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No. 80-1348

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

UNITED STATES OF AMERICA.

Plaintiff-Appellant

v.

CITY OF PHILADELPHIA, et al.,

Defendants-Appellees

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BRIEF FOR THE UNITED STATES AS APPELLANT

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(CORRECTED)

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STATEMENT OF JURISDICTION

This suit by the United States seeks injunctive and declaratory relief against policies, practices, and procedures of the Philadelphia Police Department that result in brutality and other violations of federal law. On October 30, the district court dismissed the complaint, except to the extent that it alleges racial discrimination in a federally assisted program. On December 13, the remaining claims were dismissed.

The present appeal is from an order of the district court entered on December 26, 1979, which incorporated the two orders of dismissal (A 156).[1/] We certify that the December 26 order is a final judgment for purposes of 28 U.S.C. 1291.

ISSUES PRESENTED

1. Whether the district court erred in holding that the Attorney General lacks authority to bring this action, on behalf of the United States, to enjoin official policies and practices that foster police conduct violating the Fourteenth Amendment and 18 U.S.C. 241-242.

2. Whether the district court erred in dismissing, for lack of specificity, the allegations concerning discrimination in a federally assisted program.

STATEMENT

A. Procedural history

In August 1979, the Attorney General commenced this action against the City of Philadelphia and 20 of its officials, includ-

1/ The abbreviation "A" refers to the pages of the Appendix.

(continued)

ing the Mayor and the Police Commissioner (A 11-16). The individuals are sued only in their official capacities (A 16). The complaint alleges that, without regard to racial discrimination, the challenged practices of the Philadelphia Police Department violate the Due Process Clause of the Fourteenth Amendment (A 8-9). In addition, it alleges that the practices discriminate against blacks and Hispanics in violation of the Equal Protection Clause and statutory prohibitions against racial discrimination in federally assisted programs (A 10).[2/]

On September 4, the defendants filed answers, denying the basic allegations of the complaint and raising the issue of standing (A 4, 36).[3/] The district court requested briefs on the issue of the Attorney General's standing to maintain the suit. On October 30, the court dismissed the complaint "in all respects, except to the extent that it charges discrimination on the basis of race, color or national origin in the administration of federally funded programs" (A 141).

The district court held that "the Attorney General has no standing . . . when he seeks to advance the civil rights of third persons, absent an express grant of the necessary power by an Act

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1/ (continued)

The two opinions of the district court are reported at 482 F. Supp. 1248 (October 30 opinion) and 1274 (December 13 opinion).

2/ The complaint also alleges violation of the rights of persons traveling in interstate commerce (A 9) and of constitutional principles that are an implied condition of federal grants (A 10).

3/ In response to interrogatories of the defendants, the United States provided extensive information on the incidents underlying the complaint's allegations. The answers to the interrogatories were filed on September 5 and 12 and October 9 and are contained in the record.

of Congress" (A 98; 482 F. Supp. at 1252). In rejecting the various arguments of the United States, the court attributed "overwhelming significance" to the fact that, in connection with the Civil Rights Acts of 1957, 1960 and 1964, Congress considered, but did not enact, provisions which, according to the court, would have authorized the Attorney General to bring suits like the present one (A 99, 482 F. Supp. at 1253). The district court followed the decisions in United States v. Solomon, 563 F.2d 1121 (4th Cir. 1977), and United States v. Mattson, 600 F.2d 1295 (9th Cir. 1979).[4/]

On November 20, the defendants filed a motion to dismiss the remaining claims. This motion, which was treated as a motion for judgment on the pleadings, was based in part on the assertion that the complaint does not meet the "special pleading requirements for civil rights cases . . ." (A 142-143). The motion was granted on December 13 (A 153). The district court held that the specific-pleading requirement was applicable and that the allegations of discrimination failed to set forth the underlying facts and, therefore, were not sufficiently specific (A 145; 482 F. Supp. at 1275).[5/]

The final judgment, dismissing the entire action, was entered on December 26, 1979 (A 7, 156).

4/ The district court also relied on United States v. Elrod, No. 76 C 4768 (N.D. Ill. 1978), which has been appealed by the United States, No. 79-1394, 7th Cir.

5/ The court granted the United States leave to file an amended complaint within 20 days (A 153). The United States did not do so, but moved for entry of final judgment (A 154).

B. Factual allegations

Because this is an appeal from the dismissal of a complaint, the pertinent facts are those alleged in the complaint. Two kinds of allegations form the basis for this suit--first, that individual employees of the Philadelphia Police Department have engaged and continue to engage, on a widespread basis, in brutality and other violations of federal law; and, second, that these violations result from and are encouraged by policies, practices and procedures of the defendants.[6/]

One category of allegations relates to the Police Department's treatment of persons who are encountered on the streets or elsewhere. This category includes the following conduct: randomly stopping automobiles and pedestrians and responding, by physical abuse, to resulting protests; conducting illegal searches and seizures; physically abusing arrested persons; detaining persons without probable cause; and subjecting individuals to verbal abuse, including racial slurs (A 17-18). Another category of allegations pertains to the use of deadly force. The complaint alleges that the defendants permit the use of firearms in circumstances violating state or federal law, e.g., the shooting of criminal suspects who offer no realistic threat to any other person (A 18-19).

The complaint alleges that internal procedures maintained or approved by the defendants contribute to the physical abuse and other violations (A 16-17). These include investigative and

6/ In the following discussion, the term "practices" is sometimes used to include policies, practices and procedures.

disciplinary practices that condone the violations of rights (A 17). Examples of these practices include discouraging victims of physical abuse from filing complaints (A 25); compiling reports that justify the police officer's conduct, regardless of the actual circumstances (A 25); and refusing to discipline police officers for known violations (A 28).

Other unlawful practices, including racially discriminatory practices, and the relation of the defendants to them are alleged in detail (A 11-29).

Finally, in support of the present claims for declaratory and injunctive relief, the complaint alleges that no other effective remedy exists (A 32). The essence of these allegations is as follows: because of the systemic nature of the violations, criminal prosecutions of individual policemen [7/] have not brought about and cannot bring about cessation of the pattern of unlawful conduct; and, because of the limited resources of private litigants, private suits have not succeeded and cannot succeed in doing so (A 32).

C. Statement concerning related cases

The present case has not been before this Court previously. We are not aware of any case pending before or about to be presented to this Court that is related to this suit.

7/ E.g., United States v. Ellis, No. 78-1555 (3rd. Cir., Mar. 13, 1979).

SUMMARY OF ARGUMENT

The complaint in this suit sets forth alternative grounds for holding the challenged practices of the Philadelphia Police Department to be unlawful. It alleges that, without regard to racial discrimination, conduct fostered by the defendants violates the Due Process Clause of the Fourteenth Amendment, as well as 18 U.S.C. 241-242. In addition, the complaint alleges that the practices discriminate against blacks and Hispanics and thereby violate the Equal Protection Clause and statutory prohibitions against racial discrimination in federally assisted programs.[8/]

1. Regarding the Due Process claims, the primary question is not whether the Attorney General is authorized to sue, but whether the United States has a cause of action. Cf. Davis v. Passman, 442 U.S. 228, 239, n.18 (1979). This issue necessarily depends upon the particular facts. The complaint alleges a widespread and continuing pattern of abuse, including brutality, on the part of police officers in Philadelphia. We allege that this pattern results from and is encouraged by policies, practices and procedures of the defendant officials. Other remedies are not adequate to secure the correction of these conditions.

In these circumstances, this Court should infer a cause of action for the United States. One basis for doing so is 18 U.S.C. 241-242, criminal provisions derived from Reconstruction-era civil rights statutes. Regarding an implied statutory cause of action

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8/ The Equal Protection claims overlap those based upon the nondiscrimination statutes and need not be considered separately.

for the United States, congressional purpose is the key consideration. Wyandotte Transportation Co. v. United States, 389 U.S. 191 (1967). Cf. Cannon v. University of Chicago, 441 U.S. 677 (1979).

The legislative history of the early civil rights acts does not address directly the question of actions of this type by the United States. However, the general purpose of the legislation--federal protection of the rights of individuals as against state authority--supports the present cause of action. In addition, other provisions of these acts, e.g., 10 U.S.C. 333, make clear that a broad role for the federal executive was contemplated.

In the opinion accompanying its December 30 order dismissing the Due Process and Equal Protection claims, the district court followed the decisions in United States v. Solomon, 563 F.2d 1121 (4th Cir. 1977), and United States v. Mattson, 600 F.2d 1295 (9th Cir. 1979), and relied heavily upon the legislative history of the Civil Rights Acts of 1957, 1960 and 1964. The district court's discussion of that legislative history is inaccurate and incomplete. Only in connection with the 1964 Act was there consideration of an authority-to-sue provision that would have encompassed the present Due Process claims. The most significant aspect of the 1964 Act, however, is Section 1103, 42 U.S.C. 2000h-3, which states that: "Nothing in this Act shall be construed to deny, impair, or otherwise affect any right or authority of the Attorney General or of the the United States . . . under existing law to institute . . . any action or proceeding."

Here, the basis for the implied statutory cause of action is Reconstruction-era legislation. Later Congresses have not altered the validity of that basis.[9/]

We alleged that, because of the exceptional situation described in the complaint, the ordinary remedies--criminal prosecutions under 18 U.S.C. 241-242 or private civil actions under 42 U.S.C. 1983--are not adequate. The district court, which stated that the express remedies are adequate, failed to acknowledge the factual or practical aspect of this question.

The alternative basis of the cause of action of the United States is the Constitution itself. Cf. Bivens v. Six Unknown Named Agents, 403 U.S. 388 (1971); Davis v. Passman, supra. Extension of Bivens and Passman to a Fourteenth Amendment cause of action for the United States is appropriate in this case. The duty of the President, under Article II, Section 3, to execute the laws encompasses protection of Fourteenth Amendment rights. Congress has not prohibited the United States from bringing this type of action. In light of the facts alleged here, this Court should effectuate the Fourteenth Amendment by finding an implied cause of action based on the Constitution.

