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ABSTRACT

There have been major changes in the Justice Department's law enforcement program in the 10 years since passage of the Civil Rights Act of 1964. First, no longer is civil rights enforcement limited to the South. Today, the department's program is national in scope and focus. Some of the greatest gains in the desegregation of schools and in the election of minority officials have taken place in the South, and some of the most difficult remaining problems are concentrated in Northern cities. This paper presents the provisions of the Civil Right Act and describes the department's enforcement activities in the areas of education, employment, public accomodations, voting, and housing. (Author/JF)

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THE TENTH ANNIVERSARY

of the

CIVIL RIGHTS ACT OF 1964

A Statement by

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Tomorrow the nation will be observing the tenth anniversary of the Civil Rights Act of 1964--one of the most monumental pieces of legislation in the history of human rights. Few laws have had more impact on more lives or produced such fundamental and dramatic changes in the fabric of our society. Thus, it is a fitting time to review the achievements in civil rights enforcement, and to offer a tentative assessment of what the future holds.

The 1964 Act represented an act of conscience on the part of the people of the United States. Progress in overcoming the racial discrimination outlawed by the Supreme Court's landmark Brown decision had been slow in coming. The "with all deliberate speed" timetable set by the Court had been used by opponents of desegregation more often to obstruct and delay rather than to move carefully yet forcefully toward change. It was time for major legislation. It was the hour for the Congress to pass specific laws prohibiting segregation and discrimination.

On July 2, 1964, the Civil Rights Act became law.

The Civil Rights Division of the United States Department of Justice has major responsibility for federal enforcement of the 1964 Act. The Act conferred upon the Attorney General the power both to institute and to intervene in lawsuits alleging violations of its provisions.

What is the Civil Rights Act of 1964? What does it require?

-- Title I, buttressed by passage of the Voting Rights Act a year later in 1965, prohibits discrimination in voting on the basis of race.

-- Title II makes it unlawful for any place of public accommodation, such as a hotel or restaurant, to segregate or provide unequal service to any person on account of race, religion, or national origin.

-- Title III provides a similar ban on segregation or discrimination in public facilities, such as hospitals, prisons, and recreational areas.

-- Title IV authorizes the Attorney General to file suit to desegregate public schools upon receipt of a meritorious written complaint from a parent.

-- Title VI provides that no person shall be subjected to discrimination on account of race or national origin under any program or activity receiving federal financial assistance.

-- Title VII, as amended in 1972, prohibits private employers, labor organizations, employment agencies, and state or local governments from discrimination in their employment practices on the basis of race, religion, national origin, or sex. Incidentally, this is the only section of the 1964 Act which includes a prohibition against sex discrimination.

The remaining titles authorize the Attorney General's right to intervene in cases of "general public importance" involving alleged denials of equal protection of the laws (Title IX); establish the Community Relations Service of the Justice Department (Title X); and further define the duties of the United States Commission on Civil Rights, established in 1957 (Title V).

There has been dramatic growth in resources committed to civil rights enforcement by the Federal Government.

The total federal civil rights budget now surpasses $600 million, whereas only five years ago, it was $75 million. The Civil Rights Division's budget alone is approximately

$8 million, four times greater than in 1964, and the Congress has never denied the Division any request for additional enforcement funds.

Another measure of commitment is reflected in the increase in Civil Right Division attorneys from 86 in 1964 to over 186 today. That increase in attorney personnel has enabled the Division to file and participate in a record number of new cases this year -- nearly 250 -- more than in any single fiscal year in the history of the Civil Rights Division. Many of these cases involve hundreds of defendants in a single action, so even a 'record" statistic does not fully state the scope of our enforcement program.

EQUAL EDUCATIONAL OPPORTUNITY

In the three years following enactment of the Civil Rights Act of 1964, two key priorities governed the direction of the Civil Rights Division's school desegregation program. The first was to have Brown recognized as the law in as many school systems as possible throughout the South. The second was to use the federal courts to support the school desegregation program of HEW under Title VI of the Act.

In July, 1964, there still remained more than 1,500 dual school systems in the South which had made no voluntary movement toward compliance with Brown, and only about 2 per cent of black children attended schools with white children in the 11-state South.

In the ten years that followed, government records and surveys show that HEW initiated administrative compliance proceedings in over 600 school districts charged with violation of Title VI. Under the 1964 Civil Rights Act, the Justice Department has, to date, filed or participated in lawsuits resulting in court orders against approximately 500 dual systems.

