THIS APPEAL

Is Being Presented

To

THE PRESIDENT OF THE UNITED STATES

By

THE REVEREND DR. MARTIN LUTHER KING, JR.

Of Atlanta, Georgia

On Behalf Of

THE NEGRO CITIZENRY OF THE UNITED STATES

OF AMERICA

In Commemoration

Of The

Centennial

Of The

PROCLAMATION OF EMANCIPATION

5/7/62

An Appeal

To The Honorable John F. Kennedy

President of The United States

FOR NATIONAL REDEDICATION TO THE PRINCIPLES OF THE EMANCIPATION PROCLAMATION AND FOR AN EXECUTIVE ORDER PROHIBITING SEGREGATION IN THE UNITED STATES OF AMERICA

Submitted May 17, 1962 by
The Reverend Dr. Martin Luther King, Jr.
President, Southern Christian
Leadership Conference, Atlanta, Ga.

1. PREAMBLE

Mr. President, sometimes there occur moments in the history of a nation when it becomes necessary to pause and reflect upon the heritage of the past in order to determine the most meaningful course for the present and the future. America today, in the field of race relations, is at such a moment. Consequently, we would like to discuss with you, as one of our fellow Americans, and as President of these United States, the crossroads at which America stands on the issue of civil rights.

Like you, Mr. President, we are profoundly proud of the democratic heritage of our country. We know that freedom is, indeed, a most precious thing. We know that "this land is our land, from California to the New York Island; from the Redwood forests to the Gulfstream waters"; we know that this land exists for all Americans, white and Negro. However, we also know that to millions of Negroes throughout these United States, freedom is not yet a "living reality." State enforced segregation and discrimination based on race or color continue in many parts of our country. Thus, as we approach the 100 th anniversary of the Emancipation Proclamation, eight years after the unanimous United States Supreme Court desegregation decision in Brown v. Board of Education, we want to present for your consideration our thoughts on the ways in which the legal and moral responsibility to end state enforced segregation and discrimination can be met.

The wellsprings of equality lie deep within our past. We believe the Centennial of the Emancipation Proclamation is a peculiarly appropriate time for all our citizens to rededicate themselves to those early precepts and principles of equality before the law. Mr. President, like Thomas Jefferson before you, we hold, even more today, "these truths to be self-evident that all men are created equal and endowed by their Creator with certain inalienable rights."

The Declaration of Independence gave hope to all the world because it spoke for all men, not just the privileged few.[1]

> "And in every succeeding statement of American purpose - The Gettysburg Address, Wilson's 'Fourteen Points,' the 'Four Freedoms,' - that same emphasis on the rights and needs of 'all men' has been present. In different contexts we gave these testaments of national faith and purpose a specific meaning which led a grateful humanity everywhere to raise monuments in their hearts where they honored the very word 'American.' Yet we cannot rest on those monuments today."[2] (emphasis added)

One hundred years ago this September, Mr. President, General Robert E. Lee's grey-clad Army of Northern Virginia crossed the Potomac singing "Maryland, My Maryland." The Civil War was in its second year. A victorious South was invading the North.

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1. Kennedy, John F. "Are We Up to the Task", The Strategy of Peace, Popular Library, New York, 1961.
2. Ibid.

History tells us that the outcome of Lee's invasion was determined on the 17th of September, 1862 at Antietam Creek, fifty miles up the Potomac from Washington.

> "In the early hours of the morning it was a battle for two woodlots, a cornfield and a small white church, defended by Confederate divisions under Stonewall Jackson. Toward noon it was a battle for a sunken lane, quickly named 'Bloody Lane' by the Northern attackers, and in the afternoon it was an uphill battle for ridges.
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> "When night fell, the young men from the cities, towns and farms of the North had won the most important points, but thousands of them were dead and every house and barn for many miles around soon filled with wounded."[3]

September 17th, 1862, according to the historian Bruce Catton, was "the most murderous single day of the entire war."

Abraham Lincoln was profoundly aware of the deep wounds which had been inflicted upon the Union when he spoke those prophetic words on November 19, 1863, to those thousands who had gathered on Cemetery Hill in Gettysburg, Pennsylvania for the dedication exercises of a National Soldiers' Cemetery.

> "It is for us, the living, rather, to be dedicated, here, to the unfinished work that they have thus far so nobly carried on. It is rather for us to be here dedicated to the great task remaining before us; that from these honored dead we take increased devotion to that cause for which they here gave the last full measure of devotion; that we here highly resolve that these dead shall not have died in vain; that the nation shall, under God, have a new birth of freedom, and that government of the people, by the people, for the people, shall not perish from this earth." (emphasis added)

Only ten months earlier, shortly after the Battle of Antietam, Lincoln had, on September 22, 1862, summoned his Cabinet and issued an Executive Proclamation, effective as of January 1, 1863, freeing the slaves in the rebellious states. Slavery in America was, thus, brought to an end.[4]

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3. Editorial, "Hotel Workers Union", May 29, 1961, p. 3.

4. Frederick Douglas, describing the mood and the temperament of abolitionists and free Negroes who had convened in a church in Boston on the evening of December 31, 1862, wrote:

> "We were waiting and listening as for a bolt from the sky, which would rend the fetters of four millions of slaves; we were watching, as it were, by the dim light of the stars, for the dawn of a new day; we were longing for the answer to the agonizing prayers of centuries. Remembering those in bonds as bound with them, we wanted to join in the shout of freedom, and in the anthem of the redeemed."
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> Life and Times of Frederick Douglas. N. Y. 1941, Pathway Press, pp. 387-89.

It is precisely because race relations in America today are so deeply rooted, historically, in the socio-political conditions of Slavery, the Civil War, Reconstruction, the "Black Codes", and their aftermath that we believe the time has come for Presidential leadership to be vigorously exerted to remove, once and for all time, the festering cancer of segregation and discrimination from American society.

The struggle for freedom, Mr. President, of which our Civil War was but a bloody chapter, continues throughout our land today. The courage and heroism of Negro citizens at Montgomery, Little Rock, New Orleans, Prince Edward County, and Jackson, Mississippi is only a further effort to affirm that democratic heritage so painfully won, in part, upon the grassy battlefields of Antietam, Lookout Mountain, and Gettysburg. [5]

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When the news that the Proclamation had officially become law was announced to the persons in the church assembled, it had an electrifying effect. Douglas described it thus:

> "The effect of this announcement was startling beyond description, and the scene was wild and grand. Joy and gladness exhausted all forms of expression, from shouts of praise to sobs and tears. My old friend, Rue, a Negro preacher, a man of wonderful vocal power, expressed the heartfelt emotion of the hour, when he led all voices in the anthem, 'Sound the loud timbrel o'er Egypt's dark sea, Jehovah hath triumphed, His people are free.'"

Ibid.

5. The speeches delivered by leaders of the Southwide Student Sit-In Movement before the national Platform Committees of the Democratic and Republican Parties in the summer of 1960 aptly summarized the more modern efforts to extend freedom:

> "We also represent the thinking of thousands of Negro and white Americans who have participated in, and supported student efforts that have been characterized, generally, as Sit-Ins, but which in truth were peaceful petitions to the conscience of our fellow citizens for redress of the old grievances that stem from racial segregation and discrimination. In a larger sense, we represent hundreds of thousands of freedom loving people, for whom our limited efforts have revitalized the great American dream of 'liberty and justice for all.'
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> . . . . . .
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> "The threads of freedom form the basic pattern in man's struggle to know himself and live in the assurance that other men will recognize this self. The ache of every man to touch his potential is the throb that beats out the truth of the American Declaration of Independence and the Constitution. America was founded because men were seeking room to become.
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> "We again are seeking that room. We want room to recognize our potential. We want to walk into the sun and through the front door. For three hundred and fifty years, the American Negro has been sent to the

We believe, Mr. President, that you have a unique opportunity to initiate a dramatic and historic step forward in the area of race relations. The exigencies of segregation and the inequities and injustices of discrimination against nineteen million Negroes in America demand creative and firm Executive action on behalf of civil rights.

On several occasions you have said the times we live in demand bold, imaginative and courageous action by all our people. We, like you, Mr. President, believe that the time we live in is a time for greatness. The achievement of civil and human rights in America, therefore, can no longer rest solely, or even primarily, on judicial or legislative declaration alone. The conscience of America looks now, again, some one hundred years after the abolition of chattel slavery, to the President of the United States. [6]

We submit that the present state of the law with respect to state enforced segregation and discrimination based on race or color requires, at this juncture in history, catalytic enforcement of civil rights by a strong and morally committed Executive. The time has come, Mr. President, to let those dawn-like rays of freedom, first glimpsed in 1863, fill the heavens with the noonday sunlight of complete human dignity. Morality, and Man's dignity before Man and his God, demand this in this year Nineteen Hundred and Sixty-two.

Sixty-six years ago, some thirty-three years after chattel slavery had ended, Judge Albion Tourgee foresaw that the longer the appurtenances and indicia of slavery continued, the more impatient the Negro would become. Judge Tourgee's argument before the Court in Plessy v. Ferguson [7] was ultimately vindicated in Brown v. Board of Education. [8] Today his words serve as a reminder of the wrongs of the past and cry out to

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> back door in education, housing, employment, and the rights of citizenship at the polls. We grew weary. Our impatience with the token efforts of responsible adult leaders was manifest in the spontaneous protest demonstrations which, after February 1, spread rapidly across the entire South and into the North as sympathetic students sought to display their own dissatisfaction with race relations in the United States."

6. "Because ours is a government under a Constitution, Negroes have secured through court action the enforcement of many of their rights. The judicial process is not, however, a valid substitute for political leadership. The courts can only guardedly look beyond the case at bar, and their decrees have limited application. Negro Americans, whose resources have been taxed severely in financing and manning what is in truth a defense of everybody's constitutional principles, have a just claim that the President and his administration give invigorating guidance toward real equality. The nation as a whole needs to feel the impulse of Presidential concern and activity. The free peoples of the world, who value the reputation of the United States, wait to see us act with fairness toward our own citizens."

   The Federal Executive and Civil Rights, Southern Regional Council, Jan. 1961, p. 2

7. 163 U.S. 537(1896).

8. 347 U.S. 483, 74 S. Ct. 686 (1954).

the conscience of America to eliminate the injustices of the present:

> "It is easy for us to excuse ourselves for the wrongs of slavery, but day by day, it is growing harder for the colored man to do so; and it is simply to state a universal fact of human nature to declare that a great and last-wrong like slavery done to a whole people grows blacker and darker for generations and ages as they go away from it. The educated grandchild of a slave who looks back into the black pit of slavery will find little excuse for the white Christian civilization which forbade marriage, crushed aspiration, and after two centuries and a half offered the world as the fruits of Christian endeavor five millions of (illegitimate) sons and daughters - the product of a promiscuity enforced by law and upheld by Christian teachings. Slavery will be a more terrible thing to the Negro a hundred years hence than it was to the calloused consciousness of his nameless father, and a more shameful horror to your grandchild's soul than it was to the aching heart of Garrison."[9]

We are confident that with your help, Mr. President, the discontinuance of seggregation and state imposed discrimination shall come to pass. We, therefore, respectfully propose that in glorious commemoration of the Centennial of the Emancipation Proclamation, you as President of these United States by Executive Order, proclaim:

1. That the full powers of your office will be used to eliminate all forms of statutory-imposed segregation and discrimination from and throughout the respective states of this nation.

2. Effective January 1, 1963 that as of the school year, September 1963, all school districts presently segregated must desegregate.

   Such a Proclamation should be accompanied by a Directive authorizing the Department of Health, Education and Welfare to immediately prepare, in consultation with local school officials, a program of integration in compliance with the mandate of Brown v. Board of Education.

3. That racial segregation in Federally assisted housing is henceforth prohibited and unlawful.

4. That any and all laws within the United States requiring segregation or discrimination because of race or color are contrary to the national policy of the Government of the United States and are detrimental and inimical to the best interest of the United States at home and abroad.

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9. Tourgee, Albion. First Mohonk Conference on the Negro Question in 1890 (Boston 1890) p. 111.

In the pages to follow we will briefly survey the many judicial decisions precluding the application and imposition of laws requiring discrimination and segregation against Negro Americans. These decisions, in conjunction with the Constitutional and statutory provisions cited therewith, demonstrate that in many areas of American life the Negro is entitled to those civil and Constitutional rights for which we now ask Executive support.

II. RESUME OF THE STATE OF THE LAW WITH RESPECT TO STATE ENFORCED SEGREGATION AND DISCRIMINATION BASED ON RACE OR COLOR.

Mr. President, in your Proclamation establishing May 1, 1961 as Law Day, you stated:

> "...no nation can remain free unless its people cherish their freedoms, understand the responsibilities they entail, and nurture the will to preserve them ...
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> "...law is the strongest link between men and freedom, and by strengthening the rule of law we strengthen freedom and justice in our own country and contribute by example to the goal of justice under law for all mankind." (emphasis added)

What greater contribution, "by example", can we make, as a nation, than for the President of the United States to declare that: the retention, continuance and enforcement of any and all laws within the United States requiring segregation or discrimination because of race or color is contrary to the national policy of the government of the United States and inimical to our best interest at home and abroad.