2. The December 13 order of the district court dismissed, for lack of specificity, the complaint's allegations of discrimination in a federally assisted program. This order is flatly

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9/ In the present case, in contrast to Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952), there is no inconsistency between the will of Congress and the action of the executive branch in bringing the Due Process claims. Cf. Halderman v. Pennhurst State School & Hospital, 612 F.2d 84 (3d Cir. 1979) (en banc).

contrary to the letter and spirit of the Federal Rules of Civil Procedure. There is no sound basis for applying to these claims of the United States a requirement used, in certain kinds of private "civil rights" suits, to weed out frivolous cases at an early stage. The present complaint meets the applicable standard of notice pleading. Cf. Conley v. Gibson, 355 U.S. 41 (1957).

According to the district court, the complaint was deficient because it failed to set forth detailed information regarding the incidents upon which the allegations of a "pattern or practice" of discrimination are based. In fact, extensive information of that very type--names, dates, places, kinds of violation--was provided to the defendants in the appropriate way, discovery.

STANDARD OF REVIEW

The issues presented by this appeal are issues of law. The standard of review, therefore, is whether the district court erred in its rulings on those legal issues.

ARGUMENT

I.

THE ATTORNEY GENERAL MAY MAINTAIN THIS ACTION ON BEHALF OF THE UNITED STATES TO REMEDY A SEVERE PATTERN OF DUE PROCESS VIOLATIONS ENCOURAGED BY DEFENDANTS' POLICIES AND PRACTICES

In this suit, the United States seeks to vindicate fundamental constitutional rights. The complaint alleges that the defendants have systematically encouraged police brutality and other violations of the Fourteenth Amendment and of 18 U.S.C. 241-242, the criminal statutes that protect Fourteenth Amendment rights.[10/] The district court stated that there is "no authority, express or implied, for the bringing of . . . [these claims]" and held that "the Attorney General has no standing . . . when he seeks to advance the civil rights of third persons, absent an express grant of the necessary power by an Act of Congress" (A 98; 482 F. Supp. at 1252).

The issue of authority to bring this action requires consideration of several related concepts--standing, authority to sue, and cause of action. Cf. Davis v. Passman, 442 U.S. 228, 239, n.18 (1979), where the Supreme Court discussed the meaning

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10/ We deal here with issues raised by the district court's October 30 order. Part II of our argument addresses the dismissal, on December 13, of the claims under the nondiscrimination statutes.

The complaint alleges violation of both the Equal Protection Clause and the Due Process Clause. Because the Equal Protection claims pertain to discrimination against blacks and Hispanics and overlap the claims under the nondiscrimination statutes, we will not deal separately with the Equal Protection claims.

of "jurisdiction,"[11] "standing,"[12] "cause of action," and "relief." With regard to the Due Process claims in the present case, the issues are (1) whether the Attorney General has authority to sue on behalf of the United States, and (2) whether the United States has a cause of action.[13] The fundamental issue is the latter one. For reasons described below, it is clear that if, as we maintain, the United States has a cause of action, the Attorney General is the official authorized to bring the lawsuit.

A. The Attorney General has authority to sue on behalf of the United States

The Attorney General has had the authority to bring civil suits on behalf of the United States since the office was

11/ In the present case, there is no question with regard to jurisdiction. Under 28 U.S.C. 1345, "[e]xcept as otherwise provided by Act of Congress," the district courts have jurisdiction over "all civil actions . . . commenced by the United States . . . ."

12/ In Davis v. Passman, the Supreme Court defined "standing" as the question "whether a plaintiff is sufficiently adversary to a defendant to create an Art. III case or controversy, or at least to overcome prudential limitations on federal-court jurisdiction . . . ." 442 U.S. at 239-240, n.18. In the present case, with regard to the Due Process claims, as well as the claims of racial discrimination, there is adversity between the United States and the defendants.

The individual defendants are sued solely in their official capacities. Accordingly, the fact that several of the individuals named in the complaint have been succeeded in office (see Rule 25(d)(1), Fed. R. Civ. P.) does not result in mootness. Nothing in the record shows that the challenged practices of the Police Department have been changed.

13/ In Davis v. Passman, the Supreme Court explained "cause of action" as the question "whether a particular plaintiff is a member of the class of litigants that may, as a matter of law, appropriately invoke the power of the court." 422 U.S. at 240, n.18.

created by the first Congress in the Judiciary Act of 1789.[14] Neither at that time, nor since, has Congress attempted to spell out the substance of the Attorney General's litigation authority.[15]

In 1870, when Congress created the Department of Justice, the duties of the Attorney General included attending to the legal interests of the Government. The definition of these duties was no more explicit than the Judiciary Act of 1789 had been.[16] Section 5 of the 1870 Act[17] noted the authority of the Attorney General to participate in any case in which the Government was interested, and provided that he could do so personally or direct another Department of Justice officer to do so. Subse-

14/ Act of September 24, 1789, ch. 20, § 35, 1 Stat. 92. This act also gave the federal trial courts jurisdiction over lawsuits brought by the United States. See Sections 9 and 11, 1 Stat. 76-78.

15/ The Attorney General's litigation authority is derived from the nature of the office, which is defined by reference to the contemporaneous understanding of the term "attorney general" in 1789 and the practice in the colonies and England. See Key, The Legal Work of the Federal Government, 25 Va.L.Rev. 165 (1938).

16/ Congress expressed its preference for enacting legislation in general terms in 1789, in contrast to the suggestion of greater specificity made by Attorney General Randolph, REPORT OF THE ATTORNEY GENERAL, 11 (1789). This trend of not explicitly describing within each statute its application and meaning also applied to the Attorney General. See the opinion of Attorney General Caleb Cushing on the "Office and Duties of the Attorney General", 6 Opinions of the Attorney General 326, 341 (1854).

17/ Act of June 22, 1870, ch. 150, 16 Stat. 162.

quent recodifications of Section 5 (now 28 U.S.C. 518(b)) have not changed Congress' recognition of this authority.[18/]

The power of the Attorney General to bring suit in the absence of a specific grant of statutory authority has long been recognized by the Supreme Court,[19/] as has the lack of specificity in describing the Attorney General's role. For example, in United States v. San Jacinto Tin Co., 125 U.S. 273, 278-279 (1888), a suit involving land fraud, the Court said that:

> There is no very specific statement of the general duties of the Attorney General, but it is seen from the whole chapter referred to that he has the authority, and it is made his duty, to supervise the conduct of all suits brought by or against the United States . . . . * * * He is undoubtedly the officer who has charge of the institution and conduct of the pleas of the United States, and of the litigation which is necessary to establish the rights of the government.

See also Kern River Co. v. United States, 257 U.S. 147, 155 (1921), and Sanitary District v. United States, 266 U.S. 405, 426 (1925) (recognizing that the Attorney General may institute suit without specific statutory authority). In United States v. California, 332 U.S. 19, 27 (1947), an action to determine rights in submerged coastal lands, the Court noted that:

> It is not denied that Congress has given a very broad authority to the Attorney General to institute and conduct litigation in order to

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18/ In 1873, under the first Revised Statutes, Section 5 became Section 359. When the United States Code came into existence in 1926, Section 359 of the Revised Statutes became 5 U.S.C. 309. In 1966 when the Department of Justice Act became a part of Title 28, 5 U.S.C. 309 became the present 28 U.S.C. 518(b). Section 518(b) is set forth in the Addendum, infra.

19/ See generally the cases cited in Halderman v. Pennhurst State School & Hospital, 612 F.2d 84, 91 n.7 (3d Cir. 1979) (en banc).

> establish and safeguard government rights and properties (footnote omitted).

These cases, while recognizing the authority of the Attorney General to initiate a civil action without specific statutory authorization, do so with the restriction that the case must be one in which the United States has an interest, that it not be a purely private dispute. United States v. San Jacinto, supra, 125 U.S. at 285-286.[20/]

An express statute authorizing the Attorney General to bring claims of the present type would eliminate the issue, but there is neither an express grant of such authority nor any congressional prohibition against the Attorney General's bringing such claims.[21/] The district court's statement (A 98; 482 F. Supp. at 1252) that the Attorney General may not bring a civil rights suit in the absence of an express statute is not sound. The district court's approach to this separation-of-powers issue is in-

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20/ One case that discusses the authority of the Attorney General, under the predecessor of 28 U.S.C. 518(b), to represent the "interest of the United States" in litigation is Booth v. Fletcher, 101 F.2d 676 (D.C. Cir. 1938), cert. denied, 307 U.S. 628 (1939) (defending suit against federal judges). The "interest" analysis is not different in substance, however, from the analysis, infra, of the question whether the United States has a cause of action.

21/ We discuss below the view of the district court that the failure of Congress to include in the Civil Rights Acts of 1957, 1960 and 1964 certain broad authority-to-sue provisions means that the bringing of the present claims is contrary to the will of Congress. For reasons explained below, the district court's view is not correct.

consistent with the views expressed by this Court in Halderman, supra, 612 F.2d at 91-92.[22/]

The primary question here is not the authority of the Attorney General, but the related question whether the United States has a cause of action. The latter issue turns upon an analysis of the present suit, congressional action in this area, and the relationship between them.

B. The United States has a cause of action to remedy the effects of defendants' violations of Due Process

In the present case, there are two sources for the cause of action of the United States--(1) 18 U.S.C. 241-242, criminal provisions derived from Reconstruction-era legislation, and (2) the Constitution, both the Fourteenth Amendment and the duty of the Executive under Article II, Section 3, to execute the laws.

The cause of action of the United States is grounded upon the exceptional nature of the conditions alleged in the complaint. This suit alleges, not a series of isolated abuses by individual policemen, but a systemic pattern of unlawful conduct. We allege that brutality and other unlawful conduct on the part of Philadelphia policemen is widespread and continuing and that such conduct results from and is encouraged by practices of the defendants.

