M E M O R A N D U M

TO: Honorable Marvin Griffin, Governor of Georgia

FROM: Eugene Cook, Attorney General of Georgia

SUBJECT: Authority of the President to use Federal Troops in a State of the Union

On September 24, 1957, President Eisenhower ordered the Arkansas National Guard into federal service and occupied Central High School of Little Rock with storm troopers of the regular Army. Naked bayonets were held against the throats of teenage girls and American blood was spilled upon the soil of a sovereign State by a posse comitatus under orders of the President of the United States.

Airborne troops of the regular Army landed in Arkansas for the purpose of preventing domestic violence without any request from the Legislature or from the Governor of that State.

Did the President of the United States have the authority under the Constitution of the United States and laws of Congress to take such action?

Article IV, Section 4 of the United States Constitution provides as follows:

"Section 4. The United States shall guarantee

> to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature or of the Executive (when the Legislature cannot be convened) against domestic Violence."

It will be seen that the Constitution only authorizes the United States to take protective action against domestic violence in any State on application of the Legislature, or of the Executive. This section of the Constitution has been construed in a number of cases, none of which are identical with the Little Rock situation, but there are several Supreme Court decisions which call attention to the fact that the United States can only intervene to suppress violence in a State on application of the Legislature or of the Executive of that State.

U. S. v. Cruikshank, 92 U.S. 542, 23 L. Ed. 529, involved one of the Civil Rights Acts of 1870. An indictment was brought under this act to put down a conspiracy of the Ku Klux Klan to intimidate negroes in the exercise of rights granted to them by the Fourteenth Amendment of the United States Constitution. The Court held the law unconstitutional and dismissed the proceeding, saying:

> ".... The charge as made is really of nothing more than a conspiracy to commit a breach of

> the peace within a State. Certainly it will not be claimed that the United States have the power or are required to do mere police duty in the States. If a state cannot protect itself against domestic violence, the United States may, upon the call of the Executive, when the Legislature cannot be convened, lend their assistance for that purpose. This is a guaranty of the Constitution, article IV, §4; but applies to no case like this."

In the earlier case of Luther v. Borden, 7 How. 1, 42, 45, 12 L. Ed. 581, 599-601, the Supreme Court made the following statements with reference to the law on this subject:

> ".... The first clause of the first section of the Act of February 28, 1795, of which we have been speaking, authorizes the President to call out the militia to repel invasion. It is the second clause in the same section which authorizes the call to suppress an insurection against a State government. The power given to the President in each case is the same, with this difference only; that it cannot be exercised by him in the latter case, except upon the application of the Legislature or executive of the State.
>
> "... The State itself must determine what degree of force the crisis demands."

In his address to the nation on September 24, 1957, the President stated that "disorderly mobs" have deliberately prevented the carrying out of proper orders from a federal court. He then stated that for this reason "it becomes necessary for the Executive Branch of the federal government to use its powers and authority to uphold federal courts." The

means of carrying out the orders of courts are provided by the laws of Congress. The remedies are both civil and criminal. Specifically, whenever the federal court issues an injunction, any person violating the injunction is subject to civil or criminal contempt of court. He may be arrested by the United States Marshal, or other law enforcement officer, brought before the court and subjected to fine or imprisonment or both in the discretion of the court whose order has been violated. Title 28, Sections 547-549 of the United States Code places the responsibility for carrying out the orders and decrees of the United States Courts on the Marshals of these courts, and permits them to secure all assistance necessary for such purpose. In the Little Rock case no attempt whatever was made to carry out the orders of the court in the normal manner provided by law.

The authority of the President to call the National Guard into federal service is contained in Section 3500 of Title 10 of the United States Code, the relative portions of which read as follows:

> "§3500. Army National Guard in Federal Service; call
>
> "Whenever --
>
> "(1) the United States, or any of the Territories, Commonwealths, or possessions, is

invaded or is in danger of invasion by a foreign nation;

"(2) there is a rebellion or danger of a rebellion against the authority of the Government of the United States; or

"(3) the President is unable with the regular forces to execute the laws of the United States;

"the President may call into Federal service members and units of the Army National Guard of any State in such numbers as he considers necessary to repel the invasion, suppress the rebellion, or execute those laws. Orders for these purposes shall be issued through the governors of the States. ...."

