INTERIM REPORT OF THE COMMITTEE TO ASSIST SOUTHERN LAWYERS

APPROVED BY THE

EXECUTIVE BOARD OF THE NATIONAL LAWYERS GUILD

JUNE 9, 1962

A Committee to assist Southern Lawyers was established by the Convention of the National Lawyers Guild at Detroit in February, 1962. It has received an original appropriation of over $6,000 by subscription among the delegates.

The purpose of the Committee was to attempt to fill the gap left by the failure of the Bar in the Southern States to provide adequate and effective legal representation necessitated by the massive resistance of the Southern States to the growing desegregation movement.

The existence of this gap had been recently attested to by Ernest Angell of the American Civil Liberties Union in a letter published in the New York Times, and in an article by Dean Eugene V. Rostow in The American Bar Journal. But the urgency of the problem was brought to the Convention by a number of battle-scarred Southern delegates from Virginia, Florida and Louisiana.

Having in mind the limited resources of the Guild and the immensity of the problem, the Committee was directed to channel its efforts in the direction of providing legal assistance to Southern lawyers rather than to attempt to provide direct legal aid.

The composition of the Committee is inter-racial. It consists of 32 members from 10 states.

Guild members were polled and 74 lawyers from 33 cities in 14 states sent "Commitment Forms" to the Committee agreeing to devote at least 40 hours of their time during the year and listing their qualifications. They also indicated whether they preferred to work on briefs, pleadings, research, trial or appellate cases, and whether they were willing to go South, if necessary, on a particular case.

Requests for assistance have come primarily from Guild attorneys who practice in the South, but also from attorneys who had read or heard of

the Committee's work and from organizations active in the desegregation movement.

Attached are excerpts from several reports submitted to the Committee by attorneys in a few of the cases in which the Guild has given assistance. These are included to illustrate the nature of the Committee's work and some of the problems involved. (We attach a summary of other cases handled by our Committee.)

The following comments may illuminate several of our experiences:

The Covington case illustrates how deep-seated is the prejudice which raises a barrier to obtaining legal counsel in the South. This case arose in Monroe, North Carolina, and on the surface, appeared to be a routine prosecution for a common law crime. However, Monroe, North Carolina has been the center of a bitter racial controversy which resulted in a prosecution for kidnapping against some of the leaders of the Negro desegregation movement in that community. The trial of this well-publicized case still pends.

Covington had been associated with the desegregation movement and with the defendants in the kidnapping case. Lawyers were unwilling to take his case, particularly because a challenge would have to be made to the jury system. Our Committee was requested by interested organizations to provide legal representation to Covington, since they had been unable to find an attorney in North Carolina. Because we were reluctant to provide direct legal aid, we first made every effort to obtain an attorney in North Carolina.

Our efforts were fruitless. At one point an attorney agreed to undertake the defense, but later he took the position that his fee, just for the examination, would be $1,000. The defendant and his family were poor and had no such funds available. The organizations involved had already exhausted most of their resources in the kidnapping cases. Under the circumstances, we asked two young lawyers to take the case. They agreed, and their report is appended. They deserve great credit for their work, under the most difficult conditions, and of course,

without fee.

The SAM MITCHELL case illustrates the problem which faces the Southern Negro lawyer who undertakes desegregation cases. Sam Mitchell is an attorney who has practiced law in Durham, North Carolina for a number of years and has been one of the few active lawyers in this State who undertook many kinds of cases arising out of segregation.

Last year he was indicted for failing to file income tax returns in 1956 and 1957. His failure to file and pay his modest taxes for these years was undoubtedly related to his non-lucrative, harassing work on desegregation cases. Having no defense, he pleaded guilty, hoping to be able to pay the taxes and penalties out of his current income. The Judge, in addition to requiring the payment of taxes and penalties, imposed a fine of $7,500, more than his tax and penalty combined.

Mitchell was unable to pay the fine and was prepared to serve a year's imprisonment. Our Committee was asked to assist. Because we concluded that Mitchell's predicament resulted from his work as a lawyer on desegregation cases, we agreed.

Several lawyers from Flint, Michigan agreed to handle the case. We attach a copy of Mort Leitson's letter following his appearance on behalf of Mitchell in North Carolina, which gives the flavor of the lawyer-lawyer relationship which arises in the course of our assistance program.

The ABERCROMBIE injunction case illustrates the cross fertilizing process involved in North-South lawyer relationship. This case arose out of an effort by Negro and some white citizens of Durham, North Carolina to break down segregation at a local movie theater. The theater owner sought an injunction to restrain picketing and other peaceful efforts at persuading the theater to desegregate.

Martin Bradley of Buffalo, and several attorneys working with him, have agreed to assist C.B. McKissick, the local attorney for the defendants. Among the other theories advanced by our Committee for the legal defense of this injunction case, is the old legal equitable doctrine of "unclean hands". This doctrine proved helpful during the early union

organizing efforts in the 1930's when employers were able to obtain injunctions in most state courts to restrain peaceful picketing on the simple theory that any kind of picketing was illegal.

By the use of the "unclean hands" doctrine the union was able to prevent the quick determination of employees' rights on the sole question as to whether the picketing interfered with the employer's property rights. This gave the defendants' attorney the opportunity of presenting evidence that the employer's own illegal or unfair conduct created the conditions under which picketing became necessary.

