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Department of Justice

STATEMENT

By

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On

PROPOSED CIVIL RIGHTS LEGISLATION

Before

Subcommittee on Constitutional Rights

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Recently the President transmitted to Congress a special message on civil rights. The President called attention to the fact that we are in a period of great progress in the field of civil rights and recommended seven proposals for legislation designed to continue that progress. The proposals have now been forwarded to Congress and in the Senate they are contained in S. 942 and S. 955-960.[1] Those of primary concern to the Department of Justice are S. 955-957 and S. 960, the first three dealing with law enforcement and the fourth with extension of the life of the Civil Rights Commission established by the Civil Rights Act of 1957. I welcome the opportunity to testify in support of these bills.

The cornerstone of the American way of life is the guarantee that all our people shall enjoy full equality before the law. The United States cannot be less than alarmed about denials of civil rights to any of its citizens. That cornerstone is so vital to freedom that it must not be chipped away.

The broad outlook is plainly hopeful. The fact that there are tensions does not indicate that progress is not occurring. If things were allowed to remain as they were there would, of course, be no tensions, no problems, and few incidents. In most of the communities involved there is a growing body of informed and enlightened opinion urging the

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1/S. 942 proposing to establish a Commission on Equal Job Opportunity Under Government Contracts, and S. 958 and S. 959, relating to certain problems involving desegregation of public schools, have been referred to the Committee on Labor and Public Welfare.

community to look for reasonable solutions. More and more the people affected are showing their acceptance of the principle that they must respect the lawfully determined rights of others. The proposals of the Administration have been formulated with the idea of accelerating this attitude of acceptance and of providing the most effective means to insure greater progress in this field. Then, too, their enactment would be a striking demonstration -- and I believe this would be of incalculable value -- that the Executive and Legislative branches of our government give their full support to the Judicial branch in making equality under law a reality for all people everywhere in the United States.

The proposals I shall discuss are the following:

1. A measure to strengthen the law with respect to obstruction of court orders in school desegregation cases. (S. 955)

2. A measure to punish flight to avoid prosecution for unlawful destruction of educational or religious structures. (S. 956)

3. A measure to require the preservation of federal election records and authorize the Attorney General to inspect them. (S. 957)

4. A measure to extend the life of the Civil Rights Commission for an additional two years. (S. 960)

I. Obstruction of court orders in school desegregation cases.

A striking demonstration of the need for a bill of this nature is the occurrence at Little Rock in 1957. Notwithstanding the presence of the local police force, the assembly of a large mob made it necessary, for reasons of safety, to remove the nine Negro children who had been enrolled in the Central High School pursuant to the decree of the federal district court. When the execution of the decrees of the courts are obstructed by force or threats of force, there must be authority to act effectively. If the state is unable or unwilling to act effectively it is to the federal government that the country looks for prompt and decisive action in the face of such a challenge. I believe this proposal would provide authority for the federal government to act effectively under such circumstances. In a democracy, disagreement with court decrees can find free expression in the available judicial or political processes. It cannot be permitted to find expression in force and thus frustrate the lawfully determined rights of individual citizens. And if forcible resistance occurs, it must be met.

Our proposal is a specific and firm response to a proven need. It would amend the Criminal Code with respect to court orders in school desegregation cases. The measure would make it a federal offense willfully to use force or threats of force to obstruct court orders in school desegregation cases. Upon conviction the offender could be punished by fine of not more than $10,000. or imprisonment for not more than two years, or both.

The bill is not intended to apply to a person who is named in an outstanding court order. Under existing law such an individual is answerable in contempt if he violates or resists the order directed to him. This proposal is designed to cover persons who are not in terms subject to the order, but who willfully intervene in the situation for the purpose of frustrating that order. Although the bill properly covers individual action it is contemplated that it would be used principally in coping with concerted action.