None of the three conditions set forth in the foregoing section of the United States Code existed in the Little Rock, case. There was no danger of invasion, there was no rebellion or danger of rebellion, and there is no pretense that the President was unable with the regular forces to execute the laws of the United States. In any event, orders for a call of the Arkansas National Guard into federal service were not issued through the Governor of the State as required by the foregoing section of the United States Code.

While 10 U.S.C. §§332 and 333 state instances in which the President could use the militia, these Sections do not attempt to provide the manner for calling the National Guard into federal service. These Sections are necessarily dependent upon 10 U.S.C §3500 as to the manner of call, i.e., through

the Governor of the State. If Sections 332 and 333 should be said to be in conflict with Section 3500, the latter provision being later in point of time must prevail.

The President violated the provisions of 10 U.S.C. 3500, above quoted by his failure and refusal to act through the Governor of the State as required by that statute. He also violated another Act of Congress which forbids the use of the Army as a "posse comitatus" to quell local disorders. Title 18, Sec. 1385 of the United States Code reads:

> "§1385. Use of Army and Air Force as posse comitatus
>
> "Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or the Air Force as a posse comitatus or otherwise to execute the laws shall be fined not more than $10,000 or imprisoned not more than two years, or both."

"Posse comitatus" is defined as a group of citizens called upon by the civil authorities to assist in maintaining peace and order. The quoted section of the U.S. Code prohibits the use of the Army for this purpose.

The President's address of September 24, 1957, terms the incident at Little Rock as a case of "mob rule" and the tenor of his speech does not suggest that there is any rebellion or danger of a rebellion in that city. Riots and insurrections

and mob violence do not fit the definition of "rebellion." The Supreme Court of the United States made this clear in the case of Amy Warwick, 17 L. Ed. 459. In that case it was said:

> "It is no loose unorganized insurrection, having no defined boundary or possession."

The substance of the Little Rock case is that troops were called out to enforce the segregation decision of a District Court of the United States. The President's speech makes it clear that he ordered the use of troops to carry out a court order for the de-segregation of the Little Rock schools in accordance with the Supreme Court's interpretation of the Fourteenth Amendment of the United States Constitution. In his proclamation of September 23, the President stated that the action of certain persons and assemblages of persons were impeding justice in a way which denied to colored citizens the equal protection of the laws and as authority for his later action in sending troops to quell the disturbances in Little Rock he cited sections 332 and 333 of Title 10 of the United States Code. Section 332 is merely a codification of an Act of Congress passed on July 21, 1861, for the purpose of calling the militia into federal service to put down the rebellion of the South in the War between the States. Section 333 is a codification of an Act of

Congress passed during the days of reconstruction. 10 U.S.C. 333 reads as follows:

"§333. Interferences 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."

10 U.S.C. 332 reads as follows:

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

"Whenever the President considers that unlawful obstructions, combinations, or assemblages, or rebellion against the authority of the United States, make it impracticable to enforce the laws of the United States in any State or Territory by the ordinary course of judicial proceedings, he may call into Federal service

> such of the militia of any State, and use such of the armed forces, as he considers necessary to enforce those laws or to suppress the rebellion."

The first paragraph of §333 quoted above involves the execution of the laws of the State and of the United States, but no laws of Arkansas are involved in the President's Proclamation. His Proclamation is therefore based on the second paragraph of the section just quoted. This section of the Judicial Code is obviously in conflict with Article 4, Section 4 of the United States Constitution which as stated above allows federal intervention against domestic violence only when an application has been made of the Legislature or by the Executive of the State. The facts of the matter show that there has been no opposition or obstruction in the execution of the laws of the United States in Little Rock and that nothing has been done to impede the course of justice under those laws. There is no claim that any officer or agent of the United States has been prevented from carrying out any of the laws of the United States or that any person or group of persons have impeded or interfered with any officer of any court of justice in carrying out the laws of the United States. It is true that individuals and groups of persons have assembled to intimidate negroes from entering

the Little Rock High School, and sporadic acts of violence have taken place on or about the school grounds for this purpose, but these persons are in no way connected with the administration of justice in the federal court at Little Rock.