Segregation is but a new form of slavery -- an enslavement of the human spirit and dignity rather than of the body. The enacted legislation and judicially developed case law with respect to equal rights in America today requires the fulfillment of the promise of Emancipation. This law, while admittedly subject to degrees of interpretation, is, nevertheless, in general weighted toward the elimination of any and all forms of state enforced segregation or discrimination. Consequently, we believe that a responsible Executive, nearly 100 years removed from the abolition of chattel slavery, should not remain silent and acquiesce in the persistent enforcement of state laws requiring segregation and discrimination because of race or color.

Article VI, section 2, of our Constitution states:

> "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

The supremacy clause is thus binding on private citizens as well as public officials.

Ours is a federal government under a written Constitution. The United States Supreme Court stands as the final arbiter in the federal system. Its decisions under our form of government are continual additions to the "supreme law" of the land.

Over the past eight years the Federal Judiciary has chartered historic new roads to the achievement of human dignity in the United States. The law as judicially developed suggests that the country as a whole - North, South, East and West - should be informed by an Executive Proclamation that the national policy of the Government of the United States is forthwith compliance with the numerous decisions of the United States Supreme Court in the area of equal protection of the law.

Mr. President, to millions of your fellow Americans, discrimination because of race and color is a very real and chilling thing in these United States. The realities of second-class citizenship, therefore, naturally cause us to ask whether the achievement of equality in America is so difficult and so complex that, as far as the daily lives of Negroes are concerned, it must still remain only a "dream deferred"? We think not.

The requirements of the equal protection clause are simple and unequivocal. The Supreme Law of the Land forbids any state to enact separation of the races. The simplicity of this Constitutional command pierces through the complexities and legalisms surrounding human rights. Direct and open state action to compel segregation is forbidden. What a state cannot do directly it cannot do indirectly. There is no device, no legal technique which is permissible to a state if the underlying reality is that the state by its action is recognizing, encouraging, or perpetuating segregation.

The law with respect to equality of treatment under the Fourteenth Amendment has undergone significant changes since the case of Plessy v. Ferguson, 163 U. S. 537 (1896). In that case the Court upheld the constitutionality of a Louisiana travel statute which required racial segregation and imposed penalties on those persons who disobeyed the statute. The Fourteenth Amendment, the Court stated, did not prohibit the states from enacting legislation based on race and color.

EDUCATION

In 1954, some 60 years later, the U. S. Supreme Court reached an opposite interpretation of the requirements of the Fourteenth Amendment.[10] In a unanimous decision, the Court declared:

> "We conclude that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment."[11]

Thus, where the State has undertaken the responsibility of public education, the Fourteenth Amendment requires it to provide an equal opportunity to all for an education. Separate, segregated facilities cannot, by their very nature, be equal.

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10. Brown v. Board of Education, 347 U. S. 483.
11. Ibid.

Shortly after the 1954 Brown decision, the Supreme Court of Delaware concluded that the effect of that decision was to nullify all State constitutional and statutory provisions requiring separate schools for the two races.[12]

The U. S. Supreme Court, in its second decision in the Brown case, specifically stated that "All provisions of federal, state, or local law requiring or permitting such discrimination must yield to this principle." (i. e., that racial discrimination in public education is unconstitutional.)

In a companion case to the first Brown decision, Bolling v. Sharpe,[13] the question of school segregation in the District of Columbia was raised. School segregation was also held to violate the Fifth Amendment which states that no person shall be deprived of life, liberty, or property, without due process of law:

> "Liberty under law extends to the full range of conduct which the individual is free to pursue, and it cannot be restricted except for a proper governmental objective. Segregation in public education is not reasonably related to any proper governmental objective."[14]

Realizing that its decision would affect 3 million Negro children and 7 million white children attending compulsorily segregated public schools in almost 3,000 school districts in 17 Southern states, the United States Supreme Court left the implementation of these constitutional principles to the Federal district courts with the safeguard that "it should go without saying that the vitality of these constitutional principles cannot be allowed to yield simply because of disagreement with them."[15]

In Cooper v. Aaron[16] (the Little Rock case), the Federal district court, pursuant to a request from state officials, granted a 2-1/2 year delay in the integration of the Little Rock, Arkansas high schools. The U. S. Supreme Court upheld the U. S. Court of Appeals' rejection of this delay. The Court said the constitutional principle established in Brown "forbids States to use their governmental powers to bar children on racial grounds from attending schools where there is State participation through any arrangement, management, funds, or property."[17] Constitutional rights of school children "can neither be nullified openly and directly by State legislators or State executive or judicial officers, nor nullified indirectly by them through evasive schemes for segregation whether attempted 'ingeniously or ingenuously.'"[18] The duty of state authorities (including local school boards and superintendents of schools) to end segregation was reaffirmed. State authorities, in the words of the Court, are "duty bound to devote every effort toward initiating desegregation and bringing about the elimination of racial discrimination in the public school system."[19]

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12. Steiner v. Simmons, 111 A. 2d 574 (Del. 1955)
13. 347 U. S. 497 (1954)
14. Ibid.
15. Brown v. Bd. of Ed., 349 U. S. 300 (1955)
16. 358 U. S. 1(1958)
17. Id. at p. 4.
18. Id. at p. 17.
19. Id. at p. 7.

The last significant decision by the U. S. Supreme Court in the area of public education was Pennsylvania v. Board of Directors of City Trusts.[20] The Court said:

> "The Board which operates Girard College is an agency of the State of Pennsylvania. Therefore, even though the Board was acting as trustee, its refusal to admit /the Negro applicants/ because they were Negroes was discrimination by the State. Such discrimination is forbidden by the Fourteenth Amendment."[21]

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20. 353 U. S. 230 (1957). A Negro lad had been denied admission to Girard College, operated and erected under a trust naming the City of Philadelphia as trustee and providing that the college was to admit "as many poor white male orphans, between the ages of six and ten years, as the said income shall be adequate to maintain." The trust was administered by a Board of Directors made up of judges and elected officials. No city funds were used, but the property was tax exempt. The U. S. Supreme Court rejected the argument that the city officials were acting in a fiduciary, not a governmental, capacity and were not, therefore, subject to the Fourteenth Amendment.

21. Id. at 231. The "1961 Report of the United States Commission on Civil Rights", Vol. 2, Education, summarizes the decisions of the U. S. Supreme Court concerning equal protection of the law in public education and the rules governing their implementation. It states:

> "1. State-imposed racial segregation in public educational facilities creates inequality and therefore constitutes a denial of equal protection of the laws under the Constitution. All schools in which a State participates through any arrangement, management, funds or property are subject to this rule. All provisions of Federal State, or local law requiring or permitting racial segregation in public schools are void.
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> "2. All school authorities operating segregated school systems have a duty to make a prompt and reasonable effort in good faith to comply with the Constitution. The primary responsibility for elucidating, assessing, and solving the problems of desegregation rests with the local school authorities.
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> "3. In many locations this duty would require immediate general admission of Negro children. In others, justification for not requiring immediate general admission of all qualified Negro children may exist. Hostility to racial desegregation is, however, not a ground for delay." Ibid.

Mr. President, despite these numerous signposts designated by our highest court along the road to full equality and equal opportunity in the field of public education, state enforced segregation and discrimination against Negro citizens continues. Some of the most flagrant forms of disregard for the Constitution and the laws of the United States have been curtailed. However, there still remains, overall, state sanctioned and enforced resistance to the decisions of the Court in public education. We cite you only a few examples of the more sophisticated statutory impediments erected by various Southern states in an effort to frustrate any practical implementation of the mandate of Brown v. Board of Education.[22]

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22. Ala. Code Tit. 52 #61 (4) et seq. (1957 Supp.)
Ark. Stats. Ann. #80-1519 et seq. (1957 Supp.)
Fla. Stats. Ann. #230.232 (1957 Supp.)
La. Rev. Stats. #17:81.1 et seq. 17:331 (1957 Supp.)
Miss. Code Ann. #6334-01 et seq. (1956 Supp.)
N. C. Gen. Stats. #115-176 et seq. (1957 Supp.)
S. C. Code #21-230 (9) (1957 Supp.)
Tenn Code Ann. #49-1741 et seq. (1958 Supp.)
Tex. Rev. Civ. Stats. art. 2901a (4) (1957 Supp.)
Va. Code #22-232.1 et seq. (1958 Supp.)

Significantly, these are all states in which there has been either no compliance with Brown or only a minimum. There are a total of 2,917 school districts in these ten states; 1,899 are bi-racial, only 172 are desegregated, with Texas having 132 school districts listed as desegregated. Southern School News, June 1961.

The Alabama Assignment Law is fairly representative. Its express intent is to insure "an efficient educational program with public support and to maintain order and goodwill." The local school board is given the power and authority to assign students to particular schools on the basis of legislative criteria. The criteria include availability of space, teaching capacity, transportation, suitability of established curricula for particular pupils, "psychological qualifications" of the pupil for the type of teaching and association involved, the psychological effect upon the pupil of attendance at a particular school, the possibility of breeches of the peace or ill will or economic retaliation within the community, the morals, conduct, health and personal standards of the pupil.

If a student wishes to appeal the decision of the local school board, there is an appeal to the school board for a hearing, then to the local circuit court for a jury trial and finally to the state supreme court.

In its first court test, the Alabama Law was upheld as "not unconstitutional on its face." Shuttlesworth v. Birmingham Board of Education, 162 F. Supp. 372 (N.D. Ala. 1958), affirmed 358 U.S. 101 (1958).

The Alabama criteria are typical of those used in Arkansas, Florida, Tennessee, Texas and Louisiana. Report of the U.S. Commission on Civil Rights (1959) Ch. V, "Legal Developments of Resistance in the Southern States," p. 242.

The original Virginia Pupil Placement Law (1956) included as one criterion "the efficient" operation of the schools. The same legislature defined an "efficient" system of schools

It is well known that following the May 17, 1954 desegregation decision, the legislatures of several Southern states passed measures known as "pupil placement, enrollment or assignment" laws. These enactments were expressly designed to give local school boards the power to designate which school children should attend. The process of designation is based on a series of criteria ostensibly and apparently other than race. In reality, Mr. President, most of the pupil placement enrollment or assignment laws are predicated upon race and color as underlying criteria. It is significant to note that in few instances, if any, are these criteria ever used to measure the suitability of white children for school enrollment. The practical effect of these state statutes, therefore, permits us to say with a reasonable degree of certainty that they were not enacted to implement desegregation "with all deliberate speed." Indeed, to the millions of Negroes throughout the South in particular and our nation in general, "pupil placement" has in fact become the main bulwark of "token integration," and so-called "marginal desegregation."

Recent decisions indicate that the Federal District Courts are growing more and more impatient with methods applying apparently legitimate criteria, but which in fact are designed to halt or retard desegregation in education. The U. S. Court of Appeals for the 6th Circuit, for example, ruled on March 23, 1962 that the Tennessee Pupil Assignment Law enacted by the Tennessee Legislature in 1957 may not serve as a plan to convert a segregated school system into a nonracial system. At the time the suit was filed in this case (Northcross et al. v. City of Memphis Board of Education), no Negro child had ever been transferred to a white school, and no white child had ever been transferred to a Negro school under the operation of the Assignment Law. Hence, the court concluded:

> "The practice over a long period of time of separate schools in certain geographical areas of our nation has become a way of life in those areas, and we realize that a change is not easy to accomplish. But as this court must follow the supreme law of the land, as interpreted by the Supreme Court, so must boards of education follow it."[23]

You can be sure, Mr. President, that the impatience of Negro Americans with the delaying tactics of many of our Southern states to desegregate their public education is no less than that of the lower federal courts.

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as one in which no white and colored children were taught together! The district court examined these two statutes together and declared the Pupil Placement Act unconstitutional on its face. Adkins v. School Board of the City of Newport News, 148 F. Supp. 430 (E. D. Va., 1957), affirmed 246 F. 2d 325 (4th Cir. 1957) cert. denied, 355 U. S. 855 (1957).

The Act was amended and now orders placement" so as to provide for the orderly administration of such public schools, the competent instruction of the pupils enrolled and the health, safety, and general welfare of such pupils." This statute has yet to be tested, but if Shuttlesworth is followed it may well be upheld as constitutional on its face.

Similarly, the North Carolina Pupil Placement Law directs the local school boards to assign pupils so as to provide for the orderly and efficient instruction, health, safety and general welfare of the pupils. In Carson v. Warlick, 238 F. 2d 724 (4th Cir. 1956), the United States Court of Appeals for the 4th Circuit found the Act not unconstitutional on its face.

