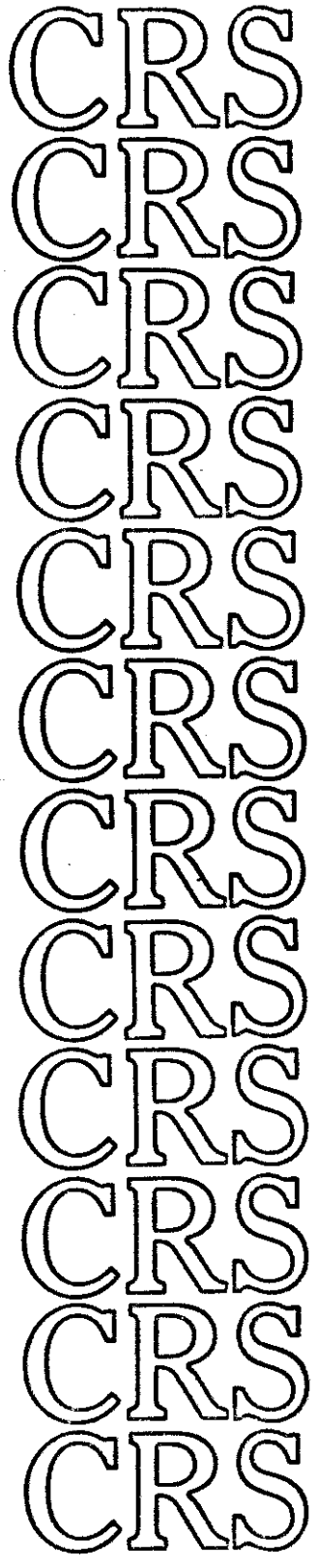

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ANALYSIS OF THE CIVIL RIGHTS SECTIONS OF S. 1437, THE "CRIMINAL CODE REFORM ACT OF 1977," AS AMENDED AND PASSED THE SENATE ON JANUARY 30, 1978

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Analysis of the Civil Rights Sections of S. 1437, the "Criminal Code Reform Act of 1977," As Amended and Passed the Senate on January 30, 1978

Chapter 15 of S. 1437 consists of three subchapters dealing with distinct but not unrelated categories of offenses involving civil, political, and privacy rights of the individual. This paper will examine the provisions in Subchapter A (§§1501-1506) concerning civil rights offenses as they would affect existing Federal criminal sanctions in the civil rights area--most notably, those in 18 U.S.C. 241, 242, and 245--with a view to highlighting major substantive changes and the extent to which they reflect the recommendations of the National Commission on Reform of Federal Criminal Laws, and its civil rights consultant.

The offenses defined by Subchapter A (offenses involving civil rights) are all graded as Class A misdemeanors punishable by imprisonment for not more than one year and prohibit intentionally depriving another, or injuring or threatening another in or because of the exercise, of "a right, privilege, or immunity secured. . . by the Constitution or laws of the United States" (§1501); depriving another of any such right, privilege, or immunity by committing "under color of law" a Federal offense against the person or property of another (§1502); intentionally subjecting another to force or threat of force to interfere with or intimidate such person in regard to Federal employment, Federal benefits, jury service, or participation in the electoral process (§1503); or, by force or threat of force, intentionally injuring, intimidating, or interfering with another because of that person's race, color, sex, religion, or national origin and because he is or has applied for or enjoyed the use of public services,

facilities, accommodations, employment, benefits and other public rights or duties (§1504); forcefully intimidating or interfering with speech or assembly opposing denials in violation of §§1503 and 1504 (§1505); and forcefully obstructing or interfering with peaceful picketing or the exercise by employees of rights of self organization or collective bargaining. (§1506).

I

Sections 1501[1/] and 1502[2/] replace existing sanctions imposed by 18 U.S.C. 241[3/] and 242[4/] with substantial modifications as to both scope and culpability. The bill would, among other things: 1) broaden present §241 to include any person, whether or not a citizen; 2) delete the requirement in that same section that at least two persons commit the offense; and 3) delete as superfluous the final clause of present §242 which spells out a Federal right not to be subject to discriminatory penalties.

A principal change made by §1501 is elimination of the conspiracy requirement from the predecessor provisions of §241 so that if a lone individual deprives another of a Federally protected right, he could be prosecuted for an offense. Another effect of this modification, however, would be to increase the burden upon the government in proving a civil rights conspiracy. Under the conspiracy provision of §241, the prosecution does not have to show an overt act—a simple agreement is sufficient. See, United States v. Marado, 454 F. 2d 167 (C.A. 5 1972), cert. denied 406 U.S. 917 (1973); Williams v. United States, 179 F. 2d 644 (C.A. 5 1950), aff'd 341 U.S. 70 (1951). With the conspiracy provision removed from §1501 (§241), the general conspiracy provision in §1002 of the bill would apply to civil rights violations by groups of two or more persons. Conviction under that

general provision requires proof of an overt act. Of less consequence is the deletion of the second paragraph of §241 concerned with going "in disguise on the highway, or on the premises of another" which was apparently intended to evidence an unlawful conspiracy. There have been no significant prosecutions under this provision and the consultant to the National Commission on Reform of Federal Criminal Laws (hereinafter "National Commission") recommended repeal of the reference.

While the Senate bill eliminates the conspiracy provision from §241, §1501 retains language criminalizing acts that "injure[], oppress[], threaten[], or intimidate[]" the free exercise of protected rights. In contrast with the other sections in Subchapter A, however, which penalize interference with protected rights only if accompanied by "force or threat of force" (i.e. §§1503-1506), the operative terms of the Senate bill's replacement for §241 (i.e. §1501) do not preclude prosecution for acts of economic or other nonviolent coercion. Although the term "deprives. . .of a right" in §1502 expresses no limitation to acts or threats of physical force, that section's additional reference to crimes against persons or property elsewhere in the bill largely confines prosecutions to situations where the offensive conduct has entailed use of force or threat of force. But this implicit limitation on the scope of §1502 may be undermined to the extent that §1501, the Senate bill's analogue to §241, protects the same rights as §1502 but is not limited to acts or threats of force.

The requirement of forceful interference is not an element of the offense under §241 or §242--which have frequently been applied in vote fraud cases--but it has been urged that the retention of the present language criminalizing the use of nonviolent coercion is inconsistent with more recent

Congressional policy manifested by the decision in 1968 to limit 18 U.S.C 245 to acts or threats of force. The consultant to the National Commission argued that this would create enforcement difficulties because of the breadth and ambiguity of the concept of economic coercion and because of the possibility that false or baseless complaints would be lodged. Working Papers of the Nat'l Comm'n on Reform of Federal Criminal Laws (1971) [hereinafter cited as Working Papers], pp. 780-1. Moreover, the failure to limit the prohibitions to violent activity may exacerbate due process problems created by the vagueness of §1501, making Federal civil sanctions more appropriate for the kinds of nonviolent coercion within the arguable purview of that section. Working Papers, pp. 780-1.