The accusation against these unorganized groups of Little Rock people is that they were obstructing the execution of the laws of the United States by interfering with the federal court's order for the integration of the public schools, then the accusation must fall because a decision of the court is not a law.

Article 1, Section VIII, Clause 15, of the United States Constitution provides as follows:

> "Call out the militia. To provide for calling forth the Militia to execute the laws of the Union, suppress insurrections and repel Invasions;"

The Act of February 28, 1795, which delegated to the President the power to call out the militia, was held to be constitutional in Martin v. Mott, 12 Wheat. 19, 32 (1827).

What are "the laws of the Union"? The phrase "the Laws of the Union" has the identical meaning as the phrase "the law of the land", which is defined in Article VI as

"this Constitution, and the laws of the United States which shall be made in pursuance thereof;" (and treaties). A decision of the Supreme Court of the United States or any other federal court is excluded by the definition itself. Article III of the Constitution provides that the judicial power of federal court may not extend to any <u>case</u> arising under federal "law", unless that law be "this Constitution, the Laws of the United States, and treaties made, or which shall be made, under their authority".

No federal or state court of record in America has ever held that a decision of the Supreme Court of the United States or that of any other federal court is "the law of the land" or "the Law of the Union". Such decision is never anything more than <u>the law of the case</u> actually decided by the court and binding only upon the parties to that case and no others. As was said by Charles Warren, in his <u>History of the Supreme Court</u>, p. 748, Vol. 2:

> "However the court may interpret the provisions of the Constitution, it is still the Constitution which is the law and not the decision of the Court."

This also disposes of the President's claim that he is using troops in accordance with his duty to "take care that the Laws be faithfully executed" as provided in Article II,

Section 3 of the Constitution. Obviously this article of the Constitution means that the laws must be executed as required by other constitutional provisions, such as the one that demands a request from the Legislature or the Governor of the State before troops are used to put down domestic violence (Art. IV, Sec.4).

If the charge against the Little Rock people is that they have impeded the course of justice under the laws of the United States, as specified in 10 U.S.C 333, then this accusation is also without legal foundation. The United States Code specifies in detail those acts which amount to obstruction or impediment to the administration of justice. Acts which amount to an obstruction of justice are set forth in Title 18, Sections 1501 to 1507 inclusive of the United States Code. These acts include assault on a process server, resistance to an extradition agent of the United States, influencing or injuring an officer of the court, a juror or witness in a pending proceeding, theft or alteration of court records, and picketing a court with the intent of influencing a judge, juror, witness, or other officer in the discharge of his duty. It is not contended that any member of the group assembled at the Little Rock High School was engaged in any of the acts which the United States Code

enumerates as an act constituting an obstruction to justice. The President of the United States was therefore in error in basing his proclamation for the use of Army troops on the questionable provisions of Sections 331 to 334 inclusive of the United States Code.

He might have based his order upon other "Civil Rights" provisions of the United States Code if these provisions had not been repealed by the Civil Rights Act of 1957 which was passed at the last Session of Congress and approved by the President.

Public Law 85-315, 71 Stat. 634, known as the "Civil Rights Act of 1957", passed in the 85th Congress and approved by the President on September 9, 1957, contains the following provision:

> "Sec. 122. Section 1989 of the Revised Statutes (42 U.S.C 1993) is hereby repealed."

42 U.S.C. 1993, which was thus repealed by the Civil Rights Act of 1957, reads as follows:

> "§ 1993. Aid of military and naval forces
>
> "It shall be lawful for the President of the United States, or such person as he may empower for that purpose, to employ such part of the land or naval forces of the United States, or of the militia, as may be necessary to aid in

> the execution of judicial process issued under sections 1981-1983 or 1985-1992 of this title, or as shall be necessary to prevent the violation and enforce the due execution of the provisions of sections 1981-1983 and 1985-1994 of this title. R.S. §1989."

