



Department of Justice

PS
667
.CLL

STATEMENT

by

ATTORNEY GENERAL RAMSEY CLARK

before the

SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS

of the

SENATE JUDICIARY COMMITTEE

ON

S. 1026, THE CIVIL RIGHTS ACT OF 1967

TUESDAY, AUGUST 1, 1967

Tragic, lawless rioting has seared the face of American cities. It must and will be stopped. To maintain law and order is the first purpose of government and the foundation of civilization. Law enforcement must marshal all resources necessary to restore domestic tranquillity. Rioting cannot be permitted to scar the heart of America.

A people prove their greatness by strength of purpose in times of adversity. For civil rights, this is a time of adversity. After a solid decade of firm commitment, America is ambivalent. Expressions of hatred, rioting and violence

inflammation, world tensions distract, general unrest and disunity among leadership divide, new issues crowd for higher priority. Now is a time to prove our greatness. No mission of America can outrank its urgent quest for equal justice for all.

We have proclaimed from the beginning our goal of equal justice and, while we have at times let decades lapse without notable progress, we have never altered the ideal. More recently we have acted in accord with our faith and moved forward.

For ourselves and our children this is essential because it is indisputably right. It is essential to demonstrate this commitment to the growing millions among us who are not sure we will act to end discrimination. It is essential also to demonstrate to the growing billions of this world that America would practice as it preaches. For those who believe this, nothing will change their love for this country because human nature cherishes justice.

Today progress is essential. In the past we could stand still for years or generations with little change in our national well being. Now immense and increasing effort is necessary merely to keep up. The vast increase in population, the bulging urbanization, the numbers of our lives and their geometric progression compel imagination, initiative, and clear, effective early action. Our whole environment

voices the consequences of failure to act. How long can we afford delays?

We can be proud of our accomplishments of the past 10 years. Schools have desegregated, public accommodations have opened to all the public, Negroes have swelled voting lists, jobs have been obtained. We have recorded one of history's happiest chapters in the never-ending quest for equal justice. Were our times static we could be confident of achieving our goal, but change is the fundamental fact of the day.

By 1963, nine years after Brown v. Board of Education, Negro children in desegregated public schools of the 11 Southern states measured one percent. In the next three years the percentage rose to 12-1/2. Slowly and painfully we labored for this small but accelerating breakthrough. It is part of as great a social transformation effected by the rule of law as history reveals.

But as this was accomplished other changes, far more pervasive, were taking place.

In the latter half of those 14 years, two million Negroes left the South. In five years, 1960-65, the percentage of Negroes in public schools of most major cities increased drastically: Baltimore from 50 to 61, Chicago from 40 to 52, St. Louis from 49 to 60, Detroit from 43 to 55.

This shift in school populations arises from segregation in housing which holds dire consequences for employment, education, health and all opportunities for a good life. It means further separation of the races, dividing the nation into two Americas, making impossible the realization of our ideal of equality. Even now we are separated so that white America is largely ignorant of the plight of Negro America. Negro America assumes white America doesn't care, or worse, prefers things as they are.

Violence and rioting are alien to the spirit of civil rights and wholly irrelevant to its merit. But they so dishearten commitment that they have become the greatest barriers to its fulfillment. Loss of commitment contributes to disillusion, hopelessness and frustration. We must persevere because it is right and because failure now will make it harder later, and some day impossible.

Priorities are essential when there is much to be done. Action taken must clearly address itself to the heart of our needs. At issue is the faith of millions of Americans in the spirit of the nation and the capability of its institutions to right this huge wrong.

The several titles of the proposed Civil Rights Act of 1967 are directly relevant to present need and rate the highest priority.

Fair juries are elemental to the administration of justice. What greater sense of hopelessness can man suffer than to face a trial for life, liberty or property believing his jury is prejudiced against him?

Employment brings independence, self-reliance and dignity. A father with a job opens doors of opportunity for a whole family and more.

Open housing reaches the roots of discrimination. While there is segregation in housing other basic opportunities are lost to the segregated. Families are reared in the home. The home should not be imbedded in discrimination.

It is intolerable that we permit the denial of invaluable federal rights. Both our abhorrence of violence and devotion to the rule of law demand protection of the rights of our citizens.

The life of the Civil Rights Commission should be extended because we must look as deeply into the present and far into the future as is possible. Our search for ways to secure equal justice must be deliberate and thorough.

For a decade Congress has led the nation toward equal justice. The need for progress was never greater. We cannot falter now.