There is a substantial doubt whether the existing authority of the federal courts is sufficient to impose effective sanctions against members of mobs--or against others who, by threats or force, willfully prevent, obstruct, impede or interfere with the exercise of rights or the performance of duties under a school desegregation order of a federal court. The purpose of the bill is to remove that doubt.

The doubt concerning the present law arises from the fact that the contempt power comes into play only when it has been found by the court that the persons charged with contempt disobeyed or resisted the decree of the court. Under federal procedure, a person cannot ordinarily be held in contempt unless he was either a party against whom the decree was issued or was acting in active concert with a party.

These limitations are provided by Rule 65(d) of the Federal Rules of Civil Procedure.

In the example I have given, obviously a desegregation order cannot name the members of a mob not yet formed. Moreover, in the ordinary situation a mob is not in concert with the school board defendants.

The inadequacy of the contempt power is well illustrated in the Little Rock case. A mob was incited to resist the orders of the court concerning the desegregation of the school. The persons responsible were not parties in the litigation, there was no proof that they acted in concert with those parties, hence a contempt case was impossible. Of course it would be possible to return to court to obtain a new injunction against mob leaders. Then it would be necessary to prove subsequent acts in violation of the new injunction. Obviously, this time-consuming procedure is of no practical use in that situation. It will not produce the prompt action needed to break up a mob which may be threatening the safety of children. For these reasons we believe that the contempt power must be supplemented if we are to deal promptly and effectively with individual or concerted action seeking to obstruct orders of the court.

The present obstruction of justice statute also appears to be inadequate. It (18 U.S.C. § 1503) punishes whoever (1) "corruptly, or by threats or force, or by any threatening letter or communication," intimidates or endeavors to intimidate a witness in a United States court or before a United States commissioner or any grand or petit jury, or

any official in the discharge of judicially connected duties; or (2) injures a party or witness on account of his testimony in a federal judicial proceeding or a grand or petit juror on account of a verdict or indictment; or (3) injures an officer on account of the performance of judicially connected duties; or (4) corruptly or by threats or force obstructs or impedes the "due administration of justice."

The important phrase for our purpose is "due administration of justice". The use of force to obstruct an existing desegregation decree would be covered, if at all, only if it could be considered to obstruct or impede the "due administration of justice." But the phrase has been narrowly interpreted to be qualified and limited by the acts specifically enumerated in the preceding portions of the statute, (United States v. Scoratow, 137 F. Supp. 620 (W.D. Pa., 1956)), and to include only conduct of that nature. Haili v. United States, 260 F. 2d 744 (C.A. 9, 1958).

Thus, the statute has been held as not covering an assault upon a United States commissioner who had required a defendant to execute a bail bond. United States v. McLeod, 119 Fed. 416 (C.C.N.D. Ala., 1902). The court was of the view that since the commissioner had already performed his duty, the assault could not have influenced or impeded the due administration of justice. And in the Scoratow case the statute was held inapplicable to threats made against witnesses in the course of an FBI investigation and prior to the filing of a complaint, the conduct not being related to a pending judicial proceeding.

I do not want to be understood as suggesting categorically that a desegregation decree is beyond the reach of the existing obstruction-of-justice statute. It is possible to argue that interference with an existing order relates to a case that is still pending and thus disturbs the ordinary and proper functions of the court within the meaning of the statute.

However, there is so much doubt as to the scope of the present law that arrests of mob leaders by federal authorities would be of questionable validity and their prosecution probably unsuccessful. What we are trying to reach here are deliberate attempts by force or threats of force to frustrate federal court orders dealing with a settled constitutional right. Such a challenge to the rule of law must be met clearly and unequivocally.

The language describing the actions covered is substantially similar to that employed by the existing obstruction of justice statute, 1/ except for the addition of the word "willfully." Willfulness is apparently an implicit element under the present statute. Pettibone v. United States, 148 U.S. 197, 206 (1893). However, we have inserted the word to make it clear that a conviction could not be obtained without evidence of an intention to obstruct the exercise of rights or the performance of duties under a federal desegregation decree. The defendant would have to know of the

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1/ That statute now applies to:

> "whoever***corruptly or by threats or force, or by any threatening letter or communication, influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice, ***."

existence of the decree. We want to reach only those people who have decided to take the law out of the hands of the court and place it into their own.