This doctrine may permit the attorney in a typical case in the South, where an injunction is sought to prevent peaceful protest of segregation, to prove the illegal character of segregation in the particular circumstances, and thus allow the basic constitutional and moral issues to be openly raised and decided in the injunction proceedings. This should provide an additional weapon in the legal arsenal which Southern lawyers can use in desegregation cases.

The Committee's experiences with these and other cases warrant the following conclusions:

1. The need for legal services in the South in cases arising from segregation, both civil and criminal, is serious and widespread, particularly in the smaller communities.

2. Pro forma legal representation, frequently the only legal representation available, particularly in criminal cases, cannot be considered as representation at all, since it avoids the constitutional challenge to the illegal underpinning upon which the system of segregation rests in the South. In most of these cases, the only effective legal right or defense available is the Federal Constitutional right. But if an attorney raises and fights for this right, whatever his own personal feelings toward segregation may be, he places himself in the position of helping undercut the system of segregation. Most attorneys are apparently unwilling to take this position, even though it is their professional obligation to do so.

3. Some attorneys seek to avoid the dilemma involved in this conflict by setting such high fees in these cases as to make their services unavailable as a practical matter. Or, if the fee is paid, the amount is large enough to provide some insurance against future loss of business.

4. We have not yet found any local or State Bar Association in the South which has taken any effective action toward providing legal services in such cases, or which has publicly encouraged attorneys to undertake their professional responsibilities.

5. Attorneys who have taken these cases, and have vigorously fought for their client's constitutional rights, have frequently suffered financial loss, social and professional ostracism and have been otherwise intimidated and harassed.

In addition to the Committee's principal task of providing assistance in particular cases, the Committee has undertaken the following activities:

PARTICIPATION IN CONFERENCES

The Committee was requested to have its representatives present at two conferences held in Atlanta, Georgia and in Birmingham, Alabama, which were attended by persons interested in working actively to eliminate segregation. Our participation was for the purpose of explaining and clarifying the legal problems involved, the Court decisions, Courtroom practice and procedure, legal rights and remedies, and the function of the lawyer in desegregation cases.

At both conferences, the Committee lawyers were well-received and made a valuable contribution to an understanding of the law and the lawyer. A report on the Committee's participation at these conferences is attached.

MANUAL FOR LAWYERS

A great deal of work has been done by Ann Ginger of Berkeley, California in compiling material for a Manual which might be of practical help to lawyers undertaking cases in the South arising from segregation. Several outlines for such a manual have been prepared and discussed by correspondence.

We are concerned that the Manual be practical but not superficial,

lawyer-like but not pedantic or too theoretical, complete but not expensive. We are presently engaged in resolving conflicting views in the light of our objective and our budget and hope to have a Manual ready for distribution by the Fall of this year.

HANDBOOK FOR LAWYERS

As a result of our experiences at the two Southern Conferences, it appeared to us that a small, easily understood handbook on legal rights, remedies and procedures suitable for general distribution in the South to non-lawyers would be most useful.

Since so few lawyers are available in the South for advice and help in cases arising out of segregation, a temporary legal crutch, at least, might be provided by such a handbook.

A committee has been appointed by the Los Angeles Chapter to prepare such a handbook. We hope to have it ready early this fall.

LAW STUDENT CLERKSHIP PROGRAM

Aryay Lenske, the Guild's Executive Secretary, in his frequent visits with law students at various campuses, was profoundly moved by the enormous interest shown by the students in the Guild's program on legal assistance to Southern lawyers.

Their interest amounted to more than intellectual curiosity. Many wanted to participate in a program which seemed to represent to many of them a practical expression of an ideal view of law as an instrument of justice. From these discussions arose the suggestion that law students serve as clerks, at subsistence pay and expenses, during the summer vacation, in offices of Southern lawyers who are active in desegregation cases.

The suggestion was communicated to some of the lawyers in the South with whom our Committee is cooperating. We have thus far been able to place only two of the many students from Northern Law Schools who volunteered, at Southern offices for the coming summer. It was too late to develop this program any further this year. If the experiment works, and funds are made available for this project, we hope to greatly expand the program next year.

COOPERATION WITH OTHER BAR ASSOCIATIONS

In accordance with the Convention resolution, other national bar

associations were asked to help in the solution of the problem. The National Bar Association expressed its willingness to do so. The National Association of Defense Lawyers in Criminal Cases expects to consider the matter at its convention in August.

The American Bar Association referred a communication from our president, Mr. Dreyfus, to its Committee on the Bill of Rights, which met in Washington, D. C. last month. The Guild was invited to appear and present its views to the Committee.

George Crockett, Jr., Co-chairman, and Ben Smith, Co-secretary of our Committee, appeared and presented our views and experiences.

Their report of this important conference is attached. It is hoped that the ABA will act on the matter at its convention this summer. Effective action by the ABA could result in a significant change in the attitude of the Southern bar.

