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Limitations in Prosecuting Civil Rights Violations

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LIMITATIONS IN PROSECUTING CIVIL RIGHTS VIOLATIONS*

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This article attempts to fill a gap in an understanding of the difficulties encountered by the federal government in conducting a program of vigorous enforcement of the criminal civil rights statute, 18 U.S.C. section 242.[1] Earlier writers have considered the obstacles posed by the strict requirements of specific intent laid down in the leading case of *Screws v. United States.*[2] A number of considerations attendant upon the *Screws* requirement, and not heretofore presented in studies on civil rights enforcement, support a conclusion that the statute has become a fragile weapon in the armory of the Department of Justice. The prospect that contemporary racial and other tensions will create additional incidents of police violation of fourteenth amendment rights places a heavy burden upon the Civil Rights Division. This burden it will find increasingly difficult to carry under the judicially imposed limitations of the present statute.

Studies of cases arising under section 242 that have so far appeared have been devoted to variegated analyses of criminal civil rights infractions and to the constitutional issues related thereto.[3] The present study complements these by examining the impact of the *Screws* decision upon

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† See contributors' section, masthead p. 579, for biographical data.

1 62 Stat. 696 (1948), 18 U.S.C. § 242 (Supp. III 1948):

> 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.

2 See especially: Carr, Federal Protection of Civil Rights, 113-15 (1947); Konvitz, The Constitution and Civil Rights, chs. 3 & 4 (1947); President's Committee on Civil Rights, Report—"To Secure These Rights" (1947); Barnett, "What is 'State' Action Under the Fourteenth, Fifteenth and Nineteenth Amendments of the Constitution?", 24 Ore. L. Rev. 227 (1945); Carr, "Screws v. United States: The Georgia Police Brutality Case," 31 Cornell L.Q. 48 (1945); Cohen, "The Screws Case: Federal Protection of Negro Rights," 46 Colum. L. Rev. 94 (1946); Clark, "A Federal Prosecutor Looks at the Civil Rights Statutes," 47 Colum. L. Rev. 175 (1947); Fraenkel, "The Function of the Lower Federal Courts as Protectors of Civil Liberties," 13 Law & Contemp. Prob. 132 (1948); Note, "May the Intent to Violate the Federal Civil Rights Statute be Established by a Presumption?", 40 Geo. L.J. 566 (1952).

3 E.g., "The Civil Rights Section, Its Functions, and Its Statutes," Address by Arthur B. Caldwell, University of Pennsylvania Civil Rights Seminar, July 16, 1953; Fraenkel, "The Federal Civil Rights Laws," 31 Minn. L. Rev. 301 (1947); Hale, "Unconstitutional Acts as Federal Crimes," 60 Harv. L. Rev. 65 (1946); Putzel, "Federal Civil Rights Enforcement: A Current Appraisal," 99 U. Pa. L. Rev. 439 (1951); Note "Federal Power to Prosecute Violence Against Minority Groups," 57 Yale L.J. 855 (1948).

the statute in terms of its effects upon the Civil Rights Division's prosecutional efforts in a particular case study of a civil rights trial—*United States v. Minnick*.[4] Following an exposition, analysis, and critique of section 242 as a substantive criminal statute, and of the Civil Rights Division in enforcing the statute, this paper will evaluate the efforts within the Division, and in Congress, to correct weaknesses in the law.

I. Development of the Statutory Weapon and the Controlling Case

> A bent and blunted sword . . . unintelligible . . . neither terrible nor swift . . . of antiquated uncertainties . . . a leftover from the days of General Grant.[5]

In such language one authority has described the Civil Rights Act of April 9, 1866, expanded somewhat by subsequent amendments, and today designated as section 242, title 18 of the United States Code.[6] In its present form the statute protects against deprivation of federally secured rights by those who, acting under color of law, willfully intend such deprivation. Violation of the statute is a misdemeanor offense; conviction results in a one-year jail sentence or a fine not to exceed $1,000. This is the sole criminal statute upon which the federal government must rely in executing its program of civil rights enforcement against official acts involving fourteenth amendment rights.

The constitutionality of section 242 was first challenged in *Screws v. United States*.[7] Since that decision in 1945, the *Screws* case has had a significant effect upon a problem of disturbing proportions in the United States, i.e., deprivations of fundamental civil rights by police officials, particularly from persons in the racial minorities.[8] Although the Court

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[4] No. 8466-M Cr., S.D. Fla., June 23-26, 1953.

[5] Chafee, "Safeguarding Fundamental Human Rights: The Tasks of States and Nation," 27 Geo. Wash. L. Rev. 519, 526-29 (1959).

[6] Congressional debate on the statute is covered in abridged form in 7-8 Great Debates In American History (Miller ed. 1913). See also Flack, The Adoption of the Fourteenth Amendment (1908). The history of enforcement during the Reconstruction period is recounted in Cummings and McFarland, Federal Justice (1937), and Davis, The Federal Enforcement Acts (1914).

[7] 325 U.S. 91 (1945).

[8] See Intimidation, Reprisal and Violence in the South's Racial Crisis (Jan. 1, 1955–Jan. 1, 1959) (published jointly by: S.E. Office, Am. Friends Serv. Comm.: Dep't. of Racial and Cultural Relations, Nat. Council of the Churches of Christ; and Southern Regional Council). It should be emphasized in this context that incidents similar to those reported in this report have occurred in other parts of the United States. See: President's Committee on Civil Rights, Report—"To Secure These Rights" 114-25 (1947); Tabulation of convictions under Section 242 supplied by Hon. Warren Olney, III, Administrative Officer, United States Courts, appended to this article; 1955-59 Att'y Gen. Ann. Rep. Testimony of Tom C. Clark (then Attorney General of the United States) at "Hearings on H.R. 115 Before House Committee on the Judiciary," 81st Cong., 1st Sess., ser. 18, at 67-80 (1949), and "Hearings before the Special Subcommittee to Investigate the Department of Justice of the House Committee on the Judiciary," 83d Cong., 1st Sess., ser. 2 (1954). See also notes 59, 60, 66 infra.

affirmed the presence of a line separating lawful arrests from acts violative of the right of a person to be free from summary punishment beyond which the police may not step with impunity, the emphasis which it placed upon the requirement of willful intent, necessitated by the challenge of vagueness brought against the statute, has drained the section of its strength. Specific intent, difficult to prove in any case, must be recognized beyond reasonable doubt by a jury in order to convict. An explanation of the precise legal meaning of willful intent, as outlined in the *Screws* decision, has become an essential part of a judge's charge to the jury in cases involving section 242. The inadequacy of the jury charge in the original *Screws* trial on the point of "willful intent" was discussed by Mr. Justice Douglas:

> The difficulty here is that this question of intent was not submitted to the jury with the proper instructions. . . . [I]n view of our construction of the word 'willfully' the jury should have been further instructed that . . . [t]o convict it was necessary . . . to find that petitioners had the purpose to deprive the prisoner of a constitutional right. . . . And in determining whether that requisite bad purpose was present the jury would be entitled to consider all the attendant circumstances—the malice of petitioners, . . . its character and duration, the provocation, if any, and the like.[9]

It should be noted here that the minority of four, who were opposed to the constitutionality of section 242, believed that it failed to meet the standard of definiteness required of criminal statutes. In their view the statute was restricted to alleged deprivations of federal rights by state law and did not include breaches made by state officials. Screws, then, had not committed any act "under color of law." All justices agreed that Screws' conduct was brutal, deserving of punishment, but the minority held that it was the responsibility of the State of Georgia to punish the offender, not that of the federal government.

