

# JUSTICE

1 United States Commission on Civil Rights Report

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# JUSTICE

1961 Commission on Civil Rights Report

# GIFT



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### PART IX: THE NEED FOR BROADER ACTION

# Foreword

The United States Commission on Civil Rights was created by the Civil Rights Act of 1957 as a bipartisan agency to study civil rights problems and report to the President and Congress. Originally created for a 2-year term, it issued its first comprehensive report on September 8, 1959.

On September 14, 1959, Congress extended the Commission's life for another 2 years. This is the fifth of five volumes of the Commission's second statutory report.

Briefly stated, the Commission's function is to advise the President and Congress on conditions that may deprive American citizens of equal treatment under the law because of their color, race, religion, or national origin. The Commission has no power to enforce laws or correct any individual wrong. Basically, its task is to collect, study, and appraise information relating to civil rights throughout the country, and to make appropriate recommendations to the President and Congress for corrective action. The Supreme Court has described the Commission's statutory duties in this way:

. . . its function is purely investigative and factfinding. It does not adjudicate. It does not hold trials or determine anyone's civil or criminal liability. It does not issue orders. Nor does it indict, punish, or impose any legal sanctions. It does not make determinations depriving anyone of his life, liberty, or property. In short, the Commission does not and cannot take any affirmative action which will affect an individual's legal rights. The only purpose of its existence is to find facts which may subsequently be used as the basis for legislative or executive action.

Specifically, the Civil Rights Act of 1957, as amended, directs the Commission to:

- Investigate formal allegations that citizens are being deprived of their right to vote and have that vote counted by reason of their color, race, religion, or national origin;
- Study and collect information concerning legal developments which constitute a denial of equal protection of the laws under the Constitution;

- Appraise the laws and policies of the Federal Government with respect to equal protection of the laws under the Constitution;
- Prepare and submit interim reports to the President and the Congress and a final and comprehensive report of its activities, findings, and recommendations by September 9, 1961.

The Commission's 1959 Report included 14 specific recommendations for executive or legislative action in the field of civil rights. On January 13, 1961, an interim report, *Equal Protection of the Laws in Public Higher Education*, containing three additional recommendations for executive or legislative action, was presented for the consideration of the new President and Congress. This was a broad study of the problems of segregation in higher education.

The material on which the Commission's reports are based has been obtained in various ways. In addition to its own hearings, conferences, investigations, surveys and related research, the Commission has had the cooperation of numerous Federal, State, and local agencies. Private organizations have also been of immeasurable assistance. Another source of information has been the State Advisory Committees which, under the Civil Rights Act of 1957, the Commission has established in all 50 States. In creating these committees, the Commission recognized the great value of local opinion and advice. About 360 citizens are now serving as committee members without compensation.

The *first statutory duty* of the Commission indicates its major field of study—discrimination with regard to voting. Pursuant to its statutory obligations, the Commission has undertaken field investigations of formal allegations of discrimination at the polls. In addition, the Commission held public hearings on this subject in New Orleans on September 27 and 28, 1960, and May 5 and 6, 1961.

The Commission's *second statutory duty* is to "study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution." This takes in studies of Federal, State, and local action or inaction which the courts may be expected to treat as denials of equal protection. Since the constitutional right to equal protection is not limited to groups identified by color, race, religion, or national origin, the jurisdiction of the Commission is not strictly limited to discrimination on these four grounds. However, the overriding concern of Congress with such discrimination (expressed in congressional debates and in the first subsection of the statute) has underscored the need for concentrated study in this area.

Cases of action or inaction discussed in this report constitute "legal developments as well as denials of equal protection. Such cases may have been evidenced by statutes, ordinances, regulations, judicial decisions, acts of administrative bodies, or of officials acting under color of law. They may also have been expressed in the discriminatory application of nondiscriminatory statutes, ordinances or regulations. Inaction



of government officials having a duty to act may have been indicated, for example, by the failure of an officer to comply with a court order or the regulation of a governmental body authorized to direct his activities.

In discharging its *third statutory duty* to "appraise the laws and policies of the Federal Government with respect to equal protection of the laws under the Constitution," the Commission evaluates the effectiveness of measures which by their terms or in their application either aid or hinder "equal protection" by Federal, State, or local government. Absence of Federal laws and policies that might prevent discrimination where it exists falls in this area. In appraising laws and policies, the Commission has considered the reasons for their adoption as well as their effectiveness in providing or denying equal protection.

The *1959 Report* embraced discrimination in public education and housing as well as at the polls. When the Commission's term was extended in 1959, it continued its studies in these areas and added two major fields of inquiry: Government-connected employment and the administration of justice. A preliminary study looked into the civil rights problems of Indians.

In the public education field, the problems of transition from segregation to desegregation continued to command attention. To collect facts and opinion in this area, the Commission's Second Annual Conference on Problems of Schools in Transition was held March 21 and 22, 1960, at Gatlinburg, Tenn. A third annual conference on the same subject was held February 25 and 26, 1961, at Williamsburg, Va.

To supplement its information on housing, education, employment, and administration of justice the Commission conducted public hearings covering all of these subjects in California and Michigan. On January 25 and 26, 1960, such a hearing was held at Los Angeles; and on January 27 and 28, 1960, in San Francisco. A Detroit hearing took place on December 14 and 15, 1960.

### *Commission membership*

Upon the extension of the Commission's life in 1959, and at the request of President Eisenhower, five of the Commissioners consented to remain in office: John A. Hannah, Chairman, president of Michigan State University; Robert G. Storey, Vice Chairman, head of Southwestern Legal Center and former dean of Southern Methodist University Law School; Doyle E. Carlton, former Governor of Florida; Rev. Theodore M. Hesburgh, C.S.C., president of the University of Notre Dame; and George M. Johnson, professor of law and former dean of Howard University School of Law.

John S. Battle, former Governor of Virginia, resigned. To replace him the President nominated Robert S. Rankin, chairman of the depart-

ment of political science, Duke University. This nomination was confirmed by the Senate on July 2, 1960.

On March 16, 1961, President Kennedy accepted the resignations of Doyle E. Carlton and George M. Johnson. A few weeks later he nominated Erwin N. Griswold, dean of Harvard University Law School and Spottswood W. Robinson III, dean of the Howard University School of Law, to fill the two vacancies. The Senate confirmed these nominations on July 27, 1961.

Gordon M. Tiffany, Staff Director for the Commission from its inception, resigned on January 1, 1961. To replace him, President Eisenhower appointed Berl I. Bernhard to be Acting Staff Director on January 7, 1961. He had been Deputy Staff Director since September 25, 1959. On March 15, 1961, President Kennedy nominated him as Staff Director. The Senate confirmed his nomination on July 27, 1961.

## *Part VII.* **Equal Justice Under Law**

# **1. Introduction**

The Commission has been disturbed by persistent reports of unconstitutional and violent acts by some agents of justice in the United States.

After an extensive review of these allegations and the entire field of administration of justice, the Commission authorized a study of three problems: (1) police brutality and related private violence; (2) the Civil Rights Acts and their enforcement; and (3) jury exclusion.

In 1931 President Hoover's Wickersham Committee found extensive evidence of police lawlessness, including unjustified violence.<sup>1</sup> Sixteen years later another Presidential Committee, this one appointed by President Truman, concluded that police brutality, especially against the unpopular, the weak, and the defenseless, was a distressing problem.<sup>2</sup> And now in 1961 this Commission must report that police brutality is still a serious problem throughout the United States.

Police connivance with private persons in acts of violence is not as widespread. But the recent racial outbursts in Alabama demonstrate that it is still a problem. Referring to the Montgomery incident, Federal Judge Frank Johnson, Jr. stated that local police officers had purposely failed to curb the mob, a failure which "clearly amount[ed] to unlawful state action in violation of the Equal Protection Clause . . ."<sup>3</sup>

At least one form of mob violence—as to which the police have not been entirely blameless—is becoming less common. At the beginning of this century the annual toll of lynchings ran into the hundreds. During the 14 years prior to the Truman Committee report of 1947 there were 123 known lynchings. During the 14 years since that report there have been 14. Not one has been reported in the past 2 years.<sup>4</sup> Yet the threat lives on: <sup>5</sup>

The devastating consequences of lynching go far beyond what is shown by counting the victims. When . . . lynchers go unpunished, thousands wonder where the evil will appear again and what mischance may produce another victim.

The major responsibility for the control of violence rests upon State and local governments. But the Federal Government also has responsibilities in this area that are imposed upon it by the Constitution and by the Civil Rights Acts. And so the Commission has sought to discover how effective the Civil Rights Acts have been in combating police brutality and associated private violence. President Truman's Committee in 1947 found weaknesses both in the Acts and in their enforcement. Its recommendation that the Civil Rights Section of the Department of Justice be expanded into a full Division was accomplished by the Civil Rights Act of 1957. This report will consider the effectiveness of the existing legislation in light of the new administrative machinery.

The fact that Negroes generally do not have fair representation in the agencies of justice is also relevant to an understanding of criminal justice in the United States. In many communities, for example, they have no real opportunity to serve on a grand or petit jury. This can hardly contribute to impartiality in the administration of justice or to respect for the agencies of law on the part of those who are excluded. To the extent that exclusion is the result of discriminatory governmental action it violates the Constitutional standard of equal protection.

This threefold study of administration of justice is concerned with denials of equal protection and with Federal laws and policies directed toward such denials. The Commission's jurisdiction derives from the statutory provisions that require it to: <sup>6</sup>

(2) study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution; and

(3) appraise the laws and policies of the Federal Government with respect to equal protection of the laws under the Constitution.

Where a State discriminates in the selection of jurors, the denial of equal protection is obvious.<sup>7</sup> So also if it deliberately discriminates in the employment of policemen.<sup>8</sup> In cases of police brutality (which are ordinarily treated as deprivations of due process) denials of equal protection are not always obvious. Yet, in many instances such denials are present.<sup>9</sup> Private violence comes within the ban of the equal protection clause—and so within the Commission's jurisdiction—when by police "support" it becomes in effect State action.<sup>10</sup>

The victims of lawlessness in law enforcement are usually those whose economic and social status afford little or no protective armor—the poor and racial minorities. Members of minority races, of course, are often prevented by discrimination in general from being anything but poor. So, while almost every case of unlawful official violence or discrimination studied by the Commission involved Negro victims, it was not always clear whether the victim suffered because of his race or because of his

lowly economic status. Indeed, racially patterned police misconduct and that directed against persons because they are poor and powerless are often indistinguishable. However, brutality of both types is usually a deprivation of equal protection of the laws and of direct concern to the Commission.

It is the considered judgment of the Commission that in most respects criminal justice is administered in the United States on a nondiscriminatory basis. Indeed, our progress toward the ideal of Equal Justice Under Law should be a source of pride for all Americans. The Commission is particularly impressed by the fact that most police officers never resort to brutal practices. Because of this fact, instances of brutality or discrimination in law enforcement stand out in bold relief. It is hoped that by focusing the attention of the President, the Congress, and the public on these remaining incongruities, this Report may contribute to their correction.



## 2. Unlawful Police Violence

The Commission's study of the administration of justice concentrates on police brutality—the use of unlawful violence—against Negroes. Complaints and litigation suggest four subdivisions of the problem. The first involves the use of racially motivated brutality to enforce subordination or segregation. The second, a not altogether separate category, entails violence as a punishment. The third relates to coerced confessions. The last and largest entails the almost casual, or spontaneous, use of force in arrests. Only the first category necessarily involves racial discrimination. In the others it may, or may not, be present, but Negroes are the victims with disproportionate frequency.

In the text of this chapter the Commission briefly describes the alleged facts in 11 typical cases of police brutality. They are presented in the belief that they contribute to an understanding of the problem. The allegations of misconduct are supported in several cases by criminal convictions<sup>1</sup> or findings by impartial agencies; in others, by sworn testimony, affidavits from eye witnesses, or by staff field investigations. In no case has the Commission determined conclusively whether the complainants or the officers were correct in their statements. This is the function of a court. The Commission is of the opinion, however, that the allegations appeared substantial enough to justify discussion in this study.

Most citizens do not look upon policemen with fear. Indeed, the law officer's badge has become a symbol worthy of much respect. There is good reason for this. Many citizens call upon policemen for aid in any emergency. And it is the policeman who must enforce the criminal law. The extent of the burden on this country's approximately 200,000 policemen<sup>2</sup> is demonstrated by the 1,861,300 serious offenses reported in 1960.<sup>3</sup> In carrying out their vital mission policemen sometimes face extreme danger. The Federal Bureau of Investigation recently reported:<sup>4</sup>

During 1959, 49 police employees were killed in line of duty, . . . pointing up the hazardous nature of the occupation and the devotion to duty of these dedicated men. In 1960, 48 police lost their lives.

Moreover, in 1960 a total of 9,621 assaults on American policemen were reported to the FBI. This amounts to a rate of 6.3 assaults for every 100 police officers in the country.<sup>5</sup> The Commission's study of denials of rights to citizens by some policemen should be viewed in the context of the difficult and dangerous job that policemen are required to perform.

## PATTERNS OF POLICE BRUTALITY

### *Enforcement of segregation or subordinate status*

*The killing of a Negro in Georgia: 1943.*—In the early morning of January 30, 1943, Manley Poteat responded to a call for an ambulance at the jail in Newton, Baker County, Georgia. He explained in sworn testimony later that he found an “unconscious” man crawling around in a pool of blood on the floor of a cell.<sup>6</sup> The man was a young Negro, Bobby Hall, a skilled mechanic who was married and had one child. He was taken to a hospital in Albany, 22 miles away, where he died approximately 1 hour after his arrival. When Walter Poteat, Manley's father, embalmed the body, he observed that it had been brutally beaten.<sup>7</sup>

The authorities in Albany, which is not in Baker County, were notified and saw the body; photographs were made; and the matter soon came to public attention. Sheriff Claude M. Screws—and the other officers—who beat and killed Hall were later prosecuted by the Federal Government for violation of an 1866 statute that makes it a Federal crime for an officer of the law to interfere with the constitutional rights of any person.<sup>8</sup> In beating and killing young Hall without justification, a Federal grand jury in Macon charged, the sheriff had deprived the victim of a number of constitutional rights including the right not to be subjected to punishment except after a fair trial and the right to equal protection of the laws. Screws was convicted, and eventually appealed to the Supreme Court, challenging the constitutionality of the statute. In the landmark decision of *Screws v. United States*,<sup>9</sup> the Supreme Court in 1945 upheld the statute, construed it strictly, and overturned the conviction because it had not been established that in killing Bobby Hall, Screws had intended to deprive him of a constitutional right.<sup>10</sup> Screws was later tried again under the standard set forth by the Supreme Court and acquitted.<sup>11</sup>

While this example of police brutality took place almost two decades ago it is still a classic case. Recent complaints coming to the attention of this Commission contain allegations that bear a striking similarity to it. For this reason the case will be described in detail.

Sheriff Screws testified at his first trial that the trouble began late that January evening in 1943 when he asked night patrolman Frank E.



Jones and Deputy Sheriff Jim Bob Kelley to serve a warrant of arrest on Bobby Hall for theft of a tire. The two men brought the Negro back to Newton in the Sheriff's car. Screws continued: <sup>12</sup>

I opened the door and I said, "All right, Bobby, get out" and I noticed he wasn't in any hurry to get out but when he, when I did see him come out, I saw something coming out ahead of him like that (indicating) and I discovered it was a gun; and he said, "You damn white sons"—and that is all I remember what he said. By that time I knocked the gun up like that and the gun fired off right over my head; and when it did he was on the ground by then and me and Kelley and Jones ran in to him and we all were scuffling and I was beating him about the face and head with my fist. I knew Jones had a blackjack and I told him to hit him and he hit him a lick or two and he didn't seem to weaken and I said, "Hit him again!" When he fell to the ground, we didn't hit him on the ground.

\* \* \*

At no time when I saw the deceased or Bobby Hall did he have any handcuffs on him.

The only colored prosecution witness who observed a crucial part of this event was Mrs. Annie Pearl Hall, the wife of the victim. She contradicted, in part, one vital item in the defendant's case: Mrs. Hall stated that after the victim left their home under arrest, "they were handcuffing him when I went to the door." <sup>13</sup> All three of the officers said that he had never been handcuffed and was, therefore, able to grab the shotgun from the front seat of the car and attack them with it.

While there are many similarities between this case and others in Commission files, there is one major difference. A number of white people observed the beating of Bobby Hall and events connected with it—and appeared at the trial as witnesses. Their stories supported one another and directly contradicted that of Screws. The testimony of these witnesses may be summarized as follows: Screws and his companions had threatened to get a "nigger" that night; they took Hall to an open area in the center of town near the public pump; the three men beat him to the ground and continued for 15 to 30 minutes to pound him with a heavy object—which was later found to be a 2-pound metal blackjack; the victim was handcuffed during all of these proceedings; after the beating the shotgun was fired once—not by the unconscious victim but apparently by one of the officers for some unknown reason. <sup>14</sup>

One of the white eyewitnesses who appeared at the trial and swore to these facts was Mrs. Ollie Jernigan. Her husband, J. H. Jernigan, did not see the incident, but he testified that he was walking through town one day and Sheriff Screws called him over to his car where the following conversation took place: <sup>15</sup>

“Herschell, you know those FBI men are down here investigating that case?” He said, “Well, I understand that your wife saw it.” I told him “Yes.” He says, “Well, you know we have always been friends and I want us to continue to be friends.” I told him, “Well, I hoped we could.”

The dynamics of combined prejudice and violence in this case are suggested in the testimony of James P. Willingham, a white man, who said that shortly after the killing he had a talk with his friend, Officer Frank Jones: <sup>16</sup>

[H]e told me that the Negro had a mighty good pistol and they had taken it away from him and the Negro acted so damn smart and went before the Court in some way trying to make them give it back to him . . . and that they went out there that night with a warrant and arrested him and handcuffed him and brought him to town and the Negro put up some kind of talk about wanting to give bond or something to that effect and they beat hell out of him; then, that when they got him up to the well they whipped him some more and he died shortly afterwards. He said the Negro attempted to shoot them at the well; said the Negro attempted to shoot them at the well with a shotgun and said he hit him with a blackjack pretty hard and I asked him about how in the world did the Negro try to shoot you and you had him handcuffed and he said well we finished him off and that is all.

Bobby Hall apparently was considered a somewhat “uppity” Negro. Evidence produced at the trial indicated that the tire theft charge was a sham for, as suggested in the Willingham testimony, Hall’s major “crime” was to challenge the power of the sheriff to confiscate his pistol. Bobby Hall was not accused of any crime in connection with the weapon. He needed it, he claimed, for protection. In attempting to exercise not his civil rights but his property rights, Hall contacted a lawyer and even went before a local grand jury. But he did not recover his pistol.<sup>17</sup> And, while he never challenged the system of segregation, he was something of a leader among Negroes.<sup>18</sup>

No State or local action was taken against the alleged offenders. Prosecution by the State—which has the power to impose the supreme penalty—may be blocked in cases of this type by the fact that the potential defendant is the person who must start up the machinery of the criminal law. While the district solicitor general in the *Screws* case had formal power to prosecute, he reportedly felt “helpless in the matter” because he had “to rely upon the sheriff and policemen of the various counties of his circuit for investigation.” <sup>19</sup> In the absence of an investigation and a complaint from Sheriff Screws, or by another police officer implicating Screws, no prosecution was commenced. In police bru-

tality cases where the potential defendant is not the *chief* law enforcement officer of the county, there is a greater possibility of criminal or disciplinary action by local authorities. But even in such situations, local action against officers of the law is not common.<sup>20</sup>

Neither Screws nor any of his associates was ever punished. They experienced the difficulty and expense of months of litigation but a second Federal jury acquitted them. The episode did not seriously tarnish the reputation of Claude M. Screws. In 1958 he ran for the State Senate and was elected.

*The killing of a Negro in Georgia: 1958.*—The town of Dawson in Terrell County, Ga. is approximately 30 miles south of Newton. There on April 20, 1958, James Brazier, a Negro in his thirties, suffered a beating at the hands of officers of the law (from which he later died)—in circumstances similar to those in the *Screws* case.<sup>21</sup>

According to the police account, the incident started in the early evening of Sunday, April 20, 1958, when Dawson Police Officer "X" arrested James Brazier's father on a charge of driving under the influence of alcohol. When the elder Brazier resisted, he was subdued by a blackjack. James Brazier protested and, according to the policemen, threatened the officer who later returned with Officer "Y" and arrested the younger Brazier, allegedly with a warrant, for interfering with an arrest. He resisted violently and was subdued with a blackjack. Shortly thereafter he was taken to jail and examined by a local physician who found no serious injury.<sup>22</sup>

Brazier died 5 days later at a hospital in Columbus, Ga. from brain damage and a fractured skull. He had four to six bruised spots on his scalp from a blunt instrument which apparently also caused the skull fracture.<sup>23</sup> The police claimed that Brazier was hit only once or twice at the time of the arrest.

In a sworn statement to Commission representatives Mrs. Hattie Bell Brazier, the widow of the victim, claimed that this affair had actually started months earlier. Mrs. Brazier explained that she and her husband had purchased a new Chevrolet in 1956—and another in 1958.<sup>24</sup> In November of 1957 James Brazier had been arrested on a speeding charge. According to Mrs. Brazier, her husband told her that Dawson Officer "Y" took him to jail, and that: <sup>25</sup>

"When I first entered the door of the jail, ["Y"] hit me on the back of the head and knocked me down and said, 'You smart son-of-a-bitch, I been wanting to get my hands on you for a long time.' I said, 'Why you want me for?' ["Y"] said, 'You is a nigger who is buying new cars and we can't hardly live. I'll get you yet.'"

Officer "Y" then allegedly hit Brazier several more times, put his foot on the small of the prostrate Negro's back (Mrs. Brazier said she saw

the footprints there later), and warned him, "You'd better not say a damn thing about it or I'll stomp your damn brains out." After his release from jail, Brazier was bleeding from his ear and vomiting blood. From this time in the fall of 1957 until the second incident in April of 1958, James Brazier was under the care of a local white doctor because of these injuries. Officer "X", the policeman who accompanied "Y" during the arrest in April 1958, also allegedly made a remark about the new car at some time previous to the fatal incident.<sup>26</sup> It appears that James Brazier of Terrell County, like Bobby Hall of Baker County, was considered an "uppity" Negro.

The story of the fatal incident in 1958 as told by Mrs. Brazier and several other colored witnesses contradicts the account given by the officers. In her affidavit Mrs. Brazier stated that her husband had been beaten brutally by the arresting officers in full view of numerous colored people, including herself and her four children. No warrant was presented by the officers, nor was any paper observed in their hands. The officers, she said, simply ran out of their car and roughly grabbed her husband. While pulling him toward the police car, "Y" beat him repeatedly with a blackjack. Mrs. Brazier's affidavit continued: <sup>27</sup>

["Y"] then said, "You smart son-of-a-bitch, I told you I would get you." James said, "What do you want to hurt me for? I ain't done nothing. I got a heap of little chillun. [sic]." ["Y"] said, "I don't give a goddamn how many children you got, you're going away from here" . . . ["Y"] pulled out his pistol and stuck it against James' stomach and said, "I oughta blow your goddam brains out."

Then these events allegedly occurred: James Brazier's 10-year-old son pleaded with the officers to stop beating his father and was knocked to the ground by "Y"; <sup>28</sup> the victim was thrown onto the floor of the police car with his legs dangling outside; "Y" kicked him twice in the groin; slammed the car door on his legs; threw a hat full of sand into his bloody face, and drove off.<sup>29</sup>

When Brazier reached the jail, he was bloody but conscious and apparently not seriously injured by the beating he had received. Yet, when he was taken to court the next morning, he was virtually unconscious. The question that arises is whether Brazier was beaten during the interval between his arrival in jail at approximately 7 p.m. and his appearance in court at approximately 9 a.m. the next day. There is evidence that he was. It comes from several witnesses, one of whom has since died <sup>30</sup> and may be identified—Marvin Goshay, a Negro who was 23 years of age when he signed an affidavit on August 24, 1960 during an interview with Commission representatives in Albany, Ga. Goshay was in jail on a charge of assault and battery when Brazier was

incarcerated. The story, as Goshay saw it, is as follows: When James Brazier was brought into the jail he was fully dressed in suit, shirt, tie, and shoes. He talked coherently to Goshay (describing his arrest consistently with Mrs. Brazier's later testimony). Several hours later—probably around midnight—he was ordered out of the cell by Officers "X" and "Y". "They took Brazier out again," Goshay stated in his affidavit. "He asked them to wait because he wanted to put on his shoes. The police said, 'You won't need no shoes.'" This was the last time that Goshay saw him that night. Goshay next saw Brazier on the following morning. His affidavit continued:

He had on pants, a torn undershirt, no coat, no tie, no white shirt. The last time I saw him, he had on a blue suit, white shirt, and tie. He looked worse on his head than when I saw him also . . . It was beaten worse than when I first saw him. On his back were about four long marks about a foot long. They looked reddish and bruised. His head was bleeding. We had to carry [him] to the car because he couldn't walk. He was slobbering at the mouth. When we got to the car, James, who was dazed but not completely out, didn't know enough to get in the car. Mr. ["Z"—a Dawson police officer] said if he didn't get in, he'd beat him with his blackjack.

More than a year after Brazier's death Sheriff Z. T. Mathews of Terrell County allegedly made the following statement to Mrs. Brazier:<sup>31</sup>

I oughta slap your damn brains out. A nigger like you I feel like slapping them out. You niggers set around here and look at television and go up North and come back and do to white folks here like the niggers up North do, but you ain't gonna do it. I'm gonna carry the South's orders out like it oughta be done.

Also, Sheriff Mathews told reporter Robert E. Lee Baker, "You know, Cap, . . . there's nothing like fear to keep niggers in line. I'm talking about 'outlaw' niggers."<sup>32</sup>

No local disciplinary or criminal action was taken against any of the officers involved. The attitude of local authorities toward police was protective in this and several other cases of alleged brutality that occurred within a brief period in Dawson. Indeed, there was indignation when Negroes claimed they were "living in an atmosphere of fear."<sup>33</sup> As in the *Screws* case the Department of Justice was sufficiently impressed with the results of an FBI investigation to authorize Civil Rights Acts prosecutions. From August 4 to 8, 1958, the local United States Attorney presented witnesses to a Federal grand jury in Macon and requested indictments in five cases of alleged police brutality against

policemen "X," "Y," and another Dawson officer.<sup>34</sup> The grand jury returned no indictments.<sup>35</sup>

In the 15 years between the death of Bobby Hall and the death of James Brazier the world had changed in many ways. But in Terrell and Baker, as in some other rural southern counties,<sup>36</sup> the economy, the social system, and racial attitudes remained virtually what they had been. James Griggs Raines who owns many of the buildings in Dawson and has been its Mayor, explained in a 1960 interview that, "This is a feudalistic system. But I don't know if, or how, it will be changed."<sup>37</sup> Few Negroes vote in these counties and in most ways they are deprived and subordinate. Officers of the law sometimes enforce this status by illegal or violent methods.<sup>38</sup>

Not long after Brazier died, police officer "Y" was promoted to Chief of the Dawson Police Department. Z. T. Mathews at this writing is still sheriff of Terrell County.

The Hall and Brazier cases are more dramatic than most, partly because they resulted in death. But the Commission has reviewed complaints and reports of similar incidents. Reports of some of the most heinous of these have come to the Commission from the Mississippi State Advisory Committee which says that it has received "many and at times almost unbelievable reports of atrocities and brutalities" perpetrated by law enforcement officials.<sup>39</sup> As with many other current complaints, these are now under investigation by the Department of Justice and for that reason will not be considered here.

Some of the worst complaints of police brutality have included allegations that the officers involved expressed some racial motive for their conduct. The extensive violence found in the Hall and Brazier cases, for example, is rarely seen in incidents where there is no element of racial hate.

### *Punishment*

A student said the Batista police were so sadistic, once the policemen put you in a scout car, you had your judge and jury, trial and punishment before you get out.

My most embarrassing moment came when a student asked me did the police in Detroit beat people. What could I say?<sup>40</sup>

The primary motivation for police brutality in the cases discussed above and in similar ones seem to have been a desire to "keep the Negro in his place." Cases of similar misconduct often occur—in many parts of the Nation—that appear to have been motivated by a desire to *punish* for reasons other than violation of local segregation customs.<sup>41</sup> A few examples are described in this section.

Policemen and comparable officials have absolutely no authority to punish anyone. Police may use whatever force is necessary to defend themselves and perform their public duties—beyond that they act illegally.<sup>42</sup> As the Wickersham Commission wrote three decades ago, “their fight against lawless men, if waged by forbidden means, is degraded almost to the level of a struggle between two law-breaking gangs.”<sup>43</sup>

*“Gentlemen cops don’t solve crimes”*: Detroit, 1959.—A fight between eight Negro boys and several policemen took place in Detroit on the evening of September 10, 1959. There was a direct conflict in the stories of the policemen and the youths as to the cause of this eruption, but it is undisputed that four of the policemen were injured and sent to a hospital for treatment.

When Thaddeus Steel, one of the boys involved, arrived at the police station, a white reporter from the Detroit Free Press observed his reception and reported as follows: “

A 16-year-old boy, arrested for hitting a policeman with a chair, was beaten and kicked by at least four patrolmen Thursday night after he was a prisoner in the Vernor Station garage.

\* \* \*

Steel was brought into the police garage in a scout car, closely followed by three other cars filled with police.

He sat in the back seat of the car. His face showed pain. There was a patrolman sitting next to him.

As the car halted, the patrolman left the car and yanked Steel from it by the neck. Another patrolman raced up.

“Is this him?” he shouted.

Then he threw a fist into Steel’s face.

A second patrolman pushed that assailant aside and sank his fist into Steel’s stomach.

Steel fell to the garage floor, moaning.

\* \* \*

The newsmen stood outside the open door of the garage.

One of the policemen saw them and shouted:

“Lower that door!”

But all were too busy slugging Steel, now prone on the floor.

They dragged him to the side and the onlookers could see only patrolmen kicking and slugging at him.

“Lower that door!” shouted one again.

Two detectives had entered the other side of the garage and strode grimly across to the newsmen. Their expressions softened as they reached them.

"Gentlemen cops don't solve crimes," one of the detectives said. The patrolmen picked Steel up and rushed him into the station. The detectives turned and walked away.

\* \* \*

Inspector Leslie Caldwell, commander of the station, is on furlough.

Lt. Raymond Glinski, acting inspector at Vernor, said, "We can't use kid gloves on gang fighters."

"When policemen are sent to the hospital, we don't want to tap the hoodlums who hurt them on the shoulder and send them home," he said.

"After all, four policemen were hit seriously enough by juveniles to be admitted and the juvenile was released from Receiving Hospital without treatment."

Glinski said he did not want to condone beating of prisoners.

"But, after all, when it's a question of a policeman going to the hospital or a hood, I think both should go," he said.

After an investigation, Detroit Police Commissioner Herbert W. Hart decided to take no action against the police officers and announced that "no evidence to substantiate charges of police brutality" had been found.<sup>45</sup> "As far as I am concerned, it is a closed issue," he added.<sup>46</sup> When asked by the Detroit Free Press for amplification regarding the eyewitness story of its reporter, Commissioner Hart said that he did "not disbelieve" it.<sup>47</sup> The newspaper editorialized, "The facts stated in our story were accurate."<sup>48</sup> But the editor admitted that the reporter could identify only one detective who was present at the beating.

Wayne County Prosecutor Samuel H. Olsen also ordered an investigation but did not prosecute because the alleged assailants could not be identified.<sup>49</sup> The Federal Government did not prosecute under the Civil Rights Acts. Several of the older Negroes were prosecuted by the State and convicted of conspiracy to commit assault and battery. Thaddeus Steel and the other juveniles were released after a hearing on similar charges by the juvenile court.

*Punishment of a trouble maker: Idaho, 1959.*—James LaFleur, a Canadian-born Cree Indian, was allegedly drunk on the night of August 15, 1959, and got in a fight,<sup>50</sup> at a bar in the town of Blackfoot, Idaho. Three members of the Blackfoot Police Department—Officers Clark, Twitchell, and Ockerman—took LaFleur into custody on charges of drunkenness and disorderly conduct. Instead of taking him to the local jail, they took him to the city limits. There Officer Clark beat him with his night stick and knocked him unconscious.

When LaFleur recovered consciousness, the police had left. In great pain and bleeding profusely, he staggered to a nearby farmhouse and got help from the State Police. Although severely injured, he recovered.



The Blackfoot Chief of Police suspended Clark from duty pending trial. His fellow officers testified against him in a Federal prosecution for violation of LaFleur's constitutional right not to be subjected to summary punishment.<sup>51</sup> The theory of the Government's case was that LaFleur had been beaten illegally for the purpose of punishment only. Rejecting Clark's claim that he had merely tried to overcome unlawful resistance, the jury brought in a verdict of guilty. On November 5, 1959, Judge Fred M. Taylor imposed a fine of \$500 and sentenced Clark to serve 60 days in the custody of the Attorney General. The latter penalty was suspended upon payment of the fine.

*The Raiford Prison case: Florida, 1960.*—In late 1958 the United States Department of Justice received information that prisoners in Florida's Raiford Prison were being subjected to brutal and inhuman punishment, often for minor infractions. A number of white guards were implicated. Victims included both whites and Negroes. Some suffered serious injuries; one apparently died from them. The victims' stories were essentially similar, and were corroborated by prison guards, by members of the medical staff, by chaplains, and by other prisoners who had not been mistreated.<sup>52</sup>

A State administrative hearing lasted one day and resulted in the discharge of two head guards by order of the Governor. The decision as to whether a State criminal action should be instituted was left to the local prosecutor. He did not prosecute.

Following indictments by a Federal grand jury for conspiracy to violate the constitutional rights of the prisoners,<sup>53</sup> the case was brought to trial on June 27, 1960, before Judge Bryan Simpson in the United States District Court for the Southern District of Florida. In support of the charges against the 14 defendants the United States produced 60 witnesses and 100 exhibits.

At the trial James Donald Brown, a 21-year-old Negro inmate of Raiford Prison made allegations typical of those made by other prisoners. He said that he had been caught with a pencil (a minor violation) and informed by a prison lieutenant, one of the defendants, that he was going to be shackled to the bars of a cell as punishment. His testimony continued: <sup>54</sup>

A. I started to resist from being handcuffed to the bar and he hit me with a blackjack.

\* \* \*

Q. Did they complete chaining you at any time?

A. Yes, they chained me.

Q. In what position were you chained?

A. I was sitting down with my legs up on the bar and my hands up on the bar sitting down on the floor nude.

Q. How long did you remain in that position?

A. About 41 hours . . .

\* \* \*

A. After I had been chained . . . [the officers] shot water on me, and poured salt on me.

\* \* \*

Q. What did he do with the hose?

A. Shot water all down on my privates, all in my face and all over my body.

\* \* \*

Q. How was the nozzle adjusted?

A. It was pretty powerful.

Then, Brown continued, after 2 or 3 hours, one of the guards gave him another hose "treatment" under the direction of the prison lieutenant.<sup>55</sup> Later he was chained to the bars again for several hours.<sup>56</sup>

Before the defense offered any evidence, Judge Simpson took the case from the jury and directed a verdict for the defendants. The gist of his ruling was that while there was evidence that these acts might have taken place; there was not sufficient evidence to show that the guards had *intended* to violate the constitutional rights of the prisoners—an intent necessary for conviction under the 94-year-old Federal statute involved. The judge observed that: <sup>57</sup>

If the sole issue here had ever been whether the guards had mistreated or brutalized the prisoners, certainly I would have to hold that the Government had made a case which should be answered by these defendants . . . [T]hat was not and never has been the issue.

### *The third degree and coercion of confessions*

In 1931 the Wickersham Commission stated: "the third degree—that is, the use of physical brutality, or other forms of cruelty, to obtain involuntary confessions or admissions—is widespread."<sup>58</sup> Five years later, in the historic case of *Brown v. Mississippi*, based upon the torture-induced confessions of three Negroes to a murder, the Supreme Court ruled that the due process clause of the 14th amendment prohibits convictions based on coerced confessions. As Chief Justice Hughes put it, "The rack and torture chamber may not be substituted for the witness stand."<sup>59</sup>

While it is permissible under certain circumstances for an officer to interrogate a criminal suspect, policemen have no general authority to compel even those obviously guilty of the most heinous crimes to answer their questions—a safeguard deemed essential to the preservation of

American freedom.<sup>60</sup> Moreover, an arrest in theory must be based on some incriminating evidence, and the function of detention after arrest is not to isolate a suspect for questioning but rather to make certain that he will appear for trial. In every State, by statute or common law, an arrested person has the right to go before a judge or other judicial officer within a short time after his arrest so that the reasons for his detention may be determined.<sup>61</sup> Yet, policemen sometimes disregard this right and illegally detain suspects solely for questioning.<sup>62</sup> It is during such periods of illegal detention that many confessions are coerced.<sup>63</sup>

In the 25 years since *Brown v. Mississippi*, the Supreme Court has reversed 21 convictions based on coerced confessions.<sup>64</sup> These cases came from all parts of the country. In at least 12 of them the victims were Negroes. Lower Federal courts, as well as State courts, have struck down or prevented many other convictions where confessions were unlawfully obtained.

This study is concerned with physical, not psychological, coercion. Yet "coercion can be mental as well as physical," the Supreme Court recently observed, "and the blood of the accused is not the only hallmark of an unconstitutional inquisition."<sup>65</sup> It is noteworthy that, with two exceptions,<sup>66</sup> all Supreme Court confession cases since 1942 have involved psychological coercion alone.<sup>67</sup>

When sources other than Supreme Court cases are considered, however, evidence is found which indicates that some policemen still resort to physical force to obtain confessions. The Commission's Alabama Advisory Committee, for example, reported allegations that some policemen in that State secure confessions from suspects by violence.<sup>68</sup> Somewhat less recent evidence of the use of brutality in connection with the third degree is found in two successful prosecutions under the Federal Civil Rights Acts during the late 1950's. One of the convictions<sup>69</sup> occurred in October 1957—the defendant being the Chief of Police of North Las Vegas, Nevada—and the other,<sup>70</sup> in February 1958—the defendant being the Chief of Police of La Porte, Texas. It does not appear that the victims in either case were minority group members.<sup>71</sup>

Complaints of brutality and the third degree also appeared in a recent study based partly on interviews in 1957 and 1959 with 359 prisoners in northern prisons.<sup>72</sup> All of these men were interviewed under approximately the same conditions. Not 1 of the 24 who had been arrested by the FBI alleged that violence in any form had been used against him.<sup>73</sup> Many of the State (New Jersey) prisoners, however, claimed that State or local officers had mistreated them, or threatened to do so, for the purpose of coercing confessions. Both Negro and white prisoners made such charges; no significant difference between the stories of the two groups was apparent.<sup>74</sup>

It is often said that prisoners make such complaints to support spurious claims of innocence. But of the 180 New Jersey prisoners who at the time of the interviews admitted their guilt, 23.9 percent (43) claimed to have been threatened, while 27.8 percent (50) claimed that they had been physically mistreated. In the overwhelming majority of these incidents, apparently, the purpose was to secure confessions. It can hardly be argued that these claims in largely anonymous interviews were made to "prove" the innocence of men who admitted their guilt.

One prisoner had been arrested a few years ago for a serious crime by the Paterson, New Jersey police. When first arrested he maintained his innocence, but, now convicted and in prison, he admitted in a questionnaire that he was guilty. He had signed a written confession, and explained that he had done so: <sup>75</sup>

Because I was beat and not fed. And they had witnesses. My partner signed first. And they beat me for further information. And I just reached my breaking point. And finally got fed up with the whole thing. And I also thought I would get off . . . A lot of guys get beat. And everyone has a breaking [point] or mostly everyone. They should be protected. The guilty as well as the innocent.

#### *Initial contact and arrest*

*A police officer complains of police brutality to himself: Detroit, 1960.*—Jesse Ray, a Negro, had been an officer in the Detroit Police Department for 13 years. He resigned on June 25, 1960—several months before he gave this sworn testimony at the Commission's Detroit hearing on December 15, 1960.<sup>76</sup>

. . . I, myself, personally have experienced two assaults by police officers. The facts in both incidents happening to me are very similar to the things that I have learned are happening to other Negro citizens. In both cases there was no reason for the officer to hit me or punish me or to take the law in his own hands. In both cases the attitude of the officers of the department, that is, the superior officers, was to protect the policeman instead of trying to find out actually what happened and prevent future brutality. In both cases the officers claimed that there was some provocation, which there wasn't.

The first incident that occurred to me was in 1955. I went to a house on a routine gambling investigation and knocked at the rear door. [Mr. Ray was on vice squad duty but in plainclothes.] As I knocked at the door, the lady turned the light out. I knocked and remained on the porch for a few minutes and started down the

steps. When I got to the last step, the lights were turned on again. I turned to see why and the [white] police officer charged down the steps and proceeded to whip me with his pistol.

This was the alleged reaction of Ray's superiors to this incident: <sup>77</sup>

I was then taken to the fifth precinct where statements were made, and the sergeant, my sergeant, and the police sergeant at the precinct asked me to cooperate with the organization, that it was an unfortunate thing but they didn't want any adverse criticism and they would appreciate my cooperation. Being a member of the organization, I agreed to cooperate. At that time I was confined to Receiving Hospital for about five days. About a year and a half later some blood clots developed in my eye, and I went back to the hospital, and this was diagnosed as a ruptured blood vessel in my eye causing these clots from the blow I had received. The doctors told me this was something I would have to learn to live with, which I am trying to do . . .

The second incident occurred on November 13, 1960, after he had resigned from the force. Ray testified: <sup>78</sup>

I was stopped by two officers, two white officers, who ordered my car pulled over to the curb. One of the officers snatched my door open, after calling me a name that I really shouldn't use, unless—

Chairman Hannah: Go ahead.

Mr. Ray: He called me a black son-of-a-bitch and ordered me to the curb. I pulled over to the curb and he opened my door and ordered me out of the car. I got out of my car and told the officers to take it easy; I had been beaten by them once before. The officer then pushed me against my car and stepped back and reached for his blackjack. When he did this, I pushed him back in an effort to try to explain what I meant. He proceeded to hit me on the head. The other officer, his partner, hit me on the head, and then a third officer came up behind me and choked me, cut my wind off, and the two other officers beat me to the ground, and then took my arms and twisted them around behind me and handcuffed me and put me in the scout car.

While I was in the scout car I asked the officers if they would mind getting my hat out of the street. They had knocked my hat off just before. One of the officers told me to shut my so-and-so mouth, and during this time he hit me in stomach with his fist.

Taken first to the 13th precinct, Ray was later transferred to Receiving Hospital. Although he was identified as a retired police officer, the police shackled him to the hospital bed all night. He was denied a

request to call his lawyer, he said, but managed secretly to get a message to him.<sup>79</sup>

At his later trial on a charge of reckless driving, Ray's defense was that the charge was laid against him only as a cover for the senseless brutality of the officers. He explained that he blew his horn at the officers in a friendly greeting as he drove by their parked cruiser. In his opinion, the policemen thought he was a "wise guy," chiding them for being double parked which is a violation of the law in Detroit. The officers ordered him over to the curb in order to reprimand him, he reasoned at his trial. When he protested—"Take it easy . . ."—the officers simply started to beat him. Mr. Ray further alleged that he was not driving recklessly and had never had a traffic ticket in his life—even during the years when he was not a policeman. The jury rendered a verdict of acquittal on the charge of reckless driving.

Another former Detroit patrolman, Joynal Muthleb, also gave eyewitness testimony regarding brutality to Negroes at the *Detroit Hearings*.<sup>80</sup> After he had testified, the following exchange between Muthleb and Chairman Hannah took place: <sup>81</sup>

Chairman Hannah: The cases you enumerate in your statement are cases where you feel strong or violent treatment was not necessary?

Mr. Muthleb: Not necessary, because in all of these cases the prisoners were handcuffed, with their hands behind their back, you see, and after you effect an arrest there's no need to hit a person.

*Search, seizure, and violence: Chicago, 1958.*—The Supreme Court of the United States decided the case of *Monroe v. Pape* <sup>82</sup> on February 20, 1961. Although this decision did not finally dispose of the case, it did permit the plaintiff to sue several Chicago police officers for violation of the Federal Civil Rights Acts on the basis of a complaint which alleged that: <sup>83</sup>

. . . [O]n October 29, 1958, at 5:45 a.m., thirteen Chicago police officers led by Deputy Chief of Detectives Pape, broke through two doors of the Monroe apartment, woke the Monroe couple with flashlights, and forced them at gunpoint to leave their bed and stand naked in the center of the living room; that the officers roused the six Monroe children and herded them into the living room; that Detective Pape struck Mr. Monroe several times with his flashlight, calling him "nigger" and "black boy"; that another officer pushed Mrs. Monroe; that other officers hit and kicked several of the children and pushed them to the floor; that the police ransacked every room, throwing clothing from closets to the floor, dumping drawers, ripping mattress covers; that Mr. Monroe was then taken

to the police station and detained on "open" charges for ten hours, during which time he was interrogated about a murder and exhibited in lineups; that he was not brought before a magistrate, although numerous magistrate's courts were accessible; that he was not advised of his procedural rights; that he was not permitted to call his family or an attorney; that he was subsequently released without criminal charges having been filed against him.

*The killing of a Negro in Cleveland: 1959.*—On September 5, 1959, policeman "A", 23 years of age, was on motorcycle duty in Cleveland, Ohio.<sup>84</sup> He claimed that a Negro motorist, whom he was chasing for erratic driving, twice tried to run him down. Later "A" caught up with the man—Jeffrey Perkins—just as the latter stopped in front of his own home. With his pistol in his hand, "A" ordered Perkins to get out of the car because he was under arrest. "I told you to stop," he yelled. "A" claims that Perkins then reached toward the glove compartment as though he were attempting to get a weapon. "A" reacted to this by shooting Perkins dead on the spot. The victim was 25 years old, a laborer, veteran of army service, married, and the father of four small children.

Eyewitnesses told reporters a story which differed from the account of the police officer. Several of them claimed that Perkins had both hands on the steering wheel when he was shot. Such a statement was made by Mrs. Eloise Goodwin, who also alleged:<sup>85</sup>

When I saw his car pull up I ran out and asked him if he would take my three-year-old daughter, who had cut her finger, to the hospital. I was standing right next to the door on the driver's side.

Before Jeff could answer, I saw the policeman. He didn't say a word, then I heard the gun go off. I yelled: "Why did you kill him?"

The policeman said: "He's not dead. He tried to run me over twice."

Upon investigation, the glove compartment was found to be empty. A small, unopened pen knife lay on the floor of Perkins' car. It was beneath the driver's seat—the glove compartment was on the other side of the automobile.

No State or local action was taken against "A". Chief Story of the Cleveland Police Department said, "We still feel Patrolman "A" was right and in the circumstances could have done nothing else but what he did."<sup>86</sup> On April 25, 1961, the Justice Department requested a Federal grand jury in Cleveland to return an indictment for violation of one of the Civil Rights Acts (18 U.S.C. sec. 242). The grand jury refused to do so.

*The shooting of a Negro in Alabama: 1960.*—The following are excerpts from a statement by Theotis Crymes, an Alabama Negro: <sup>87</sup>

I am a veteran. I served in the Armed Forces of the U.S. for six years. I have a wife and three small children. But after having been shot in the back by an officer, I have been paralyzed for life, and am now confined to a wheelchair. I tell my story in the hope that somewhere in America something can be done to help me and other victims of injustice.

On the night of March 19, 1960 I was driving home from Bessemer, Alabama to Montevallo, a distance of about 20 miles. I was driving about 60 miles an hour. A friend and neighbor, James Morrow was with me. When we passed through Helena, Alabama, I noticed a car some distance behind us, but paid no attention. After driving about four miles further, this car caught up with me and bumped into my car from behind, almost knocking my car off the highway. I pulled over and stopped. The other car stopped right behind me, a red light flashing on the top. It was not flashing when it was following me and when it hit me.

I got out of my car and an officer came after me and would have struck me with his gun, but I threw up my hands to keep from being struck. I asked what this was all about, and what I had done. He then asked if I had any whiskey in my car and I told him no. He made me put my hands up on his car, and he began to search me. And while I was standing with my hands up on his car, he shot me in the back, paralyzing me from the waist down. My friend, James Morrow, had gotten out of my car on the same side where we were standing. But a white man in plain clothes who was with the officer, got out and pointed a carbine rifle at him and made him get back into the car. I had fallen on my back in the highway. I looked up at the officer and asked why he shot me down like this. He only said "Shut up, Nigger."

The officer who shot Crymes was the Chief of Police of Helena, Alabama. After an FBI investigation the Department of Justice authorized a Civil Rights Act prosecution.<sup>88</sup> A Federal grand jury in Alabama returned an indictment. At his trial the Police Chief claimed that Crymes advanced on him with a knife and that he shot the Negro in self-defense. Crymes denied this. This trial jury acquitted the police chief.

This case presented an important related problem. Being a veteran and now disabled, Crymes applied to the Veterans Administration for a pension. His application was rejected because, according to the Montgomery office of the Veterans Administration, Crymes' disability was



the result of his "own willful misconduct." <sup>89</sup> This action was taken before it was known that a Federal grand jury had found sufficient evidence to warrant indictment of the Police Chief.<sup>90</sup> Subsequently, the claim was reviewed; a field investigation was ordered; and the pension awarded because the "Montgomery Regional Office . . . determined that Mr. Crymes was innocent of willful misconduct in the shooting incident resulting in his severe permanent injuries." <sup>91</sup>

*Excessive counterforce in Philadelphia: 1960.*—On June 23, 1960, two police officers of the Philadelphia Police Department responded to a call for assistance from Mrs. Eugene Hutchins. She claimed that during the course of an argument her husband had cut her with a knife. When the officers attempted to arrest Hutchins, a Negro, violence erupted. He filed an undue force complaint against the officers with the Philadelphia Police Advisory Board which heard and decided the case.<sup>92</sup>

Hutchins admitted that when one officer approached him, he punched the officer on the head. The Negro claimed that the officer then knocked him down with his nightstick, handcuffed him, and, while he was lying on the ground in no position to resist, both officers beat him with their clubs and a blackjack. According to the Board report, an eyewitness, Mrs. Morris Fedder, "testified that she asked the policeman to stop beating Mr. Hutchins. [The other officer] answered her with profanity and chased her away," she said. The report of the Board also stated that "Three other witnesses testified that the policemen beat the complainant while he was lying on the ground with his hands handcuffed behind him." In their testimony the officers claimed that only the force necessary to subdue the victim was used.

The Advisory Board decided that the officers "were guilty of using unnecessary force in making the arrest," recommended a 7-day suspension for both officers, and said: <sup>93</sup>

The Board recognizes and appreciates the problems that confront the police officer when he is placed in the position of having to use force in order to make an arrest, but this does not give the police officers a license to indulge in the use of club and blackjack *past the point of resistance*.

From the complaints and reports reviewed by the Commission it appears that there are more incidents in this category—police brutality occurring in the moments of initial contact between the police officer and the victim—than in any other. In such cases it is perhaps even more difficult than in the others that have been described, to come to a firm, incontrovertible conclusion in each instance as to who was at fault. The guilty criminal may claim to have been brutalized in order to avoid punishment. The police officer who has in fact used unlawful force

Such was the conclusion of a study of the attitudes of policemen in the northern city of Philadelphia.<sup>97</sup>

The element of respect may be involved because many policemen expect it in a high degree from everyone, but especially from members of minority groups. Indeed, some policemen seem to view lack of respect in and of itself as sufficient justification for violence.<sup>98</sup> There are reports that some policemen in the South have used violence when a Negro responded to a question simply by a "No" or "Yes" without the addition of a "Sir."<sup>99</sup>

Unlawful police violence, then, occurs in varying circumstances, in varying degrees for varying reasons. The cases, however, have several traits in common. The facts are frequently difficult to determine; witnesses are few; the victim and the officer usually tell conflicting stories. The victims are usually the poor and powerless. Often they are members of minority groups (whether because prejudice is involved, or because such minorities are predominantly poor). The alleged perpetrators of the violence are seldom punished. State and local officials, if not actually hindered from effective investigation, as in the *Screws* case,<sup>100</sup> often take a defensive or protective attitude toward their subordinates who may have erred.<sup>101</sup> As will be shown in succeeding chapters,<sup>102</sup> present Federal laws offer little protection against police violence.

## POLICE BRUTALITY AND THE CONSTITUTION

In whatever category they may fall most instances of unlawful police violence involve the deprivation of rights guaranteed by the Federal Constitution. Police brutality is ordinarily treated as a violation of due process.<sup>103</sup> Like other matters involving constitutional rights, however, such misconduct may involve not only denials of due process but of equal protection as well. It is upon the latter, of course, that the Commission's jurisdiction depends.<sup>104</sup> The extent to which the two constitutional provisions overlap depends in part upon the way the equal protection clause is interpreted. In a narrow view, the latter prohibits only deliberate discrimination against a person on the basis of his membership in a racial or other minority group.<sup>105</sup> Thus, for instance, it would apply only to brutality directed against a Negro because he is a Negro. A broader interpretation would apply the equal protection provision in any case where a person is deliberately denied the enjoyment of a right (such as the right to be protected from physical harm while in the custody of the police)<sup>106</sup> that is commonly afforded others in like circumstances.<sup>107</sup> This view would make it applicable to instances of police brutality where there was in fact improper treatment, whether or

will generally claim that the victim resisted arrest. And in cases where the use of *some* force was proper, it is often difficult to determine after the fact, upon the basis of conflicting stories, just how much force was necessary; how much, illegal. It is clear, nevertheless, that in the tense moment of initial contact between a policeman and a person he suspects of a crime, some officers react to a nonexistent threat, or respond to force with a force that is out of proportion to the need.

The attitude and character of the officer—his background, training, intelligence, confidence, ability to articulate, and his feelings toward minority groups—are crucial. When an intelligent and confident policeman wants to prevent serious violence he can almost always do so. This is supported by many reports to the Commission.<sup>94</sup> Former Detroit policeman Joynal Muthleb, for example, pointed out that,<sup>95</sup>

. . . in my 10 years on the job I don't think or can't recall ever striking a man or having to. I have wrestled with them; I have restrained them, but I have never struck a man with a blackjack . . . I feel that the initial approach that an officer uses with any citizen is very important, because you can certainly effect an arrest in a lot of cases without having to use physical violence.

Other police officers of all ranks have related similar stories to this Commission and its representatives. They have told of incidents in which they feared they would have to use force, but managed to talk the suspect out of resistance, or somehow calmed him down, so that chance eruptions did not occur. Such conduct rarely attracts public notice—perhaps because it isn't "newsworthy."

Not all officials have this attitude. Jesse Ray stated in sworn testimony: <sup>96</sup>

In my conversations with officers during the time I was on the force I found that many officers feel you have to be rough to be effective. They feel toward the Negro that you have to keep them down or they'll get out of hand. I remember one case in particular. I remember the lieutenant said—it was a course in human rights that they had at the various precincts—in fact, in all the precincts—and one of the officers remonstrated that he would rather write statements [explaining why he had used violence on a suspect] than end up in a hospital . . . *It seems to be the contention of most of the officers that to be effective you must hit first before you get hit.*

Prejudice and the desire for respect also play a part. A policeman who "hates" a particular minority group has a built-in motive for treating its members with special severity. There is evidence that some officers do look upon Negroes, for example, with distrust and prejudice.

not it was deliberately directed against the victim on account of his minority status. Thus as a practical matter, under this view, every act of police brutality would appear to constitute a denial of equal protection, since the police do not in fact brutalize all persons whom they arrest or hold in custody. As a matter of policy the Commission's studies are confined to cases involving members of minority groups—so that they fall far short of the outer limits of the broader interpretation.

## EXTENT AND EFFECTS

The Commission's studies indicate that police brutality in the United States today is a serious<sup>108</sup> and continuing problem in many parts of the country. Whether in the country as a whole it is increasing or decreasing is not clear. There seems to have been no marked overall abatement in recent years, although improvements have been reported in particular areas—such as Atlanta and Chicago.<sup>109</sup>

The most comprehensive statistics available on police brutality were compiled by Commission staff members from complaints that have come to the attention of the Department of Justice. These statistics, presented in the accompanying table, do not include all cases of alleged police brutality that occurred during the period in question, for as indicated below,<sup>110</sup> not all incidents come to the attention of the Department. The Department, nonetheless, receives notice of more such incidents than any other agency. Of course, not all the complaints that are received are valid by any means.<sup>111</sup> Yet they do provide at least a rough measure of the outlines of the problem.

TABLE 1.—*Allegations of police brutality by race of victim*

(Matters received by the Department of Justice, January 1, 1958, to June 30, 1960)

|  | Total   | Negro and<br>other minority* | White   | Unknown |
|--|---------|------------------------------|---------|---------|
| National totals . . . . .                | 1,328   | 461                          | 506     | 361     |
|  | Percent | Percent                      | Percent | Percent |
|  | 100     | 35                           | 38      | 27      |
| Northern and Western<br>States . . . . . | 433     | 117                          | 193     | 123     |
|  | Percent | Percent                      | Percent | Percent |
|  | 100     | 27                           | 44.6    | 28.4    |
| Southern States . . . . .                | 895     | 344                          | 313     | 238     |
|  | Percent | Percent                      | Percent | Percent |
|  | 100     | 38.4                         | 35      | 26.6    |

\* Includes 24 cases of other minority group victims: Indian, 12; Mexican, 10; Mixed, 1; and other, 1.

The statistics suggest that Negroes feel the brunt of official brutality proportionately more than any other group in American society. As Table 1 shows, among the complaints of police brutality received by the Department in the two and one half year period ending June 30, 1960, the alleged victims were Negroes (who constitute approximately 10 percent of the total population) in 35 percent of the cases and whites in 38 percent of the cases; in 27 percent of the cases the race of the victim was unknown.

In terms of regions, approximately two out of every three complaints over the last few years (as seen in Table 1), and probably over the last 20 years,<sup>112</sup> originated in the 17 Southern States and the District of Columbia. This may indicate that police brutality is more prevalent in the South than in other regions of the country. But this is by no means certain, for these statistics may be evidence merely of a greater tendency of non-southern victims to complain to local rather than to Federal authorities.

A review of the cases and complaints from all sources suggests that brutality is largely confined to State and local police or prison forces. Several Department of Justice officials stated that while complaints do come in against Federal civilian police officers or prison guards, they are quite rare. The Wickersham Commission in 1931 also found that police brutality is almost exclusively confined to State and local agencies.<sup>113</sup>

Illegal violence by officers of the law casts a cloud of suspicion over the entire system of American justice. It violates highly valued constitutional rights, and may produce a pervading fear regarding the security of the person. Brutality against a few Negroes may cause many of them to distrust all police officers. This is unfortunate not only for Negroes but also for the police and the entire community. Criminal investigations rely to a great extent on information supplied by private persons. The job of crime control becomes vastly more difficult when a whole segment of the community is wary of any contact with the police. Mr. Willis Ward, a former assistant county prosecutor, testified regarding the relationship between Negro distrust of the police and the problems of crime solution at the Commission's Detroit Hearing:<sup>114</sup>

It is sad that there are four crimes currently in the papers today, heinous crimes, involving murder and robbery, and from what we read in the paper it would appear that the suspects are colored citizens. It would appear that perhaps in this city the people most apt to know who did it might be colored people, but the thing that shudders me is: As much as the good colored people as well as the white people want criminals apprehended and brought to justice, that if a person knows or has reason to believe it would help us to

locate these culprits the chances are, 99 chances out of a hundred, if he complains he will be treated more as a suspect than as a citizen attempting to reduce crime in the city of Detroit.

## SUMMARY

Police brutality—the unnecessary use of violence to enforce the mores of segregation, to punish, and to coerce confessions—is a serious problem in the United States. Much of it occurs when an ill-trained or prejudiced policeman first comes in contact with a suspect. Yet, most policemen have demonstrated that it is possible to perform their duties effectively without resorting to unlawful violence which creates suspicions about the fairness of the American system of criminal justice.

### 3. "Private" Violence

One charged with the duty of keeping the peace cannot be an innocent bystander where the constitutionally protected rights of persons are being invaded. He must stand on the side of law and order or be counted among the mob.<sup>1</sup>

These words, written by a Federal Circuit Judge almost 10 years ago, constitute a lucid statement of the major premise underlying this section of the Commission's study. The problem involved is a limited one. For only those acts of private racial violence which involved "denials of equal protection of the laws" are within the Commission's jurisdiction.<sup>2</sup> Accordingly, the Commission is concerned exclusively with "private" violence that has some direct or indirect governmental sanction—as when policemen intentionally fail to protect a person from mob attack;<sup>3</sup> when they fail to take proper steps to protect prisoners in their custody from private violence;<sup>4</sup> or when they connive in private misconduct by failure to arrest its perpetrators.<sup>5</sup> And since all such recent cases that have come to the Commission's attention involve Negroes, this chapter is concerned with governmentally sanctioned private violence directed against them.

It is difficult to determine the extent of denials of equal protection involving police derelictions. But the Commission is of the opinion that, in contrast to police brutality, police complicity in private violence has declined sharply in recent years. More police officers than ever before apparently are doing everything in their power to prevent racial violence, and when it occurs, to arrest the assailants.<sup>6</sup> But the recent fate of the "Freedom Riders" in Alabama shows that the problem is still with us.

#### ALABAMA: 1961

The violence in Alabama was prompted by the appearance of two small groups of white and Negro bus passengers, styling themselves "Freedom Riders." Sponsored by the Congress of Racial Equality, the trip's an-

nounced purpose was to challenge racial segregation in interstate bus travel. Leaving Washington on May 4, 1961, as a single unit, the group rode through Virginia, the Carolinas, and Georgia with no major difficulties. In Atlanta, it split into two sections for the Alabama leg of the trip. One section boarded a Greyhound bus, the other a Trailways bus, and on May 14, both departed Atlanta for Birmingham. As the groups left, the United States Department of Justice alerted Birmingham police to information of planned violence against the "Freedom Riders" when they reached that city.<sup>7</sup>

Indeed, the fact that violence might occur was well known, but the police of Birmingham did not take steps to prevent it. C.B.S. News correspondent Howard K. Smith, who was in Birmingham, received a telephone call from one Edward Fields on Saturday, May 13, and was told that when the "Freedom Riders" came to Birmingham, "the Klan would be out in force and I would see action."<sup>8</sup>

Smith went to the Greyhound bus terminal in Birmingham the next day and waited for 4 hours with a crowd of other reporters and photographers. All of them expected trouble. A local reporter identified sport-shirted men gathered there as "Klansmen minus their robes." Police Commissioner Eugene Connor reportedly was in his office during much of this time. When the Trailways bus came in at another terminal several blocks away, the expected violence took place. After 10 or 15 minutes, the Klansmen jumped into waiting cars and left. Smith stated that, "The police, though nearby, had disappeared from the streets. A minute or so after the hoodlums had dispersed, as if on agreed signal, the police suddenly appeared. But no marauders were around, and no arrests were then made."<sup>9</sup>

On the day after the "Freedom Riders" were beaten the Birmingham News wrote that, "the City of Birmingham is normally a peaceful, orderly place in which people are safe."<sup>10</sup> The report then continued, "Harrison Salisbury of The New York Times last year came to Birmingham and wrote two articles about us which said, in substance, that 'fear and hatred' stalked our streets." The News, which previously had denied this charge, wrote: "But yesterday, Sunday, May 14, was a day which ought to be burned into Birmingham's conscience. Fear and hatred did stalk Birmingham's streets yesterday."<sup>11</sup>

As for the Police Commissioner and Birmingham's policemen, the segregationist News wrote:<sup>12</sup>

This newspaper supported Eugene Connor for police commissioner . . .

\* \* \*

The Birmingham Police Department under Mr. Connor did not do what could have been done Sunday.

\* \* \*



The people—and their police—permitted . . . fear and hate to ride our streets.

\* \* \*

Today many are asking “Where were the police?”

Birmingham Police Commissioner Eugene Connor made a statement on the same day: <sup>13</sup>

I regret very much this incident had to happen in Birmingham.

I have said for the last 20 years that these out-of-town meddlers were going to cause bloodshed if they kept meddling in the South's business.

\* \* \*

It happened on a Sunday, Mother's Day, when we try to let off as many of our policemen as possible so they can spend Mother's Day at home with their families.

We got the police to the bus station as quick as we possibly could.

Before the Trailways bus reached Birmingham and violence, a mob of white men and women met the Greyhound bus 60 miles away in Anniston. Police at the scene did not stop the crowd from smashing windows and slashing tires.<sup>14</sup> The bus stopped on the road 6 miles outside of Anniston when its tires went flat. It was quickly surrounded by the mob which followed from the town. An incendiary device was thrown through a window and set the bus afire. The passengers managed to get off the bus. None were killed, but 12 were admitted to the hospital because of smoke inhalation. One State highway patrol investigator who was on the bus prevented further violence.

On Wednesday, May 17, Governor Patterson declared, “We can't act as nursemaids to agitators. They'll stay home when they learn nobody is there to protect them.”<sup>15</sup> The Montgomery Advertiser commented: <sup>16</sup>

In short, the Governor of Alabama has told the cockeyed world that Alabama on occasion is to be converted into a lawless arena that might even include murder on the card.

On May 20 another group of “Freedom Riders” was attacked and brutally mauled by a mob of white men and women, this time in Montgomery, the State capital. One of those attacked and knocked unconscious was John Siegenthaler, Administrative Assistant to Attorney General Robert Kennedy and President Kennedy's personal representative in this situation. Siegenthaler had driven near the scene in a private car. It was reported to the Commission that as Mr. Siegenthaler was lying unconscious in the middle of the street several white men kicked him and one yelled, “We got us an FBI man.”<sup>17</sup> The police re-

action to the violence is summed up in this excerpt from an order subsequently issued by Frank M. Johnson, Jr., a Federal District Judge in Alabama: <sup>18</sup>

This Court . . . finds that on May 20, 1961, it was a matter of public knowledge in Montgomery, Alabama, and was known to the Montgomery Police Department in Montgomery, Alabama, that a Greyhound bus carrying a group of white and Negro college students . . . was en route from Birmingham to Montgomery. . . . This Court further finds that a Montgomery Police Department officer, Detective Shows, stated to a reporter for the Montgomery Advertiser on the morning of May 20 that the Montgomery police "would not lift a finger to protect" this group.

This finding of fact was included in an order issued on June 2, 1961, which also stated that the Ku Klux Klan had actually carried out the violence. Both the Klan and the Montgomery Police Department—as well as the "Freedom Riders"—were temporarily restrained from interfering with travel in interstate commerce. In addition, the judge made this statement: "The failure of the defendant law enforcement officers to enforce the law in this case clearly amounts to unlawful state action in violation of the Equal Protection Clause of the Fourteenth Amendment." <sup>19</sup>

Although the Federal judge found that the Montgomery police had been adequately warned, Commissioner L. B. Sullivan stated shortly after the violence that his officers had been caught off guard. The Commissioner reportedly explained that this happened "because we didn't have definite information that they were coming here." He added, "Providing police protection for agitators is not our policy but we would have been ready if we had had definite and positive information they were coming." <sup>20</sup>

Following the outbreak on May 20, President Kennedy issued this statement: <sup>21</sup>

The situation which has developed in Alabama is a source of the deepest concern to me as it must be to the vast majority of the citizens of Alabama and all America. I have instructed the Justice Department to take all necessary steps based on their investigation and information.

I call upon the governor and other responsible state officials in Alabama as well as the mayors of Birmingham and Montgomery to exercise their lawful authority to prevent any further outbreaks of violence.

I would also hope that any person, whether a citizen of Alabama or a visitor there, would refrain from any action which would in any way tend to cause further outbreaks.

I hope that state and local officials in Alabama will meet their responsibilities.

The United States government intends to meet its.

The Department of Justice ordered United States Marshals into Montgomery. Governor Patterson of Alabama declared "qualified martial law"<sup>22</sup> and sent National Guard troops to the city.

On the night of May 21 a mob of white men and women rioted outside a church where Negroes held a mass meeting to discuss the racial situation in Alabama. The mob set one car afire, stoned others. It dispersed only under pressure of the combined forces of U.S. Marshals, State, and local police and National Guard troops.<sup>23</sup>

## ALABAMA: 1954-61

Many people were shocked to learn that this kind of violence—only briefly summarized here—could happen in a country dedicated to the rule of law. But since the Supreme Court desegregation decisions and increasingly urgent demands by Negroes for full equality, tension and violence have increased in some parts of the country. Negro demands have been almost entirely peaceful. The reaction of those white people opposed to desegregation and equality has been in large measure peaceful; in part, violent.

Most of this violence has had neither active nor passive police support. Moreover, there is evidence that most policemen try diligently to prevent violence and that they actively oppose such extremist groups as the Ku Klux Klan.<sup>24</sup> But responsible Alabama citizens have charged that some policemen in the State seem at times to be in collusion with the Klan, or are members of it.<sup>25</sup> And from the facts found by Judge Johnson regarding the nonaction of the Montgomery Police Department on May 20, 1961, it is possible to infer official collusion with the Klan. Descriptions of cases in which there were allegations of police connivance in violence follow. These occurred within recent years in Montgomery and in the Birmingham-Bessemer region. The cases demonstrate that limited though the problem may be, it has profound implications for the security of the individual person.

The first sit-in protest against segregation reached Alabama's State Capitol on February 25, 1960. On Saturday, February 27 it was reported, a group of 25 white men went through the downtown streets of Montgomery swinging toy baseball bats, and one of them attacked a middle-aged Negro woman. Allegedly, "the police made no arrests, al-

though a news photograph of the episode, and the bat-swinging man, was taken.”<sup>26</sup> Two days later Governor Patterson declared: “There are not enough police officers in the United States to prevent riots and protect everybody if they continue to provoke [the white people] on that matter.”<sup>27</sup>

Sunday, March 6, 1960, at 2 p.m. was the time announced by Negro leaders for another protest meeting on the State Capitol steps. The Negroes gathered in front of the Dexter Avenue Baptist Church near the Capitol. They were led by Reverend Ralph D. Abernathy, president of the Montgomery Improvement Association. Montgomery city policemen were out in force. A crowd of perhaps 5,000 whites formed on the Capitol lawn. When 2 o'clock came and the Negroes did not move, it was reported,<sup>28</sup> a police captain shouted toward them: “Can’t you tell the time? It’s 2 o'clock. Somebody loan ’em a watch.” When some of the Negroes started to move forward, cries of “Let them come!” came from the white crowd. The police stopped the Negroes, but not the whites—some of whom attacked the Negroes, forcing them to flee. The police escorted the Negro leaders back toward the church. After the Negroes had gone inside the police dispersed the white crowd. A southerner by birth and residence later commented: <sup>29</sup>

The white crowd was *used* to intimidate the Negroes. It was not until the whites had met the Negroes at arms’ length, fought with them, and turned them back, that the police turned the whites back.

Birmingham, Alabama, is approximately 100 miles north of Montgomery. When Montgomery was the capital of the Confederacy and when Atlanta was burned, Birmingham did not exist. Its history has included a number of bloody incidents—some of the worst during the drives to organize unions in the 1930’s.<sup>30</sup> In these and earlier incidents the element of race was partly involved.<sup>31</sup> By the early 1950’s, however, industrial peace and lessening racial tension led some people to believe that a permanent break had been achieved in the unhappy tradition of violence. Interracial meetings were held to deal with racial problems; and an unsuccessful attempt was made to put Negroes on the police force.<sup>32</sup>

With the second School Desegregation Decision on May 31, 1955, racism and violence revived in Birmingham. Interracial organizations and meetings were suppressed.<sup>33</sup> In 1956 the NAACP was forced to close its doors in Alabama.<sup>34</sup> Racial tension increased throughout the State. Acts of violence increased also. From 1956 to 1961 at least 20 violent acts were publicly reported in Birmingham alone, including allegations of racially-motivated beatings, bombings, and one castration.<sup>35</sup> On September 13, 1956, John Kasper, the vocal segregationist from New York City, reportedly told 500 persons, including robed Klansmen, at a White Citizens’ Council rally in Birmingham: <sup>36</sup>

We need all the rabble rousers we can get. . . . We want trouble and we want it everywhere we can get it.