CIVIL RIGHTS ACT OF 1967

(Attachment to statement of Attorney General Ramsey Clark before the Subcommittee on Constitutional Rights of the Senate Judiciary Committee.)

Title I - Federal Jury Selection

This title has been and continues to be the subject of extensive hearings before the Subcommittee on Improvements in Judicial Machinery. Therefore, it is not treated here.

Title II - Fair Jury Selection is Elemental to the Administration of Justice

Elimination of discrimination in the selection of state juries is elemental to the administration of justice.

The Fourteenth Amendment requires that the State court jury ". . . be a body truly representative of the community." Smith v. Texas, 311 U.S. 128, 130. Nearly a century after the Amendment's adoption in 1869, and following scores of judicial findings of jury discrimination, State court juries still do not represent a fair cross-section of the community in some parts of the country.

A recent case involving systematic exclusion of Negroes from the jury rolls in Wilcox County, Alabama, where

Negroes outnumber whites two-to-one, illustrates. The parties stipulated that there had been no Negroes on the county rolls prior to 1963; that the jury rolls for 1963-1964 contained 455 white persons and 3 Negroes; and that the 1965 and 1966 jury rolls had listed 296 whites and 12 Negroes, and 456 whites and 60 Negroes, respectively. The court found that "(t)he existence of a pattern and practice of exclusion of Negroes from jury service in the count(y) is virtually uncontroverted." McNeir v. Agee, 261 F. Supp. 542 (S.D. Ala. 1966).

Although the most flagrant abuses have involved systematic exclusion of Negroes, discrimination or underrepresentation on State juries because of sex and economic status are also serious current problems. Mississippi law excludes women from juries altogether. Louisiana and New Hampshire use women jurors only when they volunteer to serve. Twelve states grant women an absolute right to be excused from jury service, whether or not they have responsibilities that would make jury service particularly onerous.

The laws of several states impose direct economic qualifications for jury service. For example, New York

requires that jurors own \$250 worth of property. In other states, the jury laws may operate indirectly to exclude persons of low income by specifying an economically-biased source, like the tax rolls, as the exclusive source of jurors.

Even where the jury selection laws are on their face neutral, the practices of jury officials may result in keeping qualified persons off juries. In a recent case the state jury officials, without statutory authority, avoided calling daily wage earners on the assumption that most of them would be excused by the court on hardship grounds. The federal appellate court held that: "The exclusion of daily wage earners as a class violates the petitioner's due process and equal protection rights to an impartial jury representing a cross-section of the community." Labat v. Bennett, 365 F. 2d 698, 719-720 (C.A. 5, 1966).

Present remedies for enforcement of the Fourteenth Amendment in state jury selection are grossly inadequate.

The individual defendant may raise the claim of racial exclusion though doing so may in itself prejudice his case. Once a claim of exclusion has been raised, the cost of

carrying it forward is often prohibitive, the evidence to support the claim--primarily, the records of the jury commission--may be inaccessible or insufficient to permit a definite determination.

The Supreme Court of North Carolina, in reversing a criminal conviction because of race discrimination in jury selection, noted that --

Copies of jury lists, showing the names included and those excluded, were not kept; when a new jury list was made the old one was destroyed. The judge would not permit an examination of the current jury box, or a determination of its racial composition. State v. Lowry, 263 N.C. 536, 548, 139 S.E. 2d 870 (1965).

When claims of racial exclusion by criminal defendants are sustained, the rulings frequently have no permanent effect. Thus, in Whitus v. Georgia, 385 U.S. 545, the Supreme Court reversed a criminal conviction where the defendants had twice been indicted and tried by juries selected in a racially discriminatory manner.

Present law does not authorize the federal government to initiate civil proceedings against state jury officials engaged in discriminatory selection practices. Under Title IX

of the 1964 Civil Rights Act, the Department of Justice may intervene in jury discrimination civil cases brought by private individuals. We have exercised this authority in eight recent cases. But the federal government cannot act until a private suit is filed. Expense, lack of counsel, and intimidation or fear of reprisal, deter such private suits.

Title II would afford effective remedies for eliminating invidious discrimination in state jury selection procedures. It contains four basic provisions.

First, it outlaws the making of any distinction in state jury selection on account of race, color, religion, sex, national origin or economic status.

Second, it authorizes the Attorney General to bring civil actions in the federal courts for injunctive relief against state jury officials engaged in discriminatory selection practices.

Third, it established a procedure for disclosure and development of information relevant to the determination of whether state jury officials have engaged in discriminatory

practices. The provision requires the jury officials to assume the burden of proving nondiscrimination where the court finds probable cause to believe that discrimination has occurred.

