-misc.

Burke Marshall, Assistant Attorney General, March 19, 1962
Civil Rights Division

Edwin Guthman, Special Assistant for Public Information

Jay Golden's article makes a worthwhile point, but I would raise the question as to whether a member of your Division should be making it. I have no strong feeling about it and am inclined to approve it for publication. If so, I would like to see Mr. Golden's identification on page three altered with less emphasis on him being a "trial lawyer," etc.

I would also suggest toning down some of the absolute adjectives. For example, on page five - it's enough to say southern registrars are bent on keeping the polls "white" -- "lily white" would needlessly rub many readers.

Another point - I would have to see more documentation for the claim on page ten that the political history of Memphis has made relationship between Negro and white citizens "a model for the South." I don't know anything about it but the name of Boss Crump intruded as I read this section.

My apologies to Mr. Golden for not getting to this sooner.

Of course, if the article is accepted it should have a disclaimer that the views expressed are those of the author and have not been approved by and in no way reflect the views of any Government agency.

Rafer Martin is a forty six year old dirt farmer in Southwest Georgia, a World War II veteran of Anzio, Solerno and Omaha Beach. In 1945, shortly before his discharge, Martin heard a lecture on "good citizenship" and the importance of voting at an army separation center. Remembering that lecture, Rafer Martin tried to register to vote soon after he came home as a civilian. "Things aren't as different around here as you think, boy," the registrar told him. "So long as I'm in charge the books are closed to colored." Seventeen years later the registrar is still in office. In 1962 Rafer Martin, a Negro, is bitter, and apathetic about voting.

Mrs. Charlotte Henson has been teaching second grade at L.C. Clark Elementary School in Central Alabama since her graduation from college in 1958. Two and a half years ago Mrs. Henson and four of the other teachers at her school talked about voting in the local election for Sheriff, and went to the courthouse one afternoon to see about getting their names put on the polls. The registrar said that he was busy that day, but that the five should come back. The following week two of the teachers lost their jobs. Mrs. Henson, a Negro, got scared; today, she insists uneasily, she could not be less interested in voting.

The Reverend William McChesney Carter is a New

Yorker who took a Baptist pastorate in a small Western Louisiana town after completing course requirements towards his Ph.D. at New York University. Shocked by the lack of sewerage facilities and the non-existence of police protection in the colored section of town, Mr. Carter urged his flock to seek relief at the polls. The minister set an example in 1957 by attempting to register. Word soon got out that he had flunked the registration test. Mr. Carter, recalling that he could not interpret a section of the state constitution having to do with legislative power to provide for ground rental or gross leases of sixteenth sections of land, shifts embarrassedly when asked about his registration experience. And familiar with the details of their learned minister's attempt, none of the members of the congregation, like Mr. Martin, all Negroes, has in the past four years ever even considered attempting to register to vote.

When Warren Ford graduated as valedictorian from Wilson High School in Southwest Mississippi three years ago He was awarded a scholarship to a Negro college in Nashville. Home on vacation last summer, and fired by a student led registration drive, young Ford instructed local Negroes in how to fill out the voting form, and encouraged them to apply for registration. One August night Warren Ford was beaten up. In the past six months

not a single Negro within one hundred miles of Ford's home has attempted to register.

As a trial lawyer in the voting section of the Justice Department's Civil Rights Division, whose chief base of operation is the deep South, these are the kinds of situations that I think of whenever "Negro apathy" is cited as the real reason for the disparity between the races in the number of registered voters below the Mason Dixon line. While the names and places in these incidents are fictional, the facts are not. For more often than not it is the fear, frustration and humiliation stemming from such experiences, rather than the myth of Negro "indifference," or contentment with existing conditions, that explains the absence of any strong local voting movement in many disenfranchised colored communities in the South.

True enough, until quite recent times relatively few Negroes have attempted to defy white political hegemony by seeking to register to vote. The number of those trying to vote has been kept small not by lack of interest among other Negroes, but by the consistency with which those who do try fail, and by the means with which they are rebuffed. The wonder is that despite the monolithic wall of white supremacy in many parts of Dixie a strong interest in the ballot as a primary means of self-improvement has persisted among the average Southern Negro.

