10-1-1973

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MOODS AND CHANGES: THE CIVIL RIGHTS RECORD OF THE NIXON ADMINISTRATION

Clarence Mitchell*

I. Introduction

Not many years ago the United States Senate was similar to a gentlemen's club. It was run in the main by white Protestant conservatives. The Senators in charge gave a high priority to their own comfort and convenience. Junior members of the Senate had to shuttle back and forth from their offices two blocks from the Senate floor in the Capitol, while the inner establishment that controlled power in the Senate had, in addition to regular quarters in the Senate Office Building, many little rooms in the Capitol itself. Between votes or procedures that were of interest to them, the members of the inner circle could retire to their Capitol offices to transact business, to talk with special visitors or perhaps just to meditate. A recent meeting between some civil rights advocates and a liberal Senator in one of these offices, a few steps from the Senate floor, had special significance. An office in the Capitol is one of the badges of power in the Senate. Possession of it by a liberal Senator means that the old conservative controls have been breached. The Senate now more closely follows the thinking and urgent demands of larger and more progressive constituencies. On that same day, another significant event was taking place in the presence of a Justice of the Supreme Court of the United States. Litigants who had won a district court decision calling for an immediate halt of the bombing in Cambodia were asking for a stay of a circuit court of appeals action that had nullified their victory. On one side were those who thought judicial power should be exercised to stop what they asserted was unconstitutional action of the Executive branch. On the other side were the lawyers for the Government of the United States. Since the full Supreme Court was in recess, the man who had to decide the case at that point was Justice Thurgood Marshall—a black man. Also on that day the Washington office of a civil rights organization was in a three-way telephone exchange with its Louisiana office and the Department of Justice urging action to halt what seemed to be wanton killing of black citizens by white law enforcement officers. Later, at the end of the day, it was reported in the Washington press that the national rate of unemployment among whites had dropped, but the rate of joblessness among blacks and other minorities had gone up.

These seemingly unrelated events are linked together because they are typical of the pattern of contrasts on the national scene. They show that in some respects the country has moved forward, but in other respects it has stood still or at least not kept up with the demands of our times. In a sense, the civil

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rights record of the Nixon Administration is a reflection of moods and changes that are a part of our everyday life. Unfortunately, on balance, the administration seems all too willing to preserve the status quo or even turn back the clock in some of the vital areas of civil rights.

This writing will explore five of those areas: Education, Employment, Fair Housing, Public Accommodations and Voting Rights. In all of these areas there have been significant advances. Desegregation has been accomplished in areas where resistance seemed impossible to overcome. It is no longer a novelty to see young black men and women behind ticket counters in southern airports. In some suburban areas the sight of a black housewife supervising the transfer of her furniture from a moving van to her new home does not cause the white hard-hat neighbor next door to stop mowing his lawn. Hotels in Alabama, Mississippi, and other parts of the Deep South can and do accommodate state meetings of Governor George Wallace’s followers and delegates to civil rights gatherings at the same time. Dr. Aaron Henry, president of the NAACP Mississippi State Conference of Branches and Chairman of the Democratic Party of the State of Mississippi, recently proudly announced that Mississippi has more black elected officials than the State of New York.

Thus, one cannot say that there has been no progress under the Nixon Administration. The real question is, where would the nation be if the present occupant of the White House had followed the examples of his immediate predecessors, John F. Kennedy and Lyndon B. Johnson, and given unequivocal backing to civil rights? It is fair to ask, would we still be in a quagmire on the question of student transportation to desegregated public schools? It is proper to ask, would the rate of unemployment among blacks be three times the rate of unemployment among whites as is now the case? It is not being picayune to ask would increasingly black cities be ringed with ever-expanding mainly white suburban areas? It would be good sportsmanship to acknowledge that in the area of public accommodation the picture would be about the same as it is today. It would be correct to say that there would not have been a bruising fight in Congress in 1970 to protect the strong features of the 1965 Voting Rights Act.

It should be noted that the comparatively recent appointment of Elliot L. Richardson as Attorney General may mark a turning point for the better in civil rights. Mr. Richardson has the advantage of personal knowledge and much experience in this field. His interview with Moses J. Newsome, executive editor of the Afro-American Newspapers, on June 27, 1973, offers a clue to his thinking. Answering one of the questions asked by Mr. Newsome, Mr. Richardson said, “At one level, it is important to the Department of Justice simply to become aware of the fact that it is a department with major social responsibilities, and it is, whether it likes it or not, either an instrument for improvement of an important group of social programs or it is missing or failing to arise to that opportunity.”