22/ In Halderman, this Court pointed out the significant difference, from the standpoint of separation of powers, between (1) the executive's invoking the jurisdiction of a federal court and (2) direct action, such as the seizure of steel mills that was held to be unlawful in Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952).

As in Halderman, the instant suit involves the United States appearing before a federal court seeking relief. Although the appearance in Halderman was as plaintiff intervenor instead of plaintiff, this Court's reasoning on the role of the United States as the enforcer of federal law is pertinent to the present case.

These exceptional facts define and limit the nature of our Due Process claims. Moreover, the existence of these facts indicates that other remedies, available to the United States or to private parties,[23/] are not effective.

1. The United States has a cause of action for relief from defendants' policies and practices which encourage widespread violations of 18 U.S.C. 241 and 242

The United States is authorized by 18 U.S.C. 241-242 to initiate criminal proceedings for violations of civil rights.[24/] Section 241 outlaws conspiracies to deny constitutional rights, and Section 242 prohibits action taken under color of state law to deny constitutional rights. These sections have been used by the United States to challenge unlawful behavior by individual policemen or related conspiracies. The instant case is not an effort to punish the individual officers alleged to engage in brutality in Philadelphia. Rather, this is an effort to halt the practices of municipal and Police Department officials that encourage continuation of the abuse. This case is an attempt to achieve, by a variation of the remedy expressly provided, the purposes of Sections 241-242. In other situations where criminal prosecution would not be effective, the United States has been

23/ It is not clear that the inadequacy of private remedies is a requisite for an implied cause of action for the United States. See, e.g., United States v. American Bell Telephone Co., 128 U.S. 315, 371-373 (1888); In re Debs, 158 U.S. 564, 600 (1895). In the present case, however, this question need not be resolved. The complaint alleges that both the criminal remedies of 18 U.S.C. 241-242 and the remedies available to private parties are inadequate to correct the situation at issue here.

24/ Sections 241 and 242 are set forth in the Addendum.

permitted to intervene as plaintiff, based on its duty to enforce Sections 241-242. Adams v. Mathis, No. 78-2035 (5th Cir. Mar. 17, 1980), aff'g per curiam, 458 F. Supp. 302 (M.D. Ala. 1978).[25/]

a. This suit meets the standards for implied causes of action.

The leading case granting the United States an implied statutory cause of action is Wyandotte Transportation Co. v. United States, 389 U.S. 191 (1967).[26/] The defendants there asserted that the United States was not entitled to relief beyond the express statutory remedies (which included criminal sanctions and in rem relief). The Court rejected the defendants' arguments that the detailed provisions of the Rivers and Harbors Act negated the possibility that Congress intended the Government to be able to avail itself of an additional remedy, id. at 200-201. The Court held that the broad congressional purposes embodied in the Act allowed the government to seek other relief (i.e., in personam

25/ The district court in Adams v. Mathis, supra, 458 F. Supp. at 308, concluded that:

> the United States was authorized to intervene in this action pursuant to Rule 24, Federal Rules of Civil Procedure. The government's standing to intervene is supported by its duty to enforce federal criminal statutes generally applicable to the conduct of the defendants proven at trial. Where, as here, such criminal prosecution would not be effective to prevent constitutional violations, this Court may properly infer the existence of derivative civil jurisdiction. * * *

The district court cited Judge Tuttle's opinion in In re Estelle, 516 F.2d 480 (5th Cir. 1975), cert. denied, 426 U.S. 925 (1976). But see the dissent by Justice Rehnquist from the denial of certiorari in Estelle, 426 U.S. at 928-929.

26/ Cf. Cannon v. University of Chicago, 441 U.S. 677, 690-691 n.13 (1979).

relief).[27] Under Wyandotte, the test regarding an implied cause of action for the United States is whether there are other adequate means by which the United States can carry out its responsibility, and whether the lawsuit in question furthers the intent of the Congress that enacted the underlying legislation. As shown below, the United States meets this test here.

The United States has long been permitted, in various contexts, to obtain relief beyond that specified in the applicable statute. See United States v. Stevenson, 215 U.S. 190 (1909); Dollar Savings Bank v. United States, 86 U.S. (19 Wall.) 227, 239-240 (1873). These early Supreme Court cases suggest that the United States need not meet the standards imposed on private plaintiffs when seeking an implied cause of action.[28] Moreover,

27/ After citing cases which had implied civil actions on behalf of private plaintiffs, e.g., J.I. Case Co. v. Borak, 377 U.S. 426 (1964), the Court in Wyandotte said that:

> "Congress has legislated and made its purpose clear; it had provided enough federal law . . . from which appropriate remedies may be fashioned even though they rest upon inferences. Otherwise we impute to Congress a futility inconsistent with the great design of this legislation."

389 U.S. at 202-203, quoting United States v. Republic Steel Corp., 362 U.S. 482, 492 (1960).

28/ In fact, these cases say that the presumption that the inclusion of a particular remedy in a statute precludes the implication of another is reversed when applied to the United States:

> The rule which excludes other remedies where a statute creates a right and provides a special remedy for its enforcement rests upon the presumed prohibition of all other remedies. If such prohibition is intended to reach the Government in the use of known rights and remedies, the language must be clear and specific.

(continued)

in Cannon v. University of Chicago, 441 U.S. 677 (1979), a private suit involving an implied cause of action, both the majority opinion, id. at 691, n.12, and one of the dissents, id. at 793, n.3 (Powell, J.), indicate that somewhat different standards are applicable to the United States and to private parties.

In the present case, Sections 241 and 242 impose upon the United States a responsibility to protect the public from violations of the type alleged to occur in Philadelphia. As in Wyandotte, the express remedies do not meet the needs of the particular situation. Rather than continue repeated use of the criminal process--a process that goes to the results of the defendants' practices--the Attorney General seeks, through a single civil action, to secure effective relief against the underlying system. Assuming that standards similar to those employed regarding implied private rights of action are applicable here, those standards, as well as the Wyandotte standards, are met.

The test for implying a statutory cause of action for a private plaintiff was enunciated by the Supreme Court in Cort v. Ash, 422 U.S. 66, 78 (1975),[29/] where four factors were out-

28/ (continued)

United States v. Stevenson, supra, 215 U.S. at 197. See Dollar Savings Bank v. United States, supra, 86 U.S. at 238-240.

29/ See also this Court's discussion in Halderman, supra, 612 F.2d at 97, where a right of action was implied under the Developmentally Disabled Assistance and Bill of Rights Act, 42 U.S.C. 6001-6081 (1976); and in NAACP v. Medical Center, 599 F.2d 1247, 1251 (3d Cir. 1979), where a private cause of action was implied

(continued)

lined.[30] See also Cannon v. University of Chicago, supra; and Touche Ross & Co. v. Redington, 442 U.S. 560 (1979). In Touche Ross, id. at 575, the Court stated that the element of congressional intent, as garnered from the statutory language, focus, legislative history and purpose, is the central inquiry.

We will now discuss the Cort factors as they apply to the present case. First, Sections 241-242 are criminal statutes enacted for the protection of the general public, and therefore their language is different from civil statutes that expressly identify the class Congress intended to benefit. Cannon, supra,

29/ (continued)

under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, and Section 504 of the Rehabilitation Act, as amended, 29 U.S.C. 794.

30/ The four Cort factors were described as follows (422 U.S. at 78):

> In determining whether a private remedy is implicit in a statute not expressly providing one, several factors are relevant. First, is the plaintiff "one of the class for whose especial benefit the statute was enacted," Texas & Pacific R. Co. v. Rigsby, 241 U.S. 33, 39 (1916) (emphasis supplied)--that is, does the statute create a federal right in favor of the plaintiff? Second, is there any indication of legislative intent, explicit or implicit, either to create such a remedy or to deny one? See e.g., National Railroad Passenger Corp. v. National Assn. of Railroad Passengers, 414 U.S. 453, 458,460 (1974) (Amtrack). Third, is it consistent with the underlying purposes of the legislative scheme to imply such a remedy for the plaintiff? See, e.g., Amtrack, supra; Securities Investor Protection Corp. v. Barbour, 421 U.S. 412, 423 (1975); Calhoon v. Harvey, 397 U.S. 134 (1964). And finally, is the cause of action one traditionally relegated to state law, in an area basically the concern of the States, so that it would be inappropriate to infer a cause of action based solely on federal law? * * * J.I. Case Co. v. Borak, 377 U.S. 426, 434 (1964); Bivens v. Six Unknown Federal Narcotics Agents, 403 U.S. 388, 394-395 (1971); id., at 400 (Harlan, J., concurring in judgment).

441 U.S. at 690-691, n.13. The United States has a duty under Sections 241-242 to protect against violations of constitutional rights. This duty meets the first component of the standard applicable here.

Second, as noted in Cort and Cannon, where a statute is silent regarding the remedy the plaintiff seeks to imply, the legislative history is likely also to be silent. This is indeed the case here--the legislative history of the Reconstruction-era Civil Rights Acts does not reveal any consideration by Congress of providing this kind of civil remedy for the United States. It is not necessary, however, to show specific congressional purpose to create the cause of action, although an explicit purpose to deny it would be controlling. Cf. Cannon, supra, 441 U.S. at 694, citing Cort, supra, 422 U.S. at 82; Halderman, supra, 612 F.2d at 91-92. As discussed below, in the early Civil Rights Acts, there was no grant of such a civil remedy, nor was there any denial. We turn next to the third Cort factor, whether implying the remedy would frustrate the purpose of the legislative scheme.