Under the measure federal officers would have the necessary authority to make arrests on the spot. However, those charged would be given every procedural protection, including indictment by a local grand jury and a trial by a local petit jury. We believe that making this conduct a specific federal offense, together with the complementary power to make on-the-spot arrests, will undoubtedly deter the formation of mobs and will help in the suppression of such mob action as may nevertheless occur. The bill should thus contribute substantially to the safety of the school children involved.

You will note that the bill would not apply to

> "an act of a student, officer or employee of a school if such act is done pursuant to the direction of, or is subject to disciplinary action by, an officer of such school."

The reason for this exception is that students, or others who are part of a school system, can be dealt with as a matter of school discipline. We want it to be clear that the statute can, in no sense of the word, be thought of as interfering with the normal operation of the schools themselves.

The problems that arise when individuals act by force or threats of force to obstruct desegregation decrees issued by a federal court are national in scope. They must be met promptly and vigorously, and this proposal has been drafted with this thought and objective in mind.

II. Flight to avoid prosecution for destruction of educational or religious structures.

Another important problem that requires additional legislation is the bombing of schools and places of worship. All decent, self-respecting people are shocked by these incidents of lawlessness. They are manifestations of racial and religious intolerance that are of extreme concern on both the domestic and international scene. While the perpetrators should be dealt with primarily under local law and by local law enforcement officers, supplemental aid from the federal government is needed.

We therefore propose to amend the Criminal Code so as to make it a felony punishable by fine of not more than $5,000 or imprisonment of not more than five years, or both, for an individual to travel in interstate or foreign commerce to avoid local prosecution, custody, or confinement for willfully damaging or destroying, or attempting to damage or destroy, by fire or explosive any building, structure, facility or vehicle used primarily for the purpose of public or private education or for religious purposes. Flight to avoid testifying in any criminal proceeding relating to such conduct would likewise be punishable.

In my opinion this bill will serve as an effective deterrent to the bombing of educational and religious structures. It has the full support of the Director of the Federal Bureau of Investigation who recognizes that these incidents have confronted local law enforcement officials

with difficult investigation and detection problems. A bombing is one of the most difficult types of crime to solve. Evidence and clues which might otherwise be available are ordinarily destroyed by the blast. There are no tangible "fruits", the sale or disposal of which can be traced. The offense is most often committed at night and therefore there are usually no eyewitnesses. The collection, sifting, and analysis of whatever physical evidence remains requires not only a great amount of effort and patience, but also expert training, equipment, and experience. And, while local officials have been diligent in their efforts to apprehend the offenders, there is no doubt that there are interstate aspects to the offenses and utilization of the resources and powers of the Federal government is needed.

When it has been requested by local authorities, the FBI has given its complete cooperation. It has rendered effective assistance in a number of bombing incidents, including those at Clinton, Tenn., Atlanta, Ga., Peoria, Ill., and Osage, W. Va. The FBI has made available the full use of its laboratory facilities, and to coordinate efforts to cope with the problem, it has held 176 field conferences with top local law enforcement officials, attended by over 8,000 officers representing 3,687 local law enforcement agencies. FBI representatives have discussed appropriate techniques for solving these bombings and have outlined the services the Bureau may offer local officials in their investigations.

However, the FBI should be in a position to act independently. For that purpose it requires a clear and solid jurisdictional basis on which it can proceed promptly and with it all its resources to make the necessary investigations and to apprehend the persons involved. The present bill, which has as its model the Fugitive Felon Act, 18 U.S.C. § 1073, reflects a basic principle that has been long maintained by the legislative and executive branches of the federal government. This principle is that the FBI is not a national police force, should not become such, and should not supersede local law enforcement agencies.

