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The Civil Rights Act of 1957

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This memorandum describes the background of the adoption of the Civil Rights Act of 1957 and the legislative history of selected aspects of the act. The aspects selected for treatment relate largely to operational problems which may be faced by the Civil Rights Commission and the Civil Rights Division of the Department of Justice.

I. The Background of the Legislation.

Over the years there have been numerous unsuccessful attempts to enact federal legislation dealing with the franchise, lynching, fair employment practices and similar subjects regarded as falling under the category of civil rights. An attempt at an omnibus approach to the problems was made with the issuance by President Truman on December 5, 1946, of Executive Order No. 9808 (3 CFR, 1943-1948 Comp., p. 590), "Establishing the President's Committee on Civil Rights." The Committee, consisting of 15 members under the chairmanship of Mr. C. E. Wilson, was:

> "authorized on behalf of the President to inquire into and to determine whether and in what respect current law-enforcement measures and the authority and means possessed by Federal, State, and local governments may be strengthened and improved to safeguard the civil rights of the people."

The order directed that the Committee

> "shall make a report of its studies to the President in writing, and shall in particular make recommendations with respect to the adoption or establishment, by legislation or otherwise, of more adequate and effective means and procedures for the protection of the civil rights of the people of the United States."

The report, "To Secure These Rights," was issued in 1947. The Committee had no subpoena power, and the report indicates (p. XI) that the information on which it was based was obtained from a series of public hearings, consultation with witnesses in private meetings, and staff

studies. The report contained a long series of recommendations (pp. 151-173). These included the establishment of a permanent Commission on Civil Rights in the Executive Branch of the Government, which was to make a "continuous appraisal of the status of civil rights, and the efficiency of the machinery with which we hope to improve that status" and to "make regular reports which would include recommendations for action in the ensuing periods." It would collect data so as to be in a position to fill in the "huge gaps in the available information about the field" (p. 154). The report did not indicate whether or not the Commission was intended to have subpoena power.

Another recommendation of the Committee involved the elevation of the Civil Rights Section of the Department of Justice to the status of a full division within the Department under the supervision of an assistant attorney general. The report (pp. 120-122) indicated that, because of their sensitivity to local opinion and attitudes, United States Attorneys sometimes failed to prosecute civil rights cases vigorously. It was therefore recommended (pp. 151-52) that the new division operate through regional offices which, apparently, would not be subordinate to the United States Attorneys. It was noted, however, that the Department of Justice had suggested that the heads of the regional offices should have the status of Assistant United States Attorneys.

The Commission further recommended the creation in the Congress of a Joint Standing Committee on Civil Rights (pp. 151, 154). With respect to legislation, it suggested, among other things, the enactment of federal fair-employment practice, anti-lynching and anti-poll tax statutes (pp. 157, 160, 167). It also urged that Congress enact statutes protecting

the rights of qualified persons to participate in federal primaries and elections against interference by both public officers and private individuals (p. 160).

The Committee urged that section 51 (now section 241) of Title 18, of the United States Code, be amended so as to impose the same liability upon an individual acting alone as the statute now imposes upon conspirators. It also suggested that section 52 (now section 242) of Title 18, be amended to enumerate expressly the rights intended to be protected (pp. 156-157) and thus meet problems raised by the opinion of the Supreme Court in Screws v. United States, 325 U.S. 91, 103.

In his message to Congress of February 2, 1948 (S. Doc. No. 516, 80th Cong., 2d Sess.), President Truman echoed many of the recommendations earlier made by the Committee. He urged the establishment of a permanent Commission on Civil Rights which would continually review civil rights policies and practices, study specific problems and make recommendations to the President at frequent intervals. He also recommended the establishment by the Congress of a Joint Congressional Committee on Civil Rights and, within the Department of Justice, of a Division of Civil Rights under the supervision of an assistant attorney general. He adopted the recommendations of the Committee with respect to the amendment of 18 U.S.C. §51, and proposed federal legislation covering lynching, fair-employment practices and protection against interference with the right to vote in all federal elections, including primaries. The President suggested that such legislation also apply to state elections insofar as the interference was based on race, color or any other unreasonable classification. However, the President's recommendations were apparently not embodied in any specific

legislation, and all that followed was that the House passed anti-poll tax legislation, which died in the Senate.

The immediate history of the 1957 act probably finds its source in President Eisenhower's State of the Union message of January 1956, in which he stated:

> "It is disturbing that in some localities allegations persist that Negro citizens are being deprived of their right to vote and are likewise being subjected to unwarranted economic pressures. I recommend that the substance of these charges be thoroughly examined by a bipartisan Commission created by the Congress. It is hoped that such a Commission will be established promptly so that it may arrive at findings which can receive early consideration. * * *
> "We must strive to have every person judged and measured by what he is, rather than by his color, race, or religion. There will soon be recommended to the Congress a program further to advance the efforts of the Government, within the area of Federal responsibility, to accomplish these objectives."1/

Numerous bills dealing with civil rights were introduced during the first and second session of the 84th Congress, and hearings were held upon them by a Subcommittee of the House Committee on the Judiciary,2/ by the full Committee3/ and by the Committee on Rules.4/ On April 9, 1956, Attorney General Herbert Brownell addressed to the Speaker of the House of Representatives an "executive communication" relating to civil rights legislation, referring to the President's State of the Union message, and making a number of specific suggestions.5/ These included the establishment of a bipartisan commission of six members to be appointed by the President with the advice and consent of the Senate. The Commission would have a life of

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1/ H. Rept. No. 2187, 84th Congress., 2d Sess., p. 6

2/ Hearings on "Civil Rights" before Subcommittee No. 2 of the House Committee on the Judiciary, 84th Cong., 1st Sess.

3/ Hearings on "Civil Rights" before the House Committee on the Judiciary, 84th Cong., 2d Sess.

4/ Hearings on H.R. 627 before the House Committee on Rules, 84th Cong., 2d Sess.

5/ H. Rept. No. 2187, supra, pp. 11-14.

two years, unless extended by Congress, and would have authority to subpoena witnesses and to take testimony under oath. The communication emphasized that the Commission would be concerned with the extent and means by which the right to vote was being denied and with charges that unwarranted economic or other pressures were being applied to deny fundamental rights safeguarded by the Constitution and the laws of the United States.

The second proposal contained in the communication was for the authorization of an additional assistant attorney general to direct the Government's legal activities in the field of civil rights. The Attorney General indicated that the existing Civil Rights Section of the Department of Justice was but one of a number of sections within the Criminal Division, that more emphasis should be placed upon civil law remedies, and that the civil rights activities of the Department of Justice should not be confined to the Criminal Division.