IN GENERAL

Something should be said about the willingness of every attorney whom we asked to "assist" to give his time and efforts to the cases, sometimes at great cost and inconvenience to himself. We have made it a practice to ask several attorneys to work together on each case so that the Southern colleague can have the benefit of the thinking of more than one attorney and so that the burden will not be entirely on one. We have also tried to distribute the work load among different cities.

The cost of administering the work of the Committee has been kept at a minimum by reason of the fact that the Chairmen and Secretaries make no charge for office overhead to the Committee, and no legal fees are paid to any attorney.

However, the actual expenses, particularly travel and long distance phone bills, are substantial, and additional funds will have to be raised if the work of the Committee is to continue on an effective basis.

George W. Crockett, Jr.
Ernest Goodman
Co-chairmen
Len Holt
Benjamin Smith
Co-secretaries

REPORT ON ASSISTANCE IN CONTEMPT CASE

AT HOPEWELL, VIRGINIA, MARCH, 1962

On March 22, 1962, I arrived at Hopewell. I met Richard Scupi and Hal Witt, young white lawyers from Washington, D. C. They had arrived the previous evening at the request of the special Committee, to assist Len Holt.

The morning had been taken up with the trial of 26 adult and 32 juvenile Negro sit-in demonstrators who were charged with trespassing. At 2:00 P. M., the Court reconvened and as anticipated, after hearing legal argument, found all defendants guilty. The adults, men and women were sentenced to thirty (30) days imprisonment; bonds of $250.00 were set for each pending appeal.

The juveniles, many of them children of the adult defendants, were paroled to the custody of their parents—a dubious exercise of judicial judgment, if the purpose of parole is to change previous attitudes.

Scupi and Witt were guests at one home; Holt and I were guests at another. Since segregation is complete in Hopewell we were totally estranged from the white community. We suffered nothing on this account, however. The hospitality, solicitude for our comfort and many kindnesses by the Negro community were heartwarming; we felt "at home" during our entire stay in Hopewell.

That evening, at Petersburg, about 15 miles from Hopewell, a public meeting was held at the First Baptist Church under the auspices of Southern Christian Leadership Conference. The meeting overflowed the seating capacity into the basement hall. Dr. Martin Luther King was the principal speaker.

Len Holt introduced Scupi, Witt and myself, the only white persons on the platform. I spoke on behalf of the Guild. A copy of my remarks is attached. The response from the audience to the announcement of the Guild's action in creating the Special Committee and in bringing us to Hopewell was tremendous.

Later that evening, the lawyers met and developed the legal and Constitutional issues involved in the contempt case against Rev. Curtis Harris which was to be heard the following morning in the Circuit Court of Hopewell. It was this case which had prompted the Committee to provide

assistance to Len Holt and Ed Dawley, his partner, who were the attorneys for Rev. Harris.

The facts of the case were simple. The Virginia Legislature had established a Committee on offenses against the Administration of Justice. This Committee, by the inverse logic which prevails in this part of the Country, instead of investigating the reasons why Justice was being withheld or denied to millions of Negroes, was investigating how Negroes were able to obtain attorneys willing to challenge segregation and to defend them when arrested.

Rev. Curtis, the President of the Hopewell Improvement Association and one of the Southern Negro leaders in the fight against segregation, was subpoenaed; he appeared before this Committee with his attorneys, Dawley and Holt. There he refused to answer the first question, "What is your name," asserting the Fifth and Fourteenth Amendments to the Federal Constitution as reasons for refusal. A rule to show cause for contempt was issued, upon petition by the Committee, and the trial was on this contempt charge.

Without going into a discussion of the various legal and constitutional issues raised at the trial, suffice it to say that defense counsel's principal contention was that the proceding was one for civil—rather than criminal contempt; that if the Judge concluded that the refusal to answer was contempt—he could only direct that Rev. Harris answer the question; and that Rev. Harris was willing to be sworn in Court and to answer the question —"What is your name?" At the end of the trial, the Judge found Rev. Harris guilty and directed that he appear before the Committee when called, and answer all lawful questions. It was felt that the decision was a victory for Rev. Harris and the Negro community.

Submitted by,

ERNEST GOODMAN
Detroit, Michigan

ADDRESS BY ERNEST GOODMAN AT THE FIRST BAPTIST CHURCH

PETERSBURG, VIRGINIA, MARCH 28, 1962

Looking, as a lawyer, at the South, it is clear to me—as it should be to any lawyer—that the Constitution guarantees equality to all, Negro and white alike.

It is equally clear that any State or official who denies or subverts this guarantee of equality, violates the Constitution and the laws of our country.

Such an official may or may not be guilty of a specific crime—but he is clearly a law violator.

Any lawyer will also know, what everybody knows—white or Negro—Northerner or Southerner—that many States and thousands of counties, cities and villages are consistently and openly engaged in preventing legal equality.

Some even proudly assert that their aim is to deny equality to the Negro people by every means at their command.

Now consider this: If the situation were reversed—if the law of our land denied equality and compelled segregation, and the Negro people then sought to obtain the equality denied them under the law, these same officials could, and would, lawfully indict all the Negro leaders as members of a gigantic criminal conspiracy, and legally send them to jail.

This is exactly what is now happening in South Africa, which I visited last year. There Apartheid—or segregation—is the law of the land. And there the Apartheid government acts cruelly and remorselessly to suppress, prosecute and imprison Africans who even advocate equality. There—this suppression occurs under the existing law.