The *Screws* case was remanded for retrial. The court's charge to the jury in the new trial exposed the basic problem—effective prosecution under section 242:

> I want you to be sure to understand that even though they (defendants) might violate the law so as to commit manslaughter or murder . . . under the laws of the state, it still would not be an offense against the laws of the United States, unless excessive force was used for the purpose of depriving the prisoner of the rights guaranteed to him by the Constitution. . . . If, however, . . . they used excessive and unnecessary force, . . . for the purpose of depriving (victim) . . . of . . . Federally secured or

[9] 325 U.S. 91, 106-07 (1945). The trial court had omitted the word "willful" in its charge.

> protected, Federal Constitutional rights, that is the offense charged in . . . the indictment . . . .[10]

In addition to a detailed definition of willful intent, the judge in the *Screws* retrial took pains to point out that the question of race was not at all relevant to a legal determination of the case, thus revealing, in fact that this was a trial with strong racial overtones.

As to the necessity for finding that the defendants had a "bad purpose" in the fatal beating, Judge Strum made liberal use of the words of Justice Douglas. The act had to be "willfully committed." Here the judge went into a full explanation of the meaning of "willful," carefully following the Supreme Court's definition. It meant,

> an evil intent without a justifiable excuse . . . the gravamen of the offense consists in the evil design . . . *and it is a question here whether this was willfully done.* So if this incident was no more than an unlawful homicide, which grew out of a personal . . . animosity . . . then it is merely an unlawful killing . . . which should be remedied in the State Courts of Georgia. . . . Such acts would not constitute a federal offense, unless you find . . . that the defendants had the specific intent of willfully depriving the prisoner of the right of being tried by a jury. . . . If you find that . . . the defendants . . . acted . . . without any thought . . . to deprive Hall of certain rights . . . granted and secured by the Constitution . . . the defendants would not be guilty of the offense charged. . . . But in considering the question . . . it is not necessary . . . that the defendants were thinking in terms of the Constitution . . . because all persons are charged with the natural . . . consequences of their voluntary acts. . . . [D]efendants cannot claim that they had no fair warning that their acts were prohibited by the Federal statute . . . those who decide to take the law into their own hands . . . plainly act to deprive a prisoner of the trial which due process of law guarantees to him; such a purpose need not be expressed by the defendants at the time they are doing these things, but it may be reasonably inferred from all the circumstances attendant upon the acts. [Emphasis added.][11]

The jury acquitted Screws and those tried with him. Subsequently they returned to their law enforcement duties.

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[10] Charge to jury in United States v. Screws, No. 1300 Cr., M.D. Ga., Nov. 1, 1945. Copy of charge obtained from Civil Rights Division, Department of Justice.

[11] Charge of the court, supra note 10, at 18. See Fraenkel, "The Function of the Lower Federal Courts as Protectors of Civil Liberties," 13 Law & Contemp. Prob. 132, 142 (1948).

> [T]he stress on the necessity for willful violation of constitutional rights makes it easy for a judge unsympathetic to the prosecution to induce a jury to acquit. This is what actually happened on the retrial. . . .

A study of the court's charge does not sustain that opinion. While undoubtedly harmful in its effects upon the Government's case because of the question of "willful" intent, the charge followed the Screws requirement and the judge emphasized his own concern for protection under the statute. It should be considered as damaging, not from design, but from the necessities of the Supreme Court's requirement.

II. Impact of the Decision and the Requirements in the Court's Charge

We had a conviction blow in the *Screws* case.

The uncertainty caused by the Court's interpretation of the statute has placed great obstacles in the path of the federal prosecutor. . . .[12]

The Supreme Court decision in the *Screws* case produced both positive and negative results. On the positive side, the statute was upheld as a sanction against violation of civil rights by state law enforcement officials. Thus, forcing confessions by threats, assault or torture;[13] resorting to extortion, false arrest, imprisonment, and neglecting to protect a victim from mob violence and attempting to avoid criminal prosecution by divesting oneself of an official capacity while participating in illegal acts;[14] pursuing and killing a Negro without just cause[15] were encompassed within the protections. Violation of these would call the statute into play. Empowering the federal government to use section 242 against invasion of civil rights by state and local officials, where legal processes are often influenced by different kinds of prejudice, has become for many the only means of protection. The federal government could now intrude into an area normally considered belonging to the states and their citizens; it could punish conduct not authorized by state law, but identified with it.

In addition, the Court's affirmation of section 242's constitutionality assured the survival of the Civil Rights Section. Without such a statute, this fundamental civil rights protection would have become meaningless. Since it is unlikely that Congress would have enacted a new law, the Department of Justice could not have functioned in this area.

The requirements placed upon the government by the *Screws* decision were thought by some to be a virtue in disguise in that they permitted broader jurisdiction over a wider variety of offenses. The failure to include definite rights, protected and guaranteed under the statute (excepting previously defined rights, privileges and immunities secured by the due process clause of the fourteenth amendment) would prevent a narrow application of the law.

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12 Testimony of Attorney General Clark before Subcommittee No. 3 of the House Committee on the Judiciary, 81st Cong., 1st and 2d Sess., ser. 18, at 74 (1950) (Committee report entitled "Antilynching and Protection of Civil Rights").

13 Culp v. United States, 131 F.2d 93 (8th Cir. 1942).

14 Catlette v. United States, 132 F.2d 902 (4th Cir. 1943).

15 United States v. Trierweiler, 52 F. Supp. 4 (E.D. Ill. 1943).

Finally, the intensive judicial attention given the case had a positive result. State and local officials were made aware of the existence of a federal law under which they could be prosecuted unless they were careful in their application of police powers.

Negatively, the requirements established by the *Screws* decision, i.e., specific intent, willful deprivation of a right to be tried by a court, and proof that the defendant intended to deprive the victim of his right to due process have, indeed, proven to be serious obstacles to effective prosecution. Judges' charges to the jury in cases involving prosecutions under section 242 do not deviate from the *Screws* dictum. While the charges may vary in language, there has developed, since the *Screws* retrial, a consistency and accuracy in presenting the requirements which leave no doubt of the courts' intention that juries understand their responsibility in judging acts of defendants in constitutional rather than criminal terms.[16]

As noted above, the Court minority in the *Screws* decision feared that the statute would be "a dangerous instrument of political intimidation and coercion in the hands of those so inclined." In this view, the statute weakens state responsibility in proportion as it augments the power of the federal government by encouraging federal intrusion. Fear of federal encroachment is emphasized in those sections of the United States which may be ignorant of, or opposed to, fourteenth amendment rights in this context.