Section 1502 is derived from 18 U.S.C. 242 and would impose Federal sanctions against persons who commit personal or property offenses while acting under color of law, thereby depriving another of a Federally secured right, privilege, or immunity. The "under color of law" element which distinguishes §1502 from §1501 finds an analogue in 18 U.S.C. 242 and its civil counterpart, 42 U.S.C. 1983, where the phrase has been interpreted as the equivalent of "State action" required by the Fourteenth Amendment. Thus, while §1501 would reach purely private, as well as official, interference with Federally protected rights, §1502 is limited in scope to the conduct of governmental officials--at the Federal, State, or local level--or persons who knowingly act in concert with such officials. United States v. Price, 383 U.S. 787 (1966); Williams v. United States, 341 U.S. 97 (1951).

Section 1502 provides that a person acting under color of law who commits any of certain specified offenses defined by the bill is also guilty

of violating the civil rights law if his conduct causes a deprivation of constitutional or statutory rights. The conduct proscribed as an offense under §1502 include any of the crimes against persons or property specified in Chapters 16 or 17 of the bill. Many of these Federal crimes against persons or property are explicitly limited to acts or threats of force. See, e.g. §1611 (maiming); §1613 (battery); §1614 (menacing); §1621 (kidnapping); §1641 (rape); §1721 (robbery); §1722 (extortion). An offense under §1502 is graded a Class A misdemeanor but a graduated scheme of penalties results from this incorporation and the general ancillary jurisdiction provisions of the Senate bill so that anyone who commits an assault, murder, theft, or other act made criminal by those chapters may be prosecuted for the more serious offense, irrespective of whether an independent basis of jurisdiction exists. Thus, while the specific reference to offenses elsewhere in the bill may theoretically narrow the protection afforded by §1502, it also defines with greater precision the kinds of conduct which are prohibited. Furthermore, it appears that the offenses proscribed by Chapters 16 and 17 reach essentially all the kinds of conduct which have been prosecuted heretofore under §242.

Sections 1501 and 1502 would relax the requirement for proving specific intent imposed by judicial construction of 18 U.S.C. 241 and 242. The Supreme Court in Screws v. United States, 325 U.S. 91 (1945) upheld the constitutionality of 18 U.S.C. 242 against a challenge based on vagueness by construing the concept of "wilfully" to require proof of a specific intent to deprive another a Federal right, i.e. in that case, that the

defendant sheriff, who had abused and killed a black victim in the course of an arrest, acted with reference to the victim's constitutional rights and not out of personal animosity. To give the act requisite specificity, Justice Douglas interpreted the term "wilfully" to mean specific intent to deprive the victim of some Federally secured right made definite by judicial interpretation "or other rule of law" and thereby attempted to escape the problem of lack of notice to those whose actions might contravene §242. "He who defies a decision interpreting the Constitution knows precisely what he is doing," Justice Douglas wrote for a plurality of the Court. 325 U.S. at 104-5. The dual requirement of Screws-- that the right in question be definite and that the defendant act with specific intent to deprive the victim of that right-- was incorporated into §241 in Guest v. United States, 383 U.S. 745, 753-4 (1966). But the Court in Guest held that the intent element under §241 was automatically satisfied by proof of a conspiracy, since a conspiracy by its very nature requires knowledge of criminal objectives.

Thus, under either §241 or §242, it is not sufficient that the defendant intentionally committed acts which resulted in deprivation of Federally protected rights; in addition, the government must prove, beyond a reasonable doubt, that the perpetrator intended to bring about that particular deprivation. Although the Court in Screws appeared to indicate at one point that "reckless disregard" of a constitutional requirement would suffice (325 U.S. at 105), subsequent court decisions

have generally held that specific intent or a "predominant purpose" is an essential element under the statutes. See, United States v. Guest, 383 U.S. at 760 (1966).

The Senate Report states with reference to §1501 that the Committee intended to "carr[y] forward the present culpability level under 18 U.S.C. 241 and 242 as enunciated in Screws v. United States, supra." S. Rept. No. 95-605, 95th Cong., 1st Sess. 453 (1977). Subsection (a)(1) of §1501 appears to accomplish that result with respect to a range of proscribed conduct since it is restricted to acts which "intentionally" (that is, with a "conscious objective" or "desire" (§302(a)(1)) deprives another person of a Federally protected right, privilege, or immunity. Significantly, however, §1501(a)(2), which would reach most conduct proscribed by (a)(1), appears to reduce the requirement of specific intent where injury, threat, or intimidation is involved. Under subsection (a)(2), the term "intentionally" modifies the conduct proscribed, not the result, so that the defendant apparently need not have a conscious desire to deprive another of his Federally secured rights but need only act in "reckless" disregard of the fact that his conduct will cause that result. §§1501(a)(2); §303(b) (required state of mind for an element of an offense if not specified). Since aside from vote fraud cases, offenses under §241 commonly involve the elements of threat and intimidation, most would be prosecutable under §1501(a)(2) without regard to the specific intent requirement in §1501(a)(1). A substantial constitutional question may thus arise under Screws because of the general vagueness of that provision.

In §1502, the bill's analogue to §242, the specific intent standard of Screws has also been reduced so that, as with §1501(a)(1), a defendant could be found guilty if he merely acted in "reckless" disregard of the constitutionally protected rights of another. Section 1502 contains no explicit culpability standard and therefore, under §303(b) of the bill, the applicable state of mind to be shown is "reckless," i.e. that the defendant was "aware" of but disregarded the risk that the result would occur, and that the risk was such that its disregard constituted "a gross deviation from the standard of care that a reasonable person would exercise in such a situation." See, §302(c)(2). Thus, in contrast to present law, a State official or other person who acts "under color of law" may be guilty of a civil rights offense--notwithstanding the absence of specific intent to deprive another of Federally secured rights--if he murders or otherwise commits a crime specified in Chapters 16 or 17 of the bill even though he was motivated only by personal malice.

The intent element added by Screws and Guest has been criticized for placing significant practical limitations on the usefulness of §241 and §242 but these may have been necessary to save those provisions from unconstitutional vagueness. The specific reference to offenses defined in chapters 16 and 17 renders the conduct proscribed by §1502 substantially more definite, possible eliminating the need to retain the specific intent requirement. Although elimination of the Screws requirement may thus strengthen the prosecutorial function without undermining the constitutionality of that provision, these improvements in §1502 may be overshadowed by the problems posed by §1501, which would reach all of the situations covered by §1502.

In addition to safeguarding constitutional rights, §§1501 and 1502 purport to penalize interference with rights secured by the laws of the United States. In United States v. Johnson, 390 U.S. 563 (1968) the Supreme Court held that 18 U.S.C. 241 could be used to punish a private conspiracy to intimidate three blacks who were exercising their right to patronize a restaurant. Relying on the sweeping language of United States v. Price, 383 U.S. 787 (1966)--where it was noted that §241 and §242 protected all the rights conferred by "all of the Constitution and laws of the United States"--the Johnson Court found that the right to patronize a public facility had been granted by Title II of the 1964 Civil Rights Act (42 U.S.C. 2000a et seq.), and was therefore protected by §241 as a right secured by the laws of the United States. The dissenters, unconcerned with §241's incorporation of the statutory right, disagreed only with the majority's finding that the Congress had intended Title II's civil remedy to be nonexclusive. 390 U.S. at 565-66 (Justices Stewart, Black, and Harlan, dissenting). Thus, Johnson established that where the victim of a civil rights crime has been deprived of a statutorily granted personal right and where that right is not protected by an exclusive noncriminal remedy, courts should uphold indictments under §241 and §242.

