

SPECIAL REPORT
STUDENT NONVIOLENT COORDINATING COMMITTEE
6 Raymond Street, NW
Atlanta, Georgia

March 23, 1965

THE NEW VOTING BILL: RHETORIC AND REALITY

"This was the first nation in the history of the world to be founded with a purpose. The great phrases of that purpose still sound in every American heart, north and south: 'All men are created equal'--'Government by consent of the governed'--'Give me liberty or give me death.' And those are not just clever words and those are not just empty theories.....--to deny a man his hopes because of his color or race or his religion or the place of his birth--is not only to do injustice, it is to deny America and to dishonor the dead who gave their lives for American freedom...Every American citizen must have an equal right to vote. There is no reason which can excuse the denial of that right. There is no duty which weighs more heavily on us than the duty we have to insure that right."

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These were the words the President spoke on the night of March 15, before both Houses of Congress assembled in joint session. It was beautiful and effective rhetoric, and he was widely applauded for the sentiments he expressed. Newspapers and commentators throughout the country assured all Americans that, at last, the disfranchisement of Negroes (or any other Americans) was at an end. All would be well, for the President had spoken unequivocally, he had committed the U.S. Government without qualification to securing, once for all, the right of every American to vote.

Then on March 17, the President sent to Congress the bill he and his Attorney General, and other assistants had drafted. It was to be the bill which embodied, in legislative terms, the rhetoric of the President's March 15 address.

Along with the bill, the President sent a letter describing the bill. In the letter he said: "I now submit to you the legislation I discussed on Monday night. This legislation will help rid the nation of racial discrimination in every aspect of the electoral process and thereby ensure the right of all to vote." The President's attitude in the letter to the Congress seemed considerably less committed to the idea of total enfranchisement than had the

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rhetoric of his address. In his own words, the bill would only "help" rid the nation of discrimination.

The bill he sent along with the letter was much more attuned to the cautious tone of his letter, than it was to his address.

The help he proposed to provide with his bill applied only to 50% of the persons in any state or county of the nation. Under the terms of the bill, the old modes of discrimination could continue unabated and unrestricted in any area in which more than 50% of the voting age population had voted in the November, 1964, election.

Thus the bill, at the outset proposed only to enfranchise one half of the people in any area to which the bill applied. The President had said on March 15: "Every American citizen must have an equal right to vote." But the bill which followed that address said that only 50% of American citizens must have an equal right to vote. In short, the President, after having delivered a ringing declaration of the best principles of American democracy, and after having received nearly universal approval of that declaration from the American people, refused even to ask Congress to implement it with legislation.

Is this an unjustified indictment of the President? Is it based upon a misinterpretation of the President's bill?

The U.S. Attorney General, Nicolas Katzenbach, testified before the Constitutional Subcommittee of the House Judiciary Committee on March 18.

In his prepared statement for the Subcommittee, Katzenbach said time and again that existing voting rights legislation is totally inadequate: "The lesson is plain. The three present statutes have had only minimal effect. They have been too slow...What these Negro voting figures do represent is the inadequacy of the judicial process to deal effectively and expeditiously with a problem so deepseated and so complex....It has become routine to spend as much as 6,000 man-hours alone in analyzing the voting records in a single county...

"After two and a half years, the first round of litigation against discrimination in Selma ended, substantially in failure...despite our most vigorous efforts in the courts, there has been case after case of slow or ineffective relief...it is now beyond question that recalcitrance and intransigence on the part of state and local officials can defeat the operation of the most unequivocal civil rights legislation... The litigated cases amply demonstrate

the inadequacies of present statutes prohibiting voter intimidation."

Then Republican members of the Subcommittee pointed out that the 50% requirement in the bill would not help any Negroes in Southern counties in which there are sufficient whites registered to comprise 50% of the total voting age population. They also pointed out that the bill would have no effect in Southern states such as Arkansas, where no literacy test is in effect. Katzenbach readily agreed that these criticisms were true. He said that the bill would not eliminate all discrimination and that it was not designed to do so.

The bill, said the Attorney General, is designed to deal with "massive discrimination" in "hard-core" areas. Other, less "massive," less "hard-core" discrimination can be handled under existing legislation, the Attorney General told the Subcommittee.

One might wonder just what kind of discrimination the Attorney General thought the existing legislation would be effective against, since he had just described it as "...too slow... only minimal effect....inadequacy of the judicial process.. substantially in failure...slow or ineffective relief.... inadequacies of present statutes."

Furthermore, the Attorney General frankly admitted that the President's bill would provide no relief to New York's Puerto Ricans who had been disfranchised by the state English-language literacy test. But Katzenbach did think that the New York literacy test does prevent "many intelligent citizens" of Puerto Rican birth from voting.

President Johnson warned Katzenbach, when the latter was preparing the new voting bill: "I want this bill completely legal;" which means, of course, that it must be upheld as constitutional by the U.S. Supreme Court. University of Chicago Law Professor Philip Kurland explains that "At the time the Constitution was framed, it provided for only a limited franchise." Time Magazine points out that the "franchise in 1789 went almost exclusively to white males; most Negroes were slaves, with no rights at all, and it was to be 131 years before women would be permitted to vote...the effect of it all was the virtual disfranchisement of Negroes in the Deep South."