Today more than 90 per cent of the black students in the 11 Southern states attend school with white students. As recently as 1968, 68 per cent of the black students were still isolated in all-black schools, whereas today, only 8.7 per cent remain in 100 per cent minority schools.

Development of legal principles has been the traditional cornerstone in most Civil Rights Division enforcement programs,because once clear and binding legal precedents are established, voluntary compliance can be more readily

achieved, and protracted litigation avoided. The Division's first major legal victory in the school desegregation field was United States v. Jefferson County Board of Education, 380 F.2d 385 (C.A. 5, 1967). There the Fifth Circuit Court of Appeals approved what was to become a "model" desegregation plan, based on HEW standards, and applicable to all school systems in the circuit (Alabama, Florida, Georgia, Louisiana, Mississippi, and Texas) that came under court order. This decision also defined the constitutional duty of school boards as not simply letting black children into white schools but dismantling the dual school system.

The next major battle was fought over the "free choice" method of desegregation. Although once bitterly opposed to allowing black students a choice of attending any school in a district, many southern school districts embraced "free choice" in the mid-1960's. Against a background of economic intimidation and fear of violence, only a small percentage of black parents actually exercised a so-called "free" choice to send their children to white schools.

In the landmark Green v. New Kent County decision, 391 U.S. 430 (1968), in which the Justice Department participated as a friend of the Court, the Supreme Court said that

only free choice plans that worked, and worked now, were constitutionally acceptable. Following this decision, the Justice Department filed "Green" motions asking for additional relief in cases pending against 145 school districts where free choice plans had proved ineffective. Simultaneously, HEW launched an administrative version of this operation.

In late 1969 the Supreme Court issued its next major school desegregation ruling in Alexander v. Holmes County, 396 U.S. 19 (1969). As a result, the Justice Department and HEW launched a joint effort to identify the remaining school systems in the South which were out of compliance with the law, and to develop workable desegregation plans for them by the fall of 1970. During that summer the Civil Rights Division filed 13 statewide and multi-district cases involving some of the most difficult remaining desegregation tasks in the country.

With this massive compliance push, the dual systems in the rural and small-town South were virtually eliminated. The next challenge became the urban school systems.

In May of 1971, the Supreme Court handed down one of its most controversial decisions in the school desegregation

field, Swann v. School Board of Charlotte-Mecklenberg County, 402 U.S. 1 (1971). In Swann the Court declared that there is a presumption against the continued existence of one-race schools in a formerly dual system. The burden, said the Court, is on the school board to justify their existence. The decision further legitimized satellite zoning and busing as "tools" in the desegregation process. Before Swann, most urban desegregation had meant blacks attending formerly white schools; now whites were required to attend formerly black schools.

Beginning in 1968, the Civil Rights Division broadened its enforcement program to include school districts outside the deep South. Since that time we have filed 15 suits against "northern" systems, such as Indianapolis, Indiana; Pasadena, California; and Omaha, Nebraska. We have also participated as a friend of the court in several "northern" cases. The law in this area has developed slowly, and the courts are still wrestling with the distinction between de facto and de jure segregation. Keyes v. School District No. 1 of Denver, Colorado, 413 U.S. 189 (1973), has provided

some guidance by defining the de jure concept to include intentional acts of segregation by school officials, even in districts where there has never existed a formal dual system.

Now, we are awaiting a decision by the high court in the Detroit school case (Milliken v. Bradley, Nos. 73-434, 435, 436, O.T. 1973), which, hopefully, will settle some of the most difficult and complex questions we face today concerning desegregation of urban systems.

The evolution of school desegregation law dramatizes not only how far we have come in a decade, but also emphasizes that there are no easy solutions to these problems of schools and race which become more complex each year.

Most recently, the Justice Department and HEW have been engaged in tackling the "second generation" problems of school desegregation. They include black school closings, minority faculty discrimination, the illegal transfer of public property and funds to private segregated schools, segregation through testing and tracking, and what is called the "pushout" problem. The Civil Rights Division has monitoring responsibilities in nearly 500 school districts

under court order to desegregate. Therefore, much of our resources and energy still are devoted to overcoming these problems.

Since the Equal Employment Opportunity Act was passed in 1972, the Division has expanded its efforts in the area of minority teacher rights. We have filed seven employment suits against state and local education agencies to end discriminatory hiring and promotion policies, and we continue to enforce faculty discrimination provisions in our many school desegregation cases.

There are other urgent priorities too. One is extending the right of equal educational opportunity to other minority groups. They include Spanish-surnamed Americans, Asian Americans, American Indians, and the mentally retarded. For example, through the Lau v. Nichols case, 414 U.S. 563 (1974), recently decided by the Supreme Court, we hope to assist in the development of standards for ensuring full and equal access to an education for non-English-speaking, ethnic minority students in the public schools.