Like §241 and §242, the cognate provisions of the Senate bill incorporate the unqualified reference to rights protected by "the Constitution or laws." Although the Final Report of the National Commission opted to retain the substance of these earlier provisions, the consultant's report was critical of their open-ended character as

"violat[ing] virtually every canon of criminal law draftsmanship, and also invit[ing] perpetual disputation of the definition of a 'constitutional right.'" Working Papers, p. 809. By the same token, the Johnson rationale may result in a still further extension of auxillary criminal jurisdiction beyond that contemplated by Congress. For it would seem that any civil statute anywhere in the United States Code which creates a personal right that is not exclusively tied to a civil remedy could be the basis for a §1501 --and if "under color of law," §1502--prosecution against anyone who injured or deprived the person exercising the statutory right. For example, because 42 U.S.C. 1981, 1982, and 1985(3) have been held to create personal rights and to carry civil remedies arguably intended to be nonexclusive, §§1501 and 1502 of the Senate bill may render criminal racially discriminatory private refusals (whether or not attended by force or threats as required by §§1503 and 1504) to contract for goods or services, to employ another, or to sell real property even though Congress may not intend to impose criminal sanctions on such common, though objectionable, conduct for which civil remedies are already available. See, Jones v. Mayer, 392 U.S. 409 (1968); Johnson v. Railway Express Agency, Inc., 421 U.S. 454 (1975); Runyon v. McCrary, 427 U.S. 160 (1976).

Furthermore, the Senate bill's retention in §§1501 and 1502 of companion statutes proscribing private and state action might be questioned in view of the overlap in coverage that currently exists between their §241 and §242 counterparts. Earlier decisions had viewed §§241 and 242

as mutually exclusive, finding that the absence of an "under color of law" requirement in §241 manifested Congressional intent that the statute not be applied to official action or to deprivations of Fourteenth Amendment rights by private persons. United States v. Williams, 341 U.S. 70 (1951). This position was repudiated, however, by the rulings in United States v. Price, 383 U.S. 787 (1966) and United States v. Guest, 383 U.S. 745 (1966). In Price, the Court found that the legislative history of §241 failed to justify the conclusion that either State action or Fourteenth Amendment rights were excluded from the statute's coverage. Announcing that the statute should be accorded a sweep as broad as its language, the Court held that §241, like §242, protects Fourteenth Amendment rights when the defendant has acted under color of law. In Guest, a majority of the Justices found that §241 would allow prosecution of private persons not acting under color of law (or in concert with State officials) who conspired to interfere with Fourteenth Amendment rights.

Under the Price/Guest rationale, it can be argued that §242 was rendered largely superfluous because §241 seems to protect at least as many rights as §242 and applies to infringement of those rights by persons acting under color of law as well as private persons. Consequently, the National Commission's consultant on civil rights recommended that §§241 and 242 be merged into a single statute. Working Papers, at pp. 806-8. Nonetheless, the Senate bill preserves the State action-private conduct dichotomy, and also eliminates many of the differences that currently distinguish the statutes. Both §1501 and §1502 safeguard any "right,

privilege, or immunity secured. . .by the Constitution or laws of the United States." By adding the word "immunity" to §1501, the bill's analogue to §241, and deleting the phrase "or protected" from §1502, its version of §242, the bill eliminates differences between the phraseology of the two sections. Also, as noted, §1501 abandons the citizenship requirement in §241 as well as the reference to "going in disguise on the highway" and entry "onto the premises of another." Excision of the conspiracy element from §241 erases a further difference between §§241 and 242 and reinforces the argument that the proposed statutes are largely redundant. For these purposes, the fact that §1502 is predicated on the commission of an act that constitutes an offense under Chapters 16 or 17 of the bill does not appear significant since the same conduct can be reached under §1501 (as well as §§1503-5) by virtue of the ancillary jurisdiction provisions governing most offenses in those chapters. See, e.g. §1601(e) (murder), §1612(c) (aggravated battery), §1641(c) (rape), §1701(c) (arson).

II

Supplementing the more general provisions of §1501 and §1502, succeeding sections of the Senate bill together carry forward the criminal provisions of Title I of the 1968 Civil Rights Act, 18 U.S.C. 245,[5/] which deal with a broad range of specified Federally protected activities and 42 U.S.C. 3631,[6/] enacted by that same law, concerned with fair housing practices. §1503 prohibits intentional and forceful interference, regardless of motive, with respect to an array of Federal or Federally assisted activities--i.e. holding a Federal job or receiving the benefits of

Federally assisted programs, serving on a Federal jury, voting or seeking elective office--in regard to which there is inherent Federal power to protect all persons.[7/] §1504 protects certain other rights but is limited, for either constitutional or policy reasons, to intentional discrimination because of race, color, religion, sex, or national origin. Embraced within §1504 is the right to be free of forceful interference with respect to the receipt of benefits from State or local programs or facilities; public or private employment; service on State or local juries; attendance in the public schools; the use and enjoyment of public accommodations or common carriers; travel in interstate commerce; and the purchase, sale, rental, or financing of residential property.[8/] §1503 and §1504 also carry forward, in their respective spheres, current protections under §245 for persons who are "affording" civil rights opportunities, and those who are "aiding and encouraging" others in their participation in any protected benefit or activity. Finally, §1505 continues the protection in §245 for persons "lawfully" engaged in speech or assembly advocating civil rights opportunities.[9/]

Sections 1503 and 1504 of the Senate bill include the language of §245 which limits coverage to acts committed "by force or threat of force" to "injure[], intimidate[], or interfere[]" with any individual engaged in specified activities. The Supreme Court has construed the language in §245 respecting the use of force, and its legislative history, as evincing a "central purpose. . .to prevent and punish violent interference with specified rights. . ." Johnson v. Mississippi,

421 U.S. 213, 224 (1975). In retaining the force requirement, the Senate bill adopts the more narrow of alternative formulations suggested by the National Commission, which included possible expansion to acts of "economic coercion." The Final Report of the National Commission noted:

> As indicated in the Introductory Note preceding §1511, the bracketed phrase "or by economic coercion" was favored by a substantial body of opinion in the Commission because of the importance of economic pressures in causing people to forego registration, voting, and other rights. Opposition to the ban on economic coercion focused on the vulnerability of employers and landlords to false charges in cases of discharge or eviction that might actually have been due to business reasons. One countersuggestion was to confine the economic coercion offense to cases of threats to use such coercion to prevent exercise of rights; requiring proof of threat would eliminate any ambiguity as to the motivation of an economic injury. The possibility of false claims of threats, however, would remain. Final Report of the National Commission on Reform of Federal Criminal Laws (1971) [hereinafter cited Final Report], §1511 Comment, p. 158.