So often one hears that the fight for civil rights legislation began in the

1960's. Actually, of course, the fight began long before the Civil War and has continued to the present. There have been periods of spectacular happenings and times when the action has passed almost unnoticed by the public in general, but the effort has never been and is not now dead.

To get a sense of perspective on civil rights and the status of implementation of those rights as undergirded by recently passed laws, it would be well to begin with the passage of the 1957 Civil Rights Act. Prior to the passage of that law many civil rights supporters had given up hope of ever getting such legislation passed in Congress without a fundamental change in the Senate Rules against filibustering. Civil rights supporters placed their major faith in court decisions and executive orders issued by Presidents. These accomplished great good, of course, but court decisions were, and still are, subjects of unfair attacks as "judge made law." Executive orders were bombarded by civil rights opponents as dictator tactics at the White House. Also, there were courts that openly denounced them as having "no legal effect whatsoever."

The Justice Department, which was the principal agency that had the duty to enforce such civil rights laws as remained from the Reconstruction period, contained a civil rights section in the Criminal Division. In most cases, civil rights matters referred to the Department found their way to that section. Even the section itself had a dubious racial policy. The first black lawyer to get on the staff of the section was Maceo T. Hubbard, a Harvard Law School graduate, who had extensive experience in private practice and in the federal government. His appointment in 1946 was the subject of "high level consideration." Stirred by protests, outcries and a sense of the need to meet problems in civil rights, President Harry S. Truman appointed a special committee to study the problems and to make recommendations. Among the recommendations of this committee was one calling for a division on civil rights under an assistant attorney general in the Department of Justice. Other recommendations included creation of a commission to oversee civil rights in the nation and the use of civil action to protect voting rights. Criminal enforcement at that time had been found to be almost meaningless, grand juries seldom indicted officials who denied voting rights to black citizens. Even when an indictment could be obtained, the hope of conviction and correction remained remote. Most of the effective action was carried on through civil proceedings entered by organizations such as the National Association for the Advancement of Colored People. All three of these proposals became law in 1957. President Dwight D. Eisenhower signed the bill, but did so without ceremony open to persons outside of

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3 Senate Rule XXII requires that to invoke cloture and stop a filibuster, two-thirds of the Senators present and voting must be recorded in the affirmative. Consistent failure to get a two-thirds vote to stop filibusters against civil rights bills prior to 1957 caused that body to be labeled by some as "The Graveyard of Civil Rights."
government or members of Congress who had successfully worked for passage of the law.

Republicans were quick to claim credit for the law, but there was not much enthusiasm about enforcement. New legislation was made necessary because of various countermoves which included attacks against the constitutionality of procedures of the Civil Rights Commission, threats to arrest government civil rights investigators, and the destruction of files containing evidence of racial discrimination. A new law was passed in 1960 to plug loopholes revealed by efforts to enforce the 1957 statute and also to assert federal power to check a wave of bombings of churches, synagogues and homes of civil rights leaders."6

As problems of discrimination in employment, education, public accommodations, expenditure of federal funds and housing became more acute, there was an increasing demand for action by the federal government. Interestingly enough, many civil rights advocates thought it was hopeless to expect action from Congress. Indeed, the historic march of August 28, 1963, when over a quarter of a million persons met at the Lincoln Memorial to air grievances, was originally planned to take place when Congress would not be in session. Many of the planners, counting on President John F. Kennedy's personal commitment to civil rights and remembering the power of the filibuster in the Senate, argued that the quickest way to get tangible results would be through presidential action. Later, of course, plans were expanded to include meetings with House and Senate leaders to urge passage of bills already under consideration or being drafted.7

Passage of the Civil Rights Act of 1964 was a major victory. In the House a superb bipartisan team was led by Rep. Emanuel Celler (D-N.Y.) chairman of the Judiciary Committee, and Rep. William McCulloch (R-Ohio) ranking minority member of the Committee. In the Senate the bipartisan effort was headed by Hubert Humphrey (D-Minn.), then the Democratic whip, and Thomas Kuchel (R-Calif.), then the Republican whip. A group of Senators took assignments to give floor leadership on certain parts of the proposed legislation. Senator Hart and Senator Keating on Title I—voting rights; Senator Magnuson and Senator Hruska on Title II—public accommodations; Senator Morse and Senator Javits on Title III—public facilities and Attorney General's powers; Senator Douglas and Senator Cooper on Title IV—school desegregation; Senator Long of Missouri and Senator Scott on Title V—Civil Rights Commission; Senator Pastore and Senator Cotton on Title VI—federally assisted programs; Senator Clark and Senator Case on Title VII—equal employment opportunity; and Senator Dodd for the Democrats on Titles VIII through XI—voting surveys, appeal of remands, community relations service, and miscellaneous items.