The above quoted section of the United States Code is one of the reconstruction acts passed by Congress on April 19, 1866, for the purpose of enforcing the Civil Rights Laws that were enacted following the Civil War. The sections of the Code referred to in the above quoted provision which was recently repealed constitute all of the Civil Rights provisions of the United States Code which are now written upon the statute books of this nation. It is therefore inescapable that Congress in its last session intended to take away from the President of the United States any authority which he may have previously had to make use of the Army or militia to enforce orders of any federal court relating to the Civil Rights of individuals. Irrespective of the intent of Congress as expressed in this recent law, the President called out federal troops under the authority of other provisions of the Code relating to the obstruction of justice, which articles are wholly inapplicable to the situation as demonstrated above.

CIVIL RIGHTS

At the bottom of the Little Rock trouble lies the precipitate and arbitrary action of an imported northern judicial integrationist whose court injunction prohibited the Governor of Arkansas from using State troops to prevent rioting and domestic violence. While this injunction merely prohibited the Governor from exercising his sworn duty to maintain the public peace, its purpose was to compel the City of Little Rock to integrate its schools with white and negro students against the will of the great majority of the people of the city and State. When the troops were withdrawn local and state police were substituted for the militia and the negroes under their protection entered the school. At this juncture citizens of Little Rock appeared separately, or in small groups, to protest and endeavor to prevent the negroes from remaining in the school. They were unarmed and unorganized and the only acts of violence that occurred were of a minor nature. Fists and feet were the only weapons employed. These people were not under injunction to integrate the school, nor were they in any sense parties to any judicial proceeding for that purpose. Before the local and state police were given the minimum opportunity to preserve order federal troops appeared. Their job - integrate the school,

furnish a military escort for the negroes, beat down with rifle butts and bayonets - bullets if necessary - any and all groups of people who gathered at the school, peaceably or otherwise, to protest this violent action against the sovereign rights of the State of Arkansas.

During the first Tragic Era of Civil War Reconstruction, a vindictive Congress passed many so-called "Civil Rights Laws" directed at the defeated and prostrated South. Most of these laws were declared unconstitutional by the Supreme Court, and the remainder were largely abandoned because they were considered, by analogy, to be equally unconstitutional and illegal - yet the basis for the proclamation of President Eisenhower and his order for Army aggression against the State rests on these unconstitutional statutes. Section 333 of Article 10 of the United States Code, relied upon by the President, by its very terms is one to enforce the Fourteenth Amendment guarantee against State action denying "equal protection of the laws." In the Little Rock case this enforcement was directed not at State action but at the individual action of private citizens who held no office in, and had no authority to act for the State of Arkansas.

The Supreme Court of the United States has on scores

of occasions ruled that the Fourteenth Amendment does not govern the actions of private citizens and applies only to State action by state officials in the enforcement of state laws that deny equal protection of the laws by racial or other discrimination.

In the case of U.S. v. Cruikshank, 92 U.S. 542, referred to above the defendant was a member of the Ku Klux Klan of Louisiana, and was charged with having gone on the public highways in disguise with other members of the Klan for the purpose of carrying out a conspiracy to intimidate negroes and deprive them of their Civil Rights in violation of the Fourteenth Amendment and the Civil Rights Acts of Congress. The Court held:

> "The 14th Amendment adds nothing to the rights of one citizen against another. It simply furnishes an additional guaranty against any encroachment by the states upon the fundamental rights which belong to every citizen."

The Court held that the United States had no constitutional power to declare the actions of the Klan to be a crime. In this connection Mr. Chief Justice Waite said:

> "Sovereignty for this purpose rests alone with the States. It is no more the duty or within the power of the United States to punish for a conspiracy to falsely imprison or murder within a state, than it would be to punish for false imprisonment or murder itself."

