STATEMENT OF

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Mr. Chairman and Members of the Subcommittee:

I appreciate the opportunity to discuss with you the experience of the U.S. Commission on Civil Rights during its more than 13 years. You have heard from distinguished representatives of other Commissions, such as the Commission on Law Enforcement and the Administration of Justice, the Commission on Civil Disorders, and the Commission on Violence. The Commission on Civil Rights shares many of the traits--and frustrations--of these Commissions.

We, like they, are restricted almost entirely to factfinding and reporting. We enforce no laws. We have no authority to redress individual grievances, no matter how serious. In short, our power is extremely limited.

Our membership is also similar to that of the other Commissions from which you have heard. We are non-partisan. Our members have achieved a degree of prominence in various fields. Service on the Commission is part-time. All of our members hold full-time occupations--two as attorneys and four as educators.

We share at least one other feature with other Commissions--perhaps the most disturbing one. Like other Commissions, we were established as a substitute for action. Several weeks ago, Senator Kennedy used an apt term to describe the danger involved in the proliferation of Commissions. The term was "cop-out." There were pressing and valid reasons for creating the Commission on Civil Rights, just as there were for creating other Commissions from which you have heard. Nevertheless, there is little doubt in my mind that creation of the Commission on Civil Rights in 1957 was, at least in part, a "cop-out." In fact, there were many at the time who were convinced that the Commission would perform a "whitewash" job and gloss over the many severe problems of civil rights denials that existed. The fact that we have not fulfilled the pessimistic expectation over the years is a tribute to the dedication and integrity of the men and women who have served as Commissioners and staff members.

Nonetheless, there is a dangerous logic that underlies creation of many Commissions. The unspoken reasoning is that the way to deal with an urgent issue upon which public attention is focused--in our case, civil rights--is to appoint a study Commission. By the time the appointed Commission has completed its study, the reasoning proceeds, the issue will have faded into the background and public attention will have shifted elsewhere. Indeed, all too often this has happened. There are too many issues and too many injustices

which have been allowed to smolder, and periodically explode, because we have failed to deal with them directly, but instead have appointed study Commissions.

The Commission on Civil Rights is similar to other Commissions, but it is also unique. Our uniqueness rests, in large part, on the fact that we continue to exist. We, like other Commissions, were established as a temporary Commission, originally scheduled to go out of business in two years. But Congress and the White House have not let the Commission expire--although extensions of the life of the Commission on Civil Rights sometimes have resembled the "Perils of Pauline." (One year, we were extended at the last minute as a rider to a peanut subsidy.) Nonetheless, after 13 years the Commission on Civil Rights is still here. Thus, unlike other Commissions, we fortunately have the attribute of continuity and are able to engage in the invaluable activity of follow-up. I will have more to say about follow-up in a few minutes.

Another difference is that while most study Commissions are established by the President and report to him alone, the Commission on Civil Rights was established by legislation and reports to the President and Congress. Thus in a real sense, the Commission owes a responsibility not only to the President, but also to the American people, through their duly elected legislative representatives.

One other unique aspect of the Commission on Civil Rights deserves mention. Most other Commissions, established by the President, are charged with a specific, often narrow, mandate. The mandate of the Commission on Civil Rights, however, is defined by the broad limits of the equal protection clause of the Constitution. While the Commission welcomes and honors requests from the President to undertake specific projects, most of our activities over the years have been determined by the Commission itself, based upon the Commission's knowledge and view of the areas that most urgently need exploration. Thus we need not wait for some outside force to recognize the urgency of a problem and call us into action. The Commission on Civil Rights is self-starting.

One example of this, about which I will say more later, is the Commission's October 1970 Report on "The Federal Civil Rights Enforcement Effort." No one asked us to do that report, but it clearly needed doing. The subject of that report--the failure of Federal civil rights enforcement--was perhaps sufficiently embarrassing to cause some to prefer that it had been left alone. The fact that the Commission on Civil Rights was in being, and possessed the authority to undertake projects of its own choosing, enabled us to make this important study and reveal, in detail, the impediments to effective civil rights enforcement.

I was asked to deal specifically today with the manner in which Commission reports and recommendations have or have not been translated into Federal policy. This, of course, is a key question. The answer to it determines, in large part, how well we are doing. The simple

answer is that we are doing pretty well, but not well enough. Like most simple answers, however, this one does not adequately take into account the role the Commission on Civil Rights plays and the standard by which we measure our success.

The Commission deals primarily with facts. This is our stock in trade--our tool and our weapon. We deal with facts for several purposes. First of all, we have a responsibility to inform the President, Congress, and the Nation about civil rights denials. This aspect of our fact-finding activity is based on the conviction that if the American people are fully aware of the facts concerning racial injustice, they will act to end it.

