Department of Justice

STATEMENT

By

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On

PROPOSED CIVIL RIGHTS LEGISLATION

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It is a basic premise of our society that every individual shall enjoy, in full measure, the rights and immunities guaranteed to him by the Constitution of the United States. That principle is central to our democratic system. Yet notwithstanding the clarity with which the principle has been announced the ideal remains in some areas of our country and for many citizens of our nation largely unfilled.

This Committee now has under consideration legislative proposals recently approved by the House of Representatives in H. R. 8601. Those proposals are meant to assist in the elimination of types of discrimination based on race or color. Each of the proposals has already received careful and exhaustive study. Each treats an area where there is a proven need for additional legislation. Each is practical and effective. Each deserves prompt and favorable consideration.

First, I would like to discuss the provisions in the Bill dealing with voting rights and then the remaining sections of the Bill.

1. Voting Referees

The voting referee provision (Title VI) of H. R. 8601 is one of its key provisions. Its ultimate objective is to secure to all qualified persons the right to vote and to

have that vote counted.

The bill provides that in any voting rights case instituted under the Civil Rights Act of 1957, which seeks relief from racial discrimination under color of law, the court, upon request by the Attorney General, must make a finding as to whether the discrimination was pursuant to a pattern or practice. If such pattern or practice is found, the court would be authorized to issue supplemental orders including therein the names of persons whom it found qualified to vote and who had been unable to qualify to vote before any appropriate State official. To assist it in passing on the qualifications of such persons, the court could appoint officers to be known as voting referees.

The bill sets forth in detail the procedures to be followed. Any application for an order finding a person qualified to vote must be heard within ten days and the order may not be stayed if such stay would delay its effectiveness beyond the date of any election in which the applicant would otherwise be enabled to vote. The proceedings before the voting referee would be ex parte, but exceptions to the referee's report may be made to the court. Such exceptions must be filed with the court within ten days after notice

of the referee's report has been served on the state officials. In the case of any application to qualify to vote filed twenty or more days prior to an election which is undetermined by the time of such election, the court shall issue an order authorizing the applicant to vote provisionally, and shall make appropriate provision for the impounding of the applicant's ballot pending determination of the application.

After an order of court upon the report has been entered, the Attorney General transmits certified copies thereof to all appropriate state election officials. Any election official who has notice of the order and refuses to permit an individual covered by the order to vote or to have his vote counted will be subject to contempt proceedings, as provided in the Civil Rights Act of 1957.

To insure effective compliance, the bill further permits the court to authorize the voting referees, or other persons appointed by the court, to take any other action appropriate or necessary to enforce its decrees.

Subsection (b) of the bill provides that where the complaint in a proceeding brought under 1971(c) alleges that any state official or agency of the state has committed illegal acts and practices which deprive persons of their

right to vote on account of race or color, the act or practice is to be deemed the act or practice of the state itself. Under this provision if the suit has been instituted the state may be joined as a party, or if the local official has resigned and no successor has been appointed the suit may be instituted against the state itself. Inclusion of the provision in the bill is merely to clarify the authority which exists under the 1957 Act, since a question has been raised concerning this authority in the case of United States v. Alabama. This provision merely reaffirms in explicit terms the authority granted by the 1957 Act.

To summarize the merits of this proposal:

1. The bill would operate within the established judicial framework and would supplement existing legislation. It thus avoids the constitutional and legal questions which would arise under plans based upon a determination by a non-judicial body.

2. The bill would apply to both state and federal elections.

3. It would be effective because the proceeding extends through the entire voting process. It is not terminated by the mere act of registration.

4. It would be enforceable because there would be an outstanding court order requiring state officials to permit Negroes named in the order to vote. Any failure to comply with an order would permit the court proceed immediately to hold state officials in contempt and impose a sentence of 45 days in jail or $1,000 fine.

5. The bill would not fragmentize the election process. It would leave the election procedures in the states where they have always been, subject only to their being administered in a manner consistent with the Constitution.

2. Federal Election Records

Two recent decisions of the Supreme Court have established a firm legal and constitutional basis for the Civil Rights Act of 1957. United States v. Raines, 28 U. S. Law Week 4147; United States v. Thomas, 28 U. S. Law Week 4163. However, a practical problem of great significance to truly effective enforcement of the statute remains unresolved. In many cases, discrimination in registration can be proved only by comparing the records of Negro applicants with those of white applicants. At the present time, the government lacks any procedure by which to compel the production of these records before suit is filed. To be sure, after an action has been initiated, records can be subpoenaed and depositions can be taken from registrars and registered voters. But if this approach were adopted, the United States would often be forced to file suits merely on information and belief in order to determine whether or not a case of discriminatory treatment can be made out.

