THE FEDERAL FACT-FINDING EXPERIENCE—A GUIDE TO NEGRO ENFRANCHISEMENT*

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I

THE CIVIL RIGHTS ACT OF 1957

Passage of the Civil Rights Act of 1957[1] marked a new departure in the ninety-two year struggle to secure the guarantees of the fifteenth amendment. Such landmark cases as Ex parte *Yarbrough*[2] and *United States v. Classic*,[3] it should be recalled, arose under criminal statutes; others such as *Lane v. Wilson*[4] and the *Primary Cases*[5] were private civil actions. Before 1957 the federal government's role was confined to criminal actions. Against local state officials, usually persons respected in their communities, such actions were an unsatisfactory solution. The deterrent effect of successful prosecutions was only minimal and came too late to protect the voter. The Government was not, therefore, in a position to influence or support the increasing effort of private groups to liberate the franchise from the inhibitory effect of discrimination.

The predicament of the Negro who wanted to vote in substantial areas of the South was manifestly proof against merely criminal remedies. The Truman Committee's report in 1947 made it clear that further legislation and study would be required.[6]

The 1957 Act brought the federal government to the forefront of the struggle on two planes: on the enforcement level it empowered the Attorney General to bring civil actions for preventive relief; it also created the Commission on Civil Rights, a national fact-finding body with extraordinary powers to investigate voting denials and with the duty to study and to make recommendations to the President and to Congress. Generally, the scheme of the 1957 Act combined a more effective legal remedy with provisions for continued study. Following the advice of the Truman Committee's report, therefore, Congress divided the Government's activity in this area into the two functions of litigation and fact-finding. The 1957 Act carried with it, by implication at least, the promise of such further legislation

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[1] 71 Stat. 634-638, 42 U.S.C. §§ 1971, 1975, 1975a-1975e (1957), as amended, 74 Stat. 88-92, 42 U.S.C. §§ 1971, 1974, 1974a-1974e (1960).

[2] 110 U.S. 651 (1884). [3] 313 U.S. 299 (1941). [4] 307 U.S. 268 (1939).

[5] Nixon v. Herndon, 273 U.S. 536 (1927); Nixon v. Condon, 286 U.S. 273 (1932); Smith v. Allwright, 321 U.S. 649 (1941); Terry v. Adams, 345 U.S. 461 (1953).

[6] PRESIDENT'S COMMITTEE ON CIVIL RIGHTS, REPORT, TO SECURE THESE RIGHTS (1947). The Committee recommended establishment of a permanent Commission on Civil Rights.

as might be deemed necessary to carry out the intent of Congress to correct voter discrimination.

In the five-year period since they assumed their respective functions, the Department of Justice has filed twenty-six suits in five states and the Commission has conducted two public hearings and issued two reports including recommendations for further legislation. During the same period Congress enacted the Civil Rights Act of 1960,[7] and it is now considering legislation directed against literacy tests and a constitutional amendment abolishing the poll tax.

Notwithstanding these significant events, no one imagines that the struggle to secure the guarantees of the fifteenth amendment has ended. Indeed, there has been a reluctance on the part of Congress to support effective legislation, and the serious delay, if not loss, of Department cases in Mississippi, indicates that a critical period may be at hand.

Ideally, the 1957 Act was to be a self-adjusting plan to cope with denials of the right to vote. Litigation, fact-finding, and recommendations, followed by corrective legislation, were designed to maintain the pressure of enforcement and to channel it in the right direction. Events have approached but certainly not attained an ideal adjustment of these functions. As indicated above the struggle may now be reaching a critical stage. It would seem to be an ideal time to review the facts and to try to identify the principal obstacles which it will be necessary to overcome if the ideal of the fifteenth amendment is to be reached.

For this purpose a review of the Commission's work is particularly useful. The function of factfinding is inclusive of all other federal activity in the field of voter discrimination, and provides a fairly reliable basis for estimating the effectiveness of present laws. In this the Commission serves the intent of Congress implied in the 1957 Act:[8]

> The scope of the bill is that of the entire nation and is not directed at nor motivated by any sectional interest. Because the problem is a continuing one, and because the Committee believes that the American body politic seeks progress toward equality for all and equal protection of the laws for all, the Commission is authorized to make a study upon which to base its recommendations for further, if any, legislation in the field of civil rights.