A second, and equally important, purpose of our fact-finding activity is documentation. Let me explain. When the Commission was created in 1957, one of our principal and specific mandates was to investigate denials of the right to vote. Everyone knew that such denials were occurring. The Commission's contribution in its early reports concerning this vital subject was not to inform people that the problem existed. Rather, our principal contribution was to document these denials in detail so that the existence and scope of the problem no longer would be a matter of conjecture or mere awareness, but of documented fact.

By the same token, the Commission's findings in its study of "The Federal Civil Rights Enforcement Effort" surprised no one who has had any experience with even a few of the various Federal agencies with civil rights responsibilities. The main contribution of the Report was not to tell people something they didn't know, but rather to document

the inadequacies of civil rights enforcement in detail and arm those concerned with the facts needed to confront the agencies.

Our reports usually contain not only facts, but also recommendations for legislative or executive action by the Federal Government. Our record, measured by the percentage of recommendations that have been adopted, is a fairly good one. We have prepared for the Subcommittee a list of all recommendations made by the Commission since its inception and the action taken in response. More than 60 percent of the Commission's recommendations have been adopted.

It would be a mistake, however, to judge the effectiveness of the Commission's efforts solely by this yardstick. The Commission is aware that many of its recommendations, when issued, are unlikely to be immediately adopted. In a narrow sense, some of our recommendations have been politically unrealistic. The Commission, however, traditionally has taken a broad view of political reality. We have not considered it our function to assess the immediate political winds and then adjust our findings and recommendations accordingly. To a large extent, our recommendations represent ideas whose times have not yet come. The Commission believes, however, that the time for each of our recommendations will come. A principal purpose of making what some believe are politically unrealistic recommendations is to bring these recommendations into the arena of public dialogue, with the conviction that this will hasten the time for adoption.

Experience has shown that the Commission's view is not as unwordly as some would think. For example, in 1959 the Commission, after having documented the extent of voting rights denials, recommended a system of Federal voting registrars. This recommendation, dismissed by many at

the time as politically unrealistic, became the basis for the Voting Rights Act of 1965, and that Act became the most effective civil rights law the Nation ever enacted. A series of Commission recommendations made in the late 1950s and early 1960s resulted in Title VI of the Civil Rights Act of 1964, prohibiting discrimination in federally assisted programs. Thus the Commission's recommendations in those two important instances projected into public dialogue ideas whose time eventually did come.

The Commission's 1967 report on "Racial Isolation in the Public Schools," undertaken at the request of President Johnson, provides an example of an idea whose time has not yet come. In that report, the Commission documented the appalling extent of school segregation, North as well as South. We recommended a national standard of school integration to eliminate the damaging effects of racial isolation upon both white and black children. Although the time for that idea has not yet arrived, there are signs that it is fast approaching.

I noted earlier that our Commission, like other Commissions, is virtually powerless. After completing an exhaustive study of a key civil rights problem and documenting denials of basic rights, the Commission has no power to take action to right the wrongs. For this, we are entirely dependent upon others. Nor does the Commission play a very active role in the process by which our recommendations are implemented. We cannot lobby for legislation, not even for legislation concerning our own existence.

The only power we have, and the only pressure we can exert, is the pressure of public opinion, stirred to action by the facts we present. Here, the continuity of the Commission on Civil Rights is highly important. Most other Commissions cease to exist shortly after their final reports are issued. But the Commission on Civil Rights has remained in being, available to follow up on what we have found and recommended.

Follow-up has become an increasingly important part of the Commission's activities. It has not always been so. During its earlier years, the Commission acted along the lines of a temporary agency, issuing reports at two-year intervals and then moving on to something else, with little provision for follow-up. In recent years, this has been entirely changed. A foremost example of the change is our report on "The Federal Civil Rights Enforcement Effort." This experience illustrates several aspects of the Commission that set it apart from the more traditional temporary study Commissions.

First, as I noted earlier, the idea for the report was generated not by an outside request, but from within the Commission itself.

Second, the basis for undertaking the study was the knowledge and experience the Commission had built up over the years. Through our investigations and our continuing relationships with Federal departments and agencies, we knew that civil rights laws were not working very well. We determined to find out what was wrong with the way Federal agencies were carrying out their responsibilities under the civil rights laws enacted during the 1960s.

Third, and most important, was the follow-up ingredient. Having informed the public in October 1970 of the inadequacies of Federal civil rights enforcement, the Commission was concerned that the heat that was put on the Federal bureaucracy would be allowed to cool. We decided we would continue to use the principal weapon at our command, public reporting, to maintain the pressure for change on Federal agencies. We have had sufficient experience with Federal bureaucracies to know their enormous resistance to any change, particularly a change so drastic as that involved in civil rights enforcement. Bureaucracy's inclination is to weather the few days of embarrassment that a study such as our Enforcement Report might cause and then continue to do business as usual. The Commission determined that it would do everything possible not to let this happen.

