It has been reported in the press that the Attorney General has stated that the Federal Government lacks power to take "preventive police action" in Mississippi to secure the safety of persons who have come into that State to aid its colored residents in the effective exercise of their rights as citizens of the United States. The undersigned students of public law are troubled by the misleading simplicity of this reported pronouncement, and believing that the Federal power to take protective action in the circumstances that now prevail in Mississippi is clear, are moved to make this statement.

Under Section 332 of Title 10 of the United States Code the President is authorized to use the State militia and the armed forces of the United States, "whenever he considers tha unlawful obstructions, conbinations or assemblages... make it impracticable to enforce the laws of the United States... by the ordinary course of judicail proceedings." Should the President be persuaded that judicial precesses are not able to secure the rights of Negro voters in Mississippi, or should he consider that those processes are not effectively safeguarding the rights of other Americans as they are defined in existing Civil Rights Acts (e.g. Section 1981 and 1983 of Title 42) the quoted section would clearly authorize him to use armed forces to secure the rights referred to.

Of course the Attorney General knows this, for it was under Section 332 that President Kennedy took military action at the University of Mississippi in 1962. Quite probably two considerations are factors in the Attorney General's determination that Section 332 has no immediate relevance. He and the Presiden may be convinced that the time has not yet come to send military forces into Mississippi-- that other processes should be exhausted before that most drastic of all remedies is pursued. If that judgment is a crucial element

in the decision one wished that it had been reported, for it would have made it clear that it is not lack of presidential power to act but the absence of a conviction that action is now called for that explains non-action. Furthermore, the Attorney General may, with some justification, feel that when military action is taken under Section 332 it is not fairly to be described as "police action" -- the type of action which he has denied the Federal Government is empowered to take. These considerations, which may explain the Attorney General's rejection of the current relevance of Section 332, seem far less applicable to the provisions of Section 333 of Title 10.

Under the terms of that Section the scope of the presidential power to take protective and preventive action is not confined to the use of the militia or armed forces. Though Section 33 mentions specifically the power to use those forces it also empowers him "by any other means (to) take such action as he considers necessary to suppress, in a State, any insurrection, domestic violence, unlawful conbination, or conspiracy, if it (1) so hinders the execution of the laws of that State, and of the United States within the State, that any part or class of its people is deprived of a right, privilege, immunity, or protection named in the Constitution and secured by law, and the constituted authorities of that State are unable, fail, or refuse to protect that right, privilege, or immunity, or to give that protection; or (2) opposes or obstructs the execution of the laws of the United States or impedes the course of justice under those laws."

Surely there is reason to believe that violence and combination are now so hindering the execution of the laws of Mississippi and of the United States as to deny to the Negroes of Mississippi rights secured by the Constitution and laws of the United States. Whether the deplorable circumstances are such as to make the provisions in subsection

(1) of the quoted section now operative is not important, for there can be no question but that the provisions of subsection (2) fit the present circumstances precisely. Violence, combination, and conspiracy in Mississippi are unquestionably obstructing the execution of the civil rights laws of the United States -- the provisions, that is, of Sections 1981 and 1983 of Title 42 and the provisions of the Acts of 1957 and 1960 with respect to voting rights.

Doubtless some creditable considerations of expedience could be cited to support a decision against now taking vigorous presidential action under Section 333 in Mississippi. Surely, however, the Attorney General's position would be less misleading and therefore less perilous if he would acknowledge that the President today has power to act but believes the "police action" under Section 333 of Title 10 is inadvisable.

In the year 1879 it was argued in the Supreme Court of the United States that when Federal marshals sought to enforce the electoral laws of the United States their conduct infringed the prerogatives of the States-- that the Nation, in other words, could not, through the authority of its agents, Take "police action" within the borders of any State. "It is argued", said Mr. Justice Bradley, "that the preservation of peace and good order in society is not within the powers confided to the government of the United States, but belongs exclusively to the States. Here again we are met with the theory that the government of the United States does not rest upon the soil and territory of the country. We think that this theory is founded upon an entire misconception of the nature and powers of that government. We hold it to be an incontrovertible principle, that the government of the United States may by means of physical force, exercised through its official agents, execute on every foot of American soil the powers and functions that belong to it.

We, the undersigned, as members of the University of Wisconsin faculty, support in principle this statement tnd urge that the President and the Attorney General take appropriate action in Mississippi under their constitutional and legal authority when deemed appropriate.

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