Fourth, it requires state jury officials to preserve for four years all records used in the performance of their duties. In areas where ten percent or more of the population is non-white, the jury officials would be required to maintain a record of the race of all persons who appear at the courthouse as jurors or prospective jurors.

Title III -- Employment Brings Independence,
Self-reliance and Dignity

Equal opportunity in employment, the right to get a job and advance in it on the basis of merit, is an essential element of freedom. Unless each individual has a fair chance to earn a decent living, other legal rights may mean little. Congress recognized this by enacting Title VII of the Civil Rights Act of 1964, which broadly bans discriminatory practices in employment. Some progress has been made since then in eliminating employment discrimination, but more effective federal remedies are needed.

While the unemployment rate in 1965 was twice as high for non-whites as for whites, the disparity increased to a ratio of 2.2-to-1 by the end of 1966. The June 1967 unemployment rate for men 20 years old and over was 2.4 percent for whites, 4.6 percent for non-whites. Among teenagers 16 to 19 years old, the unemployment rate is 25.8 percent for non-whites compared to 10.9 for whites.

Even the highly educated Negro faces job discrimination. Over 10 percent of all non-white men with a college education were in blue-collar or service work in March, 1966--twice the proportion of college educated white men.

Since 1964, the range of jobs held by non-whites has not been substantially upgraded. While they represented 10.6 percent of the work force in 1964 and 10.8 percent in 1966, they were:

- 5.8 percent of the Nation's professional and technical workers in 1964 and 5.5 in 1966
- 3.1 percent of salesworkers in both 1964 and 1966
- 8.1 percent of all construction craftsmen (except carpenters) in 1964 and 8.2 percent in 1966.

Title VII of the 1964 Act prohibits employers, labor organizations, joint-apprenticeship committees and employment agencies from discriminating on account of race, color, religion, national origin or sex. It established the Equal Employment Opportunity Commission to receive claims of unlawful discrimination. However, the Commission is empowered to seek compliance only by informal methods of conference, conciliation and persuasion. When these methods prove unsuccessful, the victim of discrimination is left to seek relief in the federal courts.

Title III of S. 1026 retains the Commission's present functions under Title VII of the 1964 Act and continues to give priority to enforcement by these informal, non-public methods. When these methods fail, however, the Commission will have enforcement powers. It will be authorized to issue a complaint against the party charged with unlawful discrimination and to hold a public hearing.

Respondents at such hearings will be entitled to all the protections afforded by the Administrative Procedure Act, including the right to counsel and the right to call and examine witnesses. If, based on the evidence presented

at the hearing, the Commission determines that the law has been violated, it can issue an order requiring the respondent to cease and desist its discriminatory practices. The Commission's orders will be enforceable or reviewable in the courts of appeals, both as to the Commission's findings of fact under the usual "substantial evidence" rule, and the Commission's interpretations of law.

The experience of the Equal Employment Opportunity Commission demonstrates the need for this legislation. The Commission has had only limited success in obtaining voluntary compliance and its percentage of successful conciliations is decreasing. Cease and desist authority will enhance the Commission's effectiveness as a conciliator.

The enforcement authority to be conferred on the Commission by this bill closely parallels that given to and long exercised by other federal agencies, such as the National Labor Relations Board, Federal Trade Commission and Federal Power Commission. It will permit a more expeditious handling of cases by an administrative agency dealing solely with discrimination in employment than is possible by courts whose

dockets are already overcrowded with other cases. It will reduce costs for an aggrieved person. It will lead to development of much-needed expertise in the area of equal employment. It will also achieve a greater uniformity of result and legal interpretation--an even implementation of a major national policy.

Title IV -- Open Housing Will Make Possible
the Elimination of Discrimination
that Cannot Otherwise Be Reached.

Discrimination in residential housing is a critical national problem. Primarily because of housing discrimination, more persons are living in segregated sections of cities today than ever before.

Life in an urban ghetto means inequality and consequent lack of opportunity for millions of Americans. As a direct result of housing segregation, there is more school segregation today than ever before in our history.

Ghetto population is rising and ghetto conditions are worsening. From 1960 to 1965, the average family income in Watts, for example, dropped 8%, from \$5100 to \$4700, while the national average income was rising 14%. In Hough, a

comparable Negro area in Cleveland, average family income dropped 16% -- down from \$4700 to \$3900. Unemployment in Watts has remained constant in the face of substantial reductions for both Los Angeles and the nation as a whole. The proportion of broken families is steadily increasing in all ghettos.

