

C. THE CIVIL RIGHTS ACT OF 1964

1. General

The Civil Rights Act of 1964 was originally sent to the Congress in June 1963 under the Kennedy Administration. Accordingly, most major policy decisions regarding the scope of the proposed statute were made during the Kennedy Administration. Most of the work done in the Department of Justice after November 1963 related to Congressional liaison and preparation of materials in support of the Administration bill. The bill was passed by the House of Representatives on February 10, 1964. The House-passed bill was amended and passed by the Senate on June 19, 1964 and the House approved the Senate bill on July 2, 1964. The bill was signed by President Johnson on July 2, 1964.

Set forth below are brief descriptions of several memoranda which reflect the type of work done by the Department of Justice while the bill was being debated in the House and Senate during the

the first six months of 1964. Following the description of these papers is a description of a set of materials prepared in the Department in support of Title VI of the 1964 Act, which prohibits discrimination in programs receiving federal financial assistance. Similar sets of materials were prepared and assembled for each of the other major titles of the Act.

Documents Concerning Congressional Liaison and Related Matters. In connection with the debates in the House and Senate on the 1964 Civil Rights bill, individuals in the Department were made responsible for handling Congressional liaison for individual titles of the proposed statute. For example, Burke Marshall, Assistant Attorney General for the Civil Rights Division, was made responsible for Title I of the bill, relating to voting rights, and Harold Reis, First Assistant for the Office of Legal Counsel, was made responsible for Title VI. Similarly, individual Senators and Congressman were assigned responsibility, as floor managers, for particular titles of the bill. 1/

1/ Memorandum entitled "Assignment of Titles", undated, authorship not indicated.

In January 1964, Gerson Kramer, an attorney in the Civil Division, met with Congressman Corman, a member of the House Judiciary Committee, to discuss Titles V and VI of the bill. The Congressman requested that the Department furnish him with detailed information concerning these titles of the bill, for which he was to act as floor manager during the House debates. 2/

On March 12, 1964, Burke Marshall, Assistant Attorney General for the Civil Rights Division, met with Senators Clark and Case concerning Titles VI and VII of the bill. Several questions arose at the meeting, and Mr. Marshall agreed to supply the Senators with memoranda from the Department dealing with each question. Mr. Marshall asked the Deputy Attorney General to assign responsibility for preparation of these memoranda. 3/

2/ Memorandum by Gerson B. Kramer, attorney, Civil Division, (transmittal slip dated 1/28/64).

3/ Memorandum from Burke Marshall, Assistant Attorney General, Civil Rights Division (3/12/64), to Deputy Attorney General Katzenbach.

On March 17, 1964, Senator Thurmond attacked the Civil Rights bill in the Senate, making a number of arguments against its enactment. A memorandum was prepared answering each of Senator Thurmond's criticisms of the bill. 4/

On March 29, 1964, Morris Wolff of Senator Cooper's office telephoned Harold Reis, First Assistant for the Office of Legal Counsel, and asked for information concerning the pace of school desegregation in the Deep South. The Senator wanted information useful to refute a claim that sufficient progress was being made in school desegregation and that therefore Title IV of the bill, which would authorize the Attorney General to initiate suits for school desegregation, was unnecessary. 5/

4/ Memorandum entitled "Attacks on the Civil Rights Bill Made by Senator Thurmond in Debate on March 17, 1964 and Answers Thereto", undated, authorship not indicated.

5/ Memorandum from Harold Reis, First Assistant, Office of Legal Counsel (3/29/64), to Harold Greene, Chief, Appeals and Research Section, Civil Rights Division.

On May 21, 1964, Harold Greene, Chief of the Appeals and Research Section of the Civil Rights Division, recommended to Burke Marshall, Assistant Attorney General for the Civil Rights Division, certain technical amendments for inclusion in the pending bill. 6/

During the debate in the Senate and prior to the introduction of the so-called "Mansfield-Dirksen substitute," Senator Dirksen raised a number of questions about various provisions of the House-passed bill. A memorandum was prepared discussing each of Senator Dirksen's criticisms. 7/

6/ Memorandum from Harold Greene, Chief Appeals and Research Section, Civil Rights Division (5/21/64), to Burke Marshall, Assistant Attorney General, Civil Rights Division.

7/ Memorandum entitled "Comments On Senator Dirksen's Observations", undated, authorship not indicated.

