



U.S. Department of Justice

John Roberts

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

October 13, 1982

MEMORANDUM

TO: William French Smith
Attorney General

FROM: Wm. Bradford Reynolds *WBR*
Assistant Attorney General
Civil Rights Division

Attached is a "briefing" paper summarizing the enforcement record of the Civil Rights Division over the past 21 months. I believe that this material, together with the attached two "Q&As", cover the major points of discussion for the October 18 meeting.

While I am scheduled to be in Williamsburg Thursday afternoon and Friday for the ABA Conference on Discrimination Law, I will be returning Friday night and available to prepare additional materials for you over the weekend if that should be necessary.

cc: Edward C. Schmults

CIVIL RIGHTS FACT SHEET
DEPARTMENT OF JUSTICE
January 20, 1981 to September 30, 1982

The President and the Attorney General have committed this Administration to the full and fair enforcement of the civil rights laws. These laws, which reach across a broad spectrum of American life, constitute the will of the Congress that discrimination on the basis of race, creed, color, national origin, sex and handicap shall be purged from our national life. These laws provide that where the evidence establishes a violation, the courts, at the instance of the Attorney General, will provide the required relief.

We in the Department of Justice are pledged to enforce these laws because, as a legal matter, it is the responsibility of the Executive Branch to see that the laws are faithfully executed. But, even more significantly, we accept this responsibility willingly, openly and publicly because we believe that these laws are right. We have no intention of seeking to repeal or dilute through non-enforcement any civil rights law that is now on the books.

At the same time, and in the same spirit, we will not hesitate to suggest and seek approval in court of ways to improve this national effort when the need for improvement has been demonstrated. Political opponents seize upon some of our innovations and claim that they belie our commitment and reveal a hidden agenda to sabotage the country's civil rights effort. In an attempt to buttress this alleged official conspiracy, critics have made various claims unrelated to our innovations; claims which are demonstrably false in whole or in major part. We can and frequently have demonstrated such errors and distortions. We earnestly call upon all those genuinely interested in civil rights enforcement to join us in the continuing search for the most effective legal tools to combat unlawful discrimination; at the same time, we urge that those who disagree with us cast their criticism in constructive terms that will serve to advance responsible public debate.

As The Wall Street Journal editorialized recently (October 4, 1982, p. 32):

In areas like the current busing debate, with the issues so complex and the law so manifestly muddy, it is immensely offensive to have the activists contend that there is one clear version of the law, that they own it, and that anyone disagreeing with them is a lawbreaker.
* * * Let's stop the name-calling and scandal-mongering and start having some sensible policy discussions.

The material which follows is designed to demonstrate, once again, that the Department of Justice, through its Civil Rights Division, has an effective, ongoing enforcement program in each of the fields of law which Congress has entrusted to it. It is hoped that such information -- some of which has received scant media attention -- will dispel once and for all the notion repeatedly floated by our critics, that this is an insensitive, do-nothing Administration which is content to preside over the erosion of hard won gains achieved during the last 25 years.

Our efforts to enforce these laws are set forth below in summary form.

Voting Rights

The level of enforcement of the Voting Rights Act is at an all-time high. We have:

- Entered objections to 85 discriminatory voting changes by covered jurisdictions, including statewide redistricting objections in 9 states, and thereby prevented dilution or impairment of voting rights of black and Hispanic voters.
- Reviewed a record of 15,850 voting changes contained in 3,777 separate submissions by covered jurisdictions.
- Successfully defended in court all contested objections including purposefully discriminatory proposals for new congressional districts in Georgia and Mississippi.

- ° Actively enforced the newly revised Section 2 in three cases, including one involving discriminatory redistricting of the Chicago City Council.
- ° Used federal examiners to register voters in two counties and federal observers to monitor election fairness, including a record number of 461, in Alabama 1982 primary.
- ° Established a new Section 2 Enforcement Unit in the Division's Voting Section to bring litigation to enforce that Section as revised in Congress.

School Desegregation

The Administration has continued the effort to require school districts which classify and assign students or teachers on the basis of race to adopt effective desegregation plans; to maximize effectiveness, we no longer seek a mandatory busing plan to achieve racial balance, but try to emphasize quality educational opportunities through use of magnet schools and other techniques. Our activities include the following:

- ° We are currently involved in 24 school cases that are in active litigation and have another 20 matters under investigation.
- ° So far we have conducted over 50 evidentiary hearings, negotiated 9 consent decrees, obtained 4 decrees after hearings, and are preparing 4 more cases for trial in the near future.
- ° Among our active or settled cases are 4 that were commenced at the very close of the prior administration; (Charleston, South Carolina; Marshall, Texas; Lima, Ohio; and Yonkers, New York); we independently reviewed each one and determined to proceed with the litigation. One has been settled (Marshall); two are involved in settlement negotiations (Charleston and Lima); and one is being prepared for trial (Yonkers).

- ° We have put in place successful desegregation plans emphasizing open enrollment and voluntary attendance at magnet schools rather than mandatory busing in Shreveport, Louisiana, Odessa, Texas and Chicago, Illinois.
- ° By consent decree, we succeeded in obtaining a desegregation plan for all of the state-supported colleges in Louisiana and are negotiating similar plans in Alabama and Mississippi.