Since 1934 the Fugitive Felon Act has been the means for punishing persons who travel in interstate commerce with the intent to avoid prosecution under state law for certain listed felonies, or to avoid testifying in state felony proceedings. While the Fugitive Felon Act established such conduct as a federal offense, its purpose was to supplement state law enforcement. Under the act, the FBI can and does locate and apprehend fugitives from state justice. When fugitives are arrested by the FBI, they are turned over for state prosecution and as a rule are not prosecuted for unlawful flight, except where for some reason state prosecution is impracticable or inadquate. During fiscal 1957, 947 fugitives were located by the FBI proceeding under the Fugitive Felon Act. Of these only nine were prosecuted in the federal courts under the act.

The proposal, in providing for federal action as a supplement to, but not a substitute for, state and local action, proceeds on the same principle and policy reflected in the Fugitive Felon Act. It differs from that Act in some particulars. While the Fugitive Felon Act applies to flight from prosecution for specified common law and statutory felonies this bill would apply to flight from any prosecution for the willful destruction or damaging by fire or explosives of any educational or religious building, structure, facility or vehicle, or for attempting to do so. It would be immaterial whether the state prosecution would be for a felony or a misdemeanor.

It is our belief that enactment of this measure will bring home to terrorists involved in these incidents that the matter is one of serious national concern and that whoever is foolish enough to indulge in such lawless action will have to face up to the formidable array of both state and federal authority.

III. Preservation and inspection of federal election records.

Our next proposal, S. 957, is designed to implement the authority vested in the Attorney General by the Civil Rights Act of 1957, to institute civil proceedings for preventive relief against discriminatory denials of the right to vote in federal elections. We have found that an effective exercise of this authority is seriously hampered by lack of suitable provisions for access to voting records during an investigation.

The bill would vest in the Attorney General the authority to require the production for inspection of records and papers relating to any general, special or primary election involving candidates for federal office. It would also require the retention and preservation of such records for three years. Willful failure to retain and preserve the records would be an offense punishable by fine of not more than $1,000 or imprisonment for not more than one year or both, and their willful theft, destruction, concealment, mutilation, or alteration, by fine of not more than $5,000 or imprisonment for not more than five years, or both. In the event of non-production, jurisdiction would be conferred upon the federal district courts to resolve any dispute which might arise in connection with the exercise of the authority conferred.

To establish a denial or threatened denial of the right to vote because of racial discrimination requires proof not only that qualified persons are not permitted to register or vote, but that the denial is based on racial discrimination. This calls for evidence that individuals of a particular race had in fact either satisfactorily demonstrated their qualifications under state law or that they were able to demonstrate their qualifications and had offered to do so, and were nevertheless not allowed to register or vote, while individuals of another race no better qualified had been permitted to register or vote.

To assemble the necessary proof of discrimination is impracticable, if not impossible, without access to detailed information

concerning applications, registrations, or other acts, tests, and procedures requisite to voting. It is on the basis of such information that it becomes possible to determine who has been permitted to register or vote and who has not, and to make the necessary racial breakdown. The only source of such comparative information--necessary for proper evaluation of complaints and in the preparation of cases--is the records of registrations or other action required for exercise of the franchise.

In the exercise of his authority under the Civil Rights Act the Attorney General has no existing power to require the production of election records during any investigation of complaints that qualified persons have been denied the right to vote in violation of federal law. The need for this power is plain. Some state and local authorities have refused to permit inspection. There are also the recent experiences of the Civil Rights Commission. The Commission, which does have the power to subpoena such records (although not for the purpose of enforcing voting rights), has found it necessary to utilize its power to compel production. In the recent Alabama case, in the United States District Court for the Middle District of Alabama (In re George C. Wallace et al., No. 1487-N), Judge Johnson, in enforcing the subpoena power of the Civil Rights Commission, stated in his opinion of January 9, 1959, that the inspection of voting records "must be considered to be an essential step in the process of enforcing and protecting the right to vote regardless of color, race, religion or national origin." An even more recent

example is the refusal of a Louisiana official to permit the Commission to inspect voting records in his custody.