Finally, desegregation of state higher education systems is returning to the forefront in our enforcement

program. In the mid-1960's court decrees opened up white universities to black students, but since that time there has been no coordinated federal effort to dismantle the dual structure of many state university systems. That effort is underway now. HEW has examined the higher education systems of ten southern states in the past year. HEW has now approved desegregation plans in eight of these states and recommended court action in two. In March of this year the Justice Department filed its first Title VI suit against a state higher education system, Louisiana, after a failure to achieve voluntary compliance.

EQUAL EMPLOYMENT OPPORTUNITY

Until 1968, the Civil Rights Division's efforts and resources had been largely concentrated on discrimination in voting and public education. The decision to give priority to the enforcement of Title VII of the Civil Rights Act of 1964, which prohibits discrimination in employment, was based on the judgment that if minority groups are to break out of the cycle of poverty, welfare, and despair in which many find themselves, they must have access to a job market unrestricted by discrimination.

Enforcement of equal employment opportunity laws has resulted in what may be the greatest achievements in recent federal civil rights efforts. Several agencies in the government--the Justice Department, the Equal Employment Opportunity Commission, and the Labor Department--are joining forces to push for a larger impact. Recent examples of this approach have been the consent decrees entered into with nine major steel companies, the trucking industry, and the American Telephone and Telegraph Company. The back pay awards in these and other Justice Department cases now total $60 million.

A review of the Justice Department's record in the equal employment field since 1964 discloses that over 120 cases have been filed, most of which involved alleged discrimination by major companies and unions against black employees and applicants. In 1972, Congress granted the Department authority to sue public employers as well, and to date, we have filed 22 suits against state and local governments in all regions of the country. Many of these suits charge discrimination on the basis of national origin and sex, as well as race.

Many important legal principles of relief have been established by the courts in employment cases brought by

the government and private groups. Some of these are the revision of seniority systems to eliminate all effects of discrimination, use of truly non-discriminatory tests and other employment selection devices, back pay for victims of discrimination, and the use of hiring goals and timetables.

Because of the 1972 Act, last March the Justice Department's authority to file "pattern and practice" cases against private companies, labor organizations and employment agencies under Title VII of the 1964 Act lapsed; and the Equal Employment Opportunity Commission now has exclusive authority to file such suits under that statute. This should cause a strengthening of enforcement as Justice and the EEOC work together and make the most of their respective opportunities. And the trend is in this direction. For example, to meet the challenge of their new responsibility, EEOC's budget has been increased 400 per cent since 1970--from $11 million to $53 million for fiscal 1975.

The Justice Department's enforcement focus has not necessarily changed as a result of this transfer of authority. We plan to continue to expand enforcement against public employers--police and fire departments, municipal governments--and to enforce Executive Order 11246, which prohibits

discrimination by public agencies and private companies who have contracts with the Federal Government. We will also enforce Revenue-Sharing Act provisions dealing with discrimination.

PUBLIC ACCOMMODATIONS

Title II of the 1964 Civil Rights Act has gone a long way toward accomplishing its original goal--to end racial discrimination in places of public accommodation. The case law in this area is now so well established that enforcement is swift and effective, and most of the remaining violators are small businesses in rural areas.

Over the past ten years the Department has filed more than 400 suits against hotels, restaurants, gas stations, truck stops, taverns, and other establishments. In addition, we have achieved voluntary compliance with several times that number of businesses. The widespread enactment of state and local ordinances also played a great part in eliminating one of the most humiliating injustices to which blacks were subjected for more than a century.

PUBLIC FACILITIES

Title III of the 1964 Civil Rights Act gave the Attorney General the authority to sue to desegregate public facilities. Courthouses, police stations, hospitals, and recreation areas are familiar examples. Because the right of equal access was traditionally protected by the Constitution, many cases had been filed by private citizens before 1964. Generally, with the exception of jails and prisons, these cases resulted in across-the-board compliance by state and local governments.

Nevertheless, there are still some forms of discrimination in this area, and the Civil Rights Division has continued to file a number of suits each year in this field. Most of these suits have concerned desegregation of jails and prison systems, following the Supreme Court's 1968 decision in Lee v. Washington, 390 U.S. 333, which outlawed segregation of inmates.

In 1971, the Division established a new Office of Institutions and Facilities, responsible for enforcement of the constitutional rights of persons confined to public institutions such as prisons, juvenile detention centers, and facilities for the mentally ill and retarded.