Since *Screws,* many similar cases have been brought in the federal courts, impelled by inadequate state action, or cynical state inaction,[17] and no accommodation has been made with the *Screws* holding. While the *Screws* requirements remain intact, subsequent decisions have modified and in some cases have mitigated hardships imposed by them.

In *Crews v. United States*[18] the fifth circuit held that evidence that a police officer mistreated a prisoner out of personal malice is not inconsistent with a conclusion that the officer also willfully intended to deprive his victim of constitutional rights. In *Williams v. United States,*[19] the first decision by the Supreme Court since the *Screws* case, the Court affirmed

16 See, e.g., Crews v. United States, 160 F.2d 746 (5th Cir. 1947).

17 See statement of Attorney General Rogers in the N.Y. Times, Nov. 18, 1959, p. 1, col. 4, regarding refusal of State of Mississippi to take any action in a lynching case (Mack Parker) involving removal of a Negro from the Poplarville jail. An attempt to indict under § 242 failed.

18 160 F.2d 746 (5th Cir. 1947).

19 341 U.S. 97 (1951).

the holding in *Screws* that rights under the fourteenth amendment are protected by section 242, that "color of law" includes misuse of power possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law, and that extorting a confession is a clear violation of section 242.

Lynch v. United States[20] filled a gap in the *Screws* holding by providing that there could be a denial of a constitutional right resulting from willful inaction of police. This idea—that a state may violate the fourteenth amendment by failing to give effective enforcement to its own laws—represents a possible broadening of the scope of the statute.

Koehler v. United States[21] affirmed that an instruction on presumed intent was within the rationale of the *Screws* requirement. Even when the improper action of the police is unauthorized or forbidden by state law, the statute applies. The defense attorney may, however, raise the question of whether or not the defendant was thinking in constitutional terms at the time he resorted to force. The *Koehler* case, further held that the right to be free from false imprisonment was within the protection of the statute. Other rights, including those under the fifth amendment and equal protection rights under the fourteenth amendment, are encompassed within section 242. These rights, in addition to those fundamental to personal protection, are included within the scope of the statute, but do not come into play unless physical violence under color of law is involved.[22]

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[20] 189 F.2d 476 (5th Cir. 1951), cert. denied, 342 U.S. 831 (1951).

[21] 189 F.2d 711 (5th Cir. 1951), cert. denied, 342 U.S. 852 (1951).

[22] See Pool v. United States, 260 F.2d 57 (9th Cir. 1958); United States v. Hunter, 214 F.2d 356 (5th Cir. 1954), cert. denied, 348 U.S. 888 (1954); Gowdy v. United States, 207 F.2d 730 (9th Cir. 1953); United States v. Konovsky, 202 F.2d 721 (7th Cir. 1953); Clark v. United States, 193 F.2d 294 (5th Cir. 1951); Apodaca v. United States, 188 F.2d 932 (10th Cir. 1951); United States v. Chaplin, 54 F. Supp. 926 (S.D. Cal. 1944). Indictments against prison officials who inflicted summary punishment upon prisoners have been upheld under § 242. United States v. Jackson, 235 F.2d 925 (8th Cir. 1956); United States v. Walker, 216 F.2d 683 (5th Cir. 1954), cert. denied, 348 U.S. 959 (1955); United States v. Jones, 207 F.2d 785 (5th Cir. 1953). Convictions of conspiracy to violate § 242 were upheld in Brown v. United States, 204 F.2d 247 (6th Cir. 1953) (extortion scheme, willful deprivation of property rights without due process of law, under color of authority). Section 242 protects against willful federal, state, and local infringement of other rights, where violent interference is a factor. See Wolf v. Colorado, 338 U.S. 25 (1949) (freedom from unlawful searches and seizures); Cantwell v. Connecticut, 310 U.S. 296 (1940); Hague v. CIO, 307 U.S. 496 (1939) (first amendment); DeJonge v. Oregon, 299 U.S. 353 (1937) (freedom of speech); Grosjean v. American Press Co., 297 U.S. 233 (1936) (freedom of press); Pierce v. Society of Sisters, 268 U.S. 510 (1925) (to express and exercise religious beliefs); Meyer v. Nebraska, 262 U.S. 390 (1923) (to establish a home); Truax v. Corrigan, 257 U.S. 312 (1921) (right to conduct a lawful business); Truax v. Raich, 239 U.S. 33 (1915) (to pursue a lawful calling). Section 242 may be used to punish official interference with rights protected against infringement by private persons. E.g., In re Quarles & Butler, 158 U.S. 532 (1895) (the right to inform federal officers concerning federal offenses). The 1959 Civil Rights Commission Report 19-145 deals with the application of the statute to voting rights under the Civil Rights Act of 1957.

III. Case Study of a Prosecution Under the Statute — *United States v. Minnick*[23]

> The awful instruments of the criminal law cannot be entrusted to a single functionary.[24]

The victims in criminal civil rights cases are often "ignorant, friendless persons, unaware of their rights, and without means of challenging those who have violated those rights."[25] Add to this description the elements of racial prejudice in a large number of these incidents and the restrictions imposed by the *Screws* holding on the Department of Justice, and the *Minnick*[26] case falls into the category of an archetype criminal civil rights violation. The values to be derived from a study of this case flow from noting these features: the aborted attempt at state action; the nature of the offense for which the victim was being apprehended; the deliberative, procedural and prosecutive efforts of the Department of Justice; and the conduct and result of the trial. Too often incidents of constitutional violation, while of interest and value in exhibiting the strengths and weaknesses of our judicial processes, overlook the values which derive from a delineation of the statute in action. In that connection, *Minnick* will serve to illustrate the impact of *Screws* upon the federal government in its prosecutive effort. This includes the Department of Justice and the agency which handled the case, the Civil Rights Section, the United States Attorney's office, and the court.

The rationale for selecting the *Minnick* case as illustrative of the major facets involved in a criminal civil rights prosecution is based upon its resemblances to *Screws* and *Crews,* as to the latter in regard to the elements of trial by ordeal, summary punishment, and death of the victim. But unlike *Crews,* who was convicted and whose conviction was upheld, Minnick was able to profit from the limitations which the Criminal Division of the Department of Justice felt compelled by the *Screws* requirements to impose upon its conduct of the case. The passage of seven years since the trial in 1953 have, in comparison with other

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[23] No. 8466-M Cr., S.D. Fla., June 23-26, 1953. Although there were two trials of officer Minnick, this study is restricted to the prosecution in Miami, Florida. Officer Minnick was tried in two district courts under two separate indictments charging offenses under § 242. They were unrelated incidents. Minnick was first indicted in Washington, D.C., for an offense under the statute while a member of the Metropolitan Police Department. Although under indictment, he left Washington and went to Homestead, Florida, where he was appointed a police officer. Five weeks later he committed the offense which forms the basis for the discussion here. Information was drawn from the files on the case in the Department of Justice, Civil Rights Division, File No. 144-16-79 (District of Columbia trial).