The ebb in recent years of physical reprisal as the consequence of bucking the system -- lynchings and beatings are anything but commonplace today -- has created the impression outside the colored community in the South that the risks of defiance have diminished. Nothing could be further from the truth. Violence is only the most dramatic of the means that have long been used in some areas to intimidate Negroes who seek their rights as citizens. The uncomfortable glare of national publicity attending the slaying of an Emmett Till or a Mack Charles Parker has evoked greater reliance on far more refined instruments of control. Economic coercion, for one illustration, is an especially effective means for disciplining those who step out of line, and for making an example of them. Boycotts were not invented by freedom riders. In an economy where Negroes depend heavily on whites for jobs, blackballing has worked disaster on more than one Negro laborer. Farmers who a few days or weeks earlier attempted to register to vote have sometimes found that there were no funds available at the local bank to finance their next crop. And school teachers -- the most respected, educated and aware group in any Negro community -- have been particularly vulnerable, as public employees, to this form of pressure; the occasional firing of a teacher who has tried to register has often been sufficient to subdue this potential source of responsible leadership.

An individual's normal aversion to humiliation is another deterrent whose impact has not been lost on the Southern voting registrar who is bent on keeping the polls lilly white. Not only is a Negro who, after being examined on the duties of citizenship, is told by an election official that he is too stupid to vote unlikely to laugh the experience off; but the friends, neighbors and relatives who one way or another hear the tale will probably be dissuaded from risking the indignity that seems to be the consequence of attempting to register.

In a society where discrimination is the rule not many such incidents are needed in any one locale to keep the average Negro in line. What to an outsider might seem like only a slight rebuff is often sufficient to reinforce or confirm a sense of utter futility in one whose entire life experience has been a series of degrading social and political frustrations. Moreover, not only is every individual barrier obstructing the ultimate goal of full citizenship formidable, but the sheer number of these barriers is calculated to create among those who would challenge the system a mood of utter despair. While the pattern varies widely in the South, a lawsuit recently filed by the Department of Justice illustrates the not uncommon extreme. In one rural county Negroes have not only been traditionally prohibited from voting or from registering, but have also not even been per-

nfited to pay the poll tax that is imposed by the state are prerequisite to casting a ballot.

Despite all of these factors, however, "Negro apathy," in the usually understood sense of indifference or lack of concern is a very secondary aspect of the current effort to secure the franchise for Southern Negroes on an equal basis with whites. The truth of the matter is that the recent focusing of national attention, through Governmental and private action, on glaring voting inequities from Georgia to Mississippi and beyond, has to a far greater extent than is generally recognized exposed a repressed eagerness among Negroes to participate in public affairs. The mask of obeisance which the Southern white community has for so long compelled in the Negroes it dominates often conceals a deep rooted desire for political equality that should be no more surprising in Clark County, Mississippi than in the Congo.

Private organizations whose primary aim is to stimulate Negro registration have discovered that, by and large, generating an interest in voting is only a peripheral problem; their major effort is simply to persuade Southern Negroes to translate that interest into action -- to convince them that trying to register may no longer be a futile gesture, and that anyway nothing is accomplished if they do not at least make the attempt to qualify as voters. Similarly, the ex-

perience of the Justice Department's Civil Rights ivision -- which concerns itself exclusively with actual and potential violations of federal law, and has no connection with efforts to drum up voter activity among Negroes -- teaches that the number of qualified Negroes who have actually applied for registration is generally an inadequate reflection of the extent of the interest in the colored community in securing the franchise. For example, in those instances where the Government has carefully supervised a court decree outlawing voter discrimination in a particular county, there has been a spectacular increase in the number of Negroes who of their own accord have sought to register to vote.

The refusal or inability of the white Southerner to grasp that "outsiders" like the federal Government have not created the Negroes' desire to vote, but are simply reacting to it, explains the militant resistance of many who are well intentioned and basically law abiding. Ironically, in most towns and counties in Dixie supression of even the slightest interest in politics by Negroes has succeeded so well over the years that a large part of their white population has come to believe sincerely that local Negroes could not care less about voting. Hence, to many whites talk about "rights" and "law" is irrelevant; for what they think they see is a deliberate instigation from without that by reason of some diabolical motivation is turning apparent harmony into ob-

vious disorder. It is this supposed meddling maliciousness that for many justifies holding firm, whatever the cost.

Similarly, only vaguely understanding why Southern Negroes have in the past not been more insistent about being treated as citizens, many Northern whites have suspicions of their own about the genuineness of the yearnings for equality that are today widely attributed to the colored man in Dixie. Qualms about imagined "external exploitation" are not limited to the South alone.