On March 6, 1957, a Negro leader, Reverend Fred L. Shuttlesworth, and his wife, entered the Birmingham railroad station, purchased tickets and sat down in the white waiting room. A white man, Lamar Weaver, sat beside the Shuttlesworths until Birmingham police forced him to leave the terminal because he had no train ticket. According to a white eyewitness interviewed by Commission representatives,<sup>37</sup> the city police officers escorted Weaver through a mob of white men outside the station, but when they had reached its fringes, the policemen walked away. The mob, allegedly including identified Klansmen, then attacked Weaver but he managed to get to his car in a nearby parking lot. A group of about a dozen white men stoned the car, rocked it, and attempted to lift its wheels from the pavement so it could not move. But Weaver succeeded in driving away. The Birmingham police did not prevent this attack. Nor did they arrest any of Weaver's attackers. But they did charge him with a traffic violation because he drove through a red light as he made his escape from the parking lot. He was fined \$25 plus costs. Shortly after this incident, Weaver moved from the State.

In September 1957, a white mob attacked Reverend Shuttlesworth on the grounds of the all-white Phillips High School. Nearby police officers rescued Reverend Shuttlesworth, but not until he had been severely beaten. "This mob had chains, brass knuckles, sticks and other things, in front of Phillips High School . . . when we went down and tried to enroll the children," said Reverend Shuttlesworth.<sup>38</sup> Later that day the mob allegedly roamed the area and hurled stones at cars driven by Negroes. Birmingham policemen patrolled near the mob, but did not disperse it.<sup>39</sup> The police did arrest three white men for the beating of Reverend Shuttlesworth, but the Jefferson County Grand Jury subsequently refused to indict them.<sup>40</sup>

During 1957 the voters of Birmingham replaced Police Commissioner Robert Lindbergh, a moderate on racial problems, with the present Police Commissioner, Eugene Connor. Commissioner Connor conducted a campaign openly appealing to racial feelings. A speech he gave at Selma, Alabama, in April 1960 sets forth Commissioner Connor's position on racial problems: <sup>41</sup>

The truth is, ladies and gentlemen—they [Negroes] don't want racial equality at all. The Negroes want black supremacy.

Yes, we are on the one-yard line. Our backs are to the wall. Do we let them go over for a touchdown or do we raise the confederate flag as did our forefathers and tell them, "You shall not pass!"

Acts of violence continued into 1958, 1959, and 1960.<sup>42</sup> When the Commission conducted a field study in the spring of 1961 regarding violence and the administration of justice in Birmingham, three out of four persons interviewed insisted upon complete anonymity. These included all of the 14 white persons interviewed: businessmen, lawyers, and other professional people. The field report stated, "The very reluctance of these persons to be quoted is the clearest documentation of the climate of fear and the conspiracy of silence that exist in Birmingham."<sup>43</sup>

In an anonymous interview one local white businessman deplored the lack of "open discussion of race problems" and the fact that interracial meetings to seek peaceful solutions to these problems have been "harassed by the police."<sup>44</sup> A white attorney stated flatly, "There is no forum for moderates."<sup>45</sup> A prominent Negro citizen said, "Those who would create violence get encouragement from city, county, and State officials of the highest ranks." "Statements of local officials predicting bloodshed," he continued, "appear to be the signal to act, for within a day or two after such predictions, a bombing would occur."<sup>46</sup> The city was described as "a powder keg" by a white attorney.<sup>47</sup> It was the conclusion of the Commission field report, written approximately 3 weeks before the attacks on the "Freedom Riders" in May of 1961, that:<sup>48</sup>

Racial prejudices are incredibly tense in Birmingham. Until local leaders make a concerted effort to control those feelings, the slightest provocation can be expected to unleash acts of violence as ugly and as frightening as any that Birmingham has seen in its . . . history.

There have been reports of private racial violence in other towns of the Birmingham region. On the day after the "Freedom Riders" were beaten in Montgomery, the Birmingham News wrote in a front page editorial that:<sup>49</sup>

We, the people, have let gangs of vicious men ride this state now for months. They have been riding in Tuscaloosa, in Talladega, in Sylacauga, in a dozen other fine towns and communities.

There is evidence that the police do not always take a serious view of their responsibilities in these situations. For example, the Police Chief of Sylacauga, in response to a reporter's question regarding a flogging on May 13, 1961, stated that it "doesn't appear to be much." Said the reporter in his dispatch to the Birmingham News:<sup>50</sup>

This, generally, has been police reaction over the past two years during a time when floggings, intimidations and threatening telephone calls have become commonplace in Sylacauga.

An earlier incident involving charges of police misconduct, occurred on June 25, 1959, in Bessemer—13 miles from Birmingham and approximately 60 miles from Sylacauga. The victims were Asbury Howard, a Negro union leader, and his son, Asbury Howard, Jr.<sup>51</sup> A later report from Bessemer alleged police involvement in another mob attack on March 12, 1960.<sup>52</sup> This was a nighttime assault on a Negro family. An FBI investigation did not discover the attackers.<sup>53</sup> A month before the "Freedom Riders" were attacked in Birmingham a young Negro boy drowned in nearby Midfield, Alabama. The drowning and the events that followed allegedly produced doubts among Negroes regarding the attitude of local authorities toward impartial investigation—and it also produced great fear in the Negro community.<sup>54</sup>

## JACKSONVILLE: 1960

On Saturday, August 27, 1960, there were a series of attacks by white men on Negroes in Jacksonville, Fla. This soon developed into a race riot which continued for several days. For some weeks prior to the outbreaks, Mayor Haydon Burns explained to a Commission representative,<sup>55</sup> members of the NAACP Youth Council had staged peaceful sit-in demonstrations in downtown Jacksonville. On Friday, August 26, Mayor Burns (who is also the Police Commissioner) received reports that violent white attacks might take place on the next day. He so informed the Chief of Police at midnight on August 26. Both the Mayor and the Chief of Police arrived at police headquarters at 6:45 the next morning. They went before the squads going on duty at 8 a.m. and apprised them of the situation. According to the Mayor, the policemen were told to concern themselves only with preserving the peace—that as long as they could do so they were not to make any wholesale arrests.

Several eyewitnesses stated that at approximately 8 a.m., August 27, they saw a group of white men milling about in Hemming Park, which is in downtown Jacksonville. Some had axe handles and baseball bats in their hands and 2 white men were seen cutting the wire from around a bundle containing perhaps 50 new axe handles. These were passed out to the waiting crowd. At approximately 9:30 a.m., the mob marched in a column of two's toward the nearby downtown stores.

Most carried axe handles or baseball bats over their shoulders military-style. Some had Confederate battle flags attached to their weapons. When they found Negroes they proceeded to attack them with the clubs.

This had all the earmarks of a carefully planned assault. At the beginning it was not a race riot but an attack by violent white men on

peaceful Negroes, many of whom had nothing to do with the sit-in demonstrations. Negro witnesses were of the opinion that many of the assailants had come into the city expressly for this attack.<sup>56</sup>

Jacksonville policemen observed the apparently disciplined group forming in Hemming Park. They saw the axe handles being passed out. They watched as the crowd marched toward the stores and the Negroes. Only when the white men began attacking Negroes did some policemen intervene.

Even after the mob attacked, according to several eyewitnesses, not all of the policemen attempted to control it. An officer directing traffic allegedly looked on while whites beat a Negro teenage boy near the corner of Hogan and Duval Streets. Instead of helping the boy, he talked and laughed with a white man who was armed with an axe handle. This was one of several similar incidents reported.<sup>57</sup>

Chief of Police Luther Reynolds explained that there were too many armed white men—approximately 60—for the few policemen present to disarm and control and that police reserves did not arrive in time to prevent the violence. In this regard the Commission field report states: <sup>58</sup>

In order to get the police version of the incident a conference was had with Luther A. Reynolds, Chief of Police; Horace V. (Tiny) Branch, Assistant Chief of Police; W. L. Bates, Inspector of Police; and Detective Sergeants Orra Brimm and C. A. Porter.

Their version was practically the same as that reported by the Mayor with the following exception—the Mayor had stated that when he and the police arrived on the scene they found a group of 60 or more white men armed with axe handles, baseball bats, etc., and upon the arrival of reserves they proceeded to disarm the whites. Chief Reynolds was asked why they did not disarm the whites immediately upon arrival and he stated that when they arrived on the scene they saw only one or two of these instruments—the host of others being brought into display at a later time. He advised that when the police saw all of them they attempted to disarm the whites but there were too many of them to be taken within a few minutes before they were brought into play against the Negroes.

A Negro minister reported that when he saw the white men assembling in the park, he asked the three policemen on duty to take the clubs away so as to prevent violence. He said they refused to do so but advised him to call the Chief of Police. When the minister did so about 9 a.m., he was reportedly told that the situation was well in hand.

A white reporter informed the Commission that a uniformed police lieutenant made a frantic call to headquarters in the presence of newsmen “and begged whomever it was he talked to for permission to stop the incipient trouble.” The lieutenant was said to have “told the person



on the other end of the wire he was well aware that his request was almost insubordination, but that unless they did something about it the newsmen would blast the whole police force for not taking some affirmative action.”<sup>59</sup> This conversation allegedly took place at approximately 11 a.m., at least 2 hours after the mob began assembling in Hemming Park.

Negro witnesses made charges that some Jacksonville policemen were brutal to members of their race during this affair.<sup>60</sup> It was also alleged that some policemen occupied themselves primarily with arresting as many Negroes as they could, including victims of the attacks.<sup>61</sup> Shortly after the riots were over, the Tampa Tribune editorialized:<sup>62</sup>

The constitutional right to peaceable assembly does not include sanction for guns, knives, baseball bats or axe handles at the gathering. Whether the decision to wait so long was theirs or Mayor Burns', Jacksonville's police by delaying to head off an ugly incident gave their city and all Florida a black eye . . .

The Commission field report, based on an extensive investigation, came to the “conclusion that the Mayor and members of the Police Department did not take all the preventive measures they could have [taken] to avoid the attack on the Negroes by the white men.”<sup>63</sup>

## VIOLENCE IN THE NORTH: CHICAGO, 1953-60

No section of the Nation has a monopoly on racial violence. In the North and West the breeding places for discord have been the cities where large concentrations of Negroes and whites are in direct competition for employment and housing. Following mass Negro migrations, racial tension erupted in Detroit, Los Angeles, New York, and in other cities during the early 1940's, causing severe loss of life and property damage. A study published by the International City Managers' Association reported that, “In both the Los Angeles and Detroit riots the minority peoples involved were convinced that they could not depend upon the respective police departments for protection.”<sup>64</sup> Despite the progress in police control of mob situations, in recent years there have also been claims of police passivity or other involvement in such situations.

The now famous Trumbull Park Housing Project riots started in July 1953, in the South Deering section of Chicago. As soon as Negro families began moving into the previously all-white project the residents of the neighborhood started rioting. During the next 4 years whites

committed numerous acts of violence against the few Negroes in the project. Negro tenants had to travel to and from their homes under police guard. On some occasions 1,200 policemen were assigned to cover the housing project area during the course of a 24-hour period.<sup>65</sup> Criticism was leveled at the police for laxity.<sup>66</sup> On numerous occasions, it was alleged, the police allowed crowds to form when their prompt dispersal might have prevented violence. While some policemen acted vigorously, there were persistent reports that whites attacked Negroes in full view of white officers who did nothing.

On April 5, 1954, for instance, it was reported that a Negro police officer attempted to arrest a man who had just thrown a piece of steel at a Negro's window in the project. When the man resisted, the officer struck him on the forehead with his nightstick. The man got away when three women from a gathering mob attacked the Negro policeman. It was reported that white policemen nearby did not assist the officer, nor did they attempt to arrest the man or the three female assailants.<sup>67</sup>

Another such incident allegedly occurred on April 17, 1954. Two Negro women and a small boy drove through the Trumbull Park project and were met with a vicious mob assault. Bricks and bottles were thrown at the Negroes' car, and it was purposely hemmed in by drivers of two other cars. The women escaped injury only by smashing the car in front out of the way. They did not report this incident to the Chicago Police Department they said, since the stoning occurred in full view of several policemen who did nothing to protect them.<sup>68</sup> Negroes complained that the only time the police took vigorous action was when a Negro appeared ready to retaliate.<sup>69</sup> One Negro claimed that a white policeman said he wasn't there "to protect us but to protect the grounds."<sup>70</sup> A Negro officer, who was present during these disturbances, was of the opinion that 75 aggressively led policemen could have "cleared up" the matter in a few days.<sup>71</sup> Other responsible Chicago citizens share these sentiments.<sup>72</sup>

In the summer of 1957, rioting began again near the South Deering area. This time the issue was the use of Calumet Park by Negroes. The police did not prevent crowds numbering several thousand persons from gathering outside the park on consecutive Sundays; from throwing rocks at Negro motorists; or from attacking Negro pedestrians.<sup>73</sup> For several weeks the situation was tense and hundreds of police were required to keep it from getting worse. Again the police were criticized for passivity toward the violence—for their refusal to disperse crowds before they became mobs.<sup>74</sup> It was claimed that policemen on the scene continually refused to arrest white hoodlums who attacked Negroes.<sup>75</sup> After strong protests from civic groups, two Park District policemen were suspended for brief periods.<sup>76</sup>

Since these disturbances, there has been evidence of more effective riot control practices on the part of Chicago policemen. For example,

another incident took place when a Negro family bought a house on West Jackson Boulevard in the summer of 1959. Crowds gathered; rocks were thrown; and threatening telephone calls made. The police acted promptly and effectively, cordoning off the area for two blocks around the house. Loud speakers were used by the police to inform the crowds that either they would disperse or face arrest under a State anti-riot statute. Within a short time numerous arrests were made, and the crowds disappeared. The courts held the arrested persons under high bond. Many were found guilty and fined the maximum amount, \$500, allowed by the statute. Within a few days no more incidents were reported from the area.<sup>77</sup>

Two minor disturbances occurred during the summer of 1960. One was at a beach, the other in a city park. Both were prompted by Negroes using swimming facilities.<sup>78</sup> In each case, however, vigorous work by teams of racially integrated police coupled with arrests and heavy fines kept the situation under control.<sup>79</sup>

In the summer of 1961 new instances of interracial violence erupted in Chicago. Although there was criticism of police action in a few situations,<sup>80</sup> it was generally conceded that the Chicago Police Department took vigorous action to quell trouble. Therefore, when Mississippi Congressman John Bell Williams asked the Department of Justice if it intended to dispatch Federal marshals to Chicago as it had to Alabama in May,<sup>81</sup> the reply was that this would not be done because local officials were taking the necessary action.<sup>82</sup>

## THE LYNCHING OF MACK PARKER

Mack Charles Parker, a Negro, was accused in April 1959 of raping a white woman in Poplarville, Miss. He was placed in the Pearl River County jail at Poplarville pending trial. Shortly before this happened, the United States Court of Appeals for the Fifth Circuit had set aside the conviction of another Negro, Robert Lee Goldsby, on grounds that members of his race had been excluded illegally from the Mississippi jury that tried him.<sup>83</sup> On the night of April 24, 1959, a group of white men took Parker from the jail, shot him twice, and dropped his body into the Pearl River.<sup>84</sup> In the opinion of many, including Mississippi Attorney General Joe T. Patterson,<sup>85</sup> there was a connection between the Goldsby decision and the Parker lynching. Some people in Pearl River County apparently felt that if Parker were convicted, a Federal court might void his conviction also—for the same reason.

Shortly after the lynching, the then Governor of Mississippi, James P. Coleman, was quoted by the Associated Press as saying:<sup>86</sup>

The violators will be prosecuted according to law. Any killing in premeditation is murder in Mississippi, under any circumstances, and we will prosecute one as such.

\* \* \*

The people of Mississippi as a whole do not approve of taking the law into their own hands . . .

The Federal Bureau of Investigation offered its cooperation to the Governor in the case. The FBI not only identified many of the members of the lynch mob but also secured admissions from some of them.<sup>87</sup>

When the Pearl River County grand jury met that fall, however, the county prosecutor refused to read the FBI report to the jury, saying it could be considered only hearsay evidence.<sup>88</sup> In charging the jury, Circuit Judge Sebe Dale told them they were like soldiers battling "for the preservation of our freedom and way of life and for the welfare of our people." He continued:<sup>89</sup>

We should have the backbone to stand against any tyranny, even including the board of sociology, sitting in Washington, garbed in judicial robes, and dishing out the legal precedents of Gunnar Myrdal.

Although the Department of Justice brought the case to the attention of a Federal grand jury in January 1960, the jury found no violation of Federal law and returned no indictment. The Federal grand jury had the benefit of the FBI report. The Department of Justice has not closed the case.<sup>90</sup> According to a dispatch of United Press International, datelined Poplarville:<sup>91</sup>

The killers, whose identities are well known to local citizens, still live in this area, where most of them do farm work.

There is evidence that the lynching took place with the cooperation of a jail official who had the duty to protect Parker.<sup>92</sup>

Mack Charles Parker was the last person known to have been lynched in the United States. According to statistics compiled by the Tuskegee Institute,<sup>93</sup> Parker was the 538th Negro lynched in Mississippi since 1883, the 3,441st in the country. The statistics show that 85 percent of all lynchings have taken place in 17 Southern States. Mississippi leads the list with a total of 578; in addition to the 538 Negroes, there have been 40 white victims. In many cases of lynching there have been allegations that officers of the law were in connivance with the mob.

Fortunately, however, lynchings are becoming rare today, so rare that the Tuskegee Institute has ceased issuing annual reports regarding them.

## EXTENT AND EFFECTS

Police connivance in lynching or in milder forms of private violence is less frequent now than in the past. Yet it lives on in the memory of thousands of Negroes and reenforces the deep fear that "lightning" may strike again. For many Negroes this raises a question of profound importance: When it strikes, will the police help me or will they help the mob?

Because so many policemen everywhere in the country fight mob violence, surely the usual answer is that the policemen will help the victim. But history, combined with a realistic appreciation of the present shortcomings of some policemen, produces suspicion and fear. When individuals are troubled by fears of this nature, they find it difficult to turn to the police. The following incident is illustrative.<sup>94</sup> In the late 1950's a member of the Commission's Alabama Advisory Committee was awakened in the middle of the night by a telephone call from a Negro woman who lived nearby. "Somebody just threw a bomb and took off the side of our house. What shall I do?" The Committee member replied, "Call the police right away and get them out there!" The woman said:

I can't call the police. It might have been the police that threw the bomb. If they find out we're not dead, they might come back and throw another bomb.

The point is not that police officers threw the bomb, but that the instinctive reaction of one American citizen was they *might* have had some connection with the attack.

On the basis of incidents like this one, and those reported in this and in the previous chapter, this Commission must report that Negro citizens in some places today live in fear of violence—accompanied by fearsome doubts regarding police integrity on race problems. It has seen this fear in the attitudes of Negroes it has interviewed; in their unwillingness to testify before the Commission—often in their unwillingness even to speak to Commission representatives. The same fear sometimes prevents the citizen from seeking redress from the Federal Government for violation of his rights. This fear is often without foundation any longer—but it exists.

Racial violence, especially with police connivance, has even broader effects. A few weeks after the attacks on the "Freedom Riders," Attorney General Robert Kennedy pointed out that the violence in Alabama had harmed the reputation of Alabama, Birmingham, Montgomery, and the United States throughout the world.<sup>95</sup> He also offered his audience, 70 local police officers graduating from the FBI Academy, some advice and a statement of hope:<sup>96</sup>

You and I, and all our fellow law-enforcement officers, have sworn to uphold the law. And we have a duty to enforce the law and to protect the rights guaranteed by our Constitution.

It is our job to enforce the law, and there is only one way we can do it and remain true to our oath. That is, to enforce the law vigorously, without regional bias or political slant.

\* \* \*

I hope that out of the tragic events in Alabama there will not again arise in this country of ours a time when local law-enforcement officers will not do their duty to preserve law and order, no matter how unpleasant the job.

## SUMMARY

Most policemen deplore mob violence, and when it occurs, try to arrest the assailants. But there are exceptions. In certain areas of the Deep South some policemen have recently connived in mob violence. This official involvement in mob violence constitutes a denial of equal protection of the laws and is subject to the penalties prescribed by the Federal Civil Rights Acts. In concert with previously instilled suspicions, it also has the effect of perpetuating deep fears among many Negroes that should violence strike, the police will side with the mob. No American citizen should have to live with such fears.

# 4. Federal Criminal Sanctions

## THE STATUTES

Three months after Bobby Hall was fatally beaten in the town square of Newton, Ga.,<sup>1</sup> the Department of Justice presented its case before a Federal grand jury in Macon and obtained an indictment against Sheriff Claude Screws, his deputy, and a town police officer. The statute under which they were indicted was an obscure, 70-year-old piece of Reconstruction legislation.<sup>2</sup> This chapter will examine the effectiveness of that and related statutes—the criminal Civil Rights Acts—as remedies for wrongs of the sort that Bobby Hall suffered. It will show the serious difficulties involved in the enforcement of these laws.

### *Violence under color of law*

The principal Federal criminal sanction against police brutality and private racial violence is section 242 of the U.S. Criminal Code. It provides, in part: <sup>3</sup>

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects, or causes to be subjected, any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution and laws of the United States . . . shall be fined not more than \$1,000, or imprisoned not more than one year, or both.

Before the establishment of the Civil Rights Section in the Criminal Division of the Department of Justice in 1939, the Federal Government used section 242 only twice <sup>4</sup>—once in 1882 <sup>5</sup> and once in 1911.<sup>6</sup>

Section 242 proved to be a weak instrument for bringing the slayers of Bobby Hall to justice. Sheriff Claude Screws and his codefendants were charged with violating and with *conspiring* to violate <sup>7</sup> section 242. The jury returned a verdict of guilty, but on appeal the U.S. Supreme Court reversed the convictions.<sup>8</sup> The Court pointed out that to con-

vict, the jury had “to find that petitioners had the purpose to deprive the prisoner of a constitutional right.”<sup>9</sup> Because of the difficulty of proving a specific “purpose,” this interpretation severely limited the usefulness of section 242 as a means of combating police brutality. When Screws was again brought to trial, he was acquitted.

Under section 242 the Government must establish three propositions before it can obtain a conviction.

*First*, the Government must prove that the defendant acted “under color of . . . law”; that is, that the defendant’s actions were in some way official, as opposed to merely private acts. Under the 14th amendment, the Federal Government has no power to punish private acts of violence—that power is reserved to the States.<sup>10</sup>

But action “under color of law” is a broad notion. A State official can *violate* a Federal, State, or local law, and still be acting under color of law.<sup>11</sup> A private citizen, if he aids or abets a State or local official in an act of police brutality, is acting under color of law.<sup>12</sup> And even inaction of State officials, when there is an intentional failure to exercise an affirmative legal duty,<sup>13</sup> falls within the meaning of section 242.

To take a case in point—on the night of April 2, 1949, Sheriff John William Lynch of Dade County, Ga., together with three of his deputies, met a group of robed Ku Klux Klan members at Hooker Hill, a Negro settlement. Sheriff Lynch and his men looked on while the Klansmen forced seven Negro men into automobiles. When one of the Negroes called to the sheriff for protection, Lynch turned his back and walked away. The Klansmen then drove a short distance, stopped, took the Negroes from the cars and beat them. Later that night the Klansmen and Sheriff Lynch and his deputies met and mingled in the county seat of Trenton. At no time were any of the Klan members arrested. Indictments were subsequently returned against the four officers and a number of the Klansmen, who were not officers. Evidence was introduced that Sheriff Lynch and his deputies had received notice of, and had been attending, Klan meetings prior to the incident. The jury acquitted all but two of the defendants. Sheriff Lynch and one of his deputies were found guilty of violating section 242.

Even though Sheriff Lynch and his deputy were not present at the beatings, the U.S. Court of Appeals for the Fifth Circuit affirmed a district court finding that the beatings had occurred under color of law.<sup>14</sup> And although the nonofficer Klansmen were acquitted by the jury, the district court suggested that the jury could have found them equally guilty as principals under section 242.<sup>15</sup> The fact that Lynch and his deputy had refused to fulfill the duties of their offices as required by State law did not prevent their conviction, for the same nonfeasance which violated State law also violated the Constitution—and hence section 242.



*Second*, the Government must establish that the defendant deprived the victim of one of his "rights, privileges, or immunities secured or protected by the Constitution and laws of the United States." The Supreme Court has noted: <sup>16</sup>

Those who decide to take the law into their own hands and act as prosecutor, jury, judge and executioner plainly act to deprive a prisoner of the trial which due process of law guarantees him.

Courts have held that summary punishment <sup>17</sup> and coercion to force a confession <sup>18</sup> are violations of the due process clause of the 14th amendment. The same clause also guarantees a fair trial.<sup>19</sup>

Moreover, some courts have treated police brutality as a denial of the equal protection of the laws, which is guaranteed by the 14th amendment.<sup>20</sup> A police officer who beats an individual because he is a member of a racial minority clearly denies him equal protection.<sup>21</sup> However, as noted previously,<sup>22</sup> racial discrimination is not the only discrimination forbidden by the equal protection clause. A Federal circuit court of appeals has observed:<sup>23</sup>

Persons under arrest are entitled *equally with other persons* under arrest to a trial by due process, and when found guilty, they are subject to the same punishment. A person unlawfully beaten by an arresting officer is denied the right of due process of law and also the right of equal protection of the laws.

Similarly, private racial violence, when it occurs with the approval or connivance of law enforcement officials, deprives the victims of their right to the equal protection of the laws.<sup>24</sup>

*Third*, the Government must prove beyond a reasonable doubt that the defendant had the specific intention of depriving the victim of one of his Federal rights. From the viewpoint of the prosecution, this is the most troublesome requirement. The *Screws* decision warrants careful analysis because the element of specific intent in section 242 had its genesis in that decision, when the Supreme Court construed the word "willfully" to mean "with specific intent."<sup>25</sup>

In his appeal to the Supreme Court, *Screws* argued that he had been convicted under an unconstitutional statute in that section 242 did not provide an ascertainable standard of guilt.<sup>26</sup> The basic evil in a criminal statute that lacks such a standard is, as the Court noted: <sup>27</sup>

. . . the essential injustice to the accused of placing him on trial for an offense, the nature of which the statute does not define and hence of which it gives no warning.

Screws' argument was a particularly serious challenge, because section 242 forbids the willful deprivation of such 14th amendment rights as the right to due process of law; and the right to due process of law comprises a vast body of law, which <sup>28</sup>—

. . . is not always reducible to specific rules, is expressible only in general terms, and turns many times on the facts of a particular case.

Moreover, definitions of constitutional rights are hammered out slowly over the years, frequently in closely divided Supreme Court decisions.<sup>29</sup> How could an ascertainable standard of guilt be found in a statute that purports to punish for denials of such vague and often undefined rights? This was the problem that concerned the Court. If section 242 were to be held constitutional—and the Court expressed a strong desire that it should <sup>30</sup>—such an ascertainable standard had to be discovered.

The Court found such a standard in the word "willfully."<sup>31</sup> Observing that in 1909 Congress had inserted that term into section 242 to make the statute "less severe,"<sup>32</sup> the Court decided that "willfully" could be construed to require "a specific intent to deprive a person of a Federal right made definite by decision or other rule of law."<sup>33</sup> So interpreted, the specificity lacking in the wording of the statute would, in effect, be supplied by the criminal purpose of the violator himself. As the Court explained: <sup>34</sup>

. . . where the punishment imposed is only for an act knowingly done with the purpose of doing that which the statute prohibits, the accused cannot be said to suffer from lack of warning or knowledge that the act which he does is a violation of law.

Furthermore, as the Court pointed out, the violator would have ample knowledge of what conduct was prohibited by the statute <sup>35</sup>—

. . . wilfull violators of constitutional requirements, which have been defined, certainly are in no position to say that they had no adequate advance notice that they would be visited with punishment. When they act wilfully in the sense in which we use the word, they act in open defiance or in reckless disregard of a constitutional requirement which has been made specific and definite. When they are convicted for so acting, *they are not punished for violating an unknowable something.*

Thus, the Court held, in effect, that to violate section 242, the accused must have (1) a certain knowledge and (2) a certain purpose. On the one hand, the Court required that the accused know, or *should* know (because the matter is knowable),<sup>36</sup> that his victim has a particular

defined constitutional right; on the other hand, the Court stated that the accused must act either "in open defiance or in reckless disregard" of that particular constitutional right.

The latter requirement—that is, the element of purpose—dealt with the problem of the unintentional or well-motivated deprivation of rights. Although the Court made only passing references to this problem,<sup>37</sup> it was nonetheless a genuine difficulty in the application of section 242. An unintentional deprivation, for example, could be committed by a policeman who, though fully aware of the defined constitutional rights of the person he is arresting, must make a conscious "on-the-spot" decision as to how much physical force is required to effect the arrest. Such judgments often are hard to make. To require an exact balance of force with force, with no allowance for honest error, would render law enforcement difficult indeed. Closely allied is the problem of the officer who in good faith uses physical violence which is necessary to enforce an apparently valid statute that is later held to be unconstitutional.<sup>38</sup> The doctrine of specific intent enunciated in *Screws* absolves the individual who acts in good faith or who commits honest mistakes.

Conceivably, this problem of the unintentional or well-motivated deprivation of rights could have been relieved by something less than specific intent—namely, by a requirement of general bad purpose, or general (rather than specific) criminal intent. The distinction between general and specific intent, though a fine one, can have significant consequences. An officer may have the requisite intent to justify a State prosecution for assault and battery or murder, but, at the same time, lack the specific intent to violate the constitutional rights protected by section 242.<sup>39</sup> For instance, it appears to follow from *Screws* that the police officer who in a momentary fit of anger beats or kills a person in his custody may not be subject to punishment under section 242. In that case the requisite specific intent to deprive the victim of the right in question may not be present, although a general criminal intent might.

Thus the *Screws* requirement of specific intent means that some knowing deprivations of constitutional rights go unpunished under section 242. It does, however, provide protection for those who act in good faith by assuring that in each case the violator had fair warning that he was depriving his victim of a constitutional right. Thus no officer will be "sent to the penitentiary if [i.e., merely because] he does an act which some court later holds deprives a person of due process of law" or of any other constitutional right under section 242.<sup>40</sup> This construction kept section 242 well within the area of constitutionality. Yet the Court acknowledged that the statute could be broader without violating the Constitution, for it noted that if Congress wished to give "wider scope" to section 242, it could "find ways of doing so."<sup>41</sup>

In summary, then, the Supreme Court in *Screws* was concerned primarily with the problem of the clarity of the standard of guilt under section 242. That problem arose from the nebulous language of the law itself. The Court upheld the statute by construing the word "willfully" to mean with "a specific intent to deprive a person of a Federal right made definite by decision or other rule of law."<sup>42</sup> The Court carefully pointed out that it was not necessary that the violators "have been thinking in constitutional terms,"<sup>43</sup> so long as "their aim was not to enforce local laws but to deprive a citizen of a right, and that right was protected by the Constitution."<sup>44</sup> The Court further explained that specific intent "need not be expressed; it may at times be reasonably inferred from all the circumstances" of the action,<sup>45</sup> such as "the malice of [the violators] . . . , the weapons used in the assault, its character and duration, the provocation, if any, and the like."<sup>46</sup>

Despite the Court's painstaking attempts to clarify the meaning of specific intent in section 242, confusion remains. This confusion, revealed in the Federal district courts' instructions to juries, seems to stem from the fact that the separate but related requirements of knowledge and purpose are not adequately distinguished.

Most Federal district judges in charging the jury on specific intent under section 242 adhere closely to the language of the Supreme Court. They either quote or paraphrase salient passages in the *Screws* opinion.<sup>47</sup> While this is perhaps a safe procedure, it is not always altogether illuminating. For the distinction between the dual elements of knowledge and purpose in the requirement of specific intent appear only after a careful analysis of that decision.

On the other hand, in one instruction wherein a district court ventured from the text of *Screws*,<sup>48</sup> the jury was charged that, in order to convict, they must find that the defendants acted "with the specific knowledge that the prisoners possessed such rights,"<sup>49</sup> or with "knowledge that the specific right exists."<sup>50</sup> This instruction appears to preclude constructive knowledge and intent; that is, that the defendants should have known of their victims' constitutional rights (because those rights were defined and hence knowable) and that the defendant acted in reckless disregard of those rights.

A review of a number of instructions given in section 242 prosecutions failed to uncover a single charge that spelled out clearly and unmistakably the requirements of actual and constructive knowledge and intent that are revealed by an analysis of *Screws*.<sup>51</sup>

Moreover, the Civil Rights Division of the Department of Justice, in proposing instructions on specific intent for trial courts, has only occasionally urged the use of charges that clearly define the alternative requirement of constructive knowledge and intent. Prior to 1957, the Civil Rights Section of the Criminal Division commonly suggested that U.S. attorneys submit instructions which followed closely the more

liberal language in *Screws*.<sup>52</sup> And in 1953 in a section 242 prosecution, the Criminal Division, although refusing to recommend an instruction that would have liberalized the *Screws* doctrine, did advise the U.S. attorney to request instructions that would elaborate upon the "reckless disregard" aspect and upon the holding in *Screws* that the defendant did not need to "have been thinking in constitutional terms" to be found guilty.<sup>53</sup> In 1960, a similar effort by the Civil Rights Division to obtain instructions on constructive intent in the *Raiford* case failed.<sup>54</sup> A consistent Division policy of proposing jury instructions on constructive intent would enhance the possibility of obtaining a definitive and more liberal ruling on specific intent from higher courts (and notably the Supreme Court). The lack of such a policy in the Division appears to be due partially to differences of opinion among Division attorneys as to the meaning of the *Screws* doctrine on specific intent.<sup>55</sup> At the same time, it must be recognized that the eventual success of this method for obtaining a liberalization of the rule in *Screws*—that is, by appeals to higher courts—depends upon the concurrence of a number of contingent events. The trial court must grant the prosecutor's request for a liberal charge on constructive intent; the prosecution must succeed; the defendant must appeal his conviction and there allege that the instructions were erroneous on this point; and the higher court, if it does not address itself to the particular allegation of error, must at least affirm the conviction. Past efforts along these lines have not been encouraging.

If the *Screws* doctrine of specific intent remains unclear to judges and attorneys, how much more confusing must it be to jurors? For it is the jurors who must comprehend and then apply the trial court's instructions. Since those instructions are often lengthy and complex; since jurors are often reluctant to convict a police officer; and since jurors are frequently unsympathetic to section 242 prosecutions in the first place,<sup>56</sup> there are unusual difficulties in securing convictions. The burden of proof under section 242 remains a challenge to the most imaginative and resourceful of prosecutors.

When the prosecution is successful the maximum penalty is a fine of \$1,000 and 1-year's imprisonment for each violation. This is hardly a stringent sanction for police brutality or private racial violence that takes a life. Under most State laws such acts are serious offenses. Under section 242 they are merely misdemeanors. (Because of this fact, the Department of Justice can, if it chooses, initiate a case of police brutality simply by filing its charges in a written information without indictment from a grand jury.)<sup>57</sup> Nevertheless, since some Federal grand juries have been reluctant to indict, and some petit juries have been slow to convict, there is reason to believe that such juries would return even fewer indictments and convictions if section 242 were a felony statute calling for more severe punishment.<sup>58</sup>

Division attorneys, however, have found that the effectiveness of section 242 against unlawful official violence does not always depend upon its penalty provisions. In some instances prompt correction has resulted from admonitory letters in which the Division merely informed responsible officials of reported abuses and of the existence of Federal penalties.<sup>59</sup> And on several occasions the presence of Federal investigators in an area has stimulated local officials to take remedial action.<sup>60</sup> But in less responsive areas, when State, local, or Federal<sup>61</sup> authorities inflict unlawful violence or refuse to protect individuals from private violence, this statute, with all its problems, stands as the principal Federal sanction for the invasion of the rights guaranteed by the laws and the Constitution of the United States. In these situations section 242 is indeed a slender reed.

### *Conspiracies to commit violence*

Section 241 of the U.S. Criminal Code is a companion statute to section 242. It provides that—

If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or

If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured—

They shall be fined not more than \$5,000, or imprisoned not more than 10 years, or both.

On its face, section 241 appears to be of equal vigor with section 242. But this is not so, for despite section 241's efficacy in protecting certain types of Federal rights, such as the right to vote,<sup>62</sup> its application to unlawful official violence is limited.

The Supreme Court carefully considered the applicability of this statute to acts of official violence in 1951.<sup>63</sup> The Court concluded that section 241, unlike section 242, was never intended as a safeguard for those rights that are protected *solely* by the 14th amendment—i.e., “those rights which the Constitution merely guarantees from interference by a State.”<sup>64</sup> Rather, “the principal purpose” of section 241, in the words of the Court, “was to reach private action.”<sup>65</sup> Accordingly, section 241 was held to protect only those rights “which Congress can beyond doubt constitutionally secure against interference by private individuals.”<sup>66</sup> The rights so secured are those “which arise from the relationship of the individual and the Federal Government”<sup>67</sup> and which “flow from the substantive powers” of that government.<sup>68</sup>

Excluded from section 241's coverage under this interpretation, are rights to equal protection and due process of law under the 14th amendment (unless, of course, the particular right involved is also granted or secured elsewhere in the Constitution against private interference).<sup>69</sup> Thus the rights of Federal citizenship protected by section 241 include, among others, the following:<sup>70</sup>

The right to pass freely from State to State . . . the right to petition Congress for a redress of grievances . . . the right to vote for national officers . . . the right to enter the public lands . . . the right to be protected against violence while in the lawful custody of a United States marshal . . . and the right to inform the United States authorities of violation of its laws. . . .

It follows that section 241 is a restricted remedy for unlawful official violence for it applies to only a limited number of situations. First, section 241 can be invoked (as can section 242) <sup>71</sup> against any such violence involving Federal officials, for the right to be secure from violence while in the custody of a Federal officer is one of those rights which an individual has by reason of his relationship with the National Government.<sup>72</sup> Yet complaints implicating Federal officers in illegal violence are almost nonexistent.<sup>73</sup> In this respect, therefore, section 241 stands only as a gun behind the door. But the door is rarely opened.

Second, section 241 can also be used as a sanction for unlawful official violence perpetrated at any level of government when that violence is used as a means of depriving the victim of any one of his narrowly defined rights of Federal citizenship.<sup>74</sup> (Since such violent acts on the part of State or local officers would constitute, at the same time, denials of the equal protection of the laws within the meaning of the 14th amendment, the officers and their coconspirators would also be liable under sec. 242.) Thus, State or local officials who resort to violence to deprive persons of such rights—to take the most probable examples—as the right to vote or the right to be free from interference in interstate travel, are liable to a prosecution under section 241. On the basis of the Commission's investigations it appears that official violence to prevent people from voting has rarely occurred in recent years.<sup>75</sup> On the other hand, there have been a few recent cases of violent interference with interstate travel that involved State or local officers.<sup>76</sup> It is in this limited area that section 241 is principally relevant to the Commission's study.

There is a broader view of section 241 which would bring within its coverage *all* of the rights found in the Federal Constitution, including, of course, the rights guaranteed in the 14th amendment against interference by the State. Thus interpreted, section 241 would afford protection from illegal violence at the hands of State and local officers under the equal protection and due process guarantees of that amendment.<sup>77</sup>

In 1951 when this view was last presented to it, the Supreme Court was evenly divided on the issue.<sup>78</sup> In the absence of a majority holding to the contrary, the narrow view prevails. A subsequent attempt by the Civil Rights Division in 1960 to bring the issue before the Court failed.<sup>79</sup> Should the Supreme Court, at some future time, find that section 241 protects the rights contained in the 14th amendment, then this statute might offer certain advantages over section 242 as a sanction against illegal violence by State officers.<sup>80</sup> In the meantime, section 241 is rarely useful as a weapon against illegal official violence.

### *Slavery and violence*

There are three other criminal statutes, in addition to sections 241 and 242, that may be applied to illegal violence by officials. These laws—sections 1581, 1583, and 1584 of the U.S. Criminal Code—all relate to slavery and peonage. The three statutes have relevance to the Commission's study only insofar as they can be invoked against State or Federal officials (and private individuals acting in concert with them) who have in some manner acquiesced or participated in acts of violence that reduced the victims to a condition of peonage or slavery. Such official conduct would constitute a denial of the equal protection of the laws (which the Commission is empowered to study) as well as a violation of the 13th amendment.

There have in recent years been a few unreported suits under sections 1583 and 1584,<sup>81</sup> including the much-publicized *Dial* case, in which a family of farmers obtained Negro slave labor by paying the fines of prisoners who were then released to them.<sup>82</sup> The Dials lived in Alabama close by the Mississippi border. They obtained Negro prisoners from Mississippi. There was ample evidence at their trial that the Dials, by threats and beatings, forced the Negroes to remain at their farms. At least one of the victims was beaten to death. Two of the Dial brothers were subsequently sentenced to 18 months in prison. There was, however, no evidence of direct official connivance in the brutality practiced by the Dial family.

Section 1581<sup>83</sup> is directed against peonage; that is, "a status or condition of compulsory service based upon the indebtedness of the peon to the master."<sup>84</sup> In a prosecution for peonage, "it is sufficient to allege and prove that a person is held against his will and made to work to pay a debt."<sup>85</sup> Anyone who *holds* a person in, or *returns* him to, a condition of peonage, or who merely *arrests* a person with the intention of placing him in peonage, violates section 1581.

State and local officials have been known to cooperate, unwittingly or not, in maintaining at least one system of peonage; it is described both in cases under section 1581<sup>86</sup> and in cases involving the 13th amendment.<sup>87</sup> The usual practice in those cases was that State officials re-



leased prisoners to any private individual who would pay the prisoner's fine. The prisoner was then compelled to sign an agreement to work out the amount of the fine for the person who had paid it. If the prisoner did not perform all the work that was required of him under the agreement, he was prosecuted under State law for fraud or deceit. The Supreme Court has roundly condemned these procedures and proclaimed the State statutes that fostered them to be unconstitutional under the 13th amendment.<sup>88</sup>

Section 1583<sup>89</sup> and 1584<sup>90</sup> deal with slavery and involuntary servitude. There have been few reported cases under these provisions.<sup>91</sup> Although the Supreme Court has stated that "involuntary servitude" has a "larger meaning than slavery,"<sup>92</sup> the difference is a matter of degree.

Violations of the slavery and peonage statutes appear to occur only rarely. Although during the 2½-year period from January 1, 1958, through June 30, 1960, the Department of Justice received 67 complaints alleging that persons were being held in peonage or slavery, no prosecutions were brought apparently because none of those complaints was deemed valid. It should be noted, however, that the victims of peonage and involuntary servitude are even less likely than the usual victims of police brutality and private violence to be articulate in protesting—especially if local officials cooperate with their "masters."<sup>93</sup>

These, then, are the Federal criminal measures dealing with police brutality and "private" violence. The usefulness of these five statutory weapons is inherently restricted; their range is short. But in the absence of effective State action, they are the sole criminal instruments now available against those two serious threats to the civil rights of the Nation's citizens. The administration of these measures will now be examined. That task—the application of these five statutes to current cases of police brutality and "private" violence—is the responsibility of the Civil Rights Division of the U.S. Department of Justice.

## THE ENFORCEMENT OF THE STATUTES

On February 3, 1939, Attorney General Frank Murphy created the first Civil Liberties Unit which was set up in the Criminal Division of the Department of Justice.<sup>94</sup> This Unit was assigned the duty of administering, among other statutes,<sup>95</sup> the then existing major Civil Rights Acts—for present purposes U.S. Criminal Code sections 241, 242, 1581, 1583, and 1584. Later, the Unit was designated the Civil Rights Section. In the Civil Rights Act of 1957<sup>96</sup> Congress elevated the Section to the rank of a separate division within the Department, and by an

order of the Attorney General, dated December 9, 1957, the Civil Rights Division was formally established.<sup>97</sup> The growth of the former Civil Rights Section was gradual; in 1953 it had eight attorneys.<sup>98</sup> The Division has expanded more rapidly—from 14 attorneys in 1958 to 32 in November 1960.<sup>99</sup>

The Commission's study of the Civil Rights Division was carried out with four objectives in view: to determine how civil rights cases are initiated, to analyze the procedure by which such cases are developed and terminated, to learn of the principal problems encountered in the handling of the cases, and to evaluate generally the effectiveness of the Department of Justice in reaching a final disposition of civil rights complaints.<sup>100</sup> The method employed in this study consisted of the gathering of statistical information from the Machine Records Unit of the Department of Justice; discussions of sample cases with members of the Division's staff; examination of certain legal studies and memoranda prepared by the Division; and informal staff conferences on the Division's general policies and procedures.<sup>101</sup> The final conference, held on December 16, 1960, between representatives of the Division and of this Commission, constituted a comprehensive discussion of the general policies, procedures, and achievements of the Civil Rights Division.<sup>102</sup>

Unquestionably police brutality and private violence constitute distressing problems for the Nation. How does the Civil Rights Division deal with them?<sup>103</sup> To answer this question, it is necessary to describe briefly the organization of the Civil Rights Division, and to follow the Division's staff, step by step, through the procedures that lead to the final disposition of complaints.

### *Organization of the Civil Rights Division*

The Division is one of the eight major subdivisions of the Department of Justice. (See app. VII, chart 1.) It ranks, therefore, as an equal of the Criminal Division of which it once was a part. (The internal organization of the Division is set out in app. VII, chart 2.) The Division is headed by an Assistant Attorney General who is appointed by the President subject to the approval of the Senate.

### *Operation of the Civil Rights Division*

There are four major steps in the handling of complaints—the receipt of notice of alleged violations; decision as to whether to order an investigation; investigation itself; and prosecution.

*Notice of violations.*—The great majority of complaints of police brutality or private violence involving official action are made by the victim, a relative, or a witness, to an FBI agent at one of the Bureau's field offices.<sup>104</sup> The agent takes a statement from the com-

plainant and automatically forwards it to the Bureau in Washington which, in turn, refers it to the Civil Rights Division.

Sometimes, however, complaints come initially to the Division, the Department of Justice, U.S. attorneys,<sup>108</sup> the White House, or some other Federal office. Other sources of information include private civil liberties organizations and newspaper reports clipped by the Division's Editorial Unit.<sup>108</sup> In the majority of cases, therefore, the Division must rely for notice of such violations upon the general public—the greater part of which seems to be wholly unaware of the Federal right to be free from police brutality and certain types of private violence.

These sources of information do not appear to be completely adequate. The principal reason for this is the apparent lack of public awareness of Federal rights in this area. A secondary reason appears to lie in the inadequacy of the Division's sources—notably in its newspaper coverage and in reports by U.S. attorneys, who are the Department's representatives in the field. For example, a much publicized series of articles following the police beating of a Negro youth in Detroit on September 10, 1959<sup>107</sup>—an incident witnessed by a reporter—did not come to the Division's attention for over a year.<sup>108</sup> Newspaper stories do not, of course, constitute legal evidence of police brutality. But such reports can and do provide leads for official investigations.<sup>109</sup>

*Decision to investigate.*—Complaints of police brutality or of private violence involving official action are assigned to one of seven attorneys who constitute the Constitutional Rights Unit of the Division's General Litigation Section. This staff attorney must first assess the merits of the complaint. He will then either submit a written recommendation that the case be closed without investigation, or he will request the FBI to direct its field agents to interview specific persons, ascertain the availability of corroborating witnesses and interview them. He will, of course, make such additional informational requests of the Bureau as he feels are necessary.

A number of the complaints received do not, on their face, merit even a preliminary investigation. Such is the case, for instance, when the complainant charges the officer with only verbal disrespect. Other complaints, however, allege clear violations of Federal law. As a rule, these allegations are investigated.<sup>110</sup>

In still other instances the decision to order an investigation involves more complex considerations. This is particularly true of unsigned complaints and certain newspaper reports. There are, as a matter of Division policy, no fixed rules for determining what constitutes an appropriate complaint for investigation in these less obvious cases.<sup>111</sup> Nor is it likely that such rules would be feasible, for considerable flexibility is required in order to assess properly the unique features of each case.

Nonetheless, there is some evidence in the Division of inflexible attitudes toward both newspaper reports and unsigned complaints. It

seemed to be the view of some staff members that certain newspapers are so inherently unreliable that their stories, regardless of content, afford no basis for investigation.<sup>112</sup> Similarly, it appeared difficult for some of the staff to appreciate the fears behind the refusals of certain complainants to sign written statements of their allegations.<sup>113</sup> While in the majority of cases, a refusal to sign may well vitiate the entire complaint,<sup>114</sup> there is little doubt that in certain areas victims are fearful—and in part justifiably<sup>115</sup>—that local police will learn of their complaint and visit them with reprisals.<sup>116</sup> These personal attitudes on the part of some Division attorneys reflect a timidity inappropriate at the very first stages of an investigation.<sup>117</sup> Although such views are not matters of official Division policy, they may explain why certain cases are closed without investigation.

The Commission learned of a case in which a Negro newspaper reported that neighbors, who allegedly witnessed the police beating of a man and his pregnant wife in Newark, N.J., had later volunteered to testify in a civil suit against the city. The case was closed by the Division in February 1959 without any investigation of the charges. It was explained by members of the Division's staff that that decision had been dictated by the weakness of the source—a newspaper which regularly treats civil rights stories in a sensational manner.<sup>118</sup> A report in another such newspaper of the death of a Negro as the result of an alleged beating by Los Angeles policemen was also closed without any investigation. A local coroner's jury, by a 5-4 decision, found the death accidental. One of the reasons assigned for closing the case was that "no one on behalf of the victim made any complaint."<sup>119</sup> Another case closed without a preliminary investigation involved the alleged police beating of a reputable Negro businessman in Alabama. The victim's injuries required medical treatment. One factor influencing the closing of the case appears to have been the victim's refusal to sign a statement regarding his interview.<sup>120</sup>

The Commission's staff learned of no case in which an investigation was ordered by the Division on the basis of a newspaper report or an unsigned complaint.

Another type of case which raises problems in ordering investigation is that which State authorities are attempting to resolve locally. The Civil Rights Division follows an invariable policy of delaying prosecution in deference to State action.<sup>121</sup> In certain respects this policy appears proper. It leaves the prime responsibility exactly where it belongs—with the States. But in most of these cases the Division does more than delay prosecution. It delays the investigation—provided it is convinced that the State is acting in good faith.<sup>122</sup>

On balance, the practice of holding up Federal investigation pending the outcome of local or State proceedings is probably a good one in most cases. It leaves corrective action in the hands of those who are most

familiar with the local situation. It also obviates the inconvenience and even confusion that may result from the presence of several investigative agencies delving into the same case simultaneously.<sup>123</sup>

But it is often difficult to judge immediately the character of a particular State action on a complaint of official brutality. And in those cases where State action is ineffective,<sup>124</sup> unnecessarily protracted,<sup>125</sup> or simply a "whitewash,"<sup>126</sup> the practice of deference can be dangerous. For the Division may later find a once-strong case greatly weakened, if not already dead.

In one case there was a long delay after the State of New Mexico had brought charges against the housefather of the State Training School for Girls. The defendant had been accused of imposing excessive and arbitrary punishments upon the girls and of forcing them to engage in sexual activities with him. After the passage of a year and a half, the State dropped its charges. During that period most of the witnesses were discharged from the training school and thereafter could not be located. The Division, which had deferred to State action, was forced to close the case for lack of evidence.<sup>127</sup>

A policy of completing a Federal investigation, even though the State is taking action, offers definite advantages. It preserves the evidence; it puts the Division in a better position to prompt State action and to act if the State's action proves insufficient. The Division has no set policy governing investigations pending State action.<sup>128</sup> Certainly no such rules would be suitable for every case.

*Investigation: the FBI.*—The Federal Bureau of Investigation has the major responsibility for carrying out civil rights investigations.<sup>129</sup> As previously mentioned,<sup>130</sup> most brutality complaints are brought first to an FBI special agent in the field. At that point, FBI policy calls for the following procedure: <sup>131</sup>

... the original complainant is thoroughly interviewed and a written statement obtained from such an individual if possible. Any other witnesses readily available as well as the victim would also be interviewed. The complaint is immediately brought to the attention of the Civil Rights Division of the Department of Justice for a determination as to whether further action is warranted. In the event the Department desires investigation, the FBI field office is instructed to institute such investigation. Before the investigation commences, the responsible head of the law enforcement agency or institution involved is notified of the initiation of the investigation. These authorities are not notified upon the receipt of a complaint but only at the outset of an investigation.

Sometimes, however, the actual practices of Bureau field offices appear to have deviated from the official procedures in regard to initial investi-

gation of complaints.<sup>132</sup> The Commission's staff learned of a significant number of cases in which the Bureau forwarded only the original complaint to Washington and apparently waited for the Division's instructions before investigating further, even though the complaint contained names of local witnesses.<sup>133</sup>

The question of investigation upon the receipt of a complaint has been a cause of some concern to the Federal Bureau of Investigation. Fifteen years ago the Bureau's Director expressed reluctance to launch investigations of so many complaints involving "murders, lynchings, and assaults . . . in which there cannot conceivably be any violation of a Federal statute."<sup>134</sup> In 1954 Attorney General Brownell authorized the Bureau to conduct "preliminary investigations into all complaints involving possible violations" of sections 241, 242, 1581, 1583, and 1584 "without the necessity of prior authorization" from the Assistant Attorney General in charge of civil rights matters.<sup>135</sup> This order was, of course, permissive, not mandatory. It has never been rescinded.<sup>136</sup> The term "preliminary investigation," according to FBI Director Hoover, "consists of rounding out the facts of the original complaint and developing sufficient information to enable the Civil Rights Division to make a determination as to whether or not there has been a violation of the statutes."<sup>137</sup> There is evidence that for some years the FBI did conduct "a preliminary investigation immediately upon receipt of a complaint alleging a Federal civil rights violation."<sup>138</sup> But, as indicated above, there are now many cases in which this practice is not followed. So at the present time the initiative for ordering preliminary investigations into civil rights complaints is largely left with the Civil Rights Division.<sup>139</sup>

Failure to conduct an investigation upon receipt of a complaint of known witnesses or to check simple statements of fact causes unnecessary delays—a bare complaint frequently lacks those minimal facts required to determine if a violation occurred or even if there is a need for a preliminary investigation.<sup>140</sup> When a Division attorney in Washington receives only a simple statement of charges, a series of needless and time-consuming procedures are usually required if the case is to be handled soundly. The attorney must request at least a limited investigation; this request must be cleared through his section chief, a higher Division official, and Bureau headquarters in Washington; an order must be dispatched to the appropriate FBI field office, and there the investigation must be assigned to a special agent; later the results of the investigation must return through the same channels.<sup>141</sup> Certain cases may require the Division's approval and direction before even limited inquiry is attempted—for example, when State authorities are actively investigating the charges.<sup>142</sup> But with due allowance for such special circumstances, there are instances in which an initial limited investigation of facts stated and witnesses named in the complaint would

provide Division attorneys with an immediate indication of its weight.<sup>143</sup> There are valid reasons for the Division's exercise of close control over further investigations of complaints.<sup>144</sup> But no such reasons appear for the Bureau's field offices to channel information of the most meager sort to Washington, when the means for a quick initial verification of the allegations are at hand.

Delays in criminal prosecutions are harmful to the accused, who is entitled to a speedy trial. With the passage of time, moreover, memories of witnesses dim<sup>145</sup> and the trail of evidence is obscured.<sup>146</sup> Delays in criminal cases are undesirable—even more so when they are avoidable.

It has been reported from time to time that the Bureau has little enthusiasm for its task of investigating complaints of police brutality.<sup>147</sup> If the contention is accurate, that fact is, to some degree, understandable. The Director has used the strongest possible language to stress the need for cooperation between the Bureau and law enforcement officials at all levels.<sup>148</sup> Apparently, without this cooperation the FBI could not maintain the excellent record it now enjoys in the enforcement of a long list of Federal criminal statutes.<sup>149</sup> Although the Bureau states that it "has not experienced any particular difficulty or embarrassment in connection with investigation of alleged police brutality,"<sup>150</sup> there is evidence that investigations of such offenses may jeopardize that working relationship.<sup>151</sup> The very purpose of these investigations is to ascertain whether or not State or local officers have committed a Federal crime. Even though the allegations later prove groundless, the investigation of them may place the FBI in a delicate position.

The policy of notifying the heads of law enforcement agencies whenever one of their officers is under investigation for alleged acts of brutality presents another problem. The policy is set forth in the Bureau's 1960 report:<sup>152</sup>

When civil rights investigations are instituted involving law enforcement officers or personnel of other public agencies, the FBI carefully avoids interfering with the orderly operation of the agency concerned. At the outset, the FBI contacts the head of the agency and advises him of the complaint which has been received and that investigation is being instituted.

Apparently this practice is considered a courtesy necessary for the maintenance of the cooperative relationship between the Bureau and local authorities. The Bureau also states that the practice<sup>153</sup>—

. . . has resulted in the realization by most police officials that it is to their own best interests and the interest of law enforcement in general that any allegations of misconduct by policemen be thoroughly and fully investigated.

But this policy can jeopardize a section 242 case. Police force supervisors may adopt an unduly protective attitude toward their officers. They may share the racial prejudices of their subordinates and of their communities.<sup>154</sup> These men cannot always be counted upon to cooperate in cases in which the victim is a member of a racial minority. Yet, the Bureau appears to adhere rigidly to this policy. In 1959 a case of an allegedly unjustified killing of a Negro by a State policeman was closed because of the Division's reluctance to have the Bureau notify the Arkansas Governor of a civil rights investigation during the tense school situation in Little Rock. There is no evidence of any written communication from the Civil Rights Division to the FBI ordering it to suspend its policy of notification in this case.<sup>155</sup>

Still another difficulty may arise from the cooperative relationship between the FBI and local policemen. Although the Bureau has declared that it knows "of no instances of any individuals being fearful to bring complaints to the attention to the FBI,"<sup>156</sup> there is evidence that some victims and witnesses, especially among Negroes in the Deep South, are afraid to bring information to the Bureau's field offices.<sup>157</sup> As has already been pointed out, victims and witnesses of police brutality "are apt to be weak and frightened people."<sup>158</sup> Some of their fears appear to be based upon the fact that agents and local policemen often work closely together,<sup>159</sup> and that officials somehow soon learn the names of complainants.<sup>160</sup> Other fears appear to be less substantial, such as those that spring from a basic distrust of all law enforcement officers.<sup>161</sup> Regardless of their source, these fears inhibit some people from reporting acts of police brutality to the Federal Government.

There is no clear-cut solution to all of the difficulties encountered in the investigation of police brutality complaints.<sup>162</sup> Some of these problems are inherent and perhaps inevitable. Such is the case of those victims of violence who distrust FBI agents, believing them to be in league with local officers. Certainly the Bureau cannot, on their account, resign its heavy responsibilities in those fields of Federal law enforcement that require its close association with local officials.

But some difficulties appear to arise from policies and practices which might be altered or followed less rigidly. In this category are the FBI policy of immediately informing police superiors of investigations and the practice of simply forwarding complaints to Washington without a limited initial investigation into the stories of known victims and witnesses. On occasion these procedures create real handicaps. The enforcement of the Civil Rights statutes is difficult enough without them.

*Prosecution.*—At some point in the investigative stage the Division must decide whether or not to prosecute. This decision is usually made with the advice of the U.S. attorney for the district in which the case has arisen.<sup>163</sup> Generally, three main factors govern a decision to prosecute.



(1) *The credibility of the victim.*—In most cases the victim of police brutality comes from an underprivileged environment. Usually he is poor and uneducated, and sometimes he has a criminal record.<sup>164</sup> And when the victim is a Negro his credibility before juries in some sections of the country is low no matter what his education or social status.<sup>165</sup> Because of these difficulties, corroborating evidence is usually vital to the Government's case. This may come from eyewitnesses. When the victim has been beaten in jail, other prisoners have often observed either the beating or its effects, but their credibility may also be suspect. Of course, the Government's case is immeasurably enhanced if a policeman testifies to the incident against a fellow officer.<sup>166</sup> In a great number of cases, however, there are simply no witnesses except the defendant and his victim. Unless the victim suffered serious and observable injury, it is difficult to prove such a case to a jury's satisfaction, for the word of the victim standing alone may be less believable than that of the officer.<sup>167</sup>

(2) *The nature of the victim's injuries.*—Injuries may provide corroborating evidence, especially when supplied through the testimony of doctors or nurses.<sup>168</sup> Moreover, if the injuries are particularly shocking, they may impress a jury sufficiently for conviction. They may also be particularly helpful in establishing specific intent. Where the variety and location of the victim's wounds indicate that he suffered protracted abuse, the jury may be persuaded that the act was done, not in a momentary fit of anger, but as part of a willful design to punish or to extract a confession—that is, with the requisite specific intent.<sup>169</sup>

(3) *The likelihood of obtaining a conviction.*—Obviously, this factor depends, in part, upon the credibility of the victim (and witnesses) and the nature of his injuries. It is also influenced by the presence or absence of racial prejudice in the community from which the jury is drawn, when the victim is a member of a minority group.<sup>170</sup>

The fact that the chances for conviction have been slim has sometimes deterred the Division from prosecuting borderline and even strong cases of official brutality.<sup>171</sup> The determination of how much weight should be attached to the likelihood of success is a question of balance. On the one hand, it seems clear that a large number of unsuccessful section 242 prosecutions throughout the country would be almost certain to generate widespread contempt for the statute.<sup>172</sup> On the other hand, even an unsuccessful prosecution, by disclosing the Government's evidence in a public trial, can have an educative and therapeutic effect upon the entire community.<sup>173</sup> The Commission feels that in some instances the Division has probably attached excessive value to the "success" factor in failing to prosecute apparently serious violations.<sup>174</sup> Additional cases, carefully selected, might well be brought—even in the face of heavy opposing odds.

Once the decision has been reached to prosecute, the case is usually turned over to the U.S. attorney for the Federal judicial district in which it is to be tried. He is normally advised of the matter early in the investigative stage, and the Division solicits his advice as to further investigation as well as prosecution. Control of all civil rights cases rests with the Attorney General and the Civil Rights Division.<sup>175</sup> However, when a police brutality case is to be prosecuted, the U.S. attorney usually assumes responsibility for presenting it to a Federal grand jury and eventually for trial, with the Division acting in an advisory role. In this way local resentment against outside "Washington lawyers" may be avoided. Nevertheless, it is necessary sometimes for Division attorneys to present cases.

U.S. attorneys, it must be remembered, are Presidential appointees of independent political stature. Moreover they are generally residents of the district in which they serve and may harbor the racial prejudices prevalent in that area. That many U.S. attorneys have, despite considerable community pressure, vigorously protected citizens' constitutional immunity from unnecessary police violence is indicative of their high caliber. Certain U.S. attorneys, however, have consistently opposed the prosecution of police brutality cases. This opposition has been expressed in protracted delays in prosecutions authorized by the Division, in halfhearted presentation of cases, and in ignoring the Division's repeated requests for information concerning the status of the prosecution.<sup>176</sup> Nonetheless, there apparently has been a significant improvement since 1947 when the Truman Committee complained that <sup>177</sup>—

All too frequently, United States Attorneys are allowed to become the final arbiters in the disposition of civil rights cases. The Department of Justice should make more vigorous use of its authority to stimulate, educate, prod, and even overrule United States attorneys in the handling of cases in this area.

Finally, U.S. attorneys are sometimes unfamiliar with the Civil Rights Acts.<sup>178</sup> Few have encountered them in their previous practice.<sup>179</sup> To meet this problem Attorney General Brownell instituted a program in 1953 under which U.S. attorneys were given a brief training course in civil rights laws at the Department in Washington. This program was not carried forward into subsequent years.

The first step in the actual prosecution is the presentment of the case to the local Federal grand jury. Strictly speaking, the Government can bypass the grand jury in police brutality cases and proceed directly to trial before a petit jury. For, as mentioned previously,<sup>180</sup> section 242—the statute under which charges of police brutality are normally brought—defines a misdemeanor, not a felony. Under Federal law,<sup>181</sup> mis-

demeanor prosecutions may be brought to trial merely by the filing of a written information—that is, a sworn statement setting out the charges against the defendant. But the Division always directs that indictments be sought.<sup>182</sup> There are good reasons for this practice. It gives the Government an opportunity to test witnesses under oath; it relieves the FBI of the necessity of appearing in the role of accuser to swear to the veracity of the complaint (as it would have to do in the event that an information were filed); and, should the grand jury refuse to indict, the Division has a transcript of the proceedings to use as a basis for deciding whether to present the case again to a new grand jury.<sup>183</sup>

Generally, there appears to be little significant difference between the attitudes of grand and petit juries toward police brutality cases.<sup>184</sup> Thus, in communities which are hostile to civil rights cases, it is sometimes as difficult to obtain an indictment from the grand jury as it is a conviction from a petit jury.<sup>185</sup> Yet lawyers well know that juries are frequently unpredictable. While even the most convincing evidence of police brutality may fall on deaf ears before one jury, a particularly bloody and senseless case may convince another jury to return an indictment. Moreover, if a grand jury refuses to return an indictment, the Government can later present its evidence before another grand jury in an effort to obtain an indictment.<sup>186</sup> Again, the Government could proceed to trial without an indictment by means of an information.

The Department of Justice has been reluctant to proceed by information after it has failed before a grand jury.<sup>187</sup> In fact, this has occurred only once. In 1942 the former Civil Rights Section, after an indictment was refused, directed that an information be filed against a West Virginia sheriff who had led a mob in tormenting members of the Jehovah's Witnesses. The sheriff's subsequent conviction by a petit jury was affirmed on appeal.<sup>188</sup>

The question whether to proceed by information after an indictment has been refused is a thorny one. On the one hand, the use of an information insures that the Government's evidence is exposed to public view. An information may offer the only remedy in a vicious brutality case, supported by strong evidence, in which a grand jury has refused an indictment out of prejudice against civil rights prosecutions or against the race of the victim.<sup>189</sup> On the other hand, the filing of an information after a grand jury has listened to the evidence and returned a "No Bill" may be actually (though not legally) unfair to the accused officer. It exposes the defendant to something analogous to double jeopardy. If a grand jury has refused to return an indictment against him, when it could have done so by a simple majority vote of its members based upon merely *prima facie* evidence of a violation, why should he be subjected to a trial before a petit jury which can convict him only if it is unanimously convinced of his guilt beyond a reasonable doubt? Moreover, U.S. attorneys generally dislike using informations.<sup>190</sup> Fre-

quently a community learns from the press or by other means that a grand jury has previously refused an indictment and comes to regard the subsequent prosecution as an unjust harassment of the defendant.<sup>191</sup> Thus local pressures militate against the use of informations. The question can only be resolved through a separate evaluation of each case. The Division could profitably devote more consideration to the use of informations in appropriate cases.<sup>192</sup>

The last step in the prosecution of a case is the actual conduct of the trial. The chief difficulty at this stage is, again, the frequent opposition of petit jurors to civil rights cases. The same general observations made with respect to grand juries apply here.

Since the Civil Rights Section formally became a Division on December 9, 1957, it has obtained convictions from juries in four police brutality cases.<sup>193</sup> And during this period, the defendants in two other cases<sup>194</sup> entered pleas of *nolo contendere*, an implied admission of guilt. This total of six cases is not an impressive statistical record for a period of over 3 years. It is difficult to state with certainty why there have not been more convictions in specific cases.

This Commission is not convinced that police brutality complaints, which constitute 30 percent of all matters received at the Division,<sup>195</sup> have been given the emphasis and the vigorous attention that they deserve. It cannot be said, of course, that more far-reaching investigation or more vigorous prosecution under the new administration will necessarily increase the number of convictions.

At the same time, it must be recognized that the value of the Civil Rights Division does not rise and fall with the annual number of convictions. As the *United States Attorneys' Manual* cautions: ". . . the underlying purpose of the Federal law in this field is to secure and protect the rights involved. Federal prosecution . . . is important only insofar as it serves this end."<sup>196</sup> Moreover, it has been argued that the real test of vigorous leadership in the enforcement of civil rights statutes is not the number of convictions obtained but rather the number of prosecutions authorized.<sup>197</sup> Yet, it should be recognized that even a policy of wholesale prosecution of complaints would not necessarily get at the root of the problem and would run the risk of undermining community respect for law enforcement officers. All of these are important considerations in assessing the effectiveness of the Civil Rights Acts and their enforcement by the Civil Rights Division and the FBI.

However, the fact remains that at the present time the constitutional rights of a significant number of American citizens are being invaded by acts of police brutality. Their rights are not being secured and protected. This problem is not being adequately handled by State and local officials.<sup>198</sup> A Federal statute makes such action a crime; yet the number of prosecutions under this statute is small.<sup>199</sup> The number of convictions, smaller yet. This is a distressing situation.

## SUMMARY

The Truman Committee wrote of the Civil Rights Section in 1947 that "the total picture . . . is that of a sincere, hard working, but perhaps overcautious agency."<sup>200</sup> This same statement would fairly characterize the Civil Rights Division today in its efforts against unlawful official violence. Many of the specific items which the Truman committee criticized in 1947 regarding the Civil Rights Section have since been remedied. The Section has become a Division. Its staff and budget have been greatly increased—though still perhaps not sufficiently. An intricate system of recordkeeping has been installed. Control over the activities of U.S. attorneys appears to have increased.

In the opinion of the Commission, however, there remain some areas where further improvement might be achieved. The Division's information-gathering activities could probably be improved. Greater willingness to authorize investigations on the basis of newspaper reports might uncover more violations of the law. A somewhat less skeptical attitude toward those who refuse to sign complaints and an increased willingness to bring borderline cases to trial are needed. The policy of deference to State authorities may presently be carried too far in those cases where an investigation (as distinct from a prosecution) is held up whenever any local action is commenced. The difficulties with investigations, such as they are, might be overcome by a more vigorous policy—and perhaps by a new administrative arrangement within the Department of Justice to ease the problem of FBI agents having to investigate police officers with whom they work daily on other cases. Such problems as remain with U.S. attorneys might be alleviated by special orientation courses for new attorneys or the designation by U.S. attorneys of assistants to specialize in civil rights matters.

The Commission's overall impression, however, is that many of the difficulties of enforcing the Federal laws in the field of unlawful police violence arise not only from these details of administration and procedure, but from the nature of the cases themselves; from the inherent difficulties of present statutes; and above all, from a general lack of awareness and sensitivity to the rights involved, on the part of judges, prosecutors, lawyers, policemen, and the general public. Little can be done directly to prevent police brutality itself until the police are more carefully selected, trained, and controlled.<sup>201</sup> State and local action appears to be very significant in this respect.<sup>202</sup> But the applicable Federal law might well be amended to make it more effective.



## 5. Federal Civil Sanctions

### "NOTHING MUCH I CAN DO"

I was born in North Carolina and raised in the Hills of Eastern Tennessee, and I am in favor of the Civil Rights Statutes but must live with this as silent as the grave. I see my clients beat, abused and run over all of the time and there is nothing much I can do, because when I try in Federal Court I wind up with the hell beat out of me.

Few attorneys who have represented victims of police brutality in civil actions under the Federal civil rights statutes have been any more successful than the southern white lawyer who wrote this paragraph to the Commission.<sup>1</sup> This fact is established by the results of a staff survey of all such Federal civil actions filed during the 2 years from July 1, 1957, through June 30, 1959.<sup>2</sup> Only 42 civil suits alleging police brutality were filed.<sup>3</sup> As of May 1961, although all but eight of these civil complaints had been disposed of, not one had resulted in a verdict for the plaintiff-victim.

Seventeen of the 42 suits were concentrated in the U.S. District Court for the Northern District of Illinois.<sup>4</sup> In 17 of the cases the victims were Negroes, and there was 1 case each involving a Puerto Rican and an Indian. Fifteen arose in the South, but only 4 of these involved colored victims.<sup>5</sup> These figures may be measured against the 1,328 complaints of police brutality received by the Civil Rights Division during a comparable 2½-year period—461 of which (including 347 from the South) involved known Negro and other minority group victims.<sup>6</sup>

Despite the relative scarcity and the general lack of success of civil suits under the Federal statutes, these civil remedies appear to possess great potential as weapons against official cruelty and connivance in violence. They seem to offer significant advantages over the Federal criminal statutes. (Of course, suits under *both* the criminal and civil statutes may be brought against an officer guilty of using unnecessary violence.)