The work of the Commission is thus relied upon to monitor the course of enforcement of the fifteenth amendment; in this sense its experience is a guide to Negro enfranchisement.

A. The Commission on Civil Rights

Congress created a six-man, non-partisan commission and placed it under the executive branch of the Government. Its members were to be appointed by the President and confirmed by the Senate. Congress provided a staff director, also a presidential appointee. The Commission, or a subcommittee of two or more of

[7] 74 Stat. 88-92, 42 U.S.C. §§ 1971, 1974, 1974a-1974e (1960).
[8] H.R. REP. No. 291, 85th Cong., 1st Sess. 5 (1957).

its members, was empowered to conduct hearings, to issue subpoenas for witnesses and for the production of evidence and to initiate through the Department of Justice proceedings to enforce the attendance of witnesses. Congress also supplied the Commission with rules of procedure for the conduct of its hearings. The rules, patterned after those governing the conduct of subcommittees of the House of Representatives, were later upheld by the Supreme Court against the charges that they violated due process of law for the reason that witnesses were not accorded the rights of notice, confrontation, and cross-examination.[9]

> Thus, the purely investigatory nature of the Commission's proceedings, the burden that the claimed rights would place upon those proceedings, and the traditional procedures of investigating agencies in general, leads us to conclude that the Commission's Rules of Procedure comport with the requirements of due process.

While the duties with which Congress charged the Commission included more than voting rights, the provision relating to voting was the most specific in its terms:[10]

> The Commission shall—(1) investigate allegations in writing under oath or affirmation that certain citizens of the United States are being deprived of their right to vote and have that vote counted by reason of their color, race, religion, or national origin; which writing, under oath or affirmation, shall set forth the facts upon which such belief or beliefs are based . . . .

Finally, Congress provided for the submission of reports on the initiative of the Commission or the President. A final and comprehensive report of its activities to Congress and the President was also required of the Commission.

A year after the 1957 Act became law, the Commission, having received its first voting complaints, conducted investigations in preparation for a voting hearing in Alabama. At the same time the Commission received a substantial number of voting complaints from Louisiana, and investigation of these was also undertaken. The Alabama hearing ended on January 9, 1959. The Louisiana hearing, scheduled for July 13 of the same year, was enjoined. Congress extended the Commission for an additional two-year period, and the Louisiana hearing took place in September 1960 and May 1961.

The testimony and exhibits received at these hearings together with registration statistics comprise the basic material resulting from Commission field activities. In addition the Commission examined federal and state laws and procedures related to voting. The 1961 Report also contained a sample survey and analysis of the so-called "black belt" counties, an attempt to explore the interrelationships of social, economic and cultural phenomena with the exercise of civil rights. Finally, the Commission studied litigation under the Civil Rights Acts of 1957 and 1960.

No purpose will be served in merely recapitulating this material, even if it were reasonably possible to do so. A basis for approaching the material is suggested by the fact that both in 1959 and 1961 the Commission concluded that discriminatory

[9] Hannah v. Larche, 363 U.S. 420, 451 (1960). [10] 71 Stat. 635, 42 U.S.C. § 1975c (1957).

administration of voter qualification laws was a principal source of discrimination.[11] This finding at least provides a means for classifying a large proportion of the factual material. Episodes of intimidation by private groups and individuals as well as legislative activity may be accounted for separately. Accordingly, an attempt will be made to distinguish those denials of the right to vote attributable to administration of voter qualifications laws from denials resulting from intimidation. In as much as the Commission has held hearings in only the states of Alabama and Louisiana, it will be necessary to look at some of the cases filed by the Department of Justice as well. A survey of the facts of discrimination peculiar to the states of Alabama and Louisiana appear to provide at least a tentative basis for conclusions. Therefore, the facts of discrimination thrown up in these states, whether by the Commission or the Department of Justice, together with necessary reference to the registration laws in each, will serve as a basis for comparison. This approach offers a fairly reliable frame of reference against which to measure the promise of litigation under present laws. For the same reason it should be possible to identify remaining obstacles and to calculate the need for legislation.