The third proposal related to the protection of voting rights by civil remedies. The Attorney General pointed out that the existing statute providing such remedies (42 U.S.C. §1971) was limited to the deprivation of such rights by officials acting under the authority of law. He recommended that there be added a section covering intimidation or coercion of individuals in the exercise of the right to vote in general, special and primary elections for federal office. The provision would apply irrespective of whether the intimidation or coercion was by individuals purporting to act under the authority of law. The recommendation also involved authorization of the Attorney General to bring injunction or other civil proceedings on behalf of the United States or the aggrieved person in any case covered by

the statute and the elimination of the requirement that all state administrative and judicial remedies be exhausted before access to the federal courts would be available.

The fourth recommendation contained in the executive communication dealt with section 1980 of the Revised Statutes (42 U.S.C. § 1985), which provides civil remedies for the violation of civil rights, including conspiracies for the purpose of depriving "any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws." With respect to this statute it was suggested that the Attorney General be authorized to initiate civil actions to protect the rights which it secured.

As a result of the hearings, the House Judiciary Committee reported favorably H.R. 627[6] which had originally been introduced by its chairman, Mr. Celler, but which was completely re-written by the Committee. On July 23, 1956, the bill passed the House by a vote of 279 to 126.[7] However, the Senate did not consider it before the termination of the 84th Congress, and the bill failed to be enacted.

As passed by the House, H.R. 627 bore considerable resemblance to the Civil Rights Act of 1957 which was ultimately passed by the 85th Congress. Part I of the bill provided for the establishment of a commission on civil rights of six members. Like section 104(a) of the bill which was ultimately enacted, section 104(a) of H.R. 627 described the duties of the Commission and was divided into three subparagraphs. Subparagraph (1) provided that the Commission shall:

6/ See H. Rept. No. 2187, supra.

7/ 102 Cong. Rec. 13999. All other references to the Congressional Record contained in this memorandum are to the daily edition of volume 103 (1957), relating to the proceedings of the first session of the 85th Congress.

"(1) investigate allegations in writing that certain citizens of the United States are being deprived of their right to vote or that certain persons in the United States are voting illegally or are being subjected to unwarranted economic pressures by reason of their sex, color, race, religion, or national origin; * * *"

It may be noted that this provision would not have required the allegations referred to to be under oath or affirmation or to set forth the facts upon which they were based. The provision contained references to allegations that citizens "are being subjected to unwarranted economic pressures" and that certain persons "are voting illegally." It referred to sex as a basis of deprivation of rights. In these respects subparagraph (1) differed sharply from the bill as ultimately enacted.

Subparagraph (2) of section 104(a) of H.R. 627 directed the Commission to:

"(2) study and collect information concerning economic, social, and legal developments constituting a denial of equal protection of the laws under the Constitution; * * *"

The reference in this provision to economic and social developments was not contained in subparagraph (2) of the law which was enacted. Subparagraph (3) of H.R. 627 was identical with subparagraph (3) of the 1957 act.

Section 102 of H.R. 627 contained provisions relating to the rights of persons adversely affected by testimony and to the protection against disclosure of testimony given in executive session. The other provisions of the bill embodied the suggestions contained in the Attorney General's executive communication. Part II provided for an additional assistant attorney general, and Parts III and IV would have amended 42 U.S.C. § 1985 and 42 U.S.C. § 1971 to effectuate those recommendations.

The failure of the Senate to act on H.R. 627 during the 84th Congress caused further efforts to be made to enact civil rights legislation in the

85th Congress. In his State of the Union message of January 10, 1957, President Eisenhower said:

> "Last year the administration recommended to the Congress a four-point program to reinforce civil rights. That program included:
> In the first part, creation of a bipartisan commission to investigate asserted violations of civil rights and to make recommendations;
> Its second provision, creation of a Civil Rights Division in the Department of Justice in charge of an assistant attorney general;
> Its third, enactment by the Congress of new laws to aid in the enforcement of voting rights; and
> Its fourth, amendment of the laws so as to permit the Federal Government to seek from the civil courts preventative relief in civil rights cases.
> I urge the Congress to enact the legislation.[8]

In the first session of the Congress attention was concentrated in the House upon H.R. 1151 introduced by Representative Keating and H.R. 2145 introduced by Representative Celler.[9] These were substantially similar to each other and also resembled the final version of H.R. 627 of the 84th Congress. In the hearings on the bills, the Attorney General reiterated the recommendations in the President's State of the Union message and stated that H.R. 627 had "embodied the administration civil-rights proposals."[10] The Committee made a number of amendments of H.R. 2145 and approved it as so amended, but ordered the Chairman to introduce "a clean bill," H.R. 6127.[11]

The Committee noted that H.R. 6127 was, in general, similar to H.R. 627, but that a number of major variations existed.[12] Thus with respect to the duties of the Commission subparagraph (1) of section 104(a) was amended to direct the Commission to investigate "allegations in writing under oath or

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8/ New York Times, January 11, 1957, p. 10.
9/ H. Rept. No. 291, 85th Cong., 1st Sess., pp. 1-2.
10/ Hearings on "Civil Rights" before Subcommittee No. 5 of the House Committee on the Judiciary, Serial No. 1, 85th Cong., 1st Sess., p. 589.
11/ H. Rept. No. 291, supra, pp. 2-3
12/ ibid., pp. 3-4.

affirmation" and to require that the writing "set forth the facts." The duty of the Commission to investigate allegations that persons are voting illegally and that citizens "are being subjected to unwarranted economic pressures" was eliminated, as was the reference to sex as a basis of discrimination.

Subparagraph (2) of section 104(a) of H.R. 6127, as reported by the Committee and as ultimately enacted, eliminated the reference in the parallel provision of H.R. 627 to "economic" and "social" developments. It merely conferred the duty upon the Commission to:

10-7 "study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution; * * *."

H.R. 627 contained no territorial limitations upon the authority of the Commission to subpoena witnesses. As introduced, section 102(k) of H.R. 6127 would have prohibited the Commission from issuing any subpoena requiring the presence of the party subpoenaed at a hearing outside the judicial circuit of the United States in which the witnesses is found, resides or transacts business. As enacted, the provision was further restricted so that it would not operate "outside of the State." As introduced and as enacted, section 102(g) of H.R. 6127 would have imposed criminal penalties for the release or use in public without the consent of the Commission of evidence or testimony taken in executive session. Although section 102(g) of H.R. 627 contained a similar prohibition against disclosure, no criminal sanctions were contained in the bill.

Sections 121 and 131 of H.R. 627 would have authorized the Attorney General to institute civil actions for damages or injunctive relief under 42 U.S.C. § 1985 and 42 U.S.C. § 1971 "for the United States, or in the name

of the United States but for the benefit of the real party and interest." The parallel sections of H.R. 6127 as introduced provided that those actions could be instituted only "for the United States, or in the name of the United States" and would be limited to injunctive or similar relief. They contained no authority for the United States to bring an action for damages on behalf of an aggrieved party. Section 131 of the bill as ultimately passed so provides with respect to 42 U.S.C. § 1971, relating to voting rights. However, as indicated below, the provision relating to 42 U.S.C. § 1985 was ultimately completely deleted by the Senate.