What in fact "outsiders" have provided for the underprivileged Southern Negro is not the desire for improvement or equality, but rather the encouragement, the wherewithal and the organization for translating that desire into reality. The activities of private organizations along the broad spectrum of civil rights offers tangible evidence that change is possible. The obvious sincerity with which the federal Government is seeking to vindicate the law promises that change is inevitable. As the sense of isolation and hopelessness gradually dissolves, the indigenous political consciousness in many colored communities in the South is becoming increasingly apparent.

Even today a sympathetic visitor grows accustomed to the thoroughly American refrain, echoed with an intensity that might have startled Patrick Henry: "We pay taxes, don't

we; why shouldn't we vote?" And like the Founding Fathers themselves, many Southern Negroes have long sensed that full citizenship will bring with it both a personal dignity that arises from equality and a fair share of the material advantages that government provides. Interestingly, the Albany Movements springing up all over the South generally demand not only equal economic opportunity, but also that colored customers be given the same courtesy and consideration traditionally reserved for whites.

The conviction that the ballot is a principal instrument for the attainment of goals such as these has not been formulated in the abstract. One need wallow but once in the unpaved mud of nearly any Southern town's Negro section to understand why voting seems important to a colored citizen who sloshes home after leaving his job in a well-paved white neighborhood. The stench following Spring rains gives a vivid, and almost constant, reminder of the blessings of proper sewerage. A prosperous Negro businessman whom I was questioning one time as a potential witness in a Government lawsuit made the point best. He suddenly pointed bitterly out the window at a shabby dog slinking along the sun-parched dirt road. "To the Sheriff and the gang up at City Hall," he said, "I'm no better than that dog. I don't vote; they don't need me to get elected. And the consideration I get shows it."

Moreover, the mass media have had the expected impact

in accelerating the Southern Negroes' desire for political equality and the ballot. The modern world, with its sophistication and its impatience, has fortified him no less than the rest of the population with ideas and experiences that transcend the familiar. It has, for one illustration particularly close to home, brought almost daily contact with other, progressive Southern communities. And the lesson of Atlanta and Memphis has not been lost on the rural Negro population. A substantial colored vote in those cities, constituting the language best understood by politicians, has brought with it a greater equalization of public services. Furthermore, the political climate has evoked responsible white leadership to which, year after year, the electorate seems overwhelmingly to respond. And relationships between the races in those cities are a model for the South.

To be sure, just as everywhere there are people who for all kinds of reasons wish that the world would go away and leave them alone, each Negro community has an element that is thoroughly detached from the mainstream of activity and vital interest in winning the right to vote. On the other hand, as in other civil rights matters, it is ironical that adamant white resistance to the demands of colored citizens for the ballot is swelling the ranks of Negro activists at an increasing rate, particularly among the young. Like its counterpart in most communities, a substantial proportion of

the Southern Negro population would not ordinarily feel impelled to play more than a marginal role in political affairs. Under the impact of current pressures, however, more and more Negroes are developing a political awareness that is not only valuable now in the group effort to win the vote, but that is likely to persist once the struggle has been won. Through their foolish and doomed defiance of federal law militant segregationists are enhancing the actual and potential strength of the group whose inferior status they seek to perpetuate.

In the final analysis, of course, the intensity of public or private efforts to eliminate racial impediments to full citizenship cannot, should not and need not depend on the number of Negroes who are committed to achieving the equality which is their constitutional right. So long as one citizen is deprived of his inalienable heritage as an American, the integrity of our democracy is to that extent undermined. The compromising of even one man's rights is the shame of us all.

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The Enforcement of Civil Rights

By Burke Marshall
Assistant Attorney General

Professor John Hope Franklin suggested in his recent Sidney Hillman lectures at Howard University that "enforcement, not enactment" is the "key test" of civil rights legislation. I agree. I think that we as a nation have made important progress in civil rights during the past year, and have done so simply by using many existing tools and powers of the federal government which have not been used -- or not fully used -- in the past.

This has been on a much broader front than by enforcement of civil rights legislation by the Department of Justice. The Administration has, for example, started on the very long but very important task of ensuring full equality of employment opportunity not only in the federal government but also by the thousands

of concerns contracting with the Government. This had not been made before in any affirmative or effective fashion.

There are other advances. A significant one reflecting the tone of the Administration is the creation of a Subcabinet Group, consisting of representatives of all of the important agencies and departments of the executive branch, to meet regularly at the White House. Its purpose, which I think has been realized, is to provide a forum in which the civil rights problems of the United States -- and the impact and potential impact of the Federal Government on them -- can be impressed particularly on the parts of the Government whose primary responsibilities lie elsewhere.