7 Leaders of the march met with the Speaker of the House and the Majority and Minority Leaders in the House and Senate during the morning of August 28, 1963. The Director of the Washington Bureau of the NAACP, who arranged the meetings, recalls with some amusement that during the meeting with House Speaker McCormack (D-Mass.) word was received that the marchers were getting restless and might move without their leaders. All present except members of Congress and the NAACP's Washington Bureau Director made a dash for taxicabs to get to the point where the march was to begin. They arrived in the nick of time.
Once the ice was broken and a comprehensive civil rights bill was passed in spite of the power of filibustering Senators, it was possible to treat legislation in this field as one would handle other complicated but important bills. What Father Theodore Hesburgh, former chairman of the United States Commission on Civil Rights, has called the most important of bills in this field, a Voting Rights law, was passed in 1965; it profoundly changed the political picture in the South. Perhaps because of a lingering suspicion that northern members of Congress could not be counted on to support racial integration in housing, as late as 1966 there were civil rights supporters who urged issuance of an executive order on this subject instead of passage of a law. Nevertheless, Fair Housing legislation was passed in 1968. The bill also contained major amendments strengthening the criminal penalties in existing civil rights statutes.

During the pre-Nixon period enforcement of the new civil rights laws was commendable but not entirely satisfactory. President Johnson gave his full backing to implementation of the promises that these laws gave to minority groups. Attorney General Ramsey Clark in the Department of Justice and Dr. Robert C. Weaver, Secretary of Housing and Urban Development, who was responsible for Fair Housing policies, gave their best efforts to make these laws work. On the other hand, many old-line agencies, career government employees, state and local officials and many private groups sought to circumvent the laws in this field. In addition, problems of selecting executives and staff to run the programs established by the laws were manifold. The major difference between that period and the present was the leadership of President Johnson. Even after he returned to private life and was aware of medical problems that could and did lead to his death, he sought to fulfill the promise of equal treatment for all.

President Nixon expresses approval of civil rights for all, but from the beginning his administration has taken major steps in the opposite direction. A summary of the actions hostile to civil rights during the first year of the Nixon Administration appears in the 1969 Congressional Almanac. The following are some excerpts:

1. In place of extension of the 1965 Voting Rights Act the Administration proposed new amendments that would dilute its effect in southern states.
2. The Administration requested further delay in school desegregation by 33 Mississippi districts on August 19, 1969. The requested delay was rejected by the Supreme Court of the United States on October 29, 1969.
3. On July 3, Attorney General John Mitchell and Secretary of Health Education and Welfare Robert H. Finch issued a statement announc-

10 The Equal Employment Opportunity Commission had three changes in its chairmanship during the Johnson Administration and a fourth change at the beginning of the Nixon Administration. Difficulty in finding a suitable person to administer the Fair Housing Law caused a delay in getting that function into operation. Numerous attacks in Congress and by state or local officials kept other programs off balance each time that they were authorized by Congress.
ing a shift in federal school desegregation enforcement policy; litigation, and not termination of federal funds would be the major means of effecting school desegregation.

II. Desegregation of Public Schools

In addition to its early attempts to delay school desegregation in Mississippi, the Nixon Administration must bear the major responsibility for creating a national issue on the subject of transportation. However, Congress must also share the blame. After giving a nationwide telecast address on largely fictional descriptions of school busing problems, President Nixon sent a message to Congress on March 17, 1972, charging that transportation programs to accomplish compliance with court decisions on desegregation were widespread, costly, harmful to the educational process and created unnecessary administrative burdens. In contrast, Stephen Horn, then Vice Chairman of the Civil Rights Commission, testifying before the House Judiciary Committee on May 10, 1972, said that population growth accounted for almost all busing and that cost of busing had held steady at between 3 and 4 per cent of total educational expenditures for forty years. He also said that the Department of Health, Education and Welfare had advised Congress in 1970 that there had been more busing in past years to preserve segregated schools than in 1970 to desegregate schools.\footnote{Hearing before the House Judiciary Committee, May 10, 1972.}