As the following discussion will show, Sections 241-242 were first enacted as part of a legislative scheme to enforce the Thirteenth, Fourteenth and Fifteenth Amendments to the Constitution. That scheme relied primarily on enforcement action through the judiciary and the executive branches. The present action serves the purpose of these statutes and does not in any way interfere with the express scheme. This Court should therefore be receptive to inferring a civil cause of action for the United States under 18 U.S.C. 241-242. Cf. Cannon, supra, 441 U.S. at 703.

The last factor to be considered under the Cort analysis is whether the subject matter at hand is basically a concern of the states,[31/] thereby making implication of a federal remedy inappropriate. The statutes invoked here are based directly on the Fourteenth Amendment and are meant to protect the exercise of constitutional rights. Cf. Cannon, supra, 441 U.S. at 708; Mitchum v. Foster, 407 U.S. 225, 238 (1972).[32/] Under the Constitution, as well as under Sections 241-242, the federal government has a central role in protecting individuals from unlawful conduct of the type alleged in the complaint.

In sum, the present claims satisfy the Wyandotte standards and standards similar to those set forth in Cort. This suit is consistent with the purpose of the Reconstruction-era Civil Rights Acts. We turn now to an analysis of the legislative history of those acts, beginning in 1866 when the original forerunner of 18 U.S.C. 242 was enacted.

31/ Section 814(a) of the Crime Control Act, as amended, 42 U.S.C.A. 3789d(a), provides that there is to be no federal control over police operations. This provision does not limit efforts to redress constitutional violations.

32/ In Mitchum v. Foster, supra, 407 U.S. at 238, the Court stated:

> . . . basic alteration of our federal system [was] wrought in the Reconstruction era through federal legislation and constitutional amendment. As a result of the new structure of law that emerged in the post-Civil War era--and especially of the Fourteenth Amendment, which was its centerpiece, the role of the Federal Government as a guarantor of basic federal rights against state power was clearly established (footnote omitted).

b. Congress' actions to enforce the Reconstruction Amendments support the cause of action here

The legislative history of 18 U.S.C. 241-242 is tied to congressional efforts during Reconstruction to enforce the newly created constitutional rights. Section 242 began as Section 2 of the Civil Rights Act of 1866, 14 Stat. 27, which was passed under the authority of the Thirteenth Amendment.[33/] The purpose of the Act was to give equal rights to all inhabitants of the United States without regard to race.[34/] After the ratification of the Fourteenth Amendment in 1868, and the Fifteenth Amendment in 1870, the Civil Rights Act of 1870, 16 Stat. 140, was passed. It provided for protection from official and private action, and re-enacted substantial portions of the 1866 Act on the basis of the Fourteenth Amendment. (Section 2 of the 1866 Act became Section 17 of the 1870 Act.) The original basis for 18 U.S.C. 241 is Section 6 of the 1870 Act.

Despite the enforcement provisions of the 1866 and 1870 Acts, the level of violence in the South continued to rise. In a

33/ Other key provisions that began as part of the 1866 Act are Section 1, now 42 U.S.C. 1981-1982. The legislative history of this section has been recounted elsewhere, albeit in a different context. See, e.g., Jones v. Alfred H. Mayer Co., 392 U.S. 409 (1968) (implied private cause of action under 42 U.S.C. 1982). The 1866 Act was also analyzed in United States v. Classic, 313 U.S. 299, 327 (1941); Screws v. United States, 325 U.S. 91, 98 (1945); United States v. Price, 383 U.S. 787, 801-806 (1966).

34/ The Act declared that all persons born in the United States are citizens of the United States, and are equally entitled to specified rights (the right to contract, sue, take and dispose of property, bring actions and give evidence, and to equal benefit of all laws for the security of person and property).

further attempt to redress this problem, the Ku Klux Act, 17 Stat. 13 (1871), was passed. Section 1 of the Act added civil remedies to the criminal penalties imposed by Section 2 of the 1866 Act. While Section 1 of the 1871 Act, the precursor of 42 U.S.C. 1983, created a private cause of action, there is no indication that Congress meant to foreclose alternative remedies available to the United States.[35/] Rather, Section 1983 leaves undisturbed whatever remedy the United States might otherwise possess.

The express remedies possessed by the United States in 1871 for civil rights enforcement were drawn from the 1866 and 1870 Acts and were supplemented by the 1871 Act. Section 3 of the 1866 Act gave jurisdiction to the federal courts over all civil and criminal actions arising under it. Congress favored the federal judiciary as the primary enforcement mechanism for the Act. See the remarks of Senator Trumbull, the bill's sponsor, Cong. Globe, 39th Cong., 1st Sess., 605 (1866); Senator Hendricks, id. at 601; Representative Thayer, id. at 1153. The bill also provided a significant role for the executive branch. The President and his legal officers were to aid the courts in enforcing the Act by invoking their jurisdiction through criminal prosecutions (Sec. 2, Sec. 4); and by directing the special appearance of federal judges when necessary (Sec. 8). Further, the President or his representative could use the military when necessary "to prevent the violation and enforce the due execution of this Act"

35/ The legislative history of Section 1 reveals that it was one of the least controversial sections of the Act. See Chapman v. Houston Welfare Rights Organization, 441 U.S. 600, 610, 617, n.34 (1979). See generally Monell v. Department of Social Services, 436 U.S. 658 (1978).

(Sec. 9).[36] Senator Trumbull indicated that the militia was to be called in as a last resort for executing the Act--everything within the normal judicial process is to be tried first, id. at 605-606. Congress recognized that obstructions to the Act's enforcement would arise that were not expressly provided for, but that should be challenged;[37] therefore, provision for the executive's role is broadly expressed.

The 1870 Act also favored judicial enforcement by creating a private civil damage action for denial of voting rights (Sec. 2, 3, 4). See, e.g., Cong. Globe, 41st Cong., 2d Sess., 3515, 3560, 3570 (1870). The executive's role was stressed by authorizing the President to employ the militia to aid the court's enforcement of the Act (Sec. 13),[38] and authorizing United States attorneys to proceed by writs of quo warranto to remove persons elected in violation of Section 3 of the Fourteenth Amendment (Sec. 14). In addition, the power of the federal government to enforce the Fourteenth and Fifteenth Amendments was discussed, id. at 3488,

36/ Section 9 of the 1866 Act and Section 13 of the 1870 Act became Rev. Stat. Section 1989, which was repealed by Section 122 of the Civil Rights Act of 1957. A related provision in the 1871 Act, Section 3, is the predecessor of 10 U.S.C. 333 (set forth below in the Addendum).

37/ To indicate that the methods of enforcement expressly provided were not intended to be exclusive, Congress provided in Section 3 of the 1866 Act that where the remedies of the Act are not ". . . adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies . . .", the federal court seeking to enforce the Act should look to the common law of the state. Section 3 of the 1866 Act was re-enacted in 1870 as Section 18 of the Enforcement Act, and appears now as 42 U.S.C. 1988 (see the Addendum, infra).

38/ See footnote 36, supra.

3611, 3613. The most important of these comments were those of Senator Pool, the sponsor of the amendment that became Section 6 of the 1870 Act, the forerunner of 18 U.S.C. 241. He stressed that Congress had the power and the duty to legislate to remedy violations of the bill. The language Senator Pool used urges an active federal role in terms which encompass action by the executive branch:

> I believe that the United States has the right, and that is an incumbent duty upon it, to go into the States to enforce the rights of the citizens against all who attempt to infringe upon those rights when they are recognized and secured by the Constitution of the country.
>
> * * *
>
> [T]he liberty of a citizen of the United States, the prerogatives, the rights, and the immunities of American citizenship, should not be and cannot be safely left to the mere caprice of States either in the passage of laws or in the withholding of that protection which any emergency may require. If a State by omission neglects to give to every citizen within its borders a free, fair and full exercise and enjoyment of his rights it is the duty of the United States Government to go into the state, and by its strong arm to see that he does have the full and free enjoyment of these rights.

Id. at 3613.[39/] There is no evidence in the debates that Congress intended to limit the executive branch's enforcement powers to such means as calling out the militia or filing criminal prosecutions.

39/ The importance of Senator Pool's remarks has been noted by the Supreme Court in United States v. Williams, supra, 341 U.S. at 73 and Appendix (where his speech is reprinted in full). For other cases commenting on the legislative history of the 1870 Act, see e.g., United States v. Reese, 92 U.S. 214 (1875); United States v. Price, 383 U.S. 787 (1966).

In the debates on the 1871 Act, Congress took an expansive view of governmental power to redress civil rights violations. Although by 1871 the political composition of Congress had changed, the 1871 Civil Rights Act contained provisions at least as broad in their federal power grant as the provisions of the 1866 Act. As with the earlier Acts, the 1871 Act was to be enforced primarily by resort to the courts.[40/] In addition, Section 3 (now codified as 10 U.S.C. 333) provided, in terms more broad than comparable provisions of the 1866 and 1870 Acts, that the President, by using the militia or the armed forces or "other means," shall take measures as he considers necessary to suppress, in a State, any unlawful combination or conspiracy if it (1) so hinders the execution of state or federal law that any part of the people is deprived of constitutional rights or (2) opposes or obstructs the execution of the laws of the United States or impedes the course of justice under those laws. Section 3 enlarged the executive's power in two significant ways. First, the grant of authority includes using not only armed force, but also "any other means." Second, this authority could be invoked not only to enforce federal court orders, but also to stop unlawful combinations resulting in deprivations of federally secured rights. It is unnecessary to determine whether the present suit comes within the phrase "any other means." It should be sufficient to note that 10 U.S.C. 333 makes clear that the specific remedies were not intended to be

40/ See remarks of Sen. Edmunds, Cong. Globe, 42d Cong., 1st Sess., 568, 697 (1871); Sen. Trumbull, id. at 581; Rep. Blair, id. at 72 App.; Rep. Hawley, id. at 380; Rep. Dawes, id. at 476. See also Mitchum v. Foster, supra, 407 U.S. at 238 (importance of the role given the federal courts under this Act noted).

exclusive, that Congress intended the executive branch to have broad enforcement power.