What follows does not extend to these matters. It is limited to the work of the Department of Justice. But I do not want it to be thought that what follows tells the complete story. Civil rights problems in this country are not exclusively racial or Southern. Northern police misconduct is not principally racially motivated, and the Northern racial problems in administering school systems are not limited to New Rochelle. Irrational, invidious discrimination persists nationally in our housing, labor unions, corporations, hospitals,

law firms, and universities, and creates an ugly, persistent economic crisis for minority racial groups which is a major national welfare and economic problem. Undeniably, however, the most apparent and, in some ways, most difficult legal civil rights problems -- the problems which are the Department's responsibility -- involve the Negro and the South. Consequently, this report, like our work, focuses on that region and its people.

Even within that limitation an exhaustive compendium of our statutes and activities is beyond the scope of this piece. Nor shall I offer a statistic-studded specialist's memorandum. Rather, I hope to exemplify the Justice Department's increasing civil rights role by describing several of our representative cases involving voting, transportation, and schools.

Voting

In a large number (though by no means a majority) of counties in a small number of states the right to vote is denied to hundreds of citizens by preventing Negro registration in two major ways: discrimination by registrars in the application of qualification tests; and intimidation by (most often) private individuals. Prior to 1947 the Justice Department had only

an unwieldy parcel of criminal statutes with which to implement the guarantees of the Fourteenth and Fifteenth Amendments. Criminal cases ran afoul of the South's assumptions in the form of Southern juries.

The Civil Rights Acts of 1957 and 1960 have given us three new tools. First, by proving discrimination or intimidation in court we can ask a federal judge to order the defendants to cease their actions or go to jail. Secondly, if we can prove a pattern or practice of discrimination, any Negro who is thereafter rejected by the Board of Registrars may apply to the federal court for a registration certificate which is valid at all subsequent elections. In determining the qualifications of the Negro applicant, the court must determine his qualifications in accordance with the qualifications and standards used by the registrars in registering white persons in the past. Thirdly, we now are able to prepare cases thoroughly before filing as we can compel local officials to let us examine and copy their registration records. How do these laws work?

Macon County occupies about 900 square miles in Southeastern Alabama. About 10,000 of the voting age population are Negroes, many of whom are associated with Tuskegee Institute and its related Veterans Hospital. In 1958, all 3000 eligible white persons, but

only 1000 or 10 percent of the Negroes, were registered. Investigation disclosed that the racially disparate voting figures were the result of myriad discriminatory devices. It developed that, in effect, whites became registered by reaching twenty-one. In fact, the registration books were taken to illiterates' homes where these persons -- despite the state's stringent literacy statute -- were enrolled at their convenience.

The Negro applicant's route was far different. First, he had to ferret out a functioning registration board which, as often as not, had secreted itself in an unlikely part of the courthouse. Moreover, several of the post-1950 boards had to be sought soon after their appointments because they resigned after registering the newly eligible whites. If cornered, the Board subjected Negroes to interminable literacy tests so that, at most, three or four applicants were processed on a registration day. One woman wrote out Article II of the Constitution five different times in an eighteen-month period. Each time she "failed" the "test" because she omitted on her application form the date of the month on which she had moved into Macon County over ten years prior to the date of her application, even though

she had been a resident there continuously since that date. All that the county required was a one-year residence for registration.

State law provides for about thirty registration days per year and some of these may be spent in precincts chosen by the registrars, i.e., non-Negro precincts. In short, most Negroes did not get to apply for registration and those who did were rejected for trivial errors on tests on which the whites received aid and assistance in completing. All of this added up to these astonishing figures. In 1957-58 an average of a about 50 Negroes were registered; in 1959 no Negroes were registered; in 1960 eight Negroes were registered. In 1961 to the date of the Federal Court's decree no Negroes were registered.

Suit had been filed in December of 1958 under that part of the 1957 Act which is directed at discrimination by local officials. Delays followed -- principally from the absence of a registration board when the suit was filed -- and the situation was not dealt with until this year. Out of the trial last March came a strong, detailed court order which directed in effect that only the registration standards theretofore applied to whites could legally be applied to Negroes. The Department has

been active in ensuing compliance with the order, and obtained supplementary relief in September. The figures are graphic; as of March 1, almost 1300 Negroes had been registered since the court's decree. On the last two registration dates in Macon County an average of about 125 Negroes were processed for registration. Furthermore, throughout this period the District Judge has required the Board to report monthly as to its progress and with our help is constantly scrutinizing the registration procedures to preclude a departure from the terms of his order.