On June 18, 1957, H.R. 6127 passed the House by a vote of 286 to 126 (Cong., Rec. 8538). In the meantime, S. 83, a bill similar to, but not identical with, H.R. 627 had been introduced in the Senate. Extensive hearings on that and related bills were held before the Subcommittee on Constitutional Rights of the Senate Judiciary Committee.13/ However, the Committee did not report the bill, and on July 16, 1957, a motion was made on the floor of the Senate to take up H.R. 6127. This motion was carried by a vote of 71 to 18. At the same time a motion to refer the House bill to the Senate Committee on the Judiciary in order to obtain a considered Committee report was defeated (Cong. Rec. 10687-10695). As a result, no Senate Committee report on the bill ever issued. After extensive debate and the adoption of amendments, the bill passed the Senate by a vote of 72 to 18 on August 7, 1957 (Cong. Rec. 12644).

The Senate modified the bill in five principal respects. First it amended section 105(a) to provide that the Commission's staff director be

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13/ Hearings on "Civil Rights--1957" before the Subcommittee on Constitutional Rights of the Senate Judiciary Committee, 84th Cong., 1st Sess.

appointed by the President with the advice and consent of the Senate, that the President consult with the Commission before submitting the appointment, and that the compensation of the staff director be fixed at a rate, not in excess of $22,500 a year, to be determined by the President. Second, it amended section 105(b) to delete the authorization conferred upon the Commission to accept the services of up to fifteen voluntary and uncompensated personnel at any one time. The provision was rewritten to prohibit the use of any such personnel.

The third important amendment adopted by the Senate deleted the provisions of Part III of the bill which would have authorized the Attorney General to institute actions for injunctive relief for violations of 42 U.S.C. 1985. At the same time, the Senate inserted a provision repealing section 1989 of the Revised Statutes (42 U.S.C. § 1993). That statute had authorized the use of the armed forces to aid in the execution of judicial process issued under, or to prevent the violation and enforce the execution of, the provisions of 42 U.S.C. § 1985 and of certain other civil rights statutes.

The fifth important change was the addition of amendments to the Criminal Code relating to criminal contempts. The amendments would have defined such contempts and have conferred the right to a jury trial in all prosecutions for criminal contempt. These provisions would not have been limited to contempts under the Civil Rights Act of 1957, but would have applied generally. Finally, the Senate added a section to the bill to amend 28 U.S.C. § 1861, dealing with the qualifications of federal jurors. The amendment eliminated the then existing disqualification of persons incompetent for jury service under state law.

No formal conference was held between the Senate and the House with respect to the Senate amendments, and, accordingly, no conference report was issued. However, on August 27, 1957, the House adopted House Resolution 410 agreeing to all of the Senate amendments other than Amendment No. 7, relating to the use of voluntary personnel, and Amendment No. 15, relating to contempt procedure (Cong. Rec. 14687-14714).

In effect, House Resolution 410 concurred in the Senate's amendment of section 105(b) of the bill to prohibit the use of voluntary employees. It merely provided for the addition to that provision of the language ultimately adopted which makes applicable only to individuals whose services are compensated by the United States the criminal penalties imposed by section 102(g) for unauthorized disclosure of evidence received in executive sessions of the Commission. Resolution 410 amended Senate Amendment 15, by deleting the broad amendments to the Criminal Code which the Senate had adopted and replacing them with section 151 of the bill as enacted, which limits the new contempt procedure to cases arising under the Civil Rights Act.

On August 29, 1957, the Senate agreed to the House amendments, thus completing Congressional action on the bill (Cong. Rec. 15044). It was approved by the President on September 9, 1957.

13 II. Commission on Civil Rights.

The legislative history of Part I of the Civil Rights Act of 1957, (which creates the new Commission on Civil Rights) is somewhat fragmentary and does not provide substantial help in interpreting the statute. The House Judiciary Committee Report on H.R. 6127 (H. Rept. No. 291, 85th Cong., 1st Sess., p. 5) stated that the Commission was created for the purpose of "investigation and study" of the denial of the right to vote and to "analyze the legal developments in Federal policies and laws involving the constitutional right of equal protection under the laws". The Commission, said the Report (ibid., p. 8), would be "a factfinding and investigatory body" the primary purpose of which would be "to collect and accumulate data so that a more intelligent study of the problem may be made."

The provisions pertaining to the Commission were analyzed in the Report in essentially the language of the bill itself (ibid., pp. 6-8), and the language of the bill as finally enacted is the same in most respects as that reported out by the House Committee on the Judiciary. The principal changes were the insertion of a geographical limitation upon the subpoena power to the State, rather than to the judicial circuit, in which the witness resides, transacts business, or is found (Section 102(k)); the addition of the words "and have that vote counted" in section 104(a)(1); the requirement that the fulltime staff director be a Presidential appointee (section 105(a)); a denial of any authority to utilize the services of voluntary and uncompensated personnel (section 105(b)); and a change in the wording of section 105(b) to make the provision in section 102(g) imposing a penalty for the unauthorized use or release of testimony taken in executive session apply only to persons whose services are compensated by the United States.

The pertinent material relating to the Commission in the legislative history is set forth below under the general headings of (A) Procedure, (B) Duties and (C) Operations.

(A). Procedure. Both Congressman Keating and Congressman Celler explained that the provisions in section 102 containing rules of procedure for the Commission were the same as the rules governing hearings before Congressional committees (Cong. Rec. 7517, 7583, 7588). The House Judiciary Committee minority agreed that the rules of procedure are "substantially those which govern the committees of the House when engaged in an investigative function," but believed them inadequate for the Commission because once the Commission was set up, the Congress would lose control over it.14/ Their complaint about the breadth of the subpoena power was partially satisfied by the subsequent limitation by state instead of by judicial circuit.

One procedural rule not found in the rules governing Congressional hearings was that against disclosure of testimony taken in executive session (section 102(g)); it was inserted to protect persons concerning whom testimony might be given.15/ However, in addition to the belief of Senator Talmadge (Cong. Rec. 10373) that the "secrecy" provision "surrounds testimony given in executive session with an iron curtain of secrecy," several Senators commented that the provision in section 102(g) for the fining or imprisonment of "Whoever releases or uses in public without the consent of the Commission evidence or testimony taken in executive session * * *" was too broad. ### FN14

14/ H. Rept. No. 291, supra, pp. 52-53. Senator Stennis, however, stated that the Commission could write its own rules, not limited by any requirement that it adhere to judicial decisions relating to Congressional committees (Cong. Rec. 12579).

15/ Cong. Rec. 7588, 7831; Hearings on H.R. 6127 before the House Committee on Rules, "Civil Rights", p. 10.