New white suburbs extend farther from central city each year. Negroes remain for the most part in the same dense, deteriorated inner circles despite their even more rapidly increasing numbers. As the geographical pressures grow, so do the human pressures. Here is a sure formula for crime, violence, and degradation.

Title IV would gradually prohibit discrimination on account of race, color, religion or national origin in the sale or rental of housing. Housing held for sale or rent by someone other than its occupant and housing for five or more families would be covered after January 1, 1968. All housing other than exempted housing of religious institutions could be covered after January 1, 1969.

The practice of profiteers inducing persons to sell their houses at distress prices by representations regarding

entry into the neighborhood of members of minority groups, a form of "blockbusting", would be prohibited.

Responsibility for administration and enforcement would rest primarily with the Secretary of Housing and Urban Development. He would use the time during which the enforcement provisions gradually go into effect to consult with housing industry leaders and state and local officials and to carry on educational activities.

A person who believes that he has been injured by a discriminatory housing practice could file a charge with the Secretary. The Secretary would be required to seek a voluntary solution in every case. If his attempt were unsuccessful, he would be authorized to issue a complaint and hold hearings. If the evidence supported a finding of discrimination, he could issue orders granting appropriate relief. His orders would be subject to judicial review.

If the Secretary declines to process a complaint, the victim of an alleged discrimination can take his own case to a state or federal court of competent jurisdiction.

The Attorney General would be empowered to initiate suits in the United States district courts to eliminate patterns or practices of housing discrimination.

Critics of fair housing legislation have claimed that it would invade the privacy of the home. The charge is without foundation.

Title IV is aimed at commercial transactions: at the "for sale" and "for rent" signs which proclaim to all that housing is available to whoever makes the best offer. To sell, or not to sell is for the owner to decide. Having decided to sell, or rent, the choice of buyer or renter is for the owner, absent discriminatory purpose. The household that wishes to take in a friend or relative is free to do so.

Congress clearly has the constitutional power, under both the Commerce Clause and the Fourteenth Amendment, to enact Title IV. Evidence adduced before this Subcommittee and the House Judiciary Committee last year in support of Title IV of the proposed 1966 Civil Rights Act established the constitutional bases for this legislation. So far as the Commerce Clause is concerned, it was shown that the housing business today is substantially interstate in character.

Millions of outstanding mortgages are held by lenders who reside in different states from the mortgaged housing. Hardly a home is built which does not contain materials produced in other states. The average family moves its place of residence once every five years, and one out of six of those moves is to a different state.

Production and employment depend on the movement of workers and executives from one state to another-- frequently the same employer will promote a man by transferring him to a higher position in another part of the country. In and near many of our large cities, advertising for new housing crosses state lines.

To support legislative jurisdiction under the Fourteenth Amendment, it was shown that today's discriminatory housing patterns are a direct outgrowth of past illegal government action and that those patterns impede state and local government in their ability to provide equal protection of the law.

Indeed, not until 1947 did the Federal government cease officially promoting the separation of the races in housing. Not until 1948 did our Nation's courts cease lend-

ing their full power and prestige to privately drawn racial covenants. And at the present time, many state-licensed real estate agents refuse to show Negroes homes in all-white neighborhoods.

At the end of its 1965 term, the Supreme Court handed down a broad reassessment of the power of Congress to enforce the Fourteenth Amendment (Katzenbach v. Morgan, 384 U.S. 641). It declared that Congress has the constitutional authority to remove whatever it reasonably considers to be a barrier to a minority group's receiving equal protection of the law, even if the barrier is a product of solely individual, rather than state, action.

If the Congress determines that Negroes and members of other minority groups cannot expect to share equally in the benefits of state or local government unless they are free from housing discrimination, then it has the power to enact laws to prohibit that discrimination.

Title V -- Abhorrence of Violence and
Devotion to the Rule of Law
Demand Protection of the
Federal Rights of Every American

Most Americans believe in equality and have welcomed the progress that members of minority groups have made in recent years. Others, finding it difficult to change deeply-rooted habits and attitudes, have nevertheless accepted these developments peacefully because their respect for law is stronger than their attachment to the old ways. But a small number of people have resorted to any means, including murder, to discourage Negroes and their supporters from exercising their civil rights.

Under our federal system, the primary responsibility for prosecuting acts of violence rests with state and local law enforcement. But in some areas officials are either unable or unwilling to protect Negroes who attempt to assert their rights and, in a few cases, there is evidence that police have openly condoned and even participated in racial violence.

When effective protection and prosecution is lacking at the local level, federal action is necessary to guarantee equal protection of the laws.