In opting for the majority recommendation of the National Commission, the Report of the Senate Judiciary Committee on S. 1437 observed that "[c]ertain types of nonforceful interference, particularly directed against voting, have been prosecuted under 18 U.S.C. 241 and 242 and may be reached under sections 1501 and 1502. Thus, the Committee believes that the proper province of [§1503 and §1504] is the area of violence." S. Rept. No. 95-605, 95th Cong., 1st Sess., 460 (1977).

Corresponding to the approach to the intent requirement taken by the bill's counterparts to §241 and §242, §§1503-5 would delete "wilfully" both in §245 on forceful interference with designated Federal activities and in 42 U.S.C. 3631 on intimidation in fair housing cases. Instead, with

respect to the element that the force or threat injures, intimidates, or interferes with another person because of participation in the specified activities, the culpability standard is prescribed as "intentionally," thereby requiring proof that the defendant consciously desired to cause that result. Whether this represents a relaxation of the Screws specific intent standard is unclear since that term may refer to the simple act of injuring, intimidating, or interfering with or without reference to the target of that action, i.e. the victim's participation in specified activities. Use of the "because [the person] is or has been, or in order to intimidate" language to define the objective of the criminal act in these sections may support an interpretation which accords with the specific intent requirement in Screws. In this instance, however, the matter may be less important from a constitutional standpoint since Screws seems to suggest that if a Federal right is defined with reasonable particularity, as arguably are the activities protected by §§1503-5, a mere knowing violation of the right would suffice. See, especially, the dissenting opinion of Justices Roberts, Frankfurter, and Jackson, 325 U.S. at 151, 153.

Although the Senate bill retains the main substantive features of §245, it does make various changes in the present law, including: substitution of "any person" for "citizen" in the provisions of §245(b)(5)(§1505); deletion of §245(b)(3), which authorizes Federal prosecution for forceful or intimidating interference, in the course of a riot, with "any person

engaged in a business" affecting interstate commerce, to permit dealing with the offense under the bill's riot provisions (subchapter D of chapter 18); adding discrimination on the basis of sex to the current prohibitions against discrimination on the grounds of race, color, religion, or national origin in §245(b)(2). The bill eliminates the exemption in §245(b) which excuses law enforcement officers from prosecution for acts committed while "lawfully" carrying out the duties of their office. This is in accord with the recommendation of the consultant to the National Commission who noted that even without the specific exemption a law enforcement officer could not be prosecuted unless he was acting with the purpose of preventing participation in one of the specified activities, and in regard to some of the activities he would have to act out of racial or other discriminatory motive to be within the coverage of §245. See, Working Papers, pp. 804-5.

Also eliminated by the bill is the first subsection of §245 which expresses a Congressional intent not to preempt or deny concurrent enforcement of State or local law and requiring a certification by the Attorney General or Deputy Attorney General in writing prior to initiation of prosecution. The former aspect would be governed by §205 of the bill which provides, generally, that the existence of Federal jurisdiction over an offense does not in itself prevent prosecution by a State or local government. An exception to this antipreemption provision in §205(b)(1)(B) permits the Attorney General to order suspension of State or local jurisdiction over certain offenses specified in Chapter 16-- including murder,

manslaughter, negligent homicide, maiming, aggravated battery, battery, menacing, kidnapping, aggravated criminal restraint, and criminal restraint. This may operate as a limitation on State concurrent enforcement of civil rights to the extent that the ancillary jurisdiction feature of the bill provides an independent basis for prosecuting these same acts when committed in the course of a civil rights violation. The National Commission adopted a different approach, however, imposing a much more restrictive bar on State or local prosecution following an acquittal or conviction in a Federal prosecution for the same conduct. See, Final Report, §708, p. 63. A similar exception applies under §205(b)(2)(C) as to violations of §1503 and §1504 insofar as they involve conduct prohibited by the Federal Election Campaign Act of 1971, as amended (2 U.S.C. 431 et seq.). Finally, in contrast to the Final Report of the National Commission which retained the substance of the present provision, the certification requirement in §245 is deleted by the Senate bill. "The Committee anticipates that the same careful screening of prosecutions in this area followed by attorneys of the Department of Justice will continue." S. Rept. No. 95-605, 95th Cong., 1st Sess., 458 (1977).

The Senate bill, in §§1503 and 1504, retains in substance the bifurcated definition of rights along motivational lines embodied in §245(b)(1) and §245(b)(2). As noted, §1503 contains one list of activities as to which inherent Federal authority is invoked to protect all persons, while §1504 designates other rights as to which only racially motivated

interference, or interference on account of color, sex, religion, or national origin is prohibited. However, the decision to subsume certain of these specified activities under §1504, limiting coverage to discriminatory denials, as opposed to the broader protections in §1503, may derive less from recognized constitutional limitations than underlying policy considerations.

In addition to various rights that derive constitutional protection from the nondiscrimination mandate of the Equal Protection Clause-- i.e. the right to the benefits of State supported programs and employment, service on State or local juries, and attendance at public schools and colleges-- §1504 deals with the right to travel or use facilities of interstate commerce. No parallel provision regarding the right of interstate travel is contained in §1503. This restrictive approach was criticized by the consultant to the National Commission who stated that "[i]n terms neither of constitutional power nor of policy does it make sense to limit the protection of the travel right to racially motivated interferences." Working Papers, at p. 788.

A right to travel interstate, plus a right to favorable conditions of travel, free from official or private interference has emerged from Supreme Court cases, related to but independent of the commerce clause. The Court in Shapiro v. Thompson, 394 U.S. 618 (1969) invalidated the practice of several States and the District of Columbia of requiring one

year's residency as a condition to eligibility for certain types of public assistance. The residency requirement, said the Court, deterred "immigration of indigents," a "constitutionally impermissible" purpose in light of the fundamental nature of the "right of interstate movement." United States v. Guest, 383 U.S. 745 (1966), in its travel aspect, involved a private slaying of a black person on an interstate highway. In reversing dismissal of a complaint under 18 U.S.C. 241, Justice Stewart characterized as "fundamental" the right to interstate travel which is secured against all governmental or private interference, independent of the Fourteenth Amendment.

> The constitutional right to travel from one State to another, and necessarily to use the highways and other instrumentalities of interstate commerce in doing so, occupies a position fundamental to the concept of our federal union. It is a right that has been firmly established and repeatedly recognized. 383 U.S. at 758.

Thus it appears that Congress could, consistent with this constitutional mandate, accord fuller protection to the right to travel than afforded by §245 or the Senate bill in its present form by inclusion of a subsection on travel in §1503. This would permit a prosecution without proof of discriminatory motive by a simple showing that the forceful interference occurred because the victim was "traveling in or using a facility of interstate commerce."