If the United States has no authority to put down or punish roving bands of Klansmen doing violence to the Civil Rights of negroes under the cover of hooded robes, by what law or rule of reason can it disperse with rifles and bayonets unmasked and unorganized groups of citizens appearing in the daylight hours to protest an invasion of federal troops into their local territory?

In the Civil Rights cases, 109 U.S. 3, 27 L. Ed. 836, the Supreme Court dismissed cases under the Civil Rights Act brought from the States of Kansas, California, Missouri, New York and Tennessee. The defendants were accused of discriminating against negroes on account of their race and conspiring to deprive them of their rights under the Fourteenth Amendment and the Acts of Congress enforcing its provisions. The Court again emphasized that the United States has no power to punish an invasion of rights under the Fourteenth Amendment by individual citizens or groups of citizens.

The citizens of Little Rock have violated no law of the United States when they assemble to protest either the integration of their schools, or the unlawful invasion of their city by Federal armed force. Just the other day Stanley Reed, retired Justice of the Supreme Court and one of the nine

who handed down the desegregation decision in 1954, stated in a speech to the California Bar Association that criticism of the decisions of the Supreme Court "is one thing that the First Amendment does not forbid."

The Civil Rights cases have been frequently reaffirmed by the Supreme Court and have never been overruled.

The President would use the Fourteenth Amendment and the Civil Rights Acts to centralize federal power in Washington but the Supreme Court plainly says these laws are not to be used for such purpose.

Mr. Justice Frankfurter is certainly no segregationist, but in the case of Stefanilli v. Minard, 342 U.S. 117, 96 L. Ed. 138, he emphasized:

> "... Only last term we reiterated our conviction that the Civil Rights Act 'was not to be used to centralize power so as to upset the federal system.' ..."

When the President thus abuses his powers against a sovereign state, he is not guaranteeing that state a "Republican form of government" as required by Article 4, Section 4 of the Constitution.

It is hardly necessary to refer to other court decisions on this subject. These are sufficient to show that the Fourteenth Amendment gives neither the Congress nor the President

the power or authority to compel individual citizens or groups of citizens to integrate the white and colored races. Congress alone has power under this Amendment and its power is limited to prohibiting a state or state laws from discriminating against any person, white or black, on account of race or color.

So we come back again to Section 333 of Title 10 of the United States Code relied on by the President as his authority for sending United States troops into Arkansas. The first paragraph of that statute says that whenever the constituted authorities of a state are unable to protect, or fail or refuse to protect any part or class of people from domestic violence or conspiracy which may deprive them of rights or privileges named in the Constitution, and secured by the laws of the State and the United States, "the State shall be considered to have denied the equal protection of the laws secured by the Constitution." This statute obviously conflicts with the Fourteenth Amendment which is directed at State action, and not at the inability of the state to act or its failure or refusal to act.

Congress certainly has no power to rewrite the Constitution by statutory definition. The Fourteenth Amendment

prohibits state action only. State inaction is the opposite of state action and cannot be converted into the latter through the actions of lawless individuals whose acts are nowhere included in the Amendment.

In today's hysteria over racial relationships prevailing over the Northern and Western portions of the nation, the politicians, the do-gooders and portions of the brainwashed populace have lost sight of the plain meaning of the Fourteenth Amendment and of the school segregation decision of the Supreme Court. Neither the Amendment nor the Black Monday decision which gave it a sociological metamorphosis require integration. They merely prohibit State action which would discriminate against any person on account of race or color. This point is well emphasized in the opinion of a three-judge court in Briggs v. Elliott, 132 F. Supp. 777 (1955).

The Briggs case was later cited with approval by the United States Court of Appeals of the Fifth Circuit in Avery v. Wichita Falls Independent School District (1957) 241 F. 2d 230, 233.

Despite these rulings of the courts federal troops have been sent to Little Rock to compel integration in its

public school. Law and order seem to be giving way to armed force with the sanction of Presidential Proclamation alone.