Discrimination in Housing

Enforcement of the congressionally mandated right to be free from discrimination in the sale, rental or occupancy of housing on the basis of race, ethnicity or sex has continued to be a high priority.

- ° We are currently reviewing 59 housing discrimination cases for potential litigation; 3 cases have been tried; 2 new cases have been brought; and 8 cases settled by consent decrees.
- ° Indictments in 8 cases have been obtained charging the forceful interference with housing rights because of race.
- ° We successfully argued in the Supreme Court that "testers" be granted standing to challenge discrimination in the sale, rental or financing of housing.

Criminal Prosecutions

The investigation, indictment, trial and conviction of criminal violations of the civil rights laws are proceeding at a record pace. Cases in this area involve such offenses as racial violence, police brutality, Klan interference with individual civil rights, enslavement of migrant workers, and the like. The Department has since January, 1981:

- ° Carried out over 5700 FBI investigations resulting in 76 indictments, 8 informations, 55 trials and 4 re-trials during this period.

- ° Included among the above statistics are such cases of national importance that have been indicted and tried as: Joseph Paul Franklin convicted of killing Utah joggers and tried for shooting Vernon Jordan; INS employees tried for abusing Cuban refugees; Klansmen tried for interference with rights; migrant crew leaders and others charged for involuntary servitude.

Employment Discrimination

The Administration has vigorously continued to seek and obtain relief against public employers who discriminate on the basis of race, sex or national origin; rather than arbitrary quotas, relief in such cases now focuses on enhanced recruiting, nondiscriminatory hiring and promotion decisions and full relief to all actual victims.

- ° During the past 21 months the Division has been actively involved in 36 affirmative employment discrimination suits, including 9 new cases filed; 17 consent decrees have been obtained and there are ongoing 17 investigations of employment discrimination involving 28 state or local government agencies.
- ° We obtained the largest backpay award in the history of the Department in a suit against a public employer -- \$2,750,000 on behalf of 685 victims of discrimination. Another award of \$1,300,000 was obtained in the Nassau County, New York police case.
- ° Indications from our monitoring of already entered consent decrees -- decrees -- that do not depend on racial quotas -- are that they will be as successful as any quota plan.

Co-ordination and Review of Federal Regulations

The Department is successfully executing its highly technical job of issuing co-ordination regulations under various statutes and of co-ordinating and reviewing the efforts of federal agencies to adhere to them. In this regard, the Civil Rights Division has:

- ° Negotiated civil rights implementation plans with 23 separate agencies, requiring long-range objectives and interim steps.
- ° Required submission, reviewed and approved final section 504 (handicapped) regulations for 10 agencies.
- ° Drafted and distributed to these relevant agencies, a preliminary co-ordination regulation on implementation of section 504 in federally conducted programs.
- ° Worked further on review of all federal statutes and regulations for vestiges of sex discrimination, and forwarded to the Cabinet Council on Legal Policy the First Quarterly Report on that activity.
- ° Developed a draft co-ordination regulation establishing standards for enforcement of 65 civil rights statutes; draft is presently being reviewed at OMB and should be published for comment soon.

Rights of Institutionalized Persons

The Administration is actively engaged in enforcement activity under the Civil Rights of Institutionalized Persons Act (CRIPA) as well as continuing to participate actively in ongoing litigation.

Our efforts include:

- ° Nineteen CRIPA investigations involving 23 state and local institutions of every type covered by the Act.
- ° Active participation in 30 ongoing cases, including 2 new filings.
- ° In a landmark case involving the Texas prison system, we won a major decision in the Court of Appeals for the Fifth Circuit and have succeeded through negotiations in reaching a settlement on a significant portion of the case.

Appellate Activity

The Department has represented the interests of minorities and women in a large number of cases in the Supreme Court and Courts of Appeals.

- ° In the Supreme Court's 1981-82 term, we were involved on the merits in a record 16 civil rights cases.
- ° In 9 of these cases, significant protections against discriminatory behavior were upheld by the Supreme Court in response to our arguments. */
- ° In the courts of appeals, we have in the past 21 months successfully defended desegregation plans, criminal convictions, fair housing decrees, rights of the institutionalized and Department of Education requirements under Title IX (sex discrimination).

