

Mitchell Rebuked By Court

Panel in Miss. Orders Action On Voting Law

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A three-judge panel in Mississippi declared yesterday that Attorney General John N. Mitchell had taken a "Pilate-like," "obtuse" and illegal course in his enforcement of the Federal Voting Rights Act.

In a unanimous opinion, the judges of the federal district court in Biloxi held that Mitchell failed to decide whether the state's new "open primary" law had a detrimental effect upon black voting power in Mississippi, as charged by civil rights lawyers.

The court ruled that the primary law—nicknamed the "Evers law" because of its impact on the candidacy of Negro leader Charles Evers for governor—must not go into effect until Mitchell reexamines it and remedies his "obtuse, patronizing failure" to give a clear ruling on the law's validity.

The Federal Voting Rights Act freezes the election laws and practices of Mississippi, Alabama, Georgia, Louisiana, Virginia, South Carolina and parts of North Carolina. Any changes must be approved either by a special three-judge federal court in Washington or by the attorney general.

Mitchell unsuccessfully urged Congress to drop this section of the 1965 law when it was extended last year. Civil rights leaders called the review power an indispensable tool for blocking sudden election changes that keep blacks from voting.

Last Sept. 21 Mitchell, saying the facts "do not conclusively establish" a racial purpose or effect in the new state law, said he was "not prepared at this time, to make "any determination" about their validity.

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Since then Mitchell has been criticized by the U.S. Civil Rights Commission and congressional leaders, including Senate Minority Leader Hugh Scott (R-Pa.), for failing to make the state prove its case. If Mitchell was undecided, they contended, the federal act required him to disapprove the new Mississippi law because the state had failed to meet its burden of proof.

Yesterday's action arose from a lawsuit by Evers, supported by the Lawyers Committee for Civil Rights Under Law, claiming that the state law was both unconstitutional and, because of its conflict with the federal law, illegal.

District Judges Dan M. Russell Jr., Russell L. Nixon Jr. (no relation to the President) and Charles Clark, a member of the Fifth U.S. Circuit Court of Appeals, said that Mitchell

could not wash his hands of the dispute the way he did.

Burden of Proof

They agreed with Lawyers Committee counsel Frank Parker that the state, when submitting the new law to Mitchell, carries the same burden of proof that it would if it sought a court judgment on the law.

In their unsigned opinion, the judges said Mississippi's "humiliation in bringing the law to Washington for bureaucratic approval" was compounded, rather than soothed, by what they called "an obtuse, patronizing failure by federal government officials to discharge the duties Congress placed upon them."

"The problem for Mississippi," they added, "is that, having done what Congress humbled her to do, she did not receive a letter of approval, or a disapproval, or mere failure to interpose an objection within a given length of time. Rather, she received a lengthy Pilate-like response, in which the attorney general recognized he had the very duty we declare the statute imposed upon him, bemoaned congress' failure . . . to leave the matter to the courts, declared that he was not prepared to make the determinations required by the act, and made no literal objections. We cannot perform his duties for him."

The "Evers law" was enacted following the scare Evers gave Mississippi political leaders in nearly winning a 1968 congressional election as an independent candidate.

The law would scrap party primaries and require all candidates to run in a single "open" election this fall, with a run-off if no candidate achieves a majority. This was a device to make it impossible for a black candidate to win, the Lawyers Committee said.