Between 1957 and January 1961, four other cases of this type were brought to court. Since that January, we have completed the last two of these cases -- at least to judgment for the United States. In reality the cases are never completed until Negroes go into the voting booth as freely and as comfortably as whites. Fourteen additional cases have been instituted. Of these, three have already been tried, one in a county with over 100,000 people, and a 3 1/2 day preliminary hearing has been held on a fourth. One important case, brought against the State of Louisiana, challenges the constitutionality of the constitutional interpretation test used in that state.

After I took office as Assistant Attorney General and after consultation on the matter with the Attorney General, I concluded that if the Civil Rights Acts were to be vigorously enforced as the President had directed, it would be necessary to seek out specific information about statistically suspicious counties, i.e., those in which the Negro population over 21 exceeds abnormally the number of Negroes registered and in which the white population over 21 is close to 100 percent registered. Accordingly, we have inquired as to whether there is discrimination in a great number of these counties and within the coming months we will make additional inquiries into the rest of them.

One method of inquiry is by inspection of voter registration records. Voter registration records have been inspected about 40 times since the 1960 Civil Rights Act was passed. We have 6 non-legal personnel, under the supervision of 3 experienced trial attorneys, in the Division analyzing these records on a full-time basis.

We also interview persons who we believe have knowledge of relevant facts about discrimination. It should be kept in mind that for the untrained person it is not easy to discover legal evidence of discrimination. Local Negro leaders cannot pore over registration

records, nor can they find out the experiences of white persons who have been registered. For instance, a state may prescribe that voters must explain a portion of the Constitution. The Negro leaders pass with flying colors, the rank and file do not. Those leaders do not know that in some counties, if a reading and writing test is involved, or an application must be completed, white applicants are assisted by the local officials while Negroes go it alone, fail, and go home to practice.

This is a sketch of what we are doing to secure the right to vote against official discrimination. We have learned that the 1957 Civil Rights Act plus the risk of the appointment of federal referees under the 1960 Civil Rights Act has been effective in persuading southern officials to change ways established for three-quarters of a century; that the voting problem exists in less than 200 counties in the south; that it will be possible to resolve the problem in some of these without litigation; and that with competent and hard-working personnel, proper organization, plus cooperation from the United States Attorneys' offices in the south, the eventual result everywhere is inevitable, although it could be advanced in time by favorable Congressional action on the Mansfield bill (S. 2750) on literacy and

other performance tests which has bipartisan and Administration support.

I should also add that we have learned that in some cases -- not as many as might be hoped for, but some -- litigation is not proving necessary. The Attorney General has directed me to explore in advance of litigation all possible avenues of self-correction by local officials of whatever abuses and defects have existed. We in fact follow this path in all instances. As the law, and the consequences of failing to respect it, become more generally known, I am hopeful that this manner of dissolving legal blocks to Negro registration will prove increasingly fruitful.

In some ways, the problem of intimidation -- and intimidation mixed with indifference and apathy caused by years of rebuff and a loss of faith in our processes -- is the more difficult one. The statute provides that no person shall attempt to intimidate, threaten or coerce any other person for the purpose of interfering with the right of such other persons to vote at a federal election. It deals with many forms and causes of fear. For example, a person may be fired from his job because of his efforts to register; he may be evicted from his farm; his credit

may be cut off; the channels of trade may be closed to him; the state criminal processes may be used to intimidate him.

When intimidation occurs, its effect is devastating to the individual Negro involved and discouraging, to say the least, to all Negroes in the area. Consequently, if we are going to enforce the statute we must act fast. Fortunately, while intimidation is hard to prove, all of the factors are not on the side of those attempting to prevent Negro registration and voting. Unlike school cases where the defendants are public officials and have at their disposal the resources of the public treasury, here the individual defendants stand on their own. In addition, intimidation cases are usually dramatic and public opinion is squarely with those who are trying to register to vote. Here are examples of the type of situation with which we deal:

Fayette and Haywood Counties lie near Mississippi in southwestern Tennessee. Almost 25,000 people live in each county and in both more than 60 percent of the residents are Negroes. In 1959 no Negroes were registered in Haywood County and only 38 were on the rolls in Fayette.

