Department of Justice

"PROTECTING CIVIL RIGHTS"

ADDRESS

BY

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At the present time, Congress has under active consideration a program to protect further the civil rights of our people.

Today, I would like to discuss the part of this civil rights program which would authorize civil suits for preventive relief in cases of threatened violation of federally guaranteed civil rights. As you know, this has been the subject of considerable public debate, and, I regret to say, widespread misinformation. The debate has centered around a proposed amendment to provide a jury trial in contempt of court cases growing out of willful disobedience to a lawful court order. This amendment for jury trial in contempt cases has such a serious impact upon the standing and effectiveness of the Federal courts that I feel warranted in calling it to the special attention of this professional group.

The civil rights program is primarily concerned with the right to vote in its real and practical sense. This is the one right, perhaps more than any other, upon which all Constitutional rights depend. It is the cornerstone of our representative form of government. Discrimination on a widespread scale cannot exist if minority groups are given an effective voice at the polls. This is why the right must be zealously guarded if it is to be made meaningful to all of our citizens.

What is the present state of the law concerning voting? Why do we now seek amendments to the law to provide civil remedies? And of special concern now, is there any validity to the objection that the proposed bill unconstitutionally deprives a person of a right to trial by jury? I shall consider these questions in order.

First, a word about the law respecting the right to vote as it now stands.

Under the Constitution, the states are given the power, even with respect to elections for office under the Government of the United States, to fix the

"qualifications" of voters. This power, however, is limited, with reference to the election of federal officers, by the express power given Congress to regulate the "manner" of holding elections and, more importantly, by the provisions of the Fourteenth and Fifteenth Amendments. The Fifteenth Amendment demands that in any election -- federal, state or local -- the right of citizens to vote shall not be denied or abridged by the United States or by any state on account of race, color or previous condition of servitude. The Fourteenth Amendment provides that no state may deprive any person within its jurisdiction of the equal protection of the laws. The courts have held that these prohibitions preclude the administration of election laws in a way which discriminates on account of race, color, or national origin.

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

So much for the right. What about the remedy?

Congress passed many years ago statutes under which private persons claiming that they had been deprived of the right to vote on account of race or color by persons acting under color of state law have been able to bring civil suits for damages and preventive relief. In a series of cases brought by private individuals under these statutes, the courts have held that the constitutionally protected right to vote extends beyond the general election to any primary or special election which is a recognized part of the state's election machinery.

Congress has also authorized Federal criminal prosecutions in the voting field. Actions by private individuals which interfere with the right to vote for federal officials may be prosecuted. Persons who act under color of law to deprive individuals of their right to vote in any election, state or federal, because of race, color, or national origin may also be prosecuted. A number of prosecutions have been had under these provisions.

In addition, almost any act, practice or custom which discriminates against the voting rights of minorities are in violation of state law. Despite these provisions of law, it is incontestable that, by one device or another, a substantial segment of our population is denied an effective voice at the polls. While time does not permit a full documentation, let me cite as a not untypical example what happened last year in Ouachita Parish, Louisiana.

In March 1956, certain members and officers of the Citizens Council of Ouachita Parish, Louisiana, a purely private group, commenced an examination of the register of the voters. Thereafter, they filed approximately 3,400 documents purporting to be affidavits but which were not sworn to as required by law. Each alleged that the affiant had examined the records, that the registrant's name therein was believed to be illegally registered, and that the purported affidavit was made for the purpose of challenging the right of the registrant to remain on the roll. Everyone of the 2,389 Negro voters in Ward 10 was challenged. None of the 4,054 white voters in that Ward was challenged. In Ward 3, such affidavits were filed challenging 1,008 of the 1,523 Negro voters. Only 23 of the white voters in Ward 3 were challenged.

The registrar accepted these unsworn affidavits knowing that each affiant had not examined the registration cards of each registered voter challenged. Citations were mailed out requiring the challenged voters to appear within ten days to prove their qualifications. Registrants of the Negro race responded in

large numbers. During the months of April and May long lines of Negro registrants seeking to prove their qualifications formed before the registrar's office, starting as early as 5:00 a.m. The registrar and deputy registrar refused to hear offers of proof of qualifications on behalf of more than 50 challenged registrants per day. Consequently, most of the Negro registrants were turned away and their names stricken from the roll without even a hearing.

With respect to those registrants who were able to gain admission to the office, the registrar imposed requirements in connection with meeting the challenge which were in violation of Louisiana law. Registered Negro voters in Ouachita Parish were thus reduced from approximately 4,000 to 694.