In February 1971, four months after the original Report had been issued, we sent detailed questionnaires to Federal departments and agencies to find out what they had done in response to the Report's findings and recommendations. What we learned was both revealing and distressing, fully confirming the necessity for our follow-up. Until our questionnaires were sent out, virtually nothing had changed. No major recommendation of the Commission--not one--had been adopted.

However, following receipt of our questionnaires and our notice that we planned to report publicly on what agencies had done, there was a flurry of activity. The month of March was a very busy month for civil rights in the Federal bureaucracy. In part, through the

active intervention of Leonard Garment, Special Consultant to the President, and George Shultz, Director of the Office of Management and Budget, a number of steps were taken to implement the Commission's recommendations. The two most important steps--establishment of a permanent Committee on Civil Rights within the President's Council on Domestic Affairs and the assumption of an active civil rights role by the Office of Management and Budget--were directly related to agencies and activities with which Mr. Garment and Mr. Shultz have close connections.

The sum total of action taken so far--which we outlined in our May 10 followup report, "Seven Months Later"--exists largely on paper. There are promises of action, to be fulfilled later. The next step for the Commission, in addition to prodding other agencies to move off the dime, will be to assess implementation of these promises and proposals. For this purpose, we plan a second followup report--"One Year Later"--which will be issued in the Fall.

The experience we have had with our Enforcement Report and the activities to follow up on it has been unique for study Commissions generally, and even for the Commission on Civil Rights. The contrast lies in the fact that steps have been taken relatively quickly.

Perhaps the most dramatic example of the effectiveness of the Commission as an instrument for rapid change in Federal policy is the experience over a one-month period, culminating in our three and a half day hearing held last week. The focus of the Commission's attention during that period was housing.

On May 10, the Commission issued its "Seven Months Later" Report, in which we found housing to be the principal area in which Federal agencies had retreated in enforcing civil rights laws. The Commission singled out the Department of Housing and Urban Development as the agency responsible.

On June 10, the Commission released its report on "Home Ownership for Lower Income Families," in which we pointed out that the great promise of Section 235 program for opening up housing opportunities had not been fulfilled. We called attention to the fact that the program's failure was the fault of HUD and its constituent agency, FHA.

Four days later, the Commission's hearings on suburban access commenced. HUD Secretary George Romney, Attorney General John Mitchell, and GSA Administrator Robert Kunzig testified.

I am sure that the members of this Subcommittee are familiar with the President's Statement on Federal equal housing opportunity policy, issued on June 11, and the press conference held on June 14, at which HUD Secretary Romney, Attorney General Mitchell, and GSA Administrator Kunzig, announced a strengthening in their fair housing activities. These include new litigation and new site selection and affirmative marketing policies.

There is little question in my mind that the Commission's activities not only served to lay the foundation for these important announcements, but also helped stimulate their issuance. I must add, however, that despite the fact that these newly announced policies represent potential

progress, the Commission is far from satisfied that the Federal Government is doing all that it can and should to erase the blight of segregated housing.

Some of our past reports and recommendations, like those of other Commissions, have been controversial and have not resulted in quick action. They have, however, been the cause of considerable public debate. We welcome this, as I am sure members of other study Commissions do.

All too often, however, the response has been one of silence. This is the worst possible response, for it is incapable of producing anything constructive. For the members of Commissions themselves, who have labored hard and in good faith to deal creatively with a national problem, the effect is likely to be one of frustration, of somehow having been used for an ignoble purpose. For the public, the effect is a deadening of interest and a suppression of open debate on issues of national importance.

In your statement several weeks ago, Mr. Chairman, you suggested the possibility of instituting a mechanism that would require a considered and timely response from Government officials to the reports and recommendations of study Commissions. I believe that such a mechanism is desirable. Most Commissions go out of business once their reports are issued. Their members are helpless, except in individual capacities, to do anything toward implementing their findings and recommendations, or even in getting them discussed.

The Commission on Civil Rights, despite the element of continuity, also has limited power in this respect. It is difficult to conduct a dialogue when one of the parties is not participating. Thus the principal value of a mechanism of the sort you have recommended would be to assure open discussion of matters that should be discussed openly.

Reports of many study Commissions have dealt with matters of urgent national importance--civil disorders that have been plaguing the country, the causes and prevention of violence, the unrest on college campuses, problems of law enforcement and the administration of justice. The men and women on these Commissions have been dedicated and hard-working. Their reports have been eminently worthy of continuing public attention and discussion. We simply cannot permit their labors to be cancelled out by silence.

There are some who fear that public debate of these issues will divide the country and breed greater discord. Neither I as an individual, nor the Commission as an institution, shares this pessimistic view. We are convinced that decisions on the great domestic issues of race and social injustice facing the Nation today will be made sensibly and compassionately if the people are sufficiently informed. In short, we do not look upon public debate of these issues as a divisive force, but as a healthy means by which the American people and their duly elected representatives can understand and deal effectively with the towering issues facing us.

Thank you, Mr. Chairman. I shall be happy to try to answer any questions you might have.