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While Senator Javits submitted a memorandum designed to show that the provision was intended to apply only to Commission personnel, there was widespread fear, expressed by Senators Morse, Ervin and Johnson of Texas and Congressman Dies, that it would be a threat to the press (Cong. Rec. 12623-12624, 12936-12937, 13661, 13387-13388, App. 6745). Senator Javits also agreed that the provision should be corrected (Cong. Rec. 13661). Section 102(g) itself could no longer be amended since there had been no disagreement on that section between the Senate and House versions. Accordingly, Senator Case of South Dakota suggested that the desired result could be accomplished by amending section 105(b) to define the word "Whoever" in section 102(g) as applying only to persons whose services are compensated by the Government. He stated that his proposal would end "doubt of any kind now that the press of the country and the reporters generally are exempted from any applicability of the penalty provided for the unauthorized disclosure of evidence taken before the Commission in executive session." (Cong. Rec. 13791-13792, 15039-15041). This proposal ultimately was adopted by the Senate and accepted by the House.

Nothing useful was found on the pertinency provisions of sections 102(a) and 102(h).

B. Duties. The Commission's duties were generally described as the development of reliable information and investigation of the need for further legislation (Cong. Rec. 7588, 11271). Senator Javits (Cong. Rec. 11942) stated also that the Commission would have power to investigate and report on what was going on in the area of civil rights, including all of the civil rights enumerated in the Congressional Record at page 11355. The bill was criticized in the minority House report because of the mandatory

language in section 104(a)(1)[16] (H. Rept. No. 291, supra, p. 43), and on the same ground by Senator Stennis who stated that the Commission would be obliged to investigate every complaint submitted to it (Cong. Rec. 12579). In addition, Senator Eastland contended that the Commission's authority to hold hearings "for the purpose of carrying out the provisions of this Act" (see section 105(f)), was broader than its listed duties (Cong. Rec. 12603).

With respect to section 104(a), Senator Thurmond contended that as the statute was phrased the person making a complaint need not have a direct interest in the matter (Cong. Rec. 14997). The language "and have that vote counted" was inserted in section 104(a)(1) in the House after the bill came out of committee. Mr. Hoffman, favoring the amendment, said it was crucial since the right to have the vote counted was included in the right to vote under the Supreme Court's decision in United States v. Classic, 313 U.S. 299 (Cong. Rec. App. 4716). Section 104(a)(1) was said by Mr. McCulloch to have been limited to investigation of deprivations of the right to vote because of "color, race, religion, or national origin," in order to insure the Act's constitutionality (Cong. Rec. App. 4713-4714). While he had opposed inclusion of the word "religion" in committee (Cong. Rec. App. 4713-4714), as had the minority report (H. Rept. 291, supra, pp 43-44), others defended its inclusion as necessary and in accord with the other specified categories (Cong. Rec. 8084). Congressman Keating also opposed striking out the specific limitations on the ground that this would open section 104(a) to investigation of ordinary irregularities concerning such matters as age

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16/ "The Commission shall (1) investigate allegations . . . that certain citizens of the United States are being deprived of their right to vote . . .". (Emphasis supplied).

requirements, literacy tests, the poll tax, etc., matters of State law which were properly for State consideration (Cong. Rec. 8081).

The Commission's duty to study and collect information concerning legal developments constituting a denial of equal protection of the laws (section 104(a)(2)), was described by Congressman Celler in a colloquy with Congressman Davis as including the power to investigate deprivations of the right to vote on broader grounds than those mentioned in section 104(a)(1) (Cong. Rec. 8081). It was Congressman Celler's view that the "legal developments" provision must be read together with the provisions on deprivation of voting rights in the preceding paragraph (Cong. Rec. 8091). The same view that the duties under section 104(a)(2) are broader than race, color, religion, or national origin, was expressed by Congressman Willis at the House Rules Committee hearings, p. 54.

Mr. Vanik, supporting a move to bring H.R. 6127 to the floor, said the Commission would be able to "investigate, study, and collect information concerning economic, social and legal developments which constitute a denial of equal protection of the laws * * *", (Cong. Rec. 5497). Senator Eastland's view was that the Commission's duties on this score would be as broad as the desires of the Commission (Cong. Rec. 10217, 12604).

Other critics of the provision denounced it as vague and intended "to do a hatchet job on the South," and as making the Commission the investigatory arm of the Civil Rights Division (Cong. Rec. 10125, 10451-10452). Senators Morse and Kefauver stressed that the purpose of the Commision was to obtain facts upon which legislation might be based, and Senator Kefauver did not favor creating the Commission in the Executive Branch (Cong. Rec. 10823, 10826-10827).

There was no material of great value concerning the Commission's duty to appraise the laws and policies of the Federal Government with respect to equal protection of the laws (Section 104(a)(3)). Senator Johnston of South Carolina believed it to be vague (Cong. Rec. 10125), and the minority of the House Judiciary Committee thought that such laws and policies should also be analyzed from the standpoint of the 10th Amendment (H. Report, No. 291, supra, pp. 53-54).

C. Operations. As reported by the House Committee, H.R. 6127 provided for utilization by the Commission of not more than 15 voluntary and uncompensated persons (ibid., pp. 20-21). The minority report objected to the use of any such personnel (ibid., p. 43), as did Senator Russell, who considered it likely to undermine the integrity of the Commission (Cong Rec. 10422-10423). As finally adopted, the Act specifically prohibits the utilization of voluntary or uncompensated personnel (section 105(b)); Senator Knowland, who introduced Senate Amendment No. 7, making this change, stated its purpose to be to make sure that persons with a particular interest would not be employed "and that any persons employed on a voluntary [sic] basis will carry on their work on an impartial basis." (Cong. Rec. 12212).

With respect to the requirement (section 105(e)) that "All Federal agencies shall cooperate fully with the Commission to the end that it may effectively carry out its functions and duties," there was some disagreement about whether this would include the Federal Bureau of Investigation. Senator Johnston believed it would (Cong. Rec. 10124), while Attorney General Brownell, testifying at the hearings before the subcommittee on Constitutional Rights of the Senate Judiciary Committee on S. 83, stated

that the F.B.I. could only investigate matters involving criminal statutes (p. 13). The House Committee stated "The subject matter which the Commission is directed to investigate and study is beyond the authority of the Federal Bureau of Investigation." (H. Rept. No. 291, supra, p. 8).

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III. OTHER PROVISIONS

This section of this memorandum reviews those aspects of the legislative history of the Civil Rights Act of 1957 which concern (A) the establishment and functions of the Civil Rights Division of the Department of Justice, (B) the additional protections relating to voting rights which were enacted, (C) the elimination of Part III of the Act, (D) the repeal of R. S. § 1989, relating to the use of military force, and (E) the amendment of 28 U.S.C. § 1861 concerning the qualifications of federal jurors.

