State of Civil Rights 1957 - 1983:

The Final Report of the U.S. Commission on Civil Rights

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United States Commission on Civil Rights

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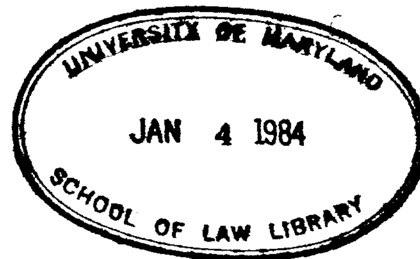

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U.S. COMMISSION ON CIVIL RIGHTS

The U.S. Commission on Civil Rights is a temporary, independent, bipartisan agency established by Congress in 1957 and directed to:

Investigate complaints alleging that citizens are being deprived of their right to vote by reason of their race, color, religion, sex, age, handicap,or national origin, or by reason of fraudulent practices;

Study and collect information concerning legal developments constituting discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, handicap, or national origin, or in the administration of justice;

Appraise Federal laws and policies with respect to discrimination or the denial of equal protection of the laws because of race, color, religion, sex, age, handicap, or national origin, or in the administration of justice;

Serve as a national clearinghouse for information in respect to discrimination or denials of equal protection of the laws because of race, color, religion, sex, age, handicap, or national origin;

Submit reports, findings, and recommendations to the President and the Congress.

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INTRODUCTION

The U.S. Commission on Civil Rights came into being in 1957 three years after the momentous Supreme Court decision in Brown v. Board of Education, 1/ which struck down the prevailing doctrine of "separate but equal" which had enabled States to enact discriminatory laws. Widespread southern resistance to the requirements of Brown and growing pressure for black political, social, and economic enfranchisement signaled to the executive and legislative branches of the Federal Government that additional action was needed at the Federal level. Among many acts that were to follow was the creation of the U.S. Commission on Civil Rights as an independent, six-member, bipartisan, temporary agency 2/ charged among other responsibilities with:

- investigating allegations of denials of the right to vote by reason of race, color, national origin, or religion;
- studying and collecting information concerning legal developments constituting denial of equal protection of the laws; and

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1/ 347 U.S. 483 (1954)

2/ 42 U.S.C. § 1975-1975e. (1976 and Supp. V 1981).

- appraising the laws and policies of the Federal Government with respect to equal protection of the laws.

The Commission was not empowered to enforce laws, administer programs, or make grants. However, the agency was given wide latitude to examine the difficult and complex problems of deprivation of civil rights and discrimination in this Nation and to report its findings and recommendations to the President and the Congress.

Established in the Executive Branch for 2 years, the Commission on Civil Rights was expected to investigate denials of civil rights and to report its findings in 1959. Although the report was filed, it was clear that the Commission's work had only begun. It was reauthorized in 1960, 1964, 1967, 1970, 1972, and 1978.

Twice the Commission's jurisdiction was expanded by Congress to address bases on which individuals were recognized more recently as also suffering discrimination--in 1972 sex was added, and in 1978, age and handicap were included. 3/ Throughout its existence the mission of the agency has remained clear: to prod the conscience of America in matters of civil

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3/ Pub. L. No. 92-496, 86 Stat. 813 (1972) (codified at 42 U.S.C. § 1975c(a) (1976 & Supp. V 1981); Pub. L. No. 95-444, 92 Stat. 1067 (1978) (codified at 42 U.S.C. § 1975c(a) (Supp. V 1981).

rights, to recommend new laws and procedures to help guarantee equal rights for all, and to monitor, assess, and report on Federal enforcement of civil rights law.