It is our growing impatience with the "one (1) percent (%) a year rate of desegregation" in the South which causes us to feel, with great conviction, that what is sorely needed is forceful Executive leadership in behalf of civil rights. This is why we say, Mr. President, that a glorious new state in the history of human rights in America would commence if you, via Executive Order, proclaimed: that the continued enforcement of State laws requiring segregation and discrimination, in your best judgment, is contrary to the Constitution and laws of the United States; and that the existence of State laws requiring discrimination because of race or color is inimical to the best interests of the United States at home and abroad; and that, consequently, the full powers of your office will be employed to bring about forthwith compliance with the Constitution and laws of the United States.

The major social transformation in the mores and customs of a substantial part of our American community provides you, Mr. President, with many opportunities for creative imaginative action. We respectfully submit that it is incumbent upon you to personally exert Executive leadership in the desegregation of public education in the Southern states of this nation. If this is not done, the "peaceful revolution in human rights" taking place in our midst will, to use your own words from another occasion, continue to strain at "the leashes imposed by timid Executive leadership." 24

We are not unaware that the Department of Justice intervened as a friend of the Court in resisting the attempt by the State of Louisiana to stifle desegregation. Nor are we unmindful that the Justice Department sought to intervene as plaintiff in Prince Edward County, Virginia.

We are similarly not unaware of the March 30, 1962 announcement of Secretary of Health, Education and Welfare, Abraham A. Ribicoff, before the Special House Education Subcommittee on integration in federally assisted areas. 25

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23. Citing Cooper v. Aaron, 358 U. S. 1.

24. Excerpt from John F. Kennedy's acceptance speech of nomination for President.

25. Secretary Ribicoff announced that:

    1. As of September 1963, the federal government will no longer regard segregated schools as "suitable" for federal grants for the education of children whose parents live and work on federal installations.

    2. Where no desegregated schools are available to serve these installations, the commissioner of education "will be authorized to provide for the education of children on a nonsegregated basis on federal property or make other suitable arrangements." SSN. V. 8 No 10, p. 1 (April 1962)

/ In 1961, more than $12 million in current school operating funds was furnished by the federal government in behalf of 65,000 pupils residing on federal government property in 17 Southern and border states (Ala., Ark., Del., Fla., La., Ky., Md., Miss., Mo., N. C., Okla., S. C., Tenn., Tex., Va., W. Va.) /

SSN. V. 8 No 10, col. 3, p. 1.

But all these actions, Mr. President, though commendatory and needed, are not a satisfactory substitute for the clarion voice of dynamic, forceful Presidential leadership. Sixty-six years was a painfully long time for the parents and children of Negro Americans to be declared constitutionally entitled to the full fruits of public education that had heretofore been limited and restricted under the Plessy v. Ferguson doctrine of separate-but-equal. One hundred years after the abolition of chattel slavery is indeed an even longer time. The extent to which the Brown decision will be complied with in "all deliberate speed" rests on your shoulders, Mr. President. The "righteousness which exalteth a nation" on the Centennial of the Emancipation Proclamation demands that the President of the United States, in the name of all the people of the United States, proclaim that as of the school year, September 1963, all school districts presently segregated must desegregate. This could be accomplished by authorizing the Department of Health, Education and Welfare to immediately prepare a program of integration for each school district pursuant to the mandate of Brown. Such programs should be worked out now in consultation with local school officials, but in each case the Department of HEW should be mindful of its national duty.

In addition, we think that the proposals advanced by the Southern Regional Council in its report, The Federal Executive and Civil Rights, that the President of the United States:

1. "--publicly affirm his full support of the Supreme Court's decision and his intention to employ his executive powers as needed to assure orderly compliance with it;

2. "--publicly affirm his administration's belief that segregation is an intolerable hindrance to the national goal of higher educational standards"

should be the basis of a formal Executive Proclamation effective January 1, 1963.

The constitutional principles developed in the school segregation cases have been extended to other public facilities and institutions.[26]

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26. Public Beaches: Lonesome v. Maxwell, 123 F. Supp. 193 (D. Md. 1954) stated that Brown did not apply to public beaches and pools. The decision was reversed by the Fourth Circuit, 220 F. 2d 386 (4th Cir. 1955) whose decision was affirmed per curiam by the U. S. Supreme Court in Mayor and City Council of Baltimore City v. Dawson, 350 U. S. 877 (1955).

Public Golf Courses: In Holmes v. City of Atlanta, Ga., 223 F. 2d 93 (5th Cir. 1956) the Court of Appeals had held that Atlanta's municipal golf courses could continue a program of "separate-but-equal". This decision was reversed by the U. S. S. Ct. in 350 U. S. 879, per curiam, with an order that the case be remanded to the district court and a decree entered in favor of petitioners in accordance with Mayor v. Dawson, supra.

Public Parks: In Detiege v. New Orleans City Park Improvement Association, 252 F. 2d 122 (5th Cir. 1958) the Fifth Circuit ruled that a Louisiana law and New Orleans city ordinance requiring segregation in city parks was unconstitutional. Affirmed by the U. S. Supreme Court in 358 U. S. 54 (1958)

HOUSING

A modest but significant step was taken in the judicial development of the national law in regard to discrimination and segregation in private and public housing in the case of Buchanan v. Warley.[27]

The U. S. Supreme Court, in a unanimous opinion, found that a racially restrictive zoning ordinance of Louisville, Ky. was not a legitimate exercise of the police power of the state. The enforcement of the ordinance constituted state action in violation of the Fourteenth Amendment in that it deprived persons of property rights without due process of law:

> "But for the ordinance, the state courts would have enforced the contract, and the defendant would have been compelled to pay the purchase price and take a conveyance of the premises. The right of the plaintiff in error to sell his property was directly involved and necessarily impaired because it was held in effect that he could not sell the lot to a person of color who was willing and ready to acquire the property and had obliged himself to take it."[28]

The Court stated that the social purpose behind the ordinance, i.e., to prevent race conflict, miscegenation, and deterioration in the value of property was not sufficient to obviate the objection that it deprived one of property without due process of law.

These same principles apply even though state-owned public facilities are leased to private persons. See Derrington v. Plummer, 240 F. 2d 922 (5th Cir. 1956), cert. denied, 353 U. S. 924 (1957), and Tate v. Dept. of Conservation, 231 F. 2d 615, cert. denied, 352 U. S. 838. Cities which manage their own facilities in a "proprietary capacity" are also forbidden to discriminate. City of St. Petersburg v. Alsup, 238 F2d 830 (5th Cir. 1956), cert. denied, 353 U. S. 922 (1957).

Public Libraries: As far back as 1945, Kerr v. Enoch Pratt Free Library was decided by the Fourth Circuit, 149 F. 2d 212. The defendant, a privately endowed library, governed by a self-perpetuating board of trustees appointed by the original donor, barred Negroes from its training school for librarians. Because of the importance of financial assistance given the library by the state and city, and because of the significant control over library activities exercised by the state, racial discrimination by the library was held violative of the Fourteenth Amendment. The U. S. Supreme Court denied certiorari in 326 U. S. 721 (1945).

27. 245 U. S. 60 (1917). Buchanan, a white person, had brought an action in the Kentucky State Court to compel specific performance of a contract for sale of certain real estate in Louisville to a Negro. The State courts denied him relief because a Louisville ordinance's stated purpose was to "prevent conflict and ill-feeling between the white and colored races in the City of Louisville" by forbidding Negroes to move into a block upon which a greater number of houses were occupied by white people.

28. Id. at p. 73.

Between the Buchanan case and the landmark decision in Shelley v. Kraemer, 334 U. S. 1 (1948), the Supreme Court made two other significant contributions toward the achievement of equal rights in public and private housing. Both were predicated upon the reasoning in Buchanan. The first, Harmon v. Taylor,[29] declared unconstitutional a city ordinance forbidding Negroes to establish a home on property in a white community. The issue was the right of a white seller to dispose of his property free from restrictions as to potential purchasers. The second, Richmond v. Deans,[30] invalidated a similar city ordinance.

Thus, the legislative trend initially established in Baltimore in 1910 of limiting, by local ordinances, the areas in which whites and Negroes could reside, was judicially terminated by the U. S. Supreme Court. State or city racial zoning laws were declared unconstitutional.

In 1948 in the case of Shelley v. Kraemer, mentioned above, judicial enforcement of racially restrictive covenants was declared state action in contravention of the equal protection clause of the Fourteenth Amendment. The Court held in effect that a state may not enforce private rights based on contractual agreements between private individuals where to do so would result in the infringement of those constitutional rights guaranteed by the Constitution.[31]

Later, in 1953, in Barrows v. Jackson,[32] the question arose as to whether or not a restrictive covenant could be enforced at law by a suit for damages against a co-covenantor who had allegedly broken the covenant. The Supreme Court replied that to award damages for the breach of a covenant would be to sanction the validity thereof and as such would also constitute state action violative of the Fourteenth Amendment "as surely as it was state action to enforce such covenants in equity, as in Shelley v. Kraemer."[33]

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29. 273 U. S. 668 (1927).

30. 281 U. S. 704 (1930).

31. Hurd v. Hodges, 334 U. S. 24 (1948), was decided on the same day as Shelley. The case involved the issue of judicial enforcement of restrictive covenants in the District of Columbia. The Court based its decision on 8 United States Code 342, derived from the Civil Rights Act of 1866:

> "All citizens of the United States shall have the same right in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property."

It concluded that, even in the absence of statute, judicial enforcement of restrictive covenants in the District of Columbia would be unconstitutional:

> "It is not consistent with the public policy of the United States to permit federal courts in the Nation's capital to exercise general equitable powers to compel action denied the state courts where such state action has been held to be violative of the guaranty of the equal protection of the laws." at 35.

32. 346 U. S. 249 (1953).

33. Id. at 254.

The lower federal courts and state courts have followed the historic lead established by the Supreme Court. There have been numerous cases in which these courts have held that local authorities operating public housing projects are barred by the equal protection and due process clauses of the Fourteenth Amendment to the U. S. Constitution from denying applications for housing facilities because of an applicant's race. Neither may local public housing authorities set up racially segregated housing.[34]

In the Banks case, the Appellate Court of the State of California ruled in August 1953 that the San Francisco Housing Authority must abandon its "neighborhood pattern" of resident selection, and admit applicants without discrimination. The U. S. Supreme Court rejected this appeal in May 1954.

Between 1953 and 1958, Federal District Courts in Evansville, Indiana; Louisville, Kentucky; Benton Harbor, Michigan; St. Louis, Missouri; and Columbus and Toledo, Ohio barred racial segregation in public housing. These federal courts acted within the framework of the Supreme Court's interpretation of the Fourteenth Amendment which forbids the practice of racial discrimination by any public officials, whether under authority of state statutes and ordinances or in deference to the custom and usage of a community.

In the Housing Act of 1949, Congress stated for the first time an overall national goal in housing:

> "The Congress hereby declares that the general welfare and security of the Nation and the health and living standards of its people require housing production and related community development sufficient to remedy the serious housing shortage, the elimination of substandard and other inadequate housing through the clearance of slums and blighted areas, and the realization as soon as feasible of the goal of a decent home and a suitable living environment for every American family, thus contributing to the development and redevelopment of communities and to the advancement of the growth, wealth, and security of the Nation."[35]

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34. See: Banks v. Housing Authority of City and County of San Francisco, 120 Cal. App. 2d 1, cert. denied, 347 U. S. 974.

Detroit Housing Commission v. Lewis, 226 F. 2d 180.

Jones v. City of Hamtramck, 121 F. Supp. 123.

Vann v. Toledo Metropolitan Housing, 113 F. Supp. 210.

Askew v. Benton Harbor Housing Commission (W. D. Mich., C. A. No. 2512, Dec. 21, 1956).

Davis v. St. Louis Housing Authority (E. D. Mo., C. A. No. 8637, Dec. 27, 1955).

Ward v. Columbus Metropolitan Housing Authority (S. D. Ohio, C. A. No. 4299, Nov. 5, 1955).

Woodbridge v. Housing Authority of Evansville (S. D. Ind., Civ. No. 618, 1953).

Taylor v. Leonard, 30 N. J. Super. Ct. 116, 103 A. 2d 632 (1954) (quota system and segregation violate 14th Amendment).

Miller v. McComb, Camden County, N. J. Super. Ct., 1955 (consent decree).

At the time that this legislation was passed, the Federal government had still been following an unbroken policy of providing federal funds for housing without seriously looking to determine whether racial discrimination was in fact being practiced. Shortly after the Shelley case, in 1948, the Federal Housing Administration held that it would not provide mortgage insurance money for property on which restrictive covenants were recorded after February 15, 1950.[36] Later, in 1951, the FHA announced that all repossessed FHA-insured housing would be administered and sold on a non-segregated basis.[37] The following year, in connection with the program of housing for non-white defense workers during the Korean War, its field offices were directed to give "some preference" to proposals for open-occupancy developments as against all-minority projects.[38] By 1954 the declared national policy of the FHA was to encourage the development of demonstration open-occupancy projects in certain areas.