But, here in the South, suppression occurs contrary to the law. And I ask: How can we justify the existence, within our country, of a common agreement, by those who possess all political power, under which the right of equality is denied to millions who are entitled to equality under our own Constitution? Is this not, also, a criminal conspiracy?

I leave the answer to this significant question for another occasion. Now, I would like to tell you of a moral and legal problem which faces the legal profession and which lawyers cannot evade. It is this:

Those who are seeking to deny Constitutional equality to Negroes

are those who possess all the power. And they use this power, without hesitation and with little restraint. Those who possess the constitutional rights but no power and little money, must resist—must defend themselves—must fight back as best they can.

Because the Negro people, and their leaders, have chosen the road of non-violent resistence to Freedom (by sit-ins, freedom rides, prayer meetings, peaceful marches and lawful boycotts) they are brought (some might say "hauled") into courts. They sometimes try to use the legal machinery of our courts—particularly the Federal Courts—to seek justice.

To defend themselves and to fight back, they need lawyers. Under our law, under the law of practically every nation on earth, even South Africa, they are entitled to lawyers.

But we sometimes deny in practice what we give in theory. Only a few lawyers will take these cases. Some will take them but are not prepared to really fight for the constitutional rights involved—for this would require them to fight against the institution of segregation itself.

And the few lawyers who have had the courage—the guts—to take these cases have frequently suffered the consequences.

It is for this reason that the recent Convention of the National Lawyers Guild at Detroit created a Special Committee to assist Southern lawyers. Six Thousand Dollars has already been subscribed to the work of the Committee, and more will be available as our work progresses.

My law partner, George Crockett, a Negro and myself, a white lawyer, of Michigan, are co-chairmen. Len Holt, a Negro lawyer of Virginia, and Benjamin Smith, a white lawyer of Louisiana, are co-secretaries.

Every Guild member is being canvassed to commit himself to give voluntary, unpaid assistance to any lawyer in the South who requests such assistance in any case involving the system of segregation.

We hope, however, that Local, State and other National Bar Associations will undertake to discharge the obligations of lawyers to provide effective legal representation to everyone.

When Len Holt appeared before the Guild Convention last month and presented the problem, he ended his moving appeal by singing that song of freedom "We Shall Overcome." I cannot sing as Len can. I can't sing at all.

But with all my heart, may I say "We shall help you overcome."

1962-1963
District of Columbia Chapter
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FOR IMMEDIATE RELEASE

FROM: L. M. Pellerzi
NA 8-7460 Ext. 654

L. M. Pellerzi, President of the District of Columbia Chapter of The Federal Bar Association, announced today that the Board of Directors of that Chapter passed a resolution calling "upon all lawyers to use their positions of leadership and influence to promote in every way the principles of equal justice and equal opportunity for all Americans". The Chapter has arranged a luncheon program to be held at noon on July 30, 1963, at the National Press Club at which the Honorable Burke Marshall, Assistant Attorney General in charge of the Civil Rights Division will speak to an assemblage of lawyers concerning the current racial controversy. This program will be under the auspices of the Chapter's Council on Community Affairs headed by Mr. Bettis Stalling, former National President of The Federal Bar Association, which has been most active in calling for the assumption by lawyers of leadership responsibility in community problems particularly in the area of race relations.

7/11/63

1962-1963

District of Columbia Chapter

of

The Federal Bar Association

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Alternate Delegate to National Council
Joseph F. Spaniol, Jr.
Attorney
Administrative Office, U.S. Courts

July 11, 1963

The Honorable Robert F. Kennedy
The Attorney General
Washington, D. C.

My dear Mr. Attorney General:

I am gratified to forward the attached resolution of this Chapter which should help promote more active leadership by lawyers in the current racial controversy. This Chapter has previously taken public positions in support of the President's action in Mississippi, the Executive Order on housing, and the proposals for a local housing regulation in the District of Columbia.

The Chapter's Council on Community Affairs headed by Mr. Bettin Stalling, former National President of The Federal Bar Association, in furtherance of the attached resolution has arranged a luncheon program for lawyers at the National Press Club on July 30, 1963, at which your able assistant, the Honorable Burke Marshall, has consented to speak. We would welcome any suggestions you or Mr. Marshall may desire to make concerning this program.

You have our support and best wishes for success in these difficult times.

Sincerely yours,

L. M. Pellerzi
President

Enclosure

cc: Honorable Burke Marshall

1962-1963

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RESOLUTION OF THE BOARD OF DIRECTORS OF THE DISTRICT OF COLUMBIA CHAPTER OF THE FEDERAL BAR ASSOCIATION ADOPTED JULY 10, 1963

Recognizing the significance of harmonious racial relations to the well-being of every community, the Board of Directors of the District of Columbia Chapter of The Federal Bar Association calls upon all lawyers to use their positions of leadership and influence to promote in every way the principles of equal justice and equal opportunity for all Americans.

DRAFT - 11 July 1963

National Guard Report

A. Role of National Guard

In addition to the Reserves of the four Services, the Army and the Air Force are supported by a substantial National Guard organization. The National Guard is organized into units allocated among the States. */ These units are an important part of our overall organization for national defense. In past wars and periods of crisis, the Guard has played an important role.