First, the Federal civil statutes can provide a more complete remedy for police brutality and private racial violence than do the criminal laws. Civil relief compensates the claimant. He receives money damages for out-of-pocket expenses as well as for pain and suffering he has endured.<sup>7</sup> If successful, he thus obtains more than the mere satisfaction of seeing his oppressors justly penalized. In addition, the most important of these civil statutes also authorizes preventive relief in a "suit in equity . . . for redress."<sup>8</sup>

Both the criminal and the civil statutes may serve as deterrents to illegal violence. The threat of suits may well dissuade officials from using unnecessary violence. Moreover, both criminal and civil suits, by directing public attention to police abuses, may develop community pressure for their correction. Such public sentiment can also be expected to deter law enforcement officers from committing (and their superiors from condoning) acts of brutality.

Second, it is less difficult, at least in theory, to prove a case of police brutality under the civil statute than it would be to establish the same case under the criminal statute, section 242.<sup>9</sup> The rather troublesome proof of specific intent which the Supreme Court has required under section 242,<sup>10</sup> is not needed to establish a claim under the civil statute; and evidence of a crime must satisfy the jury beyond a reasonable doubt, but the claimant in a civil suit need only prove his case by a preponderance of the evidence. Moreover, the civil remedy seems to involve less difficulties with juries than a prosecution under section 242. There is less danger, apparently, that the jury will be swayed by the thought that States' Rights are being threatened by "interference from Washington."<sup>11</sup> For only the forum is Federal in a case under the civil statute. The suit itself is instituted by local citizens who are usually represented by local counsel. And since grand juries do not operate in civil cases,<sup>12</sup> the facts, when they are presented for the first time, are presented in open court where they are necessarily exposed to public view.<sup>13</sup>

The advantages of the Federal civil remedies over section 242 should be weighed against the general limitations inherent in any civil suit. One of these limitations is that, unlike criminal cases for which the Government bears the costs of prosecution, in civil cases private individuals must pay their own way. The collection of evidence may require considerable time and money. Yet the victims of police brutality and racial violence are predominantly the poor and the powerless.<sup>14</sup> This problem has been partially met by contingent fees, whereby attorneys agree to take civil rights cases without initial charges in return for a promise of a higher percentage of the damages, if the suit succeeds.<sup>15</sup> But such suits seldom do. The paucity of civil suits under the Civil Rights Acts suggests that contingent fees do not adequately meet this problem.



Another limitation inherent in civil suits is that they require defendants who are at least solvent enough to satisfy a judgment for damages. Under a recent Supreme Court decision,<sup>16</sup> a victim of illegal police violence may not recover damages under the civil statutes from municipalities or States that employ offending officers. Damages must be collected from the officers themselves. But many policemen are in no position to pay substantial money judgments.

Time is still another limitation in civil suits. The Federal courts' civil dockets are overcrowded.<sup>17</sup> As a result, it may take several years to bring a civil suit to trial. Criminal cases are treated more expeditiously, because the 6th amendment guarantees "speedy" trials to those accused of Federal crimes.

These limitations—the expense of civil suits, their dependence on the defendant's means, and the longer period involved in their litigation—militate against the use of civil remedies in cases of illegal violence by officials. In the main, those same considerations apply whether civil suits are brought under Federal or State statutes.<sup>18</sup>

Until recently, judicial interpretation of the civil statutes had restricted their application.<sup>19</sup> But in February 1961, the United States Supreme Court for the first time in many years focused its attention upon the most important of these civil statutes.<sup>20</sup> The Court carefully examined the provision in the light of the congressional debates and the various counterproposals that accompanied its passage into law. Then, with only one justice dissenting, the Court swept away an accumulation of lower court decisions that over the years had almost entirely emasculated that law.<sup>21</sup> Thus revitalized, section 1983 of title 42 of the United States Code now affords promise of a more potent guarantee of the right to be free from unnecessary violence at the hands of law enforcement officials.<sup>22</sup>

## THE STATUTES

### *The most promising remedy*

The most frequently invoked of the Federal civil statutes providing redress for police brutality is section 1983. That statute provides: <sup>23</sup>

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

Section 1983 offers the victim of police brutality two remedies. He may elect to sue for money damages (this right of action survives the death of the victim, thus allowing his heirs to bring suit for his wrongful death)<sup>24</sup> or he may request a court order that enjoins the defendant-officers from harming him in the future.<sup>25</sup> The first is an action at law, the second, a suit in equity. A victim may, in fact, pursue both remedies in the same action.

The language of this section is virtually identical with that of section 242 of the United States Criminal Code. The most obvious difference is that section 242 provides for fine and imprisonment rather than the civil sanctions of section 1983—damages and injunction.

The relationship of section 1983 to section 242 is shown in the case of a colored woman, who stopped her car for gasoline at Huntsville, Tex. She attempted to use the women's restroom at the filling station. The attendant immediately summoned the police, and a deputy sheriff, who responded to the call, allegedly struck the woman in the face for being "sassy." The deputy was reported to have knocked her to the ground and kicked her. The woman was arrested and fined \$20 for disturbing the peace. A civil action against the deputy under section 1983<sup>26</sup> was subsequently settled by agreement after the woman was paid \$800.<sup>27</sup>

On the basis of the allegations made in this section 1983 suit, the Civil Rights Division might have instituted a criminal proceeding against the deputy sheriff under section 242. Had either case gone to trial, the victim in her suit and the Government in its prosecution would have had to establish most of the same elements in order to succeed—an action committed under color of law<sup>28</sup> that deprived the plaintiff of a right defined by the Constitution.<sup>29</sup>

However, section 1983, unlike section 242, does not require proof of specific intent.<sup>30</sup> Before the Supreme Court's decision early this year in *Monroe v. Pape*, some courts attempted to apply that requirement to civil cases under section 1983.<sup>31</sup> The *Monroe* decision has laid all doubts to rest—at least with respect to section 1983 suits that allege a denial of due process of law:<sup>32</sup>

In the *Screws* case we dealt with a statute that imposed criminal penalties for acts "wilfully" done. We construed that word in its setting to mean the doing of an act with "a specific intent to deprive a person of a federal right." . . . We do not think that gloss should be placed on § 1979 [sec. 1983] which we have here. The word "wilfully" does not appear in § 1979 [sec. 1983]. Moreover, § 1979 [sec. 1983] provides a civil remedy, while in the *Screws* case we dealt with a criminal law challenged on the ground of vagueness. Section 1979 [sec. 1983] should be read against the background of tort liability that makes a man responsible for the natural consequences of his actions.

Proof of a denial of equal protection of the laws in police brutality cases under section 1983 appears to require some showing of purpose if not specific intent itself.<sup>33</sup> For this reason, plaintiffs—although they can bring such suits under either rationale—are more likely to pursue their cases as deprivations of due process rather than of equal protection.<sup>34</sup>

There has been some anxiety over the effect that widespread use of section 1983 might have on the delicate balance of Federal-State relations.<sup>35</sup> This concern was reiterated by the United States Court of Appeals for the Seventh Circuit not long after the *Monroe* decision:<sup>36</sup>

A broad interpretation of the Supreme Court's decision in *Monroe v. Pape* may well open the flood gates and bring into the federal trial courts thousands of assault and battery cases that should never be there. In metropolitan areas where many arrests are made daily, cases based upon this kind of claim may well completely jam what are already crowded trial calendars. Police officers, in making arrests, are often required to use force, and for their own safety, to make search of the persons whom they have arrested. Only a small degree of imagination is required for these prisoners to develop an ordinary arrest into a claim that an attempt was made to force confessions, or to invade other constitutional rights.

Nonetheless, the *Monroe* decision squarely holds that section 1983 gives a victim of police misconduct a remedy in Federal courts. Moreover, as the Supreme Court there declared:<sup>37</sup>

It is no answer that the State has a law which if enforced would give relief. The federal remedy is supplementary to the State and the state remedy need not be first sought and refused before the federal one is invoked.

The *Monroe* decision has already had its impact. In the same case in which the Seventh Circuit expressed concern over section 1983 cases, it reversed the dismissal of a police brutality case under that statute and ordered the lower court to try the case on its merits.<sup>38</sup> The Court of Appeals noted that prior to *Monroe* it would have upheld the dismissal. Then somewhat reluctantly, it ruled that since *Monroe* it saw "no alternative to reversing."<sup>39</sup>

But the *Monroe* decision contained another ruling—that a victim of police misconduct may not use this law to sue the governmental body employing the guilty officer.<sup>40</sup> The Court said that Congress, in enacting section 1983, never intended to make municipalities liable in civil actions under the statute.<sup>41</sup> Since policemen seldom are wealthy men, this ruling is likely to discourage suits in cases where the officers responsible for acts of brutality are without means.

## *An alternative civil remedy*

A companion statute to section 1983—section 1985(3)<sup>42</sup>—provides, in part, as follows:

If two or more persons in any State or Territory conspire . . . for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws, or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws . . . .

. . . if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

Section 1985(3) is just what it appears to be—an exceedingly complex statute. The statute, as the Supreme Court has pointed out, “falls into two divisions,” of which <sup>43</sup>—

The forepart defines conspiracies that may become the basis of liability, and the latter portion defines overt acts necessary to consummate the conspiracy as an actionable wrong.

With respect to police brutality, therefore, this statute applies only in cases where there is first a conspiracy of “two or more persons.” Second, those persons must intend by their conspiracy to deprive another (not necessarily the actual victim) of certain equal rights. These rights must either be “the equal protection of the laws,” which has been defined by the Federal courts,<sup>44</sup> or “equal privileges and immunities under the laws,” a term left largely unexplained by the courts. Finally, the victim must have suffered injury to his person (which would, of course, cover cases of police brutality), damage to his property, or the loss of one of the rights of Federal citizenship.<sup>45</sup>

Since section 1985(3) only applies to certain types of police brutality—namely, those that are the result of the sort of conspiracy just described—it follows that the applicability of this statute to police brutality is not as extensive as that of section 1983.<sup>46</sup> Moreover, while section 1983 does not explicitly mention conspiracies, there is judicial precedent for making conspirators to an overt act covered by the statute—and hence to police brutality—subject to civil liability.<sup>47</sup>

In addition, section 1983 offers definite advantages over section

1985(3). First of all, section 1983 is a surer remedy. The *Monroe* decision defined its scope and thus resolved lower Federal courts' conflicting interpretations. The reaches of section 1985(3) remain largely uncharted. Secondly, section 1983 provides a more complete remedy, since it allows the plaintiff both injunctive relief and money damages.<sup>48</sup> Thirdly, and most important, section 1983 affords a far simpler remedy. In a section 1983 police brutality suit all that need be established is that the defendant acted under color of law and that he committed an act which deprived the plaintiff of one of his rights under the 14th amendment.<sup>49</sup> Proof under section 1985(3) is more involved.<sup>50</sup> The plaintiff must first establish that there was a conspiracy. Then he must show the purpose of the conspiracy. Next, the plaintiff must establish that he suffered injury. Finally, the plaintiff must prove that the injury he incurred was caused by an act performed pursuant to the original conspiracy.

Despite these complexities it appears that attorneys frequently bring police brutality suits under both section 1985(3) and 1983.<sup>51</sup> There is only one reported case in which the plaintiff was successful under section 1985(3).<sup>52</sup> And in that case he also received a judgment under section 1983.

On its face, section 1985(3) makes no distinction between private and official acts. There is no mention of conduct under color of law. However, the Supreme Court has made it clear that some action under color of law is almost invariably required to give rise to a suit under the first clause directed against conspiracies "for the purpose of depriving" a person of "the equal protection of the laws, or of equal privileges and immunities under the law."<sup>53</sup> For while private individuals may *invade* or *violate* the 14th amendment rights of others, only State action can *deprive* persons of such rights.<sup>54</sup> From this the Court concluded that:<sup>55</sup>

Such private discrimination is not inequality before the law unless there is some manipulation of the law or its agencies to give sanction or sanctuary for doing so.

The Court merely hinted without deciding what sort of action, under the first clause of section 1985(3), might make private conspirators civilly liable to the victim. The "post Civil War Ku Klux Klan, against which this Act was fashioned," was cited as a possible example, and the Court then suggested that—<sup>56</sup>

It may well be that a conspiracy, so farflung and embracing such numbers, with a purpose to dominate and set at naught the "carpetbag" and "scalawag" governments of the day, was able effectively to deprive Negroes of their legal rights and to close all avenues of redress or vindication, in view of the then disparity of position, education and opportunity between them and those who made up the Ku Klux Klan.

In the absence of such an extreme situation, the first clause of section 1985(3) provides civil relief only against those acts of violence that are the result of a conspiracy by officials.<sup>57</sup>

The second clause of section 1985(3), however, appears to provide relief against purely private action. It is directed against conspiracies formed for "the purpose of preventing or hindering the constituted authorities of any State . . . from giving or securing to all persons . . . the equal protection of the laws." The scope of this provision has yet to be defined by the courts, and the proof problems are as difficult as with the first clause. If these are surmounted, however, the second clause would afford money damages to the victims of certain kinds of conspiratorial private racial violence.<sup>58</sup>

### *Other civil remedies*

Section 1985(3) is bolstered by section 1986,<sup>59</sup> which imposes civil liability upon anyone who has knowledge that a wrong mentioned in section 1985 is about to be committed, has the power to prevent that wrong, and yet "neglects or refuses" to do so. Thus the application of section 1986 depends first upon the commission of a wrong under section 1985(3).<sup>60</sup> There are few court decisions that explain section 1986. It appears, however, to apply only to Federal, State, or local officials, those preeminently possessing the "power to prevent or aid in preventing the commission" of the wrongs specified in 1985(3)—for instance, police officers who stand by passively with full knowledge, while others conspire to commit and do commit acts of unlawful violence.

There is one more provision—section 1977<sup>61</sup>—which simply declares that all citizens are equally entitled to certain rights. Those mentioned are merely more specific expressions of the right to the equal protection of the laws under the 14th amendment. The provision is noteworthy in that it refers to the rights of nonwhite citizens.<sup>62</sup> But it makes no mention of remedies. Not having been tested in any reported case, it may do no more than provide support for a section 1983 injunctive suit to require law enforcement officials to provide nonwhite citizens with "the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens."

## SUMMARY

These then are the Federal civil remedies for police brutality and private racial violence. Only one of these statutes—section 1983—can be said to be a potentially effective instrument for dealing with them.

Despite its potential advantages over the only effective criminal remedy, section 242 of the Criminal Code, section 1983 apparently has been overlooked or misunderstood by all but a few victims of police brutality. The recent *Monroe* case may make the statute more widely and accurately understood. At the same time, however, that decision points up a serious limitation—the fact that section 1983 does not reach beyond guilty officers to allow the collection of damages from their employers, the cities.





## 6. State and Local Remedies

The Commission is primarily concerned with the Federal remedies for violence discussed in the two preceding chapters. But these remedies are neither the most important nor the most effective measures for dealing with police brutality and "private" violence. The prime responsibility to punish and prevent such abuses rests with State and local governments. This chapter is a brief review of the remedies available to these governments.

### LEGAL REMEDIES

The States, like the Federal Government, have criminal and civil remedies for unlawful violence. They may be used to punish and deter police brutality or police connivance in private violence. Civil suits offer the additional possibility that the victims of violence (or their heirs) will be compensated for their injuries. Each approach has its own advantages and disadvantages, largely parallel to those of the comparable Federal remedies.<sup>1</sup> State actions, however, have an inherent advantage. While suits under the Federal Civil Rights Acts require proof that the unlawful violence was intended to invade Federal constitutional rights, in the usual State court suit it is necessary to prove only that the policeman was liable for the violence according to more easily satisfied common law rules of criminal or civil liability.

#### *Prosecutors and criminal actions*

When a policeman uses unnecessary force or connives in private violence, he is subject to the same criminal penalties as an ordinary citizen—ranging from jail or fines for simple assault and battery up to the death penalty for first-degree murder.<sup>2</sup> Of all available remedies for police misconduct, State criminal actions may have the most powerful deterrent effect. The penalties may be heavy (unlike those of the Federal

statute, which are limited to a year's imprisonment or a \$1,000 fine),<sup>3</sup> and they do not, like damages in a civil suit,<sup>4</sup> depend on the financial condition of the officer. The expense of investigating and prosecuting falls on the State, not on the private victims (or their heirs) as with civil suits. State prosecutions of police misconduct, moreover, usually are not hindered by the necessity for showing the "specific intent," which the principal criminal Federal Civil Rights Act<sup>5</sup> requires for conviction. Nor does a local prosecutor who brings charges against a policeman run the risk of jury resentment of Federal interference with "States' rights."<sup>6</sup>

Criminal prosecutions under State law would thus appear to be a potentially powerful weapon for dealing with police brutality and police-connected violence, but they are seldom utilized.<sup>7</sup> One reason for this may be that the machinery of criminal prosecution is not self-starting. As was pointed out in an earlier chapter,<sup>8</sup> the person charged with the duty of investigating alleged police brutality may well be the very person alleged to have committed it. This situation is difficult even where some other officer has authority to investigate the charges, for here one officer must perform an investigation which could result in a prison sentence for his fellow officer. Similar difficulties arise out of the relationship between policemen and prosecutors. Prosecutors' offices are theoretically separate from police departments, but, in reality, each needs the full cooperation of the other and they usually work closely together.<sup>9</sup>

The attorney general of a State, being less dependent on local policemen than a local prosecutor, is in a position to discourage police brutality through a variety of methods. For example, he might convince local prosecutors to utilize criminal sanctions against erring policemen despite their close relationship or, failing that, might himself institute criminal action. He might in addition, support other programs—such as new laws or stricter departmental discipline—designed to inhibit all forms of police illegality including brutality. The Commission is not aware of many concerted programs of this nature. It is significant, however, that the attorneys general of at least six States (California, Massachusetts, New York, Pennsylvania, Oregon, and Wisconsin) have set up separate sections in their offices to deal with civil rights and civil liberties problems.<sup>10</sup>

### *Civil suits by private citizens*

Unlawful violence is not only a criminal act, but also a tort, or civil wrong, for which the victim may sue for damages. In State courts private lawsuits against police officers for assault and battery or for wrongful death<sup>11</sup> are apparently more frequent than criminal prosecutions;<sup>12</sup> although comparatively few cases of either type are brought before the courts. The major advantages of civil suits are that the injured

person himself may initiate the action; that it may result in direct compensation to the injured person; and that the plaintiff must prove his case only by a preponderance of the evidence, rather than beyond a reasonable doubt as is required in criminal prosecutions.

Damage suits in State courts, however, also have disadvantages, similar to those of civil suits under the Federal Civil Rights Act.<sup>13</sup> The initiative and the financial burden of what may be protracted litigation lie on private persons who are likely to be poor. In such suits, as in all judicial proceedings regarding police brutality whether State or Federal, criminal or civil, there is the problem of persuading a jury to decide in favor of victims who may lack credibility in the eyes of jurors.<sup>14</sup> And even where these hurdles are crossed and the victim secures an award of monetary compensation, the defendant often does not have sufficient funds to satisfy the judgment.<sup>15</sup>

Nonetheless, there appear to be more successful civil actions for police brutality in State courts than in Federal courts. A comprehensive survey by the Commission failed to uncover a single successful Federal civil suit against police officers for brutality during a recent 2-year period.<sup>16</sup> A brief survey limited to *reported* State civil cases of assault and battery against police officers during a comparable 2-year period found 6 successful suits;<sup>17</sup> during the 5½ years from January 1, 1956, through May 31, 1961, 11 successful State suits were reported.<sup>18</sup> Awards of damages ranged from \$500 to \$75,000. Since many cases in State courts do not appear in law reports, these figures probably represent only a portion of a much larger total.

Civil suits based on police brutality complaints might be more numerous but for the doctrine of sovereign immunity. Because of this 17th-century concept, now the rule in most States, governments cannot be sued without their consent for the wrongful acts of their agents or employees.<sup>19</sup> Apparently, only one State, New York, has given its consent by a broadly phrased statute to be sued according to the same rules that apply to private employers.<sup>20</sup> When New York policemen use unnecessary violence in the performance of their duties, therefore, injured parties may bring a civil suit for damages against the State or municipality<sup>21</sup> as well as against its employee, the officer. The statute makes the governmental employer liable for the wrongful acts of its agents—the policemen;<sup>22</sup> for their failure to act when they should have provided protection from violence;<sup>23</sup> and for the employer's negligence in the retention of unfit employees, such as an alcoholic officer.<sup>24</sup> In recent years there have been a number of successful suits in New York for acts of police brutality.<sup>25</sup>

In two States the doctrine has been limited by judicial decision. The Supreme Court of Florida in 1957 repudiated its application to law officers.<sup>26</sup> The case concerned a claim that the jailer of the town of Coca Beach was negligent in locking the victim in an unattended

cell overnight; smoke had seeped into the cell and suffocated him. In repudiating the doctrine, the court explained, "We can see no necessity for insisting on legislative action in a matter which the courts themselves originated." <sup>27</sup> Moreover <sup>28</sup>—

The immunity theory has been . . . supported with the idea that it is better for an individual to suffer a grievous wrong than to impose liability on the people vicariously through their government. If there is anything more than a sham to our constitutional guarantee that the courts shall always be open to redress wrongs and to our sense of justice that there shall be a remedy for every wrong committed, then certainly this basis for the rule cannot be supported.

In 1959 the Supreme Court of Illinois abrogated the doctrine of sovereign immunity and held a school district liable for the negligence of a schoolbus driver.<sup>29</sup> A later case involving police brutality strongly suggests that Illinois municipalities might also be liable for their negligence in the selection of people unfit for police duty and for failure to provide proper training for police officers.<sup>30</sup> It appears, however, that the sovereign immunity in this area of other States remains virtually intact.<sup>31</sup>

## DISCIPLINE BY POLICE DEPARTMENTS

Court action of a criminal or civil nature is not the only method of dealing with unlawful police violence. The most direct controls are found within the organization of State and local police agencies. Police chiefs, being the commanders of these highly disciplined organizations, are in a position to exercise control on their men and to discourage directly police brutality and connivance in private violence. Perhaps the single most potent weapon against unlawful police activity is a police commander who will not tolerate it. The converse is also true: where police leaders assume a permissive attitude toward violence by their men, they are often licensing brutality.

Many large city police departments have set up administrative machinery to deal with complaints against officers. Superintendent Orlando Wilson, who assumed command of the Chicago Police Department in early 1960, instituted an elaborate system for the handling of disciplinary problems,<sup>32</sup> many of which arise from complaints made by citizens. All complaints are now promptly reported to a division of internal inspection which conducts speedy and impartial investigations followed by recommendations for departmental action. As is the case

in most departments, only the superintendent can actually impose disciplinary action; his powers range from a simple reprimand to suspension from duty without pay for 29 days.<sup>83</sup>

It appears, however, that the major reason for the successful operation of Chicago's system lies not in the fine points of organization, but rather in the determination of a strong, capable leader that it *would* work—that police illegalities, including brutality, would be discouraged. Wilson never issued a directive expressly dealing with unnecessary violence. His demands for an honest and professional police force and his willingness to impose punishment on offending officers made the message quite clear: brutality, like bribery, is not for professional policemen. Complaints of police brutality declined drastically in the months that followed Wilson's appointment. On July 29, 1960, a civil liberties organization official wrote the Commission praising Wilson's administration and stating that "excepting for one alleged beating, we have been unable to find any source that has even heard of a case of police brutality since Wilson's employment."<sup>84</sup> A subsequent Commission field investigation in 1961 confirmed this evaluation, although complaints of brutality were made in the interim.<sup>85</sup>

The complaint machinery of other police departments has been subjected to criticism. At the Detroit hearing it was charged that "investigation of police brutality complaints by the police department, itself, is an inherently wrong procedure."<sup>86</sup> Willis Ward, former assistant county prosecutor, also maintained that the trial board of the Detroit Police Department did not deter police brutality, for "these . . . hearings appear to be slanted to prove to the public that the officer is right and the citizen is wrong."<sup>87</sup> In 1957 Philadelphia City Councilman Henry W. Sawyer III described the police board of inquiry in that city as "a farce when it comes to hearing civilian cases."<sup>88</sup> He continued, "When five policemen hear a complaint against another policeman, the policeman is always right."<sup>89</sup> Such criticism led to an experiment—the Philadelphia Police Advisory Board.

## INDEPENDENT POLICE ADVISORY BOARDS

The Philadelphia Police Advisory Board was established by Mayor Richardson Dilworth on October 1, 1958. Composed of distinguished private citizens and independent of the police department, it hears complaints from citizens against policemen and makes nonbinding recommendations to the police commissioner, who alone can impose punishment. This is apparently the first such agency created in this country.

The board operates in the following manner.<sup>40</sup> Citizens may send complaints directly to the executive director. (The police department board of inquiry is still in operation, but citizens with complaints now frequently bypass it.) When the director decides to hold a hearing, he notifies the police commissioner who orders an investigation by local commanders and also orders the officers charged to appear. Results of the police investigation are sent to the advisory board and the complainant, policemen, and witnesses on both sides are then brought before the board. Counsel are allowed to be present and to cross-examine witnesses—privileges not always granted by departmental trial boards.<sup>41</sup> After the hearing the board files its written opinion which includes: (1) its factual conclusions; (2) recommendations for specific punishment (if it concludes that the officers were wrong); and, in certain cases, (3) a recommendation of procedures to be used by other officers in like situations. In almost every case the police commissioner has imposed the punishment recommended by the board.<sup>42</sup>

Since there are no adequate statistics, it cannot be said with certainty that the incidence of police brutality has diminished since the board commenced operation. Indeed, as the board has become more widely known, the number of complaints to it has increased.<sup>43</sup> But in the words of Philadelphia Police Commissioner Albert Brown, "the men feel that you can get in trouble with this board."<sup>44</sup> For the first time in the memory of local people familiar with civil liberties problems, the relatively small number of policemen inclined toward brutality are being subjected to suspensions and other departmental discipline. The general consensus is that the Philadelphia Police Advisory Board has met with some success.<sup>45</sup> Demands are now being made in other cities that similar boards be established.<sup>46</sup> It is known that police advisory boards have now been set up in Minneapolis, Los Angeles, and York, Pa.

## SELECTION AND TRAINING

### *Selection of recruits*

The ultimate factor in any study of police misconduct must be in the individual policeman. The manner of his selection and of his training are crucial factors. When a police department fails to screen out the strongly prejudiced, the emotionally unstable, or the unintelligent, it is inviting official misconduct. The cases discussed in chapter 2 demonstrate that in at least some cases men of questionable character and psychological makeup are given the gun and club of a law officer. They also show that violent prejudice may lead policemen to unnecessary violence against

Negroes;<sup>47</sup> that much brutality occurs during the tense moments of arrest, when the officers' emotional stability is severely tested;<sup>48</sup> and that an intelligent policeman can exercise control over a tense situation so as to prevent violence from erupting.<sup>49</sup> Cases involving police violence have reached State courts where it was alleged that the officer involved had a known record of previous assaults (California, 1943);<sup>50</sup> was known to be an alcoholic (New York, 1947);<sup>51</sup> was known to be insane (Tennessee, 1948);<sup>52</sup> had been involved in numerous street brawls and had a prior criminal record including a conviction for grand larceny (Illinois, 1959);<sup>53</sup> or was a convicted murderer (Mississippi, 1958 and 1961).<sup>54</sup>

Many police departments have raised their selection standards recently in an effort to screen out men of bad moral character or of low intelligence. However, rejection of candidates because of emotional instability or violent prejudice appears to be a rare occurrence.<sup>55</sup> This may, in the past, have been due to the difficulty of isolating such characteristics, but tests have now been developed which predict with some degree of accuracy the psychological traits required for effectiveness in certain occupations, including those involving situations of stress.<sup>56</sup> There is a growing interest among police officials in the development of such a test for police candidates. In 1958 a New York City police leader declared: <sup>57</sup>

The field of psychology has many important contributions to make to Police Science, including the application of psychological testing to police selection procedures.

The New York City Police Department is currently sponsoring a comprehensive 4-year research program which is aimed at developing tests to identify the right personality types for police work and at establishing training programs which will further the establishment of professional standards for the police force. Prejudice and emotional stability are both under study.<sup>58</sup>

Programs of this sort, if successful, may eliminate many instances of police brutality at the source—by screening out those applicants most prone to commit brutality. It must be remembered, however, that no matter how good the selection program, a low pay scale will hinder the recruiting of men of high caliber.<sup>59</sup>

### *Training*

Training programs fall into two categories: those teaching modern methods of detection and control and those dealing with human relations. (It should be noted that many police departments, particularly those in smaller cities, have no training programs as such.)

*Scientific police techniques.*—A policeman trained in crime detection and proof may have less motivation for brutality than his less sophisti-

cated counterpart. Such training seems to have particular application to the third degree and coercion of confessions. As FBI Director J. Edgar Hoover has pointed out, when a suspect denies charges of criminal conduct "the ill-trained officer might think [that] . . . a severe beating will force a confession. But the trained officer, schooled in the latest techniques of crime detection, will think otherwise—he will go to work locating a latent fingerprint, a heelprint in the mud, or a toolmark on the safe." <sup>60</sup>

*Human relations and "private" violence.*—Courses in human relations appeared in police training long after training in crime detection was well established. Police training programs of this type embody ideas ranging from simple courtesy to social psychiatry, race relations, the status of minority groups, and civil rights.<sup>61</sup> These programs gained much impetus from the race riots of the early 1940's, and are well established in many big city departments including Detroit, New York City, Los Angeles, Chicago, Philadelphia, and Dallas. They are indicative of the change that is taking place in the attitude of enlightened police officers toward the role of the policeman. Former New York City Police Commissioner Stephen P. Kennedy expressed the change in this way: <sup>62</sup>

We cannot continue to be satisfied with a trade school approach to police training. The police officer must be instructed in human relations, civil rights, constitutional guarantees. In short, he has to be prepared to assume his role as a social scientist in the community.

This goal is far from realized, but that it is seriously proposed is an encouraging sign. Many training courses stress the need for the subordination of personal prejudices to the overriding duties of law enforcement. "An officer of the law . . . stands as a symbol of the impartial authority of society," states a manual prepared by the Dallas Police Department on the subject of racial eruptions.<sup>63</sup> These training policies may have their greatest impact on the impartial handling of race riots and on the prevention of police complicity in private violence.<sup>64</sup> They may also have some deterrent effect on police violence involving minority group members in other situations.<sup>65</sup>

## LEADERSHIP

Beyond these specific State and local remedies for police brutality and police involvement in private violence, lies the intangible quality of



leadership—not a “remedy” in the strict sense, but one of the most important factors in the prevention of unlawful violence. Formal procedures used to cope with the problem are not likely to be effective unless responsible governmental officials and community leaders are determined that they *will* be effective. The Commission has observed that leadership apparently has had an impact on violence in a number of situations. Two of these have already been discussed: the “private” violence in Alabama, a negative example,<sup>66</sup> and police brutality in Chicago, a positive one.<sup>67</sup>

The leadership of Atlanta’s Mayor William B. Hartsfield and Police Chief Herbert Jenkins have apparently had a deterrent effect on both police brutality and “private” violence. Last year Chief Jenkins told his men that regardless of personal feelings, they “must uphold the law” in matters of race relations.<sup>68</sup> An official of a civil liberties organization recently commented on the Atlanta Police Department: “All members of the force take more pride in doing their job as a policeman than thinking about whether they are a segregationist or an integrationist.”<sup>69</sup> The conduct of Atlanta policemen in dealing with tense racial situations arising out of sit-ins, as well as their cautious use of force, has received the praise of white and Negro citizens alike.<sup>70</sup> When four Atlanta schools were desegregated on August 30, 1961, the pattern was the same. Mayor Hartsfield, supported by civic and community leaders at all levels, counseled against violence. Chief Jenkins and his men took every precaution to prevent trouble before it started. Their objective was achieved.<sup>71</sup> President Kennedy opened his news conference on August 30 by congratulating Governor Vandiver, Mayor Hartsfield, Chief Jenkins, School Superintendent Letson, and all of the citizens of Atlanta “for the responsible, law-abiding manner in which four high schools were desegregated today.”<sup>72</sup>

Little Rock, Ark., provides an example of both the positive and the negative effects of leadership on private violence. Mob violence erupted when a school desegregation plan was being implemented in 1957. State and local policemen did not prevent the violence, and Federal troops were sent there to guard Central High School. The U.S. Supreme Court placed the blame on the State Governor and the legislators who had called for resistance to desegregation. The conditions in Little Rock, the Court stated in 1958 <sup>73</sup>—

. . . are directly traceable to the actions legislative and executive officials of the State of Arkansas, taken in their official capacities, which reflect their own determination to resist this Court’s decision in the *Brown* case and which have brought about violent resistance to that decision in Arkansas.

Between 1957 and 1959 community leaders took energetic steps to revamp the city government and the police department, and made pub-

lic statements discouraging violence and resistance to law. A mob which appeared during a 1959 desegregation attempt was quickly dispersed by the men of the "new" Little Rock Police Department under the command of the new police chief, Eugene Smith. One observer said later: <sup>74</sup>

. . . everyone in Little Rock seems to agree that, in the end, it was the economic and business leaders of the community who played the leading part, helped by many civic and religious leaders. It was a determined consensus of Little Rock "power structure" opinion that brought about the change.

The experience of New Orleans bears certain similarities to that of Little Rock. When desegregation was attempted in 1960, there were violent reactions. But in 1961 there was peaceful compliance. School Board President Louis G. Riecke expressed his opinion regarding the difference in these words: <sup>75</sup>

I don't think there is any question why the difference. The Governor and the legislature at this time last year were assuring the people there was no need to integrate the schools.

## SUMMARY

State and local remedies for violence are more important than the Federal ones presently available. State criminal prosecutions and civil suits are not affected by the legal difficulties surrounding Federal suits, and State criminal penalties for unlawful violence are more severe than those specified in Federal laws. Moreover, in all cases of unlawful violence studied by this Commission, the officers involved were State or local policemen who were, therefore, within the immediate sweep of the disciplinary powers of State and local authorities. Effective selection standards for police recruits, training programs, and punishment of officers by their police department may also prevent violent denials of equal protection of the laws. But the full potential of State and local remedies as deterrents to official violence is still a long way from being realized.

## 7. Jury Exclusion

Racial discrimination in the administration of justice finds expression in practices other than police brutality and connivance in violence. Where official policy denies participation in the instrumentalities of justice to one class of citizens because of race, color, or national origin, there is also a denial of the equal protection of the laws.<sup>1</sup> This "white-collar" discrimination is more elusive than unlawful official violence. But in some communities the results may be that a whole class of citizens is denied participation in the agencies of justice.

This report deals with only one of the many instrumentalities of justice<sup>2</sup>—juries. The jury is perhaps the most important instrument of justice. For jury service is the only avenue of direct participation in the administration of justice open to the ordinary citizen. Moreover, the function of the jury can be a solemn one. It is the jury, not the judge, who must pronounce a man "guilty" or "not guilty"—an awesome responsibility.

The exclusion of persons from juries by reason of race has been a Federal crime since 1875,<sup>3</sup> and for 80 years the Supreme Court has held it to be a denial of the equal protection of the laws.<sup>4</sup> Such exclusion violates the right of the accused, who is entitled to trial by a jury selected without regard to race,<sup>5</sup> and it also violates the right of members of the excluded racial group to sit on juries.<sup>6</sup> So clear is this rule that in its most recent decision on the subject, the Supreme Court merely cited prior cases and reversed a conviction without discussion.<sup>7</sup>

### "FAMILIARITY" AND "CONCERN"

In 1959 the United States Court of Appeals for the 5th Circuit said: <sup>8</sup>

. . . we have long known that there are counties not only in Mississippi but in the writer's own home state of Alabama, in which Negroes constitute the majority of the residents but take no part

in government either as voters or as jurors. Familiarity with such a condition thus prevents shock, but it all the more increases our concern over its existence.

The Court's concern is well-founded. For the problem of racial exclusion from jury service is relatively widespread and, in certain areas, deeply entrenched. The serious and continuing nature of the problem is revealed by the frequency of cases in which the issue of jury exclusion is raised and by local situations which the facts in those cases disclosed; by the plain statements of judges and official observers; and by various field studies conducted by the Commission's staff.

The circumstances underlying the most recent Supreme Court decision<sup>9</sup> are in point. In 1959 an all-white grand jury indicted Rev. Lewis L. Anderson, a Negro of Selma, Dallas County, Alabama, for second degree murder. According to the State,<sup>10</sup> on January 20, 1959, Rev. Anderson was driving his car at between 60 and 70 miles per hour along an unpaved street in a well populated section of Selma. He collided with a car that had stopped at an intersection; his car then careened down the street, struck and killed a pedestrian, "hit a tree, bounced 4 feet in the air and turned over."<sup>11</sup> According to the defense Rev. Anderson was driving at only 15 miles an hour when he collided with the other car; the impact knocked Rev. Anderson unconscious while his foot was pressed against the accelerator, thus causing his car to speed out of control.<sup>12</sup>

Because of his leadership in encouraging Negroes to vote, white citizens of Selma, according to information received by the Commission, regarded Rev. Anderson as a "trouble maker."<sup>13</sup> An all-white petit jury convicted him of first degree manslaughter, and the State judge sentenced him to 10 years' imprisonment.<sup>14</sup>

Rev. Anderson made appropriate motions during the proceedings, charging that members of his race were systematically excluded from grand and petit juries in Dallas County, and that such exclusion violated his constitutional rights.<sup>15</sup> The trial court heard the evidence and denied the motions.

Both sides agreed<sup>16</sup>—

. . . that the 1950 Federal census showed 6,940 white males and 7,956 colored males over the age of twenty-one years in Dallas County.

But the other evidence was conflicting. On behalf of Rev. Anderson, the circuit solicitor testified that no Negroes had served on a grand jury in Dallas County for 5 years.<sup>17</sup> The secretary to the jury commissioners stated that none had served on the grand jury for 3 years.<sup>18</sup> Negro citizens testified that neither they nor, to their knowledge, any Negroes they knew had ever served on any juries.<sup>19</sup>

The State, on the other hand, attempted to show that its valid requirements for jurors disqualified a high proportion of Negroes. The Sheriff of Dallas County and the Chief of Police of Selma stated that a much higher proportion of colored than white persons were involved in crimes that disqualified citizens from jury duty.<sup>20</sup> The State also introduced evidence that more Negroes than whites asked to be excused from jury duty.<sup>21</sup> One of the State's witnesses testified that a Negro had served on a grand jury 5 years earlier.<sup>22</sup>

The Court of Appeals of Alabama held that Rev. Anderson had not succeeded in proving his claim of discrimination.<sup>23</sup> The Supreme Court of Alabama then upheld the Court of Appeals with no discussion of the evidence.<sup>24</sup> The United States Supreme Court found it equally unnecessary to discuss the evidence and reversed the State courts, apparently because the State failed to refute the defendant's proof that Negroes had been systematically excluded from jury service.<sup>25</sup>

Negroes are not the only minority excluded from juries. In 1959 the Colorado Supreme Court cited the following undisputed facts as *prima facie* evidence of unconstitutional discrimination: Logan County, Colorado had a total population of somewhat more than 17,000, of whom 719 (4.2 percent) had Spanish-sounding surnames.<sup>26</sup> During an 8-year period not one of the 719 persons had served on a grand or petit jury;<sup>27</sup> from 1955 through 1957 not one Spanish-sounding surname appeared among the 5,400 names on the "gross jury lists,"<sup>28</sup> and in 1958 a similar list of 1,600 names contained only 2 persons with such surnames (neither of whom served).<sup>29</sup> The State attempted to rebut this evidence by verbal denials of deliberate racial discrimination by jury officials, but the Court reversed the conviction of the Spanish-American defendant.<sup>30</sup>

A question of the exclusion of persons of Puerto Rican ancestry from juries in New York City has recently been raised in the appeal of a murder conviction. In affirming that conviction, the New York Court of Appeals rejected the claim as not supported by the evidence.<sup>31</sup> The attorney for one of the defendants is currently preparing a petition for certiorari to the United States Supreme Court, on the grounds of jury exclusion.<sup>32</sup>

A more striking example of racial exclusion occurred when Robert Lee Goldsby, a Negro, was indicted by an all-white grand jury in Carroll County, Miss., for a murder that occurred on September 4, 1954.<sup>33</sup> An all-white petit jury later convicted him, and he was sentenced to die.<sup>34</sup> After a series of appeals and petitions for habeas corpus,<sup>35</sup> Goldsby finally obtained a reversal of his conviction in 1959 when the United States Court of Appeals for the 5th Circuit found that he had established "a strong *prima facie* case that Negroes were systematically excluded from the grand jury and from the petit jury,"<sup>36</sup> which the State had not refuted. The evidence revealed that in 1950 more than 57 percent of

the 15,448 persons residing in Carroll County were Negroes.<sup>37</sup> Of this number there were 1,949 nonwhite males over 21, who thus met the qualifications of age and sex for jury service.<sup>38</sup> Yet, as the Court noted: <sup>39</sup>

*. . . none of the officials called as witnesses—the Circuit Clerk, the Chancery Clerk, the Sheriff, the ex-Sheriff who had served for twenty years, the District Attorney, or the Circuit Judge—could remember any instance of a Negro having been on a jury list of any kind in Carroll County.*

This situation was apparently due to the failure of Negroes to meet a third qualification for jury service in Mississippi—the necessity of being a registered voter.<sup>40</sup> The Court noted that: “The only Negroes ever proved registered as electors [and thus even eligible for jury service] in Carroll County were two who had died before 1954.”<sup>41</sup>

Even more recently the conviction of a Negro in Pulaski County, Arkansas, was reversed because of the systematic exclusion of Negroes from jury lists.<sup>42</sup> But the number of cases is not an accurate index of the problem's prevalence, since in many areas where racial exclusion of jurors persists the issue is not raised. The Court in the *Goldsby* case said: <sup>43</sup>

*As Judges of a Circuit comprising six states of the deep South, we think that it is our duty to take judicial notice that lawyers residing in many southern jurisdictions rarely, almost to the point of never, raise the issue of systematic exclusion of Negroes from juries.*

And the Court suggested two reasons why: First <sup>44</sup>—

Conscientious southern lawyers often reason that the prejudicial effects on their client of raising the issue far outweigh any practical protection in the particular case.

And second <sup>45</sup>—

Such courageous and unselfish lawyers as find it essential for their clients' protection to fight against the systematic exclusion of Negroes from juries sometimes do so at the risk of personal sacrifice which may extend to loss of practice and social ostracism.

There are other significant indications of the widespread existence of discriminatory exclusion. The Commission's Black Belt study of 21 southern counties (similar to Dallas County, Ala., and Carroll County, Miss., in that they have a high proportion of Negro residents, only a very few of whom are registered voters) reveals that Negroes never have served on grand or trial juries in 11 of those counties.<sup>46</sup>

A more subtle form of jury exclusion was found in the Jefferson County Circuit Court in Birmingham, Ala.,<sup>47</sup> where Negroes comprise approximately 40 percent of the city's population.<sup>48</sup> A Jury Commission selects prospective jurors from male residents, who are required to be available for one week of jury service. From this group, panels of 24 members are provided for each trial. The Commission's staff interviewed nine attorneys of both races in that city during March 1961. All agreed that, although some Negroes may be called for jury service, no more than 3, and usually less, are summoned into the courtroom as members of a 24-man panel. It is relatively easy to strike the Negroes from the panel, and this is regularly done.<sup>49</sup> A prominent colored resident complained that Negroes who are called for jury service usually spend the entire week in the juror's lounge without setting foot inside a court.<sup>50</sup>

Somewhat the same situation appears to exist in Mississippi. On August 23, 1961, the New York Times reported that the issue of exclusion of Negroes from juries was raised in "the first Freedom Rider appeal trial" in the Hinds County Court in Jackson on August 22.<sup>51</sup> According to the article, former District Attorney Julian Alexander<sup>52</sup>—

. . . testified that both sides in a case usually agreed to reject Negroes without being charged with a challenge.

The article concluded: <sup>53</sup>

In cases such as the Thomas trial, each side may reject six prospective jurors without cause.

District Attorney William Waller and other lawyers testified they knew of no criminal trials with Negroes on the jury.

A similar staff survey conducted in January 1961 in Baltimore, Md.,<sup>54</sup> revealed a different problem. The United States Supreme Court has made it plain that consideration of race in jury selection is unconstitutional.<sup>55</sup> Baltimore, anxious to assure equal jury representation, keeps separate cards for white and colored prospective petit jurors for the city's Criminal Courts.<sup>56</sup> Every month the cards in each group are proportionately assigned to that month's juries. The Jury Commissioner's desire for fair representation is clearly well-intentioned, but this method of insuring proportional representation is in violation of the 14th amendment.<sup>57</sup>

The methods of selection of Federal and city grand juries in the Baltimore area presents some interesting contrasts. The Clerk of the United States District Court for the District of Maryland obtains the names of prospective jurors from sponsoring organizations and officials throughout the State. After about 400 persons have been qualified to serve, their names are placed in a box. The 23-man

grand jury is selected from the first 35 or 40 names drawn, and petit juries are picked from the remaining names in the box. Each year four Federal grand juries are chosen in this manner. The Clerk of the Court stated that even though selection is purely a matter of chance, there are always Negroes on the grand jury and that "as many as six or seven have served at one time."<sup>58</sup>

On the other hand, seldom do more than one or two colored persons serve on a city grand jury at one time. This is true despite the fact that Negroes constitute almost 35 percent of the city's population,<sup>59</sup> and even though the judges of the Supreme Bench of Baltimore City make the selection of grand jurors for the city's courts. Three times each year the judges, sitting in conference, nominate and discuss the qualifications of prospective grand jurors until 23 suitable persons have been selected. To obtain qualified Negro grand jurors, the judges have asked prominent colored persons to submit the names of likely members of their race. Some of the judges have stated that it is difficult, even with these sources, to persuade qualified Negroes to serve for several hours daily over a 4-month period.<sup>60</sup> In the opinion of at least two of the colored leaders who have been contacted by the judges, there are competent and willing Negroes in sufficient numbers to increase their present representation on grand juries.<sup>61</sup> This appears to be a case of token representation. One jury official recalled that over the past 10 years there had been approximately 30 grand juries; 2 have had no Negro members; 2 have had 3 Negro jurors; and the remainder contained either 1 or 2.<sup>62</sup>

Congress recognized the problem of discriminatory jury selection in the 1957 Civil Rights Act. Section 152 of that Act repealed a provision which had disqualified persons incompetent for jury service under State law from serving on Federal juries.<sup>63</sup> The purpose of this section as described by Senator Church, its sponsor, is:<sup>64</sup>

. . . to eliminate whatever basis there may be for the charge that the efficacy of trial by jury in the Federal courts is weakened by the fact that, in some areas, colored citizens, because of the operation of State laws, are prevented from serving as jurors. . . . There is no reason why Congress should not modify Federal law so as to safeguard against discrimination on the basis of race, color, or creed, in the selection of jurors who are to serve in Federal courts.

This change freed the Federal courts from indirect racial discrimination in jury selection (as in Mississippi where jurors must be voters, but Negroes are kept from voting polls).<sup>65</sup> It also, incidentally, allowed women to serve on Federal juries in States which permit only male jurors.<sup>66</sup>

In spite of this legislation, it appears that some Federal officials still use State jury lists for obtaining names of prospective jurors.<sup>67</sup> In 1960



the Judicial Conference of the United States renewed a long-standing recommendation that the practice stop, noting that many State lists may be constitutionally suspect.<sup>68</sup> (It cited Supreme Court decisions overturning Texas,<sup>69</sup> Georgia,<sup>70</sup> and Mississippi<sup>71</sup> convictions because of the systematic exclusion of Negroes from juries.)

## THE LAW OF JURY EXCLUSION

In 1875 Congress enacted a law prohibiting jury exclusion by reason of race.<sup>72</sup> It stands today with but minor changes, as section 243 of the United States Criminal Code:

No citizen possessing all other qualifications which are or may be prescribed by law shall be disqualified for service as grand or petit juror in any court of the United States, or of any State on account of race, color, or previous condition of servitude; and whoever, being an officer or other person charged with any duty in the selection or summoning of jurors, excludes or fails to summon any citizen for such cause, shall be fined not more than \$5,000.

Five years later in 1880, the Supreme Court decided two important cases involving exclusion of jurors by reason of race. In *Strauder v. West Virginia*,<sup>73</sup> the Court struck down a State statute that excluded Negroes from jury service as a violation of the equal protection clause of the 14th amendment. In *Ex parte Virginia*,<sup>74</sup> a criminal proceeding against a Virginia State judge who had engaged in discriminatory jury-selection practices, the Court upheld the constitutionality of the Federal jury exclusion statute quoted above. In this case, unlike *Strauder*, it was not a statute explicitly excluding Negroes that was struck down, but a discriminatory practice under a statute valid on its face. The following year, in *Neal v. Delaware*,<sup>75</sup> the Court overturned an indictment and conviction of a Negro for rape because Negroes had been excluded from both grand and petit juries. The Court also ruled that such exclusion of jurors by reason of race does not afford grounds for removing criminal cases from the State courts and conferring jurisdiction over them upon the Federal courts. The remedy lies rather in "the revisory power of the higher courts of the State, and ultimately in the power of review of the United States Supreme Court."<sup>76</sup> This rule was reaffirmed by the Court in *Gibson v. Mississippi*, decided in 1896.<sup>77</sup>

In all subsequent cases, the Supreme Court has dealt with administrative practices rather than State laws, causing exclusion of Negroes from juries. The Court made it clear in 1900 that it was as much a

denial of equal protection to bar racial groups from grand juries as from petit juries.<sup>78</sup> For more than 30 years thereafter interest in the jury exclusion question seemed to subside.

Then in 1935 in *Norris v. Alabama*<sup>79</sup> (the *Scottsboro* case), the Supreme Court announced the "rule of exclusion," which spelled out the pattern of proof required to establish a *prima facie* case of racial exclusion.<sup>80</sup> The accused must prove that within the community members of his race (1) constitute a substantial segment of the population, (2) meet the qualifications for jury service, and (3) have not been summoned to serve over an extended period.

The *Scottsboro* case had dominated the news for months. After the Supreme Court reversed the *Scottsboro* convictions, a wave of new cases came up for review. In these cases the Court held that when charged with discriminatory exclusion, jury officials could not claim ignorance of the existence of qualified minority group members;<sup>81</sup> that proportional representation of Negroes is not required,<sup>82</sup> and, indeed, if deliberate, is a denial of the equal protection of the laws;<sup>83</sup> that the right involved is not a right to have members of a particular race actually represented on a particular jury, but only a right not to have them excluded from the possibility of being represented on the jury;<sup>84</sup> that other racial minorities than Negroes (*e.g.*, Mexican-Americans),<sup>85</sup> may be the victims of constitutionally prohibited jury exclusion; and that, in fact <sup>86</sup>—

. . . the exclusion of a class of persons from jury service on grounds other than race or color may also deprive a defendant who is a member of that class of the constitutional guarantee of equal protection of the laws.

The Court here referred to economic classes.<sup>87</sup>

This then is the law of jury exclusion. Behind this body of law are two constitutional theories, both deriving from the equal protection clause.

As previously noted,<sup>88</sup> Congress has expressly forbidden racial restrictions in jury selection. Had Congress not done so by statute, the Constitution would have compelled the same result. It would not be a violation of the Constitution for the States to abolish grand <sup>89</sup> and petit <sup>90</sup> juries altogether from criminal proceedings. But if a State provides for grand or petit juries—as in fact all States do—and thus summons citizens for jury service, that summons, like all State actions, is subject to the restrictions of the 14th amendment.<sup>91</sup> Under the stricture against denials of equal protection of the laws, a State may not *arbitrarily* except a class of citizens from the summons to jury service.<sup>92</sup> Exceptions may be made, but they must be reasonable ones.<sup>93</sup> It is this last principle which, in part, justifies the various restrictions of age, education and literacy, good character, and the like.<sup>94</sup> These qualifications, the courts have said,

bear a reasonable relation to a jury function.<sup>95</sup> Qualifications of race, color, or national origin do not.

Thus the first constitutional theory has to do with the right to serve on a jury. This right cannot be denied to a racially defined class.

The second theory has to do with the right to be tried by an impartial jury. The Supreme Court has pointed out that "a Negro who confronts a jury on which no Negro is allowed to sit . . . might very well say that a community which purposely discriminates against all Negroes discriminates against him."<sup>96</sup> This does not mean that every Negro accused is entitled to a racially representative jury.<sup>97</sup> Such a guarantee would require the State to select juries on a race-basis, which is prohibited.<sup>98</sup> It would also upset the whole institution of challenges, an integral part of the jury system. It must be remembered that the State simply provides a panel of persons qualified for petit jury service; the ultimate selection of jurors from the panel is made by the accused and the prosecution. Each side usually has the right to reject a specified number of the prospective jurors without having to give any reason for the rejection. This limited number of "peremptory" challenges may be exercised capriciously or for unworthy reasons, and such use of them is no grounds for objection.<sup>99</sup> Each party is generally entitled to reject additional persons on the panel upon showing a good reason why the challenged persons could not render a fair verdict in the case. The right to make "peremptory challenges" and "challenges for cause" is of benefit to both sides. Conceivably, if the prosecution had to restrict its challenges so as to insure that a member of the accused's race sat on the petit jury, it might well be unfairly handicapped.

The right to an impartial jury, then, is simply the right to be tried by a jury selected from a panel of one's peers which has been chosen without regard to race or other arbitrary classifications.

Section 243 of the Criminal Code was principally intended as a protection for this right. The statute was part of post-Civil War legislation which recognized the hostility that was bound to exist between white citizens and the newly-freed Negroes.<sup>100</sup> Its aim was to prevent such hostility in a community from infiltrating juries.<sup>101</sup> But the statute is a very limited means to that end. It prevents only one particular external manifestation of racism in official conduct. It leaves untouched the racial sentiments of jurors, though it does open jury membership to those who presumably do not harbor such prejudice. It cannot guarantee that members of a given race will actually sit as jurors.<sup>102</sup> It guarantees merely the chance of actual service on a jury, for it assures that members of one racial group will be proposed for such service on an equal footing with all other racial groups. In short, the accused is protected only against the unfairness of being indicted and tried by juries from which those persons who are least likely to bear racial prejudices against him (*i.e.*, members of his own race) has been officially barred.

It would seem to follow from these principles that a challenge by a criminal defendant to a jury on the ground of racial exclusion of jurors can only be made by a defendant who is of the excluded race or color.<sup>103</sup>

Despite the law's clarity on the unconstitutionality of racial exclusion, proof of exclusion can be exceedingly difficult—even in cases requiring only *prima facie* evidence. The required degree of proof varies with the nature of the proceeding. Thus, where the Government charges exclusion of jurors "on account of race, color, or previous condition of servitude" in a section 243 prosecution, it must prove its case beyond a reasonable doubt as in other criminal cases. When a prisoner seeks a writ of habeas corpus on the grounds that members of his race were excluded from the jury that convicted him, he must establish only "by a preponderance of evidence the facts which he [the prisoner] claims entitle him to discharge."<sup>104</sup> And if one alleges before he goes to trial that he has been indicted or is about to be tried by such a jury, he need make only a *prima facie* showing of exclusion of members of his race from the jury; the burden of proof then shifts to the State.<sup>105</sup> If the accused neglects to raise his objection to the jury before trial, he may be held to have waived his right to object later.<sup>106</sup>

Where the excluded race comprises a substantial proportion of the population, a *prima facie* case can be established by showing a total absence of its members from juries over a long period of time.<sup>107</sup> But in the more common case where there has been some but not total exclusion of a racial minority, proof becomes more difficult.

The crucial test in identifying exclusion has been a marked disparity between the percentage of the minority race population in a community and the percentage of that race in the composition of jury panels. A Federal court has found discriminatory selection where only one Negro was summoned for jury duty over a period of 7 years, although Negroes comprised 10 percent of the county's population.<sup>108</sup> However, in one case involving a number of Negro petitioners who were under capital sentences, the Supreme Court countenanced a 7 percent Negro participation in jury service against a 38 percent Negro representation on the tax lists from which the names of prospective jurors were chosen;<sup>109</sup> by the same decision the Court affirmed a conviction from a county where there were only 1.8 percent Negroes' names placed in the jury box out of a population 47 percent colored, because it found that the petitioner had failed to meet certain procedural requirements in making his appeal.<sup>110</sup> Three justices strongly dissented on this point.<sup>111</sup> And a lower court affirmed a capital conviction handed down in Baltimore where, over a period of years, there was a 1 to 4 percent proportion of colored jurors, although at the time Negroes constituted about 19 percent of the city's population.<sup>112</sup> In such cases, however, the Supreme Court has required an explanation of the disproportionate representation.<sup>113</sup>

Thus, if the necessary evidence for a *prima facie* case of racial exclusion is available, the State may explain it away. Among acceptable "explanations" are that the minority group has a lower rate of literacy, fluency in English or schooling,<sup>114</sup> or a higher incidence of criminal convictions, dependence upon unemployment relief or financial hardship resulting from absence from work.<sup>115</sup> Among the "reasonable" jury-service requirements which the Supreme Court has upheld, but which work partly to deny a representative jury are: that the jurors own taxable property,<sup>116</sup> that jurors be freeholders,<sup>117</sup> and that jurors be registered voters.<sup>118</sup> Florida,<sup>119</sup> Mississippi,<sup>120</sup> and South Carolina<sup>121</sup> require that jurors be registered voters, and this is a valid qualification, provided there is no discrimination in voter registration. (Because of this proviso, it appears that in 1960 after the reversal of Robert Lee Goldsby's conviction,<sup>122</sup> a token number of Negroes were registered to vote in Carroll County, Miss.<sup>123</sup>)

Proof of jury exclusion is also complicated because evidence of the racial composition of past juries is often unobtainable. Jury membership records may not be kept, or where they are, race may not be indicated. And jury officials, the best source of information, are not apt to be enthusiastic in gathering proof that may impugn their own conduct, especially if they should be aware that it can be used against them in a criminal prosecution under section 243.

Difficulties of proof are further compounded by the fact that as the more obvious practices of excluding racial groups from juries have been outlawed, they have gradually been supplanted by more subtle means. One of these more sophisticated methods already mentioned is the summoning of Negroes for jury service without placing them on the panels; the Negroes are summoned but never sit.<sup>124</sup> Another method used to keep Negroes off a petit jury is agreement between counsel.<sup>125</sup> The staff learned from a number of white attorneys and a Federal judge in Alabama in March 1961, that the prosecution (sometimes even the local United States Attorney) and defense counsel frequently agree to challenge any Negroes who appear on petit jury panels.<sup>126</sup> And one State judge in the Birmingham area was reported to ask counsel as a matter of custom at the beginning of criminal proceedings: "Gentlemen, I presume you wish to exclude any Negroes from the jury."<sup>127</sup> Although the exercise of peremptory challenges to exclude Negroes for racial reasons from actual jury service is perfectly legal,<sup>128</sup> the fostering of such agreements by judges is not.<sup>129</sup>

Historically, the law of jury exclusion has developed almost exclusively within the framework of appeals from State criminal convictions. The law forbidding racial discrimination in the selection of Federal jurors, though roughly the same, derives, not of course from the 14th amendment, but from the 5th, 6th, and 7th amendments<sup>130</sup> and from certain Federal statutes.<sup>131</sup> And Federal courts can and do apply this body of

law to Federal jury selection "with greater freedom to reflect . . . [their] notions of good policy than . . . [they] may constitutionally exert over proceedings in State courts."<sup>132</sup>

Moreover, the same legal principles that forbid racial exclusion of jurors from criminal trials, also forbid it from civil trials.<sup>133</sup> But reported decisions involving racial exclusion of jurors from civil proceedings apparently have dealt only with Federal jury selection.<sup>134</sup> However, the following language of the 5th Circuit regarding State juries is unquestionably a correct statement of the law:<sup>135</sup>

The denial of the equal protection of the laws extends also to civil cases in which the lists of jurors are drawn from a jury box from which the names of Negroes have been systematically excluded. Thus, the right is one of broad significance closely and vitally connected with the proper administration of justice in both civil and criminal cases.

## EXISTING REMEDIES

There are three principal ways to suppress the systematic exclusion of minority groups in jury selection. The first is an attack on a particular jury's composition.<sup>136</sup> The other two—injunctive suits and section 243 prosecutions—are more direct remedies, but they have been largely neglected.

The first approach occurs before trial. The defendant moves that the jury be stricken, charging that because members of his race have been excluded from the grand jury that indicted him or the petit jury that is about to try him, he cannot obtain a fair trial. If his motion is denied, he may raise the issue on appeal. And if imprisoned, he may petition for a writ of habeas corpus requesting his release on the same grounds.

This approach has a number of disadvantages. It can inflame community sentiment against the accused;<sup>137</sup> thus, even if the motion succeeds, it may prejudice the next jury. Furthermore, it is a case-by-case method which can have only a remote effect upon the overall problem. Its success depends on the initiative of persons accused of crime and their attorneys. And attorneys are reluctant to charge discriminatory jury selection because of risks to themselves as well as jeopardy to their client's case.<sup>138</sup> Indeed, the consequences of this method can be unpredictable. There is, for example, evidence that the Mack Parker lynching in Mississippi in 1959,<sup>139</sup> was a direct result of the reversal—on the grounds of racial exclusion of jurors—of Robert Lee Goldsby's conviction.<sup>140</sup>

Despite these general drawbacks, an individual accused may be well-advised to attack discriminatory jury selection in his own case. It does not preclude other remedies; as suggested above,<sup>141</sup> the burden of proof may be lighter; and a victory may have an educational impact on local officials.

A second remedy lies in section 1983 of title 42 of the United States Code.<sup>142</sup> Under this section members of the excluded minority can ask the local Federal district court to enjoin jury officials, under pain of contempt of court, from practicing racial discrimination in petit jury selection. (Section 1983 also permits an action for money damages.<sup>148</sup>)

In only one reported instance was section 1983 so used.<sup>144</sup> In that suit, instituted by a colored citizen in McCracken County, Kentucky, the court found that although some 6 years before Negroes constituted slightly more than 12 percent of the population, only one Negro had been summoned for jury service over a period of years;<sup>145</sup> and that jury officials had, as a matter of custom, failed or refused to place the names of colored persons in the drum from which jurors were drawn or to summon Negroes for jury service in the McCracken County Circuit Court.<sup>146</sup> The court said these facts entitled the plaintiff to an injunction,<sup>147</sup> but since local officials had later "evinced a desire and willingness" to select juries without discrimination,<sup>148</sup> the court retained jurisdiction of the case without issuing an injunction.<sup>149</sup> The attorney who handled the case told a representative of the Commission that there was an immediate and permanent improvement in local practices. He added that he had been inspired to bring a section 1983 suit by Justice Jackson's dissent in *Cassell v. Texas*.<sup>150</sup> The Justice there said: <sup>151</sup>

These . . . civil remedies for discriminatory exclusions from the jury have been almost totally neglected . . . by Negro citizens entitled to sit as jurors.

\* \* \*

I suppose there is no doubt, and if there is, this Court can dispel it, that a citizen or class of citizens unlawfully excluded from jury service could maintain in a Federal court an individual or a class action for an injunction or mandamus against the state officers responsible. . . .

If the order were evaded or disobeyed, imprisonment for contempt could follow.

The attorney who handled the Kentucky case expressed surprise that others had not resorted to this simple remedy.

Unlike the case-by-case approach, a suit under section 1983 protects all members of the racial group within the community and may mean that jury officials can continue discriminatory practices only at the risk of summary punishment for contempt of court. And unlike section 243

prosecutions, described below, injunctive suits do not require, at least theoretically, as high a standard of proof as is required in criminal proceedings.<sup>152</sup> A distinct disadvantage in injunctive suits is that they burden private citizens with the expense of correcting racial discrimination in the selection of juries.

The third remedy is a prosecution of jury officials brought by the Civil Rights Division of the Department of Justice under section 243 of the Criminal Code.<sup>153</sup> This too is an unused remedy. In an informal conference in early December 1960, between high-ranking Division officials and Commission staff members, it appeared that the Division had not given much consideration to bringing suits under section 243. At a subsequent conference it was explained that this was due, in part, to the fact that the Division receives very few complaints of discrimination in the selection of jurors.<sup>154</sup> However, the Commission's staff has found that people do not complain unless they are aware of a remedy for the wrongs they suffer.

Between 1950 and 1956 the Department made repeated efforts to obtain information on instances of jury exclusion from the United States Attorneys.<sup>155</sup> But few, if any cases, have been reported by these sources.<sup>156</sup> Yet over the last decade the Supreme Court has overturned at least six convictions on the basis of jury exclusion.<sup>157</sup> In his dissent in *Cassell v. Texas*, Justice Jackson described section 243 as "almost totally neglected . . . by the Federal Government."<sup>158</sup> He went on to invite prosecutions in such cases and said that when such cases arose, he "would send a copy of the record to the Department of Justice for investigation as to whether there have been violations of the statute and, if so, for prosecution."<sup>159</sup>

Use of section 243 would unquestionably raise problems before juries in certain sections of the country similar to those encountered in criminal prosecutions under the other Federal civil rights statutes.<sup>160</sup> For though there have been no section 243 prosecutions in this century, it is reasonable to conclude that in communities where strong racial prejudice prevails the Government is likely to find it very hard to persuade a jury to convict a white official for discrimination against the excluded minority race. It is to be noted, however, that the offense defined is a misdemeanor, and so a prosecution under the statute could be brought directly to trial by use of an information without the necessity of first going before a grand jury to obtain indictment.<sup>161</sup>

The merits of this third approach are at best largely speculative, for the only known prosecution under section 243 was brought in the late 1870's against a Virginia judge.<sup>162</sup> Presumably the requirement that criminal cases be proved beyond a reasonable doubt would increase the difficulty of establishing jury exclusion. On the other hand, this remedy would to some extent relieve private citizens of the time and expense of vindicating their Federal right. The resources and expertise of the FBI



would be particularly valuable in gathering the necessary evidence.<sup>163</sup> Finally, section 243 actions, like injunctive suits, would directly protect the rights of all members of the racial group within the community.

Obviously, the three remedies are not mutually exclusive. They may all be employed to correct the abuse. Until now reliance has been placed almost entirely upon the first, and in many ways, weakest approach. Perhaps additional attention to the other two remedies would help eliminate racial exclusion from juries, at least in its more flagrant manifestations.

## SUMMARY

More than 80 years ago the Supreme Court said: <sup>164</sup>

The very fact that colored people are singled out and expressly denied by a statute all right to participate in the administration of the law, as jurors, because of their color, though they are citizens and may be in other respects fully qualified, is practically a brand upon them, affixed by law; an assertion of their inferiority, and a stimulant to that race prejudice which is an impediment to securing to individuals of the race that equal justice which the law aims to secure to all others.

The practice of racial exclusion from juries persists today even though it has long stood indicted as a serious violation of the 14th amendment. As a result, the bar of race and color is placed at the only gate through which the average citizen may enter for service in the courts of justice. In some areas at least, only the Federal Government can resolve this grave problem.



## 8. Conclusions

There is much to be proud of in the American system of criminal justice. For it is administered largely without regard to the race, creed, or color of the persons involved. Most officials at all levels attempt to perform their duties within the bounds of constitutionality and fairness. Most policemen never resort to brutality, thus providing constant proof that effective law enforcement is possible without brutality. And the great majority of American policemen have an excellent record of successfully discouraging mob violence against minority group members. This record shows that policemen who make it clear that they will not tolerate vigilante violence can prevent that violence.

Unfortunately, this is not the whole story. The Commission is concerned about the number of unconstitutional and criminal acts committed by agents of American justice who are sworn to uphold the law and to apply it impartially. Perhaps the most flagrant of these acts is the illegal use of violence. Indeed, a comprehensive review of available evidence indicates that police brutality is still a serious and continuing problem.

When policemen take the law into their own hands, assuming the roles of judge, jury, and, sometimes, executioner, they do so for a variety of reasons. Some officers take it upon themselves to enforce segregation or the Negro's subordinate status. Brutality of this nature occurs most often in those places where racial segregation has the force of tradition behind it. Other types of unlawful official violence are unrelated to race or region. In Florida's Raiford Prison, recently, guards took the occasion of minor rules infractions to subject prisoners of both races to inhuman treatment. Perhaps the most frequent setting for brutality is found in the initial contact between an officer and a suspect. The fact that an officer approaches a private citizen and seeks to question him, to search him, or to arrest him, creates a tense situation in which violence may erupt at any moment. The use of brutality to coerce confessions appears to be diminishing but has not disappeared.

Complete statistics on the subject of police brutality are not available, but the Commission's comprehensive survey of records at the Department of Justice suggests that although whites are not immune, Negroes feel the brunt of official brutality, proportionately, more than any other group in American society.

The Commission has been concerned with another serious (although far less widespread) dereliction of duty by American police officers—condonation of or connivance in private violence. Although this practice appears to be on the wane, it has not been totally abandoned. The most recent victims were the “Freedom Riders” in Alabama. There are American citizens in the Deep South today who live in fear, partly because they do not know if local policemen will help them or the mob when violence strikes.

On the other hand, it is encouraging for the Commission to report that lynching, another form of mob violence which frequently involved police assistance, may be extinct. Yet, the threat lives on in the memory of many Negroes.

While the discriminatory exclusion of Negroes and other minority groups from juries has diminished during the past century, this badge of inequality persists in the judicial systems of many southern counties.

By and large, frustration and defeat face the victim of these unconstitutional practices who seeks redress—for he rarely is able to obtain immediate or effective relief. A victim of these unconstitutional practices may bring action in a State court to recover money damages from the brutal policeman. The record indicates that the prospects for a verdict for the complainant in such suits are greater than in other forms of court action either at the Federal or State level. However, most victims do not commence legal action against brutal policemen, and one of the severe drawbacks of such litigation is that even if a plaintiff overcomes the difficulties of trial and is awarded a money judgment, most municipalities are not liable for their officers’ misconduct, and the policemen themselves rarely have funds to satisfy a substantial money judgment.

The victim of brutality may also request a local prosecutor to bring criminal action in a State court against the policemen. For policemen, like ordinary citizens, are subject to criminal penalties ranging from jail or fines for simple assault and battery up to the death penalty for first degree murder. Such prosecutions may have a deterrent effect on police misbehavior, but they are rare.

In addition to these State and local avenues of redress there are the Federal Civil Rights Acts, providing both civil and criminal remedies. But suits in Federal courts under these Acts are few and usually unsuccessful. The civil statutes offer the advantage of allowing the victim himself to commence action for money damages against officers who have violated his constitutional right. In a recent 2-year period, however, only 42 Federal civil suits were filed based on police brutality allegations, and none of them were successful. In a recent 2½-year period the Department of Justice authorized criminal prosecutions in 52 police brutality matters. During the same period, six prosecutions were suc-

cessful. It is probable that during these periods thousands of acts of brutality were committed in this country.

There are certain inherent difficulties in suits which seek redress for acts of violence. The victim is often ignorant of remedies for police misconduct and loath, because of lethargy or fear, to report violations to responsible authorities. Even where suit is brought, there are obstacles to successful prosecution. There are frequently no witnesses and little concrete evidence to corroborate the complainant's story; the police officer usually makes a more believable witness than the complainant; and the jury is often hostile to a civil rights suit in Federal court against a local policeman. The Commission believes, however, that the Department of Justice by taking the initiative in seeking out information and, in appropriate cases, by instituting prosecutions might make the Federal Civil Rights Acts more effective instruments—despite these inherent difficulties.

Victims of civil rights violations sometimes assume that Federal officers are closely linked with local policemen. They may, therefore, be reluctant to report unlawful violence or to sign complaints. They fear that complaints either will be useless or will result in retaliation by the local policemen. It is, of course, essential that the FBI have the cooperation of thousands of local policemen to carry out its investigative mission under a long list of Federal criminal statutes not related to civil rights. Investigations of police brutality complaints may, therefore, place FBI agents in an exceedingly delicate position.

The Department of Justice policy of deference to State authorities is another problem in Civil Rights Acts prosecutions. When State authorities take steps to prosecute local law officers for acts of brutality, the Civil Rights Division of the Department suspends both investigation and prosecution. While this practice may satisfy the States, where State action proves ineffective, Federal investigation and prosecution has sometimes been made impractical by the passage of time.