Although the present controversy over busing may seem to be a new development, it is really a continuation of a dispute that surfaced when Congress debated and passed the 1964 Civil Rights law. At that time, the southern opponents of school desegregation were fighting a rearguard action against implementation of the 1954 school desegregation decision. President Lyndon B. Johnson, who was then in the White House, the Department of Justice, and the majority of the members of both houses in Congress were united in their determination to implement Supreme Court decisions in school cases. Debate centered around Title IV of the then pending bill, H. R. 7152, which authorized the Attorney General to make the United States a party to civil actions seeking desegregation of public schools. In an effort to distinguish between what was then thought to be de facto segregation and de jure segregation in public schools, members of the Senate held a series of meetings to draw up language that would deal with this problem and also deal with the subject of student transportation. The result of their efforts is now 42 U.S.C. 2000 c 6 (a) (2) which reads: “Nothing herein shall empower any official or court of the United States to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another or one school district to another in order to achieve such racial balance, or otherwise enlarge the existing power of the court to insure compliance with constitutional standards.”

The amendment was promptly attacked by Senators Sam Ervin (D-N.C.) and Senator Richard Russell (D-Ga.) as a provision “to remove jurisdiction of the federal courts from any action looking to the correction of de facto segre-
Speaking in defense of the amendment, Senator Leverett Saltonstall (R-Mass.) said: "I was present at the meetings when the bill was revised. . . . We tried to provide that the court would not be given any more power than it now has with respect to achieving racial balance in schools by busing of children or in correcting racial imbalance."

Senator Hubert Humphrey (D-Minn.) who was floor manager of H. R. 7152, said:

Some communities are attempting to correct racial imbalances by transportation of children; others refuse to do so. The purpose of the pending Dirksen-Mansfield-Humphrey-Kuchel substitute is to make clear that the resolution of these problems is to be left where it is now, namely in the hands of the local school officials and the courts. . . . Obviously, this provision could not affect a court's determination concerning racial imbalance and possible corrective measures; this is dependent upon the Court's interpretation of the fourteenth amendment."

Senator Russell offered an amendment to strike this language from the bill. His amendment was defeated by a vote of 71 to 18 which appears to be a substantial indication that the Senate felt the courtroom was a suitable forum for airing and settling busing questions without additional legislation. From 1964 to 1970, opponents of school desegregation attempted to use this language as a limitation on the powers of the Executive branch and the courts to approve plans that require transportation of children to accomplish desegregation of public schools. Most of those who take this position ignore the clear intent of Congress as stated by Senator Humphrey and Senator Saltonstall that the amendment was not designed to restrict or expand the power of the courts to interpret the requirements of the fourteenth amendment.

Because until 1970 the transportation controversy was centered mainly in the South, most northern members of Congress became involved in one of two ways. They opposed antibusing amendments as invasions of the powers of the federal courts or they joined with southern members for logrolling purposes—to reassert conservative legal philosophy or to provide political assistance to friends who could use it in their states or districts. The last category of political assistance provided the real clout for antibusing amendments. Most of what was given sounded deadly, but as a practical matter it had little effect on the courts. The main harm was that such amendments frustrated able and effective persons in the Department of Health, Education and Welfare who were trying to implement school desegregation decisions. In addition, of course, gullible and/or obstructive state and local officials used such language to justify delay in setting up truly unitary school systems.

A modifying clause "except as required by the Constitution" was used to soften the effect of some of these amendments. For example, an amendment offered by Representative Jamie Whitten (D-Miss.) was tacked onto the Labor-HEW Appropriation Bill in 1969 and 1970. The Whitten amendment prohibited use of funds for busing of students against the wishes of their parents or

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13 Id.
14 Id. (emphasis added).
to "force a school district to bus students, abolish schools or assign students in order to receive Federal funds." Senator Charles Mathias (R-Md.) led the fight to include the words "except as required by the Constitution." There were two roll call votes on the Mathias amendment. On the first it prevailed 42 to 32 and on the second it was approved 41 to 34. The matter then went to conference. Subsequently, the Mathias amendments were accepted by the conferees and the total bill passed the House by a vote of 324 to 55 and the Senate by a vote of 82 to 0.