Unlike the Reserve components of the Services, which are under purely federal control, the Guard has a dual status. In many respects, the rules by which it is governed are provided by Congress under its broad Constitutional power over the Guard, and by an exercise of broad rule-making power delegated by Congress to the President. Day-to-day control and supervision, however, are a function of State organizations headed by the State adjutants general, who report to the State governor. Individual Guardsmen, too, have a dual status; they take a dual oath, and, in addition to their State status, they must be federally recognized if they are to receive the pay provided by the federal government for participation in the program.

Overall guidance of the Guard program within the Defense Department is provided by the National Guard Bureau, headed by a

*/ The District of Columbia and Puerto Rico both have Guard units, but since these are federal enclaves, not subject to State law, any problems of discrimination there can be dealt with as if the Guard units were units in the Army and Air Force Reserve.

military chief who reports, through the chain of command, to both the Secretary of the Army and the Secretary of the Air Force.

Federal funds provide all the drill pay for individual Guard members, support the operation and maintenance of equipment and activities, and provide 75% of the funds for new construction of armories and 100% of the funds for construction of other facilities for use by the Guard. In addition to providing funds, the federal government makes all major military equipment, tanks, planes, trucks, etc., available to the Guard. The States normally provide the land upon which armories are constructed, pay 25% of the cost of armory construction, and pay the cost of maintenance of the armory facilities. Although financial support for the Guard is overwhelmingly federal, it is estimated that the States provided $ _____ for the Guard program during fiscal year 1962.

The magnitude of the Guard program, for both the Army National Guard and the Air National Guard, is suggested by the following tables showing the strength and the amount of federal funds appropriated or available to each organization in fiscal year 1962.

(TABLES here)

Membership in the Guard is voluntary on the part of the individual, and thousands of Guard members would, but for their affiliation with the Guard, have no obligation to perform military duty as a part of any organized unit. In addition to this group, however, there are a significant number of Guardsmen who joined the Guard as a means of fulfilling possible military service obligations under the Universal Military Training and Service Act. In the past, the Guard has offered a number of programs involving a combination of a short period of active duty with subsequent training and service in the Guard. The young men participating in these programs on a satisfactory basis for a specified period of time are not drafted or required to participate in other regular or reserve programs.*/ The various Guard programs therefore complement the programs available under the draft and under various other reserve and regular programs by providing additional methods for young men to enter military service and discharge their obligations.

From the foregoing discussion, it is apparent that the Guard is an inextricable part of the nation's defense system: it provides important

*/ This exemption or deferment is achieved in some cases by the provisions of the UMT&S Act, and in others as a result of Selective Service regulations promulgated in accordance with that Act.

strength in Reserve, it receives substantial federal support and attention, and its programs for military service for young men are part of the fabric of military manpower planning.

B. Equality of Opportunity in the National Guard

At the present time there is no formal federal requirement, comparable to Executive Order 9981 which was promulgated with respect to the active forces and the Reserves, compelling color-blind administration of the National Guard. As a consequence, the degree to which equality of opportunity exists varies from State to State, and even from community to community.

In some States, as a result of constitutional or statutory provisions, discriminatory policies with respect to the Guard are forbidden. This is the case, for example, in California and New Jersey. In others, although there are no such formal prohibitions against discrimination, there appears to be full participation by Negro personnel, officer and enlisted, in the programs of the Guard.

It is reported that no State currently has a formal constitutional, statutory or regulatory provision which openly forbids or restricts Negro participation in the National Guard. */ Despite the absence of formal controls, in a number of States there are no Negro members of the National Guard. The following table lists the States without Negro members, indicates the size of the Army and Air Guard in the State, and shows the percentage of Negro population within the State.

(TABLE here)

*/ It was reported that the last such existing statutory provision was repealed by the North Carolina General Assembly on April 2, 1963.

It is apparent from the preceding table that there are 9 States */ with both significant numbers of Guardsmen and a substantial Negro population in which no Negro serves with the Guard. Whether the forces which achieve this result are formal or informal, political or social, it is apparent that in these States there is effective exclusion of Negroes from the National Guard. In those States with low Negro populations, the conclusions are less clear.

The complete absence of Negroes from State National Guard organizations is a most disturbing pattern to be found in the Guard, but there are others that deserve mention. In a number of States which had some Negro enlisted members of the Guard, there were no Negro officers. While the significance of this officer pattern varies with the size of the Guard, the percentage of Negro population and the extent of Negro participation in the enlisted ranks, the absence of officers contributes to an impression of inequality. The States reporting only enlisted Negro members include:

Oregon	Rhode Island	Nevada
New Mexico	Vermont	Maine (ck)
Nebraska	Texas	Kentucky (ck)
Delaware	Wyoming	

*/ These States are marked with an asterisk in the table.

Three States, while reporting a small number of Negroes in the Army National Guard, had no Negroes in the Air National Guard.*/ One State, Nevada, had all its Negro National Guard members in a single Guard unit, while another, Missouri, had all of its Negro members in two all-Negro units.