Significant Negro registration activity began in Fayette County in 1959; there were no registration officials in Haywood County between 1958 and May of 1960. In the fall of 1959 Fayette County's whites atavistically excluded Negroes from a local primary election which, the whites explained, was a private affair. The insularity bespoken by this tactic was penetrated by an immediate voting discrimination suit which, in effect, brought word of the death and burial of the white primary some years before. A consent decree followed early in 1960.

To vote in Tennessee, a resident need only be twenty-one, sane, and law-abiding. This absence of tests to be used to exclude Negroes, plus the white determination to retain political dominance, produced classic intimidation cases and the first tests of that portion of the 1957 Act.

The whites prepared and circulated lists of the Negro leaders' names. These persons were denied credit by the banks and merchants, their insurance policies were cancelled, they lost their jobs, and those who were retail merchants were unable to stock their shelves. But the whites, acting on outmoded assumptions, underestimated the Negroes' determination, and registration continued in both counties. Sometime early in the summer of 1960,

most of the white community decided in effect to depopulate the counties of Negroes by evicting sharecroppers and tenants from the farmland which they had worked for years. Only registrants and their families were given notice and these persons came to know the other pressures that their leaders had suffered from the beginning.

By mid-December 1960, the Department had filed three cases against more than 150 defendants in both counties, including individuals, banks and business associations. Some evictions occurred before we were able to obtain temporary injunctions on 30 December 1960 and in April, 1961, preliminary injunctions for the remainder of the cases were issued.

These cases are not over yet, and further comment is inappropriate. However, they establish our ability to deal with instances of economic reprisal directed at Negroes' efforts to vote. Moreover, this portion of our statute is not limited to privately imposed pressures. In one of the two other cases brought under it (now pending in the Supreme Court), a preliminary injunction was secured against the use of the state criminal processes -- arrest, confinement, interrogation, bail, trial -- if the processes were being used to deter registration by Negroes.

While these legal victories show progress, the statute alone can never be adequate to cope with the problem. First, we can enjoin the repetition of dramatic, violent intimidation, but that first incident, which is the basis for our subsequent court order, may itself deter the Negro community from further efforts for months or even years. Secondly, the Negro teachers, who are best equipped to lead others, are economically most dependent upon the whites and most susceptible to subtle intimidation of the sort that is difficult to link to voting in the courtroom. These problems will not ultimately be solved except with progress in other basic civil rights areas -- the national problems of poverty and limited job opportunities to which I have already referred.

Schools

It is a politically widely advertised fact that the Attorney General has no authority to initiate school desegregation suits. This does not mean, however, that the federal government has no responsibility on this important national problem. With the approval of the Attorney General, we have taken care not to use the lack of legislation as an excuse for inaction.

At a minimum, the responsibility of the Department of Justice in this area is to take any action that is necessary to protect the integrity of orders of the federal courts and to protect and promote the due administration of justice in communities where school orders have issued. It is my personal belief that at least some, if not all, of the violence and law enforcement problems which have attended school desegregation in the past were caused -- or at least were not averted -- by reason of a failure to recognize explicitly and give effect to this responsibility. In some cities that failure created a temporary vacuum -- a corresponding failure by the local officials and community to accept the inevitable and prepare their cities for it -- which proved disastrous.

This year the South and the nation made great symbolic progress in school desegregation. For the first time since 1954, many cities and towns accepted initial desegregation without a single instance of disorder. Notable advances were made particularly by entirely peaceful transitions in Atlanta, Dallas, New Orleans and Memphis.

The Department did what it could to make clear the recognition and acceptance of our responsibility, and to offer to local officials any kind of assistance which it was within the power of the federal government to grant.

For the most part this work was done through informal conferences and a series of trips made by John Seigenthaler */ and me to the major communities to be affected. In each case we attempted to be useful rather than coercive, suggestive rather than demanding. In each case we discovered an acceptance of responsibility on their part by local officials -- in some cases, coupled with a remarkable willingness and ability to provide local leadership. In each case these officials, with the support and encouragement of others, in fact were fully effective in bringing their people into compliance with federal law in a fashion which reflected credit to the nation as a whole as well as to the South.

Where outside factors interfere with this kind of compliance the Department has an additional litigating responsibility. This year we participated formally as a friend of the court in perhaps a dozen school cases.

