has shown that the defendants have intimidated, harassed, and in other ways interfered with the civil rights of Negroes secured by the Constitution. The admission and proof show a pattern and practice of interference.

Protection against the acts of terror and intimidation committed by the Original Knights of the Ku Klux Klan and the individual defendants can be halted only by a broad injunctive decree along the lines of the order suggested by the United States. The Court will promptly issue an appropriate order.[30]

30. The Court finds that on the admissions and on the evidence adduced at the hearing, a preliminary injunction should not issue against Charles Ray Williams, Louis Applewhite, and Willis Blackwell. The Court does not enter a judgment of dismissal as to these defendants, because the United States expressly reserved the right to introduce additional evidence at the hearing for permanent relief, as to these and other defendants. At the time of the hearing, Blackwell had not been correctly served. We find that James Ellis, Sidney August Warner, and Albert Applewhite are members of the klan—ACCA or were members until recently, and therefore should be enjoined. The defendants' request for dismissal of the action as to these named defendants and their request for attorneys fees are denied.

END