Currently, opponents of student transportation are calling for moratoriums on court decisions that approve plans for transportation of students to achieve a unitary school system and requiring the courts to use transportation "only as a last resort." Others suggest that the Constitution should be amended to prohibit transportation of students for the purpose of desegregating public schools. High-sounding terms have been coined to disguise the racial implications of this present campaign against student transportation. Few opponents openly state that they are against having black and white children ride together on the same bus to attend a desegregated school. Instead they assert that they are "against crosstown busing." They denounce "forced busing," and attack "busing that is injurious to the health of children." In all of the present confusion over the subject of pupil transportation there is an urgent need for leadership from the White House. President Nixon could perform a major service if he would publicly urge citizens to support court decisions on pupil transportation. He could also urge his own party leaders in Congress to oppose so-called antibusing amendments as a matter of party policy. Actually, even in the House, antibusing amendments would not pass if the administration actively opposed them. In the Senate the various antidesegregation amendments are not wanted by the leaders of either party. A word from the President to those Republicans who do vote for such destructive amendments would do much to change them also.

III. Equal Employment

In fairness, it should be said that the President has personally expressed support for the principle of fair employment in government and in private industry. The differences with civil rights groups arise with respect to the pace and methods of enforcement. If the Equal Employment Opportunity law is effectively enforced, it is unlikely that the present glaring differences between the rates of unemployment among blacks and whites will continue. As was stated at the beginning of this article, the most recent figures show white unemployment dropping with joblessness among blacks and other minorities increasing. When the Equal Employment Opportunity law was passed in 1964 as Title VII of the Civil Rights Act, enforcement was left to the Justice Department and private litigants. The Equal Employment Opportunity agency could recommend redress but could not go into court or issue orders to halt discrimination. Led by Representative Augustus Hawkins (D-Calif.) and Senators Har-
rison Williams (D-N.J.) and Jacob Javits (R-N.Y.), the Congress amended the law in 1972.

Civil rights groups favored giving the EEOC power to issue orders against discriminatory practices. The administration favored and got a provision which gives EEOC the right to go into court to obtain redress for complainants. The Department of Justice retains power to take cases into court also under a "pattern or practice" provision in the law.\(^1\) Civil rights supporters, joined by Father Hesburgh testifying before the Senate Labor Committee, urged that the law be broadened to cover federal, state and local government employment. There was general agreement at the top level in the administration that these provisions should be added. Vigorous opposition developed at lower levels of government and for a time the coverage of federal employment was in serious jeopardy. Senator Peter Dominick (R-Colo.) and Senator Alan Cranston (D-Calif.) gave strong backing to inclusion of federal employees and they were successful. Under the new amendments to the statute, federal employees may receive promotions, reinstatement, back pay and all other kinds of redress that are available to employees in private industry. Also under the new amendments, the remedies are supposed to be available to persons who had pending government complaints under civil service procedures at the time the new law was passed. For some reason, the Justice Department has taken the position that federal employee complaints pending at the time the law was passed are not covered. At least three district court decisions, however, have held that the law does apply to cases pending at the time of enactment.\(^7\)

As was suggested earlier, the Richardson appointment may signify more attention and a faster pace in the handling of some civil rights matters. The appointment of Stanley Pottinger as Assistant Attorney General in the Civil Rights Division of the Department of Justice also appears to have favorable impact on some of the aspects of the equal employment program that are handled by the Justice Department. Speaking of its work in this field, Attorney General Elliot L. Richardson said in a press release dated July 9, 1973:

Civil Rights attorneys filed several major "firsts" under the equal employment opportunity edition of the 1964 Civil Rights Act, including two suits against major domestic airlines—United and Delta—for racial and sex discrimination, and nine suits against municipal governments under the Attorney General's new authority to sue public employers. Four of these suits involve large urban fire departments in Boston, Chicago, Dallas and Los Angeles.

In another release dated August 7, 1973, Mr. Richardson announced a "record award—$396,000—will be paid to 450 minority victims of discrimination" in San Francisco. This case dealt with employment in the use of heavy equipment in the construction industry in California, Nevada, Utah and Hawaii. The settlement was the result of consent decrees. Also under the decree the release

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\(^{16}\) Under the provisions of PL 92-261 amending Title VII of the 1964 Civil Rights Act pattern or practice cases may be taken into court by the Department of Justice or the Equal Employment Opportunity Commission. Unless changed by reorganization action by the President and accepted by Congress, the entire pattern or practice function will be transferred to EEOC.