As with the earlier Acts, Congress did not attempt in the 1871 Act to provide specifically for every obstruction or violation that might arise.[41/] Representative Shellabarger, in introducing the bill, explained that the Act was to be broadly construed so that the people are protected:

> This act is remedial, and in aid of the preservation of human liberty and human rights. All statutes and constitutional provisions authorizing such statutes are liberally and beneficently construed. It would be most strange and, in civilized law, monstrous were this not the rule of interpretation. [As the Supreme Court has repeatedly decided], the largest latitude consistent with the words employed is uniformly given in construing such statutes and constitutional provisions as are meant to protect and defend and give remedies for their wrongs to all people.

Id. at 68, App.[42/] These remarks, and the over-all legislative history of the pertinent statutes, support an implied cause of action here.

41/ See the remarks of Sen. Edmunds, id. at 691-692; Rep. Elliott, id. at 389; Rep. Dawes, id. at 477.

42/ See the remarks of Rep. Wilson, id. at 481; Rep. Dawes, id. at 476.

This concept was affirmed by one of the earliest cases interpreting the Civil Rights Acts, United States v. Rhodes, 27 Fed. Cas. 785 (C.C. Ky. 1866).

Our position that the United States has an implied statutory cause of action is based upon Reconstruction-era legislation. Contrary to the view of the district court,[43/] the Congresses that adopted the Civil Rights Acts of 1957, 1960 and 1964 did not repudiate the implied right of action based on Sections 241-242.

c. Congress' actions with regard to the modern civil rights acts do not alter the cause of action implied from the Reconstruction-era statutes

The Civil Rights Act of 1957 was the first civil rights legislation to be enacted in some 80 years.[44/] Its principal provisions established the United States Commission on Civil Rights and the Civil Rights Division of the Department of Justice and authorized the Attorney General to bring civil actions, for the United States, against discrimination in the area of voting.[45/]

The version of the bill passed by the House contained, as Part III, a provision to authorize the Attorney General to bring a suit for injunctive relief against any conduct giving rise to a

43/ October 30 opinion (A 99-109; 482 F. Supp. at 1253-1258). See also United States v. Solomon, supra, 563 F.2d at 1125, n.4; United States v. Mattson, supra, 600 F.2d at 1299-1300. 1299-1300.

44/ In 1956, the House of Representatives passed a civil rights bill (H.R. 627, 84th Cong.), but it was not considered on the Senate floor. See generally J.W. Anderson, Eisenhower, Brownell and the Congress: The Tangled Origins of the Civil Rights Bill of 1956-1957 (1964).

Based upon a proposal by Attorney General Brownell, the House bill included, as "Part III," an amendment to 42 U.S.C. 1985 authorizing the Attorney General to bring civil actions under that section. See H.R. Rep. No. 2187, 84th Cong., 2d Sess. (1956) p. 3, 7-8, 11-14, 25, and 31-33, (1957) (minority views).

45/ Public Law 85-315 (1957).

cause of action under 42 U.S.C. 1985.[46] The provision was similar to one proposed in 1956 by Attorney General Brownell.[47]

The House-passed bill was the subject of a lengthy debate in the Senate. A major source of controversy was Part III, which ultimately was deleted by the Senate.[48]

The district court's explanation of the opposition in the Senate to Part III is not accurate.[49] In 1957, the principal issue was race and, in particular, the fact that Part III would empower the Attorney General to sue to desegregate school systems.[50] Opponents also stressed the broad coverage of other aspects of civil rights, such as swimming pools.[51]

The senators who voted to delete Part III included both senators from the South, who opposed the entire bill, and others, who supported the bill, but felt that Part III would give exces-

46/ See H.R. Rep. No. 291, 85th Cong., 1st Sess. (1957), pp. 9-10, 13-15, 16-17, 45-46, and 55-57 (minority views). See 103 Cong. Rec. 9518 (1957).

Section 1985 is quoted, in part, in the Addendum, infra. The most pertinent part of Section 1985 authorizes an individual to sue for damages for any deprivation, by a conspiracy, of "the equal protection of the laws."

47/ Again in 1957, Attorney General Brownell testified in favor of the bill, including Part III. See Civil Rights: Hearings before Subcomm. No. 5 of the House Judiciary Comm., 85th Cong., 1st Sess. (1957), Ser. No. 1, pp. 591-598.

48/ 103 Cong. Rec. 12564-12565 (1957).

49/ See October 30 opinion (A 101-102; 482 F. Supp. at 1253-1254).

50/ See, e.g., 103 Cong. Rec. 11083-11084 (1957) (Senator Eastland).

51/ Id. at 11086 (Senators Fulbright, Eastland).

sive power to the Attorney General.[52] One of the co-sponsors of the amendment deleting Part III said that, because that provision was not tied to voting rights, it did not belong in a "voting-right bill."[53] Thus, various reasons explain the deletion.

The pertinent provisions of 42 U.S.C. 1985 include, as an element, racial discrimination or similar denials of equal protection. In this respect, the authority at issue in 1957 was more narrow than the basis for the Due Process claims in the present suit. In another respect, however, Section 1985 is much broader than the cause of action we assert. Although the coverage of Section 1985 is limited to conspiracies, that element can be met by a single incident in which two persons conspire to harm a third person. See Griffin v. Breckenridge, 403 U.S. 88 (1971). In contrast, a fundamental aspect of our claim is the widespread and continuing nature of the underlying violations. In our view, the Senate's rejection of Part III in 1957 has little or no relevance to the present suit.

The Civil Rights Act of 1960 strengthened the provisions of the 1957 Act concerning voting rights and dealt with several other matters, including obstruction of orders of federal courts.[54]

52/ Included in the latter groups were Senators Saltonstall (id. at 12541) and Aiken (id. at 12562).

53/ Id. at 11974 (Senator Anderson). Cf. id. at 12564 (Senator Lyndon Johnson).

54/ Public Law 86-449 (1960).

The 86th Congress (1959-1960) considered a version of "Part III" similar to the one considered in the prior Congress. In 1959, Congressman Celler introduced a bill that included such a provision.[55/] Attorney General Rogers opposed this provision, on the ground that the additional authority might not be constructive.[56/]

The subcommittee of the House Judiciary Committee recommended the Celler bill, including the Part III provision, but the full committee deleted that provision.[57/] On March 24, 1960, the committee bill was passed by the House.[58/]

In the Senate, the Part III provision was first considered in early March. During a filibuster on civil rights legislation, a senator who did not favor Part III offered it as an amendment.[59/] The amendment was debated at length and, on March 10, it was tabled.[60/]

55/ H.R. 3147, 86th Cong., 1st Sess. Section 601 of the Celler bill would have authorized the Attorney General, after making certain determinations, to seek injunctive relief against any person who, under color of law, denies another person equal protection, by reason of race, color, religion or national origin. See Civil Rights: Hearings before Subcomm. No. 5 of the House Judiciary Comm., 86th Cong., 1st Sess. (1959), Ser. No. 5, p. 82.

56/ Id. at 222-225.

57/ H.R. Rep. No. 956, 86th Cong., 1st Sess. (1959), p. 3. See also pp. 28-29 (additional views) and 33-34 (minority views).

58/ 106 Cong. Rec. 6512 (1960). Congressman Celler had offered Part III as an amendment, but it was ruled out of order. 106 Cong. Rec. 6308 (1960).

59/ 106 Cong. Rec. 4909 (1960) (Senator Case of S.D.).

60/ Id. at 5182.

Subsequently, the House-passed bill was referred to and then reported by the Senate Judiciary Committee.[61/] Three members of the committee stated that, in order to further school desegregation, a Part III provision should have been included.[62/] During the floor debate, an amendment to add such a provision was offered, debated briefly and then tabled.[63/]

The substance of the Senate debates on Part III in 1960 was similar to the 1957 debate. Supporters stressed the contribution it could make to school desegregation.[64/] Others opposed the provision because of its effects in such areas as school desegregagation.[65/] Still others were against the broad authority the provision would confer.[66/]

Even if the 1960 Part III provision had become law, it would not have provided a basis for the Due Process claims in the present suit. That provision was expressly limited to denials of equal protection based on race, color, religion or national origin. Moreover, as was true of the 1957 version, the authority that would have been provided was not restricted

61/ S. Rep. No. 1205, 86th Cong., 2d Sess. (1960).

62/ Id., Pt. 2, at 6-7.

63/ 106 Cong. Rec. 7223-7225 (1960).

64/ Id. at 5164 (Senator Javits). See also id. at 7224 (Senator McNamara).

65/ E.g., id. at 5084 (Senator Stennis).

66/ E.g., id. at 5105-5106 (Senator Aiken).

to situations involving widespread violations.

In 1963, the House Judiciary Committee considered and rejected an authority-to-sue provision that would have encompassed the present Due Process claims. This provision was not proposed by the Administration,[67] but was recommended, by a subcommittee, to the House Judiciary Committee.

The subcommittee provision would have amended 42 U.S.C. 1983 to authorize the Attorney General to institute, for the United States, a civil action for preventive relief whenever any person, under color of law, has deprived another person of any right secured by the Constitution or laws of the United States.[68] Thus, the 1963 version of Part III was limited neither to conduct involving racial or similar discrimination, nor to widespread deprivations.

Attorney General Kennedy testified against the Part III provision.[69] In November 1963, the House Judiciary Committee

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67/ The Administration bill, H.R. 7152, 88th Cong., 1st Sess., covered various subjects including school desegregation, voting and public accommodations. For the text of the bill as introduced, see Civil Rights: Hearings before Subcomm. No. 5 of the House Judiciary Comm., 88th Cong., 1st Sess. (1963), Ser. No. 4, Pt. I, p. 649. For the testimony of Attorney General Kennedy, See id., Pt. II, at 1428.

68/ See October 2, 1963 committee print of H.R. 7152, Section 301(b). The relevant portion of the committee print is set forth in the Addendum, infra.

