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An Address By

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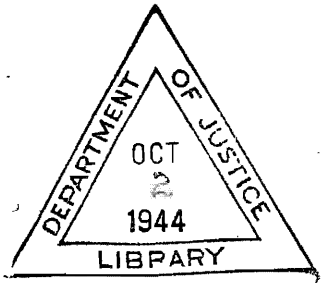

before the

ANNUAL CONFERENCE OF THE NATIONAL URBAN LEAGUE

CENTRAL HIGH SCHOOL AUDITORIUM

Columbus, Ohio

This is my first appearance before a conference of the National Urban League, and I want you to know that I am genuinely pleased at the opportunity to talk to you. After all, we have for a long time been on the same "team", so to speak, fighting the same battle -- though with different weapons -- against ignorance and prejudice and discrimination. Now we can compare notes and perhaps reach an even better understanding of the problems we face.

Tonight I should like to report to you on what we in the Department of Justice have done and are doing in our common fight to protect and extend civil rights.

Certain civil rights of the individual are protected by the Federal Constitution and Federal Statutes. When the Constitution was adopted in 1787, the rights of Negroes were not considered and they had substantially no rights before the law. As a matter of fact, the Constitution does not mention civil rights. Two years later the first ten amendments to the Constitution, known as the Bill of Rights, were adopted. They were based on fear of the tyranny of government. The colonists had experienced the tyrannies that led to the Revolution; and, distrusting any government, they set forth what the government must not do to them, within two years after they had created it. The government, they said, must not interfere with religious worship, freedom of speech and of the press, or the right to assemble peaceably. People were protected against unreasonable searches and seizures and against double jeopardy, and were assured of due process.

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But these protections were against Federal usurpation. It did not seem to occur to anyone that individuals might need protection against State action.

Then came the Civil War and the three great amendments -- the Thirteenth, Fourteenth and Fifteenth -- freeing the Negroes, making them citizens and providing for due process by the States, and specifically providing that no State should deny the right to vote "on account of race, color, or previous condition of servitude".

In the ten years that followed the War, Congress implemented these three amendments by passing five statutes setting up an elaborate program of Federal protection. Included among these was supervision of the action of State officials, with serious penalties for the violation of the new rights that had been guaranteed to the enfranchized Negroes.

But gradually the protections thus minutely spelled out were whittled away. The Supreme Court, in a divided decision, construed the Fourteenth Amendment very narrowly, in the Slaughterhouse Cases, to protect only rights springing from Federal citizenship, and held that this was a different kind of citizenship from State citizenship; and that rights inherent in State citizenship were not subject to the protection of the Amendment. Justice Field, dissenting, said the "Amendmert had swept away the Dred Scott decision, and had placed the common rights of American citizens under the protection of the National Government".

A few years later the Supreme Court, again dividing, held in the Civil Rights Cases that the Act of 1875, which forbade discrimination in theatres and on railroads, was unconstitutional because although the Fourteenth Amendment forbade States to discriminate by legislation it did not permit

the Federal Government to pass protective legislation. Justice Harlan's dissent was vigorous. "Was it the purpose of the Nation," he wrote, "simply to destroy the institution (of slavery) and then remit the race, theretofore held in bondage, to the several States for such protection, in their civil rights, as those States, in their discretion, might choose to provide?"

Congress subsequently repealed most of the civil rights legislation. The anti-peonage statute, however, is still a living law. And there are two sections -- sections 51 and 52 of the present criminal code -- under which protection of oppressed minorities can still be invoked. These deal respectively with conspiracy to injure persons in the exercise of their civil rights, and the deprivation of civil rights under the color of State law.

But of recent years there has been a marked change both in the attitude of Congress and of the Courts towards strengthening the protection of civil rights. The National Labor Relations Act and the Fair Labor Standards Act are examples of Federal legislation drawn to create and protect defined civil rights. The rights of minority groups not to be discriminated against in employment -- an enormously important right -- has been affirmed and partially implemented in an Executive order of the President, and is now expressed in a bill pending in Congress. It is obvious how vitally important such legislation is to Negroes.

With the broadening of the field of Federal civil rights there has come a quickening sense of their importance. One response to the challenge of Fascism to the ideals of democracy has been a deepened realization of the importance of these rights, based on a belief in the dignity and the rights of individual men and women.

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A liberal Supreme Court has in recent years increasingly applied the due process clause where the personal rights of individuals were concerned. The American Bar Association and the National Lawyers Guild, realizing that these rights are not self-enforcing, have recently established civil rights committees, and have participated in cases affecting these rights. Both organizations have also recently admitted Negroes to their ranks.