A. Civil Rights Division. While Part II of the Act provides merely for the appointment of an additional assistant attorney general in the Department of Justice, with no specification as to his functions and duties, the Attorney General repeatedly stated, and even pledged, and the Congressional committees involved as well as other members of both Houses of Congress fully understood, that this official would head a Civil Rights Division with functions, duties, and powers in the general field of the enforcement of civil rights and civil liberties. Hearings before Senate Subcommittee on Constitutional Rights on S. 83, pp. 11-12. The reasons given for not spelling out the jurisdiction of the head of the Civil Rights Division were historical and functional. Instead of specifying the duties of the new assistant attorney general, Congress followed its normal practice of providing by statute merely for the appointment of the official involved without rigid description of duties, so as to leave full operational responsibility of all activities in the Department of Justice in the hands of the Attorney General. Congress' power over money appropriations, it was emphasized in the hearings, insures faithful adherence to any understandings between the executive and the legislative branches with respect

to the scope of the functions of each division chief; while on the other hand lack of specificity in the enabling legislation permits administrative flexibility and fixes responsibility in the head of the Department. Ibid, p. 11.

Although, because of these considerations, the language of the Act is singularly uninformative as to the import of Part II, there clearly was this basic understanding that the intent of this Part was to create a Civil Rights Division, and there further was agreement -- at least among the proponents of the legislation -- as to the purposes and functions of such a Division.

Four prime factors were cited repeatedly in justification of the establishment of a separate Division within the Department of Justice to deal with the problem of civil rights: (1) complexity and delicacy of the problem, (2) necessity of giving additional prestige to the unit dealing with civil rights, (3) anticipated increase in the workload, (4) incongruity of retaining as a part of the Criminal Division an activity with so many civil aspects.

According to the House Judiciary Committee, the most important factor leading to the creation of a Civil Rights Division was that the problems involved in the area of civil rights had grown so complex and delicate that there was required "a centralized responsibility in the person of an eminently qualified attorney with the prestige of a Presidential appointment behind him." House Rept. No. 291, supra p. 9. Attorney General Brownell indicated that in his opinion it was illogical to retain jurisdiction of the enforcement of civil rights laws in the Criminal Division since enforcement of these laws involved a great many

purely civil aspects. Hearings before House Judiciary Subcommittee, p. 569. In colloquy with Rep. Hillings he agreed that among the other reasons for having a separate Division handle this responsibility were an anticipated increase in the workload and the necessity for additional prestige which an assistant attorney general at the head of a full Division would provide. Ibid, p. 587. And Congressman Keating emphasized (Cong. Rec. 7588) that in his opinion:

> "The problems involved in civil rights legislation and litigation * * * require the attention of personnel trained especially in this field. Moreover, if the proposed bill becomes law, there will be involved not so much criminal prosecutions as civil remedies. For these reasons a separate Division on Civil Rights should be established, separate and apart from the Criminal Division."

While actual discussion in regard to the functions of the Civil Rights Division was sparse, Sen. Case of South Dakota inserted into the record (Cong. Rec. 10694-95) a letter written by the [then] Deputy Attorney General Rogers to Sen. Eastland in connection with civil rights bills introduced in the 84th Congress. This letter lists the statutes under the jurisdiction of the Civil Rights Section of the Criminal Division which would be transferred to the jurisdiction of the Civil Rights Division, and then goes on as follows:

> "The Civil Rights Division probably would also be responsible for the formulation of legal and policy approaches involving constitutional and civil rights within the Department of Justice, and would serve as liaison between the Department and other Government departments, agencies, and commissions in such matters. For example, the new division might assist the President's Committee on Government Contracts in its program to diminish discriminatory practices in its field; advise the State Department in connection with human rights problems involving the United Nations;

or assist other Government establishments in maintaining equality of opportunity in employment in their staffs. The Civil Rights Division would also be responsible for keeping the Attorney General informed of developments in constitutional law affecting the basic rights of the people, and it would participate in cases before the courts involving important civil-rights issues.

"After further consideration of the problem and experience in the operation of the Civil Rights Division, additional statutes and functions, might be transferred to the Division and reassignments might well be made. The foregoing tentative list of statutes and outline of functions, however, should indicate the scope and nature of the proposed Division's authority and duties."

Beyond that, the feeling was expressed in Congress that the functions and duties of the Division were not definitely defined and accordingly would encompass whatever matters might ultimately be included by the courts within the scope of civil rights. Cong. Rec. 11254. Senator Johnston of South Carolina stated, referring to the Senate Report on S. 902, 84th Cong., a predecessor bill, that the Division would keep under scrutiny organizations and individuals fomenting racial tension (apparently much as the Internal Security Division keeps surveillance over subversive organizations). Cong. Rec. 10201-2.

The only point in respect of the Division's functions upon which there was more than negligible comment had to do with the problem of the actual handling of civil rights cases before the courts. There was fairly general agreement between proponents and opponents of the bill that attorneys from the new Division rather than local United States Attorneys would handle all, or at least the bulk of, civil rights cases in the courts. Rep. Willis (N. C.), House Rules Committee hearings pp. 57, 66; Rep. Delaney (N. Y.),

House Rules Committee hearings, pp. 70-1; Minority Report of House Judiciary Committee, H. Rept. 291, supra, pp. 59-60. While the Division thus would be handling a considerable number of cases in many States (Rep. Celler, Rules Committee hearings, p. 16), this was thought to be quite justified, in view of the fact that its personnel, being experts in the field, could handle the cases more properly and expeditiously, in the proven pattern of Departmental handling of anti-trust and tax cases. Rep. Delaney (N.Y.), Rules Committee hearings, pp. 70-1.

B. Additional Protections Relating to Voting Rights

Prior to enactment of the Civil Rights Act of 1957, the only statute providing a civil remedy in cases of voting rights violations was 42 U.S.C. § 1971 which provided that:

> "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."

Part IV (section 131) of the new Act gave the subsection designation "(a)" to what had previously been section 1971, and added to such section four new subsections, (b) through (e). Basically, subsection (b) prohibits the intimidation of or the attempt to intimidate any person in his voting rights in any general, special, or primary election involving federal office. Subsection (c) permits the Attorney General of the United States to institute an injunctive action in any case where a person has engaged, or where there are reasonable grounds to believe he is about to engage, in any of the acts prohibited by subsections (a) or (b). Subsection (d) grants jurisdiction

to federal district courts in proceedings under section 1971, without regard to whether the person aggrieved has exhausted any administrative or other remedies that may be provided by law. And subsection (e) provides for counsel for persons tried for contempt in connection with section 1971.

The clearly expressed purpose of these amendments was to permit the Government to protect citizens' voting rights other than by way of criminal proceedings which, since they can be used only after the event, usually come too late effectively to protect the right involved. Testimony of Attorney General Brownell on H.R. 627, 84th Cong., House Judiciary Subcommittee hearings, pp. 570-3; Senator Douglas, Cong. Rec. 7675.

To accomplish this purpose, the Act adds an injunctive remedy safeguarding the right to be free from threats in connection with the exercise of voting rights in elections for federal office to the previously existing remedies safeguarding the right not to be interfered with in any election, federal or state, for reason of race, color or previous condition of servitude. In addition, for the first time the Attorney General, acting "for the United States, or in the name of the United States," is permitted to apply for injunctive relief to secure both of these rights.