Similarly, §1504(a)(1)(E), (F), and (H), which continue §245(b)(2)(C), (E), and (F)-- dealing respectively with private employment, use of services and facilities of a common carrier, and access to and enjoyment of

public accommodations-- and §1504(a)(1)(I), concerned with fair housing, may be predicated in part on the commerce clause or an inherent Federal right to interstate travel. In his conclusion that the requirement of racial or other discriminatory motive was not essential to the constitutionality of these subsections, the consultant to the National Commission observed:

> Racial motivation is irrelevant to the constitutional basis for reaching these areas. To be sure, nondiscrimination on grounds of race, color, religion, or national origin is an element of the public accommodations sections of the Civil Rights Act of 1964, which Congress and the Court supported by the commerce clause. But the racial motivation there is simply part of the definition of the target aimed at by Congress. From the standpoint of the present violence statute the policy question becomes: should all persons have a Federal right to be free from violent interference, from whatever source and for whatever reason, in patronizing any commerce connected public accommodation? Working Papers, at p. 790.

In response, however, it might be contended that to eliminate the motivation element with respect to the commerce related activities under §1504 would make the statute extremely broad in its overlap with the State police power, a result inconsistent with the theory of Federal criminal jurisdiction as auxiliary to that of the State. Federal civil statutes in these areas (i.e. the Civil Rights Acts of 1964 and 1968) are explicitly limited to the types of discrimination proscribed in §1504 and, absent showing of past abuses and current need, there is no apparent reason for more expansive criminal coverage. Furthermore, the general provisions of §§1501 and 1502 may afford supplemental protection to §1504 where racial or other prohibited forms of discrimination are not involved.

Also, the consultant's report may understate the relevance of discrimination to the question of Congressional authority to legislate commerce based constraints in this area. In sustaining the Congressional determination in Title II of the 1964 Civil Rights Act (42 U.S.C. 2000a et seq.) that racial discrimination in places of public accommodation has a "real and substantial" impact on interstate commerce, Justice Stewart pointed out that the legislative record of hearings and debate was "replete with evidence of the burdens that discrimination by race or color places upon interstate commerce." Heart of Atlanta Motel v. United States, 379 U.S. 241 (1964). In Katzenbach v. McClung, 379 U.S. 294 (1964), Justice Stewart restated some of the main items of evidence brought out in hearings before the Senate Commerce Committee pertaining to the restrictive effect on interstate travel by Blacks, the reluctance of new businesses to locate in segregated areas, and a general reduction in the amount of goods moving interstate that resulted from an artificial limiting of the market to White customers. Whether there is a like basis in fact for finding that the incidence of violent interference with these rights protected by §1504, unassociated with forbidden discrimination, is so widespread as to constitute "a burden of national magnitude" supporting commerce based restrictions can only be speculated.

In addition to protecting participants in specified activities, or victims through whom the offender seeks to intimidate a participant, §1503(a)(5), (6) and §1504(a)(2)(A), (B) continue the coverage of §245(b)(4)(B) and (b)(5) with respect to two special classes of victims-- persons

who are "affording" civil rights opportunities in regard to specified activities, and those who are "aiding or encouraging" others to take advantage of such benefits and activities. "Afforders" of civil rights opportunities presumably include both governmental officials (e.g. election officials, public school administrators, administrators of Federal or State assistance programs, and the like) and private persons (e.g. landlords or employers) directly involved in the conduct of programs or activities specified in §§1503 and 1504. The provisions regarding "aiders" would apply to civil rights workers, whose protection was one of the main purposes behind §245, and other persons, such as legal aid attorneys, who provide more indirect assistance to others seeking to participate in protected activities.

The Senate bill incorporates various recommendations of the consultant to the National Commission which broaden existing law as to aiders and afforders. First, the term "citizen" has been replaced by "person" as applied to aiders of participants in activities specified in §§1503 and 1504. "If alien agitators become a problem, the problem is more appropriately handled by official action rather than by exempting from Federal purview private vigilante action." Working Papers, at p. 800. Second, the term "lawfully" is omitted as a qualification on the conduct of persons who aid or encourage civil rights opportunities.

> In support of the omission it can be argued that an interferer who committed murder should not be sheltered from a section 245 prosecution merely because his victim was technically trespassing or committing some other nonviolent or petty breach of the law. Additionally, inclusion of the term would present certain problems of proof.

> Would it be necessary to show that the defendant knew his victim was acting lawfully? Also, would proof of racial motivation on the part of the interferer be more difficult if the victim himself was acting unlawfully or was bordering on unlawful conduct? Working Papers, at p. 785.

Another change made to §245 would conform the treatment of afforders and aiders to the bill's protection of participants by eliminating the clause regarding discriminatory motivation, i.e. "without discrimination on account of race, color, religion or national origin," with respect to interferences with aiders and afforders of activities specified in §1503. Under §245, discriminatory motivation qualifies all interferences with aiders and afforders notwithstanding that participants in activities specified in §245(b)(1) are protected from interference without reference to the underlying motivation. See, §245(b)(4)(A), (B) and (b)(5). This situation regarding §245(b)(1) offenses-- participants being protected without showing discriminatory motivation, but not afforders or aiders-- is rectified by the bill's retention of the motivation requirement as to aiders and afforders under §1504 (a)(2)(A), (B), in conformity with that section's treatment of participants, but not as to offenses under §1503(a)(5), (6). This corresponds to the Final Report of the National Commission and the recommendations of the Commission consultant who concluded:

> Once the decision is made to protect participants in certain kinds of activities without regard to racial motivation on the part of the defendant, it would seem to follow that for the protection to be complete, the 'afforders'-- and also the 'aiders'-- should likewise be protected. To be sure, this increases, pro tanto, the overlap with the State police power, but that bridge has been crossed already in making the initial decision to give Federal protection to participants in specified activities. Working Papers, at p. 798; also Final Report, §§1513, 1514, at pp. 160-1.

Section 1504(b) provides that it is a defense to a prosecution under subsection (a)(1)(E)(i), dealing with forcible interference with the enjoyment of "an inn, hotel, motel, or other establishment that provides lodging to transient guests," that 1) the defendant was the proprietor of the establishment involved or an employee acting on behalf of the proprietor, 2) the establishment was located within a building containing not more than five rooms for rent or hire, and 3) the building was occupied by the proprietor as his residence. This provision carries forward the "Mrs. Murphy" exception in the final clause of §245(b) which contains a similar defense from prosecution for proprietors and employees of small owner-occupied lodgings for transient guests. The defense applies only to such establishments and would not extend to prosecutions under §1504 (a)(1)(I) concerned with the sale or rental of residential dwellings. Also, the defense presumably does not extend to the aiding and affording provisions so that it would not be available, for instance, to third parties who forcibly interfere with black applicants for transient lodging, with persons aiding such applicant, or with the proprietor of exempted establishments. Although the consultant to the National Commission recommended elimination of the exception, the Final Report of the Commission retained it but with the qualification that it extend only to "lawful action in support" of the guest policies of the establishment. See, Final Report, §1512(d); Working Papers, pp. 794-5.