\(^{17}\) The NAACP has brought these cases to the attention of the Department of Justice.
said, "fifty minority members will be allowed to enroll immediately in the four year apprenticeship program and will receive up to $2,000 upon completion of the training." The Richardson appointment may thus herald more vigorous federal action.

Although the administration has recommended cuts in appropriations for most agencies in the field of human rights, the President himself said in his State of the Union Message to Congress on January 20, 1972, "Our proposed budget for the Equal Employment Opportunity Commission will be up 36 per cent next year." This is a promise that the administration has kept and the EEOC is opening new field offices as well as hiring new lawyers to obtain compliance with the law. Lurking in the background, however, are personnel shake-ups which hint strongly of political maneuvering to have the agency controlled by foot-draggers. As an example, Chairman William Brown of EEOC has been recently removed from office.

IV. Fair Housing

In the field of housing the administration's policy advocates open occupancy and the Justice Department has filed a number of suits to support this objective. On the other hand, President Nixon issued a statement on June 11, 1971, in which he attempted to distinguish between exclusion from communities for economic reasons and exclusion because of race. Regarding economic discrimination he said, "We will not seek to impose economic integration upon an existing local jurisdiction." With respect to racial exclusion he announced, "We will not countenance any use of economic measures as a subterfuge for racial discrimination."

The House Judiciary Subcommittee on Civil Rights Oversight held hearings October 27, November 3, November 4, and December 2, 1971, on the federal role in equal housing opportunity. John A. Buggs, staff director of the United States Commission on Civil Rights, cited four areas in which the federal government has failed to promote open housing. He said the government has been less than vigorous in enforcing the fair housing law, the FHA has passively permitted private industry to continue segregation under the home assistance program, federal installations are moving to the suburbs from the cities and the federal agencies that supervise lending institutions are not using their authority to require compliance with the provisions of the 1968 Fair Housing Act's section forbidding discrimination by lending institutions.

Speaking on the subject of housing, Attorney General Richardson lumped the administration's record on school desegregation in the South, the record on minority business enterprise in the Commerce Department, and "housing through HUD" together when he said, "in all of these areas, gains have

18 See, e.g., Department of Justice Press Releases: January 8, 1973, Detroit, Michigan; February 9, 1973, Los Angeles, California; February 22, 1973, New Orleans, Louisiana; March 29, 1973, Toledo, Ohio; May 24, 1973, Dallas, Texas; May 23, 1973, Washington, D.C.-Baltimore area; and a number of others. (A complete list is being compiled by the Department of Justice but was not received in time for inclusion in this article.)

19 CONGRESSIONAL QUARTERLY ALMANAC, 651 (1971).
actually been made at a faster rate in each instance than during any comparable previous period." When one considers the amount of past discrimination based on race, it is entirely possible that the Attorney General may be right. However, what were only modest beginnings in the past cannot satisfy the demands of today. Experts agree that American cities are becoming increasingly black while the suburbs are constantly expanding and, for the most part, are predominantly white.

During July, 1973, the Justice Department filed eight fair housing suits and four consent decrees to expand housing opportunities for minorities in California, Florida, Indiana, Mississippi, North Carolina, Ohio, Pennsylvania and Virginia. The Department announced that it had filed its first case of discrimination against Asians. The complaint arose in Virginia. It is hoped that the filing of these cases will mean that enforcement of the fair housing law will increase in all agencies of government that have responsibility in this field. Much of the criticism in the Buggs testimony before the House Judiciary Committee in 1971 is still applicable today.

V. Public Accommodations

Racial discrimination in places of public accommodation seems remote to many young people who came of age after the passage of Title II of the 1964 Civil Rights Act which makes such discrimination unlawful. It is hard for even those who are older to remember that Elmer W. Henderson, general counsel for the House Committee on Government Operations, was once denied service in a dining car. That incident, which occurred in the 1940's, made headlines in the press. It finally reached the Supreme Court of the United States which held such discrimination to be unconstitutional. The sight of black men, women, and children being beaten or hustled off to jail because they sought a sandwich at a lunch counter would seem unreal to many who were less than ten years old at the time of such occurrences in the late fifties and sixties. Today, it is almost unheard of to find overt racial discrimination in major hotels and restaurants. Yet, there is continuing discrimination in many parts of the country. In the field of public accommodations the enforcement is largely in the hands of the Justice Department. Here action has been extensive against restaurants that maintain separate facilities based on race, swimming pools open to the public but masked as private clubs for the purpose of serving whites only, discriminatory skating rinks, bars and other places of recreation.