B. Alabama

1. *The Findings*

The Commission made findings with respect to Macon, Barbour, Bullock, Lowndes, and Wilcox counties, Alabama. Despite the fact that Negroes made up a majority of the voting-age populations, only five were registered in Bullock and none were registered in Lowndes and Wilcox counties. In Wilcox, Lowndes, and Dallas counties the Commission was unable to examine the registration records. The findings of the Commission for the six counties may be summarized as follows:

1. Segregated registration facilities were employed.

2. Applicants were delayed because only two were admitted at one time and because those admitted were engaged for long periods of time copying lengthy parts of the Constitution; delays also occurred because white applicants were given priority.

3. The Board of Registrars failed to function at all or convened at irregular hours and places.

4. The Boards applied different standards to Negro and white applicants in that the former were rejected for formal errors which did not operate to disqualify white persons; also, Negroes in some counties were given a preliminary oral examination before qualifying to receive their application forms.

5. On occasions registration officials assisted white persons with their registration, but they did not assist Negroes.

6. In one county the Board of Registrars adopted a regulation according to which a qualified elector could not vouch for more than three applicants in one year. The

[11] See UNITED STATES COMMISSION ON CIVIL RIGHTS, REPORT 140 (1959); 1 *id.* 137 (1961) [hereinafter cited as 1961 REPORT].

requirement that an applicant be supported by a qualified elector deprived Negroes of their right to vote because in the county in question there were only five Negroes registered and none of the persons for whom they vouched were accepted for registration.

7. Some applicants in some counties were required to demonstrate their literacy by copying provisions of the Constitution, but applicants in other counties were not.

8. Negro applicants in some counties were not notified of their rejection; Negroes in other counties were told they failed, but not the reason.

9. Fear of physical harm and economic reprisal deterred Negroes from attempting to register in some counties.

Quite obviously all but the last of these findings relate to the registration process.

2. *The Law*

According to Alabama law an applicant must be 21 years of age, a citizen of the United States, and a resident of the state, county, and precinct in which he offers to vote.[12] This much of the qualification law for voting in Alabama is indistinguishable from the basic requirements of every state. The provision with respect to literacy requires an applicant to be able to read and write in English any Article of the Constitution submitted to him by the Board of Registrars. A further requirement is that an applicant be of good character and embrace the duties and obligations of citizenship under the constitutions of the United States and Alabama.

The principal guide furnished registration officials is the application form, a standard questionnaire.[13] A qualified applicant must accurately report the names and addresses of all his employers for a period of five years; he must answer a disjunctive question on his willingness to give aid and comfort to the enemies of the United States *or* the government of the state of Alabama.

It seems unnecessary to pursue Alabama registration laws to make the point suggested by the findings of fact, however. The requirements of the law are clearly of secondary importance. The essence of discrimination lies not with the laws but with the administrators. Nothing could be more objective than a requirement that applicants be 21 years of age, United States citizens, and residents for stated periods of time. The literacy requirement, while it lends itself to discriminatory application, is obviously not indispensable to discrimination; it was not even used in some of the counties. The Boards of Registrars often relied only on the application forms to effect discrimination. The findings point to what could be termed extra-legal flourishes imposed not by law but by the registration officials. It is clearly no part of Alabama law to engage in slow-downs, to operate segregated registration offices, to extend preferential treatment to white persons, or to convene the Board of Registrars at odd times and places. Nor does Alabama law require discriminatory grading of application forms. However difficult the application form may be, it does not itself discriminate against Negro applicants.

[12] ALA. CONST. amend. XCI to § 181. [13] ALA. CODE tit. 17, § 31 (Supp. 1959).

C. Louisiana

1. *The Facts*

The Commission heard testimony concerning eleven Louisiana parishes. The following is a representative list of practices employed to discriminate against Negro applicants.

1. The registrars kept odd office hours or could not be located.

2. Negroes were required to identify themselves by a variety of means, including supporting witnesses who were registered voters.