*/Crawford v. Bd. of Educ. of the City of Los Angeles, _____ U.S. _____ (1982), 50 U.S.L.W. 5016 (No. 81-38, June 30, 1982)

General Telephone Co. of the Southwest v. Falcon, _____ U.S. _____ (1982), 50 U.S.L.W. 4638 (No. 81-574, June 14, 1982)

Hathorn v. Lovorn, _____ U.S. _____ (1982), 50 U.S.L.W. 4664 (No. 81-451, June 15, 1982)

Havens Realty Corp. v. Coleman, _____ U.S. _____ (1982), 50 U.S.L.W. 4232 (No. 80-988, February 24, 1982)

North Haven Board of Education v. Bell, _____ U.S. _____ (1982), 50 U.S.L.W. 4501 (No. 80-986, May 17, 1982)

Plyler v. Doe, _____ U.S. _____ (1982), 50 U.S.L.W. 4650 (Nos. 80-1538 and 80-1934, June 15, 1982)

Polk Co. v. Dodson, _____ U.S. _____ (1981), 50 U.S.L.W. 4077 (No. 80-824, December 14, 1981)

Sumitomo Shoji America, Inc. v. Avigliano, _____ U.S. _____ (1982), 50 U.S.L.W. 4643 (Nos. 80-2070 and 81-24, June 15, 1982)

Zipes v. Trans World Airlines, Inc., _____ U.S. _____ (1982), 50 U.S.L.W. 4238 (Nos. 78-1545 and 80-951, February 24, 1982)

Similar successes at the jurisdictional stage include Blanding v. DuBose and Johnson v. Board of Education of the City of Chicago.

"Q & As"

Q. The claim is frequently made that the Reagan Administration is not only insensitive to civil rights issues but is seeking systematically to dismantle the law in this area in order to reverse the gains of the last 25 years. What is your comment?

A. Such charges are utterly inaccurate. The fact is that in every single area of civil rights enforcement entrusted to this Department, we have an active and effective enforcement program. We have made some significant changes -- principally in the area of mandatory busing and the use of racial quotas in employment discrimination cases. I appreciate that some persons interested in civil rights vigorously disagree with these approaches, and have raised questions as to these policies. Our concern though, is not that there is disagreement and healthy public debate, but that these changes which we propose as innovative approaches to improve and perfect civil rights enforcement, are used to support charges that we are engaged in retreat and rollback.

We categorically reject any such charges. Our record in civil rights enforcement is second to none. We have lodged a record number of objections under section 5 of the Voting Rights Act to plans that would have disadvantaged minority voters. Our 19 new investigations of institutions and faithful pursuit of ongoing institutional litigation demonstrate

continued concern for the plight of our most helpless citizens. Our efforts to prosecute those who violently interfere with the civil rights of others has surpassed that of any previous administration. There are similar examples in each of the areas for which we have responsibility.

Surely there must be a more responsible way for those concerned by particular policy changes to make their points and obtain their media attention than by trying to ruin public confidence in an outstanding institution.

Moreover, the authority exercised by the Civil Rights Division is significant and widespread abuse of it would be apparent. For example, if one were really to exercise that authority to injure rather than advance civil rights enforcement, the review of changes under the Voting Rights Act would be a prime opportunity. If discriminatory changes were approved, instead of objected to, those affected would have no legal recourse and, in the case of census redistricting, would be locked into a discriminatory system for ten years. But, of course, that has not been the experience. Objections have been entered to statewide redistricting plans in 9 states -- every state that is covered except Alaska. A total of 85 objections have been entered. The Baltimore Sun commended this administration's record by praising the Justice Department in a September 10, 1982 editorial as a "major force in preventing southern states from redrawing legislative lines in a way that discriminates against black voters."

The bottom line is, that while we stand ready to debate the law and the wisdom of our proposed changes; we wish to do so in a fair and honest contest, free from the ridiculous notion that we neither believe in nor want to enforce any civil rights legislation.

Q. On the merits of the policy changes you have proposed, won't they result in less school desegregation and less complete remedies for employment discrimination?

A. Not at all. In fact, I believe that once the new remedies are in place they will be more rather than less effective because the people involved will recognize them as fairer and better remedies. Let's look at each one separately.

- Mandatory busing has caused large numbers of students to leave public school systems subject to court decrees, thereby largely defeating the desegregation effort and jeopardizing the quality of public education due to the drain placed on the municipal tax base. Our alternative relief -- which emphasizes voluntary student transfers and magnet school programs -- is designed to attract students back to the school district in a manner that promotes greater desegregation and serves at the same time to enhance the educational component.

- Employment quotas have succeeded in adding only modest numbers of less qualified blacks to the workforce under an "affirmative action" label that stigmatizes the racially preferred employee and introduces undesirable tensions into employment relations. Our alternative relief emphasizes recruitment and training, and insists upon hiring on a nondiscriminatory basis; in addition, we pursue "make whole" relief for all identifiable victims of discrimination. As a result, employers are required to engage in a comprehensive outreach recruitment program designed to attract larger numbers of qualified applicants who can be brought into the workforce on the basis of individual talent and worth. Rather than hiring to satisfy rigid numerical requirements, we insist upon the hiring of qualified blacks without arbitrary numerical limitations.

Nor is this theoretical optimism. School desegregation plans are already in place under court orders we have negotiated in Shreveport, Louisiana, Odessa, Texas and Chicago, Illinois. They depend on open enrollment and voluntary transfers to magnet schools; none of them depend on mandatory busing remedies and I believe all of them will not only succeed in desegregating schools but will improve the quality of educational opportunities. Similarly, we have several consent decrees in place that do depend on special recruitment of women and minorities (including goals where appropriate), followed by fair, racially neutral hiring decisions to be monitored here and, if needed, by the court. The preliminary results show that in the New Hampshire state police case the approach is working just as well as racial quotas.