An offense under §§1503 and 1504 is graded a Class A misdemeanor with a penalty of up to one year imprisonment. By contrast,

§245(b)(5) specifies a misdemeanor penalty (fine and/or imprisonment of not more than one year) and then adds higher penalties if the interference results in bodily injury, or in death. In effect, a similar graduated penalty result is achieved by the bill by the operation of the so-called "piggyback" or ancillary jurisdiction provisions which govern certain felony crimes committed in the course of a civil rights offense. See, e.g. §1601(e)(4)(murder), §1602(c)(manslaughter), §1603(c)(negligent homicide), §1611(c)(4)(maiming), §1612(c)(aggravated battery), §1615(c)(1)(terrorizing), §1617(c)(2)(reckless endangerment), §1621(c)(4)(kidnapping), §1622(c)(1)(aggravated criminal restraint), §1641(c)(2)(rape), §1642(c)(2)(sexual assault), §1701(c)(10)(arson), §1702(c)(1)(aggravated property destruction). Under these provisions, anyone who commits murder, kidnap, rape, or any other of these specified offenses and thereby deprives the victim of a right protected by §1503 or §1504 (or §§1501, 1502, or 1505) may be directly prosecuted for the more serious offense, whether or not a basis for Federal jurisdiction over that offense would otherwise exist. In other words, the civil rights provisions carry their own misdemeanor penalty and also operate as a jurisdictional base for these other Federal crimes against person or property.

Section 1505 continues the provisions in §245(b)(5) concerning protection against forceful interference with "speech or peaceful assembly" in support of various activities covered by §§1503 and 1504. Specifically, that section as passed the Senate makes a person guilty of an offense if, "by force or threat of force, he intentionally injures, intimidates,

or interferes with another person because he is or has been, or in order to intimidate him or any other person from, lawfully participating in speech or assembly opposing a denial of opportunity to participate" 1) in a benefit or activity described in §1503, or 2) in a benefit or activity described in §1504, without discrimination on account of race, color, sex, religion, or national origin. As reported by the Senate Judiciary Committee, the bill made three basic changes in the substance of §245(b)(5): 1) the section was broadened to include any person, whether or not a citizen, 2) the motivation requirement was eliminated as to speech or assembly directed to activities protected by §245(b)(1) (i.e. §1503), and 3) the term "lawfully" was deleted as a qualification on speech or assembly entitled to protection.

On January 27, 1978, however, the Senate adopted an amendment offered by Senator Allen which restored the latter requirement that persons protected by the section be "lawfully" engaged in speech or assembly opposing denial of specified rights. 124 Cong. Rec. S. 668 (daily ed. 1/28/78). In explaining his reason for this amendment, Senator Allen noted his objections to the Senate version:

> The key word is that they may not intimidate one from participating in speech or assembly; it does not say that this assembly or speech must be lawful. In other word (sic), under this, there could be unlawful assembly and still you would be forbidden to seek to put a stop to that or interfere with it in any way, even though the assembly was unlawful.... This merely requires that the assembly be lawful, that the participation be a lawful participation. Id.

This amendment to the bill accords with the formulation adopted by the Final Report of the National Commission. Final Report, §1515, at p. 161. But the consultant to the National Commission took a contrary position on the matter, noting that the qualifier "raises irrelevant issues because in criminal law we do not normally concern ourselves with the question whether the victim has clean hands, apart from self defense concepts. If taken literally, the 'lawfully' requirement could even prevent prosecution under 18 U.S.C. 245 of a murderer whose 'peaceful assembly' victims were operating in violation of a valid permit requirement... If the word is deleted from the statute, the lawfulness of the protest would no longer be a statutory element of proof." Working Papers, at p. 800.

The Senate provision also modifies the speech and assembly provisions of existing law as regards the required showing of racial motivation, or motivation based on color, religion, sex, or national origin. Section 245(b)(5), by virtue of the "so participates" phrase, incorporates the element of discriminatory motive into both sets of activities reached (i.e. those under subsections (b)(1) and (b)(2)), even though a direct interference with an activity described in subsection (b)(1) may be prosecuted without a showing of racial or other form of discrimination. Section 1505 follows the dichotomized approach to the motivation element in §§1503 and 1504 dealing with direct interference with specified activities, by retaining the race or other special motivation requirement regarding interference with speech or assembly directed to §1504 activities but eliminates it with

respect to an indirect interferer who disrupts an assembly supportive of §1503 activities in a manner corresponding to those sections' treatment of aiders and afforders. This same approach was recommended in the Final Report of the National Commission. See, Final Report, §1515, at p. 161; Working Papers, pp. 801-3.

III.

The final provision in Subchapter A, §1506,[10/] would continue in modified form 18 U.S.C. 1231[11/] which proscribes the transportation in interstate or foreign commerce of persons employed as strikebreakers. Section 1506(a) provides that a person is guilty of an offense if, by force or threat of force, he intentionally obstructs or interferes with 1) peaceful picketing by employees in the course of a bona fide labor dispute affecting wages, hours, or conditions of labor, or 2) the exercise by employees of the rights of self-organization or collective bargaining.

It should be noted that whereas the first paragraph of 18 U.S.C. 1231 punishes the transportation in commerce only of persons "employed... or to be employed," that element has been deleted from §1506(a). This follows the recommendation of the National Commission by separating out the jurisdictional aspect, interstate transportation, as an element of the crime so that the act of strikebreaking, rather than transportation or employment of another for that purpose, is the gravamen of the offense. The required nexus to commerce is retained, however, in §1506(c) which provides for jurisdiction only "if movement of any person

across a state or United States boundary occurs in the commission of the offense." By merging the jurisdictional element into the definition of the offense, the present law makes the question one of fact for the jury while under the Senate bill, it would apparently be a question of law to be decided by the court. Also, the bill somewhat expands jurisdiction under 18 U.S.C. 1231 which is limited to situations in which the strikebreaker (i.e. "any person who is employed or to be employed" for that purpose) travels or is transported in commerce. In contrast, §1506 would reach situations in which, for example, the organizer of the strikebreaking effort travels across State lines to supervise.

Section 1506 would conform the bill's treatment of strikebreaking with other civil rights offenses in the bill by substituting "intentionally" for "wilfully" in defining the required level of culpability so that the defendant would have to act with the conscious objective of interfering with protected picketing or labor organizing. The element of the offense under existing law that the obstruction or interference be attended by force or threats of force is retained in the Senate bill. Commenting on this latter aspect, the National Commission observed that "[t]he utility of this statute in labor situations may be somewhat attenuated today because of the operation of the National Labor Relations Act against unfair labor practices. The strikebreaking provision might usefully remain in the proposed Code, however, since it imposes direct criminal liability for violence and reaches outsiders trying to interfere with the collective bargaining process." Final Report, §1551, at p. 167.

Footnotes

1/ Section 1501 provides:

Interfering with Civil Rights

(a) OFFENSE.—A person is guilty of an offense if he intentionally:

(1) deprives another person of; or

(2) injures, oppresses, threatens, or intimidates another person:

(A) in the free exercise or enjoyment of; or

(B) because of his having exercised;

a right, privilege, or immunity secured to such other person by the Constitution or laws of the United States.