Our proposal is the considered product of experience. Two of its provisions are of particular significance. The first of these is the provision which calls for production and inspection of the records rather than for the issuance of a subpoena. In actual operation production would normally be at the usual place of custody of the voting records. Because of the importance of voting records and the frequent need to refer to them, we believed it preferable that the legislation should provide for inspection at their location rather than to permit their removal by subpoena to some other place. The subpoena power might be viewed by some as an attempt by the federal government to interfere unduly with state control over voting records. Inspection at the place of custody avoids any such charge. The bill authorizes inspection of the records at the office of the local United States Attorney as an alternative if for some good and sufficient reason -- which the court could pass on -- the usual place of custody is unsuitable.

The second provision requiring retention of records for a period of three years is extremely important. Its practical need has been strikingly demonstrated in the State of Alabama. After the commencement of a suit by the United States under the Civil Rights Act of 1957, the Alabama legislature introduced a bill permitting destruction of the questionnaires of unsuccessful applicants for registration. Its

obvious purpose was to obstruct the enforcement of the Civil Rights Act. Immediately after the introduction of the bill, the Government applied for and obtained a temporary restraining order preventing destruction of the records in the county involved in the case. Within a matter of days the bill authorizing destruction of the records had been passed into law. Similar action in other states would frustrate Government inspection of the records if the preservation provision does not become law.

The Department feels that enactment of this proposal is essential to the effective enforcement of the provisions of the Civil Rights Act of 1957. It would supply the needed authority to make a reality of an underlying thesis of the Act that the right of all qualified citizens to vote is the foundation of democratic government.

IV. Extending the life of the Civil Rights Commission

The reason for my mentioning S. 960 is because it is part of the Administration's program and is among the proposals forwarded by the Department of Justice. As you know, the Civil Rights Commission acts wholly independently of the Department of Justice. While we have represented the Commission at its request in proceedings to enforce its subpoenas we have not in any sense of the word been involved in the Commission's activities.

S. 960 provides that the life of the Civil Rights Commission should be extended for an additional two years. Accordingly, we ask

that section 104(b) of the Civil Rights Act be amended to provide that the Commission shall submit an interim report not later than September 1, 1959, and a final report not later than September 9, 1961. As it now stands, section 104(b) requires submission of an interim report at such times as either the Commission or the President deems desirable, and of a final report not later than September 9, 1959.

You are aware of the fact that the Civil Rights Commission for reasons beyond its control was not in a position to commence operations for a number of months after enactment of the Civil Rights Act on September 9, 1957. It has performed ably and effectively since that time. Termination of the Commission's existence by September of this year would not, in the opinion of the President, give it full opportunity to make the comprehensive investigation, study, and analysis that is needed of the problems involved in this complex and difficult field.

The Commission's initial public hearing was held on December 8, 1958, in Montgomery, Alabama, in connection with complaints of improper denials of voting rights. There has been extended litigation in that instance concerning the Commission's right to inspect election records.

The Commission has, of course, not limited itself to the question of voting rights. It has recently held a conference in New York City on racial discrimination in housing and a few weeks ago in Nashville, Tennessee, on school desegregation problems.

The work of the Commission to date proves that the public interest will be well served by extending its life for two more years.

I should like to conclude my remarks by emphasizing again that the legislative proposals which we are sponsoring are designed to provide a more solid basis for continuing the outstanding advances of recent years towards achieving our goal of full equality under law for all our people. The future, I believe, will witness even better progress. The situation calls for wisdom, understanding, and determination. The Administration's proposals were drafted with this in mind. They are moderate, workable and necessary. They will be helpful to proper law enforcement and are fully deserving of the favorable consideration of this Subcommittee.