Although Title III does not authorize the Attorney General to bring suit against such facilities except on grounds of racial, ethnic, or religious discrimination, the Department has entered ten private cases in an effort to assist the courts in developing standards for the treatment and protection of institutionalized persons.

NON-DISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS

Title VI of the Civil Rights Act of 1964 imposes upon each federal department or agency the primary responsibility for insuring that no one is denied the benefits of, or is subjected to discrimination under any program or activity receiving federal funds. Many departments and agencies extend such assistance to programs for schools, hospitals, state employment services, public housing, agricultural extension services, and a host of other activities.

In January of this year, the President of the United States issued a new Executive Order, updating the original order issued in 1965, which clarifies and broadens the leadership role of the Attorney General in coordinating Title VI enforcement.

In close consultation with the 26 departments and agencies affected, the Attorney General, through the Civil

Rights Division, is now authorized to prescribe agency compliance standards and procedures, adopt rules and regulations, and issue orders necessary to accomplish effective implementation of Title VI.

As a result of the expansion of this coordination function, the Division has hired more attorneys and equal opportunity specialists for the Federal Programs Section. This Section also has responsibility for enforcing the civil rights provisions of the Federal Revenue Sharing Act of 1972.

In addition to providing guidance to federal agencies on their Title VI compliance programs, the Civil Rights Division has the responsibility for conducting litigation arising under Title VI. To date most of these cases have involved public school districts cited for noncompliance by the Department of Health, Education, and Welfare, but the Division has also participated in numerous cases involving issues related to Title VI, such as discrimination by state agricultural services, state welfare agencies, and hospitals.

VOTING RIGHTS

From the time of its birth in 1957, one of the Civil Rights Division's primary concerns has been enforcement of

federal laws protecting the right to vote, which the Supreme Court has defined as "a fundamental political right because [it is] preservative of all rights." Yick Wo v. Hopkins, 118 U.S. 356, 370 (1885). The Civil Rights Acts of 1957, 1960, and 1964 all contained voting provisions; however, the culminating legislation was the Voting Rights Act of 1965. Prior to the 1965 Act, progress in this field had proved disappointing. Preparation of evidence was extraordinarily time-consuming, lawsuits were frought with delays, and numerous enforcement actions were needed because of disregard for court orders that was often blatant.

In the nine years since the passage of the 1965 Act, remarkable progress has been achieved. As of April 1, 1974, nearly 3,000 blacks held elective office in 45 states and the District of Columbia. This represents a gain of more than 150 per cent in the past five years. In fact, the State of Mississippi has now surpassed New York State to rank second in the number of black officials--191. Only Michigan has more, and of the top nine states, four are in the South--Mississippi, Arkansas, Louisiana, and Alabama.

Another measure of progress has been the substantial increase in the number of black registered voters in the South--approximately 1,330,000 since 1964.

Much of this has been achieved through the efforts of the Justice Department and private civil rights

groups to implement the provisions of the Voting Rights Act. The Act authorizes the Justice Department to appoint federal examiners to register voters and to assign federal observers to monitor elections in jurisdictions covered by the Act. Since 1966, federal examiners have registered over 156,000 black voters, and 6,250 federal observers have been assigned to monitor elections in the South.

Another of the Division's most telling enforcement tools has been "Section 5" of the Voting Rights Act. This law requires a large number of states, counties, and towns to submit all proposed voting law changes to the U. S. Attorney General or a federal district court in Washington, D.C., in order to determine possible discriminatory purpose or effect. Since 1965, the Department has reviewed over 4,400 such proposals ranging from simple polling place changes to complex state reapportionment plans. Under comprehensive guidelines, each submission is thoroughly analyzed, and public comment from all sides is solicited and evaluated prior to a final recommendation of approval or disapproval.

If the Attorney General "objects" to a proposed voting law, it becomes unenforceable unless subsequently approved by a federal court. In a few cases, the Division has filed

suits against political jurisdictions for implementing laws over the Attorney General's objections. But in most situations, voluntary changes have been made to overcome any discriminatory purpose or effect.

One of the noteworthy results of Section 5 enforcement has been a change by several states from multi-member to single-member voting districts in their reapportionment plans for state legislature. This kind of change often enhances minority group voting power.

Our voting rights responsibilities are taking us northward these days. Three of New York City's boroughs and approximately 40 towns and counties in New England are now subject to the Voting Rights Act. They are included because of the Act's "coverage formula." This applies to states and their subdivisions in which fewer than 50 per cent of the persons of voting age were registered or voted in the Presidential elections of 1964 and 1968. These new jurisdictions will now be required to submit all proposed voting law changes for review as have those jurisdictions covered since 1965.