A final pattern in the Guard is much like that found in the Reserves: the existence of a number of individual units without Negro members, located in States in which Negroes participate to some extent in the Guard. As the discussion of the Reserves pointed out, such all-white units are sometimes explicable by the operation of one or more of a number of variables -- smallness of unit size, small Negro population in area from which the unit draws members, lack of Negro interest in certain units, unavailability of Negro personnel with special skills required in certain types of units -- and no prima facie case of discrimination can be established without an analysis of all these factors for the units involved. On the other hand, there are sometimes no Negroes in units composed of several hundred men, units of a type not requiring a concentration of those with special skills located in areas with a reasonably large Negro population. In such cases, some type of exclusionary policy is strongly suggested, and further investigation of the background of this statistically improbable pattern is indicated.

*/ These States were Missouri, Iowa and Wyoming.

The presence of these variables discussed above, coupled with the local day-to-day control of Guard units and their procedures for attracting personnel, naturally renders any investigation of problems of inequality in the Guard more difficult than for the active forces. Assumptions based on the existence of a homogeneous group of members and on the validity of random sampling techniques cannot be as freely made. Whatever factors have contributed to the present pattern of Negro participation, it is clear that these patterns in number of cases are compelling evidence that discriminatory forces have been at work. In other cases, the figures available, while suggestive of discrimination, require amplification and further study.

Regardless of these difficulties, the questions suggested by the present status of Negro participation in Guard activities in some States cannot be lightly dismissed. There are a number of reasons why equality of opportunity in the National Guard must be a national objective. One is that the entire National Guard operation represents an exercise of Federal and State power on an impressive scale; State governments are constitutionally disabled from depriving Negroes of equal opportunity in activities subject to State control, and the firm policy of the Federal government in every area subject to its control has been one of equal treatment for all people, regardless of race. Deprivations of equal treatment in

the Guard, though perhaps of less immediate concern to Negro citizens faced with other forms of inequality of greater impact, are no less inexcusable or intolerable.

Another persuasive reason derives from the Guard's role under the Universal Military Training and Service Act. That Act provides a number of means for fulfilling the military obligations which are imposed on the young men of the nation. Several of these means are provided through the structure of the Army and Air Force National Guard. In view of the importance of these programs to the young men affected by them, there should be no program from which any American is excluded because of the color of his skin.

A final reason for compelling equality of treatment is suggested by the relationship between the National Guard and the active military forces of the Army and the Air Force. The Guard units are subject to being called into active Federal service in times of war or crisis. As a consequence, there has been for some time a requirement that Guard units conform to the organization of the regular components. While it is true that the Guard is now organized into companies, battalions, divisions, and other units which correspond to their regular counterparts, the exclusion of Negroes from these Guard units represents a deviation from the organization of regular components. If the Guard is again

called to federal service, there will be a need to bring its units up to full strength by assigning additional personnel. After the Guard has entered federal service, such assignments should be made just as assignments are made in other Army and Air Force units -- without regard to race. The situation of the first Negro to be assigned to an all-white unit is not an enviable one. It seems far better to conform the organization of the Guard to that of the regular components prior to times of crisis, when there is time for the adjustments of attitude that will inevitably be involved. This will permit a future assignment policy in times of crisis which is free from the restraints of racial embarrassments.

D. Possible Future Steps

The steps already being taken to alter the patterns of inequality in the Guard, though limited in scope and lacking promise of immediate results, should, of course, be continued and strengthened. It is appropriate to consider what other steps, promising greater achievement, are available for dealing with the problem.

A necessary preliminary to any positive program for improving equality of opportunity in the Guard is a determination that the executive power of the federal government is to be mobilized in a concerted effort to achieve equality. If this determination is made, the groundwork for any further action would be an Executive Order issued pursuant to the President's power */ to make all necessary rules and regulations for governing the Guard. Such an order would recite the statutory requirement that the Guard organization conform to that of the regular components, and, in terms equivalent to those of Executive Order 9981 which prescribed equality of opportunity for the other elements of the armed forces, would require that membership in the Guard, as well as all other aspects of Guard participation, be without regard to race, color, creed or national origin.

It would be naive to assume, in view of the recent history of recalcitrance in the face of legally imposed requirements for equal treatment, that the issuance of such an executive order alone will command compliance in all cases. Certainly the executive order,

*/ Under 32 U.S.C. § 110.

without more, might provide the stimulus for improved equality of opportunity in Guard units located in areas with less entrenched feelings. In some cases, however, additional steps will be necessary.

One avenue for dealing with noncompliant organizations exists in the courts. Suits, instituted by the federal government to compel the admission of qualified Negro applicants, will provide a forum for determining any legal issues which arise from the dual status of the Guard as an instrumentality of both the federal and state governments. Similar suits may arise in other contexts, presenting other issues for determination by the courts. Litigation has the advantage both of definitive determination of disputed issues and of resolution of conflicts in a manner now familiar in the civil rights area.

Litigation is, of course, only one of a number of alternative approaches. The President is invested with power to withhold, in whole or in part, the funds of any Guard unit which has not complied with federal requirements concerning its organization or administration. Failure to adopt equal-opportunity practices would violate both the statutory requirement that Guard units conform to the organization of equivalent regular units, and would at the same time violate the provisions of the executive order requiring equal opportunity in the Guard.