Of course, we all know that the existing legislation has not "handled" anything thus far. Injunctions have been piled on injunctions in the South. Still local officials disfranchise Negroes, and the U.S. Government appears powerless to prevent it, existing legislation notwithstanding.

Furthermore, if anything comes clear in the President's March 15 address, it is that each and every instance of racial discrimination is "massive," and that any area in which even a single person, white or Negro, is denied the right to vote is a "hard-core" area.

The President, as other Presidents before him, has lulled the militancy of the people with the stern commitment of his rhetoric. Now he is proceeding, as other Presidents before him, to press for legislation which is completely fraudulent when compared to those eloquent words.

This one thing arises clear and sure from the President's letter to the Congress, from the contents of his proposed voting law, and from the testimony of the Attorney General before the subcommittee. The President had no intention of inaltering the ideas of his address in the legislation he sent to Congress, and the Attorney General has no intention of using his enforcement power to make that rhetoric a reality.

Several leaders of civil rights organizations have expressed publicly their support of the President's legislation, and their confidence in his commitment to give the vote to American Negroes in the South. The kindest thing to be said about them is that they simply have not read the legislation, that they don't know about the President's letter and the Attorney General's testimony, and that they are incredibly naive about the nature of racism and politics in the United States.

These leaders, and everyone, black and white, who is genuinely concerned about civil rights in the United States, need to understand and accept one historical fact. Racism is deeply embedded in the United States Constitution, in the decisions of the United States Courts which have interpreted that Constitution, and in the structure of the United States Government which supposedly enforced the terms of the Constitution.

How else can it be explained that the "paper tiger" of the 14th and 15th Amendments have not been made a reality during the past one hundred years? How else explain why the might of the federal government has not, since Reconstruction, been used to protect the lives and property of black men in the South who wanted to vote? How else explain why dozens, black and white, could die in the South during recent years, trying to secure the vote, and federal troops could never be used to protect them?

How else explain why it suddenly becomes possible to send in troops when large numbers of high-ranking whites from the

North, and a few high-ranking Negroes, decide they need to make a fifty-mile hike from Selma to Montgomery. Is the right to walk more sacred than the right to vote? One does not get this from the President's fine words, but one certainly does get it from his actions. The federal troops can be used to force a few black children into two white schools, they can be used to protect some folk who want to walk peacefully and harmlessly along a federal highway. But when it comes to the real power to change things in this country--to the right to decide who will and who will not govern--the right of the federal government is nowhere to be found.

The whole history of the disfranchisement of Negroes in this country leads inescapably to one conclusion. The vote for Negroes in the South can only be secured by the Negroes and whites in the North who already have it. And this cannot be done by pressure on the President and the Congress to enact more civil rights legislation, because the whole racist structure of the enormously complex U.S. Government provides those who govern with too many "outs"--the constitutionalism and legalism which have always been used to explain why the U.S. Government must condone lynching, mass murder, systematic terrorism, and every other horror the South has been able to devise to keep Negroes in subjection.

But the issues are clearly drawn in the Challenge by the Mississippi Freedom Democratic Party to the 1964 Mississippi Congressional elections. The House of Representatives has clear, unequivocal, and unchallengeable constitutional authority to determine who shall and who shall not have seats in the House. No state can claim any right to decide this matter--no court, either state or federal can be appealed to with respect to this.

Therefore, the House of Representatives, by majority vote, can instruct the State of Mississippi, in detail, just how its Congressional elections must be conducted if the State of Mississippi wants its representatives seated in the House. The House can determine who shall and who shall not vote in such elections, under what conditions persons shall be registered to vote in those elections, and when and where the elections are to be conducted.

There is, or can be generated, sufficient northern support for the MFDP Challenge, that a majority of the members of the House, if they wish to retain their seats, will have no choice but to impose upon Mississippi such strictures with respect to Congressional elections, that the state will have to permit the "one man, one vote" principal to prevail if the state wants its representation in the House.

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And once this principle is established and validated with respect to Mississippi, other southern states will be on notice that the same strictures apply to their Congressional elections. If they do not heed this warning, every Congressional seat in the deep south can be subjected to the same treatment in the Congressional elections of 1966.

Once the racist southern control of the important Congressional committees is eliminated, many of the political factors which prevent enforcement of federal law in the South will be eliminated also.

Those factors which remain can and will be handled by Southern Congressmen, black and white, who must look to the approval of black constituencies to further their political careers.

Whether it is intended to do so or not, the introduction of voting rights legislation into the U.S. Congress at this time functions to divert attention from the MECP Challenge, and, if it is passed, it will erode support both in Congress and in the nation, from the Challenge. Yet, in realistic political terms, the final enfranchisement of Negroes in the South depends much more on the effective pursuit of the Challenge, than it does on the enactment of any new civil rights legislation.