[24] McNabb v. United States, 318 U.S. 332, 343 (1943) (Frankfurter, J.).

[25] President's Committee on Civil Rights, Report—"To Secure These Rights" 25 (1947).

[26] United States v. Minnick, No. 8466-M Cr., S.D. Fla., June 23-26, 1953.

cases studied, fixed it in the experience of the Civil Rights Division as a case which epitomizes the weaknesses of the statute.

The facts of the Florida case[27] were briefly as follows: On Christmas morning 1952, a white woman driving along a highway near Florida City was forced off the road by a car driven by a "light skinned" Negro. When the local police received the report, they proceeded to a migrant farm labor camp where they questioned several workers and attempted to arrest one Emmitt Jefferson. Jefferson, refusing to submit to arrest, got into his car and drove past a police roadblock to his father's house in nearby Homestead. Arriving immediately behind him, one police officer began beating Jefferson with a blackjack, at which point Officer Minnick arrived and, despite pleadings from Jefferson's father, shot the suspect to death.

Officer Minnick was suspended from his position and arrested on a first degree murder charge. Shortly thereafter, a Dade County Grand Jury returned a no bill. The Justice Department was requested to institute a preliminary investigation for the purpose of developing a complete picture and determining possible statutory violation. Jurisdiction, with "willfulness" as the controlling influence, is the criterion for determining whether or not to initiate prosecution. After the Grand Jury refused to indict, Minnick was arrested on a Commissioner's warrant.[28]

The local grand jury situation, which made impossible immediate presentation, had prompted the Justice Department to file a complaint with the United States Commissioner. Because of the disappointing experience in the initial attempt to indict, the Department was doubtful of success and considered three alternatives:

1. To present the case again to a larger grand jury.
2. To proceed by an information.
3. To present the case to a new grand jury.

The latter alternative was chosen and a federal grand jury subsequently did indict Minnick.

The Assistant United States Attorney, Fred Botts, believed the case to be "utterly indefensible" and "until there is legislative relief, or the

[27] The facts in the incident depicted were taken from the files on the case in the Department of Justice, Civil Rights Division, File No. 144-18-253 (hereinafter referred to as File No. 144-18-253).

[28] The United States Attorney expressed opposition to the issuing of a Commissioner's warrant and prosecution by information. His opinion was that a Commissioner's warrant would make it necessary for the government to "tip its hand" as to evidence available. But see Catlette v. United States, 132 F.2d 902 (4th Cir. 1943), in which a conviction resulted following prosecution upon an information. The United States Attorney pointed out that an information could still be employed after a failure to indict.

Supreme Court can be induced to retreat somewhat from the language it has used . . . the prosecutor has little hope of success." It was the charge, with its strict insistence upon the presence of "willful intent," that inevitably led to acquittal. Mr. Botts had wished to introduce in the *Minnick* case certain points for charge which would have helped to overcome the obvious handicaps to conviction.[29] His strategy was to induce the trial court to

> give an instruction as to intent which would be along the lines which are given and considered proper in other cases—that a person . . . is presumed to intend the natural and probable results of his act. . . . In case of a conviction under such a charge, there would then be an appeal, and the court would then be called on to determine whether or not it was error to give the more favorable charge. . . .[30]

However, the Department of Justice, concerned over the narrow vote by which the Court had upheld section 242 in the *Screws* case, was reluctant to challenge that decision. The United States Attorney was advised that the Department would not recommend relaxation of the rule that the charge must be phrased in the language of the *Screws* holding.[31] It was suggested that he request the trial judge to elaborate upon the opinion of Mr. Justice Douglas with regard to "attendant circumstances," "reckless disregard," and the immateriality of the requirement that the defendant must have been thinking in constitutional terms where the aim was not to enforce local law but to "deprive a citizen of a right . . . protected by the Constitution." Since retention of the statute, under any circumstances, was considered vital, "it is absolutely imperative that prosecutions be brought only in clear cases and that the requirements of *Screws* and *Williams* be strictly followed."

The problem of Minnick's indictment in Washington was also considered in the preparation of the case. Since the Washington trial had not yet occurred, it was recommended that information regarding the alleged offense be withheld from the Miami jury in order to avoid possible reversible error.[32] One exception to the hearsay rule, dealing with courses of conduct, probably would not be relevant since it could be shown as simply another incident similar to the one at issue.

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29 Letter from Mr. Botts to the author, July 25, 1958:
I almost begged the court to give this charge . . . which . . . while not literally following the words of the Supreme Court, would have a good chance of being upheld. . . . But unfortunately, few judges, having the clear language of the Supreme Court as a pattern . . . will risk changing the language to give the prosecutor a chance even in a vicious case. Sometimes a fearless judge may be found who will be so devoted to justice that he will risk a reversal, in the interest of justice, and give this charge.

30 Case No. 144-18-253.

31 Ibid.

32 The Department of Justice reminded Mr. Botts of the general rule excluding evidence of other crimes, e.g., Laughlin v. United States, 92 F.2d 506 (D.C. Cir. 1937).

The trial began on June 23, 1953, before Judge George Whitehurst. The more than three-hundred pages of testimony taken in the case are too interrelated for presentation out of context. Judge Whitehurst, in his charge to the jury, carefully and correctly followed the charge that had been developed in the *Crews*[33] case, which in turn had followed the charge of Judge Strum in the *Screws*[34] retrial. The jury was instructed that unless they

> found Minnick specifically intended to deprive . . . Jefferson of his constitutionally guaranteed rights when he shot him . . . they could not convict . . . that even if they felt Minnick was guilty of murder it would not necessarily follow that he had violated the Civil Rights statute.[35]

The defense counsel was satisfied with the court's charge and, after comparing it with his own requested points for charge, he concluded that "the requirements for conviction that the judge constructed from the *Screws* holding were fair, and covered the field" so completely that his requested points were inserted in the records but, with one important exception, not read.[36] The exception:

> To convict the Defendant of the charge contained in this indictment, it is necessary that you first find from the evidence beyond and to the exclusion of every reasonable doubt that the Defendant took the life of Emmitt Jefferson with the intention of denying Emmitt Jefferson either or all of these constitutional rights which have been enumerated. It is not enough to convict upon this charge that the Defendant may have had a bad purpose in firing the fatal shot; for example, if you find from the evidence that the Defendant in carrying out his duties as an officer of the law, approached the scene . . . and that the Defendant in attempting to make an arrest . . . may have used more force than was necessary to effect that arrest, which . . . resulted in the death of Emmitt Jefferson, this in itself is not enough to convict the Defendant of intentionally denying Emmitt Jefferson those constitutional rights enumerated in the indictment.

The jury was out four hours and forty-five minutes, returning once for a rereading of that portion of the charge relating to "willful" deprivation of rights. The verdict of acquittal was not unexpected by the government despite its belief that it had presented a strong case.

Some comfort may have been intended in a memorandum from the Department of Justice in Washington to Mr. Botts. The language of the Department reflects a certain resignation with which it has come to view its handicaps in prosecuting under Section 242.