69/ See Civil Rights: Hearings before the House Judiciary Committee on H.R. 7152, as amended by Subcommittee No. 5, 88th Cong., 1st Sess. (1963), Ser. No. 4, Pt. IV, pp. 2656-2659. Attorney General Kennedy said that the provision was aimed at police excesses with regard to civil rights demonstrations and that it would not be effective. He added that the provision was too broad, might result in creation of a national police force, and might jeopardize the rest of the bill.

reported a modified version of the bill, from which the Part III provision was omitted.[70/]

The reported bill did include a section stating[71/] that:

> Nothing in this Act shall be construed to deny, impair, or otherwise affect any right or authority of the Attorney General or of the United States or any agency or officer thereof under existing law to institute or intervene in any action or proceeding.

This provision became Section 1103 of the 1964 Act, 42 U.S.C. 2000h-3. It seems clear, in view of Section 1103, that the district court (and the courts in Solomon and Mattson 72/) erred in attributing significance to the House committee's deletion of the Part III provision.

70/ H.R. Rep. No. 914, 88th Cong., 1st Sess. (1963). Regarding the deletion of Part III, see p. 41 (additional views); p. 45 (additional views); pp. 81-83 (minority report); p. 116 (individual views).

71/ Id. at 15; 32-33. Cf. Section 308 of the school desegregation title of H.R. 7152 as introduced. Id., Pt. I, at 656. Also, cf. Section 301(d) of the October 2, 1963 committee print.

72/ United States v. Solomon, supra, and United States v. Mattson, supra, each related to an institution for the mentally retarded and the allegations differed significantly from the complaint here. In any event, we submit that Solomon and Mattson were wrongly decided. Our view is supported by the decision of this Court in Halderman v. Pennhurst State School & Hospital, supra. See e.g., 612 F.2d at 91, n. 7, concerning the significance of the Attorney General's annual reports to Congress and Congress' failure to react negatively to the litigation on behalf of institutionalized persons.

In the current Congress, both the House and the Senate have passed a bill which would authorize the Attorney General to sue, subject to certain conditions, to protect the rights of institutionalized persons. See 125 Cong. Rec. H 3653 (daily ed., May 23, 1979); 126 Cong. Rec. S 1966 (daily ed., Feb. 28, 1960). Congress has not yet taken final action to reconcile the two different versions of the bill.

In the present case, the district court stated[73] that:

> by filing this complaint, the Attorney General is attempting to exercise the very power which the Congressional opponents of Title III relied upon in defeating that legislation. * * *

This statement fails to acknowledge the important differences between the claim at issue here--widespread violations of Due Process--and the authority considered in 1957, 1960 and 1964. Moreover, the district court ignored Section 1103 of the 1964 Act. The foundation for our implied statutory cause of action is Reconstruction-era legislation. As a general matter, the views of a subsequent Congress are not a proper basis for inferring the intent of an earlier one. E.g., Regional Rail Reorganization Act Cases, 419 U.S. 102, 132 (1974).[74] Section 1103 makes clear that that principle is applicable here.

2. In the present case, the United States has an implied cause of action under the Constitution

With regard to the question of an implied private cause of action based upon a statute, the Supreme Court stresses the element of Congress' intent. See, e.g., Touche Ross & Co. v. Redington, supra, 442 U.S. at 575-576. When the question, however, is whether a cause of action may be inferred from the Constitution, different standards apply, and the role of the

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73/ October 30 opinion (A 104; 482 F. Supp. at 1255).

74/ Such cases as United States v. California, supra, 332 U.S. at 28-29, indicate that even Congress' rejection of specific grant to the Attorney General of authority to bring a particular kind of lawsuit does not bar the use of pre-existing authority. In the present case, the provisions that Congress failed to enact differ significantly from the basis for our cause of action concerning Due Process.

courts is central. Davis v. Passman, supra, 442 U.S. at 241-242. In the present case, in addition to 18 U.S.C. 241-242, the Fourteenth Amendment and Article II of the Constitution authorize the cause of action of the United States.

In cases arising under the Fourth and Fifth Amendments, the Supreme Court has found implied private causes of action for damages. Bivens v. Six Unknown Named Agents, 403 U.S. 388 (1971); Davis v. Passman, supra. The availability of suits under 42 U.S.C. 1983 and related statutes has largely obviated the need to consider whether there is an implied private right of action to enforce the Fourteenth Amendment.[75/] However, courts of appeals have held that, in certain circumstances, a private cause of action for damages may be inferred from the Fourteenth Amendment. See, e.g., Turpin v. Mailet,[76/] which was initially decided by the Second Circuit just before the decision in Monell v. Department of Social Services, 436 U.S. 658 (1978).

75/ In Mahone v. Waddle, 564 F.2d 1018, 1024 (3d Cir. 1977), cert. denied, 438 U.S. 904 (1978), the majority held that the plaintiffs had stated a cause of action against the defendant city under 42 U.S.C. 1981 and concluded, in view of that holding, "that a fourteenth amendment remedy should not be implied." This Court expressed no opinion "on the issue whether a fourteenth amendment remedy may or should be implied in other cases where the plaintiffs have no effective federal statutory remedy." Id. at 1025. See also Gagliardi v. Flint, 564 F.2d 112 (3d Cir. 1977), cert. denied, 438 U.S. 904 (1978).

76/ See generally the cases cited in Turpin v. Mailet, 579 F.2d 152, 157, n.14 (2d Cir. 1978) (en banc). The initial decision in Turpin, was vacated by the Supreme Court, 439 U.S. 974 (1978), and remanded for consideration in light of Monell. On remand, the Second Circuit held that, because Monell meant that the plaintiff could sue the municipal defendant under 42 U.S.C. 1983, there was "no place" for the cause of action based directly on the Fourteenth Amendment. Turpin v. Mailet, 591 F.2d 426, 427 (2d Cir. 1979) (en banc).

(continued)

While this is an action by the United States and Bivens, Passman and Turpin were private suits, the unifying element is that this action, like those suits, is necessary to enforce Constitutional guarantees. "And 'where federally protected rights have been invaded, it has been the rule from the beginning that courts will be alert to adjust their remedies so as to grant the necessary relief.' Bell v. Hood, 327 U.S. [678], at 684 . . . ." Bivens, supra, at 392.

It is well established that determining the meaning of and the remedies for implementing Section 1 of the Fourteenth Amendment is not exclusively the province of Congress.[77] The framers of the Fourteenth Amendment envisioned vigorous enforcement of the amendment by the national government. They rejected a pro-

76/ (continued)
The Second Circuit stated, however, that Monell does not call into question the Second Circuit's prior determination that the federal courts have the power, under federal-question jurisdiction, to create remedies for constitutional violations. Id.

77/ Section 1 of the Fourteenth Amendment provides, in part that no state shall "deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. "

Section 5 provides that: "The Congress shall have power to enforce, by appropriate legislation, the provisions of this . . . [amendment]."

Other parts of the Constitution that grant similar specific power to Congress, such as Article IV, Section 3, clause 2 (regulation of the territory or property of the United States) Article I, Section 8, clause 8 (regulation of patents), or Article I, Section 8, clause 3 (regulation of commerce) have not prevented the Supreme Court from holding that, even absent an express statute authorizing suits regarding these subjects, the United States may invoke the jurisdiction of the courts. See, e.g., United States v. California, supra, 332 U.S. at 27 (property); United States v. American Bell Telephone Co., 128 U.S. 315, 358 (1888) (patents); In re Debs, 158 U.S. 564 (1895)(commerce).

posal that would have authorized legislation, but would not have created constitutional rights.[78/] Just as the Fourth (see Bivens, supra) and Fifth (see Davis, supra) Amendments have an independent force that requires the courts to fashion an implied remedy, so too does the Fourteenth. Congress proposed the Fourteenth Amendment based in part on a desire to provide constitutional support for the 1866 Civil Rights Act--an act which, as we have shown, relied heavily on the executive and judicial branches for its enforcement.

While the Fourteenth Amendment rights at issue here are the rights of individuals, the national government is the guarantor of those rights. Thus, fundamental interests of the United States are involved. Under Article II, Section 3 of the Constitution, the President "shall take care that the laws be

78/ On February 26, 1866, Congressman Bingham reported to the House of Representatives a proposed constitutional amendment. Cong. Globe, 39th Cong., 1st Sess., p. 813 (1866). The proposal read as follows:

> The Congress shall have power to make all laws which shall be necessary and proper to secure to the citizens of each State all privileges and immunities of citizens in the several States; and to all persons in the several States equal protection in the rights of life, liberty, and property.

This proposal was debated, but was criticized on the ground that it left civil rights "to the caprice of Congress." Id. at 1095 (Congressman Hotchkiss).

On April 30, 1866, the Joint Committee submitted a new proposal, one similar in form to the final version--Section 1 set forth direct prohibitions on the states; Section 5 provided for enforcement by Congress. In the ensuing debate, Congressman Stevens (and others) stressed the fact that, while a statute may be repealed by a majority in Congress, rights set forth in the Constitution afforded greater protection. Id. at 2459. Thus, the prohibitions contained in Section 1 were intended to have independent force. See the initial decision in Turpin, supra, 579 F.2d at 158-160.

faithfully executed."[79] Cf. Halderman, supra, 612 F.2d at 91-92. We submit that the duty of the President, and of the Attorney General, applies not only to federal statutes, but also to the Constitution. In re Debs, supra; In re Neagle, 135 U.S. 1, 64 (1890). See Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952).[80]

Our assertion that this is a proper case for inferring a cause of action from the Constitution rests upon the particular facts. While this suit does not relate to an emergency of the type involved in Debs, it does relate to an exceptional situation--one involving official practices that encourage or condone, on a large-scale basis brutality and other unlawful conduct by police officers. As was true in Debs under other provisions of the Constitution, the United States, with regard to the present circumstances, has a duty to protect the public.[81]

The present suit pertains to an area in which Congress has acted, but, for the reasons discussed above, the express remedies

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79/ The President's oath of office, Article II, Section 1, clause 7 states: " . . . I will . . . to the best of my ability, preserve, protect and defend the Constitution of the United States." Under Article VI, Section 3, officers of all three branches "shall be bound by oath or affirmation, to support this Constitution."