3. Application forms were graded upon a different standard for white persons and Negroes.

4. The requirement that applicants be able to give a reasonable interpretation to any clause of the United States or Louisiana constitutions was employed or not employed, depending upon the registrar of the particular parish. Where employed, it was variously administered. A few registrars gave it only to some applicants; others gave it only to Negroes. In one parish, where a set of twenty-five cards with three constitutional clauses printed on each was used, more than eighty-five per cent of the white persons from eleven of the fifteen precincts of the parish received cards not offered to Negroes.

5. Imposing delay in the registration process was resorted to in some of the parishes.

6. Registrars assisted white persons on some occasions but not Negroes.

7. Intimidation and fear of economic reprisals discouraged Negroes from attempting to register in some parishes.

Like the Commission's findings in Alabama, those in Louisiana are not directly attributable to the voter qualification laws. The subjective nature of the Louisiana literacy test lends considerable support to the conduct of the registrars, and it makes proof of discrimination on racial grounds difficult. However, discrimination was practiced effectively in many parishes where the test was not used. The Commission's findings in Alabama and Louisiana are similar in this respect.

2. *The Law*

The usual qualifications of age, citizenship, and residence are, of course, provided for.[14] A literacy test involving interpretation of the Constitution has been mentioned. Louisiana law also imposes a test of reading and writing, which the registrar administers by dictating any portion of the Preamble to the United States Constitution. In addition applicants must be able to fill out without assistance a statutory application form for registration. Unlike Alabama, therefore, Louisiana applicants face an interpretation test as well as a test for reading and writing.

[14] LA. CONST. art. VIII, § 1 (1960).

D. Threats, Intimidation, and Coercion

Apart from discrimination against applicants by registration officials, the Commission has noted several types of discrimination affecting free exercise of the franchise. For example, citizens' councils have acted directly against Negro voters by purging them from the registration rolls. This occurred in a number of Louisiana parishes. Some instances of official intimidation were also noted. It was alleged that Negro applicants who went to see the registrar in one parish were referred to the sheriff. There was no indication that outright intimidation of this kind was commonplace, however.

Aside from citizens' council activity and a few instances of outright intimidation, there was evidence of fear based upon threats of economic sanctions. The most notable instance of this practice occurred in Fayette and Haywood counties, Tennessee.[15] Finally, one further type of activity involved state legislative action. The Joint Legislative Committee of the Louisiana Legislature promoted a state-wide campaign to influence registration officials to keep down Negro registration.[16]

II

VOTING RIGHTS LITIGATION

It is, of course, the work of the Department of Justice utilizing the Civil Rights Acts of 1957 and 1960 to move against the practices described. Three classes of suits may be distingiushed: (1) those which seek to overcome discrimination in the registration process and to correct the effect of purges; (2) those which seek to counter the force of economic reprisals and other forms of intimidation; and (3) those which move against state laws touching upon the qualification of electors.

Slight analysis of the reported cases leads to the conclusion that none of the practices outlined above in the Commission's findings are beyond the reach of present legislation. For example, the court in the *Macon County* case[17] called attention to the following discriminatory practices in its opinion: order of accepting applicants, assistance rendered to white applicants, the writing test, grading applications, the failure to mail registration certificates to Negro applicants, the non-notification of rejected applications, and a failure to provide adequate facilities to provide for the registration for Negroes. Against these abuses the court declared that a decree would be issued and so framed as[18]

> (1) to correct the effect of the Board's past discriminatory practices by placing certain Negroes on the voting rolls immediately, (2) to forbid the continuation of such discriminatory practices, (3) to insure the expeditious and nondiscriminatory taking and processing of applications by the Board of Registrars, and (4) to provide for supervision and possible expeditious enforcement of the court's decree.

[15] United States v. Beaty, and United States v. Barcroft, 288 F.2d 653 (6th Cir. 1961).
[16] See 1961 REPORT 43-48.
[17] United States v. State of Alabama, 192 F. Supp. 677 (M.D. Ala. 1961).
[18] *Id.* at 682.

As to the effectiveness of litigation to counter the effects of discriminatory purges of registration rolls, the Department of Justice has had excellent results, particularly in the *Washington* and *Bienville Parish* cases.[19] In these cases the courts ordered restoration of the purged victims to the voting rolls. It would appear, therefore, that the provisions of the 1957 and 1960 Acts reach discrimination in the registration process as well as discriminatory purge activities. It should also be noted in connection with the *Washington Parish* case that the court regarded the action on the part of the Citizens' Council as action under color of law.