Experience has shown that the enforcement agencies of the federal government cannot always depend

upon the voluntary cooperation of the state voting officials even to permit the inspection of the necessary documents, much less to allow their removal for copying. Last year the State of Alabama passed a statute providing for the destruction of records 30 days after an application to register is denied unless an appeal has been taken to the state board. A similar measure has been passed by the Georgia legislature. Legal officers of some of the states have openly advised voting officials not to cooperate with federal law enforcement officers or with the FBI.

Title III would vest in the Attorney General authority to require the production of records and papers relating to any general, special or primary election involving candidates for federal office. It also requires the retention and preservation of such records for two years. Willful failure to retain and preserve such records or their willful theft, destruction, concealment, mutilation, or alteration is made an offense punishable by fine of not more than $1,000 or imprisonment for not more than one year or both. In the event of non-production, jurisdiction is conferred upon the federal district courts

to resolve any dispute which might arise in connection with the exercise of the authority conferred. Congress clearly has the power to enact such legislation pursuant to the provisions of Article I, Section 4, of the Constitution. Burroughs and Cannon v. United States, 290 U. S. 534 (1934).

This proposal differs from that recommended by the President in that it requires a retention of records for two years rather than three, does not provide for an increased penalty for willful theft, concealment, mutilation, destruction, or alteration of records, requires the Attorney General to state the basis of any demand for records and the purpose for which he is making the demand, and specifically authorizes disclosure by him to the Congress, congressional committees, and government agencies. The Department does not object to these modifications and enactment of this proposal is essential to the effective enforcement of the provisions of the Civil Rights Act of 1957.

3. Bombings

In recent years there have been many incidents involving bombings and attempted bombings of

schools and religious institutions. Some of these incidents you may remember, but I shall cite a few examples for the record. Bombings have occurred at Clinton High School, Clinton, Tennessee (October 5, 1958); at the Hebrew Benevolent Congregation, Atlanta, Georgia (October 12, 1958); at Jewish Temple Aushai Emeth, Peoria, Illinois (October 14, 1958): at Osage Junior High School, Osage, West Virginia (November 10, 1958); at Orleans Parish School Board Building, New Orleans, Louisiana (November 23, 1958); at Heizer Junior High School, Hobbs, New Mexico (November 23, 1958); and at Palma High School, Salinas, California (January 1, 1959). And only a few days ago, a synagogue was bombed in Gadsden, Alabama.

There has been no lack of effort by state law enforcement agencies in their endeavor to prosecute these crimes. Further, under existing law the Federal Bureau of Investigation makes available to these agencies the facilities of its laboratory and technical experts. Accordingly, it is not recommended that state law enforcement officers be in any sense superseded in their primary responsibility in this regard.

To facilitate, however, the investigation and prosecution of these cases in which there is widespread interstate activity it is recommended that it be made a federal crime to travel in interstate commerce to avoid prosecution, custody or confinement for damaging or destroying or attempting to damage or destroy by fire or explosive any religious or educational property. If Title II becomes law, there will be no interference with responsibility of state law enforcement agencies for prosecuting the state crimes involved but there will be an undisputable basis for federal participation in the investigation of crimes of an interstate nature.

Although this provision was amended in the House to broaden the original recommendation of the Administration, it is believed that it would be more desirable for the Senate to pass the bill as presently drawn than to amend it. The Department does not believe that it was intended to impose primary responsibility upon the federal government for threats to damage or destroy buildings by fire or explosives. Most threats are hoaxes. They average 200 a month. In the absence of preliminary indication that they were the acts of a

fugitive, the Department would not construe the provisions of the bill relating to threats to require an expansion of its present responsibilities.

It should be noted, moreover, that Representative Cramer, the sponsor of the "threat" amendment in the House, has recognized this problem, for he has stated that this bill gives the federal authorities discretion as to whether the particular case required investigation. (106 Daily Cong. Rec. 5928.)

4. Obstruction of Court Orders in School Desegregation Cases

H. R. 8601, Title I, deals with obstruction of federal court orders in school desegregation cases. It would impose a fine of not more than $1,000 or imprisonment for not more than 60 days, or both, upon any person who corruptly, or by threats or force, wilfully prevents, or endeavors to prevent, the due exercise of rights or the performance of duties under any school desegregation order entered by a federal court. Exempted from the application of the Title are acts of any student, officer or employee of a school done pursuant to the direction of, or subject to disciplinary action by, an officer of such school.