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[33] Crews v. United States, 160 F.2d 746 (5th Cir. 1947).
[34] United States v. Screws, No. 1300 Cr., M.D. Ga., Nov. 1, 1945.
[35] File No. 144-18-253.
[36] Telephone conversation with Mr. Robert K. Bell in Miami, Florida, Nov. 30, 1959.

> [I]t may perhaps be found to have been a most fortunate occurrence since the punishment that can be assessed for murder or manslaughter under state law is much more appropriate than the one year, $1,000 fine maximum prescribed under the Civil Rights statute.[37]

The jury foreman said that the

> general consensus was that Minnick was guilty of manslaughter or second degree murder . . . and that the state authorities should do something about prosecuting him. There was no way to get around the instructions. . . . We would have liked to convict this man, but we could do nothing else (but acquit) under the Judge's charge.[38]

Following the acquittal the Justice Department advised Mr. Botts to provide the State Attorney for Dade County with a transcript of the testimony, but directed him not to go to the foreman of the Dade County Grand Jury. So deeply did the United States Attorney feel regarding the acquittal that he continued to make efforts to have the State of Florida reopen the case for prosecution.[39]

On June 30, the state's attorney announced that in view of the civil rights trial and statements of jurors who tried the case, he intended to reopen the case against Minnick to consider prosecution on a murder charge.[40] An offer of "full cooperation and assistance" from the Justice Department was immediately forthcoming, to redress what it considered an "apparent miscarriage of justice." A number of jurors who had served in the federal trial were interrogated by the state's attorney. His conclusion was that inasmuch as a state grand jury had, in 1952, returned a no bill, he would recommend to the present grand jury that no action be considered. The case was then closed.[41]

There remained for Minnick another trial—this time for the offense in Washington. This, too, resulted in acquittal, following the court's charge, which was true to the prescription in the *Screws* retrial.[42]

IV. The Civil Rights Division

> Certainly no other agency (CRS) within a period of less than a decade, has forced a greater change in our constitutional philosophy. The most revered section of our Constitution, the Bill of Rights, is at least seen for what it is: a shield fashioned by a democracy for safeguarding individual freedom against governmental encroachment. Now another instrument has been fashioned, a sword, for which little or no express

37 File No. 144-18-253.
38 Ibid., statement of juror to United States Attorney Botts, as expressed in letter from Botts to the author, July 25, 1958.
39 File No. 144-18-253. This is evidenced by a letter from Botts to George A. Brautigam, State Attorney for Dade County, July 16, 1953.
40 Ibid.
41 Ibid.
42 File No. 144-16-79, Dep't of Justice Civil Rights Div.

> constitutional sanction exists. But it has been fashioned and its usefulness decisively indicated.[43]
>
> An already overburdened Department of Justice . . . cannot be expected to devote its energies to supervising local police activities and prosecuting police officers, except in rare and occasional instances. And the hostility which such prosecutions have received here (see *Screws v. United States* . . .) hardly encourages putting the federal prosecutor on the track of state officials who take *unconstitutional* short cuts in enforcing state laws.[44]

In accord with the Civil Rights Act of 1957,[45] the Civil Rights Section was detached from the Criminal Division of the Justice Department and raised to separate division status. Within the new division a Constitutional Rights Unit has cognizance of

> all matters and cases involving alleged denial of due process of law under the 5th or 14th Amendments, and those arising under . . . Sections 241 and 242 . . . which involve an alleged denial of the equal protection of the laws. . . .[46]

The actual preparation of cases under section 242, as well as the other statutes within the area of division responsibility, is in the hands of a Trial Staff, composed of attorneys from the Appeals and Research Section and Constitutional Rights Unit. It is they who conduct grand jury investigations and provide assistance to United States attorneys in both the presentation of evidence to a federal grand jury and in court proceedings involving the federal government.

In the dissenting opinion of Justice Roberts, Frankfurter, and Jackson in the *Screws* case it was stated that,

> The Department of Justice has established a policy of strict self-limitation with regard to prosecutions under the civil rights acts. When violations of such statutes are reported, the Department requires that efforts be made to encourage state officials to take appropriate action under state law. To assure consistent observance of this policy in the enforcement of the civil rights statutes, all United States Attorneys have been instructed to submit cases to the Department for approval before prosecutions or investigations are instituted. The number of prosecutions which have been brought under the civil rights statutes is small.[47]

It is true that the Civil Rights Division has not considered its function that of a national policing agency. Its operations are held strictly within

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[43] Carr, Federal Protection of Civil Rights 210 (1947), referring to the Civil Rights Section of the Criminal Division.

[44] Irvine v. California, 347 U.S. 128, 152 (1954) (dissent by Douglas J.; see also his appendix to that opinion at 153).

[45] 71 Stat. 637 (1957), 5 U.S.C. § 295-1 (1958).

[46] Hearings before the Subcommittee of the House Committee on Appropriations, 86th Cong., 2d Sess. 191-93 (1960).

[47] 325 U.S. 91, 159 (1945).

a self-limiting area with regard to section 242 because of the tenuous condition of the statute.

Expectation that the establishment of the Division would result in an increased number of complaints of offenses, many of which would be considered violative of section 242, was substantiated following the Supreme Court decision in the School Segregation Cases and those involving public accommodations. Desegregation procedures primarily involve state officers. Resistance to court orders, as in Little Rock, Arkansas, which erupts into "color of law" violence has resulted in pressure for aggressive action by the Division. Other manifestations of contemporary civil rights pressures often result in acts of state officials which may be encompassed within the statute. Emphasis upon an

> expanded program of liaison and consultation with law enforcement agencies . . . of States in order to . . . encourage proper state action . . . and to place State and Federal responsibilities in proper perspective; . . . the collection of complete factual information on developments in the field of civil rights, . . .[48]

and the right to vote laws with their ramifications and manifestations, should present the Division with challenging and heavy responsibilities. However, any positive conclusions as to success in these areas would thus far be contrary to the facts.

Several reasons account for the ineffectiveness of the Division, among them the hostility with which its functions have been viewed by state officers[49] and some members of Congress,[50] the problems involved in obtaining indictments from sometimes hostile federal grand juries,[51] the

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[48] "Hearings before the Subcommittee of the House Committee on Appropriations," 86th Cong., 1st Sess. 191-205 (1959).

[49] See criticism by Governors of Pennsylvania, New York, and Virginia of FBI for "invading" police powers of states by investigating alleged brutality against inmates of state institutions. N.Y. Times, Aug. 4, 1953, p. 1, col. 6.

[50] See, for example, "Hearings before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary," 86th Cong., 1st Sess., part 2 (1959). Criticism of the Civil Rights Division was marked throughout much of the testimony, particularly at pp. 1080-1081. See also 1959 report of the Civil Rights Commission:

> Some of the members of the subcommittee (Subcommittee of the Committee on Appropriations, H.R., 86th Cong., 1st Sess., 1959, pp. 189-194) were apparently not impressed with the record of the Civil Rights Division. A large part of its energies . . . had been channeled into compiling statistics and . . . digesting State election laws . . . its legal actions were disappointing in number, nature, and results.