Upon the last extension of the life of the Commission (1978), the Congress added another amendment to the enabling legislation that required the Commission to establish "at least one advisory committee within each State composed of citizens of that State." 4/ State advisory committees to the Commision existed from its establishment, providing a much needed Federal presence on civil rights issues across the land. This mandate, however, served to emphasize the importance of a unique network of citizen advisors who have served in each of the States and the District of Columbia, and in their local communities, as the eyes and ears of the Commission. Currently over 800 strong, these unpaid volunteers have functioned over the years to keep the Commission abreast of how Federal laws and policies pertaining to civil rights affect citizens in the course of their daily lives. In the process of advising the Commission, the 51 State Advisory Committees have produced over 350 reports based on studies related to the full range of subject areas out-

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4/ 42 U.S.C. 1975d.

lined in this report. These reports have aided the Commission in its program planning efforts, contributed to the development of Commission recommendations, expanded Commission awareness of problems faced in real-life situations, and have led to the resolution of countless civil rights issues at State and local levels.

One of the duties of the Commission is the issuance of its final report to the President and the Congress. A summation of the many accomplishments of the Commission and an assessment of the progress achieved in civil rights in the past 26 years is appropriate at this time. Throughout its life, the Commission has examined a broad range of areas in which civil rights violations were occurring, including voting, education, housing, administration of justice, and employment, with an emphasis on the Federal role. This report addresses these areas, highlighting the major civil rights laws that have been enacted, and evaluating their effectiveness. The report focuses on areas in which discrimination is a continuing problem and concludes that over the past 26 years significant strides have been made in eradicating discrimination. Nevertheless, additional legislation and stronger enforcement of those laws already enacted are both needed if, within our lifetime, this Nation is to provide equal justice for all.

VOTING RIGHTS

The right to vote is fundamental in a democracy. It allows citizens, through election of local, State, and national officials, to influence decisions that affect economic, educational, and social well being. Because of the critical role of voting in this society, denial of the right to vote has been a major concern of the U.S. Commission on Civil Rights since its inception. The Commission has taken a lead role in investigating and documenting voting discrimination and in recommending ways to end it. In fact, many of the Commission's recommendations have been enacted by Congress and have resulted in significant progress in minority political participation.

The Voting Rights Act of 1965

The 15th amendment to the U.S. Constitution guaranteeing the right to vote regardless of race or color was enacted in 1870, 5/ but voting discrimination did not end with its enactment. Pursuant to its enforcement powers under section 2 of that amendment, 6/ Congress passed voting rights legislation four times before 1965; nevertheless,

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5/ U.S. Const. amend. XV, §1.

6/ Id. §2.

discrimination continued unabated. 7/ Based in part on Commission reports documenting the need for stronger legislation to end voting discrimination, Congress passed the Voting Rights Act of 1965. 8/ The act, which provides administrative as well as stronger judicial remedies to eliminate voting discrimination, is a result of almost a century of frustrated attempts to implement an effective remedy for ending discriminatory voting practices.

The Voting Rights Act contains general provisions, which apply nationwide, 9/ and special provisions, which apply to a limited number of States and political subdivisions. The heart of the act is its special provisions, which include preclearance of proposed voting practices or procedures with

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7/ Act of May 31, 1870, ch. 114, 16 Stat. 140; Civil Rights Act of 1957, Pub. L. No. 85-315, §131, 71 Stat. 637; Civil Rights Act of 1960, Pub. L. No. 86-449, §601, 74 Stat. 90; Civil Rights Act of 1964, Pub. L. No. 88-352, §101, 78 Stat. 241. The current version of these acts is codified at 42 U.S.C. §1971 (1976).

8/ Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 437 (codified at 42 U.S.C. §§1971, 1973 to 1973bb-1 (1976); Pub. L. No. 97-205, 96 Stat. 131.

9/ The general provisions prohibit voting discrimination on a national basis, abolish durational residency requirements as a precondition to voting for President and Vice President, allow private parties to file suit to enforce the voting guarantees of the 14th and 15th amendments, and place a permanent ban on the use of tests or devices as a precondition to registering or voting.

the U.S. Attorney General or the U.S. District Court for the District of Columbia and the use of Federal examiners and observers in jurisdictions subject to preclearance. Jurisdictions covered by the special provisions had manifested voting discrimination through the manipulation of or purposeful enactment of tests or devices as a prerequisite to registering or voting. Such discrimination had resulted in exceptionally low registration and voter turnout by minorities in these jurisdictions. Nine States and political subdivisions in 12 others are covered by the special provisions. 10/

Since 1965 the Voting Rights Act has been extended three times--1970, 1975, and 1982--based in part on evidence presented by the U.S. Commission on Civil Rights that voting discrimination in the covered jurisdictions continued to exist. Each time the act was extended, it also was strengthened in significant ways. In 1970, for example, Congress placed a temporary, national ban on the use of literacy tests as a precondition to registering or voting, which was made permanent in 1975.