80/ The various opinions in Youngstown expressed differing views on the general question of the scope of Presidential power under Article II, Section 3. E.g., contrast the view of Justice Black, 343 U.S. at 587-589, with that of the dissent, id. at 683. Justice Jackson's concurring opinion, id. at 637, indicates that there are circumstances in which the President may properly act "in absence of either a congressional grant or denial of authority."

81/ In rejecting our argument based on Passman and related cases, the district court relied in part on the view that Passman does not authorize "vicarious litigation" (A 121-122; 482 F. Supp. at 1264). This reasoning overlooks the significance of the duty of the United States, under the Constitution, to safeguard the exercise of Fourteenth Amendment rights.

--criminal prosecution of individual policemen, or civil actions by private plaintiffs--are not adequate.[82/] Furthermore, there is "no explicit congressional declaration" against the award of civil relief to the United States in a case like the present one. Cf. Bivens, supra, 403 U.S. at 397; Davis v. Passman, supra, 442 U.S. at 246-247. In light of the purposes of the Fourteenth Amendment and the facts alleged here, this Court should infer a civil cause of action for the United States.

In Bivens, supra, 403 U.S. at 396, the Supreme Court addressed the question whether there are "special factors counselling hesitation in the absence of affirmative action by Congress." One factor present here, but not in Bivens or Passman, is federalism. In Rizzo v. Goode, the Supreme Court said that "principles of federalism" play "an important part in governing the relationship between federal courts and state governments . . . ." 423 U.S. 362, 380 (1976). Federalism refers to the appropriate spheres of state and national power, and its principles stand for more than the desirability of minimizing federal interference with state activities. The Supreme Court, in Rizzo v. Goode, recognized that federalism does not bar appropriate relief, where a Fourteenth

82/ The district court said that here, in contrast to Passman, the other remedies, such as class actions under 42 U.S.C. 1983, are adequate (A 121; 482 F. Supp at 1264). We submit that the test of adequacy is a practical one. Other remedies exist and have been tried. Our complaint alleges, however, that, due to the nature and extent of the underlying problems, the other remedies have not been and, as a practical matter, cannot be successful (A 32).

Amendment violation is proved. 423 U.S. at 373, 375 and 377, quoting Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1, 16 (1971).

In the present case, the national power component of the doctrine of federalism is implicated by the need to protect Fourteenth Amendment rights.[83/] The ability of the United States to obtain relief depends upon proof of denials of Due Process and proof of the other elements of our cause of action. The nature of the injunctive and declaratory relief can be tailored to the violations proved and can reflect the principles of federalism.

II

THE COMPLAINT'S ALLEGATIONS OF DISCRIMINATION IN A FEDERALLY ASSISTED PROGRAM ARE SUFFICIENTLY SPECIFIC

In its order of December 13, 1979, the district court dismissed, for lack of specificity, the allegations regarding violation of the nondiscrimination statutes (A. 153).[84/]

To support its statement that it is "well established in this circuit that complaints in civil rights cases must be pleaded with factual specificity," the district court cited a number of decisions of this Court and other courts (A. 146-147;

83/ Cf. United States v. Mississippi, 380 U.S. 128, 140-141 (1965) (voting rights suit based on Civil Rights Act of 1957, as amended).

84/ Contrary to the view expressed by the district court in its October 30 and December 13 opinions (A. 112, 147; 482 F. Supp. at 1259 and 1276), the claims under the nondiscrimination statutes are not significantly different in scope from the other claims. The same basic allegations pertain to all the claims. The coverage of the nondiscrimination provisions of the Crime Control Act and the Revenue Sharing Act is discussed below in footnote 91.

482 F. Supp. at 1275-1276). Not one of the cases, however, was an action by the Attorney General.[85/]

According to the district court, the policy underlying the specific-pleading requirement--weeding out frivolous cases at an early state--applies to the present suit.[86/] There is no sound basis for such an extension of the requirement. As will be explained below, our complaint is entirely adequate. Furthermore, in response to the defendants' interrogatories, we provided detailed information regarding the incidents upon which our

85/ The great majority of the cases cited by the district court were pro se suits by inmates or other persons who had been subject to criminal prosecutions. The question of the consistency of the specific-pleading requirement with Haines v. Kerner, 404 U.S. 519 (1972), is discussed, e.g., in Rotolo v. Borough of Charleroi, 532 F.2d 920, 922 (3d Cir. 1976). See also the dissent of Judge Gibbons, 532 F.2d at 923.

Virtually all of the cases cited by the district court here were based upon 42 U.S.C. 1983 or 1985. A few of the cited cases involved allegations of racial discrimination and were based, in part, upon 42 U.S.C. 1981. See, e.g., Hall v. Pennsylvania State Police, 570 F.2d 86, 89 (3d Cir. 1978), in which this Court held that the complaint was sufficiently specific.

None of the cited decisions of this Court involved the modern civil rights statutes. One of the lower court decisions, Trader v. Fiat Distributors, Inc., 476 F. Supp. 1194, 1197 (D. Del. 1979), applied the specific-pleading requirement to a complaint based partly upon Title VII of the Civil Rights Act of 1964.

86/ As indicated by the district court (A. 150; 482 F. Supp. at 1277-1278), the rationale for the requirement was discussed in Judge Stahl's opinion in Kauffman v. Moss, 420 F.2d 1270, 1276, n. 15 (3d Cir. 1970), cert. denied, 400 U.S. 846 (1970). The full text of Judge Stahl's footnote is as follows:

> The reason for the Negrich exception to the general rule of "notice pleading" was well stated in Valley v. Maule, 297 F. Supp. 958 (D. Conn. 1968). Citing Negrich, the court said:

(continued)

allegations are based. That information makes clear that the claims of racial discrimination have a substantial basis.[87/]

The Attorney General, in seeking to enjoin a "pattern or practice" of racial discrimination in a federally assisted program, is exercising authority expressly conferred by Congress.[88/] The present claims are similar to "pattern or practice" claims under the fair housing law or Title VII of the Civil Rights Act

86/ (continued)

> As a general rule notice pleading is sufficient, but an exception has been created for cases brought under the Civil Rights Acts. The reason for this exception is clear. In recent years there has been an increasingly large volume of cases brought under the Civil Rights Acts. A substantial number of these cases are frivolous or should be litigated in the State courts; they all cause defendants--public officials, policemen and citizens alike--considerable expense, vexation and perhaps unfounded notoriety. It is an important public policy to weed out the frivolous and insubstantial cases at an early stage in the litigation, and still keep the doors of the federal courts open to legitimate claims. Id. at 960.

Cf. United States v. Gustin-Bacon Division, etc., 302 F. Supp. 759 (D. Kan. 1969).

Thus, the full quotation points out that the specific-pleading requirement is an exception to the general rule. (The decision of the district court in United States v. Gustin-Bacon Division was reversed. See footnote 89, infra.)

87/ See footnote 97, infra.

88/ See Section 815(c)(3) of the Omnibus Crime Control Act, as amended, 42 U.S.C.A. 3789(c)(3), and Section 122(g) of the Revenue Sharing Act, as amended, 31 U.S.C. 1242(g). These provisions are set forth in the Addendum.

(continued)

of 1964. In suits by the Attorney General under those statutes, the courts apply the ordinary rules of notice pleading.[89/]

The present complaint meets the standards of Rule 8(a) of the Federal Rules of Civil Procedure.[90/] The complaint alleges that the City of Philadelphia receives federal funds, under the pertinent statutes, for the Police Department.[91/] The complaint

88/ (continued)

Other bases cited in the complaint include Section 207 of the Public Works Employment Act, as amended, 42 U.S.C. 6727 (Supp. I), and Section 602 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d-1, and the Title VI regulation of the Department of Justice.

89/ For example, in United States v. Gustin-Bacon Division, Certain-Teed Products Corp., 426 F.2d 539, 542-543 (10th Cir.), cert. denied, 400 U.S. 832 (1970), the court of appeals rejected the contention that Section 707(a) of Title VII, as amended, 42 U.S.C. 2000e-6(a), requires the Attorney General to allege facts in addition to those needed to satisfy Rule 8(a), Fed. R. Civ. P. The court of appeals reversed the order of the district court which, as a result of the refusal of the United States to provide a more definite statement, had dismissed the claim against the company.

See also United States v. Bob Lawrence Realty, Inc., 313 F. Supp. 870, 873 (N.D. Ga. 1970), a fair housing suit, in which the court denied a motion for a more definite statement.

Cf. United States v. School District of Ferndale, 577 F.2d 1339, 1344-1345 (6th Cir. 1978) (reversing an order that dismissed, for lack of specificity, allegations based on the Equal Educational Opportunities Act of 1974).

90/ Rule 8(a)(2) provides that a complaint is to set forth "a short and plain statement of the claim showing that the pleader is entitled to relief." A complaint is not to be dismissed for failure to state a claim, unless it appears "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46 (1957).

91/ Paras. 8 and 48 of the complaint (A 11, 32-33). The entire Philadelphia Police Department is the "program" receiving assistance under the Crime Control Act and the Revenue Sharing Act.

(continued)

describes the challenged policies and practices of the Police Department, as well as the discrimination resulting from them.[92] The district court's view[93] that the complaint must, in addition, set forth dates, places, names and other facts concerning the incidents underlying the pattern or practice of discrimination is unwarranted. The defendants are entitled to such information, and they obtained it in the correct way--through

91/ (continued)

The regulation of the Law Enforcement Assistance Administration implementing the nondiscrimination provision of the Crime Control Act contains the following definition of "program or activity," 28 C.F.R. 42.202(g):

> . . . the operations of the agency or organizational unit of government receiving or substantially benefiting from the financial assistance awarded; e.g., a police department or department of corrections.