This criticism referred specifically to enforcement of the Civil Rights Act of 1957. The views of some members of the Subcommittee were critical also of the Division in regard to prosecutions under § 242. See particularly pp. 195-218. See also "Hearings before the Subcommittee of the House Committee on Appropriations," 86th Cong., 2d Sess. 208-09 (1960) (Congressman John R. Rooney (D) N.Y.:

> "This . . . Division . . . should have been part of the Criminal Division, rather than as it is now. . . . The Criminal Division would have done a better job.")

[51] See "Hearings before the Subcommittee of the House Committee on Appropriations," 85th Cong., 2d Sess. 97 (1958) and 103 Cong. Rec. 11640-41, 11645-47, 12156-57 (July 26 & Aug. 1, 1957).

Of particular interest in this connection are the Dawson, Georgia, incident and the efforts

resistance of many local police departments to the investigatory processes of the FBI,[52] and the reluctance of the FBI to complicate its working relationships with police departments by arresting officers on complaints. An additional difficulty results from the fact that, where there are no regional offices, the Division must rely upon information supplied by local officials as well as United States attorneys who are local residents and whose actions and reactions are frequently influenced by local pressures.[53] Thus, placing state and federal responsibilities in proper perspective often means an immobilization which tends to nullify any successful federal intervention when no other course is possible. Difficulties in prosecuting and the low number of convictions when juxtaposed against the statistics on sentences imposed[54] add to the disabilities experienced by the Division.

The difficulties encountered in the approval of an assistant attorney general to head the Civil Rights Division is a reflection of the continuing opposition within the Senate Judiciary Committee to the federal civil

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of the Justice Department to obtain indictments under § 242 there, and in the Mack Parker case in Poplarville, Miss. These failures indicate the difficulties the Justice Department faces in attempting to prosecute police officials in some sections of the Deep South. For the Dawson case see Intimidation, Reprisal, and Violence in the South's Racial Crisis, supra note 9, at 23-24, Washington Post Times Herald, June 8, 1958, p. 1, col. 3, and N.Y. Times, Aug. 10, 1958, p. 72, col. 1. In the Mack Charles Parker lynching the attempt of the Department of Justice to obtain a federal indictment under § 242 failed. Federal intervention was attempted after a state grand jury had disregarded evidence contained in a file assembled by the FBI and presented to the governor of the state and presumably other state officers as well as the grand jury.

52 See "Hearings before the Special Subcommittee to Investigate the Department of Justice of the House Committee on the Judiciary," 83rd Cong., 1st Sess., on H. Res. 50, ser. 2, at 1-294 (1953).

53 The Civil Rights Division has developed a working liaison on cases involving civil rights with New York, Pennsylvania, and Massachusetts under which authorities are notified of substantial complaints of violations and the practices are then corrected. This is done where "police practices are really violations of due process of law but . . . cannot be prosecuted for one reason or another. . . ." "Hearings before the Subcommittee of the House Committee on Appropriations," 86th Cong., 1st Sess., 202 (1959). These are the only states in which there is a regular working liaison on such cases, but

> in several Southern States a situation may arise involving a deprivation of constitutional rights, . . . and where the State authorities indicated they were taking action in good faith, the Civil Rights Division cooperated either by exchange of information, or by deferring to their action.

Id. at 213. The danger is that if state action proves inadequate in terms of legal remedy or prevention, the federal government, if it is to move, must do so under a handicap.

The FBI has for several years conducted special civil rights schools resulting from the emphasis placed upon the law enforcement officer's "role as a guardian of individual rights and privileges . . . [and] to assist in better equipping police to meet this critical obligation. . . ." 1957 Att'y Gen. Ann. Rep. 192.

54 See Appendix III for analysis of sentences under § 242. A recent case, United States v. Dunn, — F. Supp. — (N.D. Fla. 19—), is of interest in that the court granted a directed verdict of acquittal on the § 242 indictments of fourteen former prison guards, accused of torturing prisoners at Raiford (Fla.) State Prison. The judge dismissed on two grounds: the doctrine of the Screws holding, and failure of the Government to submit sufficient proof of intent to warrant continuing the case to a jury verdict. The judge also dismissed the § 241 conspiracy charges. Information obtained from Civil Rights Division, August 9, 1960.

rights function.[55] Certainly such opposition has not invigorated the Division. The result has been disappointing in terms of leadership and results. The Division, with its manifold statutory responsibilities,[56] has been functioning with fewer attorneys than many other federal bureaus and agencies of lesser importance.

These difficulties must cause feelings of frustration in the Division as it contemplates its problems in and out of court. Nevertheless, it continues to act upon complaints, to investigate, and, where indictments have been obtained, to prosecute. It also has embarked "on a large scale due process type of enforcement . . . to move against organized denial of citizen's rights."[57] The Division has been criticized for not moving to prosecute by an information where indictments have not been forthcoming. It might have attempted such prosecution in the *Dawson* and *Poplarville* cases.[58] Such action, even if it resulted in acquittals, might have had a salutary effect upon those communities, their police, the states concerned—Georgia and Mississippi—and the Civil Rights Division. Prosecution, despite an adverse decision, would have indicated a determination, courageously carried out, to enforce the statute. At the same time, failure to convict in two such highly publicized incidents might have stimulated Congress into taking some action on the statute. These were opportunities lost. They have not yet been retrieved. Reflections upon the administration of justice in the United States have led the Commission on Civil Rights to enter into a study of this field.[59]

[55] W. Wilson White was appointed by President Eisenhower to be Assistant Attorney General, Civil Rights Division, on December 9, 1957. The appointment remained in the Senate Judiciary Committee until action was taken on August 18, 1958. The confirmation was delayed despite the fact that Mr. White had previously been confirmed for a position of similar rank—Assistant Attorney General, Office of Legal Counsel. Following Mr. White's resignation on Sept. 28, 1959, a delay of four months ensued until a successor, Harold R. Tyler, Jr. was nominated on January 26, 1960. Mr. Tyler served in as an interim appointment pending action by the Senate Judiciary Committee. He was finally given a hearing on June 29. Three of the five members of the subcommittee are Southern Democrats. The two Republican members gave Mr. Tyler "little support" during the hearings. N.Y. Times, June 30, 1960, p. 19, col. 1. He was finally approved on August 20 and served until the Democratic Administration took office in January 1961.

Mr. Burke Marshall, nominated by President Kennedy on February 2, was confirmed by the Senate on March 28. Thus, in the less than four years of its existence as a Division, there have been three assistant attorneys general and one acting assistant attorney general. The first, Mr. White, waited more than eight months for Senate approval, and served for one year. The second, Mr. Tyler, served but for months following a wait of eight months for approval. (Mr. Ryan had acted as assistant attorney general preceding Mr. Tyler's nomination, and has also resigned from the Division.) These officials were Republicans. Mr. Marshall, a Democrat, waited almost two months for approval by a Democratically controlled Senate Judiciary Committee. These obstructive delays may be considered to be related to the politics of civil rights activity in the Senate Judiciary Committee. It is not calculated to enhance the operational vigor of the Civil Rights Division.