The Veterans' Administration has taken steps similar to the FHA in regard to restrictive covenants. Its regulations prevent the use of racially restrictive covenants on property financed under a VA guarantee. The Report of the United States Civil Rights Commission states:

> "These regulations apply to property encumbered by racial restrictions created and recorded after February 15, 1950. Unlike FHA, VA does not refuse to issue a guarantee on a loan covering property subject to such a restriction. But the lender is deprived of the very valuable right of conveying the property to VA in the event of default and foreclosure . . . . With respect to the direct loan program, VA will make no loan on property encumbered by a racial restrictive covenant created and filed after February 15, 1950. A subsequent filing of such a restriction by the borrower subjects the loan to optional acceleration by VA." p. 69

In view of the numerous decisions and statutory provisions on housing, we are perplexed as to how there can be so much "law" entitling the Negro to equal opportunity and equality of treatment in housing, yet so little equality of treatment in fact. Mr. President, the stated purpose of the National Housing Act of 1949 was to achieve the "goal of a decent home and a suitable environment for every American family"; that of the Housing Act of 1954 was to provide "adequate housing for all people.[39] Though eloquently stated national goals, they remain today harshly unfilled for 19 million Negro Americans.

Mr. President, you yourself spoke so eloquently about how an Executive Order in the area of federally assisted housing could be issued by the President of the United States with "the stroke of a pen."

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35. 63 Stat. 413 (1949), 42 U.S.C. 1441 (1958).

36. FHA Underwriting Manual, Sec. 303 (Dec. 1949). The FHA is authorized to insure private lending institutions against losses on long-term, first mortgage, home loans, and on unsecured loans for home repairs.

37. Report of U.S. Commission on Civil Rights, Vol. 4, "Housing". p. 25

38. Ibid.

39. 12 U.S.C. Sec. 1750aa.

On January 16, 1962, in response to a question posed to you during the course of your press conference on that date as to when you would issue an Executive Order prohibiting racial segregation in federally assisted housing, you said the following:

> "Well, I think that - I stated that I would issue that order when I considered it would be in the public interest and when I considered it to make an important contribution to advancing the rights of our citizens ... we are proceeding ahead in a way which will maintain a consensus, and which will advance this cause."[40]

We submit that the majority of the people of the United States would welcome an expression of Executive leadership on the question of democracy in housing. The "national consensus" of America is not an impediment to the issuance of an Executive Order in federally assisted housing.[41] In any event, "the President speaks the moral tone of America" and as such has "an incomparable position from which to define the problems of our policy and to indicate by word and example what needs to be done.[42]

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40. Excerpt from a transcript of the President's news conference, as reprinted on p. 14, Jan. 16, 1962, The New York Times. Anthony Lewis of The New York Times, commenting on the President's response to the question at his news conference, said:

> "The President indicated his feeling that it was important not to move too fast in the field of race relations so as not to get too far ahead of public opinion.
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> * * * * * *
>
> "There was some suggestions that Mr. Kennedy feared that issuance of the order (in Federally assisted housing) would hurt the chances of other legislative problems, notably his trade program, because of possible resentment among key Southern Congressmen."
>
> The New York Times, Jan. 16, 1962, p. 1, p. 15.

41. The New York Times, Jan. 18, 1962, p. 16, in an article entitled "Kennedy Aides Report Nation is Dissatisfied With Status Quo", indicated that a Report released by the White House showed "The American people were far from satisfied with the 'status quo' and expressed 'a strong demand for Federal action in numerous areas.'"

42. The Federal Executive and Civil Rights, p. 10, 1960-61 Report of the Southern Regional Council. The words of the Southern Regional Council are as appropriate today in 1962 as they were in 1960:

> "...the President of the United States in the 1960's ought carefully to decide what are the necessary conditions of national unity. We think they do not reside in the perpetuation of sectionalism. The white population of eleven Southern states is roughly 20% of the nation's total. These are people who, besides being numerous, have been a seed bed throughout our history of able statesmen, treasured writers, and valorous military men.

TRANSPORTATION

Until recently, the Commerce Clause of the U. S. Constitution had been the primary vehicle used to invalidate state laws requiring racial segregation in interstate travel.[43] In Southern Pacific Ry. v. Arizona,[44] the Supreme Court held that where uniformity was essential for the functioning of commerce, a state may not impose its own regulations. This same criterion of uniformity was applied by the Court in Morgan v. Virginia,[45] when it invalidated a Virginia law requiring racial segregation of vehicles traveling through the state.[46]

Two years later, the U. S. Supreme Court sustained the validity of a Michigan anti-discrimination statute as applied to steamboats operating between Detroit, Michigan and Canada. Conflict with Canada on the issue of discrimination was not to be anticipated. Jack Greenberg, in Race Relations and American Law,[47] concludes from these two cases that "the Court places a low value on the state's interest in segregation when balancing it against national uniformity, while placing a high value on non segregation in a similar equation.[48]

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> They are not a people to be condemned and shunned. And there could be no greater mistake than to assume that this 20% is a monolith. A large proportion would welcome, or at least have no objection to a broadening of civil rights because, more keenly than do persons in other regions, they want to be emancipated from the heavy age-old weight. There are state governments which have given clear indication, in the language of political maneuver, of their willingness to be silent followers of a national consensus. There is, in short, within the ranks of white Southerners practical, effective support for reform which ought not to be undervalued." Id. at pp. 6-7.

43. Article I, Section 8, Clause 3 of the U. S. Constitution provides:

> "The Congress shall have power ... to regulate Commerce with foreign Nations, and among the several states, and with the Indian Tribes."

44. 325 U. S. 761 (1945).

45. 328 U. S. 373 (1946).

46. The Court pointed out the lack of uniformity among states on segregation; 18 states forbade segregation while ten states required it; the definition of Negro varied from state to state which would cause passengers to be in a state of constant change during an interstate trip. Therefore The Court concluded:

> "As there is no federal act dealing with the separation of races in interstate transportation, we must decide the validity of this Virginia statute ... as a matter of balance between the exercise of the local police power and the need for national uniformity in the regulations for interstate travel. It seems clear to us that seating arrangements for the different races in interstate motor travel require a single, uniform rule to promote and protect national travel. Consequently, we hold the Virginia statute in controversy invalid." Id. at 386.

47. Columbia University Press, 1955.

48. Id. at p. 120. Greenberg's study of the application of the Morgan rule" indicated that the Sixth Circuit has applied the Morgan rule to company regulations as well

The Interstate Commerce Act, section 3(1), makes it unlawful for a rail carrier to "subject any particular person ... to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."[49] The Court has interpreted this section as imposing the same standards as those of the Fourteenth Amendment. Until the U. S. Supreme Court decision in Brown, this meant that if railroads could provide "separate but equal" accommodations, they were fulfilling the requirements of the statute. The first major departure from this doctrine, in transportation, occurred in Mitchell v. U. S.,[50] when the Court ruled that "separate but equal" could not constitutionally apply to Pullmans.

Shortly thereafter, in Henderson v. U. S.[51], dining car segregation was set aside not by attacking segregation, per se, as unconstitutional but by stating that Negroes may not be excluded from any empty seats in a diner even if this meant violating a segregation rule.[52] Recently in Boynton v. Virginia,[53] the I. C. A. was interpreted as guaranteeing to an interstate passenger the right to be served without discrimination in terminal and restaurant facilities operated as an integral part of the carrier's transportation service, even though the carrier does not own, actively operate, or directly control the terminal or restaurant.

As you so well know, Mr. President, even with these numerous court decisions requiring desegregation in interstate transportation, discrimination and segregation against Negroes continued. It was not until after the now famous "Freedom Rides" that any significant equality of treatment was accorded Negroes in interstate travel.[54]

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as state laws. Segregation ordered by a driver in Kentucky which had no bus segregation law was held to be an unreasonable burden on interstate commerce just as much as if it had been imposed by law. Whiteside v. Southern Bus Lines, 177 F. 2d 949 (6th Cir. 1949). The Supreme Court of Virginia also applied the Morgan rule to rail travel when it held that buses and trains are indistinguishable as far as of burden to interstate commerce. Lee v. Commonwealth, 189 Va. 890 (1949).

49. 49 U. S. C. A. 3(1).

50. 313 U. S. 80 (1941).

51. 339 U. S. 816 (1950).

52. The Court commented on the principle of segregation, however, by criticizing "the curtains, partitions and signs (which) emphasize the artificiality of a difference in treatment which serves only to call attention to a racial classification of passengers." Id. at 825.

53. 364 U. S. 454 ( )

54. On November 7, 1955, the Interstate Commerce Commission decided NAACP v. St. Louis-San Francisco Ry. Co., ordering the end of segregation on all interstate rail travel. It also ordered that the Richmond Terminal take down "WHITE" and "COLORED" signs. Relying heavily on the Brown decision, the ICC stated:

> "It is hardly open to question that much progress in improved race relations has been made.... We are, therefore, now free to place greater emphasis on steps 'to preserve the self-respect and dignity of citizenship of a common country' which this commission in 1887 balanced against 'peace and order.'"

On the same day as the ruling in the above case the ICC also declared that to require "Negro interstate passengers / to / occupy space or seats in specified

Insofar as bus terminals are concerned, it was also not until following the "Freedom Rides" in May 1961 that the Attorney General of the United States petitioned the Interstate Commerce Commission to issue a regulation prohibiting discrimination on interstate busses and in bus terminals.[55]

While there are no state laws requiring segregation aboard airplanes,[56] desegregation still exists in the airline terminals of some Southern cities.[57]

In the area of intrastate travel, state imposed segregation is forbidden by the Fourteenth Amendment. In Browder v. Gayle,[58] the District Court held that state imposed bus segregation in Montgomery, Alabama was unconstitutional. Segregation in intrastate travel cannot constitutionally be imposed by state statute, local ordinance, or public officials. In 1958, Evers v. Dwyer[59] declared that Memphis, Tennessee's continued enforcement of bus segregation was unconstitutional under the Fourteenth Amendment.

You may wonder why, Mr. President, we mention so many court decisions. We do this only because we want to emphasize the fact that in transportation as in housing and public education, there is a plethora of law entitling Negroes to protection against discriminatory treatment because of their race and color. These decisions, in conjunction with the legislation enacted over the years, make it amply clear that Negroes are legally and constitutionally entitled to exercise these very rights we now seek to have secured by Presidential leadership.

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portions... of buses, subjects such passengers to unjust discrimination, and undue and unreasonable prejudice and disadvantage, in violation of Section 216(d) /of the ICA_/ and is therefore unlawful." 64 M. C. C. 769 (1955) at 772.

55. The ICC issued a regulation on September 22, 1961, effective November 1, 1961, prohibiting carriers from segregating passengers on any bus operated interstate, and from maintaining or using any terminal any portion of which is segregated. The Department of Justice has moved quickly against localities which prevented bus terminals from obeying the regulation. Since November 1961, eight suits were filed against the following cities: Alexandria, Baton Rouge, Monroe, and Rustin, Louisiana; Greenwood, Jackson, and McComb, Mississippi. Favorable decisions for the government have been made in all cases except Baton Rouge and Jackson which are still pending.

56. The 2nd Circuit Court of Appeals has held that the Civil Aeronautics Act outlaws racial discrimination in the air. Fitzgerald v. Pan Am World Airlines, 229 F. 2d 499 (2nd Cir. 1956).

57. At the request of the Federal Aviation Agency, the Department of Justice filed a suit which led to the desegregation of the Montgomery airport in January, 1962. Another suit, intended to desegregate the New Orleans restaurant at the airport, is awaiting judgment as of April 1962. The Department of Justice was able to desegregate the Columbus, Georgia, and the Raleigh-Durham, North Carolina, airports by negotiation.

58. 142 F. Supp. 707 (M. D. Ala. 1956), aff'd per curiam 352 U. S. 903 (1956).

59. 358 U. S. 202 (1958).

On the one hand, Mr. President, nearly twenty million citizens find themselves constitutionally, legislatively and judicially entitled to the immediate discontinuance of the inequities and injusticies of racial segregation and discrimination. On the other hand, however, these same persons find that practically, in real life, statutory imposed racial segregation and discrimination is still enforced by many of the states in this country. This is the dilemma in which Negro Americans find themselves. We, thus, appeal to you to exert the full powers of your office to end the frustrations and indignities of this dilemma; and the unlawful conditions which give rise to it.

III. RESUME OF NON-COMPLIANCE WITH THE JUDICIALLY DEVELOPED AND STATUTORY LAW OUTLAWING STATE ENFORCED SEGREGATION IN AMERICAN SOCIETY.

All the judicial and legislative declarations of the rights of Negroes has not discouraged nor prevented the nullification and frustration of the patiently won guarantees of human decency and fair play by many of the states of these United States. Public officials in the Southern states of our country have willfully disregarded, disobeyed, and flaunted the Constitution and statutes of the United States and the decisions of our highest court. We suggest, Mr. President, that there is a direct relationship between the hardened resistance of these state officials to comply with the judicial and legislative declarations of our civil and constitutional rights and the absence of forceful Presidential leadership publicly committed to a policy of forthwith compliance.