In our national negro hysteria another misconception of law is being broadcast by radio, television, and the public press. This subversion of legal principle appears in oft repeated statements that the school segregation decision of the Supreme Court is the "Supreme Law of the Land". As shown hereinabove the decision is nothing more than the law of the case. The Constitution makes it clear that even a Supreme Court decision is not the Supreme Law of the Land. Article VI of the United States Constitution thus defines the Supreme Law of the Land:

> "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof, and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby...."

It will be seen that the Constitution does not include decisions of the Supreme Court in its definition of the Supreme Law of the Land. This is quite understandable in view of Mr. Justice Robert's famous remark that a "Supreme Court decision is like a one-way ticket -- good for that day and that trip only."

THE POLICE POWER

If the people of Little Rock assembled to threaten or intimidate or even to do violence to negroes who entered the high school that had been set aside for white students only, they were guilty of a breach of the peace, assault and battery, or some other act violative of peace and order in the city. The punishment or prevention of such actions is the sole prerogative of the state under its police power. The Federal Government has no inherent police power because the states have never surrendered such powers to the Federal Government. The Supreme Court has so ruled on numerous occasions.

The Fourteenth Amendment does not take from the states their inherent right to quell disorder and prevent local violence. The Supreme Court has specifically said so in Barbier v. Connolly, 113 U.S. 27, 28 L. Ed. 923.

The Federal Government has no jurisdiction to legislate or otherwise interfere in state matters relating to public safety, health or good order. The state and not the United States has the power and jurisdiction to quell local disorders.

STATES RIGHTS

There are many recent Supreme Court decisions which

seem to have the effect of obliterating from the Constitution every provision that would reserve to the states their rights to local liberty and local self-government. The Court apparently disregards the Constitution in those cases where the necessary result of following it would do violence to the personal philosophy or political beliefs of the individual judges. However, there are other decisions of the Court, quite numerous, which do honor to the basic law as it is written.

The first ten amendments to the United States Constitution constitute the Bill of Rights and are a sacred cornerstone of the liberties of individuals and of the fundamental rights of the states. Our political history as a nation records the fact that the original thirteen states refused to ratify the Constitution until these amendments were added to it. Two of these provisions of the Bill of Rights guarantee freedom of local self-government.

The Ninth Amendment limits the authority of the Federal Government to those rights enumerated in the Constitution and reserves all others to the states. It reads:

> "Article IX. - The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

The foregoing provisions of the Ninth Amendment are repeated with greater emphasis and in different verbiage in the Tenth Amendment. The language of the latter amendment is plain and unambiguous.

> "Article X. - The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Soon after the Civil War had ended Chief Justice Chase rendered a decision which emphasized the fact that the very existence of our republican form of government depended upon an observance of these articles of the Bill of Rights. Texas v. White (1868) 74 U.S. 700, 725, 19 L. Ed. 237.

The forbearance of the Federal Executive and of the Federal Courts in race riots and insurrections in Northern cities is well known. The Supreme Court in 1951 had occasion to pass upon the right of the State of Illinois to penalize the publication of inflammatory statements exposing the citizens of any race to contempt on account of their race or color. Four members of the Court thought that the guaranty of free speech contained in the First Amendment to the Constitution of the United States prohibited this action, but the majority held that such actions tending to bring about local violence and disorder were appropriately subject to the police

power of the state. In rendering the Court's opinion in this case, Beauharnais v. Illinois (1951) 343 U.S. 250, 259-267, 96 L. Ed. 919, 928-932, Mr. Justice Frankfurter said:

> "...From the murder of the abolitionist Lovejoy in 1837 to the Cicero Riots of 1951, Illinois has been the scene of exacerbated tension between races, often flaring into violence and destruction. ..... Nine years earlier, in the very city where the legislature sat, what is said to be the first northern race riot had cost the lives of six people, left hundreds of Negroes homeless and shocked citizens into action far beyond the borders of the State. Less than a month before the bill was enacted, East St. Louis had seen a day's rioting, prelude to an outbreak, only four days after the bill became law, so bloody that it led to Congressional investigation. A series of bombings had begun which was to culminate two years later in the awful race riot which held Chicago in its grip for seven days in the summer of 1919. Nor has tension and violence between the groups defined in the statute been limited in Illinois to clashes between whites and negroes.
>
> "...The danger in these times from the coercive activities of those who in the delusion of racial or religious conceit would incite violence and breaches of the peace in order to deprive others of their liberties, is emphasized by events familiar to all. These and other transgressions of those limits the States appropriately may punish.'..."