The status of suits brought under the provision of the 1957 Act permitting the Attorney General to file civil actions to enjoin threats, intimidation, and coercion of voters in federal elections is less certain. However, the Department of Justice has succeeded in obtaining temporary injunctions in the *Tennessee* cases earlier referred to.[20] These cases are now being tried. Another instance of successful action against this form of conduct arose in Louisiana, where a witness before the Commission found that upon his return from testifying at the Louisiana hearing he was unable to get his cotton ginned at the usual place or to obtain necessary supplies for his farm. Acting on this matter the Department of Justice obtained what amounted to a consent decree in which defendants undertook to assure the United States that the cotton would be ginned and that the victim would not experience further economic isolation. Again, it would appear that the conduct of private persons who act to use economic pressure to intimate voters may be reached under present laws.

Last December the Justice Department filed a suit against the state of Louisiana in order to test the constitutionality of the Louisiana literacy requirement involving interpretation of the Constitution. This is a most significant development. If the Government is successful, a precedent will be set for eliminating discriminatory voter requirements directly rather than through county-by-county litigation. Furthermore, the Louisiana literacy test is almost identical with that utilized in the state of Mississippi. One may expect, therefore, that a successful outcome in the Louisiana case will lay the groundwork for a similar result in Mississippi. Most important, however, is that the burden of proof now required of the Government in the many cases pending which involve discrimination under the same law will be eliminated. Finally, discriminatory administration of nondiscriminatory laws, established in some of the cases in any given state, may support a suit to have such laws declared unconstitutional. To the extent that this may be possible the Government will overcome the geographical limitation built into the 1957 Act, which provides relief only within the state administrative unit involved. Registration is almost universally administered in each county, with the result that the Government must file suits in adjoining counties.

[19] United States v. McElveen, 180 F. Supp. 10 (E.D. La.), *aff'd sub nom.* United States v. Thomas, 362 U.S. 58 (1960); United States v. The Association of Citizens Councils of Louisiana, 196 F. Supp. 908 (W.D. La. 1961).

[20] See note 15 *supra.*

III

RECOMMENDATIONS AND LEGISLATION

A. 1959 Report

The 1959 Report of the Commission contained a number of recommendations on the subject of voting. The first recommended that the Bureau of the Census collect registration and voting statistics by race in order to facilitate the work of the Commission. A second called for a law to require the retention of state registration and voting records and that they be made available for inspection. The third recommendation requested an amendment to the 1957 Act to bring arbitrary inaction on the part of state registration officials within range of the Attorney General's power to prevent threats, intimidation, and coercion of voters in federal elections. The fourth asked that the Commission be entitled to apply directly to the courts for the enforcement of its subpoenas. Under the 1957 Act, the Department of Justice represents the Commission in all court proceedings. The principal recommendation of the Commission in 1959 was a detailed plan to overcome the discriminatory habits of state registration officials. The registrar proposal, as it came to be known, would have substituted an administrative remedy for the judicial one contained in the 1957 Act.

It proposed that voting complaints be received by the President and investigated by the Commission. Those which proved to be well-founded the Commission would certify to the President. The President was then to appoint an existing federal officer or employee in the area from which the complaints originated to act as a temporary registrar. The appointed official was to be charged with the responsibility of registering all individuals according to the legal requirements of the particular state. Further, he was to issue them certificates and to certify the results to appropriate state officials who were to accept the certifications as authority for the individuals to vote in federal elections.

Finally, three of the Commissioners proposed a constitutional amendment which would have reduced voter qualification to age, residence, and legal confinement at the time of registration or voting.