(b) PROOF.—In a prosecution under this section, whether the deprivation, injury, oppression, threat, or intimidation concerns a right, privilege, or immunity secured by the Constitution or laws of the United States is a question of law.

(c) GRADING.—An offense described in this section is a Class A misdemeanor.

2/ Section 1502 provides:

Interfering with Civil Rights under Color of Law

(a) OFFENSE.—A person is guilty of an offense if, acting under color of law, he engages in any conduct constituting an offense described in a section in chapter 16 or 17, and thereby deprives another person of a right, privilege, or immunity secured to such other person by the Constitution or laws of the United States.

(b) PROOF.—In a prosecution under this section, whether the deprivation concerns a right, privilege, or immunity secured by the Constitution or laws of the United States is a question of law.

(c) GRADING.—An offense described in this section is a Class A misdemeanor.

3/ 18 U.S.C. 241 is designed to safeguard a citizen's rights and privileges under the Constitution and the laws of the United States against private conspiracies and provides for a maximum imprisonment of 10 years and a maximum fine of $10,000:

Conspiracy against rights of citizens

If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or

If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured—

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

4/ 18 U.S.C. 242 proscribes acts under color of law that deprive an inhabitant of his statutory or constitutional rights and provides for a maximum imprisonment of one year and a maximum fine of $1,000 or, if death results, imprisonment for any term of years or life, as follows:

Deprivation of rights under color of law

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than $1,000 or imprisoned not more than one year, or both; and if death results shall be subject to imprisonment for any term of years or for life.

5/ Title I of the 1968 Civil Rights Act, codified at 18 U.S.C. 245, is an extremely detailed and comprehensive statute which deals with violent interference with certain Federally protected interests in a broad range of areas:

Federally protected activities

(a) (1) Nothing in this section shall be construed as indicating an intent on the part of Congress to prevent any State, any possession or Commonwealth of the United States, or the District of Columbia, from exercising jurisdiction over any offense over which it would have jurisdiction in the absence of this section, nor shall anything in this section be construed as depriving State and local law enforcement authorities of responsibility for prosecuting acts that may be violations of this section and that are violations of State and local law. No prosecution of any offense described in this section shall be undertaken by the United States except upon the certification in writing of the Attorney General or the Deputy Attorney General that in his judgment a prosecution by the United States is in the public interest and necessary to secure substantial justice, which function of certification may not be delegated.

(2) Nothing in this subsection shall be construed to limit the authority of Federal officers, or a Federal grand jury, to investigate possible violations of this section.

(b) Whoever, whether or not acting under color of law, by force or threat of force willfully injures, intimidates or interferes with, or attempts to injure, intimidate or interfere with—

(1) any person because he is or has been, or in order to intimidate such person or any other person or any class of persons from—

(A) voting or qualifying to vote, qualifying or campaigning as a candidate for elective office, or qualifying or acting as a poll watcher, or any legally authorized election official, in any primary, special, or general election;

(B) participating in or enjoying any benefit, service, privilege, program, facility, or activity provided or administered by the United States;

(C) applying for or enjoying employment, or any perquisite thereof, by any agency of the United States;

(D) serving, or attending upon any court in connection with possible service, as a grand or petit juror in any court of the United States;

(E) participating in or enjoying the benefits of any program or activity receiving Federal financial assistance; or

(2) any person because of his race, color, religion or national origin and because he is or has been—

(A) enrolling in or attending any public school or public college;

(B) participating in or enjoying any benefit, service, privilege, program, facility or activity provided or administered by any State or subdivision thereof;

(C) applying for or enjoying employment, or any perquisite thereof, by any private employer or any agency of any State or subdivision thereof, or joining or using the services or advantages of any labor organization, hiring hall, or employment agency;

(D) serving, or attending upon any court of any State in connection with possible service, as a grand or petit juror,

(E) traveling in or using any facility of interstate commerce, or using any vehicle, terminal, or facility of any common carrier by motor, rail, water, or air;

(F) enjoying the goods, services, facilities, privileges, advantages, or accommodations of any inn, hotel, motel, or other establishment which provides lodging to transient guests, or of any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility which serves the public and which is principally engaged in selling food or beverages for consumption on the premises, or of any gasoline station, or of any motion picture house, theater, concert hall, sports arena, stadium, or any other place of exhibition or entertainment which serves the public, or of any other establishment which serves the public and (i) which is located within the premises of any of the aforesaid establishments or within the premises of which is physically located any of the aforesaid establishments, and (ii) which holds itself out as serving patrons of such establishments; or

(3) during or incident to a riot or civil disorder, any person engaged in a business in commerce or affecting commerce, including, but not limited to, any person engaged in a business which sells or offers for sale to interstate travelers a substantial portion of the articles, commodities, or services which it sells or where a substantial portion of the articles or commodities which it sells or offers for sale have moved in commerce; or

(4) any person because he is or has been, or in order to intimidate such person or any other person or any class of persons from—

(A) participating, without discrimination on account of race, color, religion or national origin, in any of the benefits or activities described in subparagraphs (1) (A) through (1) (E) or subparagraphs (2) (A) through (2) (F); or

(B) affording another person or class of persons opportunity or protection to so participate; or

(5) any citizen because he is or has been, or in order to intimidate such citizen or any other citizen from lawfully aiding or encouraging other persons to participate, without discrimination on account of race, color, religion or national origin, in any of the benefits or activities described in subparagraphs (1) (A) through (1) (E) or subparagraphs (2) (A) through (2) (F), or participating lawfully in speech or peaceful assembly opposing any denial of the opportunity to so participate—

shall be fined not more than $1,000, or imprisoned not more than one year, or both; and if bodily injury results shall be fined not more than $10,000, or imprisoned not more than ten years, or both; and if death results shall be subject to imprisonment for any term

of years or for life. As used in this section, the term "participating lawfully in speech or peaceful assembly" shall not mean the aiding, abetting, or inciting of other persons to riot or to commit any act of physical violence upon any individual or against any real or personal property in furtherance of a riot. Nothing in subparagraph (2) (F) or (4) (A) of this subsection shall apply to the proprietor of any establishment which provides lodging to transient guests, or to any employee acting on behalf of such proprietor, with respect to the enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of such establishment if such establishment is located within a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor as his residence.

(c) Nothing in this section shall be construed so as to deter any law enforcement officer from lawfully carrying out the duties of his office; and no law enforcement officer shall be considered to be in violation of this section for lawfully carrying out the duties of his office or lawfully enforcing ordinances and laws of the United States, the District of Columbia, any of the several States, or any political subdivision of a State. For purposes of the preceding sentence, the term "law enforcement officer" means any officer of the United States, the District of Columbia, a State, or political subdivision of a State, who is empowered by law to conduct investigations of, or make arrests because of, offenses against the United States, the District of Columbia, a State, or a political subdivision of a State.