While there was some dispute during the debates as to the scope of this legislation insofar as it might affect purely local elections, it appears from the context that any confusion was more semantic than substantive. Thus, Representative Celler stated that Part IV did not deal with intimidation or coercion in connection with a purely local election for local office. Rules Committee hearings, p. 42. On the other hand, Rep. Forrester, also a member of the Judiciary Committee, indicated that in his opinion the amendments to section 1971 had to do with both federal and

purely local elections. Rules Committee hearings, p. 163. Indeed he stated that the bill "refers to all primaries; it refers to every election: State, county, municipal, township, school district; it applies to the election of a common justice of the peace. Does anyone want to challenge that? I say it does." Cong. Rec. 7775.

What the gentlemen apparently were referring to is that per se the Act specifically creates a new substantive remedy only in subsection (b) of section 1971, and that this new remedy deals only with federal elections. But insofar as subsection (c) also creates a remedy by granting the Attorney General powers of enforcement with respect not only to § 1971 (b) but also with respect to § 1971 (a) -- which does cover local and federal voting matters in cases of racial discrimination -- it has an impact both on federal and on local elections. Attorney General Brownell was addressing himself specifically only to primary elections, but what he said was applicable to general and special elections as well, when he testified that under the bill the Government could act with respect to elections in two situations: (1) where, regardless of whether or not a federal office is involved, persons acting under color of law deprive a citizen of his right to participate in an election because of his race or color, and (2) where federal offices are included in the election and citizens are deprived of their right to vote or to have their vote counted by means of threat or intimidation. House Judiciary Subcommittee hearings, supra, pp. 606-7.

This latter category, according to a number of Senators, is not limited to racial discrimination under the 14th or 15th Amendments. Rather, it rests on the constitutional guaranty of the right of all citizens to cast a free and untrammeled ballot. Senators Russell, Yarborough, Eastland, and Thurmond, Cong. Rec. 11619, 11926, 11679.

It should be noted that under Part IV of the Act the Attorney General has the power both to intervene in an action brought by an aggrieved person, and to file an independent action without the consent of, indeed without the knowledge of, such person. Attorney General Brownell in House Judiciary Subcommittee hearings, supra, p. 599. An amendment by Sen. Ervin which would have required prior written authorization from the person for whose benefit the action is brought was defeated in the Senate. Cong. Rec. 12230, 12232. Representative Keating indicated that in his opinion the United States could sue even if only a single individual were aggrieved, although this would probably not be the usual situation. Cong. Rec. 7591.

A substantial difference between previous civil rights bills and the present Act is that 42 U.S.C. § 1971 (b) contains the proviso that no person whether acting under color of law or otherwise may interfere with certain voting rights. The generally understood purpose of the italicized words was to cover the actions of both public officials and private persons. Cong. Rec. 11679; House Report No. 291 supra, pp. 11, 47-8. This remedies what to the Attorney General seemed the most obvious defect in the old civil rights bills. House Judiciary Subcommittee hearings, 84th Cong., 1st Sess., pp. 570-3.

Another substantial change in existing law is that embodied in 42 U.S.C. § 1971 (d), which provides that the federal district courts would exercise jurisdiction without regard to any failure to exhaust State administrative or other remedies. See comment by Sen. Carroll, Cong. Rec. at 11792. According to Sen. Javits, this provision was inserted so as to prevent the tying up of a litigant in administrative remedies until after the primary

or general election. Cong. Rec. 11792. Without this provision, it was felt by proponents of the bill, the primary purpose -- to prevent harm before it occurs -- would have been defeated. Cong. Rec. 7589. An amendment by Sen. Case of South Dakota to give district courts discretionary instead of mandatory jurisdiction in cases of non-exhaustion of State remedies was rejected by roll call vote. Cong. Rec. 12213-15. The effect of this vote is to reaffirm the mandatory jurisdictional feature of section 1971 (d). Another amendment, by Rep. Ray, to deprive federal courts of jurisdiction if there is a plain, speedy, and efficient State remedy, likewise was defeated. Cong. Rec. 8400-06. In other words, the efficacy or lack of efficacy of State remedies is immaterial.

On the other hand, § 1971 (d) does not appear to suspend the traditional authority of State judges to pass summarily on voting complaints arising on election day. Proponents of the bill felt that its provisions would apply only in cases of intimidation, threats or coercion, or attempts at such acts, and that in other respects State tribunals were fully competent. Cong. Rec. 7587.

There was only very limited discussion on the meaning of the concept of the threats and the coercion referred to in section 1971 (b), particularly with reference to the question of economic boycotts. Rep. Celler, testifying before the House Rules Committee, stated that in his opinion a mere refusal to sell would not violate the Act, but that a threat of individual or organized economic boycott or reprisal would constitute a violation if it were directly linked with an election to federal office. Rules Committee hearings, pp. 44-6.

C. Elimination of Part III, which would have conferred broader authority on the Attorney General. Part III of H.R. 6127, as passed by the House, conferred upon the Attorney General remedial powers similar to those conferred upon him by Part IV, dealing with voting rights. Part III, (§ 121) authorized the Attorney General to institute suits for injunctive relief to prevent violations of R.S. § 1980, 42 U.S.C. § 1985. That section provides a civil damage remedy against any person who conspires (1) to interfere with federal officers in the discharge of their duties and as a result injures or deprives another of his rights or privileges as a citizen of the United States (subsection (a)); (2) to intimidate or injure parties, witnesses, or jurors involved in any court matter or to obstruct the due course of justice in any state court with intent to deny to a citizen the equal protection of the laws (subsection (b)); and (3) to deprive another of the equal protection of the laws or of equal privileges and immunities under the law, or of the right to vote in elections affecting federal offices (subsection (b)). According to the House Committee on the Judiciary (H. Rept. No. 291, supra, p. 10):

> "The effect of the provisions of the proposed bill on existing law as contained in title 42, United States Code, section 1985 is not to expand the rights presently protected but merely to provide the Attorney General with the right to bring a civil action or other proper proceeding for relief to prevent acts or practices which would give rise to a cause of action under the three existing subsections."

A minority of the committee characterized the provisions of Part III as "truly shocking" and stated the effect on state and local law enforcement officers as follows: "police officers will be faced with the threat of a

Federal injunction. That can only mean the chaos which must result from the breakdown of law and order." (Ibid., pp. 45-46) The minority also adverted to the fact that the committee had already eliminated the "unprecedented proposal whereby the Attorney General * * * would represent private litigants in a civil action to recover damages." (Ibid., p. 55; see also P. 4 and remarks of Representative Celler, Cong. Rec. 7582-7583).

The attacks on Part III were renewed in the debates in the Senate. The principal objections raised by the opponents of Part III may be summarized as follows: (1) Since 42 U.S.C. § 1985 covered the whole field of civil rights the Attorney General's authority would be similarly extensive; (2) in particular, Part III would authorize the Attorney General to institute suits to compel the integration of the public schools. The proceedings on Part III may be described in greater detail as follows:

At the hearings on S. 83, 85th Congress, which was substantially similar to H.R. 6127, Attorney General Brownell testified (See Hearings before Subcommittee on Constitutional Rights of Senate Judiciary Committee, p. 50):

> "We will file with you a list of the civil rights of our citizens that are protected by the Federal Constitution, and whenever an occasion arises where we think that any of those rights, which are protected by the Constitution, have been violated, that is the type of case in which we would act."