[56] See Appendix I concerning jurisdiction of Civil Rights Division.

[57] See statement of prosecutions under way, and pending, in "Hearings," supra note 53 at 200.

[58] See note 51 supra.

[59] N.Y. Times, Sept. 14, 1959, p. 28, col. 1.

The basic test of the administration of justice is not the number of offenders convicted. Rather it is in the diligence, the vigor, and the zeal with which the innocent are protected, the offenders prosecuted. It is by this standard that we must judge the efforts of the Civil Rights Division. The "sword" is not sharp. Initially dull, it has become further blunted by the inhibitions placed upon it by the *Screws* holding and by self-imposed limitations of function. Congressional inaction in this area and the negative approach to civil rights protections in some states have served only to compound the limitations.

This critique of the Division must be evaluated against the continuing efforts of the professional staff to move ahead with its manifold responsibilities. A measurable decrease in police brutality and kindred practices has been claimed as a positive result of federal action, as a deterrent at times, and as a punitive weapon where mediation or education do not succeed. Awareness of the statute and the undesirability of federal prosecution, with the possibility of conviction for a federal crime, are undoubtedly of value. Convictions, such as *Crews, Williams, Catlette,* and others, evidence the many successes[60] which have attended the efforts of the old Civil Rights Section from 1939 to 1957. Its conscientious and vigorous effort in *Minnick,* while a failure if acquittal is to be interpreted as failure, must have had effects of a deterring nature. They are the positive factors in the evaluation.

The goal of the Division's efforts is to:

> vindicate the constitutionally protected rights of individuals . . . to give meaning to the law by giving evidence of punitive efforts . . . the purpose of civil rights prosecutions is remedial rather than punitive. . . .[61]

It is in this context that the Division's efforts should be evaluated.

V. Proposed Amendatory Legislation

> If Congress desires to give the act wider scope, it may find ways of doing so.[62]

> [Section 242] can never be a very strong reed for a positive program of federal protection of civil rights, and the Court will never be free from difficulties in interpreting it. Congressional adoption of new legislation is desperately needed.[63]

In recent years, numerous bills on the subject of civil rights have been introduced in Congress. Several of these have sought to remedy the

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60 See notes 14 (Catlette), 16 (Crews) and 19 (Williams) supra.
61 "Federal Enforcement of Civil Rights," Address by Arthur B. Caldwell, University of Pennsylvania Civil Rights Seminar, July 16, 1953.
62 Screws v. United States, 325 U.S. 91, 105 (1945) (Douglas, J.).
63 Pritchett, The Roosevelt Court 152 (1958).

defects in section 242 as evidenced in the effects of the *Screws* decision. A study of the deficiencies in the statute was made in the Civil Rights Section as part of the preparatory work in drafting a proposed new civil rights act in 1956. Attorneys in the section drafted amendments to the existing statute, which would have augmented the protective coverage of rights and changed an offense against section 242 from a misdemeanor to a felony, increasing the penalties where "wrongful conduct resulted in the maiming or death of the person . . ." to "a fine of not more than $10,000 or imprisonment for not more than twenty years, or both."[64] A new section 245 would enumerate the specific rights, privileges, and immunities.[65]

Some attorneys in the Department of Justice believed that the proposed sections 242 and 245 would not provide an adequate solution to the problem. Both legal and political considerations dictated the decision of officials in the Department not to present the proposal to Congress.[66] Such a statute would have gone beyond the proposals introduced by members of Congress at a time when the Administration was primarily interested in obtaining congressional approval of a right to vote law. Legally, the Department felt that it would have been an impossible task to draft a law precise enough to meet the requirements of a criminal statute and yet broad enough to include the variety of deprivations of fourteenth amendment rights possible. Coverage of all the means or

[64] Draft drawn by Civil Rights Section, Department of Justice, March 2, 1956, entitled "A Bill to Amend Chapter 13 of Title 18, United States Code, Relating to Civil Rights, and to Otherwise Strengthen the Civil Rights Statutes."

[65] These rights, privileges and immunities are:

1. The right to vote as protected by the Constitution and federal laws;
2. The right to petition the Federal Government for redress of grievances;
3. The right to inform the Federal Government of a violation of federal law;
4. The right to the free exercise of the rights, privileges and immunities of United States citizenship;
5. The right to be immune from erections of fines or deprivations of property without due process of law;
6. The right to be immune from punishment for crime or alleged criminal offenses except after a fair trial and upon conviction and sentence pursuant to due process of law;
7. The right to be immune from physical violence or mental torture applied to exact testimony, to compel confession of crime or alleged offenses, or to extort any information;
8. The right to be free of illegal restraints of the person;
9. The right to protection of person and property without discrimination by reason of race, color, religion, or national origin;
10. The right not to be subjected to illegal summary punishment;
11. The right not to be indicted by a grand jury from which prospective jurors were systematically excluded because of race . . . , and the right to be tried by a petit jury from which prospective jurors have not been excluded because of race . . . ;
14. The right not to be deprived by the willful action or inaction of any person of any other right which is made or which shall have been made specific by the Constitution, by the laws of the United States, or by decisions of the courts interpreting such Constitution or laws.

[66] Information obtained in interviews with the draftsmen of the proposed statute.

methods that could conceivably be used to accomplish denial of a "right" would undoubtedly have appalled some members of the Senate Judiciary Committee. Attorney General Brownell decided that although the present statute had defects, amendment "would be . . . extraordinarily complicated" and "was not necessary" at the time.[67] To codify every federally protected right, in addition to its impracticability, would make the statute rigidly confining, and would arouse and deepen further the fears of the states concerning a misuse of federal power, particularly if prosecutions under such a new statute were to increase markedly.

The provisions inserted in congressional bills designed to remove the difficulties imposed by the *Screws* requirement on "willfulness" have been similar to those proposed by the Civil Rights Section in 1956. The most recent bill to amend section 242 was introduced by Senator Humphrey and others in the last session of Congress.[68] In addition to providing for increased penalties where death or maiming result, proposed section 242-A enumerates certain "rights, privileges, and immunities" of inhabitants, including, but not limited to, a number listed in the Civil Rights Section proposed statute. Senator Humphrey's bill is similar in almost all respects to those introduced in the Senate and House of Representatives since the McGrath proposal in the 81st Congress. This bill was not acted on by the Judiciary Committee:

> [M]embers of the Committee who are unsympathetic to civil rights legislation have balked any and all attempts to get any civil rights bills out of the Committee and reported to the Senate . . . we simply do not have the votes to put through a strong civil rights measure this year.[69]

Such bills as the two outlined above would help make the statute more meaningful in terms of rights protected and seriousness of the violations. They would help remedy the "vagueness" criticism voiced by the minority opinions in *Screws, Crews, Williams,* and *Koehler*. "Deprivation of rights, privileges and immunities" would be given specificity. The statute would provide for procedures applicable to a felony charge which would erase that flexibility in prosecution by information which has been considered the saving grace of the *Screws* requirement. However, this latter, with the exception of *Catlette,* has been of little value since its use has been rare. Making the offense a felony may make it more difficult to indict and convict but would add greatly to the potential hazard faced by a violator and might prove a greater deterrent than the present misde-

[67] Statement by the Attorney General on Civil Rights legislation before the Senate Committee on the Judiciary, May 16, 1956. Release, Department of Justice.