B. The Civil Rights Act of 1960

It is unnecessary to follow the course of the Commission's registrar proposal in Congress. The 1960 Act emerged only after lengthy debate. Congress modified the recommendation concerning retention of registration records, but on the whole it was in keeping with the Commission's desire to make such records accessible to investigation. Nothing was done to require the Bureau of the Census to collect registration statistics, nor was the Commission's wish to represent itself in court fulfilled. Arbitrary inaction was also omitted, but a provision of the new law did allow the Attorney General to sue the state as a party defendant in the event state officials responsible for discriminatory practices were not available for suit because of resignation from office. The so-called Referee Plan was provided in answer to the Commission's

recommendation that further legislation was needed to overcome the discrimination carried out by state registration officials. It fell disappointingly short of the Commission's effort to gain a speedier remedy than afforded by the 1957 Act.

Title six of the 1960 Act containing the referee plan makes rather elaborate provision for the unlikely contingency that a federal court will choose to employ a referee. The law provides that in any suit filed under the provisions of the 1957 Act in which the court has found discrimination, the Attorney General may request the court to find that such discrimination is pursuant to a "pattern or practice." Once the finding has been made any person "of such race" has the right to come before the court, or a referee appointed by the court, and prove his qualifications; provided, however, that he also proves that after the court's finding of pattern or practice he has been denied the right to register to vote or been found not qualified by one acting under color of law.

The weakness of the provision is apparent when it is considered that it assumes the court will not be able to enforce its decree enjoining discriminatory practices in the registration process. In the *Macon County* case earlier referred to, the court's decree, which blankets registration procedures, is not strengthened by the power actually to register applicants. The court, because it clearly has the power to force the state officials to do so, has no need to register applicants or to appoint anyone else to register applicants.

The point to be emphasized about this portion of the 1960 Act, however, is that it does nothing about the principal weakness of the 1957 Act. Unlike the registrar plan recommended by the Commission, the referee plan does not serve to broaden the remedy's application geographically. Under the registrar plan, presumably, any person who complained could obtain registration in federal elections, whereas under the referee plan the geographic limits of the state administrative unit are carefully preserved. A consequence of the limitation is that the Department of Justice has found it necessary to file and try elaborate voting cases in adjoining counties. Involved are the same laws, the same types of discrimination and, often, the same judge. In Alabama, for example, the Department of Justice is litigating suits in Macon, Bullock, and Montgomery counties, all in the Middle District of Alabama. In Louisiana, the Department of Justice is trying or has tried cases in the adjoining parishes of Bienville, Jackson, and Ouachita, all of the Western District. Also in the Western District are the adjoining parishes of East Carroll and Madison, where suits have been filed.

C. 1961 Report

During the summer of 1961, while the Commission was writing its Report, the Department of Justice more than doubled the number of voting rights cases. The Department for the first time reached into Mississippi, where it filed four suits between July and August 1961.[21] No further trials took place, however, and the Commission was under the necessity of making recommendations on the subject of

[21] These were filed in Clarke, Forrest, Jefferson Davis, and Walthall counties, Mississippi.

voting at a time when important and promising legal developments were as yet inconclusive. However, the acceleration of enforcement efforts was itself a significant fact for the Commission. It was not an appropriate time at any rate to abandon the judicial approach of the 1957 and 1960 acts in favor of again asserting the need for an administrative solution.

The first recommendation requested legislation to reduce voter qualifications to objective standards of age, residence, legal confinement or felony conviction.[22] The Commission abandoned the constitutional amendment route as impractical and affirmed its faith in the power of Congress to enact appropriate legislation to enforce the fourteenth and fifteenth amendments.

A second recommendation provided an alternative to the first. It recommended legislation providing that completion of at least six grades of formal education be sufficient compliance with literacy and other forms of educational tests for voting. The third called for an amendment to the 1957 Act to cover arbitrary inaction serving to deprive any person of the right to register and vote for federal officers. The fourth called for legislation to remedy malapportionment. The final recommendation again called upon Congress to direct the Bureau of the Census to make provision for the compilation of registration and voting statistics by race, color, and national origin.