This list, as submitted, included the following: Right to vote in federal elections and to have the ballot fairly counted; right to vote in any election free from discrimination by a state on account of race or color; right to inform a federal officer of a violation of federal law; right to testify in a federal court; right to be free of mob violence while in

federal custody, right to be secure from unlawful searches and seizures; right to assemble peaceably, free from unreasonable restraints by state or local officials; freedom of religion, speech, and of the press; right not to be discriminated against in public employment on account of race or color; right not to be denied the use of governmentally-owned facilities on account of race or color; right not to be subjected to racial segregation under compulsion of state authority; right not to be denied due process of law or equal protection of the law "in other regards"; right to a fair trial; right not to be held in peonage (Hearings, supra, pp. 245-247; see also, Cong. Rec. 10927-28).

With respect to school integration, the Attorney General stated that he could not envisage any frequent use of the civil remedies proposed by Part III; he thought, however, that those remedies could be useful in the Hoxie type case, involving interference by private individuals with the attempts of local school boards voluntarily to eliminate segregation (id., pp. 7-8).

Many of the Senators from the southern states challenged what in their opinion were the unduly broad provisions of Part III. Thus Senator Ervin stated (Cong. Rec. 9910):

> "* * * section 1985 is concerned in general terms with all rights arising under 'the privileges or immunities' and 'the equal protection of the laws' clauses of the 14th amendment, and in specific terms with definite rights arising under 'the due process of law' clause of the 14th amendment and other articles of the Constitution. These things being true, the bill covers in substantial measure the entire spectrum of civil rights."

And, subsequently he remarked (Cong. Rec. 9913):

> "Under the bill, particularly under part 3, which gives the Attorney General the power to bring suit

> in the name of the United States at the expense of the taxpayers in all of the numerous cases that are to be covered by subsections 1, 2, and 3, of section 1985, of title 42, the Attorney General of the United States could bring suits virtually unlimited in number and nature. * * *. I cannot conceive of a broader power being given to one public official."

According to Senator Hill the enactment of Part III would permit the Attorney General to intervene in state labor cases (Cong. Rec. 10230). Senator Stennis stated that Part III, "by amending existing statutes, would extend the operation of the bill to all conceivable kinds of cases which could be dumped in the general category of Civil Rights" (Cong. Rec. 10362). Senator Ellender argued that "Within the broad and nebulous field of civil rights, the authority in part III would vest police powers in the Federal Government" (Cong. Rec. 10453). Senator Eastland asserted that Part III, under recent decisions of the Supreme Court, would enable the Attorney General "to apply his coercive power to all publicly operated recreational facilities, including swimming pools, golf courses, community theatres, public stadiums, hotel facilities and State parks, and many, many more areas. The injunctive weapon would be employed against all public transportation systems of every kind and character throughout the South, regardless of the provisions of State constitutions and legislative enactments" (Cong. Rec. 10219). Senator Russell expressed a similar concern (Cong. Rec. 9711-14).

Part III was also objected to because it was viewed as enabling the Attorney General to go into court and obtain an injunction compelling a local school board anywhere in the country to adopt a plan of integration. According to Senator Eastland, to deny the right to attend a nonsegregated

school would be a violation of 42 U.S.C. § 1985; what the Attorney General would do "would be to bring suit for an injunction * * *." He would get a decree to integrate the school and give the child the right to attend a nonsegregated school. If the decree were violated, he would have two remedies. First, the person who violated it could be brought into court under an attachment, tried without a jury, and put in jail for criminal contempt. Second, under section 1993 of title 42 of the United States Code the President of the United States could use the Armed Forces to enforce judgments rendered under section 1985" (Cong. Rec. 9983-84). 17/ Similar views were expressed by Senators Ervin (Cong. Rec. 9904-10089) and McClellan (Cong. Rec. 10468-69).

The proponents of Part III did not attempt particularly to dispute its probable scope, except as to the use of armed force to compel compliance with court decrees, but defended it on the ground that it merely added a needed additional remedy in the civil rights area. See Cong. Rec. 8839, 9717-18, 10104-05, 10428, 10663-64, 10918, 10983, 11115-16, 11117, 11244. And ultimately they agreed to the elimination of the provisions of Part III conferring authority on the Attorney General to bring injunction suits (See Cong. Rec. 11344-78). The amendment striking section 121 of Part III was adopted by a vote of 52 to 38 (Cong. Rec. 11378). The deletion of Part III was supported by a number of northern Senators who were in general in favor of the bill. These included Senators Anderson, Aiken, Saltonstall, O'Mahoney, Mundt, and Smith of New Jersey. See Cong. Rec. 10480, 10678, 10681-82, 10811-13, 10818, 10912-35, 11099, 11106-07, 11343-44.

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17/ The question of 42 U.S.C. § 1993 is treated separately, infra.

D. Repeal of R.S. § 1989 (42 U.S.C. § 1993) relating to use of military force. This section, originally enacted in 1866, 14 Stat. 29, authorized the President --

> "or such person as he may empower for that purpose, to employ such part of the land or naval forces of the United States, or of the militia, as may be necessary to aid in the execution of judicial process issued under any of the preceding provisions [42 U.S.C. §§ 1981-1983, 1985-1992], or as shall be necessary to prevent the violation and enforce the due execution of the provisions of this Title [42 U.S.C. §§ 1981-1983, 1985-1994]."

The section was repealed by § 122 of the Civil Rights Act of 1957 because of the argument advanced by southern Senators opposing the bill that it would permit the use of military force to compel compliance with injunctions obtained by the Attorney General under the provisions of Part III. It will be noted that Part III, § 121, of H.R. 6127 proposed to amend 42 U.S.C. § 1985, so as to authorize the Attorney General to sue for injunctive relief to prevent violations of § 1985.[18] Since § 1985 is one of the statutes specified in R. S. § 1989, it was claimed that the latter could be used in connection with Part III of the bill. This was developed during the Senate debate on the bill as follows:

On June 19, 1957, Senator Johnston of South Carolina, in objecting to consideration of the bill by the Senate, asserted that in order to enforce its provisions the bill gave the President "the power of using the Army and Navy." (Cong. Rec. 86601). Senator Ervin commented to the same effect. (Cong. Rec. 8838). Senator Russell spearheaded opposition to the bill on the same ground, asserting that "the bill is cunningly designed to vest in

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18/ As pointed out above, that section provides a civil damage remedy against persons who, inter alia, conspire to deprive another of the equal protection of the laws. This, it was asserted, covered a broad area, including the right of an individual to attend a non-segregated public school.