It may here be noted that the bombings and bloodshed in Chicago in 1908 and 1817 and in East St. Louis in 1919 did not compel the then President of the United States to invade these cities with Federal troops. The Court's opinion

in the Beauharnais case then makes the following philosophical reflections which it conveniently forgot three years later when the School Segregation cases were decided:

> "It may be argued, and weightily, that this legislation will not help matters; that tension and on occasion violence between racial and religious groups must be traced to causes more deeply embedded in our society than the rantings of modern Know-nothings. Only those lacking responsible humility will have a confident solution for problems as intractable as the frictions attributable to differences of race, color or religion. This being so, it would be out of bounds for the judiciary to deny the legislature a choice of policy, provided it is not unrelated to the problem and not forbidden by some explicit limitation on the State's power. That the legislative remedy might not in practice mitigate the evil, or might itself raise new problems, would only manifest once more the paradox of reform. It is the price to be paid for the trial-and-error inherent in legislative efforts to deal with obstinate social issues. 'The science of government is the most abstruse of all sciences; if, indeed, that can be called a science which has but few fixed principles, and practically consists in little more than the exercise of a sound discretion, applied to the exigencies of the state as they arise. It is the science of experiment.' Anderson v. Dunn (US) 6 Wheat. 204, 226, 5 L. Ed. 242, 247. Certainly the Due Process Clause does not require the legislature to be in the vanguard of science -- especially sciences as young as human ecology and cultural anthropology. See Tigner v. Texas, 310 U.S. 141, 148, 84 L. Ed. 1124, 1128, 60 S. Ct. 879, 130 ALR 1321.
>
> ".....It is not within our competence to confirm or deny claims of social scientists as to the dependence of the individual on the position of his racial or religious group in the community. ....."

The concluding paragraph of Mr. Justice Frankfurter's opinion in the Illinois case is also quite interesting:

> "We find no warrant in the Constitution for denying to Illinois the power to pass the law here under attack. But it bears repeating -- although it should not -- that our finding that the law is not constitutionally objectionable carries no implication of approval of the wisdom of the legislation or of its efficacy. These questions may raise doubts in our minds as well as in others. It is not for us however, to make the legislative judgment. We are not at liberty to erect those doubts into fundamental law."

It was at this same term of court in 1951 that the same Justice made the remark:

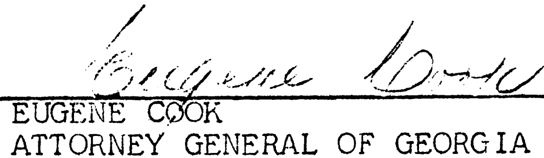
> "Only last term we reiterated our conviction that the Civil Rights Act was not to be used to centralize power so as to upset the Federal system."

CONCLUSION

The President's act of Federalizing the Arkansas National Guard and sending airborne troops of the regular Army to occupy Central High School was a deliberate and palpable executive encroachment of the Constitution and of the Congress itself. Such an encroachment will of necessity lead to the end of constitutional government, i.e., "an indestructible union composed of indestructibel states."

It is a cardinal principle of government that when law ends, tyranny begins. The present strength of these usurpers will not deter us in our opposition to such tyranny. Tom Paine aptly stated this over one hundred eighty years ago when he said - "Tyranny like hell, is not easily conquered; yet we have this consolation with us, that the harder the conflict, the more glorious the triumph."

This the 17th day of October, 1957.



EUGENE COOK
ATTORNEY GENERAL OF GEORGIA