Before turning to the response of Congress to the Commission's recommendations, the current status of voting rights litigation should be noted. As indicated above, the Commission was not in a position to estimate with any degree of certainty what progress was being made or would in the near future be made as a result of increased activity on the part of the Department of Justice. Since the first volume of the 1961 Report was published on September 9, 1961, the Department filed suits in Plaquemines, Madison, and Jackson parishes, Louisiana. In addition it filed a suit against the state of Louisiana earlier mentioned. Suits were also filed in Panola, Tallahatchie, and George counties, Mississippi. In addition, the Department filed suit to enjoin the criminal prosecution of a Negro in Walthall County, Mississippi, who was conducting a registration school for Negroes. The theory of the case was that the effect of the prosecution would serve to intimidate other Negroes in the county from attempting to register and vote. The Court of Appeals for the Fifth Circuit reversed the trial court's refusal of a temporary injunction and certiorari has been denied by the United States Supreme Court.[23] Other cases are currently being tried, and injunctions have been issued in the cases filed in Bienville Parish, Louisiana, and Bullock County, Alabama.

Any judgment about the progress to be expected from the results of these cases would, it seems clear, still be premature. It does seem certain, however, that a relatively long period of time will elapse before present laws work a complete solution of the problem of discrimination in voting.

[22] 1961 REPORT 139-42.
[23] United States v. Wood, 295 F.2d 772 (5th Cir. 1961), *cert. denied*, 369 U.S. 850 (1962).

D. Congressional Action

The present Administration has determined to support legislation designed to eliminate the use of literacy and other voter qualification tests to deprive citizens of the right to vote. The Mansfield-Dirksen bill follows the general outline of the Commission's second recommendation that a sixth-grade-education standard be made sufficient demonstration of literacy for the purposes of such tests. Commissioner Griswold and Attorney General Robert Kennedy both testified in favor of the Mansfield-Dirksen bill at hearings before the Constitutional Rights Subcommittee of the Senate Judiciary Committee. The principal difference between the recommendation of the Commission and the bill is the fact that the latter does not extend to state elections. Also, the bill includes provisions entitling Puerto Ricans to qualify even though their schooling has been in the Spanish language. The effect of the literacy test upon Puerto Rican residents in New York was a matter upon which the Commission expressed no opinion.

In the unlikely event that Congress acts favorably upon the Mansfield-Dirksen bill, its effect upon discriminatory denials of the right to vote may be disappointing. The facts tend to show that in those areas where a will to discriminate exists, the means for accomplishing discrimination are independent of the existence of objective standards. In Louisiana, for example, the requirement that the applicant be a resident for a stated period of time is administered to require applicants to furnish proof of residence. The proof required is often whatever the registrar believes the applicant cannot supply. Also in Louisiana registrars found latitude for discrimination in the simple requirement that a person identify himself as the same person he represents himself to be.

This is not to say, however, that the bill will not be a gain. On the contrary, it will greatly reduce the area of discretion available to the registrar. The significant point is that where only objective standards are available to the registration officials, proof of discrimination becomes relatively simple. The danger of such legislation lies in the fact that Americans interested in results will be disappointed to discover that lawsuits take time. It follows that the failure of Congress to enact the Mansfield-Dirksen bill will not greatly influence the present course of litigation. Suits which have already been filed will of necessity be tried on the facts of past discrimination, which are of course not affected by new legislation.

IV

CONCLUSIONS

It seems fair to conclude that racial discrimination in the administration of voter qualification laws is a more vital target for federal legislation than the laws themselves. It is highly unlikely that federal legislation to reduce voter qualifications to objective standards such as age and residence would eliminate discrimination. In Alabama and Louisiana, at any rate, some registration officials administered objective requirements to accomplish discrimination. On the other hand, this is not to

say that the elimination of strict registration laws, particularly those which place a premium upon the voter's ability to copy lengthy provisions of constitutions and to complete forms and other mental tasks with absurd precision, would not greatly improve present conditions. The presence of discrimination in the registration process is more readily detectable where the means employed are not also buttressed by the appearance of compliance with voter qualification laws. A reduction in the complexities of registration will serve to facilitate enforcement of the present remedies available to the Department of Justice.

In this connection emphasis should be placed on the fact that where the voter qualification laws are administered to discriminate, it is likely that other suits filed by the Department of Justice in the state involved may provide a basis for a suit against the state to have those laws declared unconstitutional.

A judgment concerning the effectiveness of present laws would be premature; now, as when the Commission published its 1961 Report, too many cases are pending. However, present laws have been found sufficient in dealing with each type of discrimination pointed out by the Commission. Time remains the principal factor.