the Attorney General unprecedented power to bring to bear the whole might of the Federal Government, including the Armed Forces if necessary, to force a commingling of white and Negro children in the State-supported public schools of the Sourth," and that "the unusual powers of this bill would be utilized to force the white people of the South at the point of a Federal bayonet to conform to almost any conceivable edict directed at the destruction of any of the local customs, laws, or practices separating the races in order to enforce a commingling of the races throughout the social order of the South" (Cong. Rec. 9709.) He then went on to "demonstrate by explaining part III of the bill that the talk about voting rights is a smokescreen to obscure the unlimited grant of powers to the Attorney General of the United States to govern by injunction and Federal bayonet." (Cong. Rec. 9710). Thus, § 1985 "the old reconstruction law creating the right to sue for damages, is specifically mentioned in this authorization [42 U.S.C. § 1993] of the use of military force * * *;"" ** the voting section * * is not tied in with the use of military forces, whereas that section which will be utilized to force the mixing of the races in the schools and in the public places of amusement is tied in with the statute authorizing the use of military forces" (Cong. Rec. 9712). Senator Russell's views were supported by others: Senator Ervin (Cong. Rec. 9904), Senator Eastland (Cong. Rec. 9984-86), Senator Fulbright (Cong. Rec. 9985), Senator Johnston of South Carolina (Cong. Rec. 10203), Senator McClellan (Cong. Rec. 10461), Senator Thurmond (Cong. Rec. 11122-25), Senator Long (Cong. Rec. 11133).

Senator Dirksen denied that the bill was drafted to permit the use of military force in order to force integrated schools on the south; he asserted

that the President under § 1993 already had the "ultimate authority to employ the land and naval forces to aid in the enforcement of desegregation decrees," and, apart from § 1993, the President was authorized to use the military forces under 10 U.S.C. (Supp. IV) §§ 332-333 (Cong. Rec. 10105, 10107)./19/ However, he could not imagine an occasion arising calling for the use of the military "to enforce civil-rights decrees." (Cong. Rec. 10105-10106). Senator Ervin replied that there was a material distinction between the President's power under 10 U.S.C. §§ 332 and 333 and his power under 42 U.S.C. § 1993 (Cong. Rec. 10107-08):

> "I submit that under the other statutes /10 U.S.C. §§ 332, 333/ the situation has to be in a much more drastic condition. It practically must amount to an insurrection. In this instance the President can call the troops out to enforce one judgment in a case. * * * In order for that power to exist it would not be necessary for any 'cain' to be raised. * * *. All that it would be necessary to do under title 42, section 1993, would be to obtain a judgment against me or my constituents under title 42, section 1985, but we would have to be in more or less of a state of insurrection before action could be taken under the other statutes. That would be the fundamental difference.."

According to Senator Eastland, the two statutes were separate and conferred separate and distinct powers on the President, "one of which could be used

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/19/ 10 U.S.C. § 332 authorizes the President to use military force whenever he considers that unlawful obstructions, combinations, or assemblages, or rebellion against the authority of the United States, make it impracticable to enforce the laws of the United States in any state or territory by ordinary judicial proceedings. 10 U.S.C. § 333 vests similar authority in the President with respect to insurrections or domestic violence in a state involving a deprivation of federal rights or obstructing the execution of federal laws or impeding the course of justice under those laws. The President's proclamation of September 23, 1957, and his executive order of September 24, 1957, authorizing the use of the military in the Little Rock situation, cited 10 U.S.C. §§ 332 and 333.

in case of rebellion and insurrection, and the other /of/ which could be used at the discretion of the President at any time in the aid of the execution of judicial processes. * * *. That statute /§ 1993/ remains on the books to be used by any despot, or strong figure on horseback." (Cong. Rec. 10215). And, he subsequently argued that § 1993 might be used "in the absence of rebellion"; that the President would not have to wait "until there was defiance, or until the temporary injunction had been violated. The Armed Forces could go in forthwith in order to enforce the injunction." (Cong. Rec. 10220).

Senator Humphrey, a supporter of the bill, stated that § 1993 was unnecessary since "/t/here is plenty of other appropriate law, besides Reconstruction law, available for the President's use." (Cong. Rec. 10816). Senator Anderson, another of the bill's supporters, stated (Cong. Rec. 10817):

> "The plain language of part III asserts that judicial decrees can be invoked to enforce anything termed civil rights. It also asserts that these decrees can be backed by the full weight of the Army, the Navy, and the militia."

Senators Knowland and Humphrey then offered an amendment to repeal 42 U.S.C. § 1993 (Cong. Rec. 10835). Senator Javits, in discussing the amendment, said that there appeared to be no persuasive reason for retaining § 1993: Under Title 10 the President had "all the power he needs in order to keep order" "in the event of some large-scale breach of public order * * * regardless of this particular provision of the bill." (Cong. Rec. 10934-10935). Senator Long stated that even if § 1993 should be repealed "under the Constitution and other sections of the law the use of Federal troops, including the use of bayonets, to enforce such measures /viz. integration/ will still be available." (Cong. Rec. 11133). Senator Russell, announcing his support of the amendment, stated (Cong. Rec. 11134):

> "Senators may differ as to the general authority of the President of the United States to employ the military forces, but I assert that the adoption of the amendment will eliminate from our law the specific power of the President to delegate the authority to employ troops to execute specific judicial process in specific cases.
>
> "There is a vast difference between the employment of troops under a specific statute to carry out a specific judgment of a court, and the general powers of the President of the United States to quell insurrection within this land. It should be unnecessary to dwell upon that difference."

The amendment to repeal § 1993 was adopted without dissent (90-0) Cong. Rec. 11137).

E. Amendment of 28 U.S.C. § 1861 dealing with the qualifications of federal jurors. Section 152 of the Civil Rights Act of 1957 amends the federal juror statute, 28 U.S.C. § 1861, by eliminating the fourth ground of disqualification for jury service, namely, that the individual "is incompetent to serve as a grand or petit juror by the law of the State in which the district court is held." This change was offered by Senator Church as an amendment to the jury trial amendment, on behalf of himself and a group of other supporters of the bill "to eliminate whatever basis there may be for the charge that the efficacy of trial by jury in the Federal courts is weakened by the fact that, in some areas, colored citizens, because of the operation of State laws, are prevented from serving as jurors. Thus the argument has been made that no jury trial should be permitted in civil rights cases, even in a proceeding for criminal contempt, because such cases concern relationships between the races, and in the South they would be tried by an all-white jury. * * *. There is no reason why Congress should not modify Federal law so as to safeguard against discrimination on the basis of race, color, or creed, in the selection of jurors who are to serve in Federal Courts." (Cong. Rec. 11933). Moreover, this would

establish uniform qualifications for federal jurors. (ibid.). After discussion along similar lines (see Cong. Rec. 11934, 12059-60, 12065-66, 12071, 12097-99, 12114, 12138-39, 12147), the Church proposal was adopted (Cong. Rec. 12178).