When such a case does get into court, U.S. attorneys represent the Federal Government. Some U.S. attorneys have displayed unfamiliarity with the complex case law that has developed around the Federal Civil Rights Acts. Indeed, a few attorneys have displayed open hostility to Civil Rights Acts prosecutions.

There may also be other difficulties in obtaining an indictment. Grand juries in some places refuse to return indictments under the Civil Rights Acts even in the most heinous of cases; in a recent 2½-year period grand juries refused to indict in at least 16 of the 43 police brutality cases the Department of Justice filed in court. But the grand jury is not a necessary step. The Federal Government prosecutes brutal officers under section 242 of the United States Criminal Code, and since that statute defines only a misdemeanor, action may be taken by way of information (a sworn statement setting out the specific charges against

the defendant) as well as by grand jury indictment. Prosecution was initiated by information in one case, brought in the early 1940's. It was successful.

Other difficulties in the prosecution of Federal criminal suits under the Civil Rights Acts arise from the 16-year-old Supreme Court decision in *Screws v. United States*. It was there held that to sustain a prosecution under section 242 the Government had to prove that the officers had the "specific intent" to violate the constitutional rights of the victim. If the officers merely had the general criminal intent to hurt him, the Supreme Court explained, this would not be sufficient for a conviction under the Federal statute. This requirement is onerous. It accounts for some of the hesitancy of the Department of Justice to authorize prosecutions, and of juries to render guilty verdicts. Remedial action by Congress is necessary to make Federal criminal prosecutions effective deterrents to unlawful police violence.

The most important remedies for improper police practices, however, lie in preventive measures on the local level. There is concrete evidence that when a police commander indicates that he will not tolerate brutality or other illegal practices, these practices cease. Atlanta and Chicago, among other cities, provide examples of how positive and enlightened leadership in the police department can reduce the incidence of unlawful police violence. By the same token, the available evidence indicates that some policemen have interpreted permissive leadership as a license for brutality. Leadership may also have an impact on private violence with police connivance, as dramatically illustrated by recent events in Alabama and conversely, by the less dramatic but positive work of community leaders in Atlanta and, subsequent to the 1957 disturbances, in Little Rock.

Proper recruit selection standards may also reduce police misconduct. Such standards are nonexistent in some departments; others are attempting improvement of psychological tests to weed out those recruits prone to violence. Training programs in human relations and in scientific police techniques are also important factors in the prevention of violent invasions of rights by policemen.

In 1880 the Supreme Court declared for the first time that the discriminatory exclusion of otherwise qualified citizens from jury panels was a violation of the equal protection clause of the 14th amendment. In the ensuing years the Supreme Court has reiterated that ruling time and time again. It is also a Federal crime for any official to disqualify a citizen for jury service because of his race, color, or previous condition of servitude. One of the Civil Rights Acts (section 243) passed in 1875 makes such action punishable by a fine of \$5,000. But in some counties the practice of jury exclusion is an enduring institution, and the initiative for challenging this patently unconstitutional practice has been left by default to private citizens. Apparently, the Department

of Justice has brought only one successful section 243 prosecution, and this was in the late 1870's. The jury exclusion issue is raised most often by Negro defendants convicted by all-white juries. Recently, however, a colored citizen of McCracken County, Kentucky, sought an injunction under one of the Civil Rights Acts to prevent jury officials from excluding Negroes. This action apparently has resulted in the elimination of unconstitutional jury exclusion in that county.

There can be no reasonable dissent to the proposition that all Americans, regardless of race, creed, color, or national origin, are entitled to equal justice under law. Police brutality, connivance in private violence, and exclusion of minorities from jury service violate ideals of fair play fundamental to a free society. All three are contrary to our Constitution and our heritage.

## FINDINGS

### *Unlawful official violence*

1. The actions of most policemen demonstrate that effective law enforcement is possible without the use of unlawful violence.

2. Nonetheless, police brutality by some State and local officers presents a serious and continuing problem in many parts of the United States. Both whites and Negroes are the victims, but Negroes are the victims of such brutality far more, proportionately, than any other group in American society.

3. While police connivance in violence by private persons is becoming less of a problem than in the past, such denials of equal protection still occur.

4. American citizens in some places live in fear of police violence and of mob violence with police connivance.

5. State and local officials—police commanders, prosecutors, and others in positions of authority—who have the immediate responsibility and most effective means for preventing such abuses sometimes do not use their powers. Police commanders at times take a protective attitude toward miscreant officers, and local prosecutors rarely bring criminal actions against them.

### *The professional quality of State and local police forces*

6. The most effective "remedies" for illegal official violence are those that tend to prevent such misconduct rather than those which provide

sanctions after the fact. The application of professional standards to the selection and training of policemen is one such preventive measure.

7. Complaints rarely are made against Federal police agents, in part because these officers have had professional training and have been selected according to professional standards.

8. The professional level is high in some State and local police forces also, but in many others it is low due to low pay, ineffective recruit selection standards and ineffective training programs.

9. The establishment of professional standards for police forces can be aided by such positive programs as good pay, high recruit selection standards, and training in scientific crime detection, in human relations, and in police administration. These programs would be encouraged by Federal financial assistance to police departments that seek the development of more effective selection standards and training courses.

### *Federal criminal remedies for unlawful official violence*

10. Although many acts of violence by policemen are violations of constitutional rights and of Federal statutes, the Federal criminal sanctions for such misconduct have not proved to be effective remedies. This is due to difficulties inherent in the cases such as the problem of proof; to the policies and procedures of the Department of Justice; and to weaknesses of the statutes.

11. Among the policies and procedures of the Department of Justice that have hampered Federal criminal prosecutions for unlawful official violence have been excessive reliance on signed complaints from aggrieved individuals despite the fact that many victims of police misconduct are unaware of their rights, or fearful to press them; a tendency to close some cases without complete investigation; and deference to State authorities which results in withholding any investigation pending State action even at the risk of allowing evidence to grow stale.

12. FBI agents, charged with the duty of Civil Rights Acts investigations, are sometimes placed in a difficult position when they must investigate allegations of misconduct against local policemen. The cooperation of local officers is essential to the FBI in investigating and apprehending those who violate Federal criminal statutes not related to civil rights. Moreover, victims and witnesses of police misconduct are sometimes hesitant to give information to Federal authorities because of the cooperative relationship between the FBI and local policemen.

13. Since section 242, the principal criminal Federal Civil Rights Act, defines only a misdemeanor, prosecution can be instituted by information (a sworn statement setting out the specific charges against the defendant) as well as by grand jury indictment. The former method avoids the delay and the hazard of one more hostile jury, involved in a presentment to a grand jury, and allows the facts to be brought to the



attention of the affected community in a public trial. An information has been used by the Department of Justice only once and then successfully.

14. Difficulties also arise from the language of section 242, as interpreted by the Supreme Court in *Screws v. United States*. The requirement of "specific intent"—as opposed to the usual general criminal intent—for conviction under the statute severely limits the statute's applicability. Moreover, there is confusion among judges, jurors, and lawyers as to the meaning of "specific intent." Some Federal trial judges have issued instructions to juries which seem to interpret "specific intent" more narrowly than is required by the *Screws* decision.

15. A more specific statute supplementary to section 242 spelling out certain conduct proscribed by the 14th amendment would more effectively protect the constitutional right to security of the person against official misconduct.

### *Federal civil remedies for unlawful official violence*

16. The Federal Civil Rights Acts providing civil liability for unlawful official violence have not proved to be effective remedies. Relatively few suits are filed under the principal civil statute, section 1983, which allows suits by the victims of police brutality against officers for monetary damages. Successful suits are rare.

17. One deterrent to the filing of civil suits is the fact that even if a victim of official violence sues successfully, few police officers are able to satisfy a substantial money judgement. This can be corrected by an amendment to section 1983 which would render counties, cities, and other local governmental entities liable for the misconduct of their policemen.\*

### *Discriminatory exclusion of minority groups from jury service*

18. The practice of excluding Negroes from juries on account of their race still persists in a few States. The burden of combating such racial exclusion from juries now rests entirely on private persons—almost invariably defendants in criminal trials.

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\* *Lincoln County v. Luning*, 133 U.S. 529 (1890); *Hopkins v. Clemson Agricultural College*, 221 U.S. 636 (1911); *Frame v. City of New York*, 34 F. Supp. 194 (S.D.N.Y. 1940). Some States have statutes providing that the victims of mobs may sue the State in local courts for damages so incurred. An example is Ill. Rev. Stat., ch. 38, secs. 512-517 (1959). It is doubtful if liability could be extended by Congressional action to State governments. *Hans v. Louisiana*, 134 U.S. 1 (1890); *Palmer v. Ohio*, 248 U.S. 32, 34 (1918); *In re State of New York*, 256 U.S. 490, 497 (1920); *Monaco v. Mississippi*, 292 U.S., 313, 328-30 (1934).

19. Only criminal remedies are available to the Federal Government to combat unconstitutional jury exclusion. The Federal Government has successfully invoked a criminal statute only once, in the late 1870's.

20. Civil actions instituted in the name of the United States would constitute a more effective method of preventing discriminatory exclusion from juries.

## RECOMMENDATIONS

### *The professional quality of State and local police forces*

*Recommendation 1.*—That Congress consider the advisability of enacting a program of grants-in-aid to assist State and local governments, upon their request, to increase the professional quality of their police forces. Such grants-in-aid might apply to the development and maintenance of (1) recruit selection tests and standards; (2) training programs in scientific crime detection; (3) training programs in constitutional rights and human relations; (4) college level schools of police administration; and (5) scholarship programs that assist policemen to receive training in schools of police administration.

### *Federal criminal remedies for unlawful official violence*

*Recommendation 2.*—That Congress consider the advisability of enacting a companion provision to section 242 of the United States Criminal Code which would make the penalties of that statute applicable to those who maliciously perform, under color of law, certain described acts including the following:

- (1) subjecting any person to physical injury for an unlawful purpose;
- (2) subjecting any person to unnecessary force during the course of an arrest or while the person is being held in custody;
- (3) subjecting any person to violence or unlawful restraint in the course of eliciting a confession to a crime or any other information;
- (4) subjecting any person to violence or unlawful restraint for the purpose of obtaining anything of value;
- (5) refusing to provide protection to any person from unlawful violence at the hands of private persons, knowing that such violence was planned or was then taking place;
- (6) aiding or assisting private persons in any way to carry out acts of unlawful violence.

*Federal civil remedies for unlawful official violence*

*Recommendation 3.*—That Congress consider the advisability of amending section 1983 of title 42 of the United States Code to make any county government, city government, or other local governmental entity that employs officers who deprive persons of rights protected by that section, jointly liable with the officers to victims of such officers' misconduct.

*Exclusion of minority group members from jury service*

*Recommendation 4.*—That Congress consider the advisability of empowering the Attorney General to bring civil proceedings to prevent the exclusion of persons from jury service on account of race, color, or national origin.



## *Part VIII.*    **The American Indian**

### **1. Introduction**

In the foregoing parts of this Report, the Commission has considered the extent to which minority groups, particularly Negroes, suffer from denial of civil rights. In a more limited fashion, this part will deal with similar problems faced by the American Indian.

At its California hearing in January of 1960, the Commission heard testimony to the effect that Indians in that State were deprived of their rights because of race. On the basis of that testimony, the Commission initiated an inquiry to determine how serious and extensive the alleged deprivations were for all Indians.

Within a short time the Commission discovered that, though the number of Indians is not large compared to the number of Negroes, their problems are extremely and uniquely complex. Because the Commission's time and staff were committed to other inquiries, no comprehensive study of Indian affairs was possible. Moreover, it soon became apparent that, while Indians are deprived of civil rights in many areas of Commission concern, much of their difficulty is outside the explicit scope of the Commission's jurisdiction.

This is a limited study of the extent to which Indians suffer from a denial of civil rights falling within the purview of the Commission's jurisdiction. Because Indians have a unique status, and because their civil rights problems cannot be fully understood without some discussion of why and how the Indian problem is unique, the study first touches on the highlights of the history of the American Indian in his relations with the Federal Government. The next chapter analyzes his current legal status. The remaining chapters deal with his civil rights in each area of Commission concern.

#### *The citizen with a difference*

If American Indians are a minority, they are a minority with a difference. Of course Indians face problems common to all minorities—jobs, homes, and public places are not as accessible to them as to others.

Poverty and deprivation are common. Social acceptance is not the rule. In addition Indians seem to suffer more than occasional mistreatment by the instruments of law and order both on and off the reservation.

Yet to think of the Indian problem solely in terms of bias, discrimination, or civil rights would be a mistake. For unlike most minorities, Indians were and still are to some extent a people unto themselves, with a culture, land, government, and habits of life all their own.

When Columbus discovered America, there were approximately 900,000 Indians in some 300 tribes in the area that was to become the United States. By 1880 the Indian population had dwindled to 243,000. Today some 360,000 Indians live on more than 300 reservations supervised by the Federal Government. The total number of Indians in the United States including those who live off reservations is estimated at 520,000.<sup>1</sup> There are now an estimated 263 tribes living in 25 States.<sup>2</sup> Thus Indians are not a vanishing race.

Since the Indian Citizenship Act of 1924,<sup>3</sup> all Indians born within the territorial limits of the United States are automatically citizens of the United States. By virtue of the 14th amendment, they are also citizens of the States in which they reside. In principle, then, Indians have all the rights and privileges of citizenship. Their right to vote, though occasionally contested, is now reasonably well-established. They face fewer problems on this score than do many Negroes. Among the other rights Indians share with all Americans are freedom of movement. Those who stay on reservations do so by choice and not by legal compulsion.

Still, Indians differ from other minority groups in three principal ways: (1) they have a strong tendency to preserve their separate cultures and identities, a tendency symbolized in part by the reservation. While this drive by itself is not unique—other minority groups live in separate quarters and not always unwillingly—it has elements of form and substance peculiar to Indians alone; (2) they are a quasi-sovereign people, enjoying treaty rights with the Federal Government, land set aside for their exclusive use, and Federal laws applicable only to them; (3) another important distinguishing factor is the quasi-dependent relationship of Indians to the Federal Government.

The fulcrum on which these differences turn is land. It is land most of all that binds Indians together and sustains expression of tribal culture and "sovereignty." Without land it is hard to imagine how Indians could have survived as a separate people. Thus, Federal policy toward Indian land has played a decisive role in determining the Indian's fate.

### *The struggle for Indian land*

From the beginning land has been the prime issue in the successive contests between white men and Indians. The European and the red man looked upon land differently. To the white man, it was a merchant-

able quantity, something to be owned, developed and improved, bought and sold.

The Indian, on the other hand, thought of land as an integral part of nature to be used to sustain those who lived on it. Above all, it was not merchandise; it could be occupied, hunted, toiled, but not sold or transferred. Land was the common possession of the tribe to be used for common purposes as long as common purposes remained. It was not susceptible, therefore, to ownership, or alienation by the individual.

In the early years, land acquisition by the colonist did not strain Indian-white relationships. There was enough to go around. Moreover, the hunting and food gathering habits of some tribes did not lend themselves to permanent settlement. This reduced resistance to land cessions. Hence the pressure to settle fundamental questions of ownership did not arise at once. Yet as settlements grew, Indian resistance stiffened, and the question became crucial.

Jurists supplied the legal answer by resorting to the "law" of discovery. Indians were admitted to be the "rightful" occupants of the soil with just claim to retain possession of it and use it in their own ways. But their power to dispose of the land, at their own will, to whomsoever they chose was denied "by the original fundamental principle that discovery gave exclusive title to those who made it." So reasoned Chief Justice Marshall in *Johnson and Graham's Lessee v. M'Intosh*.<sup>4</sup> Yet even so renowned a legal architect as Marshall seemed to find the "law" of discovery an ambiguous support for the white man's claims:<sup>5</sup>

Although we do not mean to engage in the defense of those principles which Europeans have applied to Indian title, they may, we think, find some excuse, if not justification, in the character and habits of the people whose rights have been wrested from them.

The historical answer was supplied by settlers, statesmen, adventurers, railroaders, homesteaders, cattlemen, miners, prospectors, and sheepherders—all that went into the continued, relentless movement westward that finally "settled" the continent. The drive had its own nomenclature, "manifest destiny," "progress," "civilization." It would be hard to say it should not have happened. Indeed, it is difficult to see how it could have been stopped, even if it should have been. The story of the American Indian then, is the story of an uneven contest between two civilizations—the one acquisitive and unrelentingly expansionist; the other, by comparison, static. It is an ironic story when one considers the high aims and ends, freedom, justice and opportunity, which have always been part of the American political tradition. If the extension of European influence in the New World was inevitable as some claim, so was the outcome. As DeTocqueville remarked in 1835, "The ruin of these Indian nations began from the day when Europeans landed on their shores; it has proceeded ever since . . ."<sup>6</sup>

Early colonists may not have felt as certain of success as DeTocqueville suggests. There was no "master plan" for settlement and expansion. The New World was largely an unknown quantity. Colonizing was a competitive affair with various European nations and mercantile interests vying for advantage in a contest that sometimes placed the Indian in a favorable strategic posture.

The policies of various European colonizers toward the Indians differed and the difference was in part attributable to divergent purposes. Hampered by a feudal system of land tenure that discouraged permanent settlement, the French were primarily traders and, as such, were able to establish better relations with the Indians. The English, on the other hand, wanted lasting settlements and, therefore, posed a more serious threat.

Yet the English were not brutish. Their policy was a cautious blend of conscience, strategy and self-interest. Though there were many swindles, and much land speculation, official policy was to prevent the "unauthorized" appropriation of Indian lands. Lord Baltimore in 1635 and William Penn in 1682, though each possessed royal grants, nonetheless sought to extinguish Indian "title" by fair purchase. Moreover, as early as 1656, land areas were set aside by some colonial governors for the exclusive use of Indians.

In spite of such official efforts, unauthorized entry upon Indian land persisted and became a constant source of friction between the English and the Indians. The policies of colonial governors were not uniform and were often ineffectively enforced so that Indians were frequently cheated. Friction was encouraged by the French who lost no opportunity to stress the danger of continued English encroachment.

Partly because of the ineffectiveness of English land policies, and largely because of the threat that permanent occupation posed, most Indian tribes joined the French against the English in the French and Indian War. With the defeat of Montcalm and the surrender of Quebec the English were left supreme.

Disturbed by the hostility of the Indians the King of England issued a Royal Proclamation in 1763 that prohibited the granting of land patents unless Indian title had been extinguished by purchase or treaty. The Proclamation also reserved for tribal use "all Lands and Territories lying to the Westward of the sources of rivers which fall into the sea from the West and Northwest." In effect, the Appalachians were established as the boundary of westward expansion. But thousands of settlers violated that boundary during and after the American Revolution without regard for policy, agreement, or treaty.<sup>7</sup>

The birth of the new Republic changed little for the Indians. The Federal Government tried at the outset to follow the policy laid down by the English. It recognized Indian rights to lands they occupied and laid down the principle that Indian land could not be acquired without



Indian consent. As stated in the Northwest Territory Ordinance of 1787:<sup>8</sup>

The utmost good faith shall always be observed toward Indians, their lands and property shall never be taken from them without their consent; and, in their property, rights and liberty, they shall never be invaded or disturbed, unless in just and lawful wars authorized by Congress; but laws founded in justice and humanity shall from time to time be made, for preventing wrongs being done to them, and for preserving peace and friendship with them.

Despite the expression of good faith, the westward push would not be denied. The new Government found itself unable and sometimes unwilling to cope with it.

Recognition of the Indians' right to occupy land until title was extinguished lawfully, a right spelled out in the numerous treaties as well as the Northwest Ordinance, proved an irksome obstacle. Many Indian tribes refused to make further cessions. Among those pressing for a change of policy was Andrew Jackson. In a letter to President Monroe, Jackson, one of the Commissioners appointed to negotiate the purchase of Indian lands (a Commission that failed), said:<sup>9</sup>

I have long viewed treaties with the Indians an absurdity not to be reconciled to the principles of our Government. The Indians are subjects of the United States, inhabiting its territory and acknowledging its sovereignty, then is it not absurd for the sovereign to negotiate by treaty with the subject?

Thirteen years later in 1830 Congress passed, and President Jackson signed, the Indian Removal Act,<sup>10</sup> expressing a major change in policy. The purpose was to transfer Indian tribes across the Mississippi. In exchange and as part payment for the lands they had previously occupied, Indians were granted *perpetual* title to the territory west of the river, an area which then seemed far enough removed to obviate the danger of future conflict.

Removal of northern tribes presented no difficulty. Most were small in number, had been weakened by years of conflict or had left voluntarily. But the southern tribes, the Cherokees, Choctaws, Creeks, Chickasaws, and Seminoles (known collectively as the Five Civilized Tribes), resisted. Large and powerful, with permanent homes, farms, and large herds of livestock, they were reluctant to move.<sup>11</sup>

Despite the pleas of the Indian tribes and their friends in and out of Congress, removal was effected in many cases by force. Troops were sent into Alabama and Georgia to escort Indians to the newly constituted "permanent" Indian territory—now the State of Oklahoma.

Most of the Seminoles left only after bitter intermittent warfare which lasted from 1835 to 1842. But the lands west of the Mississippi were not as remote as had been supposed. The annexation of Texas, acquisition of New Mexico and California and the discovery of gold, brought a steady surge of white men through the last of the Indian country. For three decades after 1850 a series of sporadic wars broke out on the western plains and did not abate until the Indian was effectively removed as a burr to westward expansion.

### *Changes in Federal policy*

From the birth of the Republic on through the push westward, the major question was what to do with what DeTocqueville described as colonies of troublesome strangers amidst a numerous and dominant people.<sup>12</sup> The alternatives were neatly posed by Henry Knox in a letter to George Washington in 1789.<sup>13</sup> The first was to wipe them out. Knox rejected this on the ground that it violated the "principles of justice and the laws of nature." He thought it wise for a new nation, anxious to put its best foot forward, to refrain from injuring a neighbor community. The second and recommended alternative was to make treaties with them by which Indian rights and territories would be explicitly defined. Until the late 1800's treaty-making was the basic policy of the United States. Treaty breaking was the practice.

Many agreed with Andrew Jackson in rejecting the treaty approach. Proponents of a tough Indian policy invariably based their arguments on the superior rights of civilized men. As in the case of the slaves, the necessary corollary was always added—that Indians were savages and could not be civilized. As late as 1872, Francis Walker, Commissioner of Indian Affairs, expressed it this way: <sup>14</sup>

There is no question of national dignity, be it remembered, involved in the treatment of savages by a civilized power. With wild men, as with beasts, the question whether in any given situation one shall fight, coax, or run, is a question of what is easiest and safest.

Walker went on to add that no one would rejoice more heartily than he when the last hostile tribe "becomes reduced to the condition of suppliants for charity."

If treaty-making was the most realistic means of dealing with the Indians, at least until the West was conquered, it did not dispose of the dilemma suggested by DeTocqueville's "colonies of strangers." On the contrary, the treaty recognized and sustained the separate status of Indians, a status later confirmed in *Worcester v. Georgia*,<sup>15</sup> which described Indian tribes as "distinct, independent, political communities"

with rights of self-government. This description stands intact as a matter of law. The dilemma was compounded by the fact that the "independent communities" were of a special sort. In *Cherokee Nation v. Georgia*,<sup>16</sup> the Supreme Court dismissed a contention that Indian tribes were foreign nations and described them as "domestic dependent nations" bearing a relationship to the Federal Government like that of a ward to a guardian. In explaining the resemblance, Marshall said: <sup>17</sup>

They look to our Government for protection; rely upon its kindness and its power; appeal to it for relief to their wants; and address the President as their great father. They and their country are considered by foreign nations, as well as by ourselves, as being so completely under the sovereignty and dominion of the United States, that any attempt to acquire their lands, or to form a political connection with them, would be considered by all as an invasion of our territory and an act of hostility.

It was this double condition of sovereignty and "wardship" which, in view of some, caused increasing "difficulties and absurdities."

One of the difficulties was that Indians still "owned" large tracts of land defined and protected by the obligations of treaty. And it was land that many Americans still coveted. As Caleb B. Smith, Secretary of the Interior, observed in 1862: <sup>18</sup>

The rapid progress of civilization upon this continent will not permit the lands which are required for civilization to be surrendered to savage tribes for hunting grounds. Indeed, *whatever may be the theory*, the Government has always demanded the removal of the Indians when their lands were required for agricultural purposes by advancing settlements.

*The abandonment of treaties.*—Those who believed that treaties with Indians were an absurdity finally prevailed. In 1871 Congress declared that "thereafter," no Indian nation or tribe "would be recognized as an independent power with whom the United States may contract by treaty."<sup>19</sup> This did not solve the Indian problem. Colonies of Indians remained strangers among the numerous and dominant people. It had been wistfully hoped, throughout the years, that Indians would somehow become more "civilized" that is, "more like us." But the contrary seemed to be true. Pressed on every side, their reservations became islands of retreat (and sometimes of confinement) in the turbulent ocean of progress. Or so it seemed. In any event pressure for disposing of the Indian dilemma "once and for all" in fell-stroke style led to the passage of the General Allotment Act of 1887,<sup>20</sup> a most radical departure from past policy.<sup>21</sup>

*The General Allotment Act.*—By 1887 most Indian tribes were settled on lands outside the main streams of traffic, lands that had been reserved for them mostly by treaty, sometimes by executive order or act of Congress. The strategy of the allotment approach (apart from the acquisition of more land) was to civilize the Indian by breaking up the reservations and granting land to individual Indians on a systematic basis. Private ownership and all that went with it would serve the purpose. As Carl Schurz, then Secretary of the Interior, argued “The enjoyment and pride of the individual ownership of property is one of the most effective civilizing agencies.”<sup>22</sup>

There were those who opposed the whole scheme. Senator Teller of Colorado characterized it as a device calculated “to despoil the Indians of their lands and to make them vagabonds on the face of the earth.”<sup>23</sup> He prophesied that in 40 years Indians would have been parted from their titles and would then “curse the hand that was raised professedly in their defense.”<sup>24</sup> Teller felt that the people who were clamoring for “allotment” would sing a different tune if they really understood Indian laws, morals, and religion. A minority report on legislation similar to the Allotment Act observed that:<sup>25</sup>

. . . it does not make a farmer out of an Indian to give him a quarter section of land. There are hundreds of thousands of white men, rich with the experience of centuries of Anglo-Saxon civilization, who cannot be transformed into cultivators of the land by any such gift. The real aim of this bill is to get at the Indian lands and open them up for settlement. . . . If this were done in the name of Greed, it would be bad enough; but to do it in the name of Humanity, and under the cloak of an ardent desire to promote the Indian's welfare by making him like ourselves, whether he will or not, is infinitely worse. . . .

The act's salient features authorized the President to dispose of tribal lands in specified amounts—160 acres of grazing land or 80 acres of agricultural land to the head of a family; one-half of the above amount to a single person over 18, or an orphan child under 18. If the Indian refused to take his allotment, the Government would select for him. Title to the allotted land would remain with the Government to be held in trust for 25 years or more at the discretion of the President. Citizenship was conferred on the allottees (by later amendment, citizenship was deferred until the trust period expired),<sup>26</sup> and surplus lands remaining after allotment were subject to purchase by the United States.

When the Allotment Act was passed in 1887 Indians owned in one form or another about 140 million acres of land. In 1890 alone some 17.4 million “surplus” acres—about one-seventh of all Indian land—were purchased by the Federal Government under the Allotment Act

and opened to non-Indian homesteaders.<sup>27</sup> In the next 45 years, 90 million acres,<sup>28</sup> including some of the best grazing, farming, and forest lands, passed out of the collective or individual control of Indians. What had been intended as a "civilizing" agent, produced a generation of landless, impoverished Indians, shorn of the social cohesiveness of tribal culture.

In 1928 the Meriam Report,<sup>29</sup> authorized by the Department of the Interior, found that most Indians were poor, ill-housed, in bad health (tuberculosis was present to an alarming degree), backward, discontented, and apathetic. A major cause according to the report lay in the Allotment Act and its swift, across-the-board application to all tribes whether prepared for it or not.

*The Indian Reorganization Act.*—By the early thirties congressional recognition of the ruinous effect of allotment brought the Indian Reorganization Act (IRA) of 1934.<sup>30</sup> This applied only to Indian tribes voting to accept it (192 of the 263 tribes did so). It authorized the expenditure of \$2 million a year for the purchase of land to be held in trust for Indians by the Federal Government and prohibited future allotments of Indian lands. It also provided for tribal government, tribal incorporation for credit and other business purposes, and preferential employment of Indians by the Indian Bureau.

The IRA was a complete reversal of prior policy. During the next 20 years, 4 million acres of land were purchased *by* and *for* Indians, and great strides were made toward the economic stability of Indian communities. But in the late 1940's the IRA came under congressional fire, in part because of its mounting costs. As a consequence Indian policy was again reversed, this time by House Concurrent Resolution 108, adopted August 1, 1953. It provided that all Indian tribes "should be freed from Federal supervision and control and from all disabilities and limitations specifically applicable to Indians," and directed the Secretary of Interior to recommend the necessary legislation piece-by-piece to "relinquish Federal trusteeship." (As a matter of fact "termination" originally known as "withdrawal programming," had already been initiated by the Bureau of Indian Affairs in 1950.) Pursuant thereto bills were enacted to terminate tax exemptions and Federal trusteeship for Indian lands belonging to several tribes located in Texas, Utah, and Oregon.<sup>31</sup> Other legislation has been enacted to effectuate the termination policy.<sup>32</sup>

The current policy of terminating Federal trusteeship and withdrawing Federal supervision over Indian affairs has met with a largely negative reaction from the Indians themselves. As one observer put it, "Among Indians termination is a dirty word." One reason Indians oppose termination is that they fear the loss of tribal land. Between 1953 and 1957, more than a million and a half acres of Indian land were taken out of trust. It is estimated that practically all of this land

was sold to non-Indians. The rate of sale has been approximately 3 percent per year which means that Indians in this 4-year period have lost approximately 12 percent of their lands.<sup>33</sup>

As of now, however, termination is no longer the official policy of the Department of Interior. Moreover, the recent Task Force Report on Indian Affairs submitted to Secretary Udall and endorsed in general by him, indicates that the pendulum of Federal policy is in the process of swinging again. Abandoning the termination concept, the "new trail" announced by the Secretary stresses economic growth for the Indian. Among the Task Force proposals under consideration are those calling for the establishment or expansion of loan funds to assist Indians in improving farming, arts and craft enterprises, and to attract new industry to reservations.

### *The dilemma of Indian policy*

The land problems of Indians and all that they include, among them, the fate of tribal life and culture, do not involve civil rights issues in the traditional sense. Nonetheless, they are basic to an understanding of the Indian problem. Moreover, they are at the heart of what concerns the Indian and the Federal Government. For one reason or another, the numerous and dominant people have not been able to make up their minds what to do with the "colonies of troublesome strangers." At times Federal policy has tended toward the preservation of tribal lands and cultures; at others it has swung toward assimilating Indians into American society. Most recently, the policy has been a curious and uneasy amalgam of each tendency. On the tribal side, it appears that Indians have not made up their minds to abandon their tribal communities and to join white society. Distrust of the white man and a lack of social and economic security contribute to the reluctance.

In short, the Indian dilemma still persists.

## 2. The Legal Status

In the course of time there have accumulated 389 treaties, more than 5,000 statutes, some 2,000 Federal court decisions, a raft of Attorney General opinions, numerous administrative rulings, 141 tribal constitutions, 112 tribal charters, a gigantic set of regulations, and an encyclopedic manual—all especially applicable to Indians,<sup>1</sup> all bearing witness to their complex and unique legal character.

An Indian is three things: a tribal member with cultural, social, economic, religious, and political ties to tribal life; a “ward” of the Federal Government; and a citizen with most of the same rights and privileges possessed by other citizens. This tripartite status has been recognized, but not clarified, by the courts. As the Supreme Court said in *United States v. Nice*:<sup>2</sup>

Citizenship is not incompatible with tribal existence or continued guardianship, and so may be conferred without completely emancipating the Indians, or placing them beyond the reach of congressional regulations adopted for their protection.

Moreover, the Indian who severs his tribal ties, asserts his rights as a citizen, and tries to make his way in the white man’s world, frequently discovers that in addition to the three facets of his legal personality outlined above, he is socially a member of a racial minority. His attempts at assimilation may meet resistance almost as determined as that faced by the Negro. Many Indians have, however, one advantage (if it can be called that), Negroes do not—they can, and often do, go home again.

### *The Indian as sovereign*

Article I, section 8 of the Constitution authorized Congress “to regulate Commerce with foreign Nations, and among the several States and with the Indian tribes . . .” It recognizes, in short, that Indian tribes are separate and distinct entities. Moreover, the separate status of Indians has been confirmed and reconfirmed by the Supreme Court in numerous cases, some of them of recent vintage.

While the Indian right to self-government is firmly rooted in treaties and judicial decisions, the right itself has been held inherent; that is, it preceded and was not created by the Federal Government. The basic principles of tribal sovereignty, then, are these: <sup>3</sup>

1. An Indian tribe possesses, in the first instance, all of the powers of any sovereign state.

2. Conquest puts an end to the tribe's external powers of sovereignty (for example its power to make treaties except with the United States). But conquest *alone* does not affect a tribe's internal sovereignty, that is, its power of self-government.

3. The latter, however, is subject to qualification by Federal legislation.

Two decisions of the Supreme Court illustrate the principle and the extent of tribal sovereignty. In the first, *Talton v. Mayes*,<sup>4</sup> the Court held that Indian tribes were not subject to the constitutional limitations addressed to the Federal Government, including the Bill of Rights. In the second, *Ex Parte Crow Dog*,<sup>5</sup> the Court held that Federal tribunals could not try one Indian for the murder of another on a reservation in the absence of legislation expressly granting such jurisdiction to the Federal courts.

While the *Crow Dog* decision sustained the right of Indian tribes to rule and judge in their own bailiwick, it also pointed out that the right was subject to congressional limitation. Two years later, Congress enacted legislation giving Federal courts jurisdiction of seven major crimes committed by an Indian against an Indian in Indian country.<sup>6</sup> Three other crimes were subsequently added.<sup>7</sup>

Apart from matters of criminal jurisdiction the most extensive congressional limitations on internal, tribal autonomy relate to land tenure. They range from control over the use and disposition of Indian lands, through the grant of adverse interests, to the control of tribal funds, (most of which arise from the use and disposition of tribal lands). Indeed they even deal with land held by individual Indians where the right to sell is, in one fashion or another, restricted. Since Federal authority is supreme in these matters the States cannot intrude unless Congress otherwise provides, as indeed it has in recent years.

At present there are about 250 self-governing tribes supported in the main by Indians themselves. Some, like the Navajos, have superior resources. They budgeted \$20 million for tribal purposes in 1959. Others, like the Pueblo of Zia, have next to no tribal budget and no paid employees.<sup>8</sup>

To the extent that they have not been limited by Federal law, Indian tribes are free to govern their members and manage tribal affairs as they see fit. However, while the Indian Reorganization Act of 1934 strengthened tribal autonomy, the tribes have acceded to the recommendation of the Secretary of the Interior that the constitutions adopted



under the act include provision for review by him of the exercise of tribal powers. Some observers insist that this power of review, incorporated in the constitutions by the tribes, has brought unwarranted interference in the matter of taxes, contracts, budgets, ordinances, and other internal tribal matters.

### *The Indian as citizen*

The 14th amendment (1868), provided that all persons born in the United States and subject to its jurisdiction are citizens of the United States and of the State in which they reside. Nonetheless, tribal Indians were held to be excluded from its effect on the ground that they were autonomous, political communities. Although many Indians became citizens before 1924 by reason of the Allotment Act and other special measures,<sup>9</sup> it was not until that year that citizenship was conferred on all native born Indians by the Indian Citizenship Act.<sup>10</sup> Indians born outside of the United States could not be naturalized until 1940.<sup>11</sup>

As citizens, Indians now enjoy, with some exceptions, the same rights and privileges in relation to Federal and State Governments as do other Americans. The principal exception is that the Federal Government holds much of their real property, and sometimes personalty, in trust or under some other form of control. For this reason Indians are not generally required to pay taxes on real property.

Many of the laws that denied Indians some of the attributes of citizenship were repealed by the Indian Reorganization Act of 1934. Others were repealed thereafter. In addition, legislation (such as the Indian Liquor Law), and laws imposing upon Indians disabilities not shared by white citizens (such as the right to sue the Government in the Court of Claims), have in large degree been repealed.

The first Indian liquor law was passed in 1802 on the recommendation of Jefferson. It authorized the President to regulate the sale of liquor among the Indian tribes. The validity of such legislation was frequently upheld by the Supreme Court. In 1953 Indians, when off the reservation, were put in the same category as non-Indians except in States having Indian liquor laws of their own.<sup>12</sup> Indians were also given the right of local option on their own reservations.

Legislation of 1863, denying Indians the right to prosecute tribal claims based on treaties, in the newly established Court of Claims was effectively offset by the Indian Claims Commission Act of 1946. Set up largely to adjudicate land grievances, the Claims Commission originally was to remain in existence for 10 years. However, because of the volume of cases, the act has been extended until 1967.<sup>13</sup>

Despite the trend toward erasing from the statute books legislation imposing special restrictions upon Indians, they continue, as was pointed out earlier in this chapter, to find social, economic, and legal impediments

ments to full equality. In housing, employment, education, public accommodations, and in the administration of justice, the Indian encounters the kind of discrimination suffered by other minority groups. If he remains on the reservation his position is ambivalent. He is citizen, ward, and tribal member. He is buffeted between the Federal Government and the States. States often have refused Indians services afforded other citizens (welfare is a prime example) on the ground that Indians are a Federal responsibility. Often when the Federal Government has terminated its supervision of an Indian tribe and ceded jurisdiction to a State, the State has been slow to assume its responsibilities.

### *The Indian as a Federal "ward"*

The term "ward" has had a special magic of its own ever since Chief Justice Marshall declared that Indian tribes bore a relationship to the United States *resembling* that of a ward to a guardian.<sup>14</sup> Acts and policies otherwise apparently unjustifiable have been upheld in the name of guardianship. As the Supreme Court once said, "from [the Indian's] very weakness and helplessness . . . there arises a duty of protection and with it the power."<sup>15</sup> The duty to protect arose, in many instances, from promises made in the various treaties with Indian tribes, including the promise to protect Indians from unauthorized appropriation and use of their lands. It often included the affirmative duty of providing money and services, education, welfare, and the like in compensation for land cessions.

As now applied, wardship is an imprecise and misleading term except, perhaps, as used to describe the Federal-Indian relationship with respect to Indian lands. But even here, as some Indian spokesmen maintain, the Federal Government is more a trustee than a guardian. The distinction is of some importance since a guardian has a wider range of power over his ward than a trustee has with respect to a beneficiary. Whatever the proper nomenclature, the forms of Indian "ownership" fall into three categories: <sup>16</sup>

1. Trust patent—the Federal Government holds the title of the property in trust for the Indian who "owns" it. The Indian is unable to alienate this land without the approval of the Secretary of the Interior.
2. Restricted fee—the Indian has been given title to the land but cannot alienate it without the consent of the Government.
3. Tribal lands—the individual member of the tribe has no vested interest in tribal property, but based on his membership, he has the right to participate in the enjoyment or use of communal holdings of the tribe in such manner as may be provided by tribal authority.

As a rule, tribal lands cannot be sold except by statutory authorization. An Indian desiring to sell land which he "owns" individually by trust

patent or restricted fee must apply to the Secretary of Interior for permission to do so. In disposing of the application the Secretary will consider such things as the competency of the Indian to manage his own affairs, the identity of the buyer, the relationship of the land to the reservation, and the current use of the land. A policy of freely granting permission to sell is likely to meet strenuous objection from tribes seeking to preserve the reservation as a unit.

One of the consequences of these restrictions is to be found in the field of taxation. While it is popularly thought that Indians are exempt from all taxation, there are, in fact, a variety of taxes, including income taxes, imposed by all levels of Government, to which Indians, including reservation Indians, are subject. However, as noted earlier, it is generally true that Federal, State, and local taxes are not applicable to lands, funds derived from land, or other personalty, owned by Indians where there are restrictions upon the sale or use thereof.

The question whether the Indians are "wards" of the Federal Government in matters other than those involving land has been raised in a number of cases of fairly recent origin. One such case concerned the right of Indians to vote in Arizona. A 1928 decision of the Arizona Supreme Court held that the Arizona Constitution did not permit persons under guardianship to vote.<sup>17</sup> In 1948 the issue came up again.<sup>18</sup> Expressly overruling its 1928 decision in *Porter v. Hall*, the Arizona Supreme Court held that Indians had never been placed under judicially established guardianship by any legal act, were citizens and thereby entitled to the franchise. The court, through Justice Levi Udall, declared: <sup>19</sup>

No superintendent or other official or employee of the United States has custody of the person of the plaintiffs. They are not confined to the reservation and may leave it at any time they so desire. The plaintiffs are under no duty to follow the advice or instruction of any Federal officials in selecting a place to live. The power of the Commissioner of Indian Affairs, or of the local superintendent, to decide what people might visit an Indian reservation and meet the Indians thereon was abolished in 1934. . . . The plaintiffs have full and untrammelled right to utilize their own property (except their interest in land or other property to which the Federal Government has a trustee's title) as they see fit and to receive and expend income therefrom without Federal interference. A . . . beneficiary of a trust estate who is a white person does not thereby become a person "under guardianship". . . .

A more recent case in California upholds the right of reservation Indians to receive directly county relief payments, the denial of which violates the 14th amendment.<sup>20</sup> In the lower court in the aforesaid case,

the Superior Court of California in and for the county of San Diego, Judge Mundo declared: <sup>21</sup>

. . . The fact that laws are passed for the protection of seamen and Indians, as well as other classes of citizens, does not mean that they become wards in the true sense of the word, nor do these special enactments operate to impair other rights which they enjoy as citizens.

There are other contexts in which the term "ward" is used, two of which deserve mention. Indians are sometimes said to be the recipients of "unearned bounties" at the hands of the Federal Government, a condition that led some to describe them as "charity wards." In reality most services rendered to Indians were, in the first instance, the *quid pro quo* for land cessions or for maintaining peace. In most cases the *quid pro quo* was defined in terms of money. Since the Indians had little use for money, it was often placed in trust and spent, as the Indians might wish, for food, stock, farm implements, education, medical services, and the like. When the funds were expended, Congress thought it wise to continue these services and appropriated funds to do so. (With the possible exception of medical service, most Federal services rendered to Indians—schools, road building and, in some instances, welfare—are services which other citizens receive from their respective States. The amount of Federal money spent for economic assistance to Indians is relatively small. It is bound to increase however as programs of economic development take effect.) In recent years, however, the tendency has been to turn over the responsibility for maintaining certain public services to the tribes or to the States.

The other sense in which the term wardship is used connotes the submission of Indians to congressional legislation and administrative control. As had been said, quite apart from its power to regulate commerce among the Indian tribes, the power of Congress to legislate in matters affecting Indian tribes was expressly recognized in many early treaties.<sup>22</sup> By virtue of the combination of the treaty power and the commerce power, Congress has been able to regulate Indians to a degree and in a manner which, if applied to non-Indians, might well have been held unconstitutional. The class legislation for Indians contributed to the notion that Indians were in a special category for which, given the depressed and economic state of many tribes the term "wardship" seemed a convenient and, sometimes, an apt description.

Plainly the meaning of the term "ward" as applied to Indians is imprecise. It is true that Indians were at one time subject to special supervision and control in many areas of their lives. They still are, to some extent, particularly with respect to "trust property." It is also true that, because of their low economic status, they often require more

assistance than most other Americans. But this does not constitute wardship in any orthodox sense. Moreover, the cure for whatever passes for "wardship" seems to consist of promoting responsibility and integrity, in supplying the economic tools and the social climate by which responsibility is translated into meaningful action.

### *An ironic anomaly*

The subtleties of the Indian's legal status are nowhere more evident than in the area of the Bill of Rights. For while neither Congress nor the States may infringe the basic civil rights of Indians—in this respect, they enjoy the same status as other citizens—Indians are not so protected against the actions of tribal governments. As has been noted in *Talton v. Mayes*,<sup>23</sup> the Supreme Court held that the fifth amendment applied only to acts of the Federal Government and did not extend to the government of the Cherokee Nation. Since the government of the Cherokees was recognized by the Federal Government, but not created by it, the court reasoned that the judicial authority of the Cherokees was not subject to the limitations imposed upon the Federal Government by the Constitution. The *Talton* case is still the law. In effect, this means that the Bill of Rights is not applicable to the relationship between Indians and their tribal governments. Moreover, a memorandum from the solicitor of the Interior Department supports the notion that the amendment's guarantee of religious liberty does not limit the action of a tribal council.<sup>24</sup>

It is true, of course, that the Bill of Rights does not apply to the States except insofar as they have been read into the 14th amendment by the Supreme Court.<sup>25</sup> Yet even with respect to these read-in protections Indians are not protected from tribal authorities. For it has been held that while States are precluded from infringing on the free exercise of religion, Indian tribes may do so with legal impunity. Two recent cases illustrate the contrast.

The first concerned an action brought by six Jemez Pueblo Indians of various Protestant faiths against the Pueblo Indian Government, charging it with subjecting them to indignities, threats and reprisals because of their Protestant faith.<sup>26</sup> Specifically the Pueblo were accused of refusing the six the right to bury their dead in the community cemetery; denying them the right to build a church of their own on Pueblo land; prohibiting them from using their homes for church purposes; and refusing to permit Protestant missionaries to enter the Pueblo freely at reasonable times. The plaintiffs further alleged that the officials of the Pueblo had threatened them with the loss of their homes, birthrights, and personal property unless they accepted the Catholic religion. The plaintiffs contended that the acts of the Pueblo were

in direct violation of an ordinance validly adopted by the Pueblo which permitted freedom of worship as the conscience dictates.

The action was brought under a Civil Rights Act which makes any person, acting under color of any "State statute, ordinance, regulation, custom, or usage of any State or territory" who deprives another of his constitutional rights liable to the person injured. The plaintiffs claimed their freedom of worship was protected by the first amendment. In holding that it had no jurisdiction to hear the complaint, the Federal District Court for the district of New Mexico said: <sup>27</sup>

It has, indeed, been held that the powers of an Indian tribe do not spring from the United States although they are subject to the paramount authority of Congress [citing *Talton v. Mayes*]. Their right to govern themselves has been recognized in such statutes as the Indian Reorganization Act of 1934. Consequently, there is no basis for holding that the conduct of the defendants of which the plaintiffs complain was done under color of State law, statute, ordinance, regulation, custom, or usage.

Although the court made mention of the fact that the plaintiffs relied on the first amendment, it dismissed the case for want of jurisdiction without further comment on the constitutional issue. In effect, the court held that no basis existed for labelling the abuses of a tribal government as "State action." Thus, if tribal actions cannot be classed as "State action," and if, according to *Talton v. Mayes*, tribal governments are not subject to constitutional limitations imposed upon the Federal Government by the first 10 amendments, they are, in effect, free to treat individual members of a tribe in ways that vary from the standards prescribed in the Bill of Rights and the 14th amendment.

In contrast, the second case involved a suit by the State of Arizona against Mary Attaki, an Indian.<sup>28</sup> She was charged with violation of a State statute which made it a crime to possess and use peyote, a non-habit forming stimulant derived from cactus plants. Some Indians use peyote as part of their religious ritual. The peyote rite is said to be one of prayer and quiet contemplation. Its use in the religious context is complex. Something of a sacrament, its consumption is thought to bring the user into closer communion with the Almighty. Peyote, is therefore an essential ingredient of the "Peyote" religion. The court found the use of the "drug" not harmful and further held that the statute which made its possession illegal was unconstitutional as applied to the defendant in the conduct of her religious beliefs.

Since constitutional limitations apply to the Federal Government and to States but not to Indian tribes, tribal governments may regulate the behavior of individual members in ways in which the Federal and State Governments may not. (The fact that they can does not, of course,

mean that all do.) Comparable limitations could be imposed on tribal governments by constitutional amendment or, very likely, by congressional action. Limitations may yet be found, in an appropriate case, by the courts. Whether and to what extent such limitations are desirable involves (as in so many Indians affairs) a delicate balancing of values—between civil rights and liberties on the one hand, and the benefits of tribal autonomy on the other.

### *Summary*

In summary, then the Indian wears three legal “masks”, tribal, citizen, and “ward”, and bears relationships to three legal authorities, Federal, State, and tribal. The relationships are complex and not always uniform. As will be seen, they sometimes conflict or leave gaps which give rise to denials of “equal protection,” particularly in the fields of education, welfare, and the administration of justice.





### 3. Status as a Minority

It was not possible, however, for the Commission to conduct more areas—voting, public education, administration of justice, public welfare, housing, employment, and public accommodations. Though the degree of denial varies, the Commission has found evidence of current or recent discrimination in each area.

It was not possible, however, for the Commission to conduct more than a limited review of the extent to which the deprivation of civil rights prevails. A field investigation was made, tribal delegations were interviewed, and conferences were held with experts on Indian affairs. Conferences on Indian problems were also held by State advisory committees. While no testimony was taken under oath, evidence obtained from the activities described above show sufficiently widespread denials of civil rights to warrant concern and fuller inquiry.

The 1960 census reported on five racial minorities. In order of population size, they were as follows: Negroes, 18,871,831; American Indians, 523,591; Japanese, 464,332; Chinese, 237,292; and Filipinos, 176,310. Indians are thus the second largest "racial" minority in the United States. As a minority, Indians fall into three general categories—reservation, nonreservation, and off reservation. The civil rights problems of the latter, sometimes referred to as "relocated" Indians, are not specially treated in this study. There is little reason to doubt however that this group suffers many of the denials inflicted on other Indians.

There is some evidence of discrimination, albeit sometimes only on a spotty basis, in all of the 25 States with substantial groups of Indians. The degree of hostility in communities adjoining Indian reservations is usually in inverse proportion to the distance of the locality from reservation boundaries. The larger cities are often too far away from reservations to provide ready access to reservation Indians and yet big enough, in most cases, to absorb a sparse Indian population. To be sure, the Indian still runs into discrimination in cities, but it does not seem to be as staunch a kind as that which finds expression in smaller communities adjacent to reservations.

In the recent past, signs, such as "Indians Not Allowed," were commonplace in many small communities near reservations. Most of these

have disappeared, but the prejudice they expressed remains. For example, the city commission of Chamberlain, a small community in South Dakota 60 miles from a reservation, passed a resolution in 1954 stating that its citizens were "opposed to the city being made an Indian town and are opposed to having Indians in our schools or living in unsanitary conditions about the city . . ." <sup>1</sup>

Hostility is sometimes found in bordering towns even where the Indian population is large and potentially holds the balance of political power, as in South Dakota where thousands of destitute Indians reside off reservations.

Because of poverty, lack of education and, in some cases, uncleanness and poor dress, it is sometimes difficult to determine whether the hostility is directed against Indians as a race or the Indian as an individual. Moreover, Indians tend to keep to themselves and do not venture into areas where they are likely to experience discrimination. Consequently the Indian often may not know whether he will encounter discrimination if he seeks to broaden the scope of his community existence. Those who were interviewed frequently could not state whether hotels or restaurants refused admission to Indians. Their people had not sought to patronize "all white" establishments and therefore did not know whether service was available on an equal basis.

### *The right to vote*

As a citizen of the United States and of the State wherein he resides the Indian has a right to vote which is subject to the same qualifications and limitations imposed on other citizens. By virtue of the 15th amendment, this right is protected against denial by reason of race or color. For the most part, today's Indian does not suffer under any widespread or substantial restrictions upon his exercise of suffrage. There are no statistics available for nonreservation Indians, but in 1956, the latest election for which figures are available, of the 143,078 Indians over 21 years of age living on reservations, 57,818 were qualified to vote and 25,582 actually cast a ballot in the previous general State election. <sup>2</sup>

The right to vote, however, did not come automatically. In 1938, 14 years after Indians were made citizens, 7 States still enforced statutes and constitutional provisions which denied Indians the franchise. The justification for the refusal invariably rested on one or all of three grounds: that Indians on reservations were members of tribes with a considerable amount of sovereignty independent of State governments; that the Federal Government maintained a high degree of control and supervision over Indians; and that Indians were not required to assume the same burdens of citizenship (i.e., pay real property taxes) and did not have the same interest in local political affairs. By 1947, however,

the number of States refusing the franchise was reduced to two—Arizona and New Mexico—each with large Indian populations. As a result of judicial decisions, both States withdrew their prohibitions in 1948.<sup>3</sup> (There was a recent flurry in New Mexico, however, when a defeated candidate brought suit contesting the right of the Navajo Indians to vote on reservations for State offices. The suit has not yet been decided.)<sup>3a</sup> In 1956, Utah revived a statute which, in effect, prohibited Indians living on reservations from voting. The statute provided that Indians were not to be considered residents of Utah for voting purposes unless prior residence in the State, other than on a reservation, had been established. In a class action, Preston Allen, a reservation Indian, brought suit in the Utah Supreme Court contending that the statute deprived Indians of the right to vote because of race in violation of the 14th and 15th amendments.<sup>4</sup> The court denied the contention and upheld the validity of the statute on the ground that the separate classification of Indians was reasonable. Said the court: <sup>5</sup>

This conclusion is based upon their continued tribal sovereignty; the influence and control, actual and potential, of the Federal Government over them; the fact that they enjoy the benefits of Governmental services without bearing commensurate tax burden, and are not as conversant with nor as interested in Government as other citizens.

The Supreme Court of the United States granted certiorari. However, a motion to vacate the judgment was granted upon stipulation of counsel, that the case had become moot.<sup>6</sup> Utah had repealed its statute, and expressly provided that residence on an Indian reservation should not result in loss of voting rights.

Such on and off attempts to restrict or challenge the right of Indians to vote arise, in part, from the irritation occasioned by awareness of the Indian's partial exemption from State legal processes. The 1959 case of *Williams v. Lee*<sup>7</sup> is an example. In that case, a white trader sued a Navajo Indian in an Arizona State court to collect a debt for goods sold. The Navajo contested the suit on the ground that the tribal court and not the State court had jurisdiction since the transaction which gave rise to the suit occurred on the Navajo Reservation. A judgment was nonetheless entered in behalf of the white trader and affirmed on appeal to the Arizona Supreme Court. The U.S. Supreme Court reversed, however, on the ground that Arizona had no jurisdiction over Indians on the reservation even where the transaction was between a white man and an Indian.

The decision became the subject of heated discussions throughout Arizona, culminating in a formal opinion issued by the State Attorney General that Indians could not vote on reservations because they were

not amenable to the laws of the State.<sup>8</sup> The Attorney General reasoned that law and order could not be maintained at polling places on reservations and ballot boxes could not be protected against stuffing. Legislation was introduced to remove all polling places from reservations. Because of the vastness of the Indian land, the removal of polling places would have disenfranchised all but a few of the reservation Indians. The legislation did not pass, however.

At the present time, most, if not all, of the legal obstacles specifically barring Indians from voting have been removed. And Indian leaders as well as officers of National Indian associations are of the opinion that the right is generally secure both on and off the reservation. The few stumbling blocks that do remain are of a more general nature. In a few States, Indians have been inhibited from large scale participation in the voting process by the poll tax and the literacy test. The latter may be a cause of the low Indian registration in States with literacy tests since some reports indicate that the Indian literacy rate approximates 50 percent.<sup>9</sup> The rate of illiteracy is of course in large part a product of the inadequate schooling of the older generation of Indians. It is not, however, the sole cause of Indian nonvoting. Two related factors which are advanced by many persons, are the Indian's intimate concern with tribal affairs, and his indifference to the white man's politics. Moreover, the Indian often recognizes the Bureau of Indian Affairs as the "government," and seeks what protection, guidance and good he can from its local and Washington representatives. Such factors as these combine to produce occasional extreme examples of seeming political apathy. One, taken at random, is the case of the Choctaws of Mississippi. Of 1,278 adults on reservations, only 27 were eligible to vote and only 9 voted in 1956.<sup>10</sup>

In recent years some Indians appear to have taken long strides in the use of the ballot and have thereby increased their political effectiveness. In New Mexico the percentage of Indian registered voters increased substantially between 1952 and 1956, largely as the result of a voter education program. Similar increases were found for some tribes in Montana, South Dakota, and Washington.

In summary, there do not seem to be any current instances of denials of voting rights to Indians because of race. The failure of Indians to vote in substantial numbers are not attributable to direct discrimination. It is no doubt due, in some measure, to lack of interest and to mixed loyalties, the deepest of which is to the Indian way of life. Whatever the cause, it is clear that years of distress and political confusion have not bred the kind of respect for the white man's institutions that encourages the pursuit of social betterment through the medium of the ballot box.

## *Public education*

As with Indian land, the Federal Government has played a dominant role in Indian education. The role has not been an easy one either for the Government or the Indian. What is difficult enough in itself became doubly so since Indian youth were the products of a culture alien to the one to which the classroom introduced them.

The first Federal action in the field of Indian education was the incorporation of education provisions in the 1794 treaty with the Tuscaroras. Thereafter the inclusion of similar provisions in treaties became the general practice until 1871 when treaty making was abandoned. The first congressional legislation in the field was the act of March 30, 1802, authorizing the expenditure of \$15,000 a year "to promote civilization among the aborigines."<sup>11</sup>

In 1819, at the urging of President Monroe, Congress passed an act which provided that the President could:<sup>12</sup>

. . . employ capable persons of good moral character to instruct them (the Indians) in the mode of agriculture suited to their situation; and for teaching their children in reading, writing, and arithmetic. . . .

A sum of \$10,000, later called the "civilization fund," was appropriated to accomplish the purposes of the act. Most of it went to establish and support mission schools whose aim it was to christianize as well as "civilize" the Indian. These were private, sectarian schools organized by missionary societies. However, in the latter part of the 19th century, opposition to Federal support for sectarian education grew and in 1897 (again in 1917) Congress passed legislation prohibiting the use of Federal funds for the education of Indian children in sectarian schools.<sup>13</sup>

While the total impact of mission education was slight, it was largely through mission efforts that schooling became the accepted method for bridging the gap between the Indian and white civilization. It also gave rise to the somewhat disputed device of the boarding school to which Indian children were sent to be freed from the inhibitions of tribal culture.

The first Federal Indian school was established in 1890, and from that time on, the number increased each year. Following the pattern set by mission schools, the course of instruction included domestic science, farming, the industrial arts, reading, writing, and arithmetic. The next 20 years saw a mushrooming of Indian schools operated by the Federal Government, though the supply never quite kept pace with the demand. The new schools were often of the boarding variety, among them Carlisle, Pa., and Lawrence, Kans. (Haskell Institute).<sup>14</sup> To meet the shortage, Congress passed the act of 1882<sup>15</sup> which authorized

the conversion of abandoned army forts for school purposes. Several of these were still in use as late as 1956.

In 1890, the old Office of Indian Affairs began a policy of enrolling Indians in public schools, which were often reimbursed for the increase in cost incurred by instructing the Indian children. Several factors however inhibited State acceptance of a responsibility for Indian education. The reservation was one. Not only did the reservation remove Indians from contact with the States, it also provided a financial roadblock to State supported education since Indian lands were not taxable. Moreover, Indians were not citizens and were felt to be the responsibility of the Federal Government.

The grant of citizenship in 1924 together with the continued policy of reimbursing States for the cost of educating Indian children helped allay the resistance of the States. The policy of reimbursement was expanded in 1934 by the Johnson-O'Malley Act which authorized the Secretary of Interior to enter into contracts with the various States, colleges and schools for the "education, medical attention, agricultural assistance, and social welfare . . . of Indians." In 1953, Congress took a further step toward assimilating Indian children into public schools by authorizing the transfer of Federal Indian schools to the States, with the consent of the Indians, and providing further that the schools be equally accessible to Indians and non-Indians alike.<sup>16</sup>

As a result of these measures, there has been a considerable shift in Indian education from federally operated schools to State supported ones. In 1900, there were 26,451 Indians in school, only 246 of them in State public schools. By 1960, more than 125,000 reservation and non-reservation Indians between the ages of 6 and 18 were in schools of one sort or another. Sixty-four percent of the total were in State schools, 27 percent in Federal schools and 9 percent in mission schools.

For many years the Federal policy in education was committed to the acculturation of the American Indian, a policy that was not entirely successful. In 1928, the Meriam Study found that only 8 percent of Indian school children were at or ahead of the normal grade for their age whereas 27 percent were retarded by 5 years or more.<sup>17</sup> One reason for the lag was felt to be that Federal education had not realistically taken into account the needs of Indians and Indian children. For one thing, the boarding school approach was thought to represent too keen, quick and unrewarding a break with tribal life and culture. Among other taboos, boarding schools forbade the use of Indian language. For another, Federal education had undermined Indian pride in Indianness without adequately preparing students for effective postschooling assimilation. For a third, the Indian suffered under severe disabilities of poverty and disease which made education more difficult.

As has been said, the Johnson-O'Malley Act of 1934 reversed past Federal policy with respect to many Indian problems. Among them was

Indian education. The cohesiveness of tribal life was now recognized to be an important element in a child's education. At the same time, the backwardness of some tribes was at least recognized as a liability to be reckoned with. Education, therefore, was to be directly pointed to the needs of Indians—to help them gain the skills needed to function in the white man's world without, at the same time, destroying their own. The boarding school gave way to the day school. Acculturation as an end in itself was softened. Children were to be schooled within their home environment by persons who were to be trained in Indian lore. The use of the native language was no longer forbidden and the Indian heritage was not looked upon as a scourge.

While much has thus been done to improve Indian education in the past 30 years, much more remains to be done. About 8,000 Indian children of school age are not in school.<sup>18</sup> Overage school children are a persistent problem. The drop out rate among teenagers is appalling.<sup>19</sup> Only 24 of the 285 Federal schools offered full-time high school courses in 1959. Over 100 Bureau schools offer only 1 to 5 years education and many of the 111 have no more than 2 grades. As a result, the educational level of the Indian is much lower than the national average.

More than any immigrant group, Indians persistently adhere to their native tongues, a persistence that makes education even more difficult than it normally is. As recently as 20 years ago, close to 30 percent of all Indian children entering Federal Indian schools came from families in which only an Indian language was spoken. In some areas, the proportion of Indian children raised in homes where no English is spoken ran as high as 97 percent.<sup>20</sup>

Another problem area is compulsory attendance, which has had a turbulent and sometimes disastrous history. In 1891 and again in 1893 Congress provided statutory authority for the issuance of compulsory attendance regulations.<sup>21</sup> However, the zeal with which governmental officials enforced regulations created strong Indian resentment. Indian children of tender years were often taken from their parents and transported hundreds and sometimes thousands of miles to attend Government schools. Occasionally, families were never reunited. In the face of mounting criticism, the policy was modified but not before it had adversely influenced the attitude of Indians towards compulsory education.

At present, the Secretary of the Interior is authorized to make and enforce regulations to insure the regular attendance of Indian children at Indian schools and public schools. The Bureau has tried, with some success, to avoid the mistakes of the past and to overcome the residue of ill will. Presently it encounters much less opposition to compulsory education from Indian tribes.<sup>22</sup>

The hostility to compulsory education that still exists usually comes from Indians in remote sections of reservations whose children, too far

from reservation schools to make the daily trek, are required to live in boarding schools at least 5 days a week and often for the entire school year. The Bureau has tried to meet this difficulty by locating trailer schools at the more remote sections of larger reservations. Another, though lesser, factor in the Indian resistance to compulsory education is the need for farm help in the spring and fall.

Some Indians have achieved a professional status through education, yet too many others have had meager schooling. As the Commission on the Rights, Liberties, and Responsibilities of the American Indian pointed out in its 1961 Summary Report<sup>23</sup> many Indians still live in grimy poverty in communities where English is neither liked nor spoken. The Report noted that Indian parents, without a tradition of formal education behind them, find it hard to understand its need or benefits. It found that poor families, struggling for a livelihood, are "loath to surrender the potential wage the children might earn." A child brought up in such surroundings, in an alien culture, with a partial command of the English language faces tremendous handicaps, and is not likely to overcome them without incentive and special instruction. As complex as community life has now become, the uneducated man has little chance to make his way through the labyrinth. If, in addition to being uneducated, he is Indian (or Negro, or Mexican, for that matter), his chances are less than slim.

For the Indian child whose education the Federal Government provides through Federal schools, the problem is the adequacy and availability of the education. Where civil rights problems have arisen is with respect to the States. Although reservation Indians enrolling in public schools have encountered hostility, the Federal policy of paying grants or subsidies to public schools for admitting reservation Indians helped to break down policies of exclusion. In some school districts, the per capita payments by the Federal Government exceed the cost per capita of the States. Hence, apart from the South, the exclusion of reservation Indians from public schools is rare. However, the Federal Government does not compel States to admit Indian children to public schools, let alone admit them on a nonsegregated basis. Its position is that eligibility for reservation Indian enrollment in public schools is a matter for State determination. Thus discrimination can and does occur in some areas.

As for reservation Indians the Bureau of Indian Affairs reported to the Commission in 1958 it had some difficulty enrolling children on a nondiscriminatory basis in Louisiana, Mississippi, and North Carolina.<sup>24</sup>

An Oklahoma Choctaw engaged in missionary work among the Mississippi Choctaws recently complained to the Bureau of Indian Affairs that he was not allowed to enroll his daughter in the public elementary school in Philadelphia, Miss., because of her race. He accused the Bureau of acquiescing in racial discrimination. In its reply the Bureau



stated that there was nothing it could do.<sup>25</sup> While there are some Choctaws in white schools in Mississippi, the bulk of Choctaw children suffer from the exclusionary policy of local public schools. This is true also of the Cherokee Indians in North Carolina. In 1960 only 91 of 992 Choctaw children in Mississippi and only 136 of 1053 Cherokee children of school age were in white public schools.<sup>26</sup> The remainder were in Federal Indian schools.

The Mississippi statute<sup>27</sup> authorizes separate schools for Indians, but does not prohibit the admission of Indians to white schools as in the case of Negroes. North Carolina provides separate schools for Indians not supervised by the Federal Government. A Delaware statute<sup>28</sup> requires the State board of education to establish schools for Indians and prohibits the attendance of white or colored children in such schools without the permission of the State board of education. There is, however, just one Indian school, the Nanticoke Indian School at Millsboro, in the State of Delaware. As of May 1961 it had an enrollment of 20 pupils all of whom are Indians.<sup>29</sup>

Some Indian tribes are not considered a Federal responsibility and hence the States wherein they reside have the primary duty of providing schooling. It is often provided on a segregated basis in Southern States. In nine North Carolina counties, for example, there are three separate sets of public schools—for whites, Negroes, and Indians. One of the nine, Robeson, reportedly has a fourth school reserved for mixed bloods. Another, Person, takes some Indian students from Virginia. In the 9 counties there are 19 separate schools for Indians, 100 for whites and 70 for Negroes, serving 10,771 Indians, 32,895 Negroes and 46,465 whites. All of the Indian schools are public schools operated with State aid and State paid teachers under county boards of education. In 1959, Indian students of Harnett County sought admission to the all-white high school in the county. Harnett County has an Indian elementary school (78 students in 1960), but no high school. Its high school students must travel 70 miles daily round trip by bus to East Carolina Indian School near Clinton in Sampson County. They were refused admission by the Harnett County Board.<sup>30</sup>

In 1960, attorneys for three of the Indian Harnett County students filed suit in Federal district court asking that the three and "other Indian children who may seek admission" be admitted to public schools in Harnett County. Once again the claim was made that they were being denied equal protection in that they were required to attend an Indian high school 35 miles away. After decreeing their admission, the Federal district judge changed his mind and ordered a full hearing to determine whether, in fact, discrimination was being practiced.<sup>31</sup> On June 21, 1961, however, it was reported that the Harnett County Board

of Education had voted unanimously to admit 20 Indian children to the previously all-white Dunn High School in September.<sup>32</sup>

As a result of refusals to admit Indian children to white public schools, and the general indisposition of States to spend money on the education of Indians residing on tax-exempt lands, the Indian Bureau has had to build schools on reservations in Southern States at a time when its policy favored assimilation of Indian children into local public school systems. In some cases it has had to send Indian students long distances because of State policies. For example, Bureau schools in Mississippi go only to the 10th grade and Choctaw Indian students wishing to complete high school must transfer to Bureau schools over a thousand miles away. Local exclusion policies, therefore, work a considerable hardship on Indian teenagers and their parents.

Segregation may crop up elsewhere than in the South. Until 1958 there was a segregated school system in Round Valley, Calif., with Indian children attending one public school and white children another. A forceful school superintendent consolidated both and reportedly lost his job as a result.

The withdrawal of white children from the public school in Cedarville, Calif., because of its integrated character was described by Mr. Erin Forrest at a Commission hearing in California in January 1960. Mr. Forrest testified that white children were permitted to transfer to another school district some distance away to avoid integration in the Cedarville school. Funds were also "transferred" from Cedarville to the school receiving the white transferees. According to Mr. Forrest, the State Department of Education unwittingly encourages discrimination.<sup>33</sup>

In summary, State public schools have accepted a fair proportion of reservation Indian children on a nondiscriminatory basis—not always without special money inducement from the Federal Government. Most other Indian children are educated by the Federal Government in Federal schools. Some "Federal-Indian" children are admitted by some States only to segregated schools and, in some cases, they are not admitted to local public schools at all. Most nonreservation Indian children in Southern States attend separate public schools.

It is therefore apparent that, with respect to non-Federal schooling, Indians in some States are denied equal protection of the laws.

### *The administration of justice*

The power of an Indian tribe to administer justice is historically rooted in its status as a sovereign entity, and, except as the Federal Government has expressly limited it, the civil and criminal jurisdiction of a tribe is roughly akin to that of any sovereign State.

For the most part, Federal jurisdiction and law enforcement apply to 10 major criminal offenses involving Indians or Indian property—murder, manslaughter, burglary, arson, rape, incest, serious assaults, and the embezzlement of tribal funds. Most other offenses committed by Indians on reservations, as well as many civil actions, fall within the purview of tribal law and are tried by tribal courts. State laws do not generally extend to Indians on reservations or their holdings except where Congress has expressly specified otherwise. When off the reservation, Indians are subject to the same laws applicable to other persons.

There have been recent deviations from the general rules of jurisdiction, however, as part of the termination process pursuant to House Concurrent Resolution 108. Public Law 280,<sup>34</sup> passed in 1953, as amended, permits State laws to supersede Federal and tribal laws with respect to reservation Indians in Alaska, Wisconsin, Minnesota (excepting the Red Lake Reservation), Nebraska, California, and Oregon (excepting the Warm Springs Reservation). Limitations are, however, incorporated in the law to protect Indian property from taxation and to protect Indian hunting and fishing rights. The statute permits States, on their own initiative, to extend their civil and criminal laws to Indians without consulting the Indians, a provision which led President Eisenhower to criticize the law when he signed it.

Only a few States have taken advantage of the invitation to extend their jurisdiction to reservation Indians. Nevada, the first to act, adopted legislation in 1955. South Dakota offered to do so, but only with the proviso that the Federal Government defray the cost, something the statute does not allow. The first attempt in Washington met with strong Indian opposition and was defeated. Thereafter, in 1957, a bill was passed, with the support of the Indians, which permits Washington to assume jurisdiction only after a tribe has requested it to do so. Eleven tribes have made that request.<sup>35</sup>

Where law and order is the responsibility of Indians it is administered by tribal courts under tribal codes of law. There are two types of Indian courts, those established by tribal ordinance or resolution, and a Court of Indian Offenses established by the Department of Interior. One difference between the two is that the latter operates under rules and procedures prescribed by the Federal Government, while the former operate under rules prescribed by the courts themselves or by the tribal councils.

Indian courts are conducted by one or more judges, who usually have no legal training. The courts have both civil and criminal jurisdiction, the latter being limited for the most part to misdemeanors. As a rule, professional attorneys are not permitted to practice before them. In May of 1961, however, the Court of Indian Offenses revoked the prohibition against attorneys.<sup>36</sup> As for tribal courts, party litigants may employ lay "counsel."