VI. Voting Rights

When Congress passed the 1957 Civil Rights law that included protection
of the right to vote, there was a humorous story that President Eisenhower was asked to authorize a statement that could be printed on large placards saying, "President Eisenhower Wants You to Vote." The publicity was to be used in southern states where blacks were being denied the ballot. Word filtered back from the White House that this might be considered inflammatory. It was then suggested that the placard should read, "President Lincoln Wants You to Vote." In a sense this story is a good description of the official attitude in Washington on the right to vote. Most top law enforcement officials and members of the White House staff concerned with civil rights matters are eager to have the means to end voting discrimination, but some of them also want subtle restrictions that will keep the voting booth partly closed.

Apparently this state of mind existed at the start of the Nixon Administration in 1969. The Voting Rights Act of 1965 authorized federal examiners to determine whether applicants were qualified to vote. Southern states and political subdivisions covered by the law were required to suspend literacy tests and similar devices for a five-year period beginning in 1965. In addition, the covered areas were required to get prior clearance from the United States Department of Justice or the United States District Court for the District of Columbia before new laws on registration and voting could be put into effect. These restrictions were necessary because of a long and cruel period of voting discrimination that resulted in property losses, job losses, and even murder of blacks seeking the right to vote. The culmination was the mass demonstration in Selma, Alabama, led by Dr. Martin Luther King and many other distinguished Americans. With this very recent memory of the tragic circumstances that made the 1965 Act necessary, civil rights leaders were greatly angered when Attorney General Mitchell proposed that states be allowed to enact voting and registration laws without prior approval as required by the 1965 statute. After a considerable amount of fruitless effort to convince the Attorney General that this change would be disastrous for would-be black voters, civil rights groups sought extension of the five-year ban against literacy tests and other discriminatory devices. They also sought extension of the requirement for prior clearance of registration and voting laws.

The administration supported the Attorney General and his version of the extension was passed by the House in spite of a vigorous fight against it. The Senate, with the full support of the Republican Minority Leader, Hugh Scott (R-Pa.), rejected the House version and kept the law intact. Senator Scott and Senator Philip Hart (D-Mich.) who were leading the fight for the bill, also agreed to a proposal by Senator Edward Kennedy (D-Mass.) that eighteen-year-olds be given the right to vote; this amendment was actually offered by Senator Mike Mansfield (D-Mont.), the Majority Leader. The Senate version of the bill was subsequently approved by the House and the President signed it into law promptly.

This action by Congress did not stop the administration's effort to restrict application of the law. The Department of Justice actually drafted a proposed set of guidelines which would have thwarted the intent of Congress to have prior approval of registration and voting laws. In a Mississippi case it was
revealed that the Attorney General had not approved or disapproved a proposed new law in that state. A three-judge federal court ruled that the new law could not be put in effect. Finally, on May 25, 1971, the Justice Department announced new guidelines requiring that the affected states prove that changes in voting laws or practices do not discriminate before those changes may be put into effect. Since then, the Department of Justice under Attorney General Richard Kleindienst and now under the Richardson-Pottinger leadership has been active in a number of voting rights cases.

VII. Conclusion

Unless there is a great national calamity such as a depression or a war, it is difficult to arouse public opinion. This is true for whites, blacks, and most other groups that should be concerned about a problem that affects them. The civil rights problem is usually at the bottom or near the bottom of the thinking of most people in the United States. They tend to look at it as something that is similar to a leaky water faucet. Put a washer in place of the old one or call a plumber. When the leak stops, forget about it and go back to the favorite television program, the poker game, or check on the golf clubs. It is the difficulty of getting people aroused about injustice and the tendency to think that some simple remedy will result in permanent correction that slows progress in the field of civil rights. Unless there is a lynching, a battle with dogs and policemen about the right to use a public park, or unless a quarter of a million people stage a march on Washington, the public tends to divide into two camps. One camp believes all must be well because (1) no one has been killed when he tried to vote, (2) national conventions of all black or interracial organizations can obtain accommodations in any part of the country, and (3) very few bigots make attacks on minority groups without first professing to believe in equal rights for all. The people in this group are not necessarily hostile. They are likely to line up on the side of fair play when they are convinced that there is a need for action. The second group is made of the proponents and opponents of civil rights. Unfortunately, the proponents are usually those with very little money, very little power, and very little access to the channels of public opinion. In addition, some of them suffer from fickle dispositions that cause them to denounce or forsake valuable plans and programs before those plans and programs have a

24 The effort to escape the requirement of prior clearance of registration and voting legislation is a continuing problem. The Civil Rights Division of the Justice Department is also preparing a compilation of its recent and current actions in this field.