In February 1939, Attorney General (now Mr. Justice) Murphy appointed a Civil Rights Unit in the Criminal Division of the Department of Justice. This unit has been actively engaged since then in enforcing the conspiracy and the color-of-law sections to which I referred, and the anti-peonage law. Their task has been to reestablish by vigorous enforcement the rights which the original statutes were drawn to protect. These rights, of course, deal with all minorities, and not merely with the rights of Negroes. A District Court in Kentucky sustained an indictment based on a conspiracy involving interference with the rights of miners to organize. In several cases where employees' rights have been threatened under the provisions of the National Labor Relations Act, a warning by the United States Attorney that the right to organize was Federally guaranteed has been sufficient to prevent interference which might constitute a Federal crime.

It is interesting that the complaints we are receiving of the violation of civil rights during the war years are in almost all cases based not upon the exercise of the Federal war powers or of the mob spirit which is so often a by-product of the war, but reflect the general awakening of the Nation to the importance of the protection of the ordinary rights of citizens. The complaints come not only from the victims and from groups

organized for their protection, such as the National Association for the Advancement of Colored People, which, like The National Urban League, has done a splendid job in protecting the civil rights of Negroes, but from fellow townsmen and neighbors of the victims, and from local law enforcement officials who sometimes find themselves powerless to deal with the situations which are presented. In a word, most of the complaints deal with the violation of the rights which the Civil Rights Statutes were adopted to protect, including the right of the Negro to vote.

Parenthetically, there are certain factors involved in Federal criminal cases which I wish to emphasize:

The impression which the victim and the witnesses make upon the jury are all-important in a criminal case. Many aggravated and brutal offenses do not result in convictions because a witness before the court is frightened or confused by the ordeal of a trial. Government lawyers find it necessary, therefore, sometimes to limit cases to those where the witnesses are of the type who will make good witnesses before the court.

Some people think that it is the grand jury which investigates these cases. This is not true as a general rule. In Civil Rights as in most other cases, the Federal Bureau of Investigation conducts an investigation before the case goes to the grand jury. This explains why there sometimes seems to be a delay between the beginning of an investigation and grand jury action. As you know, in lesser crimes, action by a grand jury is not necessary. An information is filed and the case goes to trial without grand jury action, after the investigation has been completed.

The less publicity which a case has during investigation, the better the investigation will be. Interested groups sometimes spoil a case by talking, discussing, or writing about it when it is being

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investigated. Publicity may give warning to the prospective defendants who may then suppress the very evidence that is being sought.

Often great constitutional questions of law are presented to the Supreme Court of the United States by a method of direct appeal. Sometimes the case which is later tried results in an acquittal, and yet the Supreme Court decision remains a great advance in establishing the rights for others.

The first case handled by the Civil Rights Section which went to the Supreme Court was the famous case of United States v. Classic which involved interference with the right to vote, and which arose from the turbulent election in Louisiana in which the Huey Long machine was defeated. The Court held that the right to vote in Federal elections, and to have one's vote counted as cast, extended to voting at primaries which were ruled to be an integral part of the election process, and that the Civil Rights Statutes protected this right.

In the Saylor case, the Supreme Court, expanding this doctrine, decided that wholesale ballot box stuffing amounted to interference with the right to have one's vote counted as cast - which is implicit in the right to vote. By these two cases the Court in substance reestablished the right of the Federal government to punish election frauds which appeared to have been lost with the repeal of the Enforcement Act of 1894.

Last April, the Court in Smith v. Allwright, a civil case, vindicated the right of Negroes to vote in primaries. The "white primary" rule by which Negroes have been prohibited from voting in the Democratic primaries in eleven Southern States existed as a State-wide rule at the time Smith v. Allwright was decided in only eight states: South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas, and Texas. The rule

was abandoned some time ago in North Carolina, in 1932 in Virginia, and in 1938 in Tennessee.

Since the Allwright decision, complaints by Negroes, charging that they have been prevented from voting in State primaries, have been filed with the Department of Justice. Investigations of these have been about completed and criminal action in some of them in the near future is now being considered.

It was feared by the Department that there might be race tension leading to violence and rioting at the polls as the result of efforts of Negroes to vote. All these fears have proved to be entirely unfounded. No disorder was reported from any county in any one of the States concerned.

Successful enforcement of the Smith v. Allwright decision will, of course, depend on public opinion, on which convictions for violations of all civil rights ultimately rests. There are, of course, obvious difficulties in obtaining convictions. The denial of the voting right must be willful under the statute. The local juries, usually not sympathetic to convictions, are often induced to acquit on the ground that the official involved was acting under an order or the advice of counsel, and that his act could, therefore, not be considered willful.

The Civil Rights Section has been particularly active in cases brought under the Thirteenth Amendment and the anti-peonage statue. In Taylor v. Georgia and Pollock v. Williams, the labor contract statutes of Georgia and Florida, respectively, were declared unconstitutional. The Court gave such a broad scope to the right to freedom from involuntary servitude that an attack on "enticing labor" and "immigrant agent" statutes can now be made. Peonage can no longer be protected by the vagrancy statutes and "work or fight" orders which experience has proved so often to be in reality indirect means of enforcing involuntary servitude, especially against Negro farmhands and laborers.