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The St. Helena Parish, Louisiana, case illustrates some of the problems these cases raise. The Negro private plaintiffs filed suit in September of 1952. Numerous procedural delays followed, and the district court did not order desegregation of the school until May of 1960. As a part of its own massive resistance program, in 1960 and 1961 Louisiana enacted several parcels of obstructionistic statutes. The most quaint revived the doctrine of interposition; the most troublesome authorized each parish to abandon its schools by referendum. Interposition was aborted in a case involving the New Orleans school system, but on 22 April 1961 St. Helena Parish voted to close its schools.

The school closing law is ostensibly racially neutral; that is, it was not accompanied by legislative history disclosing the racial purpose. Thus the case presented delicate problems of the judicial probing of the legislative mind and, absent that, a state's abstract obligation to provide a public school system. In this context, the court directed specific inquiries to the parties, to the United States, and all other states' attorneys general. We had previously moved to enter the case as amicus curiae, and also responded to the court's inquiries in a brief taking the position that the

Louisiana statute was unconstitutional under both the due process and the equal protection clauses of the Fourteenth Amendment. The court held the statute void, and the Supreme Court recently affirmed unanimously.

One other new development in this area is worth brief mention. We believe that the United States is authorized to protect its courts' orders by a civil suit for equity relief without a specific grant of standing from Congress, and have generally been upheld in this position. (A motion by the United States to intervene in the Prince Edward County case was denied, but the narrow grounds of the decision were limited to matters of timing and factors peculiar to that case.) Late last year officials in Louisiana permitted or arranged for the transfer of children from one parish which had been ordered to desegregate its schools to another that had not. We brought suit to desegregate the schools of the second parish, accepting children from the first, as the only realistic implementation of an order of our courts.

Transportation

The right to travel in interstate commerce without distinction of race has been won since World War II

largely by private plaintiffs on an arduous case-by-case basis. In several of the cases the Government participated as amicus at the Supreme Court level. In 1955 the ICC held that the non-discrimination provisions of Federal law governing interstate carriers and their facilities meant race as well as rates. Before 1961, however, progress was spotty. The Justice Department was thought to be without authority to protect such provate rights affirmatively and the limited resources of the ICC did not permit an effective enforcement campaign.

In 1960 the Supreme Court held that Federal law protected interstate travelers from racial discrimination in facilities used regularly by interstate carriers, whether or not the facilities were owned or controlled by the carriers. The Freedom Rides followed in the spring of 1961. After a tense week following the first outbreak of violence, in which every effort was made to induce local and state officials to meet their responsibilities, the events demanded direct and large scale federal intervention. Some Alabama officials looked on as violence erupted in Montgomery. The right of citizens of the United States to elemental protection of the law, and to travel securely among the States,

was at stake. Whatever the justification for complaint against the publicity methods used by the Freedom Riders, the legal situation, and our responsibility, was perfectly plain. Ordered liberty means the protected exercise of unpopular rights or it means nothing. It was under these pressures, and for these reasons, that the Attorney General was compelled to send a substantial number of deputy marshals to Montgomery.

This necessity also mothered the Division's resuscitation of the much criticised Debs case theory, i.e., that the Federal Government has a litigable interest in interstate commerce free from private interference. On that basis we sued successfully to enjoin the U. S. Klans from interfering with the Freedom Rides and to compel the police to Montgomery, Alabama, to fulfill their obligation to protect persons engaged in lawful -- though locally unpopular -- activity.

Next, the Attorney General petitioned the ICC to issue comprehensive regulations forbidding racial distinctions in facilities used by interstate common carriers. These regulations were issued on September 22, 1961, and they became effective on 1 November. We have brought suits to enforce compliance with them in Alabama, Louisiana, and Mississippi. Basically similar airport cases have been instituted in Alabama and Louisiana.

The results of this are in a way remarkable. Since May hundreds of bus terminals in hundreds of Southern cities and towns have been officially and formally desegregated. As a corollary we have been able, without litigation, to persuade the eighteen railroads operating in the South to take action to desegregate hundreds of additional rail terminal facilities. Where there were localities with continuing problems, we took action as promptly as possible to eliminate them. Virtually all rail and bus terminals are now at least formally desegregated, both officially and by the carriers. I think that everyone would admit that any remaining problems are now only a question of a short time.

This happened because of the basic respect the people of all parts of the United States have for the law, so long as they know the law is in fact -- to return to the beginning of this piece -- going to be enforced as well as enacted. We have used, in all three areas I have referred to, legal tools which were not generally known of, but tools which were always there, ready to be picked up, and which have been used only to enforce principles of federal and constitutional law as to the basic framework of which there has been no serious dispute for some years.