Another alternative, akin in nature to the withholding of funds, is the withdrawal of "Federal recognition" from non-complying Guard units. Under the present statutory scheme governing the Guard, a unit must be recognized federally before it can receive any federal funds and before its members can qualify for a federal status in addition to their state status.

If recognition is withheld or withdrawn, the unit no longer is a part of the federally supported Guard. The unit loses its operational funds, the members no longer receive pay for attending drills, and, perhaps more significant, those members who have not fulfilled their required duty under the Uniform Military Training and Service Act are compelled to serve in the reserves to complete the balance of their obligated period. In addition, of course, federal equipment issued to the unit would have to be withdrawn.

All these steps are available. Their use would depend upon individual situations. While litigation may seem the wisest course in one case, partial or complete withholding of funds may be more appropriate in another. In other instances, informal negotiations with governors may be sufficiently successful that additional steps are not necessary to implement the policy of the executive order.

Influencing the choice between alternatives will be considerations of military preparedness. While the use of military arguments as a cloak to justify a policy of inaction could not be permitted, valid and compelling military considerations,/ carefully and fully justified to Defense Department officials, might dictate the order in which various units are compelled to comply with the Executive Order, and would certainly influence the chronology of compelled compliance. Such considerations might, for example, suggest that plans be made for realignment of unit assignments to various states in the event that some units' effectiveness is destroyed by their opposition to policies of equal opportunity.

E. Recommendations for Action

The Committee has considered the available material concerning equality of opportunity in the Guard, the alternatives available for improving equality of opportunity and the impact of these alternatives on the Guard in the states affected. It has also considered the measures adopted to deal with the problem.

It is the opinion of the Committee that the compelling reasons for requiring equality of opportunity in the Guard, discussed above, demand more positive action than has heretofore been taken. The Guard has been, and will continue to be, an important constituent element of the armed forces. It cannot be permitted to lag behind the regular and reserve components in providing for all citizens that equality of opportunity which the Constitution commands and which national policy firmly supports.

The Committee therefore recommends that the President issue an executive order requiring that all elements of the National Guard, in all aspects of their operations, integrate completely and provide equality of treatment and opportunity without regard to race which today characterizes the operations of the regular components. The executive order should call upon all federal officials concerned with the maintenance of National Guard strength to use their good offices in seeking an end to practiced inequality of all forms.

following the issuance of this executive order, consideration should be given to the alternative steps to be taken if compliance or reasonable progress toward compliance does not follow in due course. The Committee does not recommend any of the alternatives discussed above to the exclusion of any other as appropriate for any specific situation. It does, however, feel that all of them are appropriate means for insuring compliance, with the choice of means to be dictated by the circumstances of each case.

In applying the various alternative methods, a timetable should be worked out for each State, taking into consideration the peculiar problems of that state and the role of the state's units in defense planning. Technical assistance from the Defense Department and the Services involved should be made available to the Guard organizations affected.

Essential to the process of determining appropriate courses of action is the availability of information concerning equality of opportunity in the Guard. In order that such information may be available on a continuing basis, the Committee recommends that periodic reports of the racial composition of Guard units, and of the applicants for membership therein, be required through appropriate channels. In addition, inquiry concerning equality of opportunity should be made a part of the periodic inspections of Guard units conducted by regular component personnel.

As important as any other single step will be an emphatic direction from the President, circulated down through the chain of command

of those elements of the federal defense establishment concerned with the Guard, requiring serious efforts to obtain compliance with the letter and spirit of the executive order. Difficulties are to be expected im implementing a program of this kind, and if such difficulties are made the excuse for arresting an active program, little in the way of satisfactory results can be expected. The program may proceed with some restraint, but it must proceed. Those responsible for its progress should understand that their performance will be evaluated and that excuses for unsatisfactory performance will not be routinely accepted.

It is especially important that the National Guard Bureau, as the agency at the national level most closely involved in the affairs of the Guard, be impressed with the overriding federal interest in improved equality in the Guard and with the necessity that this federal interest take priority over the inclinations of various state and local Guard organizations.

In the past programs for improving equality of treatment and opportunity for Negroes in the active forces have been instituted amid predictions that the new policies will destroy morale and military effectiveness. That such pessimism has never proved well-founded in the past should reassure those who are hesitant to embark on similar programs affecting the Guard.

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No Doc.

Honorable A. Sydney Herlong, Jr.
Member of Congress
United States House of Representatives
Washington 25, D. C.

Dear Congressman:

The Attorney General has asked me to reply to your letter of October 23, concerning reports that vehicles rented by the Department of Justice were used to transport Reverend Martin Luther King, Jr., around Alabama. On the 18th of October we issued the following statement. I think that it will completely answer your inquiry. Of course, any effort at all by Sheriff Clark or Governor Wallace to ascertain the true facts would have made these false reports unnecessary in the first place.