One of the basic premises on which our government was organized and on which it continues to exist is a respect for and a belief in the rule of law. A truly democratic society does not close its eyes when a large number of states are consciously and deliberately pursuing a policy of defiance to its national laws. The statute books of the states of the deep South and border areas are filled with legislation which require racial segregation or separation of the races, and which impose criminal penalties for persons who pursue a non-discriminatory course of conduct in their daily lives.

Following the Brown decision, the state legislatures of fifteen Southern and border states enacted over 340 new laws and resolutions to prevent, restrict, or control desegregation.[60] Alabama, Arkansas, Georgia, Louisiana, North Carolina and Virginia have adopted tuition grant laws;[61] Alabama, Arkansas, Florida, Louisiana, Mississippi, North Carolina, Tennessee, Texas and Virginia have set up pupil placement plans.[62] Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, South Carolina and Virginia legislators have approved interposition resolutions.[63] Alabama, Florida, Georgia, Mississippi, North Carolina and Texas have local option provisions for closing schools in the event of desegregation.[64]

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60. "Statistical Summary", Southern Education Reporting Service, November 1961.

61. Ibid.

62. Ibid.

63. Ibid.

64. Ibid.

Much of this legislation has been the subject of litigation. The interposition resolutions have been declared unconstitutional; the pupil placement laws, while not declared unconstitutional per se, have been challenged as to their unconstitutional method of application. Tuition grant laws and local option laws have also been challenged as to their purpose. A total of 226 court cases have been filed in state and federal courts on school segregation, desegregation, and related issues. The outcome of the litigation has been a slow process of desegregation, school by school, child by child, case by case; 7.3% of Negro school children in the South and border areas are presently attending schools with white children; this means that of the region's 3,210,724 Negro children, 233,509 Negroes are in schools with white children.[65]

While the above statistics indicate some progress, there are still, however, states and state officials, from the governor on down, who are in complete defiance of the laws of the United States and who have been permitted to court lawlessness.

Complete school segregation is maintained in the public school systems in Alabama, Mississippi, and South Carolina. Segregation is maintained on all grade levels in Georgia except in the Atlanta system.[66]

Mr. President, perhaps you can understand why, to some degree, Negro citizens in our Southern states look to you for leadership in securing and protecting their constitutionally and judicially declared civil rights. We cannot in good faith repose our confidence in state officials who enforce segregation and discrimination in flagrant defiance of elementary rights.

In January 1961, Southern School News, Vol. 7, No. 7, in reporting on state sanctioned resistance to integration in Alabama reported:

> "Governor John Patterson, noting school desegregation troubles in New Orleans said this was nothing compared to what would happen in Alabama if integration were attempted in this state.
>
> "'If you think they've had trouble in New Orleans,' he said Dec. 7 at a news conference, 'just wait until they try integration here. There'll be hell to pay.'
>
> "He said the ultimate choice facing Alabamians would be private schools or no schools at all. He has previously warned the state that such measures as the placement law are not perfect barriers against integration. And even token integration is intolerable, he said, repeating his absolute opposition to integration in any degree:
>
> "'There is no such thing as token integration or planned desegregation. Once you let the bars down, it's all over.'
>
> Closed Schools
>
> "The governor has said that he would not permit the operation of any mixed schools in Alabama. 'If the federal government continues its present course,' he repeated, 'the only solution will be to close the schools.'

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65. Ibid.
66. Nine Negro children first entered the 11th and 12th grades of four former all-white high schools of Atlanta on August 30, 1961 by court order in Calhoun v. Latimer.

"While asserting his opposition to mob violence, Patterson warned that when a showdown comes, 'I'll be one of the first ones stirring up trouble, any way I can.' By that he said he meant anything to harass or thwart the Federal Government."

The Governor of Mississippi, Ross R. Barnett, indicated similar defiance in his inaugural message on January 19, 1960.

"Our people, both white and colored, throughout generations, have successfully operated a dual system of education because we know it is best for both races. I know that this is the best and only system and I believe that the thinking people of both races feel the same way about it. Regardless, our schools at all levels must be kept segregated at all costs."

Olin D. Johnston, United States Senator from the State of South Carolina, has made the following statement which reflects the official attitude of that state:

"Our dual system of schools is the best in the Nation and the relationship we have between the races is the envy of those upon whom integration has been forced . . . In the face of much unreality and great danger, there are those in our country who favor integration in our schools. . . It is not good for the white children or the colored children. Both will lose if integration is forced upon us . . . [67]

Statements such as those above, when made by the highest officials of many of our Southern States, engender a climate of opinion which sanctions a total disregard of the constitutional rights of Negroes. This, in and of itself, Mr. President, is a serious degenerative social phenomenon in a society which seeks to inspire and imbue its citizens with a respect for law. In addition, such declarations when not countered by a firm unequivocal statement of national policy by the Chief Executive of the Government of the United States serves only to encourage and embolden those among us who seek to turn back the clock of history to slavery, the Black Codes and Plessy v. Ferguson.

Admittedly, Mr. President, the elimination of segregation and state imposed discrimination against Negroes involves a substantial change in the customs and mores of a significant section of our country. But customs and usages, to the contrary notwithstanding, cannot be invoked as the rationale for a program of "caution" in eliminating the immoral and unconstitutional practices of segregation and discrimination.

It is too often overlooked and/or forgotten that the South is not the only culture in the world that has had to radically change its customs and mores in the past 15, 30, or 50 years.

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67. Southern State News, Oct. 1959, p. 13.
The State of Mississippi stands out as the worst example of defiance of Federal law and human decency. It has innumerable statutes which are applied and enforced by various state officials, requiring racial separation in all areas of life, public and private. See appendix A attached hereto.

"Since World War II, Great Britain, France and other powers have been stripped of colonies purchased with blood and treasure. The Japanese God-Emperor, whose deity had not been questioned for centuries, was made mortal with the stroke of a pen. In all the history of the human race has there been a more rapid and total rejiggering of human attitudes than that which, within a decade, stilled the fanatic hatreds of the West Germans and the Japanese and brought them back into the family of civilized peoples? These epic upheavals, which likewise 'profoundly and personally (touched) the lives of so many millions of individuals,' were accomplished with far less warning, in point of time, than the notice which the South enjoyed, long before 1954, of the ultimate doom of its 'separate but equal' subterfuges; and, generally speaking, they were accomplished with far less sound and fury per capita than was recently generated in Mississippi and Alabama by the sight, or thought, of white and Negro students seeking to walk together into a bus station.

"The Supreme Court of the United States, the NAACP, the Freedom Riders and assorted other demons in the new Southern Theology have not demanded that white Southerners cast out their God, dam up their economic lifestreams, or even that they suppress the ancient rancors and hatreds which are their badge, their shield and their sword. Southerners are being asked to do only what 125 million other Americans ... have done for decades without foaming at the mouth, namely, to assure each citizen the right of public as well as private association with anyone who is disposed to associate with him; to guarantee everyone equal access to facilities which have been paid for with public funds, which operate under governmental license, or which are held out for public use; and, through their elected officials, to preserve the peace when their more depraved fellows take the law into their own hands in defiance of the New Order. Is this really asking too much?"[68]

IV. DUTY AND POWER OF THE PRESIDENT TO SECURE THE CONSTITUTIONAL AND CIVIL RIGHTS IN AMERICA.

This Administration has, perhaps more than any other recent administration, recognized the importance of those cherished rights generically described as the "Rights of Man." The 1960 platform of the Democratic Party, in referring to the "Rights of Man" and to civil rights in particular, stated that:

"It is the duty of the President to see that these rights are respected and the Constitution and laws as interpreted by the Supreme Court are faithfully executed."[69]

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68. Unpublished Manuscript by Charles Markham, Esq., of Battle, Fowler, Stokes & Kheel, New York City, New York.

69. Congressional Quarterly, Weekly Report, July 22, 1960 Supplement, p. 1301.

This duty today, some two years later, is of no less importance. Indeed, within the historical context of the Centennial of the Emancipation Proclamation, Presidential responsibility for the securing of civil rights is ever more important and meaningful.

The 1960 Democratic Party platform, noted specifically the peculiar role and special responsibility the Chief Executive has for the implementation and achievement of human rights for all citizens. It appropriately said:

> "What is now required is effective moral and political leadership by the whole Executive Branch of our government to make equal opportunity a living reality for all Americans."[70] (emphasis added)

1963, in the United States of America, Mr. President, must be the year of living reality, not only for some nineteen million Negroes, but for all America. To accomplish this goal, the party platform of your Administration recognized that significant executive orders and/or legal actions by the Attorney General would be necessary. Above all, however, it stated that the achievement of full human dignity would require the

> "strong, active, persuasive and incentive leadership of the President of the United States."[71] (emphasis added)

Mr. President, as President-elect you displayed an understanding of the consequences of ineffective and "timid executive leadership." In your speech formally accepting your Party's selection of you as their candidate for President of the United States you said, before thousands of Americans who had come to hear you and extend their support:

> "Apeaceful revolution for human rights - demanding an end to racial discrimination in all parts of our community life - has strained at the leashes imposed by timid executive leadership."[72] (emphasis added)

Two months later, on September 9, 1960, on your return to Los Angeles California, you spoke in a way which reflected a keen understanding of the importance of Presidential leadership on behalf of civil rights. You noted that:

> "If the President does not himself wage the struggle for equal rights - if he stands above the battle - then the battle will inevitably be lost ... He cannot wait for others to act ... He himself must draft the programs, transmit them to Congress and fight for their enactment, taking his case to the people if Congress is slow." [73] (emphasis added)

It is difficult for us to understand how you are now more hesitant to exert that bold Executive leadership so persuasively spoken of by you as a Candidate. Surely, it must be clear that if the President "does not himself wage the battle for equal rights"

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70. Congressional Quarterly, Weekly Report, July 22, 1960 Supplement, p. 1301.
71. Ibid., p. 1301.
72. Ibid., p. 1296.
73. The New York Times, Jan. 17, 1962, p. 3.

the battle will be lost! A President who "waits for others to act" on civil rights is not offering the kind of leadership consistent and commensurate with the invigorating spirit of the "New Frontier."

We believe that you, like Abraham Lincoln before you, stand at a historic crossroads in the life and conscience of our nation. The Centennial of the Emancipation Proclamation must be honored by the complete elimination of all forms of state imposed segregation and discrimination.

The Proclamation of Emancipation in 1863 was an historic milestone along the high road to freedom and human dignity. Since 1863, however, there have been many "roadblocks". Shortly after 1877 a new form of slavery arose to replace the old. In the form of legislation, euphemistically called the "Black Codes," segregation was introduced for the purpose of reinstituting the essence of slavery.[74]

We know, Mr. President, that the thirteenth Amendment to the United States Constitution was enacted to vindicate "those fundamental rights which appertain to the existence of citizenship and the enjoyment or deprivation of which constitutes the essential distinction between freedom and slavery."[75] Segregation and state enforced discrimination is inconsistent with the letter and spirit of the Proclamation of Emancipation and contrary to the legislative purpose of the Thirteenth Amendment. The continued enforcement of state laws imposing racial discrimination and segregation constitutes a direct violation of those "fundamental rights which appertain to the existence of citizenship."[76]

On September 22, 1862 Lincoln sought to chart a new and high road for America. We believe that you, too, Mr. President, have been seeking to chart a high road for our country.

> "Our overriding obligation in the months ahead is to fulfill the world's hope by fulfilling our own faith."[77]

We welcomed this declaration of human rights. We noted, with particular attention, some of the statements in your State of the Union message of January 11, 1962:

> ". . . (T)he policy of this Administration is to give to the individual the opportunity to realize his own highest possibilities.

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74. Glaine, James G., leader of the Republicans and later Speaker of the House, described the "Black Codes" as follows:

> "The truth was that his (the Negro's) liberty was merely of form and not of fact and the slavery which was abolished by the organic law of a Nation was now to be revived by the enactment of a State" (emphasis added.) Twenty Years in Congress, vol. I, (Henry Bill Publishing Co. 1886)

75. The Civil Rights Cases; United States v. Stanley; United States v. Ryan; United States v. Singleton; Robinson and wife v. Memphis & Charleston Railroad Company, 109 U. S. 3,203 S. Ct. 18, 28 (1883)

76. Ibid.

77. The New York Times, Jan. 12, 1962, p. 12.

"Our program is to open to all the opportunity to steady and productive employment, to remove from all the handicap of arbitrary or irrational exclusion, to offer to all the facilities for education and health and welfare, to make society the servant of the individual and the individual the source of progress, and thus to realize for all the full promise of America." 78 (emphasis added)

". . . . America stands for progress in human rights as well as economic affairs, and a strong America requires the assurance of full and equal rights to all its citizens of any race or of any color." 79 (emphasis added)

You then went on to say:

"As we approach the 100th anniversary next January of the Emancipation Proclamation, let the acts of every branch of the Government -- and every citizen -- portray that 'righteousness that exalteth a nation'" 80 (emphasis added)

These statements are excellent, Mr. President, but the world and the nation waits for that 'righteousness that exalteth' America. The issuance of an Executive Proclamation requesting all states which continue to operate under a segregated system of education to submit plans for immediate desegregation by the school year of September 1963 would "exalteth" the hearts of millions at home and abroad on the 100th anniversary of the Emancipation Proclamation.