This definition, promulgated in February 1977, reflects the legislative history of the 1976 amendments to the Crime Control Act. See H.R. Rep. No. 94-1155, 94th Cong., 2d Sess. p. 26 (1976). In December 1979, Congress re-enacted, without change, the nondiscrimination provision of the Crime Control Act. See Public Law 96-157, 93 Stat. 1206.

In its regulation implementing the Revenue Sharing Act, the Department of the Treasury has adopted the same definition of "program or activity." See 31 C.F.R. 51.51(i), issued in April 1979. Also, see Section 122(a)(2)(A) of the Revenue Sharing Act, as amended, 31 U.S.C. 1242(a)(2)(A).

92/ A number of the allegations refer specifically to discrimination against blacks and Hispanics. See paras. 31(f), 34(e), 40, 42(a)-(b) (A 18, 21-22, 27, 29). In addition, paragraph 48 (A 32-33) contains the general allegation that, insofar as the various challenged practices have disparate impact upon blacks and Hispanics, such practices are maintained with discriminatory intent and violate the Equal Protection Clause and also violate the nondiscrimination statutes.

93/ Opinion of December 13 (A 144, 152; 482 F. Supp. at 1277, 1279).

discovery.[94] In response to interrogatories of the defendants, we provided extensive information concerning the incidents upon which our allegations are based.[95] Our responses include dates, places, names, the race of affected individuals, and other information of the type that, according to the district court, should have appeared in the complaint.

In these circumstances--a detailed complaint, plus lengthy answers to the defendants' interogatories, it is clear that the order dismissing the claims under the nondiscrimination statutes contravenes the letter and the spirit of the Federal Rules of Civil Procedure.[96] Cf. Conley v. Gibson, supra, 355 U.S. at 48.

94/ In Conley v. Gibson, supra, 355 U.S. at 47-48, the court pointed out that:

> . . . "notice pleading" is made possible by the liberal opportunit[ies] for discovery and the other pretrial procedures established by the Rules to disclose more precisely the basis of both claim and defense * * * . (Footnote omitted.)

95/ The defendants' interrogatories were filed on August 14, 1979. Our replies, filed on September 5 and 12 and October 9, totaled some 800 pages. In its December 13 opinion, the district court did not mention the fact that interrogatories had been served and answered.

96/ See Rule 8(a), (f), Fed. R. Civ. P.

CONCLUSION

With regard to both aspects of this suit--the claims under the nondiscrimination statutes and the claims based upon denials of Due Process [97/] -- the district court erred and should be reversed.

97/ Part VI of the district court's October 30 opinion is entitled "Abuse of Power in This Lawsuit." According to the district court (A 139-140; 482 F. Supp. at 1273):

> The Justice Department attorneys publicly vilified the individual defendants * * * while simultaneously planning a schedule for the lawsuit that would prevent these same defendants from ever answering the charges. Through some of its highest ranking officials, the Justice Department created the public impression that the defendants' guilt was already documented and established. Yet, when the individual defendants demanded a speedy trial * * * to prove their innocence, the government objected on the ground that it needed a minimum of three to four months to discover evidence and prepare its case.

The views expressed by the district court are unjustified. The immediate issues are issues of law, and limited factual material appears in the present record. Still, even that material should be sufficient to indicate the substantial nature of our Due Process claims and the seriousness of the underlying problems. The purpose of this suit is not to establish the "guilt" of individuals, but is to safeguard constitutional rights.

We request that this action be remanded, with appropriate instructions to assure that the district court will permit the case to proceed in an orderly manner.

Respectfully submitted,

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ADDENDUM

1. Authority of the Attorney General, 28 U.S.C. 518(b)

§518. Conduct and argument of cases

* * *

(b) When the Attorney General considers it in the interests of the United States, he may personally conduct and argue any case in a court of the United States in which the United States is interested, or he may direct the Solicitor General or any officer of the Department of Justice to do so.

2. Statutes Derived from Reconstruction-era Acts (current codifications)

a. 18 U.S.C. 241

§241. Conspiracy against rights of citizens

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 $10,000 or imprisoned not more than ten years, or both, and if death results, they shall be subject to imprisonment for any term of years or for life.

b. 18 U.S.C. 242

§242. Deprivation of rights under color of law

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; and if death results shall be subject to imprisonment for any term of years or for life.

c. 42 U.S.C. 1983

§1983. Civil action for deprivation of rights

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.

d. 42 U.S.C. 1985(c)

§1985. Conspiracy to interfere with civil rights

* * *

(c) Depriving persons of rights or privileges

If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, 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; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, 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.

e. 42 U.S.C. 1988

§1988. Proceedings in vindication of civil rights; attorney's fees

The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this Title, and of Title "CIVIL RIGHTS," and of Title "CRIMES," for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty.

* * *

f. 10 U.S.C. 333

§333. 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.

3. Nondiscrimination provisions

a. The Crime Control Act, as amended, Section 815(c), 42 U.S.C.A. 3789d (§815(c)(1), P.L. 96-157, Dec. 27, 1979, 93 Stat. 1206).

> (c)(1) No person in any State shall on the ground of race, color, religion, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under or denied employment in connection with any programs or activity funded in whole or in part with funds made available under this title.
>
> * * *
>
> (3) Whenever the Attorney General has reason to believe that a State government or unit of local government has engaged in or is engaging in a pattern or practice in violation of the provisions of this section, the Attorney General may bring a civil action in an appropriate United States district court. Such court may grant as relief any temporary restraining order, preliminary or permanent injunction, or other order, as necessary or appropriate to insure the full enjoyment of the rights described in this section, including the suspension, termination, or repayment of such funds made available under this title as the court may deem appropriate, or placing any further such funds in escrow pending the outcome of the litigation.

b. The Revenue Sharing Act, as amended, Section 122, 31 U.S.C.1242

(a)(1) In general. No person in the United States shall, on the ground of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity of a State government or unit of local government, which government or unit receives funds made available under subchapter I of this chapter. * * *

* * *

(g) Whenever the Attorney General has reason to believe that a State government or a unit of local government has engaged or is engaging in a pattern or practice in violation of the provisions of this section, the Attorney General may bring a civil action in an appropriate United States district court. Such court may grant as relief any temporary restraining order, preliminary or permanent injunction, or other order, as necessary or appropriate to insure the full enjoyment of the rights described in this section, including the suspension, termination, or repayment of funds made available under subchapter I of this chapter, or placing any further payments under subchapter I of this chapter in escrow pending the outcome of the litigation.

[COMMITTEE PRINT]

OCTOBER 2, 1963

88TH CONGRESS
1ST SESSION

H. R. 7152

IN THE HOUSE OF REPRESENTATIVES

JUNE 20, 1963

Mr. CELLER introduced the following bill; which was referred to the Committee on the Judiciary

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To enforce the constitutional right to vote, to confer jurisdiction upon the district courts of the United States to provide injunctive relief against discrimination in public accommodations, to authorize the Attorney General to institute suits to protect constitutional rights in education, to establish a Community Relations Service, to extend to four years the Commission on Civil Rights, to prevent discrimination in federally assisted programs, to establish a Commission on Equal Employment Opportunity, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, ~~That this Act may be cited as the "Civil Rights Act of 1963".~~

would adversely affect the interests of the United States, or that, in the particular case, compliance with such provisions would be fruitless.

JURISDICTION

SEC. 205. (a) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this title and shall exercise the same without regard to whether the aggrieved party shall have exhausted any administrative or other remedies that may be provided by law.

(b) This title shall not preclude any individual or any State or local agency from pursuing any remedy that may be available under any Federal or State law, including any State statute or ordinance requiring nondiscrimination in public establishments or accommodations.

TITLE III—DESEGREGATION OF PUBLIC EDUCATION

DEFINITIONS

SEC. 301. As used in this title—

(a) "Commissioner" means the Commissioner of Education.

(b) "Desegregation" means the assignment of students to public schools and within such schools without regard to their race, color, religion, or national origin.

(c) "Public school" means any elementary or secondary

JURISDICTION

SEC. 204. (a) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this title and shall exercise the same without regard to whether the aggrieved party shall have exhausted any administrative or other remedies that may be provided by law.

(b) This title shall not preclude any individual or any State or local agency from pursuing any action that may be available under any Federal or State law, including any State statute or ordinance requiring nondiscrimination in public establishments or accommodations.

TITLE III—CIVIL ACTION FOR DEPRIVATION OF RIGHTS

SEC. 301. Section 1979 of the Revised Statutes (42 U.S.C. 1983) is amended—

(1) by inserting "(a)" at the beginning thereof;

(2) by inserting after "Constitution and laws" the words "of the United States", and

(3) by adding the following four new paragraphs:

"(b) Whenever any person under color of any statute, ordinance, regulation, custom, or usage of any State or territory has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice which would give rise to a cause of action pursuant to

paragraph (a) of this section, the Attorney General may institute for or in the name of the United States a civil action or other proceeding for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order.

"(c) Whenever an action has been commenced in any court of the United States pursuant to paragraph (a) of this section, the Attorney General in the name of the United States may intervene in the action with all the rights of a party thereto.

"(d) Nothing in this section shall be construed to deny, impair, or otherwise affect any right or authority of the Attorney General under existing law to institute or intervene in any action or proceeding.

"(e) In any proceeding under this section the United States shall be liable for costs the same as a private person. The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this section and shall exercise the same without regard to whether the party aggrieved shall have exhausted any administrative or other remedies that may be provided by law."

CERTIFICATE OF SERVICE

I, David B. Marblestone, hereby certify that, on April 22, 1980, I served this Brief for the United States by mailing two copies to counsel for appellees, addressed as follows:

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