Indian courts are said to render a good brand of justice except, perhaps, where offenders require treatment rather than punishment, as is the case with many juvenile delinquents and some adults. Most Indian courts have neither the personnel nor the other resources to cope with offenders of this sort.<sup>87</sup>

The majority of Indian reservations have their own tribal police who function independently of the tribal court system, and whose duty it is to enforce tribal law. In some instances tribal police are special deputies of the sheriff of the county; more frequently, local white police officers are deputized as special tribal police to give them authority to make arrests in Indian country. Although the tribal police owe their loyalty to the tribal council and are not responsible to the Bureau of Indian Affairs, there are a considerable number of Indian police employed by the Bureau with appropriated funds with whom tribal police are said to work closely.

Among the problems that arise from the jurisdictional complex is one that relates to the enforcement of the civil judgments of tribal courts. At present, there is no simple procedure for enforcing such judgments outside of the reservation and, as a result, the effectiveness of the only courts to which Indians of some tribes may go for redress is severely limited. Another has to do with procedural rights. An Indian defendant in a tribal court may be tried before a layman judge without the right of counsel or the right of appeal. The same is not true, of course, of Indians tried in State and Federal courts.

It must be remembered that many of these problems owe their being to the uniquely diverse legal status of Indians. Both the jurisdictional complex and the differences in rights enjoyed by Indians are worthy of an extended examination which the Commission, in this preliminary study, has not been able to make.

For the most part complaints of Indians with respect to law and order go to two extremes. On the one hand the charge is made that law and order is not adequately maintained on Indian reservations; on the other, there are frequent and widespread complaints that law enforcement officials in the white communities with substantial Indian populations, "throw the book" and sometimes more at Indian violators.

A Nez Percé tribal delegation, for instance, contended that in local white communities minor juvenile offenses by Indian youths are ignored by police officials until there is a serious offense, whereupon Indian youths are sent to industrial schools without benefit of probation. As a result, they said, while the tribes constitute less than one-half of 1 percent of the Idaho population, 20 percent of the industrial school inmates are Indian.<sup>88</sup>

Tribal delegations from the States of South Dakota, Montana, and Washington concurred in a complaint voiced by the Nez Percé that local police officers refuse to enforce truancy laws against Indian chil-

dren. The truant officers, it was said, often take the position that Indian children who attend public schools are the responsibility of the Federal Government.<sup>39</sup>

The delegations from these States expressed great concern over their inability to control their children and the lack of assistance toward this end from official resources.

With respect to the complaint that Indians, when off the reservation, receive more severe sentences for crimes than do whites, an attorney for several Indian tribes in Arizona has stated that the pattern of severe sentences for all offenses including traffic violations is the bitterest concern among Indians in the State.<sup>40</sup>

It has been reported that at times the law enforcement officers and jurists of Cortez, Col., appear to be overzealous in jailing Indians and giving them heavy fines.<sup>41</sup>

There is widespread opinion in California among Indians and those close to them that police are more prone to arrest Indians off the reservation than they are whites.<sup>42</sup>

A charge was made that South Dakota Indians are not treated fairly by the courts. The fact that Indians constitute 34 percent of the inmate population at the State penitentiary while they represent only 5 percent of the State population is advanced as evidence of this.<sup>43</sup>

In South Dakota it is also said that there is frequent use of a sentencing technique which involves the imposition of a fine or imprisonment with suspension of the sentence on condition that the offender leave town for a specified period of time. This is known as a "*floater sentence*," generally recognized as illegal under South Dakota's sentencing statutes. It would seem to be a denial of equal protection of the laws. The "*floater sentence*" is alleged to be rarely used except against Indians.<sup>44</sup>

A spokesman from the Oglala Sioux (South Dakota), told a representative of the Commission that Indians who are arrested for minor offenses are required to do manual labor during their incarceration while white prisoners are not. He alleged that in one community the police force refuses to provide protection or to respond to phone calls from the Indians in the Indian quarter of town.

A complaint that seems to come from all jurisdictions is that the local police officials tend to ignore Indian offenses against Indians but are very severe when Indians become involved with white persons.

Another common complaint concerns the exposure of Indians to violence, either by law enforcement officials, or by private citizens. It is said that white citizens sometimes take the law into their own hands, treat Indians violently and thereafter escape the full rigor of the law. There have also been reports that police officers were quick to use their weapons far beyond reasonable need where Indians are concerned.

The charge is often made that Indians arrested for drunkenness are jailed, then "rolled" by the police. The Winnebago Tribe of Nebraska

reported that Indians arrested for excessive drinking who have money are jailed and "rolled;" those without are released; that the jail itself, a wretched place, is an "Indian jail"—it takes no white prisoners; that the local Indian policeman was reportedly advised to arrest Indians who had been drinking, but not whites. On the one occasion the Indian policeman took a drunken white in tow he was allegedly advised by the Chief of Police that his services would no longer be needed if it happened again. The complaint that Indians are often "encouraged" to drink, jailed, then "rolled" was also made quite often.<sup>45</sup>

Similar complaints of mistreatment were made in Montana, North Dakota, Wyoming, Oklahoma, and New Mexico. In Elder, Mont., it was reported that Indians were often held incommunicado after arrest, exposed to police violence which occasionally required hospital treatment for the victim.

Many Indians complained that local authorities did not provide adequate police protection in Indian quarters of towns and cities. In one Montana community, city fathers were accused of ignoring a request for police protection and, as a result, it is said that virtual lawlessness prevails.<sup>46</sup> Military personnel are said to speed through the Indian section of town, discharging weapons and shouting obscenities. There were also said to have been instances of the abduction of Indian women for immoral purposes. Requests for police assistance though numerous, are said to have fallen on deaf ears and Indian citizens have had to assume the duty of preserving their own peace.

Under Public Law 280, the Federal Government relinquished to Nebraska criminal and civil jurisdiction of the Omaha and Winnebago Reservation. However, the local governments nearby claim they do not have the funds to maintain station deputy sheriffs on the reservation.<sup>47</sup> Consequently, the reservation must rely upon the sheriff to answer calls as he is able. Similar problems appear to exist for reservations in California, Minnesota, Oregon, Wisconsin, and Alaska as a result of the withdrawal of Federal law and order and inadequate expansion of State jurisdiction.

Most of the foregoing complaints of discrimination allege denials of equal protection of the laws that fall within the purview of the Commission's jurisdiction. How extensive, how valid they are could not be determined in this preliminary study. Yet the repetitive nature of the charges emanating from different sources suggests that discrimination in the administration of justice is a serious concern. If true, the charges amount to a substantial denial of civil rights for an important segment of the population.

### *Public welfare*

Because of their generally impoverished state, Indians are vitally concerned about their eligibility for welfare benefits. As a matter of law,

insofar as such benefits are extended by a State to its needy citizens, they must equally be available to Indians, since Indians are citizens of the States wherein they reside whether on or off the reservation.

As for public assistance programs under the Social Security Act <sup>48</sup>—old-age assistance, aid to the blind, aid to the dependent children, total and permanent disability compensation—Indians, whether on or off the reservation, receive the same benefits as do other citizens. These programs are administered by the States, and in order to secure Federal funds, each State must submit a plan to the Federal Government for approval. Moreover, the plan must be in effect throughout the State and this is taken to include Indian reservations.<sup>49</sup> State plans are not required, however, to cover all of the specific categories of public assistance under which one may receive benefits. In some cases, it is said that a State may exclude a particular category of assistance in order to escape the responsibility of extending it to Indians living on reservations. For example, Arizona's program does not include aid to the permanently and totally disabled, reportedly because the State did not want to be responsible for reservation Indians.<sup>50</sup>

While Indians do receive the same benefits under Federal-State social security programs as do other citizens, this is not always the case with respect to general assistance programs administered by States or their subdivisions. (General public assistance is the catchall category under which aid is given to the needy who do not fall into any of the categories under social security.) These programs are financed by the States and/or the localities themselves. And since the Federal Government has no such program of its own, it does not supply funds to the States for theirs.

Most States and counties with significant Indian populations do not extend their general assistance programs to reservation Indians. The arguments against doing so are familiar ones. Indians, it is contended, are Federal "wards," and the duty of care, it is said, is well placed since the plight of the Indian is largely of the Federal Government's own making. Moreover, it is contended that since the legal power of a State does not extend to reservation Indians—Indian lands, for example, are exempt from State taxation—its legal duty to provide the same measure of care to Indians that it does to its other citizens is thereby diminished. Nor are these the only arguments. Some States are irritated by the fact that, in many instances, destitute Indians who apply for public assistance are the owners or heirs of land held in trust for them by the Federal Government. In other instances, though an individual Indian might himself be destitute, the tribe to which he belongs is comparatively well off. In such cases, it is felt that the tribe in whose assets the Indian has an interest, rather than the State, should assume the duty of care. Where States or their subdivisions do not provide aid to needy reservation Indians and where the tribe to which the needy

Indian belongs is without sufficient resources to do so, the Bureau of Indian Affairs steps in with a program of its own.

As for off-the-reservation Indians, their eligibility to receive aid under State and county assistance programs is often a matter of potluck. Whether or not they do depends on the locality, the number of destitute Indians applying for aid and the solvency of the agency dispensing it. In some counties, Indians find it difficult to secure relief and, because the Bureau of Indian Affairs has no special program for them, destitute off-the-reservation Indians often find the going rough.

Complaints alleging discrimination in the dispensation of welfare aid have come to the Commission from a variety of Indian sources covering a number of States. Several of the Indian delegations interviewed expressed the view that the discrimination was widespread both as to eligibility and amount of welfare payments received.

The State of Arizona, for example, has refused welfare aid to Indians residing on reservations. A few years ago the Arizona State Welfare Board, on appeal, did allow a claim made by a reservation Indian for general assistance, but specifically ruled that the decision would not control future cases.<sup>51</sup>

Indians from the State of Washington have complained that they are now required by the State, and encouraged by Bureau personnel, to turn over titles to their properties in order to get welfare benefits. They contend this to be a sharp and unlooked-for change in Bureau policy. As a result, they say, some Indians have had their homes and land sold at auction.

A Fort Berthold Indian delegation from North Dakota contended that some counties deny aid to Indians living off the reservation on the grounds that they are without funds. The Indians claim that the lack of funds applies only to them.

Under the poor relief law of South Dakota,<sup>52</sup> a county may require a new resident to sign a poor relief affidavit to the effect that he will not become a public charge on the county within a period of 1 year. An Indian moving from one county to another, or into the city from a reservation who is served with notice of the requirement for filing such an affidavit, becomes ineligible for relief for a period of 1 year. It is said to be the practice in South Dakota, particularly in Pennington County, to continue serving notices on the same Indians year after year in order to keep them from getting relief.<sup>53</sup> The law has been in effect since 1919 but is now allegedly used primarily against Indians. While the 1-year requirement may be legal, the practice of serving a second, third, and fourth notice to prevent them from acquiring a full year's residence would, if applied to Indians alone, amount to a denial of equal protection of the laws.

In California, a county welfare agency refused assistance to an Indian. On appeal, the court held that the Indian was entitled to welfare bene-



fits as a citizen of the State.<sup>54</sup> Despite this clear holding, however, the charge is made that discrimination against Indians exists in California on the county level in many areas.

Most Indians interviewed by the Commission staff claimed they were often discouraged from applying for public welfare. They contended that welfare workers are reluctant to approve their applications for various forms of benefits. It is probably within this area of administrative discretion that the greatest amount of discrimination occurs. However, it is difficult to find clear evidence.

In summary, where States administer programs under social security, benefits are available to Indians and non-Indians alike. Civil rights deprivations do arise, however, with respect to State and local assistance programs not under social security. These, it appears, are not uniformly available to Indians, particularly reservation Indians. Insofar as a given State explicitly refuses to extend its program to Indians, the refusal would seem to amount to a clear denial of equal protection of the laws. As for the more subtle kinds of discrimination, where, for example, the refusal of welfare benefits to a particular Indian falls within the area of local administrative discretion, the fact of discrimination is more difficult to establish. Nonetheless, if the refusal is on racial grounds, it, too, amounts to a denial of equal protection of the laws.

### *Housing and employment*

The Commission's survey of Indian civil rights problems did not include a detailed examination of discrimination in the areas of housing and employment. However, on the basis of preliminary reports and interviews, it appears that Indians suffer extensive denials in both areas analogous to those confronting Negroes and other minority groups.

As one might expect from the low economic status of Indians, the quality of reservation housing is far below the national average. There was general agreement among the Indians interviewed that there is a dire need for improved housing on the reservations. However poor and inadequate reservation housing is, it does not involve civil rights issues.

Indians seeking housing off the reservation encounter the same obstacles that Negroes do, though to a lesser degree. While some Indians have been unable to buy new homes where their ability to pay is not in question, most, because of their low economic level, do not reach the point of seeking and being denied a home because of race. For this reason discrimination in the purchase of homes built with Federal assistance does not seem to present a significant problem to Indians at present. However, as the economic status of Indians improves, their demand for housing, and their exposure to whatever patterns of discrimination exist, may be expected to expand.

A frequent explanation given for the absence of Indians from work forces in areas where they might be expected is that Indians have poor work habits. Judged by the white man's standards, some Indians may deserve the criticism. Yet the result of applying a judgment against some Indians to all Indians is to erect unfair barriers against those whose habits are as good as any white man's and to discourage others whose inclination is to acquire them. Moreover, some Indians do possess special skills that white employers do not hesitate to use when they are needed. The skill and ease of some Indians in working on bridges and other high structures is well known.

With few exceptions, the Indians with whom the Commission has had contact, expressed resentment over their inability to find suitable employment in private industry. Some also complained that, despite its announced policy of preferential employment for Indians, the Bureau of Indian Affairs frequently favors whites for jobs on Indian reservations. There were also reported instances of "State" discrimination. Some schools, it was said, urged by parents not to hire "squaws" to teach their children, have avoided taking on qualified Indian teachers. It was also reported that State employment offices often aid and abet discrimination by accepting and processing "don't send me an Indian" job orders.

Even so preliminary a study as this strongly suggests that the pattern of job and housing discrimination applies to Indians as it does to other minority groups. To document the extent and import of the discrimination, particularly in governmentally connected areas, further study is required.

### *Public accommodations*

In many areas Indians, like Negroes, are refused access to accommodations which are open to the general public. Unlike Negroes, however, Indians do not seem to be denied entry to any accommodations that are "State connected" in such a way as to involve the 14th amendment. A brief review of State statutes fails to uncover any that require the segregation of Indians in hotels, restaurants, inns, and other public places. (However, State laws forbidding discrimination by public places because of race unquestionably apply to Indians.) And, while Negroes are still refused equal access to transportation facilities—terminal waiting rooms, restrooms, and restaurants—in sections of the South, Indians are not so disabled. (Representatives of the Choctaw Indians of Mississippi, for example, have advised the Commission that they use "white" waiting rooms in the segregated intrastate bus terminals of that State.) Nor has any evidence come to the Commission's attention that Indians cannot freely use the facilities connected with courthouses, postoffices, and other government buildings. The only

instance of discrimination which may involve State action and, hence, a denial of equal protection, concerns the posting of "No Indians or Dogs Allowed" signs in small towns. Signs of this kind have been reported in the Southwest, notably Arizona.

Discrimination does exist on a spotty basis in many rural communities throughout the Nation in restaurants, taverns, hotels, and similar places. But refusal to serve in places such as these does not, under present law, amount to a denial of equal protection of the laws.

While further study might reveal more extensive bias of the sort condemned by the 14th amendment, nothing gleaned in this preliminary study indicates that the area of discrimination in public accommodations is a matter of significant concern to Indians, their leaders, or spokesmen.



## 4. Conclusions

Limited as was the Commission's study of American Indians, it disclosed sufficient evidence of unequal treatment under law to warrant action in certain areas and more searching investigation in others. It showed, for example, that some Indians are segregated in schools, and that in some instances needy Indians are denied welfare benefits in programs administered and financed by State and local government. Repeated complaints of unfair treatment by police and courts, and complaints of inadequate law enforcement on reservations in States to which the Federal Government has relinquished jurisdiction, indicate serious problems exist in the administration of justice. While no definitive investigation was made in the areas of housing and employment, such information as was received revealed that in both areas Indians run into barriers similar to those confronting the American Negro. Ironically, the study disclosed also that Choctaw Indians use waiting rooms designated "Whites Only" in Mississippi bus stations, while some towns in the Southwest still are marked by signs reading: "No Indians or Dogs Allowed." The significance of this incidental information lies in what it suggests: There is nothing exclusive about insults to human dignity.

In substance then, the civil rights problems of Indians are for the most part the same as those confronting other minorities. Yet Indians have some unique problems. Their cultures and history; their close, changing and at times turbulent relationship to the Federal Government; their battle to preserve reservation land—set them apart from others. Unlike other minorities, tribal Indians are members of semisovereign nations enjoying treaty rights with the Federal Government. They are also, however, citizens entitled to the rights and privileges of citizenship. Similarly, they are entitled to equal protection of the laws. Particularly with respect to land, tribal Indians bear a dependent relationship to the Federal Government often described, though erroneously, as that of "ward" to guardian.

The manifestations of their unique status are varied. Indians, for example, are in some respects beyond the reach of Federal and State law, including the Constitution itself. Tribal governments are not subject to the limitations imposed on governmental authority by the Bill of Rights

and the 14th amendment. Indian land is, for the most part, held in trust by the Federal Government; it is tax exempt, and the Government's consent is required before it can be sold. Some Indians go to Federal, some to State, and some to mission schools. They may be subject to three kinds of law and legal procedure. They have, it appears, a strong tendency to preserve their own identities and ways of life, a tendency which is most concretely expressed in the Indian tie to reservations.

Some States resent the fact that while on a reservation, Indians are beyond the reach of State law; this resentment is occasionally expressed in attempts at "retaliation." For example, when in 1959 the Supreme Court held that Arizona had no jurisdiction over a transaction that occurred on the Navajo reservation, even though it was between a white man and an Indian, the State sought to remove all polling places from the reservation. Arizona's Attorney General issued an opinion declaring that Indians could not cast their ballots on reservations because they were not amenable to State laws. As a practical matter the removal of polling places would have disfranchised all but a few reservation Indians, for the size of the reservation would have compelled most Indians to travel great distances to cast their ballots. Though legislation was introduced to implement the Attorney General's opinion, it did not pass. The incident illustrates the Indian's ambivalent legal status, and the frustrations to which it gives rise.

Nor is it the only one. As has been noted, Indians are citizens of the United States and, as such, one would expect them to enjoy the significant protections from government encroachment contained in the Bill of Rights. They do with respect to Federal and State action, but not with respect to tribal action. Thus tribal governments can (as indeed one has) prevent tribal members on an Indian reservation from freely pursuing the religion of their choice.

Despite the recent problem in Arizona and a similar one still unresolved in New Mexico, the Indian's right to vote appears to be more secure than his other rights. Yet Indians have not gone to the polls in great numbers. A variety of explanations is offered. The high illiteracy rate among Indians (estimated to be at 50 percent) restricts registration in States that require literacy tests. Another, and more important factor, appears to be that tribal Indians are more concerned with tribal government than with white man's government. A third has to do with their close relationship to the Federal Bureau of Indian Affairs.

As to education, States with Indian populations have accepted a fair proportion of tribal children from reservations as students in public schools on a nondiscriminatory basis, although not always without special inducement by the Federal Government. As of 1960 about 60 percent of the 125,000 Indians of school age were in State schools; 27 percent were in Federal schools and 9 percent in mission schools. In some States, however, Indians are accepted in public schools only on a segregated

basis. The Bureau of Indian Affairs has reported difficulty in securing admission of Indian children to public schools on a nondiscriminatory basis in Louisiana, Mississippi, and North Carolina. However, some Choctaw children in Mississippi and some Cherokee children in North Carolina do go to public schools with white children.

Apart from matters of civil rights, Indian education suffers from other limitations. Some reservations are so big and so thinly populated that it is not practical to provide schools accessible to all Indian children. Moreover, there is still some tribal resistance to compulsory education, largely because of past Federal policies under which Indian children were sent to boarding schools, forbidden to speak their native tongues and otherwise encouraged to sever tribal and cultural ties. (In some cases, families were never reunited.) A third factor is the poverty of many Indians and the reluctance to surrender wage earners to the classroom. Another is the lack of a tradition of formal education.

Complaints by Indians of discrimination in employment are similar to those of Negroes. A preliminary survey indicates some State employment offices accept and process discriminatory job orders. There are also charges that the Bureau of Indian Affairs frequently ignores its announced policy of preferential employment for Indians. Some schools, it is said, urged by parents not to permit "squaws" to teach white children, have resisted hiring qualified Indian teachers. As to private employment, many Indians express resentment over the reluctance of some employers to hire them for suitable jobs.

Indian complaints of unequal treatment in the administration of justice include charges that law and order are not adequately maintained on reservations in States to which jurisdiction has been ceded, and that there is outright ill-treatment by police and courts in towns adjacent to Indian reservations.

A final area of unequal treatment is that of public welfare—a matter of vital concern for Indians because of their general poverty. In this preliminary study there were no complaints of discrimination in the administration of public assistance programs operated by States with Federal funds. Complaints were received, however, of unequal treatment in the administration of programs financed from State and local revenue. Investigation disclosed that some States with large Indian populations do not extend their general assistance programs to Indians living on reservations. Indians, it is argued, are the special responsibility of the Federal Government. And since the legal power of a State does not ordinarily extend to Indians living on reservations—for example, Indian lands are exempt from State taxes—some States insist that their legal duty to provide care for reservation Indians is limited. Another argument is that while some individual Indians may be destitute, the tribes to which they belong are well off and should take care of their needs.

Thus the denial of equal protection of the laws to Indians appears to be severe and widespread. Some of the denials (those concerning welfare, the administration of justice and, in the recent past, voting) stem at least in part from the unique legal and political status of Indians. Others stem from the fact that, as a minority, Indians are subject to the same kinds of discrimination inflicted on other minorities. Whatever their source, the denials deserve full-fledged investigation.

Over and above matters of civil rights, we still face the problem of redeeming the past by preparing for the future, of providing Indians with the tools by which they may become economically, socially, and democratically secure. As this is done, some, if not many, of the civil rights denials will in all probability diminish. It is toward both ends then—protecting Indian rights and promoting Indian economic health—that the Federal Government should strive.

## FINDINGS

### *General comments*

Much of what concerns the Indian is outside the specific scope of this Commission's jurisdiction—for example, his desire to retain "home rule," his worry over the loss of tribal lands, his fear that the Federal Government will abruptly end its "trusteeship," his need for economic development. Most of these were covered by the recent report to the Secretary of the Interior by the Task Force on Indian Affairs. For the present, it appears that the policy of terminating Federal supervision and special services to Indians held in abeyance in recent years, has been abandoned. The Interior Department indicates it will adopt a "new trail" for Indians stressing economic development.

Within the area of the Commission's jurisdiction, there is evidence of some serious Indian civil rights problems. But in view of the tentative nature of its study, the Commission does not offer recommendations particularly directed to such matters. However, several recommendations made elsewhere in this report would serve Indians as well as others. The following findings suggest several areas warranting further study and possibly action by appropriate Federal agencies.

1. Despite recent attempts to make it difficult for Indians on two reservations to vote, by and large Indians are free to register and cast their ballots. However, a high illiteracy rate among older Indians, and a preoccupation with tribal affairs apparently keep Indian registration figures well below the national average.



2. While the bulk of Indian children have been accepted in white public schools (although not without Federal inducement), some States have denied Indians admission to State schools because of race. With appropriate authorization by the President or Congress, the Department of Justice or the Department of the Interior might take legal action to end this discrimination against Indian children.

3. Although Indians are afforded welfare benefits much the same as other Americans in programs administered by States with Federal aid, reservation Indians in some areas have been openly denied general public assistance in localities administering programs financed out of local and State revenue. The extent to which this occurs is a matter for further study. Where it does occur, the Department of Justice or the Department of the Interior could, with appropriate authorization by the President or Congress, take legal action to end such discrimination.

4. Some State and local governments reportedly use administrative discretion as a device to prevent both reservation and nonreservation Indians from receiving welfare benefits for which they are qualified. Further study would be required to verify these reports, and to determine the extent of the practice.

5. In some cases, reservation Indians have not been provided with adequate law enforcement by the States to which the Federal Government has ceded civil and criminal jurisdiction. Further study would be needed to determine the exact extent of this problem. The problem could be dealt with in part by requiring a firm State commitment that all governmental services will be provided as a prerequisite of any future withdrawal of Federal responsibility.

6. Reservation and nonreservation Indians are treated unfairly by police and courts in many localities, particularly those adjoining large reservations. Indian neighborhoods are sometimes not given adequate police protection by local authorities. Further study would be required to determine the extent of this problem.

7. Reservation housing is generally bad. With respect to nonreservation housing, Indians face the same kinds of discrimination confronting other minorities.

8. Employment opportunities for Indians appear to be as restricted as they are for Negroes. Some State employment offices reportedly accept discriminatory job orders and some State agencies are reluctant to hire qualified Indians.

9. Unlike Negroes, Indians do not seem to be denied access to transportation and terminal facilities. (The Choctaw Indians of Mississippi, for example, use white waiting rooms.) Discrimination against Indians does exist, though on a limited basis, in many rural communities with respect to other public accommodations such as taverns, hotels, and restaurants.

10. Many American Indians are members of semisovereign tribes. They are also citizens of the United States entitled to the rights and privileges of citizenship. Indian tribal governments are not at present subject to the limitations imposed on State and Federal Governments by the Bill of Rights and the 14th amendment. Tribal governments are thus free to inhibit and have in fact in some instances inhibited the free exercise of religion by tribal members.

## *Part IX.* **The Need for Broader Action**

### *A Concluding Statement to the 1961 Report*

This report has shown that despite substantial progress the national objective of equal opportunity for all, regardless of race, faith, or ancestry, is not yet fully achieved. At home, delay frustrates legitimate private hopes, impedes important national programs, and seriously hinders development of our national strength. Abroad, as President Kennedy has said: "the denial of constitutional rights to some of our fellow Americans on account of race . . . subjects us to the charge of world opinion that our democracy is not equal to the high promise of our heritage."<sup>1</sup>

The effort to achieve that promise must be based on full understanding of the challenge that confronts us. In this report the Commission has attempted to contribute to that understanding, and to suggest some guidelines for action. The report deals separately with civil rights problems in different areas, and suggests differing remedies. Yet these areas are not wholly separate from each other; through all of them run certain common threads which form a single web of discrimination. So also, there are some common premises underlying many of the Commission's recommendations.

The Commission's studies indicate that civil rights problems occur in complex settings from which they cannot readily be isolated. Discrimination in one context is apt to be interlinked with discrimination in other contexts. Inferior schooling, for example, makes it difficult for Negroes in some areas to achieve the vote—and, combined with restriction to menial jobs, makes it difficult for them to assert other rights.<sup>2</sup> Similarly, there can be no doubt that inequalities in educational opportunity necessarily produce inequality of employment opportunity;<sup>3</sup> and, to complete the circle, a choice of careers that is restricted by discrimination undercuts the hope that might lead the minority group youth to pursue his education to the full extent of his capabilities.<sup>4</sup> It is also clear that racial restrictions in the housing market help to produce segregation in the schools,<sup>5</sup> and that this in turn generally means inferior schools for minority group children.<sup>6</sup> Discrimination in housing also often

limits the choice of employment for its victims. Thus the Personnel Director for North American Aviation told the Commission: "When we move into new areas . . . there tends to be a lack of appropriate housing for minority groups and as a result it is difficult for us to transfer people into these areas . . . they can't find appropriate housing at a price they can pay so they will turn the job down, maybe even give up the job altogether." <sup>7</sup> Finally residential segregation tends to produce and perpetuate slums, a breeding-ground for juvenile delinquency and crime, which in turn invite police misconduct.<sup>8</sup>

United Auto Workers' President Walter Reuther described this ring of discrimination in the Commission's Detroit Hearing: <sup>9</sup>

Discrimination begins . . . long before the Negro approaches the hiring stage. In most cases it begins when he is born into a family enjoying about half the annual income of the average white family . . . .

In most cases . . . the Negro child is born into a black ghetto, a slum or near slum of overcrowded, inadequate housing. All too frequently he goes to a school that by any standard is inferior to that attended by the average white child in the same city. All too frequently he drops out of school too soon—either because his family needs whatever money he can earn or because he knows that, even if he continues through high school and college, his opportunities of getting employment of as high a level and rewarded with as much pay as a white person with the same educational accomplishments are very limited.

These relationships suggest that no single, limited approach will bring an end to discrimination. While attention to one civil rights problem at a time may achieve substantial progress, simultaneous action on many fronts is far more promising. Thus the Commission's studies of Southern black belt counties suggest that assuring the right to vote, fundamental as that is, will not quickly assure equal protection of the laws in other aspects of the Negroes' life. Similarly the opening of new career opportunities to a particular minority will be of little use if its members have had no opportunity or reason to prepare themselves for such careers—or if they are barred from living near the "new" places of work.

The need for broader action is underlined by the fact that problems of discrimination are often intimately related to other problems. For example, the slums that blight our urban areas pose problems of major concern to a Nation whose future lies increasingly in the cities. Urban renewal is not in itself a civil rights problem, yet discrimination—in housing, in education, and in employment—contributes in major degree to the creation and preservation of the slums. If they are to be abolished, discrimination will also have to go. Metropolitan planning, health,

welfare, recreation, transportation, and related programs not primarily concerned with civil rights objectives may fail if they do not deal with questions of discrimination as well.

The close relationship of civil rights to other areas of public concern may also mean that measures not directly aimed at discrimination may be helpful in eliminating it. The Commission's black belt study, for example, strongly suggests that economic measures to expedite transition from a one-crop agricultural economy to agricultural diversity and industry may ultimately do more than lawsuits to improve the economic, political, and legal status of black belt Negroes. Measures to broaden economic and educational opportunities for all may help solve civil rights problems throughout the Nation.

In short a variety of approaches are needed. The methods that are most suitable may vary from place to place. The Southern rural black belt, for instance, is generations as well as miles apart from the Northern cities where the Nation's minority population is now concentrating. In both places there are serious deprivations of civil rights, but they are manifested in different ways, and against different social, political, and economic backgrounds; the remedies may not be entirely interchangeable. In all circumstances, however, action of many sorts by many agencies—private, local, State and Federal—is needed.

In accordance with its statutory duty this Commission has focused principally on the role of the Federal Government. The latter does not and, in the Commission's views, should not bear exclusive or even initial responsibility for the achievement of equal opportunity for all. Nonetheless, it bears a heavy responsibility, and one that—despite great strides in recent years—it has not yet discharged. Accordingly, the Commission has made a number of recommendations for Federal action, but these by no means exhaust the needs or possibilities for improvement.

Several of the Commission's recommendations have been directed not to measures that in themselves would remedy civil rights deprivations, but to the collection of information that would make such remedies more easily and effectively applied. Thus the Commission has recommended the collection of statistical information on race, color, religion, and national origin in the fields of voting,<sup>10</sup> education,<sup>11</sup> Federal employment,<sup>12</sup> and housing.<sup>12a</sup> It has found a need for such data in its own studies, and believes that they are often necessary for planning and evaluating local, State, and Federal programs as they affect equality of opportunity. The Commission is aware that many agencies which formerly recorded racial information have abandoned the practice, largely from fear that keeping of racial records creates or facilitates discrimination, and it recognizes that such records may indeed in some cases invite discrimination. The Commission has also found, however, that the lack of such information often makes it difficult to ascertain the extent of discrimination. The Commission's recommendations in

this line are premised on the belief that until discrimination is no longer a problem of its present dimensions, more rather than less statistical information is needed in some areas; and that means can be found to obtain such information without rendering it susceptible to discriminatory use.<sup>13</sup>

With regard to remedial measures intended to achieve the objective of nondiscrimination, the Commission has made recommendations for three kinds of action. It has recommended invoking *the power of the law* to enforce the requirements of the Constitution: by new statutory requirements,<sup>14</sup> and by measures to facilitate enforcement of existing law.<sup>15</sup> In proposing such action the Commission is not expressing a special confidence in punitive sanctions, but in the creative and instructive role that law can play—and has played—in American society.

A number of recommendations have also been made regarding *the use of public money*. These are based on the principle recently stressed by President Kennedy that "Federal money should not be spent in any way which encourages discrimination, but rather . . . [to encourage] the national goal of equal opportunity."<sup>16</sup> On the one hand, the Commission has suggested in several instances that Federal financial support should be withheld from programs which are so administered as to discriminate on racial grounds.<sup>17</sup> On the other hand, it has repeatedly recommended augmentation of existing programs, or establishment of new ones, to expand the opportunities of all citizens in education,<sup>18</sup> job-placement,<sup>19</sup> vocational training,<sup>20</sup> and housing.<sup>21</sup>

Finally, the Commission has made several recommendations calling for the *exertion of leadership* by the President and others in the National Government;<sup>22</sup> and it reiterates the need and worth of such leadership in the general recommendation that follows. These recommendations are based on the belief that the Presidency, and indeed the whole Federal establishment, is preeminently a place for moral leadership. The Commission has been impressed with the influence which those in responsible positions can exert on the civil rights climate of the Nation. By using the instruments for education and persuasion which are available to them they can stir the conscience of the country. By the example of their own conduct they can exert an influence far beyond the immediate occasion.

Of course the need for forceful, enlightened leadership is not confined to the Federal Government. At every level of civic life—from the President down through mayors and police chiefs to school boards; from the chairman of the board to the shop superintendent; among religious leaders, union officials, and journalists—leadership plays a vital role in making clear the legal and moral obligations of the citizens of a democracy. Where such leadership is lacking there has been little progress—and sometimes regression to violence. Where it is present, there is no challenge that cannot be met.

## GENERAL RECOMMENDATION TO THE PRESIDENT

The Commission recommends that the President utilize his leadership and influence and the prestige of his office in support of equal protection of the laws for all persons within the jurisdiction of the United States in all aspects of civil and political life: by explaining to the American people the legal and moral issues involved in critical situations when they arise; by reiterating at appropriate times and places his support for the Supreme Court's desegregation decisions as legally and morally correct; by undertaking the leadership of an active effort to stimulate the interest of citizens in their right of franchise; and by all other means at his disposal marshaling the Nation's vast reservoir of reason and good will in support of constitutional law not only as a civil duty but as essential to the attainment of the national goal of equal opportunity for all.

## A STATEMENT BY COMMISSIONER HESBURGH

This is not the usual minority statement to express a difference of opinion. Despite our wide diversity of backgrounds, all of the six Commissioners are in very substantial agreement regarding this report and its recommendations. It has occurred to me, having been a member of the Commission since its inception, that the Commission is becoming, more and more, a kind of national conscience in the matter of civil rights. As a conscience, its effectiveness depends quite completely upon whether it is heard, and whether the Nation and national leaders act accordingly.

I am filing this personal statement because of a personal conviction that Federal action alone will never completely solve the problem of civil rights. Federal action is essential, but not adequate, to the ultimate solution. In the nature of the problem, no single citizen can disengage himself from the facts of this report or its call to action. Leadership must come from the President and the Congress, of course, but leadership must also be as widespread as the problem itself, which belongs to each one of us. May I then say just a few words about what the Commission Report, as a conscience, seems to be saying. I claim no special wisdom. This is just one man's extra step beyond the facts of the report and its recommendations.

To anyone who reads this report on the present status of civil rights in America there must come mixed emotions—some joy and satisfaction at the demonstrable progress that the past few years have seen, and a deep frustration at the seemingly senseless and stubborn pockets of resistance that remain all across our land. Then comes the really significant question: Why?

To ask *why* is to become philosophical, even theological, about the matter. Why does America, the foremost bastion of democracy, demonstrate at home so much bitter evidence of the utter disregard for human dignity that we are contesting on so many fronts abroad? Americans might well wonder how we can legitimately combat communism when we practice so widely its central folly: utter disregard for the God-given spiritual rights, freedom, and dignity of every human person. This sacredness of the human person is the central theological and philosophical fact that differentiates us from the communistic belief that man is merely material and temporal, devoid of inherent inalienable rights and, therefore, a thing to be manipulated, used, or abused for political or economic purposes, without personal freedom or dignity, defenseless before the state and the blind laws of economic determinism.

It is not enough to reject this inhuman communistic doctrine. We must demonstrate that we have something better to propose in its stead,



and *that this something works better*, and is better for all mankind, here and everywhere. The most depressing fact about this report is its endless tale of how our magnificent theory of the nature and destiny of man is not working here. Inherent in the depressing story is the implication that it is not working because we really do not believe in man's inner dignity and rightful aspiration to equality—unless he happens to be a white man.

Some white men in very recent years have kicked, beaten, or shot a Negro to death and have not even been indicted because of a jury's prejudice or a legal technicality, while "among these rights are life, liberty, and the pursuit of happiness."

The pursuit of happiness means many good things in America: equal opportunity to better one's self by a good education; equal opportunity to exercise political freedom and responsibility through the vote; equal opportunity to work and progress economically as all other Americans do; and equal opportunity to live in decent housing in a decent neighborhood as befits one's means and quality as a person. If the pursuit of happiness does not mean at least these things to Americans reading this report, then they have not recognized the splendor of the American dream or the promise of the American Constitution.

Now read the pages. They are filled with a record of people, again good, intelligent people, working with all their energy and talent to make a travesty of this dream and this promise. These people who are trying to pervert our Western ideal of the dignity, the freedom, and the rights of every human person are not Communists. They are Americans, but white Americans denying what they enjoy, and I trust cherish, to Negro Americans.

Some of the sorry efforts are crude: like the reign of terror to deter Negroes from registering and voting (vol. 1, pp. 163-64), or the application of double standards in the matter: one for whites and the other for Negroes (vol. 1, pp. 86, 161-62). Other efforts are heartless: denying the Negro American decent schooling on all levels—even industrial and agricultural training—which means another long generation of menial jobs and wasted talents and blighted hopes, all to America's loss (vol. 2, pp. 79-98; vol. 3, pp. 97-101). Still other efforts are sentimental: a way of life, right or wrong, is more important than what happens to other human beings and to our country in the process. Perhaps we could establish a stronger alliance against these outrages if we were to meditate more deeply on the true import of our Christian heritage. Could we not agree that the central test of a Christian is a simple affirmative response to the most exalted command mankind has ever received: "Thou shalt love the Lord thy God with thy whole heart, and thy whole soul, and thy whole mind, *and thy neighbor as thyself*." No mention here of a white neighbor. There was another similar statement,

“Whatsoever you did (good or evil) to one of these, my least brethren, you did it *to Me*.” We believe these truths or we do not. And what we *do*, how we *act*, means more than what we *say*. At least, the Communists admit that they do not believe as we do. At least they thus avoid hypocrisy.

Lest I seem to be unduly harsh on the South, let me underline another story often repeated in these pages, which is a specialty of the North and East and West. There is the sophisticated approach of the financial community which says its concern in financing housing is purely economic as though this might somehow cancel out the moral dimension of what their lack of moral concern causes to happen to human beings, fathers, mothers and children, not Martians, but Americans, who live in blighted neighborhoods with no hope of the most elemental physical well-being without which human dignity and decent lives become impossible. Then there are the unspoken, but very effective conspiracies of builders, real estate brokers, and good neighbors who are downright arrogant in preserving the blessings of democracy for their own white selves alone (vol. 4, pp. 2-3, 122-26).

Well, if the report says anything it demonstrates that we are reaping the effects of our many discriminatory practices. We spend billions of dollars trying to convince the uncommitted nations of the world (about 90 percent nonwhite) that our way of life is better than communism, and then wipe out all the good effects by not even practicing “our way” in our own homeland. We are all excited about Communist subversion at home while we perpetuate a much worse and studied subversion of our own Constitution that corrodes the Nation at its core and central being—the ideal of equal opportunity for all. What can we expect for the future, if one-tenth (and predictably at the end of this century, one-fifth) of our population are second-rate citizens, getting a second-rate education, living in second-rate houses in second-rate neighborhoods, doing all of the second-rate jobs for second-rate pay, and often enough getting second-rate justice. What can we expect if this continues? I suspect that we will have a fifth of the Nation being second-rate citizens, and the rest of us can hardly be expected to be classed first rate by the rest of the world in allowing this, especially while we continue to profess a strong belief in equal rights and equal opportunity.

Personally, I don’t care if the United States gets the first man on the moon, if while this is happening on a crash basis, we dawdle along here on our corner of the earth, nursing our prejudices, flouting our magnificent Constitution, ignoring the central moral problem of our times, and appearing hypocrites to all the world.

This is one problem that needs more than money. Basically, it needs the conviction of every American, of every walk of life, in every corner of America. We have the opportunity in our time to make the dream

of America come true as never before in our history. We have the challenge to make the promise of our splendid Constitution a reality for all the world to see. If it is not done in our day, we do not deserve either the leadership of the free world or God's help in victory over the inhuman philosophy of communism. Even more fundamentally than this, we should as a Nation take this stand for human dignity and make it work, *because it is right* and any other stance is as wrong, as un-American, as false to the whole Judeo-Christian tradition of the West as anything can be.

Maybe more constructive action will come sooner if we allow ourselves the unfashionable and unsophisticated taste of moral indignation: when known murderers go untried and unpunished with the studied connivances of their fellow citizens (vol. 5, ch. 3); when brutal fear is forced even upon women and children in America (vol. 5, ch. 3); when economic reprisals are used to prevent qualified American citizens from voting, but they are not exempted from paying taxes and serving in the Armed Forces (vol. 1, pp. 91-97); when little children are stoned by a vicious mob because they dare to go to a decent school long denied them (*The New Orleans School Crisis*,\* p. 16); when people are intimidated, embarrassed, and jailed because they presume to eat in a public place with other people (see vol. 1, p. 4; vol. 5, ch. 3); when a place for homes becomes, by neighborhood action, an empty park because Americans think they will be contaminated by Americans (vol. 4, pp. 133-34); when Negro Americans help pay for a new hospital and then are told there is no place in it for them (vol. 4, p. 84); when, God help us, even at death Negro Americans cannot lay at rest alongside of other Americans (*California Hearings*, p. 704).

You may think by now that I have taken considerable license with the mandate of our Commission "to appraise." Perhaps I have, and if these remarks seem intemperate, the facts that support them are all between the covers of this report, and in other publications of the Commission.

I believe, as my fellow Commissioners do, that a report should be objective and factual. But, unless there is some fire, most governmental reports remain unread, even by those to whom they are addressed: in this case, the President and the Congress.

I have no illusions of this report climbing high on the bestseller list, because much of what it says is unpleasant, unpopular, and to sensitive people, a real thorn in the conscience. My words then are simply to say that I have a deep and abiding faith in my fellow Americans: in their innate fairness, in their generosity, in their consummate good will. My conviction is that they simply do not realize the dimensions of this

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\*Report of the Louisiana State Advisory Committee to the Commission on Civil Rights.

problem of civil rights, its explosive implications for the present and future of our beloved America. If somehow the message, plain and factual, of this report might reach our people, I believe they would see how much the problem needs the concern and attention of every American—North, South, East, and West. If this were to happen, then the problem would be well on its way to a solution. But without the personal concern of all Americans, the problem of civil rights is well nigh insoluble in our times. If so, not just Negro Americans, but all of us, and all the world, will be the losers.

# Documentation—Book 5

## Part VII—EQUAL JUSTICE UNDER LAW

### NOTES: JUSTICE, Chapter 1

1. National Commission on Law Observance and Enforcement, *Report on Lawlessness in Law Enforcement* 4 (1931).
2. The President's Committee on Civil Rights, *To Secure These Rights* 25-27 (1947).
3. *United States v. U.S. Klans*, 194 F. Supp. 897, 902 (M.D. Ala., 1961).
4. See discussion in ch. 3 at 41, *infra*.
5. The President's Committee on Civil Rights, *op. cit. supra*, note 2, at 24.
6. The Civil Rights Act of 1957, sec. 104(a)(2)(3), 71 Stat. 635, 42 U.S.C. sec. 1975c(a)(2)(3) (1958). A more lengthy discussion of the Commission's jurisdiction is found in ch. 2 at 25, *infra*.
7. *Norris v. Alabama*, 294 U.S. 587 (1935).
8. See *dicta* in *Johnson v. Yeilding*, 165 F. Supp. 76 (M.D. Ala., 1958).
9. See, for example, *United States v. Lynch*, 94 F. Supp. 1011, 1014 (N.D. Ga. 1950), *aff'd*, 189 F. 2d 476 (5th Cir. 1951), *cert. denied*, 342 U.S. 832 (1951).
10. *United States v. Konovsky*, 202 F. 2d 721 (7th Cir. 1953); *United States v. Lynch*, *supra*, note 9; also see *United States v. Trierweiler*, 52 F. Supp. 4, 7 (E.D. Ill. 1943).

1. In two of the incidents described in the text the officers were convicted in a Federal civil rights prosecution—the *Screws* case *infra*, at 6 and the *Clark* case *infra*, at 14. Since the Civil Rights Section of the Department of Justice became a Division in December 1957, it has obtained police brutality convictions from juries in four cases, while in two cases the defendant officers entered pleas of *nolo contendere*. See ch. 4 at 66 *infra*. In none of these cases were the victims known to be minority group members, except in the *Clark* case wherein the victim was a Canadian born Indian.
2. Federal Bureau of Investigation, *Uniform Crime Reports—1960* at 105 (1961). The total for 3,779 cities with a total population of 103,493,753 is 195,109, which figure includes civilian employees.
3. *Id.* at 1.
4. *Id.* at 19 and 104.
5. *Id.* at 106.
6. Record, p. 109, *Screws v. United States*, 325 U.S. 91 (1945).
7. *Id.* at 114.
8. 14 Stat. 27 (1866), 18 U.S.C. sec. 242 (1958).
9. *Screws v. United States*, *supra*, note 6.
10. A full discussion of the statute, the *Screws* case, and other aspects of the enforcement of the Civil Rights Acts are found in ch. 4 *infra*.
11. *United States v. Screws*, Crim. No. 1300, M.D. Ga., Nov. 1, 1945.
12. Record, *supra*, note 6, at 171.
13. *Id.* at 60.
14. This description is based primarily on the testimony of these white eyewitnesses: Mr. A. B. Edwards (*id.* at 79–82), Mrs. A. B. Ledbetter (*id.* at 83–85), Mr. A. B. Ledbetter (*id.* at 85–89), Mrs. Mabel Burke (*id.* at 105–106), and Mrs. Ollie Jernigan (*id.* at 89–92).
15. *Id.* at 93.
16. *Id.* at 120.
17. *Id.* at 67–68.
18. Special Agent Marcus B. Calhoun of the FBI office testified at the trial that, “Mr. Screws . . . told me that he had had trouble with Bobby Hall, that he seemed to be a leader or denominated himself as such and that when a Negro got in trouble with the law that he, Bobby Hall, would advise him as to what action he should take.” Record, *supra*, note 6, at 78.
19. Information from the Department of Justice, as quoted in Carr, *Federal Protection of Civil Rights* 107 (1947).
20. See ch. 6 at 79, *infra*.
21. The description of the Brazier case is largely based on evidence gathered in an investigation by Commission representatives in late August, 1960 and incorporated into a Commission document en-

titled *Report on Field Investigation In Terrell County, Georgia*. Four Negro eyewitnesses to various parts of the Brazier incident were interviewed and statements taken from them. In addition, statements were received from other Negro eyewitnesses who were not then available to be interviewed. Four white people were interviewed regarding the case.

In addition to the Brazier incident other cases in Terrell County involving alleged police brutality to Negroes were investigated on this field trip. The evidence supporting complaints in these cases was not as strong as that in the Brazier case.

22. *Id.* at 10-12.
23. This information comes from the Certificate of Death of James Brazier and from an interview with a doctor who attended the victim at the Columbus Medical Center, *Report on Field Investigation in Terrell County, Georgia, supra*, note 21, at 18.
24. Affidavit of Mrs. Hattie Bell Brazier, and *Report on Field Investigation In Terrell County, Georgia, supra*, note 21, at 14. Although their hourly wages were not high, Mrs. Brazier explained, she had three jobs and her late husband, two. They sometimes worked at menial tasks from early morning until late at night. This allowed them to purchase the automobiles. Interview With Mrs. Hattie Bell Brazier, Albany, Ga., August 23, 1960.
25. Affidavit of Mrs. Hattie Bell Brazier, and *Report on Field Investigation in Terrell County, Georgia, supra*, note 21, at 12-13.
26. Earlier in the Spring of 1958 Mrs. Brazier alleged that Officer "X" saw the Brazier's new car and asked them how they managed to purchase it. James Brazier replied flippantly, "I works for what I gets." And "X" countered in a threatening tone, "You'll never remember paying for it." Mrs. Brazier said that this took place in her presence, and it is set out in her affidavit and in *Report on Field Investigation In Terrell County, Georgia, supra*, note 21, at 14.
27. Affidavit of Mrs. Hattie Bell Brazier and *Report on Field Investigation in Terrell County, Georgia, supra*, note 21, at 15.
28. Affidavit of Mrs. Hattie Belle Brazier, Affidavit of James Brazier, Jr. (aged 10), and *Report on Field Investigation in Terrell County, Georgia, supra*, note 21, at 16. Mrs. Brazier explained in a subsequent interview that the shock of this incident brought on a nervous condition in James, Jr., and forced her to send the boy to live with his grandmother in the North. Interview With Mrs. Hattie Bell Brazier, Albany, Ga., August 23, 1960.
29. In addition to the affidavit of Mrs. Brazier this story is supported by several colored eyewitnesses interviewed by Commission representa-

- tives in Georgia. *Report on Field Investigation in Terrell County, Georgia, supra*, note 21, at 16.
30. See note 35, *infra*.
31. Affidavit of Mrs. Hattie Bell Brazier, and *Report on Field Investigation in Terrell County, Georgia, supra*, note 21, at 20. Mayor James Griggs Raines of Dawson reported in an interview with two Commission representatives that he felt that Sheriff Mathews was a bad influence on Dawson policemen. "In my opinion the Sheriff, Mathews, is unfit and has violated the Civil Rights Acts. I've seen him beat a pregnant Negro woman. He's unfit to hold office. You can quote me," the Mayor stated. *Id.* at 40.
32. Washington Post, June 8, 1958, p. A-12.
33. Atlanta Constitution, June 9, 1958, pp. 1-5; June 10, 1958, pp. 1, 8.
34. The Government contended that the officers had violated 18 U.S.C. sec. 242 because by these acts of brutality they had "under color of law" interfered with the constitutional rights of the victims.
35. Although Marvin Goshay was subpoenaed by the Federal Government to testify before the grand jury sitting in Macon, he did not appear. In his sworn statement to a Commission representative Goshay explained that shortly after he received the subpoena, Officer "Y" found him walking on the street in Dawson and ordered him to jail. When the Negro asked why he was being incarcerated, "Y" replied, "You just need to be in jail." The young man was kept prisoner for 1 week, during which time the Federal grand jury met and refused indictments. One week later, "Officer ["Y"] came in and told me I could go on home," Goshay explained. "I never was brought to . . . court during this time. I just stayed in jail. I can only guess, although no one ever told me, that the only reason I was locked up was because they didn't want me to go to Macon." Goshay was slated to be a witness in a pending Federal civil suit for \$177,000 brought by Mrs. Brazier against Officer "Y" and others. On March 14, 1961, Marvin Goshay was found dead—apparently of asphyxiation—in a Dawson undertaking parlor. An FBI investigation failed to uncover evidence of foul play.
36. Those rural, southern counties which have a high percentage of nonwhites in their population are the subject of a separate and detailed analysis in this report. See part III, *supra*.
37. *Report on Field Investigation in Terrell County, Georgia, supra*, note 21, at 5.
38. In addition to the Brazier case, there are recent cases containing similar allegations in the files of the Commission. Some of these have been referred to the Department of Justice for possible prosecutive action.



39. Report of the Mississippi Advisory Committee to the Commission on Civil Rights, *The 50 States Report* 315, 317 (1961). The following two cases, which came to the attention of the Commission from sources other than the Mississippi Advisory Committee, are illustrative of reports from that State.

On August 9, 1958, about midday, Theodore R. Nash was stopped by a deputy sheriff 5 miles north of Winona, Miss., on a charge of reckless driving. In the car with Nash were his wife, Geraldine, his daughter, Pearlle Mae Boatman, and four small children under 6 years of age—all Negroes. Nash was a native of Mississippi but had lived in Milwaukee, Wis., since 1950. When this incident occurred, he and his family were on a vacation trip. The Nashes reported to the Commission that the following events took place: The deputy sheriff roughly ordered Nash to the nearby office of a justice of the peace. While outside the office, an altercation developed. The officer allegedly kicked Mrs. Nash, because she protested that they had not been speeding; and the justice of the peace is alleged to have struck her on the side of the head with his fist and to have dragged her along by her arms and hair because Mrs. Nash replied "No"—without adding a "Sir"—to a question from the justice. At one point the officer cocked his pistol and threatened Mr. Nash: "I just wish you would make any kind of an attempt, I would blow your damn brains out here in the street, and I wouldn't have anything to do except to write out a statement that you are tempting the law, and there won't be nothing done about it."

When the babies in the car started to cry, the officer told Nash's daughter, "If you don't quiet them, I'll take this pistol handle and beat their damn brains out into the seats and there won't be enough of them left to try to bury." Mrs. Nash was placed in jail but was soon released after fines of \$19 (for resisting arrest) and \$34 (for reckless driving) were paid on the spot. The officers then told the family to "Get out of here—and don't be caught in here any more" on pain of death. "They told us that they were going to stop us northern niggers from coming down there. They said these niggers get up here in the northern state[s] around these damn rich Jews, saying 'Yes' and 'No' and think that they can come down there in Mississippi doing the same thing, but before they would take that they would kill every nigger that comes down here and kill them and nothing would be done whether they were in the right or wrong. They said they make the laws and they break them as they see fit to do."

This information comes from (1) an affidavit executed by Theodore Nash on October 4, 1958, and (2) a statement given to a

Commission representative on January 27, 1961, by Mr. Nash, Mrs. Nash, and Pearl Mae Boatman, their daughter. This case was investigated by the Department of Justice. No prosecution was authorized because no corroboration beyond the story told by the Nash family regarding the violence was available. The officers alleged that Mrs. Nash attacked them and had to be subdued. Interview with Civil Rights Division attorney.

In early April 1961, a wire service photograph appeared in newspapers and magazines across the country. Life, April 7, 1961, p. 30. It showed policemen in Jackson, Miss., armed with clubs moving into a crowd of retreating, well-dressed Negroes. A German Shepherd dog on a leash had leaped upon a Negro and seemed about to bite his arm. The man was later identified to the Commission as Reverend S. Leon Whitney, the Pastor of the Farish Street Baptist Church and one of the most prominent Negro clergymen in Jackson. He suffered a severe laceration of his arm from the dog's attack. Other Negroes in the crowd also suffered injuries including an elderly man, W. R. Wren, whose arm was broken. The incident started when a group of Negroes applauded nine Negro students who were going into court to be tried in connection with Mississippi's first sit-in demonstration which had occurred in a public library. The applauding Negroes did not commit or threaten violence. After driving them away with clubs and dogs, the officers returned and asked a nearby crowd of approximately 70 white persons to disperse. United Press International dispatch as reported in the N.Y. Times, March 30, 1961, p. 19.

40. *Detroit Hearings* 433 (attributed to a Negro columnist in the Statement of Judge Victor J. Baum).
41. In five of the six successful police brutality prosecutions under section 242 by the Civil Rights Division, Department of Justice since January 1, 1958, the officers apparently were primarily motivated by a desire to punish for other than racial reasons. In only one of these five cases—the *Clark* case, described at 14, *infra*—was the victim known to be a minority group member; and in that case this did not appear to be a major factor. The facts in the other four "punishment" cases are as follows: (This information comes from interviews with Civil Rights Division attorneys and from the indicated annual Reports of the Attorney General.)

In *United States v. Koch*, Crim. No. 18,850, E.D. Ill., June 17, 1958, complaints were made to the Department of Justice alleging that prisoners of the St. Clair County Jail in East St. Louis, Ill., had been subjected to sadistic punishment for such offenses as violation of jail rules. Three deputy sheriffs were indicted and on

June 17, 1958, pled guilty. See *Annual Report of the Attorney General of the United States for the Fiscal Year Ended June 30, 1958* at 177-78, and ch. 4, note 194, *infra*.

In *United States v. Saxon*, Crim. No. Cp. 2091, M.D. Ala., June 11, 1958, the sheriff of Coosa County, Ala., was charged with having beaten two men with his fists and a blackjack at a filling station in Goodwater, Ala. The sheriff, H. Pierce Saxon, was reportedly annoyed at a remark one of the men made concerning Saxon's bright headlights. A Federal grand jury indicted Saxon on September 11, 1957, but trial in November 1957 resulted in a hung jury. On July 11, 1958, Sheriff Saxon entered a plea of *nolo contendere* (no contest). See *Annual Report of the Attorney General of the United States For The Fiscal Year Ended June 30, 1958* at 177, and ch. 4, note 194, *infra*.

In *United States v. Barber*, Crim. No. 1428, M.D. Ga., Mar. 18, 1959, a police officer of Nashville, Ga., was convicted on evidence that he had beaten John Lester Teal, the manager of a Valdosta jewelry store. Barber, while off duty and in plain clothes, had beaten Teal because he had insulted Barber's daughter in the course of an attempted repossession of a ring. As the beating was taking place, another officer, Hancock, arrived but did nothing to stop it. At the station house later Hancock allegedly held Teal while Barber beat him again. Hancock was tried but acquitted. Barber was convicted on March 18, 1959. See *Report of the Attorney General Of the United States for the Fiscal Year Ended June 30, 1959* at 187, and ch. 4, note 193, *infra*.

In *United States v. Payne*, Crim. No. 55,788, N.D. Ga., Mar. 25, 1959, the evidence indicates that Herbert C. Payne, a police officer of the town of Lyerly, Ga., incited a mob to beat the victim on two separate occasions. The victim was known as the town drunk, a ne'er-do-well, and had a reputation for beating his children. The announced purpose of the attacks was to force him to leave town. Payne and a nonofficial member of the mob were indicted under section 242 and under 18 U.S.C. sec. 371 for conspiracy to violate section 242. Payne was convicted on March 25, 1959, under the conspiracy charge. See *Annual Report of the Attorney General of the United States For the Fiscal Year Ended June 30, 1959* at 188, and ch. 4, note 193, *infra*.

42. See discussion of "Force Permissible" in Orfield, *Criminal Procedure From Arrest to Appeal* 26-27 (1947).
43. National Commission on Law Observance and Enforcement, *Report on Lawlessness in Law Enforcement* 190 (1931).
44. Detroit Free Press, Sept. 10, 1959, pp. 1, 3.

45. Detroit Free Press, Sept. 13, 1959, p. A-1. The testimony of Commissioner Hart of this incident is found in *Detroit Hearings* 392-93.
46. Detroit Free Press, *supra*, note 45.
47. *Ibid.*
48. *Ibid.*
49. Prosecutor Olsen's description of his investigation of this incident is found in *Detroit Hearings* 502-503.
50. Information on this case was obtained from Department of Justice attorneys in the Civil Rights Division.
51. The prosecution was based on 18 U.S.C. sec. 242.
52. Information on this case comes from interviews with Civil Rights Division attorneys and from a review of the extensive trial transcript in the files of the Department of Justice.
53. There were 23 indictments alleging (1) that the defendants were guilty of conspiracy under 18 U.S.C. sec. 241 and (2) were further guilty under 18 U.S.C. sec. 371 by conspiring to violate 18 U.S.C. sec. 242. Section 371 is the general Federal conspiracy statute.
54. Record, p. 2838-39, *United States v. Dunn*, Crim. No. 11,205, S.D. Fla., Aug. 8, 1960.
55. *Id.* at 2840.
56. *Id.* at 2843.
57. *Id.* at 4634. The precise legal issues in the Raiford case and in similar cases are discussed in ch. 4, *infra*.
58. National Commission on Law Observance and Enforcement, *op. cit. supra*, note 43, at 4.
59. *Brown v. Mississippi*, 297 U.S. 278, 285-86 (1936).
60. *Brown v. Mississippi*, *supra* note 59; cases set forth in app. VII, table 1; U.S. Const. amend. V.
61. Orfield, *Criminal Procedure from Arrest to Appeal* 34 (1947). For a compilation of State statutes relating to prompt arraignment and to confessions made prior to arraignment, see *Hearings on Confessions and Police Detention Before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary*, 85th Cong., 2d sess., 669-748 (1958).
62. See, for example, the Hearings cited in note 61, and Illinois Division, ACLU, *Secret Detention by the Chicago Police* 5, 24-28 (1959); also see the article by Harold Norris, "Arrests Without Warrant," as reproduced in *Detroit Hearings* 481-84.
63. Illinois Division, ACLU, *op. cit. supra*, note 62, at 14-15. A review of the cases listed in app. VII, table 1 reveals that lengthy detention was a common circumstance surrounding coerced confessions.
64. See app. VII, table 1.
65. *Blackburn v. Alabama*, 361, U.S. 199, 206 (1960).

66. The two cases were *Rochin v. California*, 342 U.S. 165 (1952), and *Reck v. Pate*, 367 U.S. 433 (1961). In the *Rochin* case, the victim's stomach was pumped to obtain narcotics he had swallowed. The brutality in the *Reck* case actually occurred in 1936. See app. VII, table 1.
67. See app. VII, table 1.
68. Report of the Alabama Advisory Committee to the Commission on Civil Rights, *The 50 States Report*, ' , 10-11 (1961). The Report stated:

As regards the question of the use of the "third degree" by the police to extort confessions from persons who were arrested on suspicion without any legal evidence, 24—or roughly 50 percent of our respondents—reported that police in their area allegedly have been known to make use of force and intimidation in order to extort confessions from prisoners. Among the "third degree" methods mentioned by these respondents were some of the standard practices of police brutality. At least 14 of the respondents indicated that police were known to slap victims in the face. Thirteen reported the alleged use of assault by the police in kicking or mugging victims. Twelve of the respondents cited the alleged use of lashing, whippings, beatings, sluggings with fists, and scourging with weighted rubber hoses. An almost equal number cited the "third degree" practice of hours-long questioning under strong lights. Ten referred to the strong-arm methods of twisting of arms and 7 reported alleged other excessive punishments used by police in the "third-degree" method. Two cited alleged instances where police made use of electricity, either in batteries or in live wires, to shock victims in order to extort confessions.

- In its study the Alabama Committee sent questionnaires to 120 State citizens; 46 questionnaires—25 from Negroes and 21 from whites—were returned in time to be used in its Report. *Id.* at 4-5.
69. This conviction was appealed to the Ninth Circuit—*Pool v. United States*, 260 F. 2d 57 (1958)—which upheld the district court. The evidence indicated severe and protracted beating; it is summarized in 260 F. 2d at 59-63.
  70. This was the case of *United States v. Lowery*, Crim. No. 13,235 S.D. Tex., Feb. 19, 1958; also see *Report of the Attorney General of the United States for the Fiscal Year Ended June 30, 1958* at 177, and ch. 4, note 193, *infra*.
  71. Interviews with Civil Rights Division attorneys.
  72. This is a forthcoming study by Arnold S. Trebach, *Defendants and Defenders*, dealing with the realities of the criminal process. The

breakdown on the prisoners interviewed was as follows: New Jersey State Prison, 146; Bordentown Reformatory, N.J., 99; Holmesburg Prison, Philadelphia, 39; Federal Penitentiary, Lewisburg, Pa., 75.

73. Trebach, *op. cit. supra*, note 72. Seventy-five Federal prisoners were interviewed, many of whom were arrested by agencies other than the FBI such as Treasury Agents, Postal Inspectors, and Military Police. In general, Federal police agencies—with the exception of the Military Police—fared better in the written and spoken opinions of the prisoners than did State or local police agencies.

In the process of explaining the methods by which the FBI maintains its excellent record on convictions without coercion, Director J. Edgar Hoover stated, "Civil rights violations are all the more regrettable because they are so unnecessary . . . Technical crime-detection methods have greatly reduced arbitrary intrusions on civil liberties. The apprehended suspect 'won't talk': Third-degree methods, the ill-trained officer might think, perhaps a severe beating, will force a confession. But the trained officer, schooled in the latest techniques of crime detection, will think otherwise—he will go to work locating a latent fingerprint, a heel-print in the mud, or a toolmark on the safe." Quoted in Frank and Frank, *Not Guilty* 185 (1957). See also, *Statement of FBI*, ch. 6, note 59, *infra*.

74. Trebach, *op. cit. supra*, note 72, table 19.

75. Trebach, *op. cit. supra*, note 72.

76. *Detroit Hearings* 370.

77. *Ibid*.

78. *Id.* at 370–71.

79. *Id.* at 371.

80. *Id.* at 321–22.

81. *Id.* at 329.

82. 365 U.S. 167 (1961). See discussion in ch. 5 at 72–73, *infra*.

83. These are the words of Justice Frankfurter in dissent, 365 U.S. at 203–204.

84. Information on this case comes from conferences with officials at the Department of Justice and also from The Cleveland Call and Post, Sept. 12, 1959, p. 1.

85. Cleveland Press, Sept. 7, 1959, p. 8.

86. Cleveland Plain Dealer, April 22, 1960, p. 9.

87. Statement in Commission files entitled "Document No. 7 on Human Rights in Alabama." There have now been 14 such "Documents," issued by the Inter-Citizens Committee of Birmingham, dealing with alleged police brutality and interracial violence in Alabama, primarily in the Birmingham-Bessemer area.

88. The statute invoked was 18 U.S.C. sec. 242.
89. This was the language of the original determination as explained in a subsequent letter from H. S. Kendrick, Adjudication Officer, Montgomery Regional Office, Veterans Administration to Theotis Crymes, January 18, 1961.
90. Letter From A. H. Monk, Associate Deputy Administrator, Veterans' Administration to the Commission, May 15, 1961.
91. Letter From A. H. Monk to the Commission, June 30, 1961.
92. The statements that follow in the text are taken from the decision of the Philadelphia Police Advisory Board in this case: Complaint of Mr. Eugene Hutchins against Policeman [name omitted], No. 4119, and [name omitted], No. 4026, October 5, 1960, DN No. 83.
93. *Ibid.* [Emphasis added]. A rehearing was held on this case because the officers claimed that there was new evidence to support their defense. The Board sustained its original findings and the Police Commissioner of Philadelphia indicated his intention to impose the recommended punishment. Commission field notes. A brief field trip was made to Philadelphia to study, among other things, the operation of the Advisory Board. See ch. 6 at 83, *infra*.
94. These reports have emphasized that intelligent and articulate policemen can manipulate people who might resort to violence so as to prevent it. Regarding the criminal element, a New Orleans police training pamphlet quotes an officer as saying: "Well, let's say that you are dealing with hoodlums. You have to fight fire with fire. You cannot talk 'sweet talk' to hoodlums. You have to be firm and decisive. You cannot show the least sign of softening or indecision. That doesn't mean that you have to 'hit them', but you have to let them know that you are in command of the situation." New Orleans Police Department, *Human Relations and Effective Police Action* 8 (1952). Martin Barol, executive director of the Philadelphia Police Advisory Board, related that, "In speaking to many of the older men in the Department. . . . I was pleasantly surprised to hear statements such as: 'In my eighteen years on the Force, I have only had occasion to pull my gun twice,' or, 'I pulled my gun only once in my years on the Force and that includes five years in homicide.'" Barol, *Police Training in Human Relations* 2 (1961) (unpublished paper).
95. *Detroit Hearings* 328.
96. *Detroit Hearings* 372. [Emphasis added.]
97. Kephart, "The Negro Offender: An Urban Research Project," 60 *Am. J. of Sociology* 46-50 (1954).
98. Westley, "Violence and the Police," 59 *Am. J. of Sociology* 34, 38 (1953). This study took place in an industrial city of about 150,-

ooo population. Seventy-three policemen, approximately half of the total police force, were asked: "When do you think a policeman is justified in roughing a man up?" Thirty-seven percent of the officers thought it was justified when an individual showed disrespect for the police.

99. For example, it was alleged that in May 1961 several of the Negro "Freedom Riders," including a 19-year-old girl, were struck by Mississippi jail officials for not saying "Sir" to them. When Reverend Cordy T. Vivian of Nashville was released after posting bond, a photograph was taken showing "the bloodstains on the clerical clothes he was wearing when attacked by the jailer." *Norfolk Journal and Guide*, June 17, 1961, p. 10. Also, see the *Nash* case, *supra*, note 39. There are other statements in Commission files alleging such practices.
100. See p. 8, *supra*.
101. See p. 11, *supra*, and ch. 6 at 83, *infra*.
102. See chs. 4 and 5, *infra*.
103. See, e.g., *Screws v. United States*, 325 U.S. 91 (1945).
104. See ch. 1 at 2, *supra*.
105. This view was set forth as *dictum* in the *Slaughterhouse Cases*, 83 U.S. (16 Wall.) 36 at 81 (1873). Later cases (see notes 106 and 107 *infra*) definitely give a far broader meaning to the equal protection clause.
106. *Catlette v. United States*, 132 F. 2d 902, 906-907 (4th Cir. 1943).
107. *Lynch v. United States*, 189 F. 2d 476, 479 (5th Cir. 1951), *cert. denied*, 342 U.S. 831 (1951).
108. The seriousness of the problem of police brutality in quantitative terms is documented by the cases described in this Report; by many similar reports in Commission files not included in this Report; by the many complaints received by the Department of Justice, see app. VII, tables 2 and 3; and by the opinion of Department of Justice officials that many acts of brutality are not reported to officials due to apathy, fear, or ignorance, see ch. 4 at 58, *infra*. In qualitative terms the problem must be considered serious because any act of unlawful violence, especially by an official, is harmful to our society. The effect of such acts on the Negro community is described in Willis Ward's testimony, p. 27, *infra*. The seriousness of this situation is also suggested by this excerpt from a recent study by Bullock entitled *The Houston Murder Problem* 80-81 (1961):

Negroes also have a "Bully" image of Houston's policemen. Whenever one hears about the police descending upon a group of Negroes, there is always raised this question: "How



many heads were whupped?" The reasons for this attitude grow out of the spread of reports concerning instances of police brutality.

\* \* \*

Gradually and insidiously, these reports seep into the minds of Negroes and reinforce ugly images about all of Houston's policemen. Therefore, when Negroes are asked what they think of policing in Houston, their response is a series of negative attitudes that are heavily laden with disrespect. We asked this question of more than five hundred (500) people, and we got attitudinal patterns that were generally negative.

109. See ch. 6 at 82 and 87, *infra*.

110. See ch. 4 at 57-58, *infra*.

111. Harold R. Tyler, Jr., former Assistant Attorney General in charge of the Civil Rights Division, wrote the Commission on October 18, 1961, in this connection:

As most lawyers are aware, there has been an increasing tendency over the years for defendants and their counsel in criminal cases, particularly those of the common law variety, to raise by way of defensive matter the issue of coercion or improper treatment at the hands of the police. I feel that this phenomenon has some impact upon the nature, number, and type of complaints received by the Department of Justice. Further, Department attorneys must keep this in mind when evaluating complaints. The Department cannot be expected to prosecute complaints which are motivated by a desire on the part of the complainants to "use" the Government to raise defensive matters collaterally, even in those situations where the facts *prima facie* might support a Section 242 prosecution. Then, too, the Government should not be expected to litigate, at least in most instances, those complaints of criminal defendants which necessarily will be aired before the courts in the complainants' own cases. Other ramifications of this point are too detailed for profitable discussion here, but the point remains that this tendency on the part of criminal case defendants, though not susceptible to statistical evaluation, is often a real problem in evaluating and acting upon complaints.

112. See app. VII, table 3.

113. Referring to brutality connected with the third degree, the Wickersham Commission wrote that there was "little evidence of the practice among Federal officials." National Commission on Law Observance and Enforcement, *op. cit. supra*, note 43 at 4.

114. *Detroit Hearings* 381.