In 1970 the Voting Rights Act was extended to 1975. Additionally, the 1970 amendments, as sustained by the Supreme Court, suspended literacy tests nationwide; eliminated durational residency requirements for Presidential elections; and reduced the voting age to 18 in

all federal elections. A study is now in progress on proposed extension of the Act.

FAIR HOUSING

Although the Fair Housing Act was not passed until 1968, no anniversary assessment would be complete without discussing the Department's enforcement responsibilities in this vital area. Since 1968 we have filed or participated in nearly 200 fair housing cases in 29 states and the District of Columbia in a truly national program of enforcement. Many are large impact cases, such as those affecting thousands of apartment units in numerous major metropolitan areas.

The Department has won almost all of its housing cases. We believe that substantial progress has been made in the past six years through our efforts and those of state, local, and private fair housing groups in curtailing such discriminatory practices as blockbusting, "steering," advertising on a racially selective basis, and imposing different qualifications and standards for black and white homebuyers and tenants.

CRIMINAL INTERFERENCE WITH CIVIL RIGHTS

Our criminal statutory authority is also an important civil rights program. The Civil Rights Division enforces

several Reconstruction laws which prohibit law enforcement officials or private persons from acting or conspiring to interfere with the constitutional rights of others. These century-old statutes also impose sanctions against the holding of individuals in peonage or involuntary servitude. In recent years the Division has prosecuted several migrant camp crew leaders under these statutes.

The Civil Rights Act of 1968 broadened the Division's responsibilities by making it a federal crime to threaten, intimidate or injure any person engaged in a federally-protected activity, such as obtaining housing or equal service in a place of public accommodations.

In the early 1960's there was an urgent need for the Federal Government to bring prosecutive action against persons charged with violent disregard for the rights of minority citizens. Many of our cases involved Ku Klux Klansmen, local law officers, and private citizens charged with conspiracy to deny blacks their basic rights as citizens.

The vast majority of our criminal cases continue to concern allegations of police misconduct, but such incidents are not limited to a region or race.

In recent years we have also conducted prosecutions regarding student deaths and injuries during confrontations with law enforcement officers at South Carolina State College, Jackson State College, and Kent State University. This spring, an indictment was returned against National Guardsmen as a result of the Kent State incident in May, 1970. Trial of that case will commence this fall.

CONCLUSION

There have been major changes in the Department's law enforcement program in the ten years since passage of the Civil Rights Act of 1964.

First, no longer is civil rights enforcement limited to the South. Today our program is truly national in scope and focus. Some of the greatest gains in the desegregation of schools and the election of minority officials have taken place in the South, and some of the most difficult remaining problems are concentrated in Northern cities.

The law is now well developed under all major titles of the 1964 Act. This has enabled the Department to pursue an extremely successful program of achieving voluntary court settlement of cases. Two recent examples come immediately to mind--the consent decrees with the steel and trucking industries calling for comprehensive action to overcome past discrimination against minority employees and applicants.

Closely related to this trend is that of filing large impact cases which can involve hundreds of defendants and cover thousands of employees in a single case.

Another change, which is causing necessary and healthy debate and reassessment within the civil rights community itself, has been a rapid growth in the complexity of issues. For example ten years ago, we faced the relatively simple task of desegregating all black and all white schools in the rural South. Today we are faced with the monumental logistical challenge of desegregating large urban school districts where traditional housing patterns make it difficult to devise effective, non-disruptive desegregation plans.

Today we are building upon a positive record of achievement in all areas of civil rights enforcement. Most of the early, symbolic gains stemming from civil confrontation are behind us. What remains is the less spectacular task of resolving the more complex and difficult issues ahead in the field of human rights as well as minority rights. This is a logical progression. Yesterday's victories may have made today's work less dramatic, but we should not mistakenly interpret persistent, institutionalized enforcement as a lack of commitment. It is indeed a sign of maturity that in ten years civil rights enforcement has become a part of the basic fabric of American law.

The momentum of the civil rights movement is continuing, expanding, and achieving greater concrete successes in both old and new areas of endeavor such as rights of ethnic minorities, women, and the unique minority of institutionalized persons.

We are a nation that holds itself to high ideals. If we have come a long way in a single decade compared to what other societies have achieved, we must also recognize that we have a long way to go in order to achieve our constitutional concept of equal rights for all. For it is only through continued dedication that we will finally reach the day Dr. King envisioned for us all in his historic dream of a decade ago.