[68] Bill S. 2003 introduced in the Senate May 19, 1959.

[69] Letter from John J. Flynn, Legislative Counsel to Senator Hubert H. Humphrey, March 31, 1960.

meanor statute. Some attorneys in the Division think that to view the felony offense as a deterrent and punishment is to oversimplify. In their view indictment and conviction, even under a misdemeanor, are the more important considerations. However, where maiming or death result, it is shocking to think of a civil rights criminal statute in terms of a misdemeanor.

A Supreme Court decision upholding "constructive intent" would of course greatly strengthen section 242. In addition, proposals in Congress to add civil remedies would perhaps be exposed to less hardship in the House and Senate Judiciary committees than have the criminal penalties.[70] In this context the Court's decision in *Monroe v. Pape*,[71] involving the meaning of the Civil Rights Act of 1871 is of immediate interest and possible future significance since it upheld the right of injured parties to sue police officers for damages where their constitutional rights were violated. Of particular interest, too, is that there was but one dissenter—Justice Frankfurter.

The Kennedy Administration has not yet given an indication of its thinking in this area of civil rights. Voting, housing, and education, as civil rights matters requiring Administration and congressional consideration, have had primacy thus far. But protection from physical violence at the hands of police and other officials remains a nagging, persistent problem, not likely to be soon resolved under present statutory protections. It thus devolves upon the new Attorney General to bring into the Civil Rights Division the kind of leadership, intelligence and dedication on the higher levels that it has not given evidence of possessing since it became a Division in December 1957. Unrelenting litigation where it has jurisdiction should be the policy. This will require both a strong, daring assistant attorney general, and energetic and dedicated deputies. The President, assuming that responsibility which is his alone, must bring the great prestige of his office to bear directly on this situation.

Conclusion

Prosecution under section 242 is a delicate and difficult task. When a state fails or refuses to fulfill its responsibilities for the protection of civil rights, the intervention of the federal government is required to vindicate those rights. *Screws* has placed a burden upon the Civil Rights Division which, added to its self-imposed functional limitations in this area, has made successful prosecution a constant problem. If the pros-

[70] See "Hearings on S. 508 before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary, 85th Cong., 1st Sess. 141 (1957).

[71] 365 U.S. 167 (1961).

pects for future prosecution continue to suffer from these cautionary inhibitions, the Civil Rights Division will have lost the opportunity to realize the goals for which it was established.

A more sharply drawn federal statute, particularizing the rights protected and providing meaningful penalties in terms of the rights violated, would sharpen significantly the prosecutive tool. What was considered by the minority in *Screws* to be a "shapeless and all embracing statute" would then become specific and clarified. Despite the fears of a few, the statute has not become a "dangerous instrument of political intimidation and coercion," except to those averse to federal intervention on any terms other than their own. More concern should be given to the "debilitation of local responsibility" of which civil rights violations are but a single, albeit, dangerous manifestation.

Testing the concept of "constructive intent" in the courts would enable the Division to overcome the difficulty imposed by the *Screws* requirement as seen in *Minnick*. This would require a liberalization of the court's charge which would clarify permissible behavior of police officers under the statute. It would then relate "bad purpose" to "constitutional deprivation."

The strongest possible statute must perforce be limited in application where the climate of enforcement is at best without strength, and at worst negative or neutral. There must be a Civil Rights Division with leadership, direction, and dedication. It will require public recognition, translated into action by the President and the Attorney General, that this is indeed a function of national importance, meriting Congressional and Administrative support. In the final analysis section 242 was enacted to provide protection of all inhabitants (although directed toward the Negro initially) from "under color of law" deprivations of fourteenth amendment rights. Without this protection other statutory rights have little meaning.

APPENDIX I

STATISTICAL DATA UNDER SECTION 242, FEBRUARY 10, 1960
Prepared by Civil Rights Division, Department of Justice, Washington, D. C.

	Complaints Received	Complaints Investigated	Cases Submitted to Grand Jury	No True Bills	Indictments Returned
Jan.–June, 1958	584	317	2		2
July–Dec., 1958	643	167	12	9	3
Jan.–June, 1959	612	213	9	5	17*
July–Dec., 1959	591	211	4	1	25**

	Disposition of Cases in Court		
	Acquittals	Convictions	Dismissals
Jan.–June, 1958	1	1	1
July–Dec., 1958	3		
Jan.–June, 1959		2	1
July–Dec., 1959	1	1	1

* 14 of these indictments were returned in a single grand jury investigation.
** 23 of these indictments were returned in a single grand jury investigation.

APPENDIX II

DEFENDANTS CONVICTED AFTER TRIAL OR ON PLEA, AND SENTENCED FOR VIOLATIONS OF SECTION 242 SECTION 371 (CONSPIRACY) IN ALL U. S. DISTRICT COURTS DURING FISCAL YEARS 1954 THROUGH 1959

Administrative Office U. S. Courts, Washington, D. C., March 1960

District and Fiscal Year	Docket Number	Sentence Imposed by the U. S. District Court
1954		
Alabama, N.	1363	Fine $275
Mississippi, S.	2295	12 months and fine $500, suspended, probation 15 months
Florida, N.	999	1 year and fine $500, imprisonment suspended, probation 1 year
Texas, N.	9348	6 months, $500 fine
Texas, S.	5754	Fine $100
Kentucky, E.	9951	Fine $1,000
1955		
Alabama, N.	1338	Fine $250 to stand committed as of July 15, 1955 and 6 months, suspeuded
Texas, E.	5096	Fine $500 to stand committed in default of payment
1956		
Texas, W.	488	4 months—suspended 4 months—probation without supervision
Missouri, E.	28285	Fine $100 each counts 1 and 2, to stand committed
Idaho	2998	Fine $150 and 30 days each of counts 1 and 2. Imprisonment suspended and defendant to have 6 months to pay fines.

APPENDIX II (*Continued*)

1957		
New York, W.	7022	Counts 1 and 2, 6 months suspended, 1 year probation, conc. Fine $200 count 1
North Dakota	8499	Count 2, 6 months imprisonment
1958		
Alabama, M.	10981	Fine $500
Texas, S.	13235	6 months suspended, 5 years probation
Arkansas, E.	3886	Probation 1 year, fine $500
Nevada	136	Counts 1 and 2, 1 year conc. 6 months
1959		
Georgia, N.	4767	Count 1 under § 371, 12 months and fine $1,000. Imprisonment and fine suspended, 3 years probation. Count 2 under § 242, jury not guilty
Georgia, M.	2188	6 months suspended, 5 years probation, fine $1,000
Illinois, E.	18850	Probation 2 years, fine $250