## NOTES: JUSTICE, Chapter 3

1. *Downie v. Powers*, 193 F. 2d 760, 764 (10th Cir. 1951). The complaint in this case alleged that the Chief of Police of Duncan, Oklahoma had been present but had done nothing during a mob attack on a group of Jehovah's Witnesses, *id.*, at 762-63.
2. See ch. 1 at 2, *supra*.
3. See the order of Federal district Judge Frank M. Johnson, Jr., p. 32, *infra*; and the language from the *Downie* case at the beginning of this chapter, p. 29, *supra*.
4. *United States v. Lynch*, 94 F. Supp. 1011, 1015 (N.D. Ga. 1950), *aff'd*, 189 F. 2d 476 (5th Cir. 1951), *cert. denied*, 342 U.S. 831 (1951); *Catlette v. United States*, 132 F. 2d 902 (4th Cir. 1943).
5. *United States v. Lynch*, *supra*, note 4.
6. This statement is based on a review of many cases of threatened mob violence where local policemen took prompt and vigorous action to control the mob. See, for example, the effective actions of the Atlanta Police Department, ch. 6 at 87, *infra*, and of that in Little Rock, ch. 6 at 87, *infra*, and Chicago, p. 40, *infra*.
7. Telegram, May 23, 1961, from the U.S. Attorney General to Alabama Representatives and Senators, as published in The Washington Post, May 24, 1961, p. A-6.
8. Howard K. Smith, Weekly News Analysis, CBS News, May 21, 1961. Fields is a young chiropractor who writes anti-Semitic and anti-Negro literature and who "has now settled on Birmingham as headquarters" because, as he claimed to Smith, "It is a perfect place for my kind of work." *Ibid*.
9. *Ibid*. In the Birmingham News, May 15, 1961, p. 1, it was stated that:

. . . yesterday hoodlums took over a section of Birmingham. They clustered in small groups, they drove around in cars, they all but swaggered. They were not afraid, they were sure of themselves, they knew about the "freedom riders" and the buses they were supposed to come in on, and they had the place staked out—both the Greyhound bus terminal and, a bit more than two blocks away, the Trailways bus terminal.

Others knew this situation existed, Commissioner Eugene Connor apparently knew it. He was on duty at City Hall.

10. *Ibid*.

11. *Ibid*.

12. *Id.* at 8. The Department of Justice subsequently sought a Federal injunction against the Ku Klux Klan as well as Birmingham and Montgomery police officials to prevent them from interfering with travel in interstate commerce, *United States v. U.S. Klans*, note 18,

*infra*. While the Federal judge issued a preliminary injunction against the Klan and Montgomery police officials, he did not include the Birmingham officials. (Most witnesses at the hearing testified regarding the Montgomery incident.) The Birmingham officials, however, remain as defendants in the suit which has not yet been tried on the merits. Information from Department of Justice.

13. *Id.* at 1.
14. N.Y. Times, May 15, 1961, p. C-1; Washington Post, May 21, 1961, p. A-7.
15. Montgomery Advertiser, May 21, 1961, p. A-4.
16. *Ibid.*
17. Confidential statement from an eyewitness in Commission files.
18. *United States v. U.S. Klans*, 194 F. Supp. 897, 900-901 (M.D. Ala. 1961). Some of the exact details of the purposeful failure of the Montgomery police to provide protection are found in the following statement, from which the quotation in the text above is excerpted:

This Court further finds that on May 20, 1961, it was a matter of public knowledge in Montgomery, Alabama, and was known to the Montgomery Police Department in Montgomery, Alabama, that a Greyhound bus carrying a group of white and Negro college students (which students had announced the purpose of riding through the State of Alabama, including Montgomery, on an interstate carrier, to determine whether they could use the instrumentalities of interstate commerce on such trip without racial segregation, or other illegal discrimination, and to demonstrate against any such discrimination should it occur) was en route from Birmingham to Montgomery. This Court finds that the Montgomery, Alabama Police Department was advised, through Spencer Robb, an agent of the Federal Bureau of Investigation of Montgomery, Alabama, that the bus carrying these passengers had left Birmingham at approximately 8:30 a.m.; and that this advice was given Acting Chief Marvin Stanley of the Montgomery Police Department by this agent of the Federal Bureau of Investigation at approximately 9:30 a.m. on the morning of May 20, 1961. The Court further finds that the Montgomery Police Department was aware of the fact that this bus had left Birmingham and was aware of the fact that certain difficulties had been encountered in Birmingham, Alabama, on May 14, 1961, when a similar group had arrived in Birmingham, Ala. This Court further finds that a Montgomery Police Department officer, Detective Shows, stated to a reporter for the Montgomery Advertiser on the morning of May 20 that

the Montgomery police "would not lift a finger to protect" this group. The evidence is abundantly clear and this Court specifically finds that Lester B. Sullivan, as Police Commissioner, was advised by Floyd Mann, Director of the Alabama Department of Public Safety, on the morning of May 20, 1961, that the bus in which this group was riding was en route from Birmingham to Montgomery, Ala., and had reached a point 12 to 14 miles from the city limits of Montgomery, Ala., at approximately 10:00 a.m. The likelihood of violence was known to the Department of Public Safety, and that Department, acting through its head, Floyd Mann, had taken the necessary precautions to protect this bus from Birmingham to the city limits of Montgomery, Ala., by assigning 16 highway patrol cars and one airplane to accompany this bus from city limits to city limits. Through various sources, Sullivan and the Montgomery Police Department, through Sullivan, were aware of the explosive situation that existed in this area with reference to these riders, and with that knowledge did not take any of the usual precautionary measures to keep down violence in the city of Montgomery upon the arrival of this bus. Police Commissioner Sullivan, with this information—according to Police Officers Swindle, Moody, Lofton, Smith, Parham, and others—had not even alerted the Montgomery City Police Department to ensure the safety of the group of students, to prevent unlawful acts of violence upon their persons, and to ensure the safe conduct of these groups of interstate travelers. This Court specifically finds that the Montgomery Police Department, under the direction of Sullivan and Ruppenthal (Acting Chief Stanley, upon behalf of Ruppenthal) willfully and deliberately failed to take measures to ensure the safety of the students and to prevent unlawful acts of violence upon their persons. This lack of protection on the part of the city police of Montgomery continued even after the arrival of the bus. From the testimony of witnesses and the radio log of the Police Department, no police car was dispatched to the area of violence until car No. 19 (with two officers) was sent at 10:33 a.m. "to investigate." At 10:37 a.m. car No. 25 was also sent to investigate. It is significant that none of the officers in these two cars testified in this case. At 10:39 a.m., car No. 29 was sent to the general area "to direct traffic." The police dispatcher's radio log does not reflect that any other help was sent by the dispatcher to the station until 11:24 a.m.

19. *Id.* at 902.
20. Birmingham News, May 21, 1961, p. B-5.
21. *Id.* at A-1.
22. Atlanta Constitution, May 22, 1961, p. 8.
23. N.Y. Times, May 22, 1961, pp. 1, 26.
24. For example, when a Texas Klan leader announced that there were over 1,000 members in the Shreveport, Louisiana area, city leaders including the local sheriff issued statements opposing the organization. Shreveport Times, Feb. 10, 1960, p. 1-A. Also see note 6, *supra*.
25. Report of the Alabama Advisory Committee to the Commission on Civil Rights, *The 50 States Report* 7 (1961). The Alabama Committee sent questionnaires to 120 local citizens with 46 being returned in time for use in its report—25 from Negroes and 21 from whites. *Id.* at 4-5. In connection with the point in the text the Report stated, *id.* at 7-8:

Another item that seemed to be symptomatic of the unfavorable attitude of the local citizens toward the police was the response by the observers to the question about collusion between the police and the Ku Klux Klan. About 65 percent of the respondents intimated that local officials give the appearance of working hand in hand with the rightwing terrorist groups such as the Ku Klux Klan. This was especially pronounced among the Negroes, more than 65 percent of whom gave testimony about this aspect of police lawlessness. In fact, about 45 percent of the respondents indicated that local officials were known to hold memberships in the Ku Klux Klan or in other rightwing subversive terrorist organizations.

26. McMillan, *Racial Violence and Law Enforcement* 19 (1960). Following the release of this photograph, it was reported that, "Several letters were published asking for at least equal justice for the Negro." Hentoff, "A Conversation in Alabama," The New Yorker, July 16, 1960, p. 41.
27. McMillan, *op. cit.*, *supra*, note 26, at 19.
28. N.Y. Times, Mar. 7, 1960, p. 1, 14.
29. McMillan, *op. cit.*, *supra*, note 26, at 22. Commissioner Sullivan stated during a subsequent interview, "I think we proved a big point that day up at the capitol. The people who might be inclined to take things in their own hands have let us know they now believe we can handle matters. You know our present administration was elected on a platform of bringing new business to Montgomery. . . . But things haven't been normal here since the bus boycott in 1956."

Notes: Justice, Chapter 3—Continued

- I feel business doesn't like all this turbulence. I'm sure this new outbreak has jeopardized our program." *Id.* at 23.
30. Leighton, *Five Cities* 131-36 (1939).
  31. *The Negro and the Instrumentalities of Justice in Birmingham, Alabama* 9-14 (1961). This Commission document contains the results of a field investigation by two Commission representatives in March 1961. The Commission field team interviewed 23 Alabama residents—14 whites and 9 Negroes.
  32. *Id.* at 16-17.
  33. *Id.* at 17-19.
  34. *Id.* at 17-19. See also *NAACP v. Alabama*, 357 U.S. 449, 452 (1958).
  35. *The Negro and the Instrumentalities of Justice in Birmingham, Alabama*, *supra*, note 31, at 19-33.
  36. Birmingham News, Sept. 14, 1956, p. 2.
  37. Confidential statement in Commission files.
  38. CBS Reports, "Who Speaks For Birmingham," CBS Television Network, May 18, 1961.
  39. Statement of Rev. Fred L. Shuttlesworth; confidential statement in Commission files; and Birmingham News, Sept. 9, 1957, p. 1.
  40. Montgomery Advertiser, Oct. 5, 1957, p. 1.
  41. Birmingham News, Apr. 15, 1960, p. 12.
  42. *The Negro and the Instrumentalities of Justice in Birmingham, Alabama*, *supra*, note 31, at 19-33.
  43. *Id.* at 2.
  44. *Id.* at 34.
  45. *Ibid.*
  46. *Id.* at 35.
  47. *Id.* at 33.
  48. *Id.* at 82.
  49. Birmingham News, May 2, 1961, p. 1.
  50. Birmingham News, May 18, 1961, p. 10.
  51. Statement in Commission files. See also *1959 Report* 96-97. In his statement, the younger Howard described how the incident started when his father, interested in urging Alabama Negroes to register and vote, hired a local white painter to copy a cartoon depicting a Negro praying for the full enjoyment of his rights. The statement continued:

But before it was completed it was seen by a white person who immediately notified the police. The Police Chief came and arrested Dad on the afternoon of Wednesday, January 22, 1959. He was charged with breach of the peace and inciting to riot. The trial was held on Saturday, Jan. 25, 1959. At the

trial Dad was found guilty and sentenced to six months in jail and \$100 plus costs. My Father appealed the decision.

As we were leaving the courtroom on the way to the bonding company to make appeal bond, two white men stepped in front of me separating me from Dad. This happened while we were going down a narrow stairway to the lobby of the court building. As Dad got to the bottom step in the lobby of the court building, one of the men in front of me nodded to a strongly built white man who was standing at the bottom of the stairway with blackjack in hand. I realized that the men were blocking me so they could get to Dad. When the man nodded, I shouted to Dad to look out. At that moment the man with the blackjack swung and struck Dad on the head with the blackjack. Immediately about forty white men who were gathered in the lobby sprang to the attack. [A city policeman was seen in the mob.] Many of them had blackjacks and knives in the halls of justice. My mother rushed out and cried, "They're killing my Husband and my Son." One of the men placed a knife on her stomach and told her if she hollered again he would cut her entrails out.

When the men jumped on Dad, I shoved the two men blocking me down the stairway and dived headlong into the bunch. Both my Father and I were fighting for our very lives in the halls of justice. The odds were almost forty to one against us, and we were severely mobbed. There was an officer at the door, and there were many officers in the court building. But none of them came to our rescue. Finally, after what seemed about eight or ten minutes, a group of officers came from upstairs calling on everyone to break it up. My Father's face and mine were bloody, and our bodies were much bruised, yet no arrests were made, and all the men immediately left the lobby and went outside . . .

Asbury Howard, Jr., also stated that because he later tried to push through the crowd toward his father, he was arrested and convicted of disorderly conduct and disobeying an officer. He was sentenced to 360 days imprisonment and a fine of \$200 plus costs. Pending appeal, Asbury Howard, Sr., produced bond, but since it was improperly made out, he had to serve his sentence working on the city streets.

52. Statement in Commission files. As in most cases of this type it is impossible to state whether or not these charges are correct. The assault allegedly was connected with a prayer-protest meeting held by a group of 12 Negro students at a Negro park in nearby Birming-

ham on February 29, 1960. The students were arrested by Birmingham policemen, and their names and addresses appeared in The Birmingham News on the following day. One of the students was Robert Jones, whose mother, Mrs. M. Jones made the following statement:

On March 12, around 8:30 P.M. I heard a knock on the door. I got out of the bed and went to the door and asked who it was. Someone asked if William Jones (my husband) was home. I said he was not home and started back to bed. There was a knock on the door again. Someone said "We're policemen" and demanded that I open the door. When I opened the door, about five white men walked in and asked for my son Robert. I asked what they wanted with him. They said they had a warrant for him. I asked them to read it, but they did not answer. Then three white men came in through the back way with guns drawn. They had broken down the back door. There were now eight white men in the house, all armed with guns, sticks, pipes, and I don't know what else. When they tried to get to Robert I blocked them and the fighting began. They started beating me and my daughter, but we fought as best we could. One of them stood over me and broke my leg with a weapon. I was knocked in the head with such force that the wound required nine stitches. My finger was broken as I swung my hand trying to knock a weapon from one of them. After the fight my whole body was full of bruises and whelps [sic]. My daughter also had many bruises on her body. But they did not take Robert out. They ran out and sped away in about six cars which they had come in . . . A neighbor said she heard the screaming and thought there was a fire. She came to the door, but was ordered back into the house by a white man standing near her house. She went back, but when the screaming continued, she ran out on the porch to see what the trouble was. This time the man hollered "Auntie don't come out here, It's the police." I had to spend about ten days in the hospital and about three months on crutches, but it still pains me to walk. I weighed 185 lbs. at the time of the attack. My weight is now 130.

This is an experience that I can never get over as it has left its mark on me. And I cannot feel safe even now, since, to my best recollection, the man who stood over me and broke my leg was a deputy.



53. Information from Department of Justice. If the allegations of official connivance in this case, could have been substantiated, the Department of Justice would have had grounds to prosecute under the Civil Rights Acts. See ch. 4, at 45, 46, *infra*.
54. Reverend C. Herbert Oliver of the Inter-Citizens Committee of Birmingham investigated the case. He wrote:

On Sat. Apr. 15, a group of Negro boys went fishing in Midfield, Ala., a town between Birmingham and Bessemer. They were joined by a little white boy. Some of the boys left, and William [Nettles, aged 14, along with] a little Negro boy 9 years of age, and the white lad continued to fish. After a while the two latter boys decided to go get some water a short distance away, less than a stone's throw. There were larger white boys nearby. (Previously Negroes had been driven out of this area by bigger white boys.) While the two boys were getting water, they heard William holler. They both rushed back but William was nowhere to be found. His fishing pole had been broken. They called and searched for him but they could not find him.

But as they were running back toward William, they saw the larger white boys running away. When they could not find him the little white boy asked the colored boy in innocence, do you think they hit him and threw him in the water.

Soon word was around that William was missing, and a search was begun. The Brownville police assisted in the search. Divers searched until dark. The next morning the search was resumed. But the local divers were not able to find anything. A crowd of white persons and Negroes watched the procedure, including relatives of the boy. Finally an outside diver or divers were secured and in a short time the body was found. But when the diver came up and said he had found the boy, the Brownville police made everyone go away including the boy's mother, grandmother, grandfather, and other relatives. No relatives were allowed to see the boy until he was taken to the funeral parlor.

The father was called from Michigan to come. When he went to see the body he was not allowed to see his back. But he saw a bruise on his forehead, one on his groin, and two scars on either side of his neck. I myself saw the head bruises and the neck scars. They looked like scars made when the top skin is rubbed off. The coroner's verdict was death by drowning. When the father asked for an autopsy, the coroner refused.

The night before the funeral I went with relatives to the funeral parlor, where we viewed the body and secured the clothes that the victim wore when the tragedy occurred. They were bloody all over. I attended the funeral, and I would say that everybody believes that William Nettles was killed. A hushed silence and fear still lingers in the wake of an unexplained death. It is amazing to observe the firm belief in the Negro community that nothing can or will be done.

. . . [D]ark faces seem to say, this is bad, I hope they don't get me next.

55. *Investigation of Circumstances Resulting in the Race Riot Which Occurred in Jacksonville, Florida, Saturday, August 27, 1960*. This Commission document contains the results of a field study conducted in Jacksonville during October, 1960. A total of 37 people were interviewed. Among the seven whites in official positions interviewed were the Mayor, the Chief of Police, and other police officers. Nineteen whites who held no official position were interviewed. Eleven Negroes, including participants in the demonstrations, also gave statements. Other material gathered for this investigation included sworn complaints and a copy of a television newsreel film showing the whites marching to the attack and the attack itself. The description that follows in the text is based on this field investigation.
56. One Negro minister, for example, stated "that all the trouble on Saturday, August 27, 1960, was started by gangs of white men from Georgia and other parts of Florida." *Id.* at 24.
57. Statements in Commission files, and see *Investigation of Circumstances Resulting in the Race Riot Which Occurred in Jacksonville, Fla., Saturday, August 27, 1960, supra*, note 55, at 20-21.
58. *Id.* at 7.
59. *Id.* at 33.
60. Statements in Commission files.
61. *Investigation of Circumstances Resulting in the Race Riot Which Occurred in Jacksonville, Fla., Saturday, August 27, 1960, supra*, note 55, at 24.
62. Tampa Tribune editorial as reported in *The Florida Star*, Sept. 3, 1960, p. 2.
63. *Investigation of Circumstances Resulting in the Race Riot Which Occurred in Jacksonville, Fla., Saturday, August 27, 1960, supra*, note 55, at 34-35.
64. Weckler and Hall, *The Police and Minority Groups* 1 (1944). This study also praised the actions of certain police departments, espe-

cially that of the New York City department during the August 1943 riot. "This riot was probably the only one in American history in which police activity was generally approved on all sides." *Id.* at 4.

65. *Chicago Field Study* 26. This Commission document contains an analysis of information gathered by a Commission staff attorney and an investigator during a field investigation in Chicago from January 23, 1961, to January 31, 1961. The purpose of the investigation was to study the problems of police brutality, interracial violence, and employment of minority groups on the Chicago police force—both before and after the administration of Superintendent Orlando Wilson who took office in March 1960—and to ascertain if changes in police procedures and policy made by the new administration had affected in any way the handling of these problems. Twenty-seven people were interviewed, 12 of whom were Negro. Among the 27 interviewed were 8 attorneys; a Federal judge; the Superintendent of the Chicago Police Department and other members of the Department; members of the Commission's Illinois Advisory Committee; representatives of the Chicago branches of the ACLU, the Urban League, the American Friends Service Committee, the NAACP, and the Mayor's Commission on Human Relations and several victims of alleged police brutality.

The police brutality complaint records of the ACLU, NAACP, and the Chicago Police Department were analyzed by Commission staff members. Superintendent Wilson conducted a special employment survey by race of police personnel for the Commission. In addition, Commission staff members studied published materials of the ACLU, the Urban League, the American Friends Service Committee, the Mayor's Commission on Human Relations, and the Police Department.

66. *Id.* at 27; see American Friends Service Committee, Chicago Regional Office, *Trumbull Park, A Progress Report* 9 (1959).
67. Confidential statement in Commission files.
68. *Ibid.*
69. *Ibid.*
70. American Friends Service Committee, Chicago Regional Office, *Quakers Look at Trumbull Park* (1956).
71. *Chicago Field Study*, *supra*, note 65 at 27.
72. *Ibid.*
73. *Id.* at 28–29.
74. *Ibid.* See Chicago Commission on Human Relations Department of Public Information, *Report on Press, Radio, and Television Coverage of Racial Disturbances in Chicago, From July 28 to Au-*

- gust 15, 1957 (1957) (unpublished), on file at the Commission, for a resume of published comment on the Calumet Park riots.*
75. *Chicago Field Study, supra*, note 65, at 29.
76. *Ibid.*
77. *Chicago Field Study, supra*, note 65, at 30.
78. *Ibid.*
79. *Ibid.*
80. For example, see the incident reported in the *Chicago Defender*, July 8, 1961, p. 1 involving Mrs. Annie Pittman, her sons, and police officers Arens and Nolan.
81. (Charleston, S.C.) *News and Courier*, July 16, 1961, p. 1.
82. *N.Y. Times*, July 17, 1961, p. 25.
83. The *Goldsby* case is discussed in ch. 7, at 91, *infra*.
84. *N.Y. Times*, Jan. 4, 1960, p. 8.
85. See statement of Attorney General Patterson, (Jackson, Miss.) *Clarion-Ledger*, Oct. 13, 1959, p. 10 regarding the connection between the *Goldsby* and *Parker* cases.
86. Associated Press Dispatch, May 12, 1959, as published in *Hearings on Civil Rights before the Subcommittee on Constitutional Rights of the Senate Judiciary Committee*, 86th Cong., 1st Sess., Part 2, 1309 (1959).
87. Testimony of J. Edgar Hoover, Director, Federal Bureau of Investigation, *Hearings before the Subcommittee of the House Committee on Appropriations*, 86th Cong., 2d Sess. 359 (1960).
88. *Washington Post*, Feb. 9, 1960, p. 2.
89. *Minneapolis Morning Tribune*, Nov. 4, 1959, p. 4.
90. Information from Department of Justice.
91. See *supra*, note 84.
92. Information from the Department of Justice.
93. See app. VII, tables 4, 5, and 6.
94. Confidential statement in Commission files.
95. *N.Y. Times*, June 8, 1961, p. 18C.
96. *Ibid.* By mid-September there were signs of encouragement in the conviction of two Klan members and the guilty pleas of five others in a prosecution arising out of the May 13 flogging mentioned above, p. 36. See *Birmingham News*, Sept. 15, 1961, p. 3. The *News* stated that these were the "first admitted members of the Ku Klux Klan ever to be convicted of flogging in Alabama." *Ibid.*

## NOTES: JUSTICE, Chapter 4

1. See ch. 2 at 6, *supra*.
2. The indictment was based on section 242 of the U.S. Criminal Code (Title 18). Section 242 is derived from both the Civil Rights Act of 1866 (14 Stat. 27, ch. 31, sec. 2) and the Enforcement Act of 1870 (16 Stat. 140, ch. 114, secs. 16 and 17). For a full discussion of the history of this and related statutes, see Carr, *Federal Protection of Civil Rights*, 57-77, 85-115 (1947).
3. The omitted portion of sec. 242 prohibits the infliction, under color of law, of "different punishments, pains, or penalties, on account of" the victim's "being an alien, or by reason of his color or race." The Supreme Court has held that the "alienage, color or race" clause relates solely to this second portion of the statute. *United States v. Classic*, 313 U.S. 299, 326-27 (1941). This provision is rarely used apparently because of the considerable burden of establishing that the deprivation of rights took place "on account of" alienage, color or race.
4. See Carr, *op. cit. supra*, note 2, at 24-31.
5. *United States v. Buntin*, 10 Fed. 730 (C.C. S.D. Ohio 1882).
6. *United States v. Stone*, 188 Fed. 836 (D. Md. 1911).
7. See *Screws v. United States*, 325 U.S. 91, 92, 111 (1945).
8. *Screws v. United States*, *supra*.
9. *Id.* at 107.
10. U.S. Const. amend. X. See, *The Civil Rights Cases*, 109 U.S. 3, 17 (1883).
11. *Screws v. United States*, *supra*, note 7, at 111.
12. Either 18 U.S.C. sec. 371 (1958) (the general conspiracy statute) or 18 U.S.C. sec. 2 (1958) (criminal provision defining principals) is invoked with sec. 242. For an example of the first, see *United States v. Trierweiler*, 52 F. Supp. 4, 7 (E.D. Ill. 1943). For an instance of the latter, see *United States v. Lynch*, 94 F. Supp. 1011, 1013 (N.D. Ga. 1950).
13. *United States v. Lynch*, *supra*, note 12, at 1015, *aff'd*, 189 F. 2d 476 (5th Cir. 1951), *cert. denied*, 342 U.S. 831 (1951); *Catlette v. United States*, 132 F. 2d 902 (4th Cir. 1943); *accord*, *United States v. Hunter*, 214 F. 2d 356 (5th Cir. 1954), *cert. denied*, 348 U.S. 888 (1954); *cf. Robeson v. Fanelli*, 94 F. Supp. 62, 70 (S.D.N.Y. 1950).
14. *Lynch v. United States*, 189 F. 2d 476, 481 (5th Cir. 1951), *affirming*, *United States v. Lynch*, 94 F. Supp. 1011, 1013-14 (N.D. Ga. 1950).
15. *United States v. Lynch*, *supra*, note 12, at 1013.
16. *Screws v. United States*, *supra*, note 7, at 106.

17. See, e.g., *Koehler v. United States*, 189 F. 2d 711, 712 (5th Cir. 1951), *cert. denied*, 342 U.S. 852 (1951), *rehearing denied*, 342 U.S. 889 (1951); *Culp v. United States*, 131 F. 2d 93, 96 (8th Cir. 1942).
18. See, e.g., *United States v. Williams*, 341 U.S. 97, 101 (1951); *Pool v. United States*, 260 F. 2d 57, 65-66 (9th Cir. 1958); *Apodaca v. United States*, 188 F. 2d 932, 936 (10th Cir. 1951).
19. See, e.g., *Screws v. United States*, *supra*, note 7, at 106-107; *Crews v. United States*, 160 F. 2d 746, 749 (5th Cir. 1947).
20. *United States v. Lynch*, *supra*, note 12, at 1014; *Catlette v. United States*, *supra*, note 13, at 906.
21. Diligent search failed to uncover any clear statement of this proposition in reported Federal cases involving police brutality. The courts decided those cases without reaching the factual question of the presence of racial discrimination. Nonetheless, it is clear that such racial discrimination under color of law violates the equal protection of the laws. In *Shelley v. Kraemer*, 334 U.S. 1 (1948), the Supreme Court found a violation of the equal protection clause in the enforcement by a State court of racially restrictive covenants affecting real property. The Court declared: "The historical context in which the Fourteenth Amendment became a part of the Constitution should not be forgotten. Whatever else the framers sought to achieve, it is clear that the matter of primary concern was the establishment of equality in the enjoyment of basic civil and political rights and the preservation of those rights from discriminatory action on the part of the States based on considerations of race or color." *Id.* at 23. See also *Brown v. Board of Education*, 347 U.S. 483 (1954); *Strauder v. West Virginia*, 100 U.S. 303, 307 (1880).
22. See ch. 2 at 25, *supra*.
23. *Lynch v. United States*, *supra*, note 14, at 479. [Emphasis added.]
24. *United States v. Konovsky*, 202 F. 2d 721 (7th Cir. 1953); *United States v. Lynch*, 94 F. Supp. 1011, 1014 (W.D. Ga. 1950), *aff'd*, 189 F. 2d 476, 479-80 (5th Cir. 1951), *cert. denied*, 342 U.S. 831 (1951). See *Catlette v. United States*, *supra*, note 13, at 906.
25. *Screws v. United States*, *supra*, note 7, at 101-104. The decision was not unanimous. Three Justices held sec. 242 to be unconstitutional; four held the statute's constitutionality could only be preserved by requiring specific intent; Justice Rutledge concurred in that result in order that the case be resolved, but he indicated that otherwise he would have affirmed the conviction; Justice

Murphy dissented and held that the conviction should have been affirmed since section 242 was constitutional without specific intent.

26. *Id.* at 94-96.

27. *Id.* at 101.

28. *Id.* at 96.

29. *Id.* at 97.

30. *Id.* at 98, 100.

31. Conceivably, instead of construing the term "willfully," the Court might have construed the words "rights, privileges, or immunities" to mean only those constitutional rights that were already defined at the time the accused was charged with violating sec. 242. Such a construction (just as the *Screws* doctrine) would have insured that the statute applied only to deprivations of particular announced rights under the due process clause and other such general provisions of the Constitution. It would not, however, have spelled out the specific conduct that would violate those particular defined rights.

32. *Screws v. United States*, *supra*, note 7, at 100.

33. *Id.* at 103.

34. *Id.* at 102.

35. *Id.* at 105. [Emphasis added.]

36. See *Clark v. United States*, 193 F. 2d 294, 296 (5th Cir. 1951).

37. *Screws v. United States*, *supra*, note 7, at 97-98.

38. It should be observed that this is different from the situation in which the right has not yet been defined by the Supreme Court. Rather this situation would involve a statute that has remained in force although in conflict with certain constitutional rights already defined.

39. See *id.*, at 108-109.

40. *Id.* at 97.

41. *Id.* at 105.

42. *Id.* at 103.

43. *Id.* at 106.

44. *Ibid.*

45. *Ibid.*

46. *Id.* at 107.

47. See, e.g., instructions to the juries in *United States v. Clark*, Crim. No. 3183, D. Idaho, Oct. 30, 1959; *United States v. Stackpole*, Crim. No. 2026, E.D. Tex., 1958; *Crews v. United States*, Crim. No. 7593, S.D. Fla., Oct. 3, 1946, approved as "fair, full and able" by the Fifth Circuit. 160 F. 2d 746, 750 (1947). Copies of these jury charges are on file at the Civil Rights Division at the Department of Justice in Washington, D.C.

At a conference held at the Justice Department on Dec. 16, 1960, between representatives of the Civil Rights Division and the Commission on Civil Rights (see note 102, *infra*), the subject of trial courts' instructions in sec. 242 prosecutions was discussed. Division attorneys stated that judges will frequently ask the source of proposed instructions on specific intent and, when informed that the requested charge is based on the opinion in the *Screws* case, will go to the case and parrot the Court's language. *Department of Justice Conference, Notes, infra*, note 102, at 37.

- An experienced prosecutor of sec. 242 cases, commenting in 1958 on a case he had prosecuted some 5 years before, wrote "few judges, having the clear language of the Supreme Court [referring to the decision in *Screws*] as a pattern . . . will risk changing the language to give the prosecutor a chance even in a vicious case." Letter From Fred Botts, Esq., to Harry H. Shapiro, July 25, 1958, quoted in Shapiro, "Limitations in Prosecuting Civil Rights Violations," 46 *Cornell L.Q.* 532, 541 n. 29 (1961).
48. *United States v. Dunn*, Crim. No. 11, 205, S.D. Fla., Aug. 8, 1960. This case concerned the treatment of inmates at the Raiford (Fla.) Prison. Federal prosecutors presented some 60 witnesses who testified that prison guards had cruelly mistreated prisoners. See description of the case in ch. 2 at 15, *supra*. The Federal district judge, after admitting that "the Government had made a case which should be answered" insofar as the facts of mistreatment were concerned (Record, p. 4634), nonetheless refused to allow the jury to consider the case, and acquitted the defendant-guards on the grounds that the Government had failed to establish the essential element of specific intent (*ibid.*).
49. *Ibid.*
50. *Id.* at 4635-36. The district judge ruled that the Government had to establish this "specific knowledge," in addition to proving (1) that the guards had in fact deprived the prisoners of a right guaranteed by the 14th amendment, and (2) that the guards specifically intended to deprive the prisoners of that right (*ibid.*). In closing, the judge implied that he felt that Florida officials had already taken "appropriate action" (*id.* at 4636). It appears that the State had discharged 2 of the 14 guards who were named in the Government's indictments. Moreover, the judge added (*id.* at 4636-37):

The day may arrive when State conduct, by responsible State officials, of the internal affairs of State prisons, is subject to Federal supervision and Federal review and resultant Federal



criminal proceedings. If that is so, I would emphasize my view to you now, that this is not that day and these are not those proceedings.

51. The Civil Rights Division made available to members of the Commission's staff copies of many instructions given in cases that went to trial since the creation of the Division in 1957. Members of the Division's staff discussed these instructions with representatives of the Commission. In addition, instructions used in 242 prosecutions prior to 1957 were also studied.
52. Interview with Civil Rights Division attorney. According to the attorney, the Civil Rights Section supplied copies of instructions that were approved by the Fifth Circuit in *Crews v. United States*, *supra*, note 47, at 750. These instructions parallel the language of the *Screws* decision.
53. Communications between the assistant U.S. attorney and the Department of Justice contained in Department of Justice records, File No. 144-18-253 (*United States v. Minnick*, Crim. No. 8466-M, S.D. Fla., June 26, 1953), and quoted in Shapiro, *op. cit.*, *supra*, note 47, at 541. See also *United States Attorneys' Bulletin*, Aug. 7, 1953.
54. Discussion with Division attorneys, December 1960, on *United States v. Dunn*, *supra*, note 48.
55. Interviews with Division attorneys. Division attorneys who participated in a conference between representatives of the Division and of this Commission on Dec. 16, 1960, did not agree on the meaning of the *Screws* doctrine of specific intent. *Department of Justice Conference, Notes, infra*, note 102, at 28, 37. The Court's language in the *Screws* case leaves room for honest differences of opinion as to the decision's full import. The fact of divergent views among Division attorneys is mentioned here simply to point up one of the reasons for the absence of a firm Division policy on proposed instructions covering constructive intent.
56. See p. 65, *infra*.
57. See U.S. Const. amend. V; Fed. R. Crim. P. 7(a).
58. See p. 63-65, *infra*. Civil Rights Division attorneys agreed that it would be even more difficult to obtain convictions if sec. 242 were a felony rather than a misdemeanor statute. *Department of Justice Conference, Notes, infra*, note 102, at 35.
59. Interviews with Division attorneys.
60. *Ibid.*; *Department of Justice Conference, Notes, infra*, note 102, at 25.
61. See *Screws v. United States*, *supra*, note 7, at 97 n. 2.

62. See, e.g., *United States v. Saylor*, 322 U.S. 385 (1944), *rehearing denied*, 323 U.S. 809 (1944); *Guinn v. United States*, 238 U.S. 347 (1915); *United States v. Nathan*, 238 F. 2d 401 (7th Cir. 1956), *cert. denied*, 353 U.S. 910 (1957), *rehearing denied*, 353 U.S. 951 (1957); *United States v. Fontana*, 231 F. 2d 807 (3d Cir. 1956); *United States v. Chandler*, 157 F. Supp. 753 (S.D. W. Va. 1957); *United States v. Skurla*, 126 F. Supp. 713 (W.D. Pa. 1954); *United States v. Ellis*, 43 F. Supp. 321 (W.D. S.C. 1942).
63. *United States v. Williams*, 341 U.S. 70 (1951).
64. *Id.* at 77.

The Court based this conclusion on a number of factors: (1) To extend sec. 241 to cover official conspiracies violative of 14th amendment rights would duplicate the scope of sec. 242 applied in conjunction with sec. 371 (the general conspiracy statute). But Congress intended only these latter two statutes to reach such conspiracies. *Id.* at 75-76, 78. (2) The language of sec. 241 shows—that it was directed against private actions such as the activities of the Ku Klux Klan and others who went “in disguise on the highway,” *id.* at 76; that it was a guarantee of those rights “granted or secured” by the Constitution (a phrase descriptive of rights protected against private interference) and not those rights merely “secured or protected” as in sec. 242, *id.* at 78; and that sec. 241, unlike sec. 242, makes no mention of action under color of law. *Ibid.* (3) On five occasions Congress has revised the Federal criminal laws without changing sec. 241 in substance, and that in at least three of those revisions, “Congress had before it a consistent course of decisions” of the Supreme Court interpreting sec. 241 as a protection solely of rights of Federal citizenship. *Id.* at 79-81.

It is also of interest that the Court noted that it was “construing a Federal criminal provision that affects the wise adjustment between State responsibility and national control of essentially local affairs.” *Id.* at 73.

65. *Id.* at 76.
66. *Id.* at 77.
67. *Ibid.*
68. *Id.* at 78.
69. The same conduct may constitute a violation both of the 14th amendment and some other provision of the Constitution that defines a right of Federal citizenship. For instance, State action interfering with the right to vote in Federal elections is unquestionably a denial of the equal protection clause of the 14th amendment. *Nixon v. Condon*, 286 U.S. 73, 89 (1932); *Nixon v. Herndon*,

- 273 U.S. 536, 541 (1927); cf. *Grovey v. Townsend*, 295 U.S. 45, 48 (1935). At the same time, the right to vote is guaranteed to citizens against interferences from any quarter whatsoever, by art. I, secs. 2 and 4 of the Federal Constitution. *United States v. Classic*, 313 U.S. 299, 314-15 (1941). If sec. 241 is invoked in such a case, it is not by virtue of the equal protection clause of the 14th amendment, but rather as a violation of the former provisions. *Ibid*.
70. *Twining v. New Jersey*, 211 U.S. 78, 97 (1908). See *Logan v. United States*, 144 U.S. 263, 291-92 (1892); *United States v. Waddell*, 112 U.S. 76, 79 (1884); *Ex parte Yarbrough*, 110 U.S. 651, 666-67 (1884). These rights are found in the main body of the Constitution or the Bill of Rights.
71. *Screws v. United States*, *supra*, note 7, at 111.
72. *Logan v. United States*, *supra*, note 70, at 284, 286, 295. By virtue of this same right, sec. 241 (but not sec. 242) could also be invoked against private individuals who lynch or otherwise harm persons in Federal custody without the consent of Federal officers.
73. See discussion in ch. 2 at 27, *supra*; ch. 6, note 59, *infra*.
74. This application of sec. 241 is derived, of course, from the nature of the right invaded and not from the official status of those who invade the right. The Constitution, and hence sec. 241, protects the rights of Federal citizenship against both private and official intruders.
75. Cf. pt. II, ch. 3, at 67, *supra*.
76. See, e.g., *United States v. U.S. Klans*, 194 F. Supp. 897 (M.D. Ala. 1961); see also ch. 3 at 29-33, *supra*. Sec. 241 might have been invoked to prosecute any officers or private individuals who interfered with the right of persons to travel freely in interstate commerce.
77. See *United States v. Williams*, *supra*, note 63, at 87-93 (Justice Douglas dissenting).
78. Justice Frankfurter expounded the narrow view on behalf of four justices, *id.* at 77-82, and Justice Douglas the broad view on behalf of four others, *id.* at 87-93. Justice Black cast his vote to affirm the reversal by the Fifth Circuit (reported at 179 F. 2d 644 (1950)) of the defendants' conviction under sec. 241 on the grounds that, by virtue of the defendants' prior acquittal of the substantive offense in a sec. 242 prosecution, the issue of their conspiring to commit that offense had already been decided in their favor, *id.* at 85-86.
79. *United States v. Dunn*, *supra*, note 48.

80. If sec. 241 should be found to protect 14th amendment rights, it would provide stiffer punishment for police brutality and official connivance in violence. Thus it could be invoked in preference to sec. 242 in appropriate cases—for example, when the victim had been deprived of his life. However, if the general language of sec. 241 should be held to include the entire body of rights encompassed by the 14th amendment, it might encounter the same difficulties raised by sec. 242 in the *Screws* case. See *United States v. Williams*, *supra*, note 63, at 82. The doctrine of specific intent, which the Court in *Screws* found essential to preserve the constitutionality of sec. 242, could not be predicated upon a requirement of willfulness—a term not found in sec. 241. Conceivably the conspiracy element might be interpreted as requiring specific intent since “a conspiracy by definition is a criminal agreement for a specific venture,” *id.* at 94 (Justice Douglas dissenting), and since “intent to accomplish an object cannot be alleged more clearly than by stating that parties conspired to accomplish it.” *Frohwerk v. United States*, 249 U.S. 204, 209 (1919).
81. See Brodie, “The Federally-Secured Right to be Free from Bondage,” 40 *Geo. L.J.* 367, 374 nn. 33 and 34 (1952). See also *Hearing Before the Special Subcommittee on Labor and Labor-Management Relations of the Senate, on Labor Practices in Laurens County, Ga.*, 82d Cong., 1st sess., 79–88 (1951).
82. *United States v. Dial*, Crim. No. 1348, N.D. Ala., May 14, 1954.
83. 18 U.S.C. sec. 1581 (1958) *Peonage; Obstructing Enforcement*:
  - (a) Whoever holds or returns any person to a condition of peonage, or arrests any person with the intent of placing him in or returning him to a condition of peonage, shall be fined not more than \$5,000 or imprisoned not more than 5 years, or both.
  - (b) Whoever obstructs, or attempts to obstruct, or in any way interferes with or prevents the enforcement of this section shall be liable to the penalties prescribed in subsec. (a).
84. *Clyatt v. United States*, 197 U.S. 207, 216 (1905).
85. *Pierce v. United States*, 146 F. 2d 84 (5th Cir. 1944) [citing *United States v. Gaskin*, 320 U.S. 527 (1944); *Taylor v. Georgia*, 315 U.S. 25 (1942); *Bernal v. United States*, 241 Fed. 339 (5th Cir. 1917)], *cert. denied*, 324 U.S. 873 (1945), *petition denied*, 157 F. 2d 848 (5th Cir. 1946), *cert. denied*, 329 U.S. 814 (1947).
86. *United States v. Reynolds*, 235 U.S. 133 (1914); *Clyatt v. United States*, *supra*, note 84.
87. *Pollock v. Williams*, 322 U.S. 4 (1944); *Taylor v. Georgia*, *supra*, note 85; *Bailey v. Alabama*, 219 U.S. 219 (1911).
88. Cases cited in notes 86 and 87, *supra*.

89. 18 U.S.C. sec. 1583 (1958) *Enticement Into Slavery*:

Whoever kidnaps or carries away any other person with the intent that such other person be sold into involuntary servitude, or held as a slave; or

Whoever entices, persuades, or induces any other person to go on board any vessel or to any other place with the intent that he may be made or held as a slave, or sent out of the country to be so made or held—

Shall be fined not more than \$5,000 or imprisoned not more than 5 years, or both.

90. 18 U.S.C. sec. 1584 (1958) *Sale Into Involuntary Servitude*:

Whoever knowingly and willfully holds to involuntary servitude or sells into any condition of involuntary servitude any other person for any term, or brings within the United States any person so held, shall be fined not more than \$5,000 or imprisoned not more than 5 years, or both.

91. The only recent reported decision under section 1583 occurred in 1947. *United States v. Ingalls*, 73 F. Supp. 76 (S.D. Cal. 1947). The decision turned on the correctness of the following definition of slavery that was contained in the trial court's instructions to the jury (*id.* at 78):

A slave is a person who is wholly subject to the will of another, one who has no freedom of action and whose person and services are wholly under the control of another, and who is in a state of enforced compulsory service to another.

The definition was approved by the court in denying the defendant's motion for a new trial. There have been no reported decisions under sec. 1584 in this century.

92. *Slaughterhouse Cases*, 83 U.S. (16 Wall.) 36, 69 (1873); *Bailey v. Alabama*, *supra*, note 87, at 241.

93. There are indications that some State officials may still give effect to State laws that have been declared unconstitutional under the 13th amendment. On November 18, 1958, in connection with information received from the FBI about a suspected case of slavery, a Department of Justice attorney reported in a memorandum as follows to the acting head of the Civil Rights Division:

A Georgia statute made it a crime to contract to perform services with the intent to procure money or other things of value thereby and not to perform the services. It further created a presumption of intent based upon proof of the

contract, the procuring, and the failure to perform. In *Taylor v. Georgia*, 315 U.S. 25 (1942), this statute was held to violate the 13th amendment.

Nevertheless, local officials in Georgia still attempt to enforce this statute from time to time, by adding a charge of minor theft. The fact that the victim was charged with theft of a tool as well as with indebtedness indicates that the situation described in the Bureau's memorandum might be such an attempt.

Further, the circumstances of the sheriff putting up bail in exchange for the prisoner's services indicates a possible violation of the involuntary servitude statutes in that he may not have given the victim any choice between jail and working or he may have compelled the victim to work until the amount of bail was paid off.

94. Order of the Attorney General No. 3204, Feb. 3, 1939.
95. *E.g.*, the Hatch Act and Corrupt Practices Act (18 U.S.C. ch. 29 (1958)), and the Fugitive Felon Act (18 U.S.C. sec. 1073 (1958)).
96. 71 Stat. 637.
97. Order of the Attorney General, No. 155-57, Dec. 9, 1957.
98. Address by Arthur B. Caldwell (Chief, Civil Rights Section) to Civil Rights Class of University of Pennsylvania, July 16, 1953, (mimeo. copy revised 1957) p. 1.
99. Information from Administrative Office, Civil Rights Division.
100. The Commission's study, though it represents the most comprehensive survey of the Department's civil rights activities to date, is not an exhaustive treatment. Indeed, a truly exhaustive evaluation of the handling of civil rights cases appears inherently impracticable. Such a study would require initially a thorough knowledge of the facts and the available evidence in each of the cases as a necessary background for assessing the Department's ultimate disposition of each complaint. It was never the purpose of this study, even if it had been possible, to weigh the particular judgments of the responsible Division attorneys and thus to appraise in the light of subsequent events the final disposition of specific cases. At the same time, the Commission believes its study sufficiently detailed to accomplish its fourfold aim and to justify certain general conclusions which follow.
101. The study commenced in September 1960. Commission staff attorneys first reviewed record sheets obtained from the Machine Records Unit of the Department of Justice in order to obtain

statistical information on cases pertaining to civil rights. The staff thus received complete statistical data on all cases involving allegations of official brutality, slavery, or peonage which were terminated during the 2½-year period from Jan. 1, 1958 (the approximate date when the former Section began operating as a Division) through June 30, 1960. This information was further broken down according to the race of the victim. (The Commission had previously decided, as a matter of practical policy, to limit its studies at this time to acts of official violence involving members of racial minorities.) It was found that, during this period, 461 official brutality matters and 30 peonage and slavery matters were received in which the victim was identified as a member of a minority race. See ch. 2, table 1, at 26, *supra*, and app. VII, table 11. From this group of cases, those few which went to trial and a large cross section or random sample of all other cases were designated for more detailed study. The files in those specific cases, with the exception of confidential FBI reports, were made available for use in this phase of the survey. The documents reviewed for use in this study included legal memoranda prepared by Division lawyers, communications between the Division and the U.S. attorneys, and the "close out" memoranda in which a Division attorney usually summarizes the facts of the case and explains the manner of and reasons for its termination. Later, many of the cases were discussed in individual conferences with the Division attorneys who had handled them. In this way the staff obtained a more detailed explanation of the difficulties encountered at each stage in their development. The study culminated in two informal conferences between staff members of the Civil Rights Division and of this Commission. The second conference, held on Dec. 16, 1960, was attended also by the Assistant Attorney General in charge of the Civil Rights Division and by a member of this Commission. See note 102, *infra*. Although some individual cases were analyzed at these conferences, the discussions were chiefly concerned with matters of general policy and procedure. In addition, both before and after the conferences, Division attorneys afforded frequent informal interviews to representatives of the Commission.

The Commission gratefully acknowledges that it received the complete cooperation of members of the Civil Rights Division. Without their ungrudging sacrifice of time and energy, this study could not have been completed.

The staff also reviewed certain secondary sources in connection with this stage of its survey. Of particular interest is *To Secure These Rights*, the report of President Truman's Commit-

tee on Civil Rights—the only Federal study unit which has covered the same ground. That committee, appointed in 1946, was charged with recommending “more adequate and effective means and procedures for the protection of the civil rights of the people of the United States.” Executive Order No. 9808, Dec. 5, 1946. The Committee considered its study of the Civil Rights Section of the Department of Justice to be “one of its most important assignments.” The President’s Committee on Civil Rights, *To Secure These Rights* 114 (1947). The report is of interest today for two reasons: it affords a measure of the progress made since 1947 in the administration of the civil rights statutes, and it provides perspective on some apparently chronic civil rights problems. Two nonofficial surveys which treat the Justice Department’s handling of police brutality cases have also been examined with particular care—Carr, *Federal Protection of Civil Rights* (1947), and Shapiro, “Limitations in Prosecuting Civil Rights Violations,” 46 *Cornell L.Q.* 532 (1961).

102. This conference was held in the offices of the Civil Rights Division in Washington. Present from the Division were Harold R. Tyler, Jr., then Assistant Attorney General in charge of the Civil Rights Division, and three Division attorneys. Present from the Commission on Civil Rights were Commissioner Robert S. Rankin, Gordon M. Tiffany, the then Staff Director, and four Commission attorneys. The following topics, among others, were discussed—The Problem of Police Brutality: Extent and Location; Investigations: Newspapers and Complaints; Investigations: The Civil Rights Division and the FBI; Proposal for the Creation of Regional Offices of the Civil Rights Division; Deference to State Authorities; Factors Affecting Decision To Prosecute; Grand Juries, Indictments, and Informations; United States Attorneys; Remedies for Police Brutality; Intergroup Violence; Exclusion of Negroes From Juries; and Peonage and Slavery. The foregoing are the subtitles from one of the two Commission documents compiled from notes taken by Commission attorneys who attended the conference; it is entitled *Report on Department of Justice Conference*, and is a 39-page analysis of the conference. The other document, entitled *Department of Justice Conference, Notes*, is a 42-page running account of statements, some verbatim, made at the conference.
103. The Civil Rights Division’s policies and procedures are discussed within the framework of police brutality cases rather than of incidents of “private” violence involving official connivance. The explanation for this fact lies in the rarity of the latter type of



cases. It should be noted, however, that there would be no significant difference between the Division's general procedures for prosecuting police brutality and official connivance in private violence. Both the officers and the private persons involved would in all probability be prosecuted under sec. 242. The *Lynch* case, *supra*, note 12, is an example.

104. See app. VII, table 13.

105. According to representatives of the Division, U.S. attorneys are advised at their annual meeting in Washington to be on the watch for civil rights violations in their respective jurisdictions. *Department of Justice Conference, Notes, supra*, note 102, at 10.

106. The Editorial Unit, according to Division sources, subscribes to newspapers from the North and South, but not from the West. The Division relies upon the FBI offices and the U.S. attorneys to cover newspaper reports in the West. *Ibid.*

107. See ch. 2 at 13, *supra*.

108. This information is based upon a check of records at the Civil Rights Division in the fall of 1960 and upon interviews with Division attorneys.

109. A Division spokesman stated that, although it is not a constant practice, the Division does request FBI investigations of newspaper reports. *Department of Justice Conference, Notes, supra*, note 102, at 9.

The staff of this Commission scans approximately 35 newspapers each day. Numerous complaints of alleged police brutality (and some alleging police connivance in private violence) have thereby been brought to its attention. A number of these complaints have later been found to be valid.

110. This statement is based upon the study of cases, interviews with Division attorneys, and statements made at the final Commission-Division conference. *Department of Justice Conference, Notes, supra*, note 102, at 13.

111. *Id.* at 13, 14, 16-17.

112. *Id.* at 13-14. It appears that in 1959 a memorandum was circulated in the Division advising the staff to disregard newspaper clippings as cause for investigation, but that the directive was informally rescinded. *Id.* at 13.

113. *Id.* at 14, 16.

114. It was revealed at the final Division-Commission conference that FBI agents generally advise informants that they can be held liable for the truth of their signed statements. Where such warnings make the complainant unwilling to sign, obviously that fact affects his credibility. *Id.* at 16.

115. See discussion at p. 62, *infra*.
116. This statement is based upon several years of investigations involving hundreds of interviews with Negroes and whites in the Deep South—especially, but not exclusively, in small rural communities. Time and time again Commission personnel have encountered the fear that inhibits many people with valid complaints from informing the Federal Government. Victims and witnesses have sometimes stated explicitly that local officers would harm them if they complained of official misconduct. See the discussion of the Brazier case, ch. 2, at 9-10 and note 30, *supra*. Experienced Division attorneys corroborated the existence of such fears. *Department of Justice Conference, Notes, supra*, note 102, at 15, 16.
117. It appeared to be the view of some Division attorneys that restraint in ordering preliminary investigations on the basis of newspaper clippings, *id.* at 13, or of unsigned complaints, *id.* at 15, is necessary to protect and to lighten the work of the FBI. In this connection, see discussions at p. 60 and note 134, *infra*.
118. Discussions with Division attorneys of the case of *Unknown City Police—Simmons*, Department of Justice File No. 144-48-238.
119. "Close out" memorandum in the case of *Brusso—Washington*, Department of Justice File No. 144-12-540.
120. Discussion with Division attorneys of the case of [names withheld], Department of Justice File No. 144-1-482.
121. This policy is set forth in the *United States Attorneys' Manual*, Title 10: Civil Rights Division, p. 1, as follows:

The enforcement of Federal law relating to civil rights involves the Department and the United States Attorneys in a critical area of federal-state relationships. Among the individual rights guaranteed by the Constitution and implemented by Federal statute are those that proscribe certain conduct by persons acting under color of state authority. Investigation of a complaint of this type of violation will necessarily involve inquiry into the conduct of state or local officials. Such conduct may involve a violation of state as well as federal law. Accordingly, there may be a need for the fullest cooperation and consultation between the United States Attorney and the State or local prosecuting official.

It should be borne in mind that the underlying purpose of the federal law in this field is to secure and protect the rights involved. Federal prosecution or civil action is important only insofar as it serves this end. Wherever prompt and vigorous action by state officials is effective in vindicating an

infringement of a person's civil rights, the purpose of the federal law is as well served as it would have been by federal action. Such efforts by the state officials should be encouraged and should receive the full cooperation of the United States Attorney.

Spokesmen for the Division stated that this policy is followed. *Department of Justice Conference, Notes, supra*, note 102, at 23. The Division is not likely to prosecute if the State acquits the accused officers, but if the State prosecution results in the imposition of what appear to be inadequate penalties, the Division may prosecute too. *Ibid.*

Apart from prosecutions, the Division may direct the U.S. attorney to warn or admonish local officials. The *United States Attorneys' Manual, supra*, at 3, devotes a separate section to this policy of mediation:

When in the judgment of the United States Attorney the evidence relating to a civil rights complaint does not warrant a federal prosecution but there is indication of continuing or repetitive civil rights violations, the United States Attorney may recommend to the Division that the matter be handled by means of a mediative conference rather than by court action. Situations in which such a conference may be useful include those involving enforced racial segregation and illegal police practices such as the detention of arrested persons for unreasonable lengths of time without the filing of formal charges.

Upon receiving authorization from the Division, the United States Attorney shall hold a conference with responsible local officials. Such a conference should serve the purpose of putting the officials on notice regarding the applicable federal laws and giving them an opportunity to remedy the situation through their own action. The Division should be notified of the results of the conference. After the conference the United States Attorney shall take steps to determine whether the illegal practices which were the subject of the conference have been discontinued. The FBI may be asked to make a spotcheck for this purpose.

122. Statements of Division attorneys. *Department of Justice Conference, Notes, supra*, note 102, at 24, 25. On rare occasions, according to a Division staff member, an investigation will be made even though the State is acting in good faith in a case. *Id.*

- at 24. For FBI policies with respect to concurrent State action, see discussion at p. 61, *infra*.
123. Division spokesmen mentioned difficulties of ill-feeling, *Department of Justice Conference, Notes, supra*, note 102, at 19, and confusion, *id.* at 21, that are apt to result from overlapping investigations.
124. Since investigation is the stage of the case which follows review of a complaint, when the Federal Government does not *investigate* these cases in deference to State action, it has ceased to act. Thus, in areas where police disciplinary boards are operating, the policy of deference might dictate that the Federal Government virtually cease investigation of brutality complaints. Where the boards are effective, this appears to be a defensible policy. But they are not always effective. See ch. 6 at 83, *supra*. At the Detroit hearing, Mr. Willis Ward, then an assistant U.S. attorney in Detroit, complained that the trial board of the Detroit Police Department was ineffective in dealing with the problem of police brutality to Negroes. *Detroit Hearings* 381 (1960). Later the following exchange took place, *id.* at 382:

VICE CHAIRMAN STOREY. I believe awhile ago, Mr. Ward, you mentioned the fact that the Federal Civil Rights Act does not reach this particular area of law enforcement for the reason that the police department has within its organization trial board procedures or something to that effect. Would you explain that matter further, please?

Mr. WARD. Yes. As I understand the Federal Civil Rights Act, it gets its greatest teeth where local law enforcement takes no action whatsoever. Where local law enforcement has procedures, I am reasonably certain that the Federal law in this area will leave it to local authorities to carry it out.

125. There were numerous instances of "stalling" actions by the States in police brutality cases prior to 1958 when Federal prosecutions were handled by the former Civil Rights Section. *Department of Justice Conference, Notes, supra*, note 102, at 24. For a more recent instance, see note 126, *infra*.
126. In [names withheld], Department of Justice File No. 144-3-205 (see also No. 144-3-209 and No. 144-3-210), several complaints alleged that a large group of prisoners at the Atmore, Ala., State prison refused to allow other prisoners to go to work in order to draw the warden's attention to a signed petition for redress of grievances. A riot among the prisoners ensued and was put down.

Those who signed the petition and those whom the guards picked out as participants in the riot were allegedly forced to run between rows of guards armed with bats and clubs. Several prisoners were reportedly hurt. A great deal of newspaper publicity was given to the FBI investigation, and the State instituted an investigation, allegedly not into the prisoners' complaints, but into the identities of the complainants. Subsequently an unsigned letter was received by the local U.S. district judge reporting that named prisoners were being systematically and seriously beaten because of the FBI investigation. Because the subsequent complaint (that the victims were subject to severe reprisals following the FBI probe) was unsigned and appeared inherently unreliable, it was not investigated. Acting Assistant Attorney General Ryan of the Division was in contact with Governor Patterson several times during the investigation and, by informing the Governor that the FBI reports disclosed no violation of Federal law, succeeded in satisfying the Governor's demands to see the FBI reports without actually revealing the exact contents of them to him. The Division and the U.S. attorney concurred in the closing of the case on May 2, 1960, because, according to a memorandum in the file, "no violation of Federal law is indicated."

127. Discussion with Division attorneys of the case of, *Cox*— [name withheld], Department of Justice File No. 144-49-165. Following is a brief summary of the sequence of events in the case: The Division ordered a full investigation into conditions at the school on Feb. 28, 1958. On Mar. 11, 1958, the local U.S. attorney suggested that the investigation be held up, pending the completion of State action. On Mar. 22, 1958, a State warrant was issued for the arrest of Cox. He was indicted for rape and contributing to the delinquency of a minor on June 5, 1958. The matter was not set for trial by the local authorities until June 15, 1959. The matter was then reset for trial for some time in September 1959. The rape charge was dismissed against Cox by local authorities on Sept. 24, 1959. On Nov. 2, 1959, the delinquency charge was dropped for failure to prosecute. The Division, on Dec. 16, 1959, closed the matter because many of the witnesses had disappeared after having been released from the school during the 2-year delay.
128. *Department of Justice Conference, Notes, supra*, note 102, at 24-25.
129. *United States Attorneys' Manual, supra*, note 121, at 2-3. See note 132, *infra*.
130. See note 104, *supra*.

131. *Statement of the Views of the Federal Bureau of Investigation on Civil Rights Investigations*, Sept. 27, 1961, p. 2, (hereinafter cited as *Statement of FBI*.) This four-page Commission document contains a concise summary of the Bureau's position in this area. As the document explains, the statement was obtained in the following manner (*id.* at 1) :

The following memorandum briefly summarizes the views of the FBI on civil rights investigations. For the most part, these views were expressed during a conference held on Friday, Sept. 15, 1961, between Mr. Berl I. Bernhard, Staff Director, and Mr. David B. Isbell, Assistant Staff Director, representing the Commission on Civil Rights, and Mr. Courtney A. Evans, Assistant Director of Special Investigative Division, FBI, and Mr. Clement L. McGowan, Jr., Chief of the Civil Rights Section, FBI. The conference was held pursuant to a letter sent by Mr. Bernhard to Attorney General Kennedy on May 30, 1961, inquiring, among other things, into the absence of complaints of brutality against the FBI, and the question of FBI procedures in dealing with such complaints against State and local police forces.

After the conference, a first draft of a memorandum summarizing the conference was submitted to the Bureau for suggestions and comments. Mr. J. Edgar Hoover, Director of the FBI, by his memorandum of Sept. 22, 1961, proposed a slightly revised draft as "a concise summary of this Bureau's views concerning the lack of complaints of brutality on the part of Agents and the procedures of this Bureau in handling civil rights matters." Mr. Hoover's draft . . . has been adopted verbatim by the conferees as an official statement of the Bureau's views on the subjects discussed at the conference.

The FBI's internal structure and training programs with regard to civil rights matters are described in the Bureau's statement as follows (*id.* at 3) :

The Civil Rights Section of this Bureau maintains liaison with the Civil Rights Division of the Department and also closely supervises investigations of violations of the Civil Rights Statutes. This Section also conducts training in civil rights matters for Special Agents. All agents of the Bureau are instructed in civil rights matters during their initial training period and in connection with all refresher courses provided to the agents on a regular and frequent basis in the field and

at the Seat of Government. In addition selected agents and officials are brought to Washington, D.C., for the purpose of further specialized training in civil rights matters. Where possible, these agents would be utilized on such matters.

A separate section for handling civil rights matters was set up in 1939 and specialized training in civil rights matters has been afforded selected special agents beginning in 1947.

132. The Bureau has defined three types of investigations, two of which may occur in the initial stages of a case, as follows (*id.* at 2-3):

Investigations requested by the Civil Rights Division may be limited, preliminary, or a full investigation. In the event a limited investigation is requested, the Bureau will restrict itself to that specifically requested by the Department. A preliminary investigation consists of rounding out the facts of the original complaint and developing sufficient information to enable the Civil Rights Division to make a determination as to whether or not there has been a violation of the statutes. The police officer against whom the allegation was made would be interviewed during the course of a preliminary investigation. A full investigation is directed toward obtaining all pertinent facts concerning the particular incident.

133. This statement is based on interviews with Division attorneys and on discussions at the Commission-Division conference. *Department of Justice Conference, Notes, supra*, note 102, at 17. Division attorneys stated that although the Bureau has been given a certain latitude in preliminary matters, *most of the time* it forwards only the complaint. *Ibid.*
134. This quotation appears in Mr. Hoover's letter below. The following exchange of letters which explain the problems in this area is contained in the records of the President's Committee on Civil Rights at the Harry S. Truman Library in Independence, Mo. The notation on the first letter is "Letter of September 24, 1946, from J. Edgar Hoover to the Attorney General (File No. 144-012)." It reads:

I believe it would be well to give consideration to having a thorough and prompt review made of the Federal Statutes relating to civil liberties in order that a concise statement might be furnished to this Bureau for its guidance, in which there would be set forth specifically a statement as to the exact types of cases in which there would appear to be a potential violation of the Civil Liberties statute and an outline

of the type and nature of the evidence necessary to support a criminal prosecution. I believe that at the present time the Bureau is expending a considerable amount of manpower investigating murders, lynchings and assaults, particularly in the Southern States in which there cannot conceivably be any violation of a Federal statute. Generally, as a result of the aggressiveness of pressure groups or as a result of newspaper stories appearing prominently in newspapers the Bureau is requested to initiate an investigation into a case for the purpose of determining whether there has been a violation of the Civil Liberties statutes. The improbability of such a violation existing is manifested by the large number of cases in which investigation is and has been conducted and the virtually non-existent prosecutions in the Federal Courts. Nevertheless, the Bureau and the Department of Justice are publicized as entering these cases and are thereafter charged in the public mind and in the press with the responsibility for the solution of the cases. The vast majority of the public and the majority of the newspapermen do not understand the legal distinction between facts which would justify prosecution or a violation of the nebulous Federal Statutes and the outright solution of a murder, assault, or lynching case which would justify prosecution in the State Courts. As a result, there is a feeling and belief that the Bureau has failed to "solve" many cases into which it has entered and the resulting feeling that the Department of Justice has been inadequate to the occasion. While within the Department we realize the fallacy of this conclusion, it nevertheless is a fact that the public judges the efficiency of a law enforcement and prosecuting organization upon the basis of prosecutions which it undertakes. While I, of course, do not subscribe to this fallacy, I again point out that it exists nevertheless.

I do not mean to infer that I condone the type of activities embraced in the average case referred to the Bureau for investigation as a Civil Liberties violation. On the contrary, I think it is incumbent to the effective working of democracy that the perpetrators of such offenses should be apprehended and prosecuted for their crimes. The responsibility for the solution and prosecutive action in these cases and the jurisdiction for the accomplishment of these ends are in the State Courts. Under the present circumstances it appears that the work of the Department and the Bureau is completely ineffective, both as a deterrent and as a punitive force. Regardless



of whether we like it, it is a fact that the Federal Statutes penalizing violations of civil liberties are inadequate weapons for efficient enforcement by the Department and I think, consequently, that it is a mistake of policy for the Department to accept for investigation so many of these cases in which, as I have indicated, there is no probability of federal prosecutive action and in which the Bureau and the Department are merely assessed in the public mind with a responsibility which is neither discharged nor executed.

I think it is essential to the prestige of the Department and the Bureau that some immediate step be taken to clarify this situation both in the policy of the Department and in the public concept of the Department's responsibility in this field.

The notation on the second letter in the records of the Truman Library is "Reply, dated September 24, 1946; Attorney General to J. Edgar Hoover." It reads:

. . . There is no question but that a large percentage of the investigations initiated in this field prove in the end to be fruitless, but in each case the complaint made is indicative of the possibility of a violation, and if we do not investigate we are placed in the position of having received the complaint of a violation and of having failed to satisfy ourselves that it is or is not such a violation. I know of no way to avoid at least a preliminary inquiry into the facts of a complaint which alleges a civil rights offense. I am sure you agree that we should not be in the position of avoiding such action.

It is my understanding that the Civil Rights Section of the Criminal Division has, as a matter of policy, requested only limited investigations in almost every case as a means of ascertaining sufficient facts upon which to base a determination to go forward or to close out each complaint. In many cases the United States Attorneys are requested to make the necessary initial inquiries through confidential sources available to them in order that the Department may have a basis for appraising a complaint. Despite these precautions, we are frustrated in large measure and as you know it is my purpose to report these matters to Congress in the hopes of securing a broader and more substantial basis for Federal action. I would welcome any suggestions that your Bureau may wish to make.

Such discussions between the incumbent Attorney General and the Director of the FBI regarding Bureau investigation procedure in civil rights cases continued into subsequent years. The Truman

committee report stated in this connection: "There is evidence in the civil rights case files in the Department of Justice that the Bureau has sometimes felt that it was burdensome and difficult to undertake as many specific civil rights investigations as are requested." President's Committee on Civil Rights, *op. cit.*, *supra*, note 101 at 123.

135. Order of the Attorney General, No. 40-54, Feb. 9, 1954.

136. *The United States Attorneys' Manual*, *supra*, note 121, containing instructions issued by the Attorney General, continues to state that "*preliminary investigations* of violations of the [major civil rights statutes] may be conducted by the FBI on its own initiative. . . ." *id* at 2. [Emphasis added.] The full statement on "Investigations of Civil Rights Complaints" is as follows (*id.* at 2-3):

The investigation of all complaints and the prosecution and handling of all cases involving possible violations of 18 U.S.C. sec. 241—conspiring to injure citizens in exercise of Federal rights; Sec. 242—willful deprivations of Federal rights of inhabitants under color of law, and Sec. 243—exclusion of jurors on account of race or color; and the investigation of all complaints and the prosecution and handling of all cases involving possible violations of 18 U.S.C. sec. 1581 (peonage, arrest with intent to place in peonage), sec. 1583 (carrying persons to be sold into involuntary servitude or held as a slave), and sec. 1584 (involuntary servitude), are all subject to the following instructions:

1. Preliminary investigations of violations of the following statutes may be conducted by the FBI on its own initiative or at the request of the U.S. attorney or of the Civil Rights Division. Whenever a complaint involving a possible violation of any of these statutes comes to the attention of the United States Attorney, he shall immediately refer it to the FBI and advise the Civil Rights Division of such referral.

2. Upon completion of the preliminary investigation and receipt of the Bureau's reports, the United States Attorney for the district having jurisdiction will promptly review such reports and forward to the Civil Rights Division his recommendations concerning the need for further investigation or whether the matter should be closed, giving his reasons therefor. In unusual cases where it clearly appears that violations have been committed and where time is of the essence, the FBI may be instructed to complete the investigation in cooperation with the United States Attorney without obtaining clearance from the Civil Rights Division.

Report of the Director of the Federal Bureau of Investigation, J. Edgar Hoover, 1958 *Report* 325. See also 1959 *Report* 330; 1960 *Report* 338. The Director's 1958 *Report* did contain a subsequent reference to preliminary investigations: "During the fiscal year, 1,269 preliminary investigations of alleged civil rights violations were instituted." 1958 *Report* 326. Similar words had appeared in prior reports. See 1957 *Report* 193; 1956 *Report* 203; 1955 *Report* 185. This reference to preliminary investigations in connection with the statistics on civil rights matters handled by the FBI was subsequently dropped. "During the fiscal year, 1,292 alleged civil rights violations were received." 1959 *Report* 331. "... 1,398 alleged civil rights violations were reported to the FBI during the 1960 fiscal year. . . ." 1960 *Report* 339.

139. See in this connection the excerpts from *Statement of FBI* in note 132, *supra*.
140. Discussion of cases with Division attorneys. The Attorney General in 1946 placed great emphasis upon the need for investigation to determine if a violation had occurred. *Supra*, note 134.
141. Interviews with Division attorneys.
142. See discussion at p. 58, *supra*.
143. An immediate but limited investigation of a number of cases could be expected to uncover such fatal weaknesses as mental defects in the complainant, insignificant injury, lack of corroborating evidence, and, most vital of all, the absence of elements essential for a violation of the Federal laws; *viz*, action under color of law, deprivation of a constitutional right, and perhaps even the requisite specific intent of the accused.
144. The Division, for instance, is in a better position to direct investigations in the light of the legal complexities of the Civil Rights Acts. Moreover, the Division must take care that its efforts do not disturb unnecessarily the delicate balance of Federal-State relationships and that proper deference is paid to State action. See discussion at p. 58, *supra*.
145. *Department of Justice Conference, Notes, supra*, note 102, at 18.
146. It has been claimed that delays have afforded guilty officials the opportunity to intimidate complainants and witnesses. Interview with member of the Alabama State Advisory Committee to the U.S. Commission on Civil Rights, June 1961. See also, The President's Committee on Civil Rights, *op. cit. supra*, note 101, at 124-25.
147. In 1947, The President's Committee on Civil Rights, *op. cit. supra*, note 101, at 123, reported:

3. In all civil rights investigations which are presented to a grand jury, the testimony of all witnesses should be recorded by shorthand reporters or other recording methods unless permission to proceed without a reporter is first obtained from the Civil Rights Division. Whether such testimony should thereafter be transcribed will depend upon the facts in each case, and should be determined only after consultation with the Civil Rights Division.

4. Prior approval is to be obtained from the Civil Rights Division before presenting to a grand jury for investigation or indictment any case under the civil rights, peonage, slavery, or involuntary servitude statutes.

137. See note 132, *supra*.

138. In 1955 and 1956 the yearly reports of the Director of the FBI to the Attorney General contained words similar to the following statement found in the 1957 report:

By order of the Attorney General, the FBI conducts a *preliminary investigation immediately upon the receipt of a complaint alleging a federal civil rights violation*. The facts gathered are then promptly reported to the Civil Rights Section of the Department of Justice's Criminal Division for its review, prosecution opinion and instructions as to further investigation. In accordance with instructions of the Attorney General, full investigations are not conducted in civil rights cases unless the Department or a United States Attorney so directs. [Emphasis added.]

Report of the Director of the Federal Bureau of Investigation, J. Edgar Hoover, *Report of the Attorney General of the United States for the Fiscal Year Ended June 30, 1957*, at 192. See also 1956 *Report* 203; 1955 *Report* 184-85.

The description of the practice of making a "preliminary investigation immediately upon the receipt of a complaint" disappeared from the statement explaining the manner in which the FBI deals with civil rights complaints after 1958:

The facts gathered during investigations of alleged civil rights violations are reported to the Civil Rights Division of the Department of Justice for its review, prosecutive opinion and instructions as to further investigation. Pursuant to instructions of the Attorney General, full investigations are not conducted in these cases unless the Department so directs.