6/ A housing violence provision with analogous language and penalties to §245, although codified separately, 42 U.S.C. 3631 was enacted by Title VIII of the 1968 Civil Rights Act and punishes wilful interference with the right to be free from discrimination in the sale, purchase, rental, or financing of housing:

Violations; bodily injury; death; penalties

Whoever, whether or not acting under color of law, by force or threat of force willfully injures, intimidates or interferes with, or attempts to injure, intimidate or interfere with—

(a) any person because of his race, color, religion, sex or national origin and because he is or has been selling, purchasing, renting, financing, occupying, or contracting or negotiating for the sale, purchase, rental, financing or occupation of any dwelling, or applying for or participating in any service, organization, or facility relating to the business of selling or renting dwellings; or

(b) any person because he is or has been, or in order to intimidate such person or any other person or any class of persons from—

(1) participating, without discrimination on account of race, color, religion, sex or national origin, in any of the activities, services, organizations or facilities described in subsection (a) of this section; or

(2) affording another person or class of persons opportunity or protection so to participate; or

(c) any citizen because he is or has been, or in order to discourage such citizen or any other citizen from lawfully aiding or encouraging other persons to participate, without discrimination on account of race, color, religion, sex or national origin, in any of the activities, services, organizations or facilities described in subsection (a) of this section, or participating lawfully in speech or peaceful assembly opposing any denial of the opportunity to so participate—

shall be fined not more than $1,000, or imprisoned not more than one year, or both; and if bodily injury results shall be fined not more than $10,000, or imprisoned not more than ten years, or both; and if death results shall be subject to imprisonment for any term of years or for life.

7/ Section 1503 provides:

Interfering with a Federal Benefit

(a) OFFENSE.—A person is guilty of an offense if, by force or threat of force, he intentionally injures, intimidates, or interferes with another person because such other person is or has been, or in order to intimidate any person from:

(1) applying for, participating in, or enjoying a benefit, privilege, service, program, facility, or activity provided by, administered by, or wholly or partly financed by, the United States;

(2) applying for or enjoying employment, or a perquisite thereof, by a federal government agency;

(3) serving as a grand or petit juror in a court of the United States or attending court in connection with possible service as such a grand or petit juror;

(4) voting or qualifying to vote, qualifying or campaigning as a candidate for elective office, or qualifying or acting as a poll watcher or other election official, in a primary, general, or special election;

(5) affording another person or class of persons opportunity to participate, or protection in order to participate, in any benefit or activity described in this section; or

(6) aiding or encouraging another person or class of persons to participate in any benefit or activity described in this section.

(b) GRADING.—An offense described in this section is a Class A misdemeanor.

8/ Section 1504 provides:

Unlawful Discrimination

(a) OFFENSE.—A person is guilty of an offense if, by force or threat of force, he intentionally injures, intimidates, or interferes with another person:

(1) because of such other person's race, color, sex, religion, or national origin and because such other person is or has been, or in order to intimidate any person from:

(A) applying for, participating in, or enjoying, a benefit, privilege, service, program, facility, or activity provided or administered by a state or locality;

(B) applying for or enjoying employment, or a perquisite thereof, by a state or local government agency;

(C) serving as a grand or petit juror in a state or locality or attending court in connection with possible service as such a grand or petit juror;

(D) enrolling in or attending a public school or public college;

(E) applying for or enjoying the goods, services, privileges, facilities, or accommodations of:

(i) an inn, hotel, motel, or other establishment that provides lodging to transient guests;

(ii) a restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility that serves the public and that is principally engaged in selling food or beverages for consumption on the premises;

(iii) a gasoline station;

(iv) a motion picture house, theater, concert hall, sports arena, stadium, or other place of exhibition or entertainment that serves the public; or

(v) any other establishment that serves the public, that is located within the premises of an establishment described in this subparagraph or that has located within its premises such an establishment, and that holds itself out as serving patrons of such an establishment;

(F) applying for or enjoying the services, privileges, facilities, or accommodations of a common carrier utilizing any kind of vehicle;

(G) traveling in or using a facility of interstate commerce;

(H) applying for or enjoying employment, or a perquisite thereof, by a private employer or joining or using the services or advantages of a labor organization, hiring hall, or employment agency; or

(I) selling, purchasing, renting, financing, or occupying a dwelling; contracting or negotiating for the sale, purchase, rental, financing or occupation of a dwelling; or applying for or participating in a service, organization, or facility relating to the business of selling or renting dwellings; or

(2) because such other person is or has been, or in order to intimidate any person from:

(A) affording another person or class of persons opportunity to participate, or protection in order to participate, without discrimination on account of race, color, sex, religion, or national origin, in any benefit or activity described in this section; or

(B) aiding or encouraging another person or class of persons to participate, without discrimination on account of race, color, sex, religion, or national origin, in any benefit or activity described in this section.

(b) DEFENSE.—It is a defense to a prosecution under subsection (a)(1)(E)(i) that:

(1) the defendant was the proprietor of the establishment involved or an agent acting on behalf of the proprietor;

(2) the establishment was located within a building containing not more than five rooms for rent or hire; and

(3) the building was occupied by the proprietor as his residence.

(c) GRADING.—An offense described in this section is a Class A misdemeanor.

9/ Section 1505 provides:

> **Interfering with Speech or Assembly Related to Civil Rights Activities**
>
> (a) OFFENSE.—A person is guilty of an offense if, by force or threat of force, he intentionally injures, intimidates, or interferes with another person because he is or has been, or in order to intimidate him or any other person from, lawfully participating in speech or assembly opposing a denial of opportunity to participate:
>
> (1) in a benefit or activity described in section 1503; or
>
> (2) in a benefit or activity described in section 1504, without discrimination on account of race, color, sex, religion, or national origin.
>
> (b) GRADING.—An offense described in this section is a Class A misdemeanor.

10/ Section 1506 provides:

> **Strikebreaking**
>
> (a) OFFENSE.—A person is guilty of an offense if, by force or threat of force, he intentionally obstructs or interferes with:
>
> (1) peaceful picketing by employees in the course of a bona fide labor dispute affecting wages, hours, or conditions of labor; or
>
> (2) the exercise by employees of rights of self-organization or collective bargaining.
>
> (b) GRADING.—An offense described in this section is a Class A misdemeanor.
>
> (c) JURISDICTION.—There is federal jurisdiction over an offense described in this section if movement of any person across a state or United States boundary occurs in the commission of the offense.

11/ 18 U.S.C. 1231 punishes by up to two years in prison whoever wilfully obstructs or interferes with picketing or employee organizational or collective bargaining rights by importing strikebreakers from another State or country.

Transportation of strikebreakers

Whoever willfully transports in interstate or foreign commerce any person who is employed or is to be employed for the purpose of obstructing or interfering by force or threats with (1) peaceful picketing by employees during any labor controversy affecting wages, hours, or conditions of labor, or (2) the exercise by employees of any of the rights of self-organization or collective bargaining; or

Whoever is knowingly transported or travels in interstate or foreign commerce for any of the purposes enumerated in this section—

Shall be fined not more than $5,000 or imprisoned not more than two years, or both.

This section shall not apply to common carriers.