The New York Times, editorially, the day after your State of the Union message, said in part:

"The President linked the approaching centennial of the Emancipation Proclamation with a plea for fuller guarantees of racial equality, then made it plain he had nothing original to put forward in this regard." 81 (emphasis added)

We respectfully suggest that the exigencies of segregation and racial discrimination provide you with a veritable storehouse of materials from which proposals for Executive action can be fashioned. Mr. President, no other office, like the Presidency, within our three branches of government offers or possesses such inherent capabilities for the exertion of national leadership on the critical issues of our time. When the President of the United States speaks he speaks with the voice of the American people. Woodrow Wilson, writing in his Blumenthal Lectures given at Columbia University in 1907 said:

"He (the President) cannot escape being the leader of his party except by incapacity and lack of personal force, because he is at once the choice of the party and of the nation.

"He can dominate his party by being spokesman for the real sentiment and purpose of the country, by giving direction to opinion, by giving the

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81. The New York Times, Jan. 12., 1962, lead editorial "The Burden and the Glory"

" country at once the information and the statements of policy which will enable it to form its judgments alike of parties and of men.

"His is the only national voice in affairs. Let him once win the admiration and confidence of the country, and no other single force can withstand him, no combination of forces will easily overpower him. His position takes the imagination of the country. He is the representative of no constituency, but of the whole people.

"He may be both the leader of his party and the leader of the nation, or he may be one or the other. If he lead the nation, his party can hardly resist him. His office is anything he has the sagacity and force to make of it.

"Some of our Presidents have deliberately held themselves off from using the full power they might legitimately have used, because of conscientious scruples, because they were more theorists than statesmen ... The President is at liberty, both in law and conscience, to be as big a man as he can.

"His is the vital place of action in the system, whether he accept it as such or not, and the office is the measure of the man -- of his wisdom as well as of his force." (emphasis added)[82]

Segregation and discrimination against millions of American citizens because of race and skin color is a domestic problem with ramifications throughout the world, the majority of whose people are non-white. What the President of the United States says and does on this crucial issue is observed and heard around the world.

The recent exertion of Executive power in behalf of the public interest to maintain price stability in the Steel Industry revealed to us the tremendous influence which the President of the United States can exert. You can, Mr. President, if you so choose, creatively utilize this same power in behalf of civil and constitutional rights. We, respectfully, submit that human dignity and the immediate discontinuance of state enforced discrimination against Negro citizens is as much in the public interest as stabilization of prices and wages.[83]

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82. The President Office and Powers - 1787-1957, Edward S. Corwin, pp. 28, 39; New York University Press, 4th Edition, (1957)

83. "America has no undeveloped resource comparable to the reservoir of human talent which, in our Negro population, is going to waste. We need manpower and we leave if untrained. We need brains and talents and we allow them to lie fallow. We need to restore the social health of our cities and we do little to prevent their greater infection with the viruses of disorganization and spiritual deadness. We need to deepen our sense of purpose and our confidence in our country and its cause, and we allow prejudice to be institutionalized and our national values to be layered with hypocrisy. We need the friendship of the non-white peoples of Africa and Asic, and we subject our own non-white citizens to indignity. "The Federal Executive and Civil Rights," Southern Regional Council

As, chief executive, you have the unique opportunity to activate and direct the moral and democratic conscience of America in the field of race relations. The President of the United States

> "Can draw upon his authority as spokesman for the nation in such a way as to inspire those who are working for a more democratic America and to rebuff those who would drag us backward into the swamps of primitivism and oppression -- or, still better, to educate all of us in the ways of brotherhood. The moral force of this great office is never so apparent as when he lashes out at the vigilants who spoil the vines of the First Amendment, its prestige never so imposing as when he sets out quietly to persuade the leaders of Southern opinion that a new day has dawned. One thing is certain about our attempt to solve the crisis of desegregation in the schools: a key factor in the equation of success will be a succession of Presidents determined to use all the resources of this great office.[84] (emphasis added)

The Constitution of the United States places responsibility for the implementation of the laws directly upon the office of the Presidency. Before the President enters on the execution of this office, he is required to take the following oath:

> "I do solumnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my ability, preserve, protect, and defend the Constitution of the United States." [85]

This solemn oath, which Lincoln characterized as "recorded in Heaven," requires all the provisions of the Constitution be enforced by the President for the protection of all the citizens of the country regardless of which particular state in which they happen to reside.

The duty to "preserve, protect, and defend" the Constitution is of an entirely different nature than the duties of office prescribed in the oaths of office taken by members of Congress and the Judiciary. Their oath is simply to "support" the Constitution.[86]

The Constitution further requires him as the Chief Executive to "take care that the Laws be faithfully executed."[86]

> "Under Article VI of the Constitution, the Constitution and Acts of Congress are the supreme law of the land. Thus, 'Laws,' within the meaning of Article II, Section 3, include the Constitution and the interpretation given it in judicial proceedings.[87]

The question before the Supreme Court in In Re Neagle,[88] was whether the Presidential duty was limited to enforcement of Acts of Congress or treaties according to the

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84. Rossiter, Clinton, The American Presidency (2nd Ed) New York: Harcourt Brace & Co., 1960.
85. Article II, Sec. 1, #8
86. Article VI.
86. Article III, Sec. 3.
87. See Standard Computing Scale Co. v. Farrill, 249 U.S. 751, 577 (1919); In re Neagle, 135 U.S. 1(1889); Williams v. Bruffy, 96 U.S. 176, 183 (1877); Stoffel v. W. J. McCahan Sugar Ref. Co., 35 F. 2d 602, 603 (E. D. Pa. 1929). "Petition of the United States to intervene in Prince Edward County School Board case.

express terms, or whether it included the "rights, duties and obligations growing out of the Constitution itself . . ." The Court reached the latter view:

> "In the view we take of the Constitution of the United States, any obligation fairly and properly inferable from that instrument, or any duty . . . is "a law" within the meaning of this phrase."[89]

and consequently enforceable by the President under his constitutional powers.

Mr. President, a time of greatness, calls for acts of greatness. The full panoply of Presidential power must now again, as in 1863, be exerted in behalf of civil rights. A former President of the United States, once said, in describing the importance of creatively wing the executive power to enforce the Constitution and laws of the United States.

> "The most important factor in getting the right spirit in my administration, next to the insistence upon courage, honesty, and a genuine democracy of desire to serve the plain people, was my insistence upon the theory that the executive power was limited only by specific restrictions and prohibitions appearing in the Constitution or imposed by the Congress under its Constitutional powers. My view was that every executive officer, and above all every executive officer in high position, was a steward of the people, and not to content himself with the negative merit of keeping his talents undamaged in a napkin. I declined to adopt the view that what was imperatively necessary for the Nation could not be done by the President unless he could find some specific authorization to do it. My belief was that it was not only his right but his duty to do anything that the needs of the Nation demanded unless such action was forbidden by the Constitution or by the laws. Under this interpretation of executive power I did and caused to be done many things not previously done by the President and the heads of the Departments. I did not usurp power, but I did greatly broaden the use of executive power. In other words, I acted for the public welfare, I acted for the common well-being of our people, whenever and in whatever manner was necessary, unless prevented by direct constitutional or legislative prohibition. I did not care a rap for the mere form and show of the substance."[90]

Candor and frankness require us to remind you again, Mr. President, of your own words, quoted earlier in this appeal:

> "If the President does not himself wage the struggle for equal rights - if he stands above the battle - then the battle will inevitably be lost . . . . He cannot wait for others to act . . . He himself must draft the programs, transmit them to Congress and fight for their enactment, taking his case to the people if Congress is slow."[91] (emphasis added)

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88. 135 U. S. 1.
89. Id. at p. 59.
90. Roosevelt, Theodore, An Autobiography, pp. 388-389. New York 1913
91. New York Times, Jan. 17, 1962, p. 3.

Millions of your fellow Americans, need, and the moral conscience of our country demands "your stewardship" of the nation toward the goal of human dignity and equal rights.

We repeated these words from your September 9, 1960 Los Angeles campaign speech, only because we firmly believe that there is broad statutory authority for the President of the United States to initiate action to enforce the judicially declared civil and constitutional rights of nearly twenty million Negro Americans.

As is well known, Mr. President, we are morally, spiritually and practically, committed to the principles and precepts of non-violence. We are confident that our peaceful resistance to unlawfully imposed segregation and discrimination will awaken the conscience and morality of those who, in ignorance and without love and respect for the dignity of man, seek to impose second class citizenship upon us.

We believe we need not and should not struggle unaided. Our efforts to achieve human decency and human rights by eliminating the unlawful restrictions upon the exercise of our civil and constitutional rights seeks to uplift and enrich our entire country.

Much of the presidential sources of authority and power for executive enforcement of civil rights in the United States arises from Title 10, Sections 332 and 333. These statutory provisions concern the possible exertion of force against some of our fellow citizens. We want to make it unmistakably clear that our present appeal for the exertion of Presidential power on behalf of civil rights is expressly intended to remove these conditions, the continued existence of which decreases the possibility of a peaceful non-violent achievement of first class citizenship. We hope and pray that some of the power for presidential action concerning the use of military force will never become necessary to secure civil and constitutional rights in these United States. Title 10, Section 333 of the United States Code provides:

> "The President, by using the militia or the armed forces, or both, or by any other means, shall take such measures as he considers necessary to suppress, in a State, any insurrection, domestic violence, unlawful combination, or conspiracy, if it
>
> "(1) So hinders the execution of the laws of that State, and of the United States within the State, that any part or class of its people is deprived of a right, privilege, immunity or protection named in the Constitution and secured by law, and the constituted authorities of that State are unable, fail, or refuse to protect that right, privilege, or immunity, or to give that protection; or
>
> "(2) Opposes or obstructs the execution of the laws of the United States or impedes the course of justice under those laws.
>
> "In any situation covered by clause (1), the State shall be considered to have denied the equal protection of the laws secured by the Constitution."

Section 333 of Title 10 has its origin in the Act of April 20, 1871. It not only extended presidential power far beyond the limitations of present section 333, but the intent of the enacting Congress was to enable the President to act whenever the state denied the equal protection of the laws to its citizens. It was to be "an Act to enforce the

Provisions of the fourteenth Amendment to the Constitution of the United States, and for other purposes." 17 Stat. 13. The only significant change from the 1871 Act to the present section 333 was the elimination of the following sentence at the end:

> "... and any person who shall be arrested under the provisions of this and the preceding section shall be delivered to the marshal of the proper district to be dealt with according to law."

The mandate from Congress is clear. The President has statutory authority to use the militia, armed forces, or "ANY OTHER MEANS" to suppress a conspiracy or unlawful combination if it deprives a class of person of the equal protection of the laws of the United States.

10 U. S. C. 332 relates to the problem of presidential enforcement of judicial decrees. It provides:

> "Whenever the President considers that unlawful obstructions, combinations, or assemblages, or rebellion against the authority of the United States, make it impracticable to enforce the laws of the United States in any State or Territory by the ordinary course of judicial proceedings, he may call into Federal Service such of the militia of any State, and use such of the armed forces, as he considers necessary to enforce those laws or to suppress the rebellion." 92

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92. The history of 10 U. S. C. 332 goes back to the early days of our country when President Washington requested authority from Congress to handle the Whiskey Rebellion in Western Pennsylvania. Congress granted him broad authority to call forth the militia. It is illuminating for us today to see the various means Washington attempted to use until he felt compelled to resort to the militia as the final means of seeing that the laws of the country would be obeyed. He issued a proclamation on September 15, 1792 warning "all persons whom it may concern to refrain and desist from all unlawful combinations and proceedings whatsoever ..." 36 N. C. LR. p. 124. The Administration began legal proceedings against those who were violating the law. The Government only purchased whiskey for the Army from those farmers who obeyed the law. Attacks upon the revenue collector were followed by warrants for the arrest of those who had participated in the attacks. The U. S. Marshal was physically threatened by the western farmers and was therefore unable to serve process. President Washington still hesitated to use the militia and first appealed to the Governor of Pennsylvania to call forth the state militia. Upon the latter's refusal, Washington issued a second proclamation warning the insurgents that he was determined to "cause the laws to be duly executed." p. 127. He also appointed three U. S. commissioners to proceed to the scene of the trouble and a referendum was conducted in which the people voted against compliance with the Whiskey Tax. The President hesitated no longer to enforce the law. He issued a third proclamation in which he declared that the militia from four of the neighboring states would proceed to "the scene of the disaffection." When the militia arrived, it was met with complete submission.

As a result of this disobedience to the laws of the land, Congress passed the Act of 1795 to provide "means by which the Executive could come in aid of the Judiciary"

Mr. President, our citation of the constitutional and statutory sources of Presidential power is not done for the purpose of advocating or rationalizing the use of military force to enforce civil rights. On the contrary, we are urging bold imaginative Executive leadership precisely because we are so deeply committed to a firm but peaceful nonviolent achievement of human dignity for 18 million Americans.