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This year the drive of the Department of Justice against peonage culminated in the first prosecution in many years against a large plantation owner. Albert Sydney Johnson, who farmed some 10,000 acres in the rich cotton belt of Arkansas, had consistently terrorized the Negro and white laborers on his plantation, threatening to kill them if they left his place, and lending color to these threats by always carrying a gun, a revolver, and a pair of brass knuckles. White men as well as black so feared him that they would slip away from his farm at night, leaving behind their possessions, including their standing crops. Finally, a deputy sheriff reported the case to the Department, and statements were obtained from local officials and neighboring land owners as well as the victims of Johnson's brutality. Johnson tried to bluster his way out by intimidating and bribing witnesses, but the government's case was so strong that he finally pleaded guilty and was sentenced to jail for two and one-half years.

Prosecutions under Section 52 involving the deprivation of rights under color of law have been instituted against sheriffs, police officers, and justices of the peace who have misused the power of office to deprive individuals either of due process of law or of equal protection of the law under the Fourteenth Amendment.

Of course in all these cases it is necessary to establish the action of State or local officials acting under color of law before the Federal statutes are applicable. In one case where the jailor was connected with a lynching mob, an indictment was obtained but the defendants were acquitted; in another, which involved a manhunt by a sheriff and his posse in Illinois, a demurrer to the indictment was overruled and the trial will soon be held.

Section 52 was first invoked in a case where a confession was tortured from a Negro boy - a confession of a crime of which he was later acquitted. It was used to indict a group composed of a sheriff, a jail trusty, and a shyster lawyer, who worked together through the operation of a notorious "kangaroo court" to extort sums of money from prisoners in the county jail; and in a case where members of the sect of Jehovah's Witnesses were brutally mistreated by a deputy sheriff and a chief of police whose protection they had sought when violence was threatened. The sheriff removed his badge in an effort to disassociate himself from his office, and the victims were forced to swallow large quantities of castor oil while the police officer looked on. They were then tied together and paraded through the streets out of town. The Court held that the defendants acted under color of law, and that they were guilty of denial of equal protection of the laws provided by the Fourteenth Amendment by refusing to intervene to save the victims from violence in accordance with their duty as police officers. As a result of this case there should be less doubt of the power of the Federal government to prosecute most instances of police brutality; and a number of such prosecutions have been instituted in South Carolina, Mississippi and Georgia, most of which had to do with the brutality of jailors towards Negro prisoners for the purpose of obtaining confessions.

An appeal is now pending in the Supreme Court of the United States in a case in which most savage brutality had been inflicted upon a Negro. The county deputy sheriff and a policeman of Newton, Georgia, were convicted by the United States District Court of Baker County, Georgia, for beating the Negro to death under cover of a warrant charging larceny of an automobile tire. Bob Hall, the Negro, owned a pearl-handled automatic

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45 pistol. Sheriff Jones wanted it and got it. After a month, Hall appealed to the sheriff and finally to the grand jury who ordered the gun returned. But the sheriff would not return it. On January 29, 1943, the sheriff received a letter from Hall's lawyer demanding the return of the pistol. On that evening Hall met his death at the hands of the three defendants. The State brought no prosecution. The Federal government did. On October 7, 1943, the jury, all of whom must have personally known the three defendants, convicted all three of them. They were sentenced to the maximum penalties under the act.

It is interesting that in this and many other cases the local sentiment and the local newspapers are supporting the government's stand. In the case just referred to, the Atlanta Journal said in commenting on the result: "Georgia's justice must become a synonym for equal justice for all, colored or white, humble or mighty." The editorial concluded that the decision "lends a new and encouraging stand against mob violence and brutality in the South."

A Federal bill has been introduced in the Congress which would amend Section 253 of Title 18 - the section penalizing the killing of Federal officers - to include men wearing the uniform of the armed forces. But at present the only Federal statute under which the Department may prosecute an assault upon a Negro soldier, even though it result in death, is Section 52 of Title 18, which applies only to the action of State officials and is a misdemeanor statute. In cases where State prosecution has been instituted, we have refrained from taking any action under this section.

To summarize: Eighty years ago, after the Civil War, the Union States passed laws which should have protected Negroes and other minority

groups from State action, but gradually through construction, repeal, and disuse, these laws became ineffective. In the last five years, however, they have been revivified and effectively used by the Department of Justice, particularly for the protection of Negroes; and the test case that have gone to the Supreme Court indicate that the Federal law can be used with constantly increasing success. But, as has been said before, the program depends ultimately on local public opinion, and must be developed carefully. Only strong cases should be brought; and criminal prosecutions should only be instituted where the State authorities refuse to act. The communities must be made to feel that it is their government invoking their law to vindicate their good name.