Title I of H.R. 8601 is quite similar to a recommendation made last year by the President to the Congress. The House version differs in only three particulars from that recommendation. First, under the House version, the crime here defined is made a misdemeanor, not a felony. In my view, this change in no way impairs the effectiveness of the Title. True the conduct proscribed is closely

analogous to that punishable as a felony by the present Obstruction of Justice Statute (18 U.S.C. §1503). However, reduction of the penalty from felony to misdemeanor status will in no way prevent prompt arrests for violation of the Title, and, indeed, will produce the advantage of permitting the United States to proceed by way of information as well as indictment.

A second change made by the House is the insertion of the word "public" before the word "school" each time "school" appears. This was done to make clear what was always intended -- that the Title would apply only to cases involving desegregation of schools operating under color of law.

The third change made by the House is the addition of a proviso that the punishment imposed under the Title not be consecutive or supplemental to any criminal contempt penalties imposed for violation of a school desegregation injunction.

I want to make clear to this Committee that I have no objection to any of the House modifications.

The need is clear for a federal criminal statute dealing with obstruction of school desegregation orders. In the five years since the implementation decision of the Supreme Court in the original school desegregation cases, the federal courts have entered approximately 40 orders requiring desegregation or approving state or community plans of desegregation in public schools. At least 10 of those orders have been met by violence or threats of violence from persons who were neither parties to the litigation nor acting in concert with parties to the litigation.

As I reminded a Subcommittee of this Committee a year ago, the most extreme example of this type of interference with a federal court order occurred at Little Rock in 1957. Notwithstanding the presence of the local police force, a large mob made it necessary to remove the 9 Negro children who had attempted to exercise their rights to attend a public school ordered desegregated by a federal court.

Existing law is inadequate to deal effectively with such a situation. Our Obstruction of Justice Statute

(18 U. S. C. §1503) comes into play only when persons act to disturb the ordinary and proper functions of a court in a pending case. Under Title I we are trying to reach deliberate attempts by force, or threats of force, to frustrate federal court orders which have finally settled constitutional rights.

The contempt power is equally inadequate to deal effectively with violent opposition to school desegregation decrees. As I testified last year, that power is of dubious value against persons who are neither parties to litigation nor provably acting in concert with such parties (Rule 65(d), Fed.R.Civ. P.). To be sure, once a mob has formed, it is possible to return to court and seek an injunction against named members of a mob. But where experience has shown a strong likelihood of violent resistance to federal court orders, the United States clearly should have the power to act promptly to arrest instigators of resort to force and abuse.

5. Education of Children of Members of Armed Forces

I should like to consider now the children of our citizens who are serving in the armed forces in areas which still maintain total or extensive segregation to the public schools. Approximately 40% of the total military personnel within the United States, it is estimated, live in such areas. Five states maintain complete segregation in their elementary and secondary schools. In two states, some desegregation has occurred as a result of litigation instituted by Negro parents, and in four states the extent of desegregation is minimal.

Resistance to desegregation of the schools in these areas has resulted in the closing of some public schools. Even where the public schools have not been closed, the children of our Negro soldiers, sailors, and airmen have been deprived of their constitutional rights by the refusal of local school officials to admit them to schools which would logically serve the area of their residence. This has occurred despite the fact that federal funds are used to assist in the construction and maintenance of schools in so-called "federally impacted areas."

It is indeed incongruous that those who, through no choice of their own, are assigned to off-base quarters in areas which maintain segregated schools can be and are being deprived of the enjoyment of their constitutional rights, in spite of the fact that racial segregation in the armed forces is forbidden by Executive Order.

Title V of H. R. 8601 was originally designed to remedy this entire situation. The proposal of the President and Title V both authorize the Commissioner of Education to provide for the eduction of all children of military personnel, whether living on federal property or not, if local facilities are unavilable. However, while the President's proposal would permit the Commissioner to use for a fair rental school facilities constructed with federal aid if they are not being used for free public education, Title V provides for such use only if an agreement can be reached between the Commissioner and the local agencies as to use of the buildings.

While I believe the President's original proposal to be preferable, nonetheless Title V will assist in

assuring education facilities to the children of members of our armed forces, and I, therefore, urge its enactment.