I think that there is a great deal more work of this kind which can be done in this way.

Burke Marshall
Assistant Attorney General

WFI-77

(CIVIL RIGHTS)

WASHINGTON--THE REV. MARTIN LUTHER KING CRITICIZED PRESIDENT KENNEDY TODAY FOR NOT EXERTING ENOUGH LEADERSHIP IN THE FIELD OF CIVIL RIGHTS.

KING, HEAD OF THE SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE, CONCEDED THAT THE KENNEDY ADMINISTRATION TOOK SOME SIGNIFICANT STEPS DURING ITS FIRST YEAR.

BUT HE EXPRESSED HIS OVERALL DISAPPOINTMENT WITH WHAT HAS BEEN ACCOMPLISHED.

"I DON'T THINK PRESIDENT KENNEDY HAS YET GIVEN THE LEADERSHIP THIS PROBLEM DEMANDS," KING SAID. "THIS PROBLEM NEEDS A FORTHRIGHT, VIGOROUS LEADERSHIP."

KING SCORED THE ADMINISTRATION BOTH FOR ITS FAILURE TO ISSUE AN EXECUTIVE ORDER BANNING DISCRIMINATION IN FEDERALLY ASSISTED HOUSING AND FOR THE PRESIDENT'S "FAILURE TO STAND UP VIGOROUSLY FOR LEGISLATION IN THE FIELD OF CIVIL RIGHTS."

KING WAS IN WASHINGTON FOR A MEETING WITH NEGRO LEADERS IN THE AREA IN CONJUNCTION WITH A VOTER REGISTRATION

DRIVE THE INTEGRATION LEADERS PLANNED TO SEE ATTY. GEN. KENNEDY AND THE VICE PRESIDENT JOHNSON DURING THE AFTERNOON.

KING SAID THE KENNEDY ADMINISTRATION WAS DOING A BETTER JOB IN THE CIVIL RIGHTS FIELD THAN HIS PREDECESSOR ON MANY POINTS.

HE STRESSED THAT KENNEDY HAS MADE SOME "REAL IMPROVEMENT" IN APPOINTING NEGROES TO GOVERNMENT JOBS; LAUDED THE JUSTICE DEPARTMENT FOR MOVING IN THE AREA OF VOTING RIGHTS; AND SAID HE WAS HEARTILY PLEASED WITH THE EXECUTIVE ORDER BANNING DISCRIMINATION IN EMPLOYMENT BY COMPANIES WHICH HAVE FEDERAL CONTRACTS.

KING SAID HE WOULD PRESENT NEW EVIDENCE TO THE ATTORNEY GENERAL SHOWING "ALL TYPES OF DEVICES ILLEGALLY STILL BEING USED TO KEEP NEGROES FROM VOTING IN THE SOUTH."

THE ATLANTA PASTOR SAID HE ALSO PLANNED TO TELL KENNEDY ABOUT THE HARASSMENT SUFFERED BY NEGRO CIVIL RIGHTS LEADERS IN SOUTHERN STATES.

KING SAID HE HOPED THE ATTORNEY GENERAL WOULD INITIATE SOME LAW SUITS AND INVESTIGATIONS OF THE FACTS PRESENTED TO HIM.

HE SAID THAT 7,000 VOTERS WERE ADDED THROUGH A REGISTRATION DRIVE IN NEW ORLEANS BUT PURGES OF NEGRO VOTERS DURING THIS SAME PERIOD RESULTED IN A NET LOSS OF 410 ON THE REGISTRATION ROLL.

KING SAID THE PURGES WERE CARRIED OUT BY THE REGISTRARS WHO SCRATCHED OFF THE NAMES OF NEGRO VOTERS WHO WERE NOT HOME WHEN CALLED BY TELEPHONE.

AT THE PRESENT, HE SAID 1.3 MILLION OF A POSSIBLE 5 MILLION NEGROES WERE REGISTERED TO VOTE IN THE SOUTH. HE ADDED THAT HE EXPECTED TO DOUBLE THIS FIGURE WITHIN THE NEXT YEAR.

KING ALSO CRITICIZED THE GOVERNMENT FOR NOT PUSHING SCHOOL INTEGRATION SERIOUSLY ENOUGH AND SAID AT THE PRESENT RATE IT WOULD TAKE 95 YEARS BEFORE ALL NEGRO CHILDREN COULD GO TO INTEGRATED SCHOOLS.

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MEMORANDUM

M.L. King article.

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