> The reports that automobiles rented by the Department of Justice were used to furnish transportation for Reverend Martin Luther King in Alabama are either a gross mistake or a deliberate attempt to mislead the people of Alabama.
>
> We are setting forth all the facts so that there can be no misunderstanding although we issued a complete denial on Wednesday.
>
> Attorneys for the Department of Justice on duty in Alabama and elsewhere in the

cc: Records
Chrono
Doar
Putzel
Trial File

United States frequently rent automobiles. In recent weeks, Department attorneys have rented two automobiles in Alabama -- one a 1963 blue Chevrolet Impala and the other a 1964 white Ford Galaxie.

It has been reported that the 1963 Chevrolet was used to take Reverend King from Birmingham to Selma on October 15. This car had been rented by Kenneth McIntyre, a Department attorney, but was being used by Thelton Henderson, another Justice Department attorney.

At about 5:15 p.m. on October 15, Mr. Henderson went to the Gaston Motel to interview Reverend King at the specific direction of the Department of Justice. At that time Dr. King was at a meeting at the Gaston Motel. When Dr. King came out of the meeting, Mr. Henderson asked to speak to him. Dr. King replied that he was late and had to go immediately to the New Pilgrim Church in Birmingham. Henderson offered to drive him there if he could interview him on the way and Dr. King agreed. Henderson left the Gaston Motel at 5:30 p.m. and let Dr. King off at the New Pilgrim Church at 5:40 p.m. Henderson then returned to the Gaston Motel. The Chevrolet never left Birmingham that night.

We have learned that Reverend King was driven to Selma in a Chevrolet similar to the one rented by the Department of Justice. However, it was a privately-owned vehicle and was not the one used by Mr. Henderson.

It has been reported that later on October 15, Reverend King was driven from Selma

to Montgomery in the 1964 Ford which also was rented by Mr. McIntyre. Mr. McIntyre rented the Ford in Montgomery at 5:41 p.m. on October 15 and drove to Craig Air Force Base near Selma, checking into the Base at 9:35 p.m. Thereafter, neither Mr. McIntyre nor the Ford left Craig Air Force Base that night. Mr. McIntyre does not know Reverend King and has never met him. The Ford remained overnight in Selma and the following morning John Doar, First Assistant Attorney General in charge of the Civil Rights Division, drove the Ford to Tuskegee and then back to Montgomery. We have been informed that Reverend King drove from Selma to Montgomery in a privately-owned Cadillac.

It is obvious from these facts that neither the Chevrolet nor the Ford, nor any other car rented by the Department of Justice, was used to transport Reverend King. The reports to the contrary are false. Any efforts to ascertain the truth would have revealed these facts.

Very truly yours,

Burke Marshall
Assistant Attorney General
Civil Rights Division

UNITED STATES GOVERNMENT

DEPARTMENT OF JUSTICE

Memorandum

DATE: JUL 29 1963

TO : Burke Marshall
Assistant Attorney General
Civil Rights Division

7-29-63

FROM : Gordon A. Martin, Jr.
Attorney
Civil Rights Division

GAM, Jr:swh

SUBJECT: Proposed Gesell Report on the National Guard

I talked this morning with Lt. Robert Jordan of the President's Committee on Equal Opportunity in the Armed Forces who told me that the ten states with substantial Negro population and no Negro members in the National Guard are:

Alabama
Arkansas
Florida
Georgia
Louisiana
Mississippi
North Carolina
South Carolina
Tennessee
Virginia

UNITED STATES GOVERNMENT — DEPARTMENT OF JUSTICE

Memorandum

TO : Burke Marshall
Assistant Attorney General
Civil Rights Division

DATE: July 26, 1963

FROM : Gordon A. Martin
Attorney

SUBJECT: Proposed Gesell Committee Report on the National Guard

On July 25, 1963 I met with Lt. Robert Jordan, a legal assistant to the President's Committee on Equal Opportunity in the Armed Forces. Mr. Doar had previously asked that I act as the Division liaison to the President's Committee. Jordan and I discussed generally my reactions to the initial Gesell report in light of my recent visit to the four Southern Air Bases and also a draft which he had prepared for the Committee on ending discrimination in the National Guard. Jordan asked if I saw anything in the draft which would be objectionable to the Department of Justice. I told him that I personally did not but that I would refer it to you and Mr. Doar to see if you had any comments. I did mention that were federal recognition to have been withdrawn from the Mississippi and Alabama National Guards, it would have prevented the federal activation of these units at the time of the integration of the Universities of Mississippi and Alabama. Withdrawal of federal recognition from non-complying Guard units is one of the possibilities set forth in the report at pp. 12 and 13.

Jordan, a 1961 graduate of Harvard Law School, is with the Committee just temporarily and has been assisting Larry Hewes, its counsel. He stated that the draft probably would not be considered by the full committee until mid-september. The Committee apparently is making a referral such as this to the Executive Branch in the hope that its recommendations will not prove embarrassing to the Administration.

Attachment

15 July 1963

Burke—

These are the papers I spoke to you about this morning. They are going to SecDef this afternoon. I would like to be able to tell him that you have read same + offer no objection. Please call, leaving message if I'm out.

Alfred B. Fitt—

Burke,

This is the document I mentioned on the 'phone today which is pertinent to the discussion next week. These are pre-mature, inadequate and ill-defined procedures.

Gerry

3/7/63

11:00 Weds. 13th Dirs

GERHARD A. GESELL