But federal legislation to protect civil rights is required not only because local officials have sometimes

abdicated their responsibilities. In recent years, violence to prevent the exercise of civil rights has been resorted to increasingly to suppress the exercise of affirmative federal rights.

Such violence is direct defiance of the will of the Congress. The very integrity of those Acts depends on federal enforcement.

The present federal criminal laws--18 U.S.C. 241 and 242--while applicable to some racial violence are inadequate to deal with present problems. Worded in general terms, they apply to a whole panoply of federal rights, including--without specification--rights under the Fourteenth Amendment. As a result, prosecutions under both statutes have been plagued by serious "vagueness" problems. Often requiring protracted litigation.

Such delays seriously undermine enforcement efforts. And because these statutes do not spell out clearly what kinds of conduct are prohibited, they lack the deterrent effect that would result from plainly worded prohibitions. Commenting on the vague language of section 241, Justice Brennan said last year in United States v. Guest, 383 U.S. 745, 786--

. . .since the limitation on the statute's effectiveness derives from Congress' failure to define--with any measure of specificity--the rights encompassed, the remedy is for Congress to write a law without this defect. To paraphrase my Brother Douglas' observation in Screws v. United States, 325 U.S., at 105, addressed to a companion statute with the same shortcoming, if Congress desires to give the statute more definite scope, it may find ways of doing so.

Section 241 has another serious limitation-- it requires proof of a conspiracy involving two or more persons. Thus, when a single private individual commits a racially-motivated assault for the purpose of punishing or preventing another from exercising a federal right, there is frequently no federal criminal sanction that can be invoked. Section 242 does not cover such cases because, by its terms, it applies only to persons acting under "color of law."

Another defect in existing law is that the penalty provisions are frequently not commensurate with the gravity of the crime. Whether an act of violence results in death or a mere scratch, the maximum penalty under section 241 is imprisonment for ten years, a \$5,000 fine, or both. Under section 242, the maximum penalty is imprisonment for only one year, a \$1,000 fine, or both.

Title V would afford the federal government an effective means of deterring and punishing forcible interference with the exercise of federal rights. The Title would specify in clear language the different kinds of activity which are protected--thus avoiding unnecessary litigation concerning coverage and providing unmistakable warning to lawless elements that if they interfere with any of these activities, they must answer to the Federal government.

The bill would cover both private individuals and public officials and no proof of a conspiracy would be required. A graduated scale of appropriately severe penalties is provided, depending upon whether bodily injury or death results from a violation.

The title prohibits interfering with a person by means of force or threats of force in order to prevent or punish him for engaging in specified kinds of activities on account of race, color, religion, or national origin. The areas of protected activity are voting, public accommodations, public education, public services and facilities, employment, housing, jury service, use of common carriers, and participation in federally assisted programs.

Title V prohibits interference that occurs either before, during, or after a person engages in protected conduct.

This includes, for example, reprisals taken against a person a week or even months after an election because he voted, or threatening a person with violence to discourage him from voting. It also covers forcible interference with persons who have urged or aided others to engage in protected activities, or who have engaged in peaceful protests against denials of the opportunity to participate in those activities.

The title protects persons performing duties in connection with protected activities--for example, a public school official implementing a desegregation plan, or a restaurant proprietor affording service to the public on a non-discriminatory basis.

Title V is constitutional. Doubts that Congress could reach private interference with the exercise of Fourteenth and Fifteenth Amendment rights were dispelled last year in United States v. Guest, in which six of the nine Justices stated that Congress has the power to enact laws punishing acts--private or public--that interfere with Fourteenth Amendment rights.

Title VI--Our Search for Equal Justice
Must be Deliberate, Thorough
and Disenthralled

Unless extended by the Congress, the life of the United States Civil Rights Commission will expire in January of

1968. Title VI of the bill would extend the Commission's life for an additional five years.

Negro Americans and other minority groups continue to suffer denials of their civil rights in many areas of American society. Our racial crisis arises in large measure from widespread ignorance of the plight of minorities.

The facts required by the American people to appreciate these problems, particularly the subtle and complex issues involved in our urban ghettos, and to deal with them effectively, are often not available.

These deeply rooted problems require the continuing attention of an independent and impartial agency such as the Commission on Civil Rights, which has amply demonstrated its qualifications to find the facts, to report on these findings, and to make recommendations to the President and the Congress.

Throughout its existence, the Commission has played a significant role in bringing forward the facts essential for a proper exercise of the legislative function and, equally important, in educating the American citizenry. As recent developments in the civil rights area clearly indicate, the need for an effective factfinding agency continues.