In vindicating his right, the voter might institute suit for damages or injunctive relief -- a high price to pay for the privilege of voting. Few who have been discriminated against have either the means or the inclination to pursue such a course.

Alternatively, the only course open to the Government is to institute criminal prosecutions. But such a proceeding can be brought only after the harm is done. No amount of criminal punishment after an election can restore the lost right to vote or the harm done to the nation when an election does not fully reflect the voice of the electorate.

The prime object of law is to secure rights, rather than to punish for their abrogation. What is needed, and what the legislation would authorize, is authority in the Department of Justice to proceed in civil suits in which the problem can often be solved in advance of the election and without the necessity of imposing upon any official the stigma of criminal prosecution.

Suits in equity for preventive relief are well adapted to the key problem of eliminating discrimination in voting situations. By means of a suit in equity, a registrar of voters who has been discriminating against a minority

group, for example, in the administration of a literacy test, might be enjoined far enough in advance of an election to permit voting rights to be exercised.

Let us consider step-by-step how such a remedy might apply to the facts in the Louisiana case just described. As early as March, almost eight months before the election, a civil suit might have been instituted. In such a proceeding, the Government would have to establish that the laws were being administered in a discriminatory manner against the voters of one race. Before any injunction could be issued, the registrar would be entitled to a full hearing before the court on whether his conduct violated federal law. If the court were convinced that violation, if any, was inadvertent, or if there were adequate assurance that violation would not be resumed, it could, in its sound discretion, withhold relief. Moreover, the right to such relief would have to be made clear and would be granted only after great caution and deliberation. Should an order enter restraining the conduct as unlawful, an appeal would lie from that decision.

Consider the case at this stage. All that has occurred has been a finding by a court after notice and hearing that certain conduct is in violation of federal law. All that the court order seeks is a discontinuation of the unlawful conduct so that it will not be renewed. No one has been punished. In most cases this is the end of the matter. Upon compliance with the court order, the public interest is vindicated. Ours is a government of law. We presume that election officials will obey the law once it is authoritatively declared. The contempt process only comes into effect thereafter if the defendant defies it.

If, to pursue our illustration, the registrar in the Louisiana case should either refuse to restore or proceed to strike the names of Negro voters from the rolls in the face of the court order, prompt and vigorous action is essential under our form of government to vindicate the authority of the court and the law. And this step would be taken under traditional procedures, fully protecting Constitutional rights.

The court, upon complaint made, could order the registrant to appear for an immediate hearing. The defendant would be entitled to counsel and to bring witnesses and cross-examine opposition witnesses. If the court found a knowing violation, then it could impose a fine, or order the registrar imprisoned for the purpose of compelling him to comply with the order. The registrar would then carry the key to the jail in his pocket--compliance with the court order would bring about his release.

Proceedings might also be had for the purpose of punishing the defendant for defiance of the court order. In such a proceeding for criminal contempt the registrar would have the right to counsel, to face his accusers, and to examine and cross-examine witnesses. He would enjoy the presumption of innocence until proven guilty beyond a reasonable doubt. In the event the court ruled against him, the defendant would again be entitled to appeal.

There is nothing novel or unfair about such proceedings. Numerous federal statutes authorize the Government to seek injunctive relief. Where a decree is disobeyed, it is customary to resort to contempt proceedings to insure compliance with the orders entered.

Sound reasons exist for increasing use of civil suits for preventive relief. Judicial determination of a course of conduct at its threshold aids the government in its primary purpose of preventing violation of law. It also aids the defendant. He can litigate the legality of his proposed conduct without risk of a criminal conviction if he guesses incorrectly.

Now what is the chief objection to this procedure? It is urged that the bill would deprive persons of their Constitutional right to a trial by jury.

This contention should be analyzed carefully. First, the premise is erroneous. Second, it is much more than an attempt by those unsympathetic to

civil rights legislation to saddle the bill with amendments designed to make it ineffective. Most important, the amendment is a frontal attack on the integrity of the courts and evidences a wholly unwarranted distrust and fear of our judicial system--a fear that miscarriages of justice will flow in civil rights cases unless the authority of federal judges to punish for contempt without a jury is taken away from them.