On May 25, 1964, Senators Dirksen, Mansfield, Humphrey, and Kuchel offered an amendment during the Senate debate in the form of a substitute bill. The substance of what came to be called the "Mansfield-Dirksen substitute" was ultimately enacted as the 1964 Act.

Following the introduction of this amended bill, a memorandum was prepared describing the changes it effected in the House-passed bill. 8/

2. Materials concerning Title VI (as illustrations of supporting materials for the 1964 Act). Title VI of the Civil Rights Act of 1964, as proposed by the Administration and as enacted, prohibits discrimination in programs receiving federal financial assistance. During the Congressional debates on the 1964 Act, the Department prepared and assembled extensive supporting materials concerning Title VI and other major titles of the proposed statute. The materials concerning Title VI are described below.

Department attorneys prepared a lengthy memorandum setting forth:

- (1) the need for Title VI
- (2) the history of legislative and executive action to eliminate discrimination in federally assisted programs, including the legislative history of Title VI as it was amended in the House of Representatives;

8/ Memorandum entitled "Memorandum Describing Changes in H.R. 7152 Embodied in Amendment No. 656 offered by Senators Dirksen, Mansfield, Humphrey and Kuchel," undated, authorship not indicated.

- (3) the power of Congress to require nondiscrimination as a condition of receiving federal financial assistance;
- (4) the manner in which Title VI would be implemented;
- (5) the scope of the prohibition against discrimination in federally-assisted programs;
- (6) a summary of objections voiced by opponents of Title VI;
- (7) significant questions frequently raised during Congressional debates relating to Title VI, and answers thereto. 9/

Prior to the House debate on Title VI, Representative Celler, Chairman of the House Judiciary Committee, asked the Department of Justice for a list of programs and activities receiving federal financial assistance that would be within the scope of Title VI of the Civil Rights bill. On December 2, 1963, Deputy Attorney General Katzenbach responded to Chairman Celler's request. 10/

9/ Memorandum relating to various aspects of Title VI of the Civil Rights Act of 1964, undated, authorship not indicated.

10/ Letter from Deputy Attorney General Katzenbach (12/2/63) to Congressman Emanuel Celler.

During debate in the House of Representatives, a number of amendments were offered to Title VI, mostly by its opponents. A memorandum was prepared listing each amendment considered by the House, the action taken thereon, and references to the Congressional Record to arguments made in opposition to these amendments during House debate. 11/ In addition, Federal statutes then on the books relating to particular programs in which discrimination was prohibited were compiled in a memorandum. 12/

The so-called "Mansfield-Dirksen substitute", previously described, contained several amendments to Title VI as passed by the House. Memoranda were prepared commenting on these amendments and other proposals suggested by Senator Dirksen. 13/

11/ Memorandum entitled "Possible Amendments", undated, authorship not indicated.

12/ Memorandum entitled "Provisions Of Existing Federal Assistance Statutes Relating to Racial Discrimination", undated, authorship not indicated.

13/ Memorandum entitled "Department Comments on Amendment 656 and Other Dirksen Proposals", undated, authorship not indicated.

In addition, the Department prepared separate memoranda on the following questions relating to Title VI:

- ✓ (1) Procedural safeguards pertaining to hearing under Title VI;
- ✓ (2) Pinpointing cutoffs under Title VI;
- ✓ (3) Effect of Title VI on direct federal payments;
- ✓ (4) Effect of Title VI on the Executive Order relating to housing;
- ✓ (5) Judicial review of administrative enforcement proceedings;
- (6) Examples of discriminatory uses of federal funds;
- (7) Applicability of Title VI to discrimination by beneficiaries of federal assistance;
- (8) "Separate but equal" laws;
- (9) Title VI and religious discrimination. ^{14/}

^{14/} Memoranda entitled as indicated in the text, undated, authorship not indicated.

On April 21, 1964, Senator Cooper wrote a letter to Attorney General Katzenbach raising a number of questions concerning Title VI. On April 24, 1964, the Attorney General replied to Senator Cooper, listing each of his questions and following each question with the Department's answer. 15/

During the Senate debates on the Civil Rights bill, Senator Pastore, floor manager for Title VI of the bill, suggested a number of changes in the Title. A memorandum was prepared discussing each of Senator Pastore's suggestions. 16/

15/ Letter from Attorney General Katzenbach (4/24/64) to Senator Cooper.

16/ Memorandum from Harold H. Greene, Chief, Appeals and Research Section, Civil Rights Division (5/12/64), to John Douglas, Assistant Attorney General, Civil Division.