

BRIEF MEMORANDUM ON FEDERAL CIVIL RIGHTS AUTHORITY

I. LEGAL AUTHORITY OF THE FEDERAL GOVERNMENT IN CR MATTERS.

The principle areas in which the federal government is authorized to go into court to protect civil rights is that of the vote. The main law is section 1971 of Title 42 of the U.S. Code. This section was amended by the Civil Rights Act of 1957 and further amended by the Civil Rights Act of 1960.

As the section now stands the federal government can do the following: (1) Ask the federal court for injunctions to prevent intimidation of people attempting to register to vote or to do any other act in connection with the right to vote, (2) Request the appointment of voting referees to register persons denied the right to vote, and (3) Ask for whatever orders are necessary to fully guarantee the right to vote.

Suits under this section may also be brought by private persons--however, there is some doubt as to the court's power to appoint voting referees when the suit is so initiated; the better view of the law would appear to be that the court has such inherent power in any case.

The most dramatic use of section 1971 was in a recent suit in Halifax Co., North Carolina, where the private parties requested and received extremely far-reaching relief. The Federal District judge apparently ordered the registrar to (1) hire additional deputy registrars; (2) process the applications for registration at the rate of no less than one every five minutes; (3) directed the FBI to observe the registration process and report back to the court; (4) directed the federal marshalls to protect prospective registrants; and (5) ordered the federal district attorney and the Justice Department to come into the case. The relief granted in this suit by private parties apparently exceeds that achieved by the Justice Department in any of its numerous cases. (However, the Justice Department's Civil Rights Division was successful in securing rather far-reaching relief in the Pano-la County, Mississippi, case, U.S. v. Duke, a few days ago.) The referee procedure can be enormously effective if properly done. (See remarks of the Honorable James Corman, page 1593, Congressional Record, Feb 1, 1964.)

Another key provision of law protecting the right to vote is, of course, the 15th amendment to the constitution. This may be useful in some cases.

In any case, voting or otherwise, in which a person interferes with or otherwise obstructs the effectiveness of a Federal Court order he may be fined up to \$1,000 and imprisoned for no more than one year. This provision was added by the Civil Rights Act of 1960. (Section 1509, Title 10, U.S. Code.)

That same act also made it a Federal crime to flee across state lines to avoid persecution for attempting to or damaging or destroying any building, dwelling, house, church, or educational institution or in connection with any such crime. More importantly, anyone having any connection whatsoever with the use of any explosive material in connection with damaging or destroying any such buildings commits a Federal crime.

Also of great importance is the section which makes it a crime to threaten in any way whatsoever the damage or destruction in any manner of such buildings. (Sections 837 and 1074, Title 18 U.S. Code.)

Section 1927 of Title 42 of the U.S. Code requires all federal judicial officials such as U.S. Attorneys, Marshalls and Commissioners to arrest and prosecute all persons violating any of the older civil rights statutes. This section has been largely ignored by the Justice Department and other Federal officials. Under section 1992, the President has the power to order the judge, marshall, and U.S. District Attorney of any judicial district to go immediately to any place in their district and to arrest and try any person violating any of the older civil rights laws. (The older civil rights laws include sections 241 and 242 of Title 18, which are the statutes making it a crime to deprive any person of his Constitutional rights.)

Section 241 of Title 18 of the U.S. Code makes it a crime for two or more persons to conspire to deprive or intimidate any person in the employment of his Constitutional rights or rights secured by the laws of the United States. Section 242 of Title 18 makes it a crime for any person, one or more, under color of law to deprive any other person of rights secured by the Constitution or laws of the United States. Section 243 makes it a crime for any person in any manner to be a party to discrimination on account of race in the selection of any jury, state or federal. Although 241 and 242 have been restrictively interpreted by the courts, they still have not begun to be used by the Justice Department to the extent that their validity merits in police brutality cases. The Justice Department's Civil Rights Division has repeatedly taken the position that since Southern juries will not convict, almost no prosecutions will be brought under Section 242 of Title 18.

It also should be noted that there are many suits and types of action that cannot be brought by the U.S. Government, but can only be brought by private persons. Such actions, for example, are school integration suits. In these cases when a court order is obtained, it may then be necessary for the federal government to become a party to the suit in order to insure the enforcement of the court order. This was true in the Meredith case.

A. Authority for the use of marshals and the FBI.

The Federal marshal and his deputies, in executing the laws of the United States within a state has the same powers that a sheriff of that state has in enforcing the state laws. (Section 549, Title 20, U.S. Code.) Both U.S. marshals and agents of the FBI are authorized to (1) carry firearms; (2) serve warrants and subpoenas; (3) make arrests without warrants and on the spot for any offense against the United States committed in their presence; and (4) arrest for any felony under the laws of the United States if they have reasonable grounds to believe that the person to be arrested has committed or is committing such felony. (Sections 3052 and 3053, Title 18, U.S. Code.) This power has almost never been used in even the most blatant violations of the U.S. civil rights criminal statutes.