The Civil Rights Acts Amendment of 1947 repealed that portion of 10 U. S. C. 332 which authorized the President to employ the armed forces to "aid in the execution of judicial process issued under" the Civil Rights Act. However, the Senate debate on the amendment indicated that the Senate did not intend to deprive the President of the power given him by the George Washington Act of 1795. [93]

In short, Mr. President, we are firmly convinced that there exist sufficient constitutional and statutary sources of power to enable you to creatively use the authority and moral prestege of your office to dramatically advance human rights in America. As the 100th anniversary of the Proclamation of Emancipation draws near, we along with millions of our fellow citizens, and the peoples throughout the world are watching and waiting to see whether America, has at long last fullfilled the hopes and dreams arising from the abolition of slavery. We appeal to you in order that we may now have to wait no longer. We appeal to you because we love so dearly this great land of ours. We appeal to you because we yearn for the time when we can stand in the full sunlight of human decency and join hands with our white brethren, north and south, east and west, and sing in joyous hallelujah, "Sound the loud timbrel o'er Egypt's dark sea, Jehovah hath triumphed - His people are free!"

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by calling forth the militia to execute the laws of the United States whenever they "shall be opposed, or the execution thereof obstructed."

The Thomas Jefferson Amendment of 1807 gave the President the additional power of employing the land or naval force of the United States. In Martin v. Mott, 12 Wheat 19 (1827), it was held that authority to decide whether the exigency had arisen to call the militia belonged exclusively to the President.

The Abraham Lincoln Amendment of 1861 to the George Washington 1795 Act authorized the President to call forth the armed forces "to enforce the faithful execution of the laws" whenever, in the judgment of the President, "It shall become impracticable" to enforce them by the ordinary course of judicial proceedings.

93. See Appendix B attached hereto.

APPENDIX B

ISSUE: Did the Civil Rights Act of 1957 limit in any way executive power to enforce judicial decrees dealing with civil rights?

CONCLUSION: No.

FACTS:

The precise question of this memorandum is the effect on executive power of the passage of the Knowland-Humphrey amendment during the course of the debate on the Civil Rights Act of 1957 in the 85th Congress.

The Knowland-Humphrey amendment repealed 42 U. S. C. 1993. That section was originally passed on the Civil Rights Act of 1866. Acts Apr. 9, 1866, c. 31 sec. 9, 14 Stat. 29. It was re-enacted in the Civil Rights Act of 1870 with no substantive changes. May 31, 1870, c. 114, sec. 13, 16 Stat. 143. Entitled "Aid of Military and Naval Forces", sec. 1993 provided:

> It shall be lawful for the President of the United States, or such person as he may empower for that purpose, to employ such part of the land or naval forces of the United States or of the militia, as may be necessary to aid in the execution of judicial process issued under Sections 1981-1983 or 1985-1994 of this title.

The events leading to the repeal of sec. 1993 are as follows: In 1957 the Justice Dept. had drafted a civil rights bill which was introduced in both houses as the "Eisenhower Administration bill." It consisted of four parts. Part I provided for the establishment of a Commission on Civil Rights. Part II provided for an Assistant Attorney General for Civil Rights. Part III provided that the Attorney General would have standing to sue for an injunction on the behalf of those deprived of rights under sec. 1985.[1] This third part was to be an amendment to sec. 1985. Part IV provided that the Attorney General would have standing to sue in his own name for the denial of voting rights.

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1. 42 U. S. C. 1985 Conspiracy to interfere with civil rights.

(1) Preventing an officer from performing duties. If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office ... under the United States or from discharging any duties thereof; ... or impede him in the discharge of his official duties;

(2) Obstructing justice; intimidating party, witness, or juror. If two or more persons in any State or Territory conspire ... for the purpose of impeding, hindering or obstructing, or defeating in any manner, the due course of justice in any State or Territory with intent to deny any citizen the equal protection of the laws ...

(3) Depriving persons of rights and privileges. If two or more persons ... conspire, or go in disguise on the highway ... for the purpose of depriving ... any person ... of the equal protection of the laws ... the party so injured may have an action for the recovery of damages.

Identical bills were considered by both Houses. Hearings were held in the Senate. Hearings Before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary, 85th Congress, 1st Session. But no Senate reports on the bill were issued, since the Senate placed the House bill, H. R. 6127, directly on the Senate calendar before the Senate bill was reported out of committee.

Part III amended sec. 1985; it thereby became interrelated to sec. 1993. Sec. 1993 was a general enforcement section for most of the civil rights sections, and so in retrospect it does not seem strange that the amendment did not mention specifically the interrelation. But it was this unmentioned interrelation which provoked the Southern attack that culminated in the repeal of sec. 1993.

Opponents to the bill, both in the House and the Senate, focused their attack on Part III. Three major arguments were developed:

> (1) Use of the injunctive remedy by the Attorney General, when he already had power to prosecute criminally, would mean that he would elect the injunctive procedure so as to deny jury trial to those who would be accused of violating sec. 1985 rights.
>
> (2) Granting the Attorney General standing to sue on the behalf of others for denial of sec. 1985 rights would make him an oppressive power wielder.
>
> (3) The administration had represented the bill as one dealing with voting rights. In fact, sec. 1985 rights comprehended many more rights. To pass Part III would go beyond the necessities of the time and would be a fraud on the Congress as well as the American people.

A fourth argument emerged in the Senate debate. It was that by means of the interrelation of the amendments of sec. 1985 (i. e., Part III) to the enforcement provision of sec. 1993, integration in the South would be accomplished by military force. It was to this last argument that the Knowland-Humphrey amendment was addressed.

The House Judiciary Committee report indicates that the "military force" argument was not considered in that body. The majority report speaks in terms of the "injunctive remedy:" "The effect ... of the proposed bill on ... sec. 1985 is not to expand the rights presently protected but merely to provide the Attorney General ... with a new remedy." H. R. Rep. No. 291, 85th Cong., 1st Sess. 10 (1957). The minority report also does not mention the military force argument. Id. at 45.

The first mention of this argument appeared during the course of the Senate hearings. The subject came up during the testimony of Attorney General Brownell. The testimony was:

> Mr. Young. /_staff_/ I would like to have an expression from you now as to whether this statute is intended ... /_to be_/ used for the enforcement of these decrees?
>
> Mr. Brownell. I am rather disturbed by you even raising these points, because, as I said so many times, public statements made by persons who intimate that there is any such thought in the minds of anyone here in

Washington to use the military in these cases does not represent the true state of facts, and I frankly think that the only reason it can be brought into the discussion at all is to confuse the issue.

Mr. Young. It is possible to do it under that statute, however, is it not, General?

Mr. Brownell. There are other statutes that would have to be considered in connection with that, and I think you will find the general rule is that the Governor of the State must request the President.

We do not want to take away any supplementary aid which the Governor of a State may want.

* * * * * * * * *

No one has had in mind any use of the militia in this situation, and I don't think that there should be any implication that they do.

Mr. Young. ... the power resides in the President to do this, does it not?

Mr. Brownell. The President is presumed to act in a constitutional way and I do not think that there is any indication that he is not going to.

* * * * * * * * *

I frankly don't think it would be appropriate to have an exercise in the interpretation of that statute. /_Sec. 1993_/

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Since there is not the slightest suggestion on the part of any responsible public official of bringing in matters of the militia into the civil rights area, I think it would be quite misleading really to continue ...

* * * * * * * * *

/T/his program does not extend the jurisdiction of the Federal Government. Whatever power is there now, the constitutional power of the President remains exactly the same. We are not extending Federal jurisdiction one bit.[2]

There was no other testimony on this point by Mr. Brownell. But it was at this point that Senator Ervin pointed out the interrelation of sec. 1985 to sec. 1993. He also noted that sec. 1993 was an existing statute, a point sometimes lost sight of in the later debate.

Then on July 2nd Senator Russell took to the floor with a prepared speech. Reveling in the full flower of Southern oratory he declaimed:

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2. Hearings Before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary, 85th Cong., 1st Sess., 214-217, (1957).

> /The/ bill is cunningly designed to vest in the Attorney General unprecedented power to bring to bear the whole might of the Federal government, including the armed forces, if necessary, to force a commingling of white and Negro children in the State supported public schools of the South.
>
> /Its aim/ is to force the white people of the South at the point of a Federal bayonnet to conform to almost any conceivable edict directed at the destruction of any of the local customs, laws ....103 Cong. Rec. 10771 (1957).
>
> Voting rights is a smokescreen to obscure the unlimited grant of powers to the Attorney General of the United States to govern by injunction and Federal bayonet. Id. at 10772.
>
> If it is proposed to move into the South in this fashion, the concentration camps may as well be prepared now, because there will not be enough jails to hold the people of the South who will oppose the use of raw Federal power forcibly to commingle white and Negro children in the same schools .... Id. at 10774.

That same day Senator Douglas took the floor and answered:

> So far as the use of Federal troops by the President is concerned...that power has existed in the United States since the time of the Whisky Rebellion, and since 1870 when the Force Act was passed. But that power has never been exercised by this Government since 1877, and we pray God it never will be exercised. Id. at 10779.

As later insertions into the Congressional Record demonstrate, the opponents of Part III were on the offensive. Playing to the national audience they elaborated these arguments:

> (1) The sponsors of the act really wanted to enforce school integration at a bayonet point under the guise of a voting rights bill.
>
> (2) The amendment to sec. 1985, when 1985 by its own terms did not refer to sec. 1993 (the enforcement provision), was a hidden cross reference demonstrating the epitome of legislative trickery.
>
> (3) The invocation of sec. 1933 was pouring salt into old wounds.
>
> (4) The Congressional sponsors were unwitting dupes of the faceless, nameless legislative draftsmen in the Attorney General's office.
>
> (5) The President himself was against it. Or at best, he did not fully realize what he was asking for. Utilizing TV programs, and capitalizing on newspaper editorials and on article in Newsweek, the opponents campaign was built up.

The Senate sponsors, facing substantial difficulties in attempting to pass the injunctive provisions of Part III, and hoping to save votes which might otherwise be alienated by the interrelation aspect of sec. 1993, chose to propose an amendment which would repeal sec. 1993 in toto. This was the Knowland-Humphrey amendment.

In the subsequent two weeks the debate on the Senate floor turned to other aspects of Part III. As the debate on this section neared to its close, the Administration made its position known in two ways. One was by a press release distributed on July 16 by the White House which was entitled "Statement by the President". It said:

> This legislation seeks to accomplish these four simple objectives:
>
> 1. To protect the constitutional right of all citizens to vote regardless of race or color. In this connection we seek to uphold the traditional authority of the Federal courts to enforce their orders. This means that a jury trial should not be interposed in contempt of court cases. . . .
>
> 2. To provide a reasonable program of assistance in efforts to protect other constitutional rights of our citizens.

The second was through the Presidential press conference of the following day, July 17, 1957. The relevant portion of it reads:

> /A/re you aware. . . you now have the authority to use military force to put through the school integration in the South. . . . ?
>
> Well, first of all, lawyers have differed about some of the authorities of which you speak, but I have been informed by various lawyers that that power does exist.
>
> But I want to say this:
>
> I can't imagine any set of circumstances that would ever induce me to send Federal troops into a Federal Court /sic/ and into any area to enforce the orders of a Federal court, because I believe that common sense of America will never require it.
>
> Now, there may be that kind of authority resting somewhere, but certainly I am not seeking any additional authority of that kind, and I would never believe that it would be a wise thing to do in this country. 103 Cong. Rec. 12055 (1957) (Official transcript, as reported in The New York Times, inserted).

On July 18th the Senate began discussion of the amendment. And on the next day of the debate, July 22nd, a full discussion of the amendment occurred. The Senate then voted to pass it unanimously. Id. at 12310 (90 ayes and 0 nays).

With no substantive discussion of the Senate amendments, the House Rules Committee recommended adoption of the Senate amendments, H. R. Rep. No. 1243, 85th Cong., 1st Sess. 1 (1957).

ANALYSIS:

An understanding of the appropriate scope to be attributed to the repeal of sec. 1993 necessarily involves an understanding of the basis of executive power under other statutory and constitutional provisions. Some of these provisions are:

> U. S. Const. art. II, sec. 1. The executive power shall be vested in a President of the United States.
>
> U. S. Const. art. II, sec. 2. The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States.
>
> U. S. Const. art. II, sec. 3. /H/e shall take Care that the Laws be faithfully executed....
>
> U. S. Const. art. II, sec. 1. Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation: - "I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."
>
> U. S. Const. art. VI. /A/nd all executive and judicial officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution....

Congress has provided the President with other statutory authority[3] in Title 10 (Armed Forces), Chapter 15 (Insurrection), secs. 331-334, and in Title 50 (War and National Defense), Chapter 13 (Insurrection), secs. 205-226.[4]

The proponents of the thesis that the appropriate scope to be attributed to the repeal of sec. 1993 is a wide one necessarily have two contentions. These are:

(1) The legislative purpose implicit in the repeal of Sec. 1993 was to deny the President the authority to use the armed forces to execute judicial decrees in cases under the civil rights acts.