There is evidence in the civil rights case files in the Department of Justice that the Bureau has sometimes felt that it was burdensome and difficult to undertake as many specific civil rights investigations as are requested. Moreover, investigations have not always been as full as the needs of the situation would warrant.

In 1961 a Commission staff member interviewed a former FBI agent who had served with that agency for many years, but who, in his capacity at the time of the interview, handled certain complaints of civil rights violations, including police brutality. The Commission staff member's field notes state:

I asked him why he did not refer the complaints to the FBI, especially since he was formerly a special agent. Mr. [name withheld] stated that he does not turn civil rights cases over to the Bureau, because they don't like them. He explained that it is very embarrassing to agents to have to investigate police department officials in the morning and then attempt to enlist their cooperation on other cases in the afternoon. He stated that the Bureau distributed a monthly bulletin to police departments all over the country and makes no secret therein of the sort of information in which the FBI is interested, i.e., kidnaping, bank robberies, but never civil rights. He stated that the Bureau feels that "civil rights shouldn't even be in there."

The ex-agent made it clear that he was in accord with this position which, however, has never been stated by any official FBI source. But see, in this connection, the Hoover letter, *supra*, note 134.

The "monthly bulletin" referred to is apparently the *FBI Law Enforcement Bulletin*. Commission attorneys reviewed all 68 issues of this *Bulletin* from January 1956 through August 1961, and found only one item dealing primarily with civil rights. This was a 2-page article on the protection of civil rights in the June 1956, issue (pp. 10-11)—a reprint from Roscoe Drummond's column, "Washington," which had originally appeared in the New York Herald Tribune on Apr. 6 and 8, 1956. The article deals with the problems of police misconduct and FBI investigations under the Civil Rights Acts. It stated that the FBI was conducting civil rights schools of 1-day duration for local officers throughout the country in order to impress upon officers the importance of observing constitutional rights while vigorously enforcing the criminal law (p. 10). A guiding tenet of FBI instructors in these schools was described as follows (*ibid.*): "That a single

act of police brutality is a blow to respectable and responsible peace officers everywhere in the United States, starts a chain reaction in the courts, the press, and among the public, makes resistance to law easier, enforcement of the law harder.”

Issues of the *FBI Law Enforcement Bulletin* frequently mentioned cases having some relation to civil rights—for example, instances in which scientific techniques proved the innocence of suspected persons. However, major emphasis in these 68 issues was placed on police organization, on tactics in dealing with a broad range of crimes, on the rising crime rate, and on the apathy of the American people to the dangers of Communism.

148. For example, on Mar. 6, 1961, FBI Director, J. Edgar Hoover, testified before a House Appropriations subcommittee as follows (*Hearings on the Department of Justice before the Subcommittee on Departments of State and Justice, the Judiciary, and Related Agencies Appropriations of the House Committee on Appropriations*, 87th Cong., 1st sess., 412 (1961)):

Cooperation, which is the backbone of effective law enforcement, is the leading weapon, in my estimation, against crime. As a result of the high degree of cooperation in American law enforcement, there is an extensive exchange of criminal intelligence data between the FBI and other law-enforcement agencies—Federal, State, and local—on a day-to-day basis.

Mr. Hoover further testified (*id.* at 413):

Many persons are not aware of the excellent cooperation which exists among law-enforcement agencies. In June of 1960, we prepared a booklet which I hand to the committee, entitled “Cooperation—The Backbone of Effective Law Enforcement,” for the purpose of showing the extent and effectiveness of mutual assistance in the fight against crime. To date we have distributed over 90,000 copies of this booklet.

149. In his statement, “To All Law Enforcement Officials,” appearing in the *FBI Law Enforcement Bulletin* of February 1956, p. 1, Director J. Edgar Hoover wrote:

No police organization, regardless of strength or facilities, can stand alone and successfully combat crime. The common problems created by the far-fleeing fugitive and skilled criminals of this era can be solved only by mutual assistance and coordinated effort on all police levels.

150. *Statement of FBI, supra*, note 131, at 3.

151. "The FBI, as the investigative arm of the U.S. Department of Justice, considers civil rights cases of the utmost importance and gives the highest priority to civil rights investigations. Such investigations are difficult and, at times, delicate, because they require interviewing State and local police officers, some of whom may not be in sympathy with the investigation, and the obtaining of evidence against enforcement officials who have cooperated with the FBI on other matters in the past." From an article by Roscoe Drummond, reprinted in the *FBI Law Enforcement Bulletin*, *supra*, note 147, at 10.
152. Report of the Director of the Federal Bureau of Investigation, J. Edgar Hoover, *Report of the Attorney General of the United States for the Fiscal Year Ended June 30, 1960*, at 339. The rules in the *United States Attorneys' Manual* governing civil rights investigations mention no such policy. See note 137, *supra*. Division attorneys stated that there is no such policy in effect in the Division, *Department of Justice Conference, Notes, supra*, note 102, at 22.
153. *Statement of FBI, supra*, note 131, at 4.
154. See discussion, ch. 3 at 35, *supra*.
155. Discussion with Division attorneys of the case of *Newman—Charles*, Department of Justice File No. 144-9-321. The victim, who had once been in a mental hospital, but had no prior criminal record, was shot and killed by State Police during the burglary of a liquor store in Pine Bluff, Ark. The victim's father alleged that his son had not been attempting burglary. A local coroner's jury exonerated the officer of any culpability in the death. The Division ordered preliminary investigation, but then countermanded the order because of the tense school situation in Little Rock and the Bureau's procedure of notifying the Governor's office (in this case, Governor Faubus) prior to investigating charges of misconduct against State officials. Subsequently the case was closed by the Division on Dec. 17, 1959, without any investigation, on the ground that there was no evidence of a violation of Federal law. This was one of the specific cases discussed in the conference between this Commission and the Civil Rights Division on December 16, 1960. *Department of Justice Conference, Notes, supra*, note 102, at 22.

An allied problem arises from the policy of those States that restrict access to their prisons—which has obvious implications for investigations of prison brutality. Some States require that a member of the prison staff be present when a complainant prisoner is being interviewed by an FBI agent. This effectively stops the

- interview, for the FBI will not ordinarily conduct one under these circumstances. Division attorneys stated that Florida, Georgia, and South Carolina currently follow this rule. *Id.* at 20–22.
156. *Statement of FBI, supra*, note 131, at 3.
157. Statements of Civil Rights Division attorneys at the Division-Commission conference. *Department of Justice Conference, Notes, supra*, note 102, at 15. See also The President's Committee on Civil Rights, *op. cit. supra*, note 101, at 123.
158. The President's Committee on Civil Rights, *op. cit. supra*, note 101, at 123. In almost none of the cases studied by the Commission did the victims appear to be people of wealth or position. See, for example, the cases described in ch. 2, *supra*. On rare occasions, however, a person of some prestige does become the victim of police misconduct. One case involving Circuit Judge John T. Dempsey of Chicago is described in American Civil Liberties Union, Illinois Division, *Secret Detention by the Chicago Police* 5 (1959). But on the same page the report points out that "the poor, and racial and ethnic minorities—these are the people who suffer most from police lawlessness."
159. Statements of Division attorneys. *Department of Justice Conference, Notes, supra*, note 102, at 15.
160. Local police officials can usually figure out the identity of a complainant. *Ibid.* It is even easier for a prison official to locate an inmate-complainant. *Ibid.*
161. Commission attorneys and investigators have frequently learned of such suspicions from interviews with members of racial minorities.
162. In this connection The President's Committee on Civil Rights, *op. cit. supra*, note 101, at 123, recommended—

. . . streamlining the somewhat cumbersome administrative relationships among the Civil Rights Section, the Criminal Division of the Department of Justice, the office of the Attorney General and the Federal Bureau of Investigation.

The Committee more specifically recommended that regional offices of the then Civil Rights Section be established throughout the country. Those offices would "serve as receiving points for complaints arising in the areas, and as local centers of research, investigation, and preventative action." *Id.* at 151. Members of the Civil Rights Division, however, cite compelling arguments against this proposal. First, regional offices could not hope to match FBI expertise in obtaining information. Second, the more urgent need is to enlarge the Division's Washington staff. Third,



because of the delicate State-Federal problem encountered in civil rights cases, as well as community pressures in local areas, it is important to maintain close central control over all cases—preferably in Washington. *Department of Justice Conference, Notes, supra*, note 102, at 10–12.

163. This statement is based on interviews with Division attorneys and upon a review of letters from case files. The *United States Attorneys' Manual, supra*, note 121, at 3, merely states that "prior approval" is needed from the Civil Rights Division before a U.S. attorney may present a case to a grand jury. For a detailed analysis of the procedure followed in the prosecution of an actual police brutality case, see Shapiro, "Limitations in Prosecuting Civil Rights Violations," *op. cit. supra*, note 101, at 540–43.
164. See cases discussed in ch. 2, *supra*; see also note 158, *supra*. Division attorneys agree with this statement. *Department of Justice Conference, Notes, supra*, note 102, at 5.
165. *Department of Justice Conference, Notes, supra*, note 102, at 27. It was clear in the conference, and in previous discussions, that this did not reflect on the truthfulness of southern Negroes but on their "believability" before juries—an element which a prosecuting attorney cannot ignore in a criminal case.
166. Several such recent cases were studied at the Department of Justice. One of these was the *Clark* case described in ch. 2, at 14, *supra*.
167. This statement is based on numerous interviews with Civil Rights Division attorneys.
168. *Department of Justice Conference, Notes, supra*, note 102 at 27. Also see the Raiford Prison case, ch. 2 at 15, *supra*.
169. For a discussion of specific intent, see discussion at p. 47, *supra*.
170. There are, of course, group prejudices, other than those against race or color, that can affect the community. As previously mentioned, however, the Commission has limited its present study of official violence to that involving racial elements.
171. This statement is based upon a review of many "close out" memoranda, explaining why particular cases were terminated, and upon discussions of cases with Division attorneys.
172. Some members of the Division's staff appeared anxious about this possibility. *Department of Justice Conference, Notes, supra*, note 102, at 26.
173. Other Division representatives attested to the "therapeutic effect" of some unsuccessful prosecutions. *Id.* at 25, 26. In this connection the Truman committee reported: "Even where the Federal Government has failed to win convictions, the mere attempt

- to invoke criminal penalties in civil rights cases where flagrant wrongs have been committed has often had a sobering influence upon local attitude and practices.” President’s Committee on Civil Rights, *op. cit. supra*, note 101, at 128.
174. Some Division attorneys believed that the Division has placed excessive reliance on the possibility of success in authorizing prosecutions. *Department of Justice Conference, Notes, supra*, note 102, at 25, 26. The conference discussions illustrated the differences of opinion possible among experienced lawyers on this point. *Ibid.*
175. See excerpts from *United States Attorneys’ Manual, supra*, note 137.
176. These statements regarding U.S. attorneys are based upon a review of communications between U.S. attorneys and the Division in a number of cases (see note 101, *supra*), upon discussions with Division attorneys, and upon the Commission-Division conference (see note 102, *supra*).
- In the Raiford Prison case, discussed in ch. 2 at 15, *supra*, the local U.S. attorney promised his cooperation but indicated that neither he nor his staff would be able to take charge of the case. The Division was forced to dispatch members of its own staff to Florida. *United States v. Dunn*, Crim. No. 11,205, S.D. Fla., Aug. 8, 1960, Department of Justice File No. 144-18-831. Several years ago another U.S. attorney in a large northern city explained to a Division attorney that he had not sought an indictment in a shocking police brutality case with the remark—“I don’t want to present to that grand jury because, by God, they might indict.” Interview with Division attorney. One Federal district judge in Alabama has served notice that in the future he will require the local U.S. attorney to represent the Federal Government in all civil rights matters arising in that district. *Birmingham News*, Mar. 8, 1961, p. 28.
177. The President’s Committee on Civil Rights, *op. cit. supra*, note 101, at 122.
178. This statement is based upon an examination of communications in particular cases between the Division and U.S. attorneys, and upon statements of Division attorneys during the Commission-Division conference. *Department of Justice Conference, Notes, supra*, note 102, at 12, 41.
179. Relatively few suits of either a criminal (see app. VII, table 7, 8, and 9) or civil (see ch. 5 at 69, *supra*) nature are brought to trial.
180. See discussion at p. 51, *supra*.
181. See U.S. Const. amend. V; Fed. R. Crim. P. 7(a).

Notes: Justice, Chapter 4—Continued

182. Statements of Division attorneys. *Department of Justice Conference, Notes, supra*, note 102, at 30. There is no mention of an information in that part of the *United States Attorneys' Manual* dealing with civil rights. See note 136, *supra*. In contrast, the following instructions regarding the use of information in cases handled by the Criminal Division appear in title 2 of the *United States Attorneys' Manual* (p. 11):

The use, nature and contents of the indictment and the information are covered by Rule 7, Fed. Rules Crim. Proc. Prosecution should be by information, where the offense is not capital or infamous or where prosecution by indictment is waived, unless in an exceptional case it is considered important that the matter be considered by a grand jury.

183. These three reasons were provided by Division attorneys at the Division-Commission conference. *Department of Justice Conference, Notes, supra*, note 102, at 30.
184. This is the view of Division attorneys. *Id.* at 30-31.
185. *Ibid.*
186. This is rarely done. *Id.* at 32. The Government could again request the same grand jury to return an indictment, but there seems little point in its doing so.
187. Statements of Division attorneys. *Id.* at 31-33.
188. *Catlette v. United States*, 132 F.2d 902 (4th Cir. 1943).
189. *Cf.* note 173, *supra*.
190. Division attorneys stated that informations are unpopular with U.S. attorneys, not just in sec. 242 cases, but in all criminal prosecutions. *Department of Justice Conference, Notes, supra*, note 102, at 30-32.
191. *Id.* at 31.
192. This view has some support in the Division. *Id.* at 26-27.
193. Memorandum from the Civil Rights Division to the Commission on Civil Rights, Aug. 28, 1961. There has not been a conviction since Oct. 30, 1959. The four conviction cases are (1) *United State v. Lowery*, Crim. No. 13235, S.D. Tex., Feb. 19, 1958, Department of Justice File No. 144-74-425, conviction on Feb. 19, 1958, 6 months' suspended sentence; (2) *United States v. Barber*, Crim. No. 1428, M.D. Ga., Mar. 18, 1959, Department of Justice File No. 144-19M-325, conviction on Mar. 18, 1959, \$1,000 fine, 6 months' suspended sentence and 5 years' probation; (3) *United States v. Payne*, Crim. No. 55,788, N.D. Ga., Mar. 25, 1959, Department of Justice File No. 144-19-438, conviction on Mar. 25, 1959, \$1,000 fine, 1 year suspended sentence and 3

Notes: Justice, Chapter 4—Continued

- years' probation; and (4) *United States v. Clark*, Crim. No. 3183, D. Ia., Oct. 30, 1959, Department of Justice File No. 144-22-34, conviction on Oct. 30, 1959, \$500 fine and 2 months' suspended sentence.
194. The two cases are (1) *United States v. Koch*, Crim. No. 18850, E.D. Ill., June 17, 1958, Department of Justice File No. 114-24-126, plea of nolo contendere on June 17, 1958, \$250 fine, 2 years' probation for each of the three deputy sheriffs on condition they would not hold office as police officers or county officials during the probationary period; and (2) *United States v. Saxon*, Crim. No. 2091, M.D. Ala., June 11, 1958, Department of Justice File No. 144-2-195, trial in November of 1955 ending in a hung jury, plea of nolo contendere on July 11, 1958, \$500 fine.
195. See app. VII, table 10. Since this percentage was computed on the basis of *all* matters received in the Division, including matters unrelated to civil rights (see note 95, *supra*), police brutality complaints probably comprise a much higher percentage of the Division's total civil rights workload.
196. 10 *United States Attorneys' Manual* 1.
197. Interviews with Division attorneys; see discussions at p. 63, *supra*. See also, Shapiro, *op. cit. supra*, note 101, at 548:
- The basic test of the administration of justice is not the number of offenders convicted. Rather it is in the diligence, the vigor, and the zeal with which the innocent are protected, the offenders prosecuted. It is by this standard that we must judge the efforts of the Civil Rights Division.
198. See ch. 2 at 8, 11, 14, 15, 19, *supra*, and ch. 6 at 80, 83, *infra*.
199. See app. VII, table 7.
200. The President's Committee on Civil Rights, *op. cit. supra*, note 101, at 125.
201. See ch. 6 at 82, 84-86, *infra*.
202. See ch. 6, *infra*.

## NOTES: JUSTICE, Chapter 5

1. Communication dated March 18, 1961, and received at the Commission on April 17, 1961, in response to a questionnaire sent to attorneys in connection with the survey described below. The attorney added: "Please do not expose me on this thought."
2. The principal Federal civil sanction for police brutality is section 1983 of title 42 of the United States Code. The staff survey revealed that 190 actions were filed claiming a cause of action under this statute during the 2-year period. Many of these cases also involved claims under related but less important statutes—sections 1981, 1985(3), 1986, and 1988 of the same title. Only one case was discovered in which any of these four sections were invoked apart from a claim under section 1983.
3. The staff was unable to obtain complete information on 8 of the 190 complaints filed under section 1983. Thus, the following figures were computed on the basis of 182 known cases. Of this number, in addition to the 42 cases of police brutality, there were 45 desegregation suits. The remaining cases involved claims of such wrongs, among others, as false arrest and false imprisonment, illegal commitment to a mental institution, interference with the organization of labor unions, denial of the right to vote, and malapportionment of voting districts. See also app. VII, table 14.
4. A Commission field study, conducted in December 1960, of the administration of justice in the Chicago area disclosed that a group of local attorneys have for some time maintained a very active interest in the Federal civil remedies for police brutality. *Chicago Field Study, supra*, ch. 3, note 65, at 22–24. Four of the 17 cases from the Northern District of Illinois were handled by the same lawyer.

The distribution of the remaining 25 cases alleging police brutality was as follows: Alabama 5, Arkansas 1, Connecticut 2, Florida 1, Georgia 1, Kentucky 1, Michigan 5, Mississippi 1, Pennsylvania 2, Tennessee 4, Texas 2. All five complaints in Alabama were filed in the United States District Court for the Northern District. One law firm represented the clients in three of these cases.
5. There were two interracial cases of police brutality from Texas, and one each from Florida and Tennessee.
6. Records of the Civil Rights Division, Department of Justice. See ch. 2, table 1, at 26, *supra*, and app. VII, tables 2, 3, 7, 8, 9, and 10, *infra*.
7. See discussion in ch. 6 at 81, *infra*.
8. See discussion at 71–72, *infra*.
9. See ch. 4 at 47, *supra*.
10. *Screws v. United States*, 325 U.S. 91 (1945).

Notes: Justice, Chapter 5—Continued

11. See ch. 4 at 64, *supra*.
12. See ch. 4 at 51, 64–65, *supra*.
13. The Commission learned of a suit under section 1983 arising in Alabama in which it was reported that the defendant, a constable, agreed in court to resign his office immediately. The case was then dismissed by the Federal district judge. Communication from Alabama attorney to the Commission, dated Nov. 22, 1960.
14. See ch. 2 at 27, *supra*.
15. From correspondence with 10 attorneys who represented plaintiffs in police brutality cases during the survey period, July 1, 1957, through June 30, 1959, it was learned that 8 of them handled their cases on a contingent fee basis. Other attorneys who returned Commission questionnaires did not answer the question about contingent fees.
16. *Monroe v. Pape*, 365 U.S. 167 (1961).
17. See *Hardwick v. Hurley*, 289 F. 2d 529, 530 (7th Cir. 1961).
18. See discussion of State remedies in ch. 6 at 80, *infra*.
19. See, e.g., *Simmons v. Whitaker*, 252 F. 2d 224 (5th Cir. 1958) (requiring proof of specific intent and narrow construction of “color of law”); *Morgan v. Sylvester*, 220 F. 2d 758 (2d Cir. 1955), *affirming per curiam*, 125 F. Supp. 380 (S.D.N.Y. 1954) (narrow construction of right protected); *Bottone v. Lindsley*, 170 F. 2d 705 (10th Cir. 1948) (same); *Mackey v. Chandler*, 152 F. Supp. 579 (W.D.S.C. 1957) (illegal search and seizures not covered by Civil Rights Acts); *Dye v. Cox*, 125 F. Supp. 714 (E.D. Va. 1954) (specific intent required).
20. *Monroe v. Pape*, *supra*, note 16. The allegations that gave rise to the case are described in Justice Frankfurter’s dissent, 365 U.S. at 203–204, quoted in ch. 2 at 20, *supra*.
21. See discussion at p. 72, *infra*.
22. In the following discussion of section 1983 and related laws, there is little mention of the statutes’ application to private racial violence. As was pointed out in connection with section 242 of the Criminal Code—private racial violence, when it occurs with the connivance of officials, constitutes action under color of law. None of the cases occurring during the 2-year period surveyed by the staff were concerned with “private” racial violence of this sort. Nonetheless, the Federal civil statutes apply also to “private” racial violence when it is committed under color of law.
23. Rev. Stat. sec. 1979 (1875), 42 U.S.C. sec. 1983 (1958).
24. See, e.g., *Davis v. Johnson*, 138 F. Supp. 572 (N.D. Ill. 1955), in which the court declared (*id.* at 574):

It would seem inconsistent with the purpose of the act to say that a State officer should be responsible if he only injured a person and not responsible to anyone if he killed the person.

As plaintiff points out, such a holding would encourage officers not to stop after they had injured but to be certain to kill.

25. There appears to be only one reported case in which a victim of police intimidation obtained injunctive relief. *Refoule v. Ellis*, 74 F. Supp. 336, 343 (N.D. Ga. 1947). Courts appear reluctant to issue such decrees. See, e.g., *Haifetz v. Rizzo*, 171 F. Supp. 654 (E.D. Pa. 1959).
26. *Sheffield v. Farris*, Civ. No. 11774, S.D. Tex., Mar. 17, 1959.
27. Letter From Thomas H. Dent, Esq. (attorney for plaintiff Sheffield) to the Commission, Mar. 24, 1961.
28. *Monroe v. Pape*, *supra*, note 16, at 186–87.
29. *Id.* at 171. Prior to the Supreme Court's decision in *Monroe v. Pape*, it was not entirely clear that section 1983 protected the same rights as did the criminal statute, section 242. Many lower Federal courts had decided that the same meaning should not be ascribed to the "rights, privileges, or immunities" protected by section 1983 as had been given to the identical language in section 242. Those courts had ruled that section 1983 did not afford a remedy for deprivations of any rights save those comprised by the 14th amendment right to due process of law. See, e.g., *Ortega v. Ragen*, 216 F. 2d 561 (7th Cir. 1954); *McShane v. Moldovan*, 172 F. 2d 1016, 1018 n. 2 (6th Cir. 1949); *Bottonne v. Lindsley*, *supra*, note 19, at 706; *Morgan v. Sylvester*, 125 F. Supp. 380, 384 (S.D.N.Y. 1954), *aff'd per curiam*, 220 F. 2d 758 (2d Cir. 1955). *Contra*, *Agnew v. City of Compton*, 239 F. 2d 226, 230 (9th Cir. 1956); *Glicker v. Michigan Liquor Control Commission*, 160 F. 2d 96, 99–101 (6th Cir. 1947); *semble*, *Lane v. Wilson*, 307 U.S. 268, 274 (1939); *cf. Hague v. CIO*, 307 U.S. 496, 526 (1939) (opinion of Justice Stone). But in *Monroe v. Pape*, *supra*, note 16, at 171, the Supreme Court corrected that view and stated that the law applied to all rights under the 14th amendment, including, of course, equal protection of the laws.
30. Ch. 2 at 47, *supra*.
31. See, e.g., *Dye v. Cox*, *supra*, note 19. *Contra*, *Picking v. Pennsylvania R.R.*, 151 F. 2d 240, 249 (3d Cir. 1945), *cert. denied*, 332 U.S. 776 (1947).
32. *Monroe v. Pape*, *supra*, note 16, at 187. (The Court refers to section 1983 as section 1979, its designation in the Revised Statutes of 1875.)
33. In 1944 the Supreme Court ruled that conduct on the part of State officers resulting in the unequal application of a valid State law to

persons who are entitled to equal treatment is not in itself a denial of the equal protection of the laws. *Snowden v. Hughes*, 321 U.S. 1 (1944). The Court found it necessary for the plaintiff further to show "an element of international or purposeful discrimination." (*Id.* at 8.) According to the Court (*ibid.*), such an intent or purpose—

. . . may appear on the face of the action taken with respect to a particular class or person . . . or it may only be shown by extrinsic evidence showing a discriminatory design to favor one individual or class over another not to be inferred from the action itself . . . But a discriminatory purpose is not presumed . . .

In *Screws v. United States*, *supra*, note 10, at 103, the Court referred to this holding in connection with proof of alleged denials of equal protection under the criminal statute, section 242. Some lower courts, moreover, have equated the showing of purposeful discrimination required by the Snowden decision with proof of specific intent in section 242 cases under the Screws doctrine. *Hoffman v. Halden*, 268 F. 2d 280, 291 (9th Cir. 1959); *Burt v. City of New York*, 156 F. 2d 791 (2d Cir. 1946). Of course, proof of specific intent is not required in a section 1983 suit that alleges a denial of the right to due process of law. However, where a denial of equal protection is claimed under section 1983, proof of an intent to discriminate would appear to be necessary.

34. This same preference—but based on the generally less complicated proof required to show a denial of due process—is reflected in the Justice Department's prosecutions under section 242 of the Criminal Code. Staff members of the Civil Rights Division, during a Division-Commission conference on December 16, 1960, stated that almost all of the cases are brought under the due process clause for this reason. *Department of Justice Conference, Notes, supra*, ch. 4, note 102, at 29.
35. See, e.g., *DeLoach v. Rogers*, 268 F. 2d 928, 929-30 (5th Cir. 1959).
36. *Hardwick v. Hurley, supra*, note 17, at 530.
37. *Monroe v. Pape, supra*, note 16, at 183.
38. *Hardwick v. Hurley, supra*, note 17, at 529. The plaintiff claimed that when he was arrested for excessive speeding, Chicago police officers directed him to take a "drunkometer" test. He further alleged that he refused, whereupon the officers called him a "wise guy" and began to "batter him with their fists, to stomp upon and kick him."



39. *Id.* at 531.
40. *Monroe v. Pape*, *supra*, note 16, at 187–92.
41. *Ibid.*
42. Rev. Stat. sec. 1980 (1875), 42 U.S.C. sec. 1985(3) (1958).
43. *Collins v. Hardyman*, 341 U.S. 651, 659 (1951).
44. See ch. 2 at 25, *supra*.
45. *Collins v. Hardyman*, *supra*, note 43, at 660–61. The rights of Federal citizenship—which do not include the rights to due process and equal protection—were discussed in ch. 4 at 52, *supra*, in connection with section 241 of the United States Criminal Code.
46. See *Lewis v. Brautigam*, 227 F. 2d 124, 128 (5th Cir. 1955).
47. *Hoffman v. Halden*, *supra*, note 33, at 293–94; *cf. Lewis v. Brautigam*, *supra*, note 46, at 127–28. It is likely that sections 1983 and 1985(3) allow a plaintiff to reach private persons who conspire or act jointly with State agents in acts of police brutality. In this connection, see *Baldwin v. Morgan*, 251 F. 2d 780, 789–90 (5th Cir. 1958). Such individuals are, of course, liable under the criminal statute, section 442. See discussion in ch. 4, at 46, *supra*.
48. While section 1985(3), by its terms, affords only damages, it has been held, along with section 1983, to define rights for the protection of which Federal courts may, in certain cases, issue injunctions either under 28 U.S.C. sec. 1651, *Brewer v. Hoxie School District No. 46*, 238 F. 2d 91, 94, 103 (8th Cir. 1956), or by well-established judicial precedent, *id.* at 98, *citing, inter alia, Bell v. Hood*, 327 U.S. 678, 684 (1946). There are no reported cases involving police brutality in which section 1985(3) was so used. Even if such a case should arise, section 1983 would appear to be equally applicable and to constitute in itself a more complete remedy.
49. See discussion at 72, *supra*.
50. *Collins v. Hardyman*, *supra*, note 43, at 659–60.
51. Of the 42 complaints of police brutality filed under the Federal civil statutes during the 2-year period surveyed by the staff, 13 claimed relief under both sections 1983 and 1985(3).
52. *Wakat v. Harlib*, 253 F. 2d 59 (7th Cir. 1958).
53. *Collins v. Hardyman*, *supra*, note 43, at 661–62.
54. *Id.* at 661.
55. *Ibid.*
56. *Id.* at 662.
57. For a contrary view, see the dissent of Justice Burton, *id.* at 663–64.
58. See *Monroe v. Pape*, *supra*, note 16, at 200 n. 9 (Justice Harlan concurring).
59. “Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are

about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action; and if the death of any party be caused by any such wrongful act and neglect, the legal representatives of the deceased shall have such action therefor, and may recover not exceeding \$5,000 damages therein, for the benefit of the widow of the deceased, if there be one, and if there be no widow, then for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued." Rev. Stat. sec. 1981 (1875), 42 U.S.C. sec. 1986 (1958).

60. *Arkansas v. Central Surety & Insurance Corp.*, 102 F. Supp. 444 (W.D.Ark. 1952); *Robeson v. Fanelli*, 94 F. Supp. 62, 68 (S.D.N.Y. 1950).
61. "All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishments, pains, penalties, taxes, licenses, and exactions of every kind, and to no other." Rev. Stat. sec. 1977 (1875), 42 U.S.C. sec. 1981 (1958).
62. See, *Agnew v. City of Compton*, *supra*, note 29, at 230; *Arkansas v. Central Surety & Insurance Corp.*, *supra*, note 60, at 447.

## NOTES: JUSTICE, Chapter 6

1. See ch. 5 at 70, *supra*.
2. The crime of assault and battery refers to the imposition of any unlawful physical violence on a human being without his consent. See generally 4 Am. Jur. *Assault and Battery* sec. 6 (1936). The crime of aggravated assault and battery, which might apply to certain cases studied by this Commission, has been defined by one State court as "an unlawful act of violent injury to the person of another, accompanied by circumstances of aggravation, such as the use of a deadly weapon. . . ." *State v. Jones*, 130 S.E. 747, 751 (S.C. 1925). There are various degrees of homicide—depending on the degree of intent and premeditation—from involuntary manslaughter to first-degree murder which is usually defined as the intentional and premeditated taking of a human life with malice aforethought. For a discussion of the various degrees of homicide, see *State v. Myers*, 79 N.W. 2d 382 (Ia. 1956). See 26 Am. Jur. *Homicide* secs. 41-42 (1936).
3. See ch. 4 at 45, *supra*.
4. See p. 81, *infra*.
5. See ch. 4 at 47, *supra*.
6. See ch. 4 at 64, *supra*.
7. In extremely few recent cases of police brutality studied by this Commission were local criminal proceedings instituted against the officers. See also Foote, "Tort Remedies for Police Violations of Individual Rights," 39 *Minn. L. Rev.* 493, 494 (1955).
8. See ch. 2 at 8, *supra*.
9. A California judge described the resulting situation in these words:

I should like to have brought to my attention any such case where a prosecution has been successful, or even where a . . . prosecution has been instituted. It is absurd to suggest that any district attorney, or superior officer is going to take criminal action against one of his subordinates. . . .

*White v. Towers*, 235 P. 2d 209, 215-16 (Cal. 1951) (dissenting opinion).
10. Information from the Department of Justice and from the Massachusetts Attorney General's office.
11. The definition of the tort of assault and battery is essentially similar to that of the crime of assault and battery. See note 2, *supra*. Wrongful death actions are brought by the victim's estate alleging that the policeman caused the victim's death without legal justification. See, e.g., *Hargrove v. Town of Cocoa Beach*, 96 So. 2d 130 (Fla. 1957).

Notes: Justice, Chapter 6—Continued

12. As indicated above, State criminal prosecutions are rare.
13. See ch. 5 at 70, *supra*.
14. See ch. 4 at 63, *supra*.
15. See ch. 5 at 71, *supra*. The problem of the impecunious defendant-policemen is relieved in some jurisdictions by the existence of other financially sound sources to pay judgments. For example, under Wisconsin law, Wis. Stat. sec. 270.58(1) (1959), the State or political subdivision employing the officer will pay any judgments provided the officer "acted in good faith." See *Larson v. Lester*, 49 N.W. 2d 414 (Wis. 1951). In Illinois the city of Chicago must indemnify police officers against whom judgments are returned for negligence or misconduct, except in cases of willful misconduct. Ill. Rev. Stat. ch. 24, sec. 1-15 (1957). In California the members of the council of a municipal corporation may be held individually liable for negligence, active or passive, in the selection of a municipal employee. *Abrahamson v. City of Ceres*, 203 P. 2d 98 (Cal. 1949). In some States policemen and sheriffs are required to post bond. E.g., see Ky. Rev. Stat. sec. 95.750 (1959). See also *Chilton v. Gividen*, 246 S.W. 2d 133 (Ky. 1952); and *Chaudoin v. Fuller*, 192 P. 2d 243 (Ariz. 1948).
16. See ch. 5 at 69, *supra*. The 2-year period was July 1, 1957, through June 30, 1959. The Commission is aware of only one successful Federal civil suit against policemen for unlawful violence in recent history. In this case a Federal jury awarded Leslie Wakat, a victim of Chicago police in 1946, the sum of \$15,000 on May 31, 1957. The verdict was subsequently upheld by the circuit court. *Wakat v. Harlib*, 253 F. 2d 59 (7th Cir. 1958).
17. In 1958 and 1959 the reported successful States cases for assault and battery against policemen and the damages awarded were: *Jones v. Franklin*, 340 P. 2d 123 (Colo. 1959) (award not indicated); *Mead v. O'Connor*, 344 P. 2d 478 (N.M. 1959) (\$7,000); *Powell v. State of New York*, 191 N.Y.S. 2d 846 (1959) (\$4,500); *Fletcher v. State of New York*, 183 N.Y.S. 2d 265 (1959) (\$30,938); *Vanderslice v. Shoemake*, 102 So. 2d 804 (Miss. 1958) (affirmed on liability of defendant and surety; reversed on question of damages only); *Orr v. Walker*, 310 S.W. 2d 808 (Ark. 1958) (\$500).
18. See note 15, *supra*, for cases in 1958 and 1959; the cases in the other years and the damages awarded were: *Hinton v. City of New York*, 212 N.Y.S. 2d 97 (1961) (\$75,000); *Anderson v. Vanderslice*, 126 So. 2d 523 (Miss. 1961) (\$1,000); *Holler v.*

*State of New York*, 200 N.Y.S. 2d 840 (1960) (\$10,505); *Padilla v. Chavez*, 306 P. 2d 1094 (N.M. 1957) (\$3,855); *Jones v. Shears*, 299 P. 2d 986 (Cal. 1956) (\$30,000).

19. See Fuller and Casner, "Municipal Tort Liability in Operation," 54 *Harv. L. Rev.* 437, 459 (1941); Green, "Freedom of Litigation (III)—Municipal Liability for Torts," 38 *Ill. L. Rev.* 355, 377 (1944); Blachly and Oatmen, "Approches to Governmental Liability in Tort: A Comparative Survey," 9 *Law and Contemporary Problems* 181, 213 (1942).
20. N.Y. Court of Claims Act, sec. 8:

The state hereby waives its immunity from liability and action and hereby assumes liability and consents to have the same determined in accordance with the same rules of law as applied to actions in the supreme court against individuals or corporations, provided the claimant complies with the limitations of this article. . . .

See generally, 38 Am. Jur. *Municipal Corporations* sec. 620 (1936) for the proposition that the doctrine of sovereign immunity is generally the rule throughout the States. However, Florida, p. 81, *infra*, and Illinois, p. 82, *infra*, have recently overturned the doctrine through court decision. New Jersey has breached the doctrine slightly by holding the municipality liable for torts of its policemen where it can be shown that the municipality indulged in "active negligence." *Kelley v. Curtiss*, 102 A. 2d 471 (N.J. 1954). The elements of the doctrine of "active negligence" consist of a wrongful, affirmative act by a public employee plus notice to the proper city authorities and continued acquiescence to the acts by the city.

21. *Bernadine v. City of New York*, 62 N.E. 2d 604 (N.Y. 1945), makes it clear that municipalities also may be sued.
22. See New York cases cited in note 18, *supra*.
23. *Schuster v. City of New York*, 180 N.Y.S. 2d 265 (1958).
24. *McCrink v. City of New York*, 71 N.E. 2d 419 (N.Y. 1947).
25. See New York cases in notes 17 and 18, *supra*.
26. *Hargrove v. Town of Cocoa Beach*, *supra*, note 11.
27. *Id.* at 132. The earliest decision on municipal immunity is *Russell v. Men of Devon*, 2 Durn. and East 667, 100 Eng. Rep. 359 (1788).
28. *Hargrove v. Town of Cocoa Beach*, *supra*, note 11, at 132. The court held, however, that this repudiation of the doctrine did not apply to legislative and judicial officials.
29. *Molitor v. Kaneland Community Unit District No. 302*, 163 N.E. 2d 89 (Ill. 1959).

Notes: Justice, Chapter 6—Continued

30. *Peters v. Bellinger*, 19 Ill. 2d 367 (1959), *rev'd on other grounds*, 166 N.E. 2d 581 (Ill. 1960).
31. *But see, Muskopf v. Corning Hospital Dist.*, 29 U.S.L. Week 2366 (Jan. 27, 1961) (Cal.); *Williams v. Detroit*, 30 U.S.L. Week 2150 (Sept. 22, 1961) (Mich.).
32. Chicago Police Department General Order 16.
33. *Chicago Field Study*, ch. 3, note 65, at 15-16, *supra*.
34. Letter From John McKnight, Executive Director, Chicago Branch, American Civil Liberties Union to the Commission, July 28, 1960.
35. *Chicago Field Study*, ch. 3, note 65, at 6, *supra*. The following chart represents a Commission staff analysis of brutality complaints received by the Chicago branches of the ACLU and the NAACP over a 3-year period. Racial designations of victims were not available from the ACLU. All complaints received by the NAACP involve Negro victims.

|            | 1958  | 1959  | 1960  |
|------------|-------|-------|-------|
| ACLU-----  | 17    | 23    | 6     |
| NAACP----- | 9     | 9     | 4     |
|            | <hr/> | <hr/> | <hr/> |
| Total----- | 26    | 32    | 10    |

The Chicago Police Department since April 1960 has kept its records of police brutality complaints in its Division of Internal Inspection. From April 1960 to Jan. 1, 1961, these records disclosed that 109 complaints of "police brutality" had been received. Many involved complaints stemming from disputes within officer's families and allegations of misconduct by off-duty policemen as well as alleged brutality by police during the course of duty. In 17 cases the division's investigation had disclosed enough evidence of misconduct to result in some disciplinary action being taken. *Id.* at 15-16.

In characterizing the improvement in the police brutality problem in Chicago, an editor of a Negro newspaper stated that prior to Wilson's administration, the paper received several hundred complaints a year from Negro citizens alleging police brutality. Since Wilson took office, according to this source, the paper has received few if any complaints. He attributes this to Wilson's vigorous leadership and the systematized complaint investigation system set up by him since taking office. *Id.*, app. A.

36. *Detroit Hearings* 305 (Testimony of Arthur L. Johnson, Executive Secretary, Detroit Branch, NAACP).
37. *Id.* at 388 (Testimony of Willis Ward).
38. (Philadelphia, Pa.) Sunday Bulletin, Oct. 27, 1957, p. 24.
39. *Ibid.*

40. The description that follows in the text is based on information gathered in a 2-day field investigation, the results of which are incorporated in a Commission document entitled *Report on Field Investigation in Philadelphia*. The survey conducted in March 1961 had two objectives. The first was to study the operation of the Philadelphia Police Advisory Board. The second was to obtain information on the research program being conducted by a team of psychologists aimed at establishing the requirements for effective police training in human relations. This latter program is a joint endeavor of the Philadelphia Police Department and the Philadelphia Commission on Human Relations. Persons interviewed included the police commissioner, the executive director of the commission on human relations, the executive director of the police advisory board, the psychologist in charge of the police human relations research project, and representatives of the Philadelphia branches of the ACLU and the NAACP.
41. In 1957 City Councilman Henry W. Sawyer III stated that the Philadelphia Police Trial Board did not always permit attorneys to appear with complainants. Sunday Bulletin, *supra*, note 38. Criticism of lack of counsel and of cross-examination privileges has been made of the police hearing board in Cincinnati. Testimony of Cincinnatians for a Police Advisory Board (before the public welfare committee), *The Case for a Police Advisory Board* 5 (1960) (mimeo).
42. *Report on Field Investigation in Philadelphia, supra*, note 40, at 27-28. In two cases the police commissioner did not wish to follow the recommendation of the board as to punishment, and the matters were adjusted in discussions between the board and the commissioner. The board has never recommended dismissal from the force, the most severe penalty recommended being a 2 weeks' suspension. Letter From Martin S. Barol, executive director, Philadelphia Police Advisory Board, to the Commission on Apr. 25, 1961. The total number of complaints received by the board from Oct. 1, 1958, until Aug. 31, 1960 was 107. (By Mar. 7, 1961, when a field investigation was conducted in Philadelphia, the total had reached 152.) *The Second Annual Report of the Police Advisory Board of the City of Philadelphia*, Appendix "A" (1960). Of the total of 107 complaints, there were 46 which alleged brutality; 28, harassment; and 33, illegal arrest or search and seizure. Hearings were held in 22 cases, with 12 decisions for the complainant and 10 for the policemen. Three of the 10 hearing cases decided for the policemen were won virtually by default since the complainants failed to appear. *Report on Field Investigation in Philadelphia, supra*, note 40, at 20-21.

43. *Id.* at 20.
44. *Id.* at 29.
45. *Id.* at 30–33. The board has had the additional effect of increasing public confidence that citizens' complaints are impartially handled; it has also apparently increased public confidence in the police department itself. Among the board's strong supporters today are officials and groups who are not always on the same side of civil rights issues: the mayor, the police commissioner, and the Philadelphia branches of the American Civil Liberties Union and of the National Association for the Advancement of Colored People. *Id.* at 19, 29–33.
46. For example, see Testimony of Arthur L. Johnson, *Detroit Hearings* 305; Statement of Judge Victor J. Baum, *id.* at 429; and Statement of American Civil Liberties Union, *id.* at 485. At this hearing Police Commissioner Herbert W. Hart of Detroit outlined his objections to an advisory board. *Id.* at 423–24. Police Commissioner Albert Brown of Philadelphia indicated his disagreement with most of these objections in a March 1961 interview. *Report on Field Investigation in Philadelphia, supra*, note 40, at 31.
47. See ch. 2 at 6, 9, *supra*.
48. See ch. 2 at 18–25, *supra*.
49. See ch. 2 at 24, *supra*.
50. *Fernelius v. Pierce*, 138 P. 2d 12 (Cal. 1943). The court upheld a complaint alleging that the city manager and the chief of police were liable for a death which resulted from an assault by jail guards who were known by the defendants to have previously beaten many prisoners.
51. *McCrink v. City of New York, supra*, note 24. Patrolman Anderson of the New York City Police Department shot two people, killing one and permanently injuring the other. He was off-duty and drunk at the time. In 1928 and in 1936 the officer had been found guilty of drunkenness. And in 1937 he was found guilty of intoxication while on duty. Despite this record, he was not discharged. The court said that the city "may not with impunity retain in service an employee from whose retention danger to others may reasonably be anticipated." *Id.* at 422. The New York statute waiving State immunity to suit in such cases is discussed on p. 81, *supra*.
52. *Bobo v. City of Kenton*, 212 S.W. 2d 363 (Tenn. 1948). This case involved a shooting by a police chief who allegedly was known to be insane and dangerous. But the city was held not liable under the doctrine of sovereign immunity.



53. *Peters v. Bellinger*, 159 N.E. 2d 528, 529 (Ill. 1959). The court stated, "No one checked into the record of the policeman before he was hired." *Ibid.*
54. *Vanderslice v. Shoemaker*, *supra*, note 17; *Anderson v. Vanderslice*, *supra*, note 18.
55. A few police departments in the United States require that recruits pass a psychological test. The Los Angeles Police Department is one of these. *California Hearings* 334.
56. Flanagan, "Psychological Requirements of the Airline Pilot," 18 *Journal of Aviation Medicine* 521-27 (1947). Elbert, Glaser, and Hanes, "Research on Problems of Selection of Personnel for Duty at Isolated Stations," *American Institute for Research* (1957).
57. Address by Inspector Robert R. J. Gallati, Annual Conference, International Association of Chiefs of Police, October 1958. Recent textbooks in the field of police administration call for psychological testing and psychiatric examination as part of the regular procedure in sifting candidates for police departments. German, *Police Personnel Management* 46-48 (1958); Wilson, *Police Planning* 236 (2d ed. 1957). But as pointed out by one authority, progress in devising such tests has been slow. "We are in dire need of constructive valid tests of emotional stability for police officers." Mirich, "The Qualified Policeman," 50 *J. Crim. L., C. and P.S.* 315, 316 (1959).
58. This program is being financed primarily by two private foundations—the Russell Sage Foundation and the Rockefeller Brothers Fund. A team of social scientists from the American Institute for Research is conducting the study. See the research proposal submitted by the American Institute for Research entitled *A Comprehensive Study of Problems Encountered by Members of a Metropolitan Police Department and the Implications of the Findings for Selection and Training Programs* (1959) (mimeo).
59. J. Edgar Hoover recently stated:

Inadequate budgets have become a perennial problem with far too many law enforcement agencies.

\* \* \*

This is not just a problem of big cities or small towns. It exists in communities of all sizes—in every part of the nation. One large Southern community pays its patrolmen a starting salary of \$279 a month, and the minimum work week is 48 hours. In this same city, 18-year-old stenographers can find government positions offering \$337 a month salary for a 40-hour week!

In a medium-sized Western city, the situation is even more ludicrous. Here the starting salary of patrolmen is \$175 per

month. The Chief of Police of this “enlightened” community earns \$400 a month and, again, a minimum 48-hour workweek is required.

When conditions such as these persist, it is no wonder that many police departments have trouble recruiting qualified personnel and retaining competent officers.

Address by FBI Director J. Edgar Hoover, International Association of Chiefs of Police, October 3, 1960. Regarding the selection and training of FBI personnel Mr. Hoover, in response to an inquiry from this Commission, said (*Statement of the Views of the Federal Bureau of Investigation on Civil Rights Investigations*, ch. 4, note 131, *infra*, at 1-2) :

In regard to your inquiry as to the lack of complaints of brutality on the part of Special Agent personnel, such may be attributed to the following factors: Selection of personnel; Training; Discipline; and the Nature of the functions of this Bureau.

With respect to personnel, Special Agents must be college graduates and the majority have had postgraduate training in courses such as law or accounting. All are thoroughly investigated before being offered an appointment.

All Agents before being assigned to investigative work in the field receive a thirteen-week period of training which includes extensive instruction in such pertinent matters as constitutional law, law of arrests, searches and seizures, confessions and evidence.

As to discipline, Agents of this Bureau clearly understand that duress or brutality of any type is absolutely forbidden. The use of such tactics or any other improper conduct toward subjects of investigation by an FBI Agent is grounds for severe disciplinary action including dismissal. This rule is vigorously enforced and any complaint of misconduct against an Agent is immediately and thoroughly investigated.

Another factor to be considered is the functions of the FBI compared to those of state and local law enforcement officers. This Bureau is primarily an investigative agency, whose arrests in most instances are made after investigation and upon warrant. The uniformed police officer, on the other hand, is principally concerned with patrol duty, maintenance of order and the protection of life and property rather than investigation. He is, therefore, necessarily exposed to many more situations where complaints may arise.

Mr. Hoover's statement continued:

This Bureau also engages in educational activities which have a direct bearing on the problems of police misconduct at the state or local level. The FBI National Academy provides special training for police officers, tuition free, twice a year for a period of twelve weeks. This course, like that given to FBI Agents, includes instruction in constitutional law, law of arrests, searches and seizures, and the rules of evidence, as well as other matters. This Bureau also conducts or assists in conducting police training schools throughout the country. During the past fiscal year there were 3,464 such schools attended by 88,111 law enforcement officers. Training of policemen appears to have a direct bearing on their conduct as officers of the law.

Also, see the remarks on the subject of pay by the Chief of Police of Los Angeles, Calif., Parker, *The Police Role in Community Relations* 11-13 (1955).

60. See ch. 2, note 73, *supra*.

61. By 1955 awareness of the need to squarely face these problems was so strong that a national meeting—the first Police Community Relations Institute—was held at Michigan State University. Since that time numerous such meetings, in cooperation with the National Conference of Christians and Jews, have been held throughout the country. According to Prof. A. F. Brandstatter, director of the School of Police Administration at Michigan State University, the purpose of these institutes is to develop “a keener awareness on the part of the police leadership of our country for the need to have a greater understanding of the underlying causes of tension occurring in a community, thus hoping police administrators will take action to prevent the eruption of violence.” Letter From A. F. Brandstatter to the Commission, July 1, 1960.

62. New York Herald Tribune, July 10, 1960, p. 1. Regarding the Philadelphia research program in human relations, see note 40, *supra*, and Siegal and Baker, Applied Psychological Services, *Police Human Relations Training* (1960).

63. As quoted by Assistant Chief Charles Batchelor, Dallas Police Department, at a panel discussion on “The Police and Minority Groups,” *National Police-Community Relations Institute* (Proceedings) 1960. Police Commissioner Albert Brown of Philadelphia stated that the new human relations training course will convince many recruits to have the proper attitude on civil rights matters; the “hard core” man who won’t be convinced will be told that he must act as if he was for eight hours a day. Interview with Police Commissioner Albert Brown in Philadelphia, March 1961.

Notes: Justice, Chapter 6—Continued

64. See ch. 3, *supra*.
65. See the "segregation or subordinate status" category of police brutality in ch. 2 at 6-12, *supra*.
66. See ch. 3 at 29, *supra*.
67. See p. 82, *supra*.
68. Norfolk (Va.) Journal & Guide, Jan. 14, 1961, p. 20.
69. *Investigation of Administration of Justice in Atlanta, Georgia* 18. This study was made by a Commission investigator between Apr. 14 and Apr. 21, 1961. During this period a total of 26 persons were interviewed. Among those interviewed was Mayor William B. Hartsfield; Chief of Police Herbert T. Jenkins; Mr. Ralph McGill, editor of the Atlanta Constitution & Journal; representatives of local and Federal law enforcement organizations, officials of the local and Federal courts; and leading members of the white and Negro community.
70. *Id.* at 17-21.
71. See Time, Aug. 25, 1961, p. 40; N.Y. Times, Aug. 31, 1961, pp. 1 and 15; Atlanta Constitution, Sept. 2, 1961, pp. 1 and 4.
72. N.Y. Times, Aug. 31, 1961, p. 10.
73. *Cooper v. Aaron*, 358 U.S. 1 (1958).
74. McMillan, *Racial Violence and Law Enforcement* 28-29 (1960). A graphic discussion on the Little Rock situation and the impact of leadership on violence is found in the testimony of J. Gaston Williamson and Virgil Blossom, *Gatlinburg Transcript* 75-99.
75. The Washington Post, Sept. 11, 1961, p. 6A.

## NOTES: JUSTICE, Chapter 7

1. *Strauder v. West Virginia*, 100 U.S. 303, 307-308 (1880); *Ex parte Virginia*, 100 U.S. 339, 344-45 (1880); *Virginia v. Rives*, 100 U.S. 313, 318 (1880); *Slaughter House Cases*, 83 U.S. (16 Wall.) 36, 70-72 (1873).
2. Some enforce the law—the police, prison administrators, parole and probation officers. Others dispense justice under the law—judges, with widely varying jurisdictions, and grand and petit juries. Still others assist in the dispensation of justice—the numerous subordinate officials of the courts, the prosecutors, and the non-official members of the bar. Each of these agencies, composed of a variety of groups performing countless specialized tasks, operates at the city, county, State, and Federal levels.
3. Civil Rights Act of 1875, ch. 114, sec. 4, 18 Stat. 336, 18 U.S.C. sec. 243 (1958).
4. Prior to 1961 there were at least 18 decisions of the Supreme Court upsetting convictions of State courts because of exclusion of jurors by reason of race. *Eubanks v. Louisiana*, 356 U.S. 584 (1958); *Reece v. Georgia*, 350 U.S. 85 (1955); *Hernandez v. Texas*, 347 U.S. 475 (1954); *Avery v. Georgia*, 345 U.S. 559 (1953); *Shepherd v. Florida*, 341 U.S. 50 (1951); *Cassell v. Texas*, 339 U.S. 282 (1950); *Brunson v. North Carolina*, 333 U.S. 851 (1948) (five cases); *Patton v. Mississippi*, 332 U.S. 463 (1947); *Hill v. Texas*, 316 U.S. 400 (1942); *Smith v. Texas*, 311 U.S. 128 (1940); *Pierre v. Louisiana*, 306 U.S. 354 (1939); *Hale v. Kentucky*, 303 U.S. 613 (1938); *Hollins v. Oklahoma*, 295 U.S. 394 (1935); *Norris v. Alabama*, 294 U.S. 587 (1935); *Carter v. Texas*, 177 U.S. 442 (1900); *Bush v. Kentucky*, 107 U.S. 110 (1882); *Neal v. Delaware*, 103 U.S. 370 (1881); *Strauder v. West Virginia*, *supra*, note 1. The defendants in all but one of these cases were Negroes. The *Hernandez* case involved a defendant of Mexican descent.
5. *Ibid.*
6. *Strauder v. West Virginia*, *supra*, note 1, at 308-309; *Brown v. Rutter*, 139 F. Supp. 679 (W.D. Ky. 1956).
7. *Anderson v. Alabama*, 366 U.S. 208 (1961).
8. *United States ex rel. Goldsby v. Harpole*, 263 F. 2d 71, 78-79 (5th Cir. 1959), *cert. denied*, 361 U.S. 838, *rehearing denied*, 361 U.S. 850 (1959).
9. *Anderson v. Alabama*, *supra*, note 7.
10. *Anderson v. State*, 120 So. 2d 397, 399 (Ala. 1959).
11. *Ibid.*
12. *Ibid.*

Notes: Justice, Chapter 7—Continued

13. Staff investigator's notes on interviews in Selma, Alabama, May 19, 1960.
14. *Anderson v. State*, *supra*, note 10 at 398-99.
15. *Id.* at 402.
16. *Id.* at 406.
17. *Id.* at 404.
18. *Id.* at 405.
19. *Ibid.*
20. *Id.* at 407.
21. *Id.* at 412.
22. *Id.* at 406.
23. *Id.* at 413. The Court pointed to the fact that the trial judge might have found it significant that Rev. Anderson had failed to produce the jury rolls of Dallas County, which would have been the best evidence on the issue. The Court also stated as its "reasons" for affirmance, the fact that the trial judge was entitled to consider his own personal knowledge of the jury roll, of the number of Negroes appearing on the venire, and of the number of Negroes appearing before him in criminal cases. As further considerations that possibly influenced the trial judge's decision, the Court cited the undisputed testimony of the law enforcement officers about the higher crime rate among Negroes, and the failure of the defendant to show that Negroes called were coerced into seeking to be excused (*ibid.*).
24. *Anderson v. State*, 120 So. 2d 414 (Ala. 1960).
25. *Anderson v. Alabama*, *supra*, note 7. The Court simply declared, "The judgment is reversed," and cited *Pierre v. Louisiana*, *Cassell v. Texas*, and *Hernandez v. Texas*, *supra*, note 4.
26. *Montoya v. People*, 345 P. 2d 1062 at 1063 (Colo. 1959).
27. *Ibid.*
28. *Ibid.*
29. *Ibid.*
30. *Ibid.* The Colorado Court indicated that reversal was required by the presence of the same three elements that required reversal in *Norris v. Alabama*, 294 U.S. 587 (1935), *viz.* (1) the existence of a class constituting a substantial segment of the county, (2) members of that class who were qualified to serve as jurors, and (3) token representation or none of the class on the jury lists over an extended period of time.
31. *People v. Salvatore*, No. 118, N.Y. Ct. App., July 7, 1961. The Court ruled that there was no showing of discrimination and noted that "special efforts" had been made to obtain Puerto Ricans as jurors.

32. Telephone conversation with Shad Polier, Esq., Sept. 19, 1961. Mr. Polier is counsel for defendant Agron. See N.Y. Times, July 21, 1961, p. 6.
33. *United States ex rel. Goldsby v. Harpole*, *supra*, note 8 at 73, 75.
34. *Id.* at 74, 75.
35. See *id.* at 74-76.
36. *Id.* at 79.
37. *Id.* at 78.
38. *Ibid.*
39. *Ibid.* [Emphasis added.]
40. Miss. Code Ann. sec. 1762 (1942).
41. *United States ex rel. Goldsby v. Harpole*, *supra*, note 8 at 78.
42. *Bailey v. Henslee*, 287 F.2d 936 (8th Cir. 1961).
43. *United States ex rel. Goldsby v. Harpole*, *supra*, note 8, at 82.
44. *Ibid.*
45. *Ibid.*
46. See discussion in pt. III, at 179, *supra*.
47. *The Negro and the Instrumentalities of Justice in Birmingham, Alabama* (a Commission Staff Report) 58-60. This report incorporates the results of a field investigation of the Birmingham area on March 7-19, 1961. Seven white and seven Negro professional men, active in the Birmingham area, were interviewed; two Negro and seven white professional men familiar with the administration of justice in Birmingham, but residing outside Jefferson County, were also interviewed.
48. U.S. Bureau of the Census, *U.S. Census of Population: 1960, Advance Reports: General Population Characteristics* PC (2B)-23 (Ala.) (1961).
49. In *The Negro and the Instrumentalities of Justice in Birmingham, Alabama*, *supra*, note 47, at 58-59, it is stated that—

It was the unanimous view of white and Negro attorneys interviewed in Birmingham that, although some Negroes may be summoned for jury service and although as many as three Negroes have been known to appear on a 24-man panel, colored jurors are seldom actually sworn in as members of the 12-man jury. All further agreed that this fact could be attributed to a common agreement among local attorneys that Negroes will be stricken from the 24-man panel. Such agreements are easily carried out because each side first exhausts its challenges for cause, and then still has six peremptory challenges (for which no reason is stated). . . . One of these lawyers declared that the bailiff notes which members of the panel are Negroes and transmits this in-

- formation to counsel. A Negro attorney stated that he is always apt to lose a jury case "unless it is very clear-cut."
50. *Id.* at 59. This complaint was made during an interview with a staff attorney in Birmingham on March 16, 1961.
51. N.Y. Times, Aug. 23, 1961, p. 31. The article reported that "the list of prospective jurors for the trial includes 51 whites and 2 Negroes. Mr. Kunstler [counsel for appellant], who is white, noted that Hinds County had 31,548 white and 16,139 Negro males of voting age. Only male voters are eligible for jury duty in Mississippi." The article also reported that 3 Negro witnesses, registered for 30, 36 and 14 years respectively, "testified they had never been called for jury duty."
52. *Ibid.*
53. *Ibid.*
54. *Desegregation of the Instrumentalities of Justice in the Baltimore Metropolitan Area* (a Commission Staff Report) 25-27. The report contains the findings of a staff investigation in the Baltimore area from Dec. 20, 1960, through Feb. 21, 1961.
55. *Cassell v. Texas*, *supra*, note 4, at 286-87.
56. *Desegregation of the Instrumentalities of Justice in the Baltimore Metropolitan Area*, *supra*, note 54, at 27 (based on an interview with Jury Commissioner, Supreme Bench of Baltimore City) on Jan. 11, 1961.
57. *Cassell v. Texas*, *supra*, note 4.
58. *Desegregation of the Instrumentalities of Justice in the Baltimore Metropolitan Area*, *supra*, note 54, at 25 (based on an interview with Clerk of Court, United States District Court for the District of Maryland, Baltimore, Jan. 11, 1961).
59. U.S. Bureau of the Census, *U.S. Census of Population: 1960, Advance Reports: General Population Characteristics* PC (22B)-19 (Md.) (1961).
60. *Desegregation of the Instrumentalities of Justice in the Baltimore Metropolitan Area*, *supra*, note 54, at 26 (based on interviews with two judges on the Supreme Bench of Baltimore City, Jan. 11 and 12, 1961).
61. *Ibid.* (based on interviews in Baltimore, Jan. 19 and Feb. 21, 1961).
62. *Ibid.* (based on interview with the Jury Commissioner, Supreme Bench of Baltimore City, Jan. 11, 1961).
63. 62 Stat. 951 (1957), 28 U.S.C. sec. 1861 (1958).
64. 103 Cong. Rec. 13154 (1957).
65. See discussion at p. 92 and note 40, *supra*.
66. See, e.g., 30 Ala. Code tit. 30, sec. 21 (Supp. 1958).



67. The Judicial Conference of the United States, *The Jury System in the Federal Courts* 20 (1960).
68. *Id.* at 19–20.
69. *Cassell v. Texas*, *supra*, note 4.
70. *Avery v. Georgia*, *supra*, note 4.
71. *Patton v. Mississippi*, *supra*, note 4.
72. Civil Rights Act of 1875, ch. 114, sec. 4, 18 Stat. 336, 18 U.S.C. sec. 243 (1958).
73. 100 U.S. 303 (1880).
74. 100 U.S. 339 (1880).
75. 103 U.S. 370 (1881).
76. *Id.* at 387. Federal law provides for the removal of suits from State to Federal courts when a party “is denied or cannot enforce in the courts of such State” his rights under the civil rights statutes (Rev. Stat. sec. 641 (1875), 28 U.S.C. sec. 1443 (1958)). The Court held that there was no proof that the plaintiff could not enforce those rights in the courts of Delaware (103 U.S. at 393).
77. 162 U.S. 565 (1896).
78. *Carter v. Texas*, 177 U.S. 442 (1900).
79. 294 U.S. 587 (1935).
80. *Id.* at 590–92. See *Hernandez v. Texas*, 347 U.S. 475, 480 (1954).
81. *Cassell v. Texas*, 339 U.S. 282, 289 (1950); *Hill v. Texas*, 316 U.S. 400, 404 (1942); *Smith v. Texas*, 311 U.S. 128, 131–32 (1940).
82. *Akins v. Texas*, 325 U.S. 398, 403 (1945); see *Fay v. New York*, 332 U.S. 261, 291 (1947).
83. *Cassell v. Texas*, *supra*, note 81, at 287.
84. *Akins v. Texas*, *supra*, note 82, at 403.
85. *Hernandez v. Texas*, *supra*, note 80, at 477.
86. *Ibid.*
87. See also *Thiel v. Southern Pac. Co.*, 328 U.S. 217 (1946).
88. See statute set forth at p. 95, *supra*.
89. *Jordan v. Massachusetts*, 225 U.S. 167, 176 (1912) (dictum); *Maxwell v. Dow*, 176 U.S. 581, 602 (1900); *Hurtado v. California*, 110 U.S. 516, 538 (1884).
90. *Fay v. New York*, *supra*, note 82, at 288 (dictum); *Snyder v. Massachusetts*, 291 U.S. 97, 105 (1934) (dictum); *Jordan v. Massachusetts*, *supra*, note 89, at 176 (dictum); *Maxwell v. Dow*, *supra*, note 89, at 603 (dictum); *Missouri v. Lewis*, 101 U.S. 22, 31 (1880) (dictum).
91. *Akins v. Texas*, *supra*, note 82, at 400, and cases cited therein.
92. *Ibid.*; cf. *Watson v. Maryland*, 218 U.S. 173, 179 (1910).

Notes: Justice, Chapter 7—Continued

93. *Cf. Watson v. Maryland, supra*, note 92; *Gibson v. Mississippi, supra*, note 77, at 589.
94. *Fay v. New York, supra*, note 82, at 270; *Gibson v. Mississippi, supra*, note 77, at 589.
95. *Ibid.*
96. *Fay v. New York, supra*, note 82, at 293 (dictum).
97. *Ex parte Virginia*, 100 U.S. 339, 345 (1880).
98. *Cassell v. Texas, supra*, note 81, at 286-87; *Akins v. Texas, supra*, note 82, at 404; *Neal v. Delaware, supra*, note 75, at 394. And see discussion at p. 96, *supra*.
99. *People v. Dukes*, 169 N.E. 2d 84 (Ill. 1960); *People v. Harris*, 161 N.E. 2d 809 (Ill. 1949); *People v. Roxborough*, 12 N.W. 2d 466, 473 (Mich. 1943), *cert. denied*, 323 U.S. 749 (1944).
100. See *Strauder v. West Virginia, supra*, note 73, at 305-306. See also *Fay v. New York, supra*, note 82, at 282-84.
101. *Ibid.*
102. See discussion at p. 99, *infra*.
103. See *Commonwealth v. Wright*, 79 Ky. 22 (1880). (White person objected unsuccessfully to exclusion of Negroes from grand jury that indicted him.) See also dictum in *Fay v. New York, supra*, note 82, at 287, and cases cited therein.
104. *United States ex rel. Jackson v. Brady*, 133 F. 2d 476, 480 (4th Cir. 1943), *cert. denied*, 319 U.S. 746 (1943).
105. *Hill v. Texas, supra*, note 81, at 404; *Norris v. Alabama, supra*, note 79, at 598; *United States ex rel. Goldsby v. Harpole, supra*, note 8, at 78.
106. But see *United States ex rel. Goldsby v. Harpole, supra*, note 8, at 79-84.
107. *Patton v. Mississippi, supra*, note 71, at 465-66; *Hill v. Texas, supra*, note 81, at 404; *Norris v. Alabama, supra*, note 79, at 590-91; *United States ex rel. Goldsby v. Harpole, supra*, note 8, at 78-79.
108. *Brown v. Rutter*, 139 F. Supp. 679, 681 (W.D. Ky. 1956).
109. *Brown v. Allen*, 344 U.S. 443, 481-82 (1953).
110. *Id.* at 482-87, 552.
111. *Id.* at 548-60, dissenting opinions of Justice Black (with whom Justice Douglas joined) and of Justice Frankfurter (with whom Justice Black and Justice Douglas joined).
112. *United States ex rel. Jackson v. Brady, supra*, note 104, at 477-78, *affirming*, 47 F. Supp. 362 (D. Md. 1942).
113. *Akins v. Texas, supra*, note 82, at 403.
114. *United States ex rel. Jackson v. Brady, supra*, note 104, at 478; *United States v. Fujimoto*, 105 F. Supp. 727, 732 (D. Hawaii

Notes: Justice, Chapter 7—Continued

- 1952), *writ of prohibition or mandamus denied*, 344 U.S. 852 (1952).
115. *United States ex rel. Jackson v. Brady*, *supra*, note 104, at 478.
116. *Brown v. Allen*, *supra*, note 109, at 474.
117. *Strauder v. West Virginia*, *supra*, note 73, at 310.
118. *United States ex rel. Goldsby v. Harpole*, *supra*, note 8, at 71-78 (by implication).
119. Fla. Stat. Ann. sec. 40.01 (1951).
120. See note 40, *supra*.
121. S.C. Code Ann. sec. 38-52 (1952).
122. *United States ex rel. Goldsby v. Harpole*, *supra*, note 8.
123. See pt. III, ch. 4, at 179, *supra*.
124. See discussion at p. 93, *supra*.
125. See note 49, *supra*.
126. *The Negro and the Instrumentalities of Justice in Birmingham, Alabama*, *supra*, note 47, at 60.
127. *Ibid.* Statements made by two white lawyers practicing in the Birmingham courts.
128. See discussion at p. 97 and note 99, *supra*.
129. The question of judges encouraging and assisting counsel in their challenges to exclude racial minorities from jury service appears never to have arisen in reported cases. A judge however, is "an officer" subject to section 243 and is thereby forbidden to exclude jurors because of race or color. Moreover, the judge acts in the name of the State while presiding over the challenging of prospective jurors, and thus, insofar as his cooperation with counsel in their exercise of challenges constitutes deliberate racial discrimination on his part, it is State action violative of the equal protection clause of the 14th amendment.
130. See *Fay v. New York*, *supra*, note 82, at 287-88; *Glasser v. United States*, 315 U.S. 60, 84-85 (1942).
131. See, e.g., 28 U.S.C. secs. 1861 and 1863 (1958). Section 243 of the United States Criminal Code applies to selection of both State and Federal jurors.
132. *Fay v. New York*, *supra*, note 82, at 287. See, *id.* at 294.
133. The selection of jurors by State officials, whether for criminal or civil proceedings, is clearly State action subject to the restrictions of the 14th amendment. Moreover, no reasonable distinctions can be drawn between criminal and civil cases that would justify racial considerations in the selection of jurors for the latter. It follows that the equal protection clause forbids racial, religious, or other unreasonable discrimination in the selection of jurors as much for civil cases as for criminal cases—and for the same reasons.

134. Diligent search failed to uncover a single reported Federal court decision involving racial exclusion of jurors from civil trials in State courts. There are some cases dealing with the question of jury exclusion in Federal civil proceedings. See, e.g., *Thiel v. Southern Pac Co.*, *supra*, note 87, at 220; *Dow v. Carnegie-Illinois Steel Corp.*, 224 F. 2d 414, 423 (3d Cir. 1955).
135. *United States ex rel. Goldsby v. Harpole*, *supra*, note 8, at 79–80.
136. The first remedy is discussed below in the context of criminal trials. There are no Supreme Court decisions arising from a direct attack on the discriminatory selection of a civil jury in a State court; only a few Federal appellate decisions have arisen from such objections to a civil jury in a Federal district court. See note 134, *supra*. Nevertheless, considerations relevant to an attack on a criminal trial jury would apply to objections based on racial discrimination in the jury's selection prior to a civil trial.
- The other two remedies treated below are statutory and allow of no distinction between racial exclusion from criminal and from civil juries. The first of these Federal statutes protects, *inter alia*, rights under the equal protection clause, which forbids racial exclusion from criminal and civil juries alike. See note 133, *supra*. The second statute, which makes it a crime to practice racial exclusion from any grand or petit jury creates no exception for exclusion of jurors in civil cases.
137. See discussion at p. 92, *supra*.
138. *Ibid*.
139. See ch. 2 at 41, *supra*.
140. See *United States ex rel. Goldsby v. Harpole*, *supra*, note 8.
141. See discussion at p. 98, *supra*.
142. Section 1983 was examined in great detail in ch. 5, at 71, *supra*.
143. See ch. 5, at 72, *supra*.
144. *Brown v. Rutter*, *supra*, note 108.
145. *Id.* at 681.
146. *Id.* at 681–82.
147. *Id.* at 683.
148. *Id.* at 682.
149. *Id.* at 683.
150. 339 U.S. 282 (1950).
151. *Id.* at 303–304 (dissenting opinion).
152. See discussion at p. 98, *supra*.
153. It should be noted that section 242, previously discussed in ch. 4, at 45, *supra*, would probably be applicable as well. See Carr, *Federal Protection of Civil Rights*, 91 n. 12 (1947). However, there seems to be no advantage in proceeding under section 242

rather than the specific remedy provided by section 243—especially since the latter has never been construed to require “specific intent.”

154. The second and final Division-Commission conference was held on Dec. 16, 1960. The conference is described in detail in ch. 4, at note 102, *supra*. The Division’s explanation, referred to in text, for the lack of 243 prosecutions is set forth in a Commission staff document summarizing the conference discussions. *Department of Justice Conference, Notes, supra*, ch. 4, note 102, at 39.
155. On at least three occasions the Criminal Division of the Department of Justice requested United States Attorneys to report any local cases of jury exclusion violative of section 243 that came to their attention. These notices were featured on the front page of Department bulletins, which are periodically sent to the United States Attorneys. In 1950, a Department request read as follows (*Bulletin*) *Criminal Division*, vol. 9, No. 14, pp. 1–2 (July 17, 1950)):

*Notice to United States Attorneys*

*Request that cases involving intentional exclusion from grand or petit juries of Negroes or other citizens, on account of their race or color, be reported.* The Supreme Court, in *Cassell v. Texas*, 339 U.S. 282 (1950), recently reaffirmed the rule that a Negro is denied the equal protection of the laws, in violation of the Fourteenth Amendment, when he is indicted by a grand jury from which Negroes as a race have been intentionally excluded. “An accused is entitled to have charges against him considered by a jury in the selection of which there has been neither inclusion nor exclusion because of race” (at p. 287). Unlawful discrimination can be established by proving systematic and purposeful exclusion continuing over a long period; or by a showing that the jury commissioners disregarded Negroes and thereby intentionally excluded them, choosing only from citizens they personally knew; or by other proof depending upon the nature of the case.