6. Commission on Civil Rights

Title IV of the bill amends the portion of the Civil Rights Act of 1957 which established the Commission on Civil Rights. It deals with two comparatively minor administrative matters. First, the Commissioners are authorized to administer oaths and take statements of witnesses under affirmation. The amendment merely clarifies and makes this power explicit. The second section eliminates the requirement that Commission staff personnel be hired pursuant to the civil service classification laws so as to afford more personnel flexibility to the Commission in keeping with its temporary status and statutory purposes. Enactment is recommended.

I turn now to two proposals which the President has urged the Congress to enact and which the House of Representatives failed to include in H.R. 8601.

The need exists for federal assistance to those states and localities which prior to the 1954 decision in Brown v. Board of Education practiced segregation in their schools and are now undertaking desegregation. Approximately thirty cases are pending in federal court in which Negroes are seeking admission to presently segregated schools. Others are to be expected.

The report of the Civil Rights Commission, its hearings at Nashville, and studies of experts in the field, stress the fact that no one pattern of desegregation is adaptable to all communities. Whatever method is adopted, however, careful planning and community education are basic to success. State departments of education will have additional services to render in assisting communities to formulate and effect workable plans. Much help can be gained by the technique of using professional conferences and workshops on both a local and statewide level and employing special non-teaching personnel who can take an active role in the practical preparation for a step,

admittedly not easy, for the states and localities involved. Additional expense must necessarily be involved in successfully carrying out a desegregation program.

If this Committee decides to amend the House bill, I would urge that it reinstate the President's recommendation for technical and financial aid to states and localities incurring special expenses in connection with the development of policies and programs looking to desegregation in their public schools. The proposal is contained in Section 4 of H.R. 8315.

The other recommendation of the President not contained in the House bill is that which would give statutory authorization for the President's Committee on Government Contracts. This Committee has as its object the implementation of the standard clause in government contracts which provides that employment for work thereunder shall be without discrimination because of race, religion, color or national origin. This clause or one substantially similar has been incorporated in all government contracts since 1941. The Committee has been in existence since August 1953. The present authority for both the clause and the Committee is in Executive Orders issued by President Eisenhower.

Under existing law each government contract contains a clause in substance as follows:

> "In connection with the performance of work under this contract, the contractor agrees not to discriminate against any employee or applicant for employment because of race, religion, color, or national origin."

By Presidential order each government contracting agency is required to provide for compliance with this clause in the same manner it provides for compliance with other provisions of government contracts. To coordinate their efforts the President created the Committee on Government Contracts which is composed of representatives of the Atomic Energy Commission, Department of Commerce, Department of Defense, Department of Justice, Department of Labor, General Services Administration and eight public members.

The Committee's functions are aligned in three general programs:

(1) Complaint Review

It reviews action on complaints from persons who claim discrimination in employment by government contractors. Since its creation the Committee has received approximately 600 complaints over which it had

jurisdiction. Sixty percent of these have been satisfactorily concluded. Forty percent are still under active investigation or negotiation.

(2) Compliance Surveys

At the request of the Committee, contracting agencies have surveyed approximately 500 plants each year since 1957. Most of these plants are located in communities which have a Negro population of over 50,000. In this connection, it has sought to determine those plants which do not employ Negroes and the extent of discrimination in those which do employ Negroes, but exclude them from employment in certain job categories such as the professions, skilled mechanics, office employment and apprenticeship programs.

(3) Education Program

The Committee also conducts meetings to coordinate activities by other groups interested in the elimination of racial and religious discrimination in employment. Among other things it held in Washington a conference to 500 religious leaders, the largest groups of this sort ever assembled by a government agency.

After seven years of work it is desirable that the Committee effort be ratified by the Congress. This important Committee should become a permanent one with regular appropriations. Although the Committee could continue in its present form, this action by Congress would be of great significance in showing congressional recognition and affirmation of the principle that employment for government work must be free from racial bias.

Congress should affirm this principle because (1) it is just that those who are taxed for government programs have equal opportunity to compete for the opportunity to serve those programs; (2) this Country cannot afford to waste the skills of its labor force by arbitrary restrictions which prevent the most skillful from filling the most demanding jobs; (3) racial discrimination in all of its ugly forms can have no more telling impact than in arbitrary job limitations. To be, by birth, denied work is intolerable and inexplicable on other than a shameful basis, to one's children or to the world, white and non-white; (4) the contractors who profit from government work should be the leaders in eliminating this practice.

If this Committee, or the Senate itself, decides to amend the House bill, this section should be of primary concern. Certainly there is nothing of more importance in the field of equality for minority groups than equal job opportunity.

In conclusion, then, I strongly urge this Committee to act favorably on the House bill, and if it decides to amend the House bill, to include these two important provisions which the President has recommended.