The Supreme Court of Appeals of Virginia, in considering a similar argument, made this reply to it (Carter's Case, 96 Va. 791, 816):

> It was suggested in argument that to maintain the position that to entrust juries with the power to punish for contempts would impair the efficiency and dignity of courts, disclosed a want of confidence in that time-honored institution. May it not be said in reply that to take from courts a jurisdiction which they have possessed from their foundation betrays a want of confidence in them wholly unwarranted by experience? The history of this court, and indeed of all the courts of this Commonwealth, shows the jealous care with which they have ever defended and maintained the just authority and respect due to juries as an agency in the administration of justice, but our duty, as we conceive it, requires us not to be less firm in vindicating the rightful authority and power of the courts.

Trial by jury in criminal prosecutions is indeed a sacred right -- so sacred that it finds express protection in the Bill of Rights. But there is no Constitutional right to jury trial in contempt cases for violation of court orders.

As long ago as 1890 the United States Supreme Court said: "It has always been one of the attributes -- one of the powers necessarily incident to a court

of justice -- that it should have this power of vindicating its dignity, of enforcing its orders, of protecting itself from insult, without the necessity of calling upon a jury to assist it in the exercise of this power."

However, our opposition to the jury trial amendment goes far beyond the legal nicety that it may not be demanded as of right. The issues to be tried in a contempt proceeding arising out of a civil rights case would raise no unique factual problems which would warrant the intervention of a jury. As a matter of law, the order would have to spell out the course of action prohibited in sufficient detail so that the defendant would be fully on notice of what was proscribed. As in any contempt proceeding, the narrow question would be whether the defendant had pursued a course of action contrary to the express mandate of the court. In such a case the court would be the most competent judge of whether specific acts were in violation of its decree. Thus, there is this practical reason why courts are empowered to punish for disobedience of their orders without a trial by jury.

In addition, in voting cases particularly rights must often be vindicated promptly if they are to be preserved. The injection of a jury trial between an order of a court enjoining unlawful discrimination in an election, and the enforcement of that order, would provide numerous opportunities for delay beyond the time when the order could have practical effect.

Traditionally, the equity powers of the court have been invoked to prevent irreparable injury through timely relief. We know that this power is not abused by the courts. In my opinion, equity provides the fairest procedure known to the law to protect the legitimate interests of all concerned in civil rights cases involving voting. Two rights require safeguarding -- the Constitutional right of all citizens to vote without discrimination on account of race or color

and the Constitutional right of the states to establish voting qualifications. Equity provides procedure for promptly determining whether any particular practice is lawful or unlawful.

In our system of government, the last word in resolving conflicts as to the law resides in the courts of justice. But court decisions must be obeyed if they are to be meaningful. Let one kind of lawless action impair the respect and authority of the court, and it will not be long before disrespect is bred for all lawful authority. For this reason, the courts must have the power to compel compliance with their orders. As the Supreme Court of Mississippi has recognized (Watson v. Williams (36 Miss. 331, 341)): "A court without the power effectively to protect itself against the assaults of the lawless, or to enforce its orders, judgments or decrees against the recusant parties before it, would be a disgrace to the legislation and a stigma upon the age which had invented it."

With but one minor exception, Congress has never provided for jury trial of contempts resulting from the violation of court orders issued in suits brought by the United States as plaintiff. The exception was contained in the Norris-LaGuardia Act relating to labor disputes cases. This exception has had no practical application. When the Wagner Act and the Taft-Hartley Act modified the law and permitted the Government to seek injunctions in certain labor situations, they specifically waived the jury trial requirement placed in the Norris-LaGuardia Act. In addition, jury trials in contempt cases are also virtually unknown in the states.

Stripped to its essentials, the jury trial controversy amounts to this -- can we expect our federal judges to apply the same high standards of fairness and impartiality in civil rights cases that we expect and receive from them in

all other cases? Those who propose the jury amendment seemingly say "No"; my answer to this is an emphatic "Yes".

Federal judges are not foreign to the people of their soil and the areas in which they sit. They are generally natives of their communities. Their roots are there. They know the people, their customs, their prejudices, their capacity for human betterment. These judges, in turn, are held in high esteem because of their position, their legal background and learning, and their standing as citizens in the community. They are not dependent on anyone in the Federal Government for extension of their term -- they hold office for life. Such judges may be expected, as experience has shown, to be utterly fearless in their duty, to apply the law without favor, to uphold it with utmost integrity.

These are the issues; I leave it to you to weigh them.

A growing concern has been evidenced on the part of Congress and the American people that we have fallen short of our great objective to secure to all our citizens equality of treatment under the law. The nation's conscience has been aroused by discriminatory treatment against minority groups. There is a widespread demand for more effective action in this crucial area. This gives hope that through legal and non-legal processes the enjoyment of Constitutional rights will be shared equally by all without regard to race, creed, or color in the near future.