Where Negroes have been intentionally excluded from a grand jury, the officials responsible therefor may have wilfully violated 18 U.S.C. 242. In addition, a violation of 18 U.S.C. 243 may have been committed, since the Negroes who suffered the intentional exclusion from the jury were deprived of rights enforced by that Section.

The above applies with equal force, of course, to discrimination in the choice of petit jurors. See Mr. Justice Jackson’s dissenting opinion at page 301 and cases there cited.

As Mr. Justice Jackson notes, Congress, by 18 U.S.C. 243, has provided direct and effective means to enforce the right of Negroes and other citizens to participate in grand jury service. See *Ex parte Virginia*, 100 U.S. 339. In addition, it is quite clear that 18 U.S.C. 242 would be applicable to such cases. The Criminal Division, however, has received very few complaints involving these principles. From time to time we have noted in the reported State and Federal cases claims made by defendants that the jury which tried or indicted them had been illegally constituted because of systematic exclusion of Negroes therefrom, but by the time the case is reported years may have passed since the alleged violation of Federal law was committed.

It is requested that each United States Attorney consider the above and report to the Criminal Division any relevant cases which come to his attention at any time. The Division will be pleased to have recommendations and suggestions as to any specific case or as to the general problem.

A second notice in 1953, after referring to the Supreme Court's recent decision in *Avery v. Georgia*, *supra*, note 70, stated (*Bulletin, Criminal Division*, vol. 12, No. 9, p. 1 (June 8, 1953)):

Despite the prior notice given United States Attorneys in the July 17, 1950 issue of the Criminal Division *Bulletin* (Vol. 9, No. 14, p. 1) and despite the apparent continuing practice of racial discrimination in selecting juries, evidenced by the crude method of exclusion in the *Avery* case, no case of this type of alleged violation has been reported to the Criminal Division by United States Attorneys since the *Bulletin's* request for such information. It is requested again that United States Attorneys promptly inform the Criminal Division of any allegations of such racial discrimination in the selection of juries which may be brought to their attention, in order that the Department may be saved the embarrassment of first learning of such practices when a case reaches the Supreme Court.

In 1956, a similar notice commenting on another recent decision, *Reece v. Georgia*, *supra*, note 4, concluded as follows (*United States Attorneys Bulletin*, vol. 4, No. 1, p. 4 (Jan. 6, 1956)):

Through the medium of the *Bulletin*, United States Attorneys have twice been requested to inform the Criminal Division of all allegations or reports of such racial discrimination, in order that the law may be properly enforced and the Department may be saved the embarrassment of first learning of such practices when a case reaches the Supreme Court. . . . Nevertheless, the Crim-

inal Division has not received a single report or reference concerning a possible violation of Section 243. It is therefore again requested that all United States Attorneys promptly inform the Division of any situation involving a possible violation of the statute.

Comments and suggestions with respect to this problem are invited.

156. *Department of Justice Conference, Notes, supra*, ch. 4, note 102, at 39.
157. See notes 4 and 7, *supra*.
158. *Cassell v. Texas, supra*, note 150, at 303.
159. *Ibid*.
160. See ch. 4, at 62–66, *supra*.
161. There are many factors, however, which should be weighed before any information is used. These considerations are discussed in connection with section 242 prosecutions in ch. 4, at 65, *supra*; they appear to be equally applicable to section 243 prosecutions.
162. The original case appears not to have been reported in its entirety, but the court's charge to the Federal grand jury which indicted the judge is reported. Charge to Grand Jury—Civil Rights Act, 30 Fed. Cas. 1002 (No. 18,259) (C.C.W.D. Va. 1878). Later the judge, by a writ of habeas corpus, sought his discharge from imprisonment under that indictment, but the Supreme Court denied his petition. *Ex parte Virginia, supra*, note 74.
163. It should be noted that under section 243, unlike section 242 (see ch. 4, at 61, *supra*), FBI agents would investigate jury officials and not State and local law enforcement officers upon whose cooperation the Bureau relies in other cases.
164. *Strauder v. West Virginia, supra*, note 73, at 308.





## APPENDIX VII

### *Text Table*

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## APPENDIX VII

TABLE 1.—*Reversals of convictions based on coerced confessions, The U.S. Supreme Court*

(Feb. 17, 1936, to June 12, 1961)

| <i>Case</i>  | <i>Names and descriptions of victims</i>  | <i>Crimes to which victims confessed and sentences</i> | <i>Description of assailants</i>  | <i>Description of incident</i>  |
|--|---|--|---|---|
| <i>Brown v. Mississippi</i> , 297 U.S. 278 (1936).                           | Ed Brown, Henry Shields, Yank Ellington, "all ignorant Negroes."                                      | Murder—death.....                                      | Mississippi county deputy sheriff, mob of private individuals.                                | Hanged by neck to limb of tree several times; whipped repeatedly; "laid over chairs and their backs were cut to pieces with a leather strap with buckles on it"; warned that if they changed their story in any way the treatment would be repeated. No counsel, friends, or preliminary hearing before confession. |
| <i>Chambers v. Florida</i> , 309 U.S. 227 (1940).                            | Isiah (Izell) Chambers, Jack Williams, Charlie Davis, Walter Woodward, Negroes, young tenant farmers. | Murder, robbery—death.                                 | Broward County, Fla., sheriff, other officers, a "convict guard," groups of private citizens. | Nearly continuous questioning for 1 week; little sleep; allegations of brutality and torture; various threats including imminence of mob violence. No counsel, friends, or preliminary hearing before confession.   |
| <i>White v. Texas</i> , 309 U.S. 631, rehearing denied, 310 U.S. 530 (1940). | Bob White, "an illiterate farm-hand," Negro.  | Rape—death.....  | Texas Rangers and Polk County, Tex., local peace officers.                                    | Held 6 or 7 days in jail; taken out into woods at night on numerous occasions; allegedly handcuffed "up in the woods somewhere," and whipped on each occasion;  |

constantly asked if he was ready to confess; at 2 a.m. of last morning began to cry, confession given. No counsel, friends, or preliminary hearing before confession.

Held incommunicado and made to reenact crime. No information in the case reports to indicate the nature of the coercion.

Held for 36 hours incommunicado during which time he was continuously questioned and made to stand for several 40-minute periods. No counsel, friends, or preliminary hearing before confession.

Held incommunicado by police. No information in the case reports to indicate the nature of the coercion. No counsel, friends, or preliminary hearing before confession.

Murder—death . . . Montgomery County, Ala., officers.

Rape—death . . . . . Montgomery County, Tex., police.

Murder—death . . . . . Jefferson County, Ala., police.

Dave Canty,  
Negro.

Lomax, young  
Negro laborer.

Joe Vernon,  
Negro.

*Canty v. Alabama*,  
309 U.S. 629  
(1940).

*Lomax v. Texas*,  
313 U.S. 545  
(1941).

*Vernon v. Alabama*,  
313 U.S. 547  
(1941).

TABLE 1.—*Reversals of convictions based on coerced confessions, The U.S. Supreme Court—Continued*

(Feb. 17, 1936, to June 12, 1961)

| <i>Case</i>   | <i>Names and descriptions of victims</i> | <i>Crimes to which victims confessed and sentences</i> | <i>Description of assaults</i>                       | <i>Description of incident</i>  |
|---|--|--|--|---|
| <i>Ward v. Texas</i> , 316 U.S. 547 (1942).         | William Ward, "an ignorant Negro."       | "Murder without malice"—3 years' imprisonment.         | Titus, Morris, and Henderson Counties, Tex., police. | Arrested at night; taken to 3 different jails in 3 days; carried over 100 miles; "persistent and protracted questioning"; allegedly beaten and burned with cigarette stubs; denied by some officers, confirmed by sheriff of Titus County; warned of possibility of lynching by mob. No counsel, friends, or preliminary hearing before confession. |
| <i>Ashcraft v. Tennessee</i> , 322 U.S. 143 (1944). | E. E. Ashcraft, 45 years old, white.     | Murder—99 years' imprisonment.                         | Shelby County, Tenn., law enforcement officials.     | Held incommunicado for 36 hours of constant interrogation. No counsel, friends, or preliminary hearing before confession.   |
| <i>Malinski v. New York</i> , 324 U.S. 401 (1945).  | Morris Malinski, white.                  | Murder—death . . .                                     | New York City police.                                | Held 4 days incommunicado in hotel room by police. Questioned intermittently by relays of police. No counsel, friends, or preliminary hearing before confession.  |

|   |  |  |  |   |
|---|--|--|--|---|
| <i>Haley v. Ohio</i> , 332 U.S. 596 (1948).           | John Haley, 15 years old, Negro.         | Life imprisonment .                            | Akron, Ohio, police.                               | Held incommunicado for 5 hours between midnight and 5 a.m. Questioned continually until confession obtained. No counsel, friends, or preliminary hearing before confession.           |
| <i>Watts v. Indiana</i> , 338 U.S. 49 (1949).         | Robert Watts, Negro.                     | Murder—death....                               | Indianapolis city police and Indiana State police. | Held incommunicado; questioned intermittently for 1 week by relays of police with little time out for sleep and food. No counsel, friends, or preliminary hearing before confession.  |
| <i>Turner v. Pennsylvania</i> , 338 U.S. 62 (1949).   | Aaron Turner, race not indicated.        | Murder—death....                               | Philadelphia, Pa., police.                         | Held for 5 days incommunicado while being questioned by relays of police. No counsel, friends, or preliminary hearing before confession.  |
| <i>Harris v. South Carolina</i> , 338 U.S. 68 (1949). | Harris, Negro, 25 years old, illiterate. | Murder—death....                               | Aiken County, S.C., police.                        | Held incommunicado for 3 days and questioned intermittently until he confessed. Not permitted friends, relatives, or counsel. There was no preliminary hearing even after confession. |
| <i>Rochin v. California</i> , 342 U.S. 165 (1952).    | Antonio Rochin, race not indicated.      | Possession of narcotics—60 days' imprisonment. | Los Angeles County, Calif., deputy sheriffs.       | Stomach pumped by police against will to obtain narcotics he swallowed.   |

TABLE 1.—*Reversals of convictions based on coerced confessions, The U.S. Supreme Court—Continued*  
(Feb. 17, 1936, to June 12, 1961)

| <i>Case</i>                                     | <i>Names and descriptions of victims</i>   | <i>Crimes to which victims confessed and sentences</i> | <i>Description of assailants</i>              | <i>Description of incident</i>  |
|---|--|--|---|---|
| <i>Leyra v. Denno</i> , 347 U.S. 556 (1954).    | Buddy Leyra, 50 years old, white.  | Murder—death....                                       | New York City police.                         | Approximately 4 days and nights of intermittent and intensive interrogation; little sleep; psychiatrist disguised as general physician questioned for 2 hours using hypnotic techniques. No counsel, friends, or preliminary hearing before confession. |
| <i>Fikes v. Alabama</i> , 352 U.S. 191 (1957).  | William Fikes, schizophrenic, highly suggestible, uneducated, 27 years old, Negro. | Burglary with intent to commit rape—death.             | Selma, Ala., chief of police, other officers. | Interrogated intermittently for 9 days, during course of questioning; taken 80 miles away to Kilby Prison. No counsel, friends, or preliminary hearing before confession.   |
| <i>Payne v. Arkansas</i> , 356 U.S. 560 (1958). | Frank Payne, 19 years old, 5th-grade education, Negro.                             | Murder—death....                                       | Pine Bluff, Ark., chief of police.            | Interrogated almost constantly for 3 days; denied food and sleep for long periods; threatened with mob violence. No counsel, friends, or preliminary hearing before confession.   |

Interrogated constantly for 8 hours at night (7:15 p.m. to 3:25 a.m.), denied food and sleep, frequent requests for counsel denied; finally, a policeman who was a friend of prisoner used a false story to obtain a confession.

Interrogated for 10 hours (1 p.m. to 11 p.m.) with 1 hour break, no rest; small room, 6 by 8 feet; 3 officers present most of time. No counsel, friends, or preliminary hearing before confession.

After being held from Jan. 9, 1954, to Jan. 30, 1954, at New Haven jail on other charges, taken to coroner's office and interrogated from 2 p.m. to 8 p.m. by police about murder. Police threatened to bring in sick wife for questioning if he did not confess. He confessed. No counsel, friends, or preliminary hearing before confession.

Murder—death... New York City police.

Colbert County, Ala., officers.

Robbery—20 years' imprisonment.

New Haven, Conn., police.

Murder—death...

Vincent Spano, foreign born, uneducated, 25 years old, white.

Jesse Blackburn, "insane," 24 years old, Negro.

Harold Rogers, unskilled laborer, Negro.

*Spano v. New York*, 360 U.S. 315 (1959).

*Blackburn v. Alabama*, 361 U.S. 199 (1960).

*Rogers v. Richmond*, 365 U.S. 534 (1961).

TABLE I.—*Reversals of convictions based on coerced confessions, The U.S. Supreme Court—Continued*

(Feb. 17, 1936, to June 12, 1961)

| Case   | Names and descriptions<br>of victims               | Crimes to which<br>victims confessed and<br>sentences | Description of assailants | Description of incident  |
|--|--|---|---------------------------|--|
| <i>Culombe v. Connecticut</i> , 367 U.S. 568 (1961). | Arthur Culombe, mentally retarded, white.          | Murder—death....                                      | Conn. State police.       | Taken into custody on Feb. 23, 1957, and held for several weeks. Interrogated on numerous occasions during this period but not continuously. He requested counsel, but police refused to obtain lawyer for him. No counsel or preliminary hearing before confession.   |
| <i>Reck v. Pate</i> , 367 U.S. 433 (1961).           | Emil Reck, 19 years old, mentally retarded, white. | Murder—life.....                                      | Chicago, Ill., police.    | Held incommunicado for more than 8 days. Questioned almost every day for 7 or 8 hours and beaten. He was placed in hospital and released after having vomited blood and complaining of being beaten in the stomach. He confessed twice, once on Saturday and once on Sunday. He was not arraigned until the next Thursday—8 days after arrest without warrant. These events occurred in 1936. No counsel, friends, or preliminary hearing before confession. |



TABLE 2.—*Police brutality matters received by Department of Justice, by region, State, and race*

(Jan. 1, 1958, to June 30, 1960)

| <i>Northern and Western States</i> | <i>Totals</i> | <i>Negro and<br/>other minority</i> | <i>White</i> | <i>Unknown</i> |
|------------------------------------|---------------|-------------------------------------|--------------|----------------|
| Alaska.....                        | 3             | 2                                   | 1            | 0              |
| Arizona.....                       | 10            | 4                                   | 0            | 6              |
| California.....                    | 47            | 8                                   | 22           | 17             |
| Colorado.....                      | 30            | 2                                   | 17           | 11             |
| Connecticut.....                   | 9             | 4                                   | 3            | 2              |
| Hawaii.....                        | 0             | 0                                   | 0            | 0              |
| Idaho.....                         | 4             | 1                                   | 2            | 1              |
| Illinois.....                      | 46            | 18                                  | 16           | 12             |
| Indiana.....                       | 11            | 2                                   | 5            | 4              |
| Iowa.....                          | 1             | 1                                   | 0            | 0              |
| Kansas.....                        | 4             | 0                                   | 4            | 0              |
| Maine.....                         | 0             | 0                                   | 0            | 0              |
| Massachusetts.....                 | 9             | 0                                   | 3            | 6              |
| Michigan.....                      | 28            | 9                                   | 14           | 5              |
| Minnesota.....                     | 3             | 0                                   | 0            | 3              |
| Montana.....                       | 3             | 2                                   | 1            | 0              |
| Nebraska.....                      | 2             | 1                                   | 1            | 0              |
| Nevada.....                        | 4             | 0                                   | 3            | 1              |
| New Hampshire.....                 | 2             | 1                                   | 1            | 0              |
| New Jersey.....                    | 17            | 4                                   | 7            | 6              |
| New Mexico.....                    | 16            | 8                                   | 6            | 2              |
| New York.....                      | 54            | 13                                  | 24           | 17             |
| North Dakota.....                  | 4             | 1                                   | 2            | 1              |
| Ohio.....                          | 42            | 15                                  | 20           | 7              |
| Oregon.....                        | 4             | 1                                   | 1            | 2              |
| Pennsylvania.....                  | 38            | 10                                  | 16           | 12             |
| Puerto Rico.....                   | 6             | 2                                   | 4            | 0              |
| Rhode Island.....                  | 2             | 0                                   | 2            | 0              |
| South Dakota.....                  | 2             | 1                                   | 0            | 1              |
| Utah.....                          | 3             | 0                                   | 3            | 0              |
| Vermont.....                       | 0             | 0                                   | 0            | 0              |
| Washington.....                    | 3             | 1                                   | 1            | 1              |
| Wisconsin.....                     | 4             | 1                                   | 3            | 0              |
| Wyoming.....                       | 1             | 0                                   | 1            | 0              |
| Unknown.....                       | 2             | 2                                   | 0            | 0              |
| Totals.....                        | 414           | 114                                 | 183          | 117            |

TABLE 2.—*Police brutality matters received by Department of Justice, by region, State, and race—Continued*  
(Jan. 1, 1958, to June 30, 1960)

| <i>Southern States</i>    | <i>Totals</i> | <i>Negro and<br/>other minority</i> | <i>White</i> | <i>Unknown</i> |
|---------------------------|---------------|-------------------------------------|--------------|----------------|
| Alabama.....              | 104           | 58                                  | 33           | 13             |
| Arkansas.....             | 57            | 17                                  | 17           | 23             |
| Delaware.....             | 4             | 0                                   | 4            | 0              |
| District of Columbia..... | 8             | 4                                   | 3            | 1              |
| Florida.....              | 113           | 20                                  | 44           | 49             |
| Georgia.....              | 98            | 48                                  | 22           | 28             |
| Kentucky.....             | 13            | 1                                   | 6            | 6              |
| Louisiana.....            | 77            | 35                                  | 23           | 19             |
| Maryland.....             | 24            | 13                                  | 6            | 5              |
| Mississippi.....          | 37            | 21                                  | 10           | 6              |
| Missouri.....             | 15            | 4                                   | 5            | 6              |
| North Carolina.....       | 17            | 5                                   | 3            | 9              |
| Oklahoma.....             | 15            | 3                                   | 6            | 6              |
| South Carolina.....       | 36            | 19                                  | 5            | 12             |
| Tennessee.....            | 51            | 16                                  | 23           | 12             |
| Texas.....                | 234           | 79                                  | 109          | 46             |
| Virginia.....             | 7             | 2                                   | 2            | 3              |
| West Virginia.....        | 4             | 2                                   | 2            | 0              |
| <b>Totals.....</b>        | <b>914</b>    | <b>347</b>                          | <b>323</b>   | <b>244</b>     |

TABLE 3.—Total number of "144"<sup>1</sup> civil rights cases<sup>2</sup> received by Department of Justice, by State and region

(Feb. 1939 to Oct. 21, 1960)

| State                     | Number of cases | State               | Number of cases |
|---------------------------|-----------------|---------------------|-----------------|
| Alabama.....              | 1, 021          | Montana.....        | 71              |
| Alaska.....               | 45              | Nebraska.....       | 50              |
| Arizona.....              | 124             | Nevada.....         | 65              |
| Arkansas.....             | 400             | New Hampshire.....  | 47              |
| California.....           | 985             | New Jersey.....     | 278             |
| Colorado.....             | 196             | New Mexico.....     | 242             |
| Connecticut.....          | 96              | New York.....       | 811             |
| Delaware.....             | 26              | North Carolina..... | 292             |
| District of Columbia..... | 315             | North Dakota.....   | 20              |
| Florida.....              | 1, 183          | Ohio.....           | 193             |
| Georgia.....              | 1, 188          | Oklahoma.....       | 247             |
| Hawaii.....               | 19              | Oregon.....         | 70              |
| Idaho.....                | 43              | Pennsylvania.....   | 672             |
| Illinois.....             | 601             | Rhode Island.....   | 22              |
| Indiana.....              | 225             | South Carolina..... | 441             |
| Iowa.....                 | 68              | South Dakota.....   | 28              |
| Kansas.....               | 96              | Tennessee.....      | 605             |
| Kentucky.....             | 317             | Texas.....          | 2, 048          |
| Louisiana.....            | 724             | Utah.....           | 50              |
| Maine.....                | 16              | Vermont.....        | 6               |
| Maryland.....             | 198             | Virginia.....       | 269             |
| Massachusetts.....        | 136             | Washington.....     | 131             |
| Michigan.....             | 386             | West Virginia.....  | 99              |
| Minnesota.....            | 108             | Wisconsin.....      | 89              |
| Mississippi.....          | 538             | Wyoming.....        | 47              |
| Missouri.....             | 445             |                     |                 |

<sup>1</sup> The "144" classification is a number assigned by the Records Office to those cases which involve a number of different civil rights violations, including police brutality, but excluding the sizable voting category. Although it is unknown exactly what proportion of the "144" cases involve police brutality, it is estimated by staff members of the Civil Rights Division that such cases are a majority of the "144" group.

<sup>2</sup> A "case" is a communication which, in the opinion of a person in the Department of Justice Records Office, contains information of a violation of a civil rights statute.

#### Regional comparisons

|  |         | Percent national total |
|--|---------|------------------------|
| 9 Southern States (Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Texas, Virginia).....              | 7, 704  | 47. 00                 |
| 8 Border States (Arkansas, Delaware, Kentucky, Maryland, Missouri, Oklahoma, Tennessee, West Virginia) and the District of Columbia..... | 2, 652  | 16. 18                 |
| Combined total for 9 Southern States, 8 Border States, and the District of Columbia.....   | 10, 356 | 63. 18                 |
| 33 Northern and Western States.....  | 6, 036  | 36. 82                 |
| Total, 50 States.....  | 16, 392 |                        |

TABLE 4.—*Lynchings by State and race, 1882-1959*<sup>1</sup>

| <i>State</i>        | <i>White</i> | <i>Negro</i> | <i>Total</i> |
|---------------------|--------------|--------------|--------------|
| Alabama.....        | 48           | 299          | 347          |
| Arizona.....        | 31           | 0            | 31           |
| Arkansas.....       | 58           | 226          | 284          |
| California.....     | 41           | 2            | 43           |
| Colorado.....       | 66           | 2            | 68           |
| Delaware.....       | 0            | 1            | 1            |
| Florida.....        | 25           | 257          | 282          |
| Georgia.....        | 39           | 491          | 530          |
| Idaho.....          | 20           | 0            | 20           |
| Illinois.....       | 15           | 19           | 34           |
| Indiana.....        | 33           | 14           | 47           |
| Iowa.....           | 17           | 2            | 19           |
| Kansas.....         | 35           | 19           | 54           |
| Kentucky.....       | 63           | 142          | 205          |
| Louisiana.....      | 56           | 335          | 391          |
| Maryland.....       | 2            | 27           | 29           |
| Michigan.....       | 7            | 1            | 8            |
| Minnesota.....      | 5            | 4            | 9            |
| Mississippi.....    | 40           | 538          | 578          |
| Missouri.....       | 53           | 69           | 122          |
| Montana.....        | 82           | 2            | 84           |
| Nebraska.....       | 52           | 5            | 57           |
| Nevada.....         | 6            | 0            | 6            |
| New Jersey.....     | 0            | 1            | 1            |
| New Mexico.....     | 33           | 3            | 36           |
| New York.....       | 1            | 1            | 2            |
| North Carolina..... | 15           | 84           | 99           |
| North Dakota.....   | 13           | 3            | 16           |
| Ohio.....           | 10           | 16           | 26           |
| Oklahoma.....       | 82           | 40           | 122          |
| Oregon.....         | 20           | 1            | 21           |
| Pennsylvania.....   | 2            | 6            | 8            |
| South Carolina..... | 4            | 156          | 160          |
| South Dakota.....   | 27           | 0            | 27           |
| Tennessee.....      | 47           | 204          | 251          |
| Texas.....          | 141          | 352          | 493          |
| Utah.....           | 6            | 2            | 8            |
| Vermont.....        | 1            | 0            | 1            |
| Virginia.....       | 17           | 83           | 100          |
| Washington.....     | 25           | 1            | 26           |
| West Virginia.....  | 20           | 28           | 48           |
| Wisconsin.....      | 6            | 0            | 6            |
| Wyoming.....        | 30           | 5            | 35           |
| Total.....          | 1, 294       | 3, 441       | 4, 735       |
| Percent.....        | 27. 33       | 72. 67       | 100          |

<sup>1</sup> Source: Tuskegee Institute, Tuskegee, Ala.

TABLE 5.—*Lynchings by region and race, 1882-1959*<sup>1</sup>

| <i>Region</i>   | <i>Whites</i> | <i>Negroes</i> | <i>Total</i> | <i>Percent national total</i> |
|---|---------------|----------------|--------------|-------------------------------|
| 9 Southern States (Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Virginia, Texas)..... | 385           | 2,595          | 2,980        | 62.94                         |
| Percent.....  | 12.92         | 87.08          | 100          | .....                         |
| 8 Border States (Arkansas, Delaware, Kentucky, Maryland, Missouri, Oklahoma, Tennessee, West Virginia).....                 | 325           | 737            | 1,062        | 22.43                         |
| Percent.....  | 30.60         | 69.40          | 100          | .....                         |
| 9 Southern States, 8 Border States..  | 710           | 3,332          | 4,042        | 85.36                         |
| Percent.....  | 17.57         | 82.43          | 100          | .....                         |
| 33 Northern and Western States...   | 584           | 109            | 693          | 14.64                         |
| Percent.....  | 84.27         | 15.73          | 100          | .....                         |
| Total, 50 States.....   | 1,294         | 3,441          | 4,735        | 100                           |
| Percent.....  | 27.33         | 72.67          | 100          | .....                         |

<sup>1</sup> Source: Tuskegee Institute, Tuskegee, Ala.TABLE 6.—*Lynchings by year and race, 1882-1959*<sup>1</sup>

| <i>Year</i> | <i>White</i> | <i>Negro</i> | <i>Total</i> |
|-------------|--------------|--------------|--------------|
| 1882.....   | 64           | 49           | 113          |
| 1883.....   | 77           | 53           | 130          |
| 1884.....   | 160          | 51           | 211          |
| 1885.....   | 110          | 74           | 184          |
| 1886.....   | 64           | 74           | 138          |
| 1887.....   | 50           | 70           | 120          |
| 1888.....   | 68           | 69           | 137          |
| 1889.....   | 76           | 94           | 170          |
| 1890.....   | 11           | 85           | 96           |
| 1891.....   | 71           | 113          | 184          |
| 1892.....   | 69           | 161          | 230          |
| 1893.....   | 34           | 118          | 152          |
| 1894.....   | 58           | 134          | 192          |
| 1895.....   | 66           | 113          | 179          |
| 1896.....   | 45           | 78           | 123          |
| 1897.....   | 35           | 123          | 158          |
| 1898.....   | 19           | 101          | 120          |
| 1899.....   | 21           | 85           | 106          |
| 1900.....   | 9            | 106          | 115          |
| 1901.....   | 25           | 105          | 130          |
| 1902.....   | 7            | 85           | 92           |
| 1903.....   | 15           | 84           | 99           |
| 1904.....   | 7            | 76           | 83           |
| 1905.....   | 5            | 57           | 62           |
| 1906.....   | 3            | 62           | 65           |
| 1907.....   | 2            | 58           | 60           |
| 1908.....   | 8            | 89           | 97           |
| 1909.....   | 13           | 69           | 82           |
| 1910.....   | 9            | 67           | 76           |

See footnote at end of table.

TABLE 6.—*Lynchings by year and race, 1882-1959*—Continued

| <i>Year</i> | <i>White</i> | <i>Negro</i> | <i>Total</i> |
|-------------|--------------|--------------|--------------|
| 1911.....   | 7            | 60           | 67           |
| 1912.....   | 2            | 61           | 63           |
| 1913.....   | 1            | 51           | 52           |
| 1914.....   | 4            | 51           | 55           |
| 1915.....   | 13           | 56           | 69           |
| 1916.....   | 4            | 50           | 54           |
| 1917.....   | 2            | 36           | 38           |
| 1918.....   | 4            | 60           | 64           |
| 1919.....   | 7            | 76           | 83           |
| 1920.....   | 8            | 53           | 61           |
| 1921.....   | 5            | 59           | 64           |
| 1922.....   | 6            | 51           | 57           |
| 1923.....   | 4            | 29           | 33           |
| 1924.....   | 0            | 16           | 16           |
| 1925.....   | 0            | 17           | 17           |
| 1926.....   | 7            | 23           | 30           |
| 1927.....   | 0            | 16           | 16           |
| 1928.....   | 1            | 10           | 11           |
| 1929.....   | 3            | 7            | 10           |
| 1930.....   | 1            | 20           | 21           |
| 1931.....   | 1            | 12           | 13           |
| 1932.....   | 2            | 6            | 8            |
| 1933.....   | 4            | 24           | 28           |
| 1934.....   | 0            | 15           | 15           |
| 1935.....   | 2            | 18           | 20           |
| 1936.....   | 0            | 8            | 8            |
| 1937.....   | 0            | 8            | 8            |
| 1938.....   | 0            | 6            | 6            |
| 1939.....   | 1            | 2            | 3            |
| 1940.....   | 1            | 4            | 5            |
| 1941.....   | 0            | 4            | 4            |
| 1942.....   | 0            | 6            | 6            |
| 1943.....   | 0            | 3            | 3            |
| 1944.....   | 0            | 2            | 2            |
| 1945.....   | 0            | 1            | 1            |
| 1946.....   | 0            | 6            | 6            |
| 1947.....   | 0            | 1            | 1            |
| 1948.....   | 1            | 1            | 2            |
| 1949.....   | 0            | 3            | 3            |
| 1950.....   | 1            | 1            | 2            |
| 1951.....   | 0            | 1            | 1            |
| 1952.....   | 0            | 0            | 0            |
| 1953.....   | 0            | 0            | 0            |
| 1954.....   | 0            | 0            | 0            |
| 1955.....   | 0            | 3            | 3            |
| 1956.....   | 0            | 0            | 0            |
| 1957.....   | 1            | 0            | 1            |
| 1958.....   | 0            | 0            | 0            |
| 1959.....   | 0            | 1            | 1            |
| Total.....  | 1, 294       | 3, 441       | 4, 735       |

<sup>1</sup> Source: Tuskegee Institute, Tuskegee, Ala.

TABLE 7.—Disposition of police brutality matters by Civil Rights Division, Department of Justice, by race of victim

(Jan. 1, 1958, to June 30, 1960)

|   | Total  | Negro and<br>other minority | White | Unknown |
|---|--------|-----------------------------|-------|---------|
| Matters received: <sup>1</sup>                                  |        |                             |       |         |
| Number . . . . .  | 1, 328 | 461                         | 506   | 361     |
| Percent of total . . . . .                                      | 100    | 35                          | 38    | 27      |
| Prosecution authorized: <sup>2</sup>                            |        |                             |       |         |
| Number . . . . .  | 52     | 19                          | 18    | 15      |
| Percent of matters received . .                                 | 3.9    | 4.1                         | 3.6   | 4.2     |
| Prosecution instituted:   |        |                             |       |         |
| 1. Cases filed, pending trial: <sup>3</sup>                     |        |                             |       |         |
| Number . . . . .  | 43     | 2                           | 3     | 38      |
| Percent of matters received . .                                 | 3.2    | 0.4                         | 0.6   | 10.5    |
| 2. Grand jury refused to indict; case closed: <sup>4</sup>      |        |                             |       |         |
| Number . . . . .  | 16     | 8                           | 4     | 4       |
| Percent of matters received . .                                 | 1.2    | 1.7                         | 0.8   | 1.1     |
| 3. Cases terminated unsuccessfully in trial court: <sup>5</sup> |        |                             |       |         |
| Number . . . . .  | 8      | 4                           | 3     | 1       |
| Percent of matters received . .                                 | 0.6    | 0.9                         | 0.6   | 0.3     |
| 4. Cases terminated successfully in trial court: <sup>6</sup>   |        |                             |       |         |
| Number . . . . .  | 6      | 1                           | 2     | 3       |
| Percent of matters received . .                                 | 0.5    | 0.2                         | 0.4   | 0.6     |

The source of this information is the records of the Civil Rights Division:

<sup>1</sup> *Matters received*.—This category consists of the complaints received by the Department of Justice during the fiscal year. This incoming material is sifted by the Records Division of the Department of Justice to eliminate crank letters, duplicate complaints, and matters not within its jurisdiction. Thereupon the communication is assigned a complaint number and a Department of Justice file number and is sent to the Civil Rights Division administrative office. Matters received, then, represent a group of complaints which, in the estimation of the Records Division, are legitimate problems for the Civil Rights Division. In most instances these complaints present a prima facie civil rights complaint which can only be disposed of through assessing the result of a field investigation.

<sup>2</sup> *Prosecution authorized* (Department of Justice, IBM Code 021).—This category includes any matter in which the Division has authorized the U.S. attorney either to make a presentment to a grand jury or to file an information. At this point a "matter" also becomes a "case" for purposes of future Division reference.

<sup>3</sup> *Cases filed, pending trial* (Department of Justice, IBM Codes 201, 202, 204, 205, 206, 222).—The filing of an indictment or information makes a case a "case filed."

<sup>4</sup> *Grand jury refused to indict; case closed* (Department of Justice IBM Code 20).—These are cases where a presentment has been made to a grand jury which has returned no true bill, and where no further action (such as the filing of an information) is intended.

<sup>5</sup> *Cases terminated unsuccessfully in trial court* (Department of Justice IBM Codes 20, 321, 325, 326, 330, 340, 345, 370).—These include jury verdicts of acquittal, directed verdicts, dismissals by the Government, etc.

<sup>6</sup> *Cases terminated successfully in trial court* (Department of Justice IBM Codes 60, 380).—Convictions.

TABLE 8.—*Disposition of police brutality matters handled by Civil Rights Division, Department of Justice, by region and race*

(Jan. 1, 1958, to June 30, 1960)

| <i>Northern and Western States</i> | <i>Total</i> | <i>Negro and<br/>other minority</i> | <i>White</i> | <i>Unknown</i> |
|------------------------------------|--------------|-------------------------------------|--------------|----------------|
| Matters received:                  |              |                                     |              |                |
| Number . . . . .                   | 414          | 114                                 | 183          | 117            |
| Percent of total . . . . .         | 100          | 27.5                                | 44.2         | 28.3           |
| Prosecution authorized:            |              |                                     |              |                |
| Number . . . . .                   | 16           | 1                                   | 11           | 4              |
| Percent of matters received . .    | 3.9          |                                     |              |                |
| Prosecution instituted:            |              |                                     |              |                |
| 1. Cases filed, pending trial:     |              |                                     |              |                |
| Number . . . . .                   | 16           | 1                                   | 1            | 14             |
| Percent of matters received . .    | 3.9          |                                     |              |                |
| 2. Grand jury refused to in-       |              |                                     |              |                |
| dict; case closed:                 |              |                                     |              |                |
| Number . . . . .                   | 11           | 8                                   | 1            | 2              |
| Percent of matters received . .    | 2.7          |                                     |              |                |
| 3. Cases terminated unsuc-         |              |                                     |              |                |
| cessfully in trial court:          |              |                                     |              |                |
| Number . . . . .                   | 3            | 1                                   | 2            | 0              |
| Percent of matters received . .    | 0.7          |                                     |              |                |
| 4. Cases terminated success-       |              |                                     |              |                |
| fully in trial court:              |              |                                     |              |                |
| Number . . . . .                   | 4            | 1                                   | 0            | 3              |
| Percent of matters received . .    | 1.0          |                                     |              |                |
| <i>Southern States</i>             |              |                                     |              |                |
| Matters received:                  |              |                                     |              |                |
| Number . . . . .                   | 914          | 347                                 | 323          | 244            |
| Percent of total . . . . .         | 100          | 38.0                                | 35.3         | 26.7           |
| Prosecution authorized:            |              |                                     |              |                |
| Number . . . . .                   | 36           | 18                                  | 7            | 11             |
| Percent of matters received . .    | 3.9          |                                     |              |                |
| Prosecution instituted:            |              |                                     |              |                |
| 1. Cases filed, pending trial:     |              |                                     |              |                |
| Number . . . . .                   | 30           | 1                                   | 2            | 27             |
| Percent of matters received . .    | 3.3          |                                     |              |                |
| 2. Grand jury refused to in-       |              |                                     |              |                |
| dict; case closed:                 |              |                                     |              |                |
| Number . . . . .                   | 5            | 0                                   | 3            | 2              |
| Percent of matters received . .    | 0.5          |                                     |              |                |
| 3. Cases terminated unsuc-         |              |                                     |              |                |
| cessfully in trial court:          |              |                                     |              |                |
| Number . . . . .                   | 5            | 3                                   | 1            | 1              |
| Percent of matters received . .    | 0.5          |                                     |              |                |
| 4. Cases terminated success-       |              |                                     |              |                |
| fully in trial court:              |              |                                     |              |                |
| Number . . . . .                   | 2            | 0                                   | 2            | 0              |
| Percent of matters received . .    | 0.2          |                                     |              |                |



TABLE 9.—*Disposition of police brutality matters handled by Civil Rights Division, Department of Justice, regional totals*

(Jan. 1, 1958, to June 30, 1960)

|  | Total  | Southern States | Northern and Western States |
|--|--------|-----------------|-----------------------------|
| Matters received:                                  |        |                 |                             |
| Number.....  | 1, 328 | 914             | 414                         |
| Percent of total.....                              | 100    | 68. 8           | 31. 2                       |
| Prosecution authorized:                            |        |                 |                             |
| Number.....  | 52     | 36              | 16                          |
| Percent of total.....                              | 100    | 65. 2           | 34. 8                       |
| Prosecution instituted:                            |        |                 |                             |
| 1. Cases filed, pending trial:                     |        |                 |                             |
| Number.....  | 46     | 30              | 16                          |
| Percent of total.....                              | 100    | 65. 2           | 34. 8                       |
| 2. Grand jury refused to indict; case closed:      |        |                 |                             |
| Number.....  | 16     | 5               | 11                          |
| Percent of total.....                              | 100    | 31. 3           | 68. 7                       |
| 3. Cases terminated unsuccessfully in trial court: |        |                 |                             |
| Number.....  | 8      | 5               | 3                           |
| Percent of total.....                              | 100    | 62. 5           | 37. 3                       |
| 4. Cases terminated successfully in trial court:   |        |                 |                             |
| Number.....  | 6      | 2               | 4                           |
| Percent of total.....                              | 100    | 33. 3           | 66. 7                       |

TABLE 10.—*Disposition of police brutality matters in comparison to total workload of Civil Rights Division, Department of Justice*

(Jan. 1, 1958, to June 30, 1960)

|                                      | All matters | Police brutality matters |         |
|--------------------------------------|-------------|--------------------------|---------|
|                                      |             | Number                   | Percent |
| Matters received.....                | 4, 471      | 1, 328                   | 29. 7   |
| Prosecution authorized:              |             |                          |         |
| Number.....                          | 87          | 52                       | 59. 8   |
| Percent of matters received.....     | 1. 9        | .....                    | 3. 9    |
| Prosecution successful:              |             |                          |         |
| Number.....                          | 18          | 6                        | 33. 3   |
| Percent of matters received.....     | 0. 4        | .....                    | 0. 5    |
| Percent of prosecutions authorized.. | 20. 7       | .....                    | 11. 5   |

TABLE 11.—*Slavery and peonage matters received by Civil Rights Division, Department of Justice*

(Jan. 1, 1958, to June 30, 1960)

| <i>Source of complaint</i>    | <i>Total</i> | <i>Negro and<br/>other minority</i> | <i>White</i> | <i>Unknown</i> |
|-------------------------------|--------------|-------------------------------------|--------------|----------------|
| Northern and Western States.. | 25           | 6                                   | 8            | 11             |
| Southern States.....          | 42           | 24                                  | 5            | 13             |
| Total all States.....         | 67           | 30                                  | 13           | 24             |

TABLE 12.—*Personnel and budget, Civil Rights Division, Department of Justice*

|   | <i>1958</i> | <i>1959</i> | <i>1960</i> | <i>1961</i> |
|---|-------------|-------------|-------------|-------------|
| Amount available.....                         | \$185, 000  | \$483, 000  | \$466, 000  | \$689, 000  |
| Number of employees at<br>end of fiscal year: |             |             |             |             |
| Attorneys.....                                | 14          | 27          | 26          | 32          |
| Other.....                                    | 25          | 29          | 29          | 1 32        |

<sup>1</sup> As of Nov. 15, 1960.

TABLE 13.—*Referral sources of police brutality matters received by the Department of Justice, Negro and other minority group victims*

(Jan. 1, 1958, to June 30, 1960)

|                       | <i>1958</i> | <i>1959</i> | <i>1960</i> | <i>Total</i>     |
|-----------------------|-------------|-------------|-------------|------------------|
| FBI.....              | 93          | 154         | 134         | <sup>1</sup> 381 |
| U.S. attorney.....    | .....       | 3           | 6           | 9                |
| Private citizen.....  | 2           | 9           | 10          | 21               |
| State authority.....  | .....       | .....       | .....       | .....            |
| Court.....            | .....       | .....       | .....       | .....            |
| Newspaper report..... | 1           | 7           | 1           | 9                |
| U.S. marshal.....     | .....       | .....       | .....       | .....            |
| Other.....            | 1           | 10          | 10          | 21               |
| Other agency.....     | .....       | .....       | .....       | .....            |
| Unknown.....          | 1           | 1           | 18          | 20               |
| Total.....            | 98          | 184         | 179         | 461              |

<sup>1</sup> 82 percent.

TABLE 14.—Police brutality cases filed in Federal courts by private persons

(June 30, 1957, to June 30, 1959)

| Name   | Federal judicial district       | Interracial <sup>1</sup> | Statutes pleaded (title 42,<br>U.S. Code, sections) |                  | Disposition of cases                         | Other allegations in<br>addition to brutality |
|--|---------------------------------|--------------------------|---|------------------|--|---|
|  |                                 |                          | No.....   | 1983             |  |   |
| Fortson v. Owens.....  | Northern District,<br>Alabama.  | No.....                  |   | 1983             | Dismissal granted at<br>plaintiff's request. | False arrest.                                 |
| Mitchell v. McCarter.....  | do.....                         | No.....                  |   | 1983             | do.....                                      | Do.   |
| Sharpe v. McCarter.....  | do.....                         | No.....                  |   | 1983             | do.....                                      | Do.   |
| Thomas v. May.....   | do.....                         | No.....                  |   | 1983             | Plaintiff withdrew.....                      | Do.   |
| VonBache v. Berry.....   | do.....                         | No.....                  |   | 1983             | Dismissal granted at<br>plaintiff's request. | Do.   |
| In re State of Arkansas<br>Relator G. A. La Gusse<br>v. Godbehere. | Western District,<br>Arkansas.  | No.....                  |   | 1983             | Jury verdict for<br>defendant.               |   |
| Luckett v. Richmond.....   | Connecticut.....                | No.....                  |   | 1983, 1984       | Plaintiff withdrew.....                      |   |
| Nash v. Richmond.....  | do.....                         | Yes.....                 |   | 1983, 1984       | do.....                                      |   |
| Moore v. City of Palatka.  | Southern District,<br>Florida.  | Yes.....                 |   | 1983             | Jury verdict for<br>defendant.               |   |
| Deloach v. Rogers.....   | Western District,<br>Georgia.   | No.....                  |   | 1981, 1983       | Dismissed on defend-<br>ant's motion.        | False arrest.                                 |
| Brandon v. Griffen.....  | Northern District,<br>Illinois. | No.....                  |   | 1985             | Plaintiff withdrew.....                      |   |
| Brize v. City of Chicago..   | do.....                         | Yes.....                 |   | 1983, 1986       | Pending.....                                 |   |
| Burns v. City of Evanston.   | do.....                         | Yes.....                 |   | 1983             | do.....                                      | Illegal arrest.                               |
| Coleman v. Johnstone.....  | do.....                         | Yes.....                 |   | 1983             | Nonsuit.....                                 | Do.   |
| Durham v. Nash.....  | do.....                         | No.....                  |   | 1983, 1985, 1986 | Plaintiff withdrew.....                      |   |
| Egan v. City of Aurora...  | do.....                         | No.....                  |   | 1983             | Pending.....                                 | Do.   |
| Exclusa v. Krejciat.....   | do.....                         | Yes.....                 |   | 1983, 1986       | Dismissed on defend-<br>ant's motion.        |   |

See footnote at end of table.

TABLE 14.—Police brutality cases filed in Federal courts by private persons—Continued

| Name   | Federal judicial district       | Interracial <sup>1</sup> | Statutes pleaded (title 42,<br>U.S. Code, sections) | Disposition of cases   |  | Other allegations in<br>addition to brutality |
|--|---------------------------------|--------------------------|---|--|--|---|
|  |                                 |                          |   | Court dismissed on its<br>own motion.  |  |   |
| <i>Gordon v. Arrington</i> .....             | Northern District,<br>Illinois. | No.....                  | 1983, 1985, 1986                                    | Court dismissed on its<br>own motion.  |  |   |
| <i>Hardwick v. Hurley</i> .....              | ....do.....                     | Yes.....                 | 1983, 1985, 1986                                    | Pending.....   |  |   |
| <i>Hunter v. Director<br/>Public Safety.</i> | ....do.....                     | Yes.....                 | 1981, 1982, 1983,<br>1985, 1988                     | Dismissed for want<br>of prosecution.  |  |   |
| <i>Mahkimetas v. City of<br/>Chicago.</i>    | ....do.....                     | Yes.....                 | 1983, 1985, 1986                                    | Pending.....   |  |   |
| <i>McPike v. McManaman</i> ..                | ....do.....                     | No.....                  | 1986  | Plaintiff withdrew....   |  |   |
| <i>Monroe v. Pape</i> .....                  | ....do.....                     | Yes.....                 | 1983, 1985, 1986                                    | Pending.....   |  |   |
| <i>Moorelander v. Tassone</i> ...            | ....do.....                     | Yes.....                 | 1983, 1985  | Plaintiff withdrew....   |  |   |
| <i>Perry v. Doe</i> .....                    | ....do.....                     | Yes.....                 | 1983, 1985, 1986                                    | Nonsuit.....   |  |   |
| <i>Sibbs v. City of Chicago</i> ..           | ....do.....                     | No.....                  | 1983  | ....do.....  |  |   |
| <i>Swanson v. McGuire</i> .....              | ....do.....                     | No.....                  | 1983  | Pending.....   |  |   |
| <i>Richardson v. Bone</i> .....              | Western District,<br>Kentucky.  | No.....                  | 1983  | Plaintiff withdrew<br>civil rights complaint<br>and received judg-<br>ment for \$395 on the<br>assault and battery<br>complaint (jurisdic-<br>tion was based on<br>diversity of<br>citizenship). |  |   |
| <i>Anderson v. Brown</i> .....               | Western District,<br>Michigan.  | No.....                  | 1983  | Plaintiff withdrew....   |  |   |
| <i>Kennedy v. Doe</i> .....                  | Eastern District,<br>Michigan.  | Yes.....                 | 1983, 1985  | Directed verdict for<br>defendant.   |  | False arrest.                                 |
| <i>Pettus v. Schlutz</i> .....               | ....do.....                     | Yes.....                 | 1983, 1985, 1988                                    | Pending.....   |  |   |
| <i>Shorkey v. Tator</i> .....                | ....do.....                     | No.....                  | 1983  | Nonsuit.....   |  | Illegal arrest.                               |

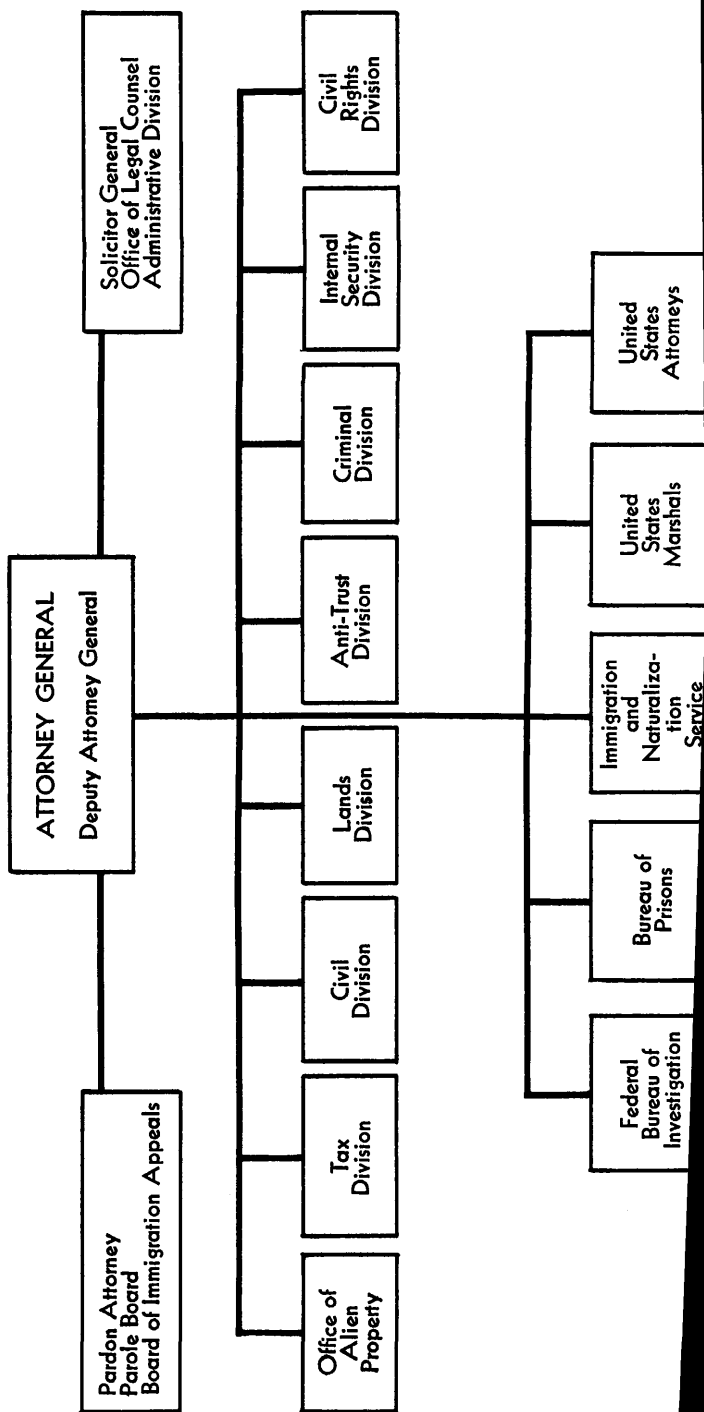
|   |                                 |              |            | Jury verdict for defendant. Appeal pending. |     |
|---|---------------------------------|--------------|------------|---|-----|
| <i>Mitchell v. Basila</i> . . . . .             | Southern District, Mississippi. | No. . . . .  | 1983       | Dismissal on motion for summary judgment.   |     |
| <i>Santiago v. McConnell</i> . . . . .          | Eastern District, Pennsylvania. | Yes. . . . . | 1983       | Dismissed for want of prosecution.          | Do. |
| <i>Clark v. Sullivan</i> . . . . .              | do. . . . .                     | Yes. . . . . | 1983       | Dismissed on stipulation of parties.        | Do. |
| <i>Cox v. Cloyd</i> . . . . .                   | Eastern District, Tennessee.    | No. . . . .  | 1983       | Nonsuit. . . . .                            | Do. |
| <i>Deen v. Cloyd</i> . . . . .                  | do. . . . .                     | No. . . . .  | 1983       | do. . . . .                                 | Do. |
| <i>Green v. Robinson</i> . . . . .              | Western District, Tennessee.    | Yes. . . . . | 1983, 1985 | Directed verdict for defendant.             |     |
| <i>Lingerfeit v. Hardin</i> . . . . .           | Eastern District, Tennessee.    | No. . . . .  | 1983       | Nonsuit. . . . .                            | Do. |
| <i>Brooks v. American General Insurance Co.</i> | Southern District, Texas.       | Yes. . . . . | 1983       | Pending. . . . .                            | Do. |
| <i>Sheffield v. Farris</i> . . . . .            | Western District, Texas.        | Yes. . . . . | 1983       | Settled before trial. . . . .               | Do. |

<sup>1</sup> White officer, minority race victim.

## APPENDIX VII

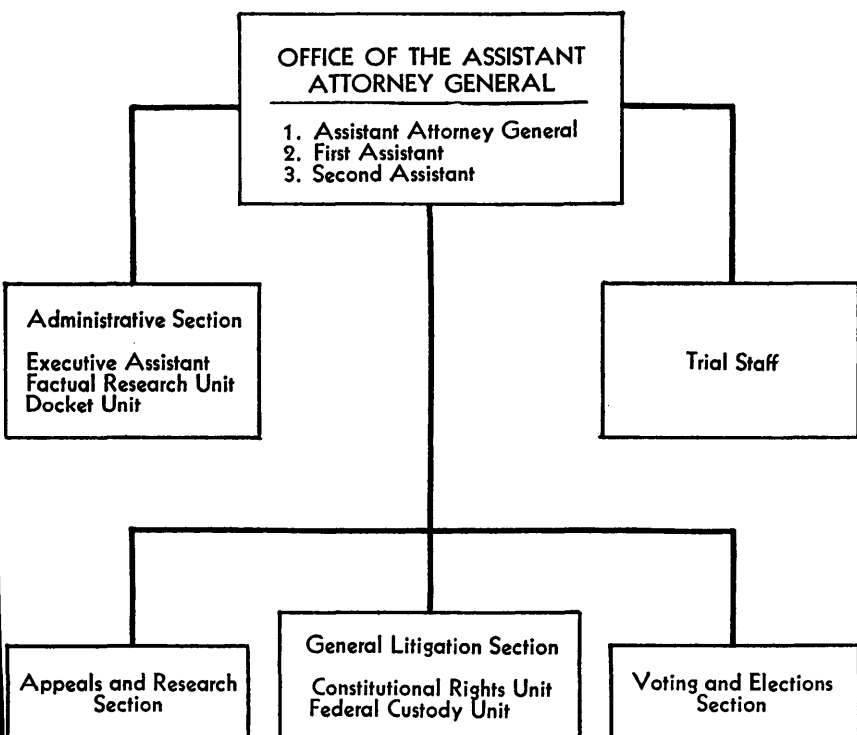
## ORGANIZATION CHART 1

## DEPARTMENT OF JUSTICE



ORGANIZATION CHART 2

CIVIL RIGHTS DIVISION—DEPARTMENT OF JUSTICE



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## Part VIII—THE AMERICAN INDIAN

### NOTES: INDIANS, Chapter 1

1. U.S. Dept. of Interior, Justifications for Appropriations, Bureau of Indian Affairs, Fiscal 1962.
2. This estimate is based on the number of tribes voting on the consent requirement of the Indian Reorganization Act. It includes only those tribes under Federal supervision. There are, perhaps, a dozen additional tribes under State supervision which have not been treated in this report.
3. Act of June 2, 1924, 43 Stat. 253, 8 U.S.C. sec. 3 (1958).
4. 21 U.S. (Wheat.) 543, 574 (1823).
5. *Id.* at 589.
6. DeTocqueville, *Democracy in America*, 28 (1947).
7. For discussion of early history, see 10 *Collier's Encyclopedia* 453-474 (1958); Fey and McNickle, *Indians and Other Americans* (1959); "American Indians and American Life", 311 *The Annals of the American Academy of Political and Social Science* 1-165 (1957).
8. McNickle, "Indian-White Relations from Discovery to 1887," 311 *The Annals of the American Academy of Political and Social Science* 9 (1957).
9. "Correspondence of Andrew Jackson," ed. John S. Bassett. vol. 2, pp. 277-82.
10. Act of May 28, 1830, 4 Stat. 411, 25 U.S.C. sec. 174 (1958).
11. The Cherokees provide an example of the great progress made in adjusting to the white man's standards. In 1826, they were reported to have 22,000 cattle; 7,600 horses; 46,000 swine; 2,500 sheep; 762 looms; 1,488 spinning wheels; 172 wagons; 2,948 plows; 10 saw mills; 31 grist mills; 62 blacksmith shops; 8 cotton machines; 18 schools; 18 ferries, and a number of public roads. In 1827, they adopted a written constitution providing for an executive, a bicameral legislature, a supreme court and a code of laws. Fey and McNickle, *Indians and Other Americans* 30 (1959).
12. DeTocqueville, *op. cit. supra*, note 5.
13. For Knox's views, see American State Papers, Class II, Indian Affairs, Vol. I.
14. U.S. Bureau of Indian Affairs, *Commissioner's Annual Report* (1872).
15. 31 U.S. (6 Pet.) 515, 593 (1832).
16. 30 U.S. (5 Pet.) 1, 17 (1831).
17. *Id.* at 17, 18.
18. Fey and McNickle, *op. cit. supra* note 11, at 66. [Emphasis added.]

19. Act of March 3, 1871, ch. 126, 16 Stat. 566, 25 U.S.C. sec. 71 (1958). For discussion, see Cohen, *Handbook of Federal Indian Law* 66 (1941).
20. Act of February 8, 1887, 24 Stat. 388, 25 U.S.C. sec. 332 (1958).
21. While it is true that some allotments were made prior to 1887, they were not great in number and did not represent a uniform Federal policy such as was contained in the General Allotment Act of 1887.
22. Fey and McNickle, *op. cit. supra* note 11, at 72.
23. 12 *Cong. Rec.* 782 (1881).
24. *Id.* at 783.
25. *H.R. Rep. No. 1576*, 46th Cong., 2d sess. (May 28, 1880).
26. Haas, "Legal Aspects of Indian Affairs from 1887 to 1957," 311 *The Annals of the American Academy of Political and Social Science* 13 (1957).
27. Fey and McNickle, *op. cit. supra*, note 11, at 67, 68 (quoting 1890 Annual Rep. of Comm. on Indian Affairs).
28. *Id.* at 74.
29. Meriam, *The Problems of Indian Administration* (1928).
30. Act of June 18, 1934, 48 Stat. 984, 988, 25 U.S.C. secs. 461, 478 (1958).
31. Ten bills, affecting more than 66,000 Indians in 10 States were introduced in Congress in 1954. In hearings most of the Indians opposed termination. Six of these bills were passed affecting two additional tribes. Congress has practically discontinued this type of legislation at the present time. See 68 Stat. 250, 718, 724, 768, 868, 1099, 25 U.S.C. secs. 891-93, 564-564d, 691-93, 721, 677-677e, 741 (1958) for the six bills passed in 1954 and 70 Stat. 893, 937, 963, 25 U.S.C. secs. 791-95, 821-24, 841-43 (1958) for the three 1956 bills.
32. Examples of this legislation other than termination acts, are: (1) Extension of criminal and civil jurisdiction to certain State and territorial courts (Alaska, Calif., Minn., Nebr., Oreg., and Wis.) and consent for others to assume similar jurisdiction. 18 U.S.C. sec. 1162 (1958); 28 U.S.C. sec. 1360 (1958). (2) Local option on liquor controls, Act of Aug. 15, 1953, 67 Stat. 586, 18 U.S.C. 1161 (1958). (3) Authorized study of Indian education, including problems of transferring Indians to public schools, Act of July 14, 1956, 70 Stat. 531, 25 U.S.C. sec. 304a (1958).
33. "Land Transactions", Senate Committee Print 85th Cong., 2d Sess. 15, 18; Lindley, "Why Indians Need Land," *Christian Century*, November 1957.



## NOTES: INDIANS, Chapter 2

1. Commission on the Rights, Liberties, and Responsibilities of the American Indian, *A Program for Indian Citizens, A Summary Report*, 41 (1961).
2. 241 U.S. 591, 598 (1916).
3. Cohen, *Handbook of Federal Indian Law* 274, 275, 276 (1945).
4. 163 U.S. 376, 384 (1896).
5. 109 U.S. 556 (1883).
6. Act of March 3, 1885, 23 Stat. 385, 18 U.S.C. sec. 1153 (1958).
7. 35 Stat. 1151; 47 Stat. 337, 18 U.S.C. sec. 1153 (1958).
8. *A Program for Indian Citizens*, *op. cit. supra*, note 1, at 23.
9. Indian women marrying citizens became citizens by an 1888 law (25 Stat. 392); some World War I Indian veterans were made citizens by a 1919 law (41 Stat. 350); others had been made citizens by treaty.
10. Act of June 2, 1924, 43 Stat. 253, 8 U.S.C. sec. 3 (1958).
11. The Nationality Act of 1940 stated that a child born in the United States to an Indian, Eskimo, Aleutian, or other aboriginal native would be a citizen at birth. This was reenacted on June 27, 1952, 66 Stat. 235, 8 U.S.C. sec. 1401 (1958).
12. Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. sec. 1161 (1958). However, State liquor laws, insofar as they distinguish between Indians and non-Indians may well amount to a denial of equal protection in violation of the 14th amendment.
13. Pub. L. No. 48, 87th Cong., 1st sess. (June 16, 1961).
14. *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1, 17 (1831).
15. *U.S. v. Kagama*, 118 U.S. at 375, 384 (1886).
16. Solicitor of the Department of Interior, *Federal Indian Law*, 32-43, 58-86, and ch. IX (1958).
17. *Porter v. Hall*, 271 Pac. 411 (Ariz. 1928).
18. *Harrison v. Leveen*, 196 P. 2d 456 (Ariz. 1948).
19. *Id.* at 462, 463.
20. *Acosta v. San Diego County*, 272 P. 2d 92 (Cal. 1954).
21. Daniels, "American Indians," 29 *The Reference Shelf* 106 (1957).
22. For discussion, see Cohen, *Handbook of Federal Indian Law* 89-91 (1941).
23. See note 4, *supra*.
24. Memo, Solicitor of the Interior Department, Aug. 8, 1938. (See *Federal Indian Law*, *op. cit. supra* note 16, at 399).

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25. *Mapp v. Ohio*, 367 U.S. 421 (1961); *Hernden v. Lowry*, 301 U.S. 242 (1936); *Near v. Minnesota*, 283 U.S. 697 (1930); *Powell v. Alabama*, 287 U.S. 45 (1932).
26. *Toledo v. Pueblo De Jemez*, 119 F. Supp. 429 (D. N.Mex. 1954).
27. *Id.* at 432.
28. *Arizona v. Attaki*, No. 4098, Ariz. Super. Ct. Maricopi County, July 26, 1960.

## NOTES: INDIANS, Chapter 3

1. Memo From Robert Burnette, Chairman, Rosebud Sioux Tribal Council, to the House Subcommittee on Indian Affairs, Mar. 19, 1959.
2. "Present Relations of the Federal Government to the American Indian," House Comm. on Int. and Insular Affairs (Comm. Print No. 38, 1959) pp. 8-9.
3. *Harrison v. Leveen*, 196 P. 2d 456 (Ariz. 1948); *Trujillo v. Garley*, D. Ct. (N. Mex. 1948) (unreported).
- 3a. *Montoya v. Bolack*, Civ. No. 85725, N. Mex. 2d Judicial Dist. Bernalillo County (Dec. 23, 1960).
4. *Allen v. Merrell*, 305 P. 2d 490 (Utah 1956).
5. *Id.* at 495.
6. 2 *Race Rel. L. Rep.* 778 (1957).
7. 358 U.S. 217 (1959), reversing 319 P. 2d 998 (Ariz. 1958).
8. Opinions of the Atty. Gen. of Arizona (unpublished 1959).
9. 5 *Cong. Qtrly.* 79 (1960).
10. *Government Relations to Indians*, *op. cit. supra*, note 2.
11. 2 Stat. 139, 143.
12. Act of Mar. 3, 1819, 3 Stat. 516, 25 U.S.C. sec. 271 (1958).
13. Act of June 7, 1897, ch. 3, sec. 1, 30 Stat. 79; Act of Mar. 2, 1917, 39 Stat. 988, 25 U.S.C. sec. 278 (1958).
14. Blauch, *Educational Services for Indians* 34, 35 (1939).
15. Act of July 31, 1882, 22 Stat. 181, 25 U.S.C. sec. 276 (1958).
16. Act of June 4, 1953, 67 Stat. 41, amended May 16, 1957, 71 Stat. 29, 25 U.S.C. sec. 293a (1958).
17. Meriam, *The Problems of Indian Administration* (1928).
18. Commission on the Rights, Liberties, and Responsibilities of the American Indian, *A Program for Indian Citizens, A Summary Report*, 30 (1961).
19. U.S. Bureau of Indian Affairs, *Today's Dropouts, Tomorrow's Problems* (1959). Less than 40 percent of the Indian youth who enter high school stay to graduate. This is sharply contrasted to a national rate where 60 percent of all American youths now graduate from high schools. *Ibid.*
20. Baerreis, *The Indian in Modern America* 18 (1956) (Beatty, "Twenty Years of Indian Education").
21. Act of Mar. 3, 1893, 27 Stat. 628, 635, Act of July 13, 1892, 27 Stat. 143, 25 U.S.C. secs. 283, 284 (1958). For discussion of statutes and regulations relating to compulsory education, see Solicitor of the Department of Interior, *Federal Indian Law* 277 (1958).

22. As a practical matter, the Bureau must rely heavily upon the States for enforcement of compulsory attendance regulations. Accordingly, in 1946 Congress provided in the act of August 9, 1946, now 60 Stat. 962, 25 U.S.C. sec. 231 (1958), that the Secretary of Interior shall permit State employees to enter upon reservations for the purpose of enforcing penalties of State compulsory school attendance laws provided that the tribal government has adopted a resolution consenting to such jurisdiction.
23. Solicitor of the Department of Interior, *op. cit. supra*, note 21, at 30.
24. *Report of the U.S. Commission on Civil Rights 1959* at 315.
25. Newsletter 35, Association of American Indian Affairs, Inc., Feb. 1960. The correspondence from Paul L. Fickinger, Area Director, said in part:

We are conscious of the fact that some communities in Mississippi will not accept the Mississippi Choctaw Indians in their schools. Developments in the past several years, however, have complicated those efforts as you are personally well aware. It was this very situation that caused us several years ago to institute a so-called crash program of developing our own schools in the various Indian communities of the Reservation. . . .
26. Letter From John A. Carver, Jr., Assistant Secretary of the Interior, to the Commission, June 9, 1961.
27. Miss. Code, Sec. 6632 (1942 ed. ann.).
28. Del. Laws, ch. 75, art. 1, sec. 2631 (1936).
29. Letter From George R. Miller, Jr., State Superintendent, Department of Public Instruction, Delaware, to the Commission, May 15, 1961.
30. So. School News, October 1960, p. 9.
31. So. School News, November 1960, p. 2.
32. Durham Morning Herald, June 21, 1961, p. 1A.
33. *Hearings in Los Angeles and San Francisco before the U.S. Commission on Civil Rights* 360 (1960).
34. Act of Aug. 8, 1958, 72 Stat. 545, 18 U.S.C. sec. 1162 (1958).
35. *A Program for Indian Citizens, op. cit. supra*, note 18, at 24.
36. 25 C.F.R. sec. 11.9 (revoked May 16, 1961).
37. According to William B. Bengé, Chief, Branch of Law and Order, U.S. Bureau of Indian Affairs, "Law and Order on Indian Reservations," 20 *Federal Bar Journal* 227 (1960):

. . . As life in this society of ours daily becomes more complex, and as the need for community services by the Indian people rises, the effectiveness and efficiency of the Indian courts will more and more be drawn into focus . . . the inadequacy of the facilities and services and resources available to the Indian courts is

becoming increasingly apparent. For example, in the area of juvenile delinquency, most Indian courts do not have available to them the services of State institutions or the services of professional people to assist in the treatment and rehabilitation of Indian juveniles. In this situation about all an Indian court can do is to counsel with the juvenile and either send him home or place him on probation. Incarceration as a form of punishment for a juvenile is not an answer, and the courts have recognized this. It seems axiomatic that the effectiveness of a court is related directly to the resources available to it in the treatment of offenders with which it must deal. . . .

38. Staff interview.
39. Staff interview.
40. Staff interview.
41. Confidential letter on file at the Commission.
42. Commission field notes.
43. Commission field notes.
44. Farber, *Indians, Law Enforcement and Local Government* 68, 69 (1957).
45. Commission field notes.
46. Commission field notes.
47. Under a prior statute (39 Stat. 865, December 1916) the State of Nebraska was given authority to tax Indian lands belonging to members of the Winnebago and Omaha tribes for "local, school district, road district, county and State" purposes. It is reported that Thurston County, which includes the Omaha and Winnebago Reservations, collects as much as \$53,000 annually from taxes on Indian lands.
48. Act of Aug. 14, 1935, 49 Stat. 620.
49. Memo Solicitor Department of Interior, Apr. 22, 1936.
50. On Mar. 21, 1952, Arizona established (by ch. 83 of the Laws of 1952) a plan of aid to the permanently and totally disabled under the social security program, providing "that no assistance shall be payable under such plan to any person of Indian blood while living on a Federal Indian reservation." The Federal Security Administrator refused to approve the plan, and the State brought suit against the United States in the U.S. District Court for the District of Columbia, where it was dismissed. An appeal to the U.S. Court of Appeals was denied May 13, 1954 (No. 11839). Since then Arizona has made no effort to establish aid for the totally disabled. Letter From John A. Carver, Jr., *supra*, note 26.
51. On Dec. 17, 1954, the Arizona State Welfare Board reversed the denial by the Graham County Welfare director of general welfare

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assistance to a reservation Indian and unanimously approved a grant to a San Carlos Apache living at Bylos, on the reservation. Letter From John A. Carver, Jr., *supra*, note 26.

52. S.D. Code Title 50 (1939).

53. Commission field notes.

54. *Acosta v. County of San Diego*, 272 P. 2d 92 (Cal. 1954).

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## Part IX—THE NEED FOR BROADER ACTION

### NOTES

1. *State of the Union Message*. 107 *Cong. Rec.* 1360, 1362 (daily ed. Jan. 30, 1961).
2. See pt. III, ch. 4.
3. See pt. V, ch. 5. See generally pt. V, chs. 3, 4, 6; *Detroit Hearings* 36; *California Hearings* 639.
4. See pt. IV, ch. 8; pt. V, chs. 1, 3, 4, 5; Ginzberg, *The Negro Potential* 92-97 (1956); *Detroit Hearings* 36, 90, 121-22.
5. See pt. IV, ch. 7, *supra*; see also *Detroit Hearings* 36; *California Hearings* 449-50.
6. See pt. IV, ch. 7, *supra*; see also *Detroit Hearings* 137-38.
7. *California Hearings* 349. See also *id.* at 25, 261, 278-81, 283-84, 335-43, 423, 702-703; *Detroit Hearings* 36, 50, 58-59, 98, 114-15, 131.
8. See pt. VII, ch. 2, *supra*.
9. *Detroit Hearings* 58.
10. See pt. II, Recommendation 5.
11. See pt. IV, Recommendation 12.
12. See pt. V, Recommendation 2.
- 12a. See pt. VI, Recommendation 7.
13. The Health Department of New York City, for example, announced that beginning January 1961, identification of "color" and "race" would be dropped from birth certificates in that city, but for needed statistical purposes, this information would be recorded on the back of corresponding documents in the Department's confidential medical file. *N.Y. Times*, Dec. 27, 1960, p. 1.
14. See pt. II, Recommendations 1, 2, 3, 4; pt. IV, Recommendation 1; pt. V, Recommendation 9; pt. VII, Recommendation 1.
15. See pt. IV, Recommendations 3, 7; pt. V, Recommendation 1.
16. Remarks of the President at meeting of President's Committee on Equal Employment Opportunity. White House Press Release, Apr. 11, 1961.
17. See pt. IV, Recommendations 2, 9, 11; pt. V, Recommendation 8.
18. See pt. IV, Recommendations 4, 10.
19. See pt. V, Recommendations 6, 7.
20. See pt. V, Recommendations 4, 5.
21. See pt. VI, Recommendation 2(d).
22. See pt. IV, Recommendation 8; pt. V, Recommendations 2, 3; pt. VI, Recommendations 1, 2.

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