B. Authority for the Use of Troops or Whatever Force is Necessary.

The Federal Government, through the person of the President, has more than ample authority to make sure that the Constitution and the laws of the United States relating to the civil rights of all its citizens are enforced and scrupulously adhered to. Section 332 of Title 10 of the U.S. Code provides as follows:

"Use of militia and armed forces to enforce Federal authority.

Whenever the President considers that unlawful obstructions, combinations, or assemblages, or rebellion against the authority of the United States, make it impracticable to enforce the laws of the United States in any State or Territory by the ordinary course of judicial proceedings, he may call into Federal service such of the militia of any State, and use such of the armed forces, as he considers necessary to enforce those laws or to suppress the rebellion. (Aug. 10, 1956, ch. 1041, 70A Stat. 15.)"

It is to be noted that this section is one of enormous power, since the President may use troops to enforce the laws even though it is only "impracticable to enforce the laws of the United States in any state or territory by the ordinary course of Judicial proceedings." Such conditions clearly exist today and have existed for many years in many southern states such as Mississippi and Alabama. The statute plainly says that when effective enforcement of the laws of the United States is not obtained through the courts, then troops may be used.

Another, more specific, section is Section 353 of Title 10 of the U.S. Code:

Interference with State and Federal Law.

The President, by using the militia or the armed forces, or both, or by any other means, shall take such measures as he considers necessary to suppress, in a State, any insurrection, domestic violence, unlawful combination, or conspiracy, if it--

(1) so hinders the execution of the laws of that State, and of the United States within the State, that any part or class of its people is deprived of a right, privilege, immunity, or protection named in the Constitution and secured by law, and the constituted authorities of that State are unable, fail, or refuse to protect that right, privilege, or immunity, or to give that protection; or

(2) opposes or obstructs the execution of the laws of the United States or impedes the course of justice under those laws.

In any situation covered by clause (1), the State shall be considered to have denied the equal protection of the laws secured by the Constitution. (Aug. 10, 1956, ch. 1041, 70A Stat. 15.)"

Section 333 is of considerable power and is normally invoked together with Section 332 to send in troops in racial situations such as the Little Rock and Oxford crises. However, the important point is that both of these sections are far, far broader than those limited situations; and the sections fully authorize much more extensive use of troops to rectify the existing conditions in such states as Mississippi and Alabama.

It is to be noted, however, that immediately prior to invoking either Section 332 or 333, the President, pursuant to Section 334, must issue a proclamation ordering those persons blocking the execution of laws to cease such action. (Frequently, this requirement is complied with by simply signing the proclamation paper a few minutes prior to the 332 and 333 papers.)

A further point should be made that, under the Republican Form of Government Clause of the Constitution (Article IV, Sec. IV), the President initially and the Congress ultimately have the power of recognizing the legitimate government of a state. It could well happen this summer that an insurgent government be set up in Mississippi seeking recognition as the lawful government of that state. In such a case, the Supreme Court has held (Luther v. Borden; Texas v. White) that first the President and ultimately the Congress have the power to decide which is the legitimate government of a state under the Republican Form of Government Clause and that this decision is not subject to review in the courts. Such a condition occurred (1) during Dorr's Rebellion in 1848 in Rhode Island based upon the denial of the right to vote of a substantial part of the the population (as exists today in Mississippi) and (2) in Texas and other southern states immediately after the Civil War when various rival governments were seeking recognition by the President and the Congress. (Title 10, Section 331, U.S. Code; U.S. Constitution, Article IV, Section IV.)

SOME PROVISIONS FOR FEDERAL PROSECUTION IN CIVIL RIGHTS

From Title 18 U.S.Code

FBI Arrests - 18 U.S.Code, Section 3052: The Director, Associate Director, Assistant to the Director, Assistant Directors, inspectors, and agents of the Federal Bureau of Investigation of the Department of Justice may carry firearms, serve warrants and subpoena issued under the authority of the United States and make arrests without warrant for any offense against the United States committed in their presence, or for any felony cognizable under the laws of the U.S. if they have reasonable grounds to believe that the person to be arrested has committed or is committing such felony.

Interference with the Vote - 18 U.S. Code, Section 594: Whoever intimidates, threatens, coerces, or attempts to intimidate, threaten or coerce, any other person for the purpose of interfering with the right of such other person to vote or to vote as he may choose, or of causing such other person to vote for, or not vote for, any candidate for the office of President, Vice President, Presidential elector, Member of the Senate, or Member of the House of Representatives, Delegates or Commissioners of the Territories or Possessions, at any election held solely or in part for the purpose of electing such candidate, shall be fined not more than \$1,000 or imprisoned not more than one year or both.

Deprivation of Constitutional Rights - 18 U.S. Code, Section 242: Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, (or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens,) shall be fined not more than \$1,000 or imprisoned not more than one year, or both.