(2) Without such specific statutory authority as existed under sec. 1993, the President is without authority to implement such decrees.

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3. Congress probably acted under art. I, sec. 8, which states: "Provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions."

4. See Appendix I for the statutes.

The legislative purpose.

(a) Pollitt

Pollitt's analysis of the repeal of sec. 1993 is as follows:

Congress recognized and sustained the power of the President under the George Washington Act of 1795 to use the armed forces to enforce judicial decrees arising under the civil rights act and other acts of Congress and believed that the supplementary power given him in the civil rights act should be repealed so as to narrow the area of controversy of the then pending business. Politt, Presidential Use of Troops to Execute the Laws: A Brief History, 36 N. C. L. Rev. 117, 135 (1957).

The Senate debate makes it clear that the 1957 amendment was not intended to deprive the President of what Congress believed to be the identical authority given to him by the George Washington Act of 1795. Id. at 137.

The Senate approved the Knowland-Humphrey amendment by unanimous vote, which fact, when viewed in light of the background of the section eliminated from the announced purposes of the sponsors of the amendment, and the unanimous views of those who spoke on the amendment, leads to but one conclusion: that the Congress that met in 1957 believed that all apart from the express provision in the existing civil rights act, the President had authority under the Constitution and the George Washington Act of 1795 to use federal troops to enforce the execution of judicial decrees issued in civil rights and other judicial cases. Id. at 138.

Some of Pollitt's analysis is incorrect, but otherwise his conclusion on the effect of the repealing amendment is a sound one.

(b) Background.

First it is necessary to recall the circumstances which surrounded the debate on the repealing amendment. Those were the pre-Little Rock days, and as Senator Douglas had stated, there had been little occasion to invoke sec. 1993 during all the time it had been on the statute books. No doubt the use of military force was never in the minds of those sponsoring the main bill. The President himself had indicated his distaste towards such use. The Attorney General had been evasive on this point. And the opponents of any civil rights legislation were making great capital out of their "discovered" interrelation of sec. 1985 to sec. 1993.

It was in this context that the sponsors of the main bill were faced with several alternatives. They could have directly justified the interrelation, saying that Part III was in no way adding to the enforcement provisions of sec. 1993; that that section already existed, and if there should be a repeal of that section, then the burden of showing a need for its repeal should be on those who wanted it repealed. Or sec. 1993 could have been amended so as to delete any reference to either the whole of sec. 1985, or more narrowly, to the Part III amendments to sec. 1985. Or outright repeal of sec. 1993 could be advanced. Whether or not other alternatives were considered, it was outright repeal which was selected. And it is this last alternative which, when compared to the other alternatives, presents the strongest

argument for the negative implication that by repeal the President is denied the power to enforce judicial decrees under the civil rights act.

In turning to the content of the debate it should be noted that whatever legislative history there is, it is contained in the Senate debate. The House neither in its report, or on the floor, considered the interrelation aspect of Part III. The Senate had no explanatory reports. The debate then is the legislative record, and whether judicially significant or not, the Senate was highly conscious that it was making a record which would be used in the interpretation of the bill. Not only was there considerable discussion on the importance of making a legislative history for purposes of construing the act, but it was also recognized that there was special probative value that would be attributed to the remarks of sponsors of amendments. 103 Cong. Rec. 11987 88 (1957).

(c) Debate positions.

What emerges from the debate is a slight medley of confusion. The sponsors were not always clear as to the purpose and effect of the repealing amendment. Their opponents were divided. One recognized that the President would still have the power to enforce judicial decrees, and another did not. Other Senators indicated that they did not know what was the real issue involved in the repeal. One thing is certain: the unanimity of views which Pollitt says occurred did not exist.

(d) Sponsors' position.

From the sponsors' side, and from those advocates of the entire bill, three positions were taken with regard to the repeal amendment. They were:

(1) It would serve the immediate purpose of narrowing the debate to the real issue of the injunctive power of the Attorney General under Part III, as well as saving votes which otherwise might be alienated by this sec. 1993 "military force" provision.

(2) As a policy matter, a program of integration should not be implemented by military force.

(3) Nonetheless, the power of the President to enforce judicial decrees, despite the repeal of sec. 1993, remained. Therefore nothing would be lost by enacting the repealing amendment.

Senator Humphrey's remarks reflect these somewhat inconsistent positions:

The reference to section 1993 is unfortunate. I think the Attorney General made a very unfortunate mistake in making that kind of reference, because there is plenty of other law to utilize, without rubbing salt into an old wound. 103 Cong. Rec. 11980 (1957) (July 17).

It is the belief of those of us who offered the amendment... that provisions relating to the use of military force had no place in the bill, and therefore ought to be eliminated. 103 Cong. Rec. 12074 (July 18).

It is most regrettable and unfortunate that...this bill should have been clouded by, and, in fact, distorted by, reference to the use of the Armed Forces of the United States as an instrumentality of law enforcement in civil rights matters.... I have felt that the reference was...unwise and psychologically unfortunate.

* * * * * * *

Civil rights, to be meaningful, must be essentially secured by observance of the law. To be sure, enforcement has its role in the fulfillment of any law, or in the fulfillment of the objectives of the law; but ... when we are dealing with human rights ... we must seek to obtain compliance ... through respect for the law ... Therefore any reference in this proposed public statute to the use of military forces has an unfortunate connotation, and I must say our opponents found in this particular reference to the use of military power a dramatic incident, putting out of focus the whole purpose of the proposals which are before the Senate in the field of civil rights. 103 Cong. Rec. 12304 (1957) (July 22).

Senator Knowland's statement also indicated a purpose to narrow the issues on the floor, and a purpose to have a civil rights program which would not necessitate the use of military force. But he only intimated that the repeal of sec. 1993 would not affect other Presidential powers. He said:

> Although it was not stated in so many words, the inference was that it would be the intention of the sponsors of the bill and those who propose its enactment, that the full weight of the Armed Forces of the United States ... might be brought to bear upon a school district or locality in the enforcement of certain court orders.... /T/hat was not the intent of the President ...of the House of Representatives...and...it certainly was not the intent or policy of any member of this body.

* * * * * * *

At least we should eliminate that argument from the bill.

* * * * * * *

As I stated, it was for the clarification of the debate that the amendment was offered, and the amendment is only to repeal that particular section of the code which dates from Reconstruction days. 103 Cong. Rec. 12304 (1957) (July 22).

The Senators which most consistently and clearly maintained that the repeal of sec. 1993 would have no effect on Presidential powers were Senators Clark and Javits. And their position was clearly understood and acknowledged by one of the prime opponents of the bill, Senator Long.

During his presentation of the whole of Part III, Senator Javits said:

> On that point /the Knowland-Humphrey amendment/ I see no particular reason why that part of the bill should be stricken out; neither do I see any particular reason why it should be retained. If in connection with the passage of the bill, the Senate wishes to strike out something which is a vestige of the past, and does not belong in the law, that will be

perfectly all right. There are many parts of the law that fall into that category....

So in this case, if more Senators will vote for the bill if that part is eliminated, and if Senators will be made happy by its elimination, --- that is to say, by striking out provisions which are obsolescent; indeed, provisions which were replaced a year ago by the Armed Forces bill, [5] which gives the President all the power he needs in order to keep order ---I would not think of taking the position that I should insist on the retention of that particular part, and that not one word of it should be changed.

Senator Aiken. Is it the opinion of the Senator from New York that if the Knowland-Humphrey amendment is agreed to, the President still will have authority to use troops where necessary?

In the event of some large scale breach of public order, the other statutes which are more specific, in my opinion give the President all the power he needs or all the power he ought to have, regardless of this particular provision of the bill.

* * * * * * *

I say the President would not thereby be deprived of any power he needs or any power he ought to have. 103 Cong. Rec. 12098 (1957) (July 18).

Senator Clark's statement, during the main debate on the repealing amendment, was as follows:

Under Article 1, section 3 of the Constitution, the President of the United States is required to see to the faithful execution of the laws. Since 1795 the President has had full power to use the military forces of the United States to execute the laws if wholesale resistance is encountered... the 1795 act was the result of the Whiskey Rebellion.

In view of the fact that these laws have been on the books since 1795, and that the President has the constitutional duty to enforce the laws in any event, I am in accord with... /the sponsors/ that it would be psychologically unsound and unwise further to embitter the civil rights controversy by referring, in the bill under consideration, to an old section of the Klu Klux Klan Act, which inevitably would arouse age-old passions which were better left to die on the ashes of their age.

So I shall support the pending amendment, knowing full well that after the amendment is agreed to, the President will still have, as he has always had, adequate authority to enforce the laws of the United States. 103 Cong. Rec. 12306 (1957) (July 22).

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5. The reference evidently is to the recodification of 1956. 50 U.S.C. 201-204 on Aug. 10, 1956 was recodified as 10 U.S.C. 331-334. ch. 1041, 70A Stat. 641.

Senator Clark then inserted in the Congressional Record a memorandum prepared by the American Law Division of the Library of Congress which in substance justified his statement. [6]

(e) An opponent's recognition.

Senator Long indicated that he fully understood the thrust of statements such as those of Senator Clark, and one is tempted to say, attributed a greater clarity of purpose to the sponsors of the amendment than they deserved when he said:

> I believe certain things should be made clear. One of them is that the Senators who are proposing that this provision of the bill be stricken out are not doing so because they do not envision the use of Federal troops to support integration in the South. They are moving to have the provisions stricken out because, as they have explained, they believe that under the Constitution, and other sections of the law, the use of Federal troops, including the use of bayonets, to enforce such measures will still be available. Id. at 12310.

(f) The ambiguous Senators.

Other Senators advanced the position of being adamantly against the use of "military force" to implement court orders, and yet recognized the existence of such power in the executive. Senator Lausche was against Part III without the Knowland-Humphrey amendment since:

> It is set forth pointedly, harshly, and severely that the Army, the Navy and the militia shall be called out to put the law into effect.
>
> I shudder to think that in America, in connection with a problem of this type, that someone possessed the audacity to sponsor such a provision, notwithstanding the provision of the Constitution which gives the President the power to enforce judicial decrees when they are resisted by armed revolution or otherwise.
>
> * * * * * * *
>
> There was no need for that provision, Mr. President. The Constitution... already gave ample powers to the President. Id. at 12307.

Senator Carroll thought the amendment was designed "to quiet the fears that have been aroused". Id. at 12309. He added: "If I believed that the enactment of the bill would result in the imposition of a police force on the Southland, I would vote against the bill. Yet in referring to the Library of Congress memorandum he said: "Its statement on the matter is clear. The President has always had the power to use force to insure the functioning of the United States laws." Id. at 12309-10.

Senator Cooper also presented the position that though it was bad policy to use military force, yet the President would continue to have such power. He said:

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6. See Appendix II.

> A few minutes ago the Senate voted to repeal the archaic reconstruction statute which gave to the President of the United States, presumably, the power to enforce the orders of the courts by the use of military force. It was wise to repeal it because it is old and archaic and because it would not be enforced.
>
> Yet everyone who is familiar with the Constitution and who knows the law is aware that the President has such power, without that statute. The United States cannot permit the Federal system and the judicial system to collapse, if local law enforcement should collapse. 103 Cong. Rec. 12317 (1957).

Other Senators were even less clear about their positions on the effect and purpose of the repeal of sec. 1993. Senator Saltonstall wanted no Federal dictation, and thought the "government should be close to the people". Id. at 12283. Senator Anderson thought the amendment dealt with "a subject which might have been handled by separate legislation." Id. at 12284. Senator Aiken thought it would repeal "an obsolete law which is unnecessary and which ought not to remain in the statutes." Id. at 12284.

(g) Recapitulation and sole opposing interpretation.

Aside from the immediate tactical purpose of "narrowing the issues", there were only few statements to the effect that the repeal of sec. 1993 would have absolutely no effect on extant Presidential powers. The majority of the statements fell in that ambiguous pose that decried the use of military force but which nonetheless recognized the existence of a duplicatory and residual Presidential power to use military force. Some of these statements may not have recognized explicitly the existence of such power, but no Senator denied it, - save one, and that was Senator Russell. He said:

> Senators may differ as to the general authority of the President of the United States to employ the military forces, but I assert that the adoption of the amendment will eliminate from our law the specific power of the President to delegate the authority to employ troops to execute judicial process in specific cases.
>
> There is a vast difference between the employment of troops under a specific statute to carry out a specific judgment of a court and the general powers of the United States to quell insurrection within this land. It should be unnecessary to dwell upon that difference. Id. at 12310.

(h) Conclusion on legislative purpose.

The position that the repeal of sec. 1993 effectuated a legislative purpose to deny the President power to enforce judicial decrees under the civil rights act has little to recommend it. The position rests on these two elements:

> (1) The debate indicated a legislative policy against the use of military force to support court orders.
>
> (2) The statement of Senator Russell indicated the true legislative purposes.