25 See, e.g., A press release dated June 29, 1973, stated that the Justice Department had filed a civil suit challenging the validity of a municipal election held in April, 1972, in Fort Valley, Georgia. During the 1972 election, black candidates ran for five of the six offices up for election. They won majorities in two contests and forced run-off elections in the other three, according to the suit. In the run-off election, the black candidates led in the ballotting at the polls but eventually lost when an unusually large number of absentee ballots were cast for each of the three white candidates. The suit charged that the black voters seeking to cast absentee ballots were not given the same assistance as were white persons. The suit also charged that the absentee ballots of many white persons were counted despite the failure of the voter to observe proper procedures or to follow the correct absentee voting requirements. The suit charged that the application of different standards, practices and procedures on a racial basis violated federal voting rights statutes and requested the court to call for a new election for the three posts in question.
chance to work. The opponents, on the other hand, usually hold the reins of power in government and industry. They control or have the means of controlling the media and they never seem to run out of a dogged determination to obstruct even though such obstruction may be against their own best interests and against the welfare of the country as a whole. When one accepts the foregoing generalizations, it is not difficult to understand the misfortunes that overtake civil rights from time to time. The Nixon Administration is not alone in its sometimes lukewarm and sometimes openly hostile attitude on matters in this field. By simple arithmetic the Nixon planners and many other Democratic and Republican officeholders determine that pleasing the opponents of civil rights brings in powerful allies and is not likely to arouse widespread indignation.

The best line of successful offensives on the part of civil rights forces is to continue to build a broad base of support. Any retreat into a shell of racism or nationalism is doomed to be crushed under the heel of intolerance. The proponents of civil rights must apply this principle to politics. Progress in this field requires the best minds and the best efforts of both major parties. Follow-through is perhaps one of the greatest of needs in the civil rights field in this period. This is the hard, often dull and boring, part of the job. Perhaps the point is best illustrated by an exchange between civil rights advocates in the gallery in the closing days of the debate and action on the 1964 Civil Rights bill before the bill was sent to the Senate. Some highly intelligent and effective civilrighters were observing the maneuvering and listening to exchanges on the floor below. Tough words and phrases were being uttered in quiet gentlemanly tones—often accompanied with smiles. Sensing the imminence of victory, Congressmen supporting the bill were giving opponents full opportunity to express themselves before voting down weakening amendments. Opponents also knew that they were losing but they wanted to build a record showing a fierce last-ditch opposition that could be used at campaign time. That is why hard words were being spoken softly. Their colleagues understood this and did not take offense. At one stage some of the newly recruited civil rights spectators observed, “things are too quiet.” “What we need,” they said, “is some action—maybe we should lie down in the gallery or block the doorways to the House Chamber.” Obviously, if such action had taken place the greatest beneficiaries would have been the anticivil rights members of Congress. It would have livened things up, gotten a great amount of front-page publicity and possibly killed the bill.

One can understand the mood of those who were fresh from the front lines of those days, embittered by screaming police sirens headed for segregated lunch counters where blacks and whites were seated and waiting to be arrested. In those days going to jail for violating segregation required by law and/or custom was dangerous, because one could also get killed in the process. It was also exhilarating, because the participant could feel the joy of personally striking a blow for freedom of his fellow man. This also made good copy for the press and great action pictures for television. Many of the tasks in civil rights now require almost dogged attention and seldom do they get a headline or television coverage. Nevertheless, they are of crucial importance. Studying policies of the agencies that administer civil rights law, working for appropriations so that these agencies
may function effectively and seeking legislation that will strengthen or continue the life of civil rights programs, all present challenges to those who want to keep the nation moving forward in the field of human rights. It is not enough to blame one administration or to become discouraged over some losses experienced in this period. Again, from a vantage point of years in Washington and firsthand experience in all parts of the country, it is possible to assert that there is no civil rights problem now or in the foreseeable future that cannot be solved by dedication, hard work and a willingness to accept lawful strategies that will get results even though they may not get publicity.*

* ed.—This article was composed prior to the resignation of Attorney General Elliot Richardson; all references to Mr. Richardson or the office of the Attorney General should be read in this light.