In 1975 the Commission presented evidence showing that minority language groups were victims of the same types of

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10/ The special provisions cover the entire States of Alabama, Alaska, Arizona, Georgia, Louisiana, Mississippi, South Carolina, Texas, and Virginia.

discriminatory practices--intimidation, harassment, and racial gerrymandering--used to prevent blacks from registering and voting. As a result, a coverage formula was devised making jurisdictions that had engaged in such widespread discrimination against language minorities subject to the preclearance provision as well as to the other special provisions. Based on findings that the use of English-only elections prevents many minority language groups from participating in the political process, another coverage formula was devised requiring States and political subdivisions with a certain percentage of minority language residents to provide election materials in the applicable minority language as well as in English.

In 1982, Congress extended the special provisions of the Voting Rights Act for an additional 25 years, except the minority language provisions, which were extended for an additional 10 years. More amendments were made in 1982 than on any previous occasion, further strengthening and expanding the voting rights of all Americans.

Significantly, Congress amended section 2 of the Voting Rights Act to give minorities an effective means of challenging alleged discriminatory voting practices and procedures. Section 2 is a nationwide provision that prohibits the use of voting practices or procedures that discriminate against minorities. Lawsuits under this section can be brought either by the U.S. Attorney General or by private citizens. It is

used primarily in challenging alleged discriminatory voting practices in jurisdictions not covered by the special provisions or in covered jurisdictions in which the alleged discriminatory practice occurred before the effective date of coverage under the special provisions.

A 1980 plurality decision of the Supreme Court of the United States, City of Mobile v. Bolden, 11/ had made it difficult for minorities to prove that certain voting practices, such as the use of at-large election systems and redistricting, diluted their voting strength, in violation of the 14th and 15th amendments and section 2 of the Voting Rights Act. The Bolden plurality decision, which involved the constitutionality of an at-large election system, held that proof of intent to discriminate must be shown under the 14th and 15th amendments and that such proof also must be shown under section 2 of the Voting Rights Act. 12/ An earlier decision of the U. S. Supreme Court, White v. Regester, 13/ only required evidence that the voting practice produced a discriminatory result. Pursuant to its power to enact

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11/ 446 U.S. 55 (1980).

12/ Id. at 65, 67. The opinion asserts that section 2 of the Voting Rights Act simply restates constitutional prohibitions. Id. at 60-61.

13/ 412 U.S. 755, 766-67 (1973).

legislation to enforce the guarantees of the 15th Amendment, Congress amended section 2 to conform to the White v. Regester standard for proving voting discrimination. That section now prohibits the use of voting practices and procedures that have a discriminatory result.

The 1982 amendments also provided fair and objective criteria by which a jurisdiction can remove itself from the special provisions (bailout). In general, to bail out, a jurisdiction must show a 10-year record of good behavior. Evidence supporting a record of good behavior includes proof that the jurisdiction has complied with section 5, that there has been no judicial finding of discrimination, and that it has taken positive steps to increase minority participation in the political process.

In addition to amending the special provisions of the act in 1982, Congress also extended voting protections to voters who are blind, disabled, or unable to read or write. It passed a new provision stating that such voters could be assisted in voting by anyone of their choice, except their employer or union representative. This amendment facilitates voting participation by many citizens previously ignored.

Progress Under the Voting Rights Act

The Voting Rights Act of 1965 is considered to be the most effective civil rights legislation ever enacted. The results

of the act are most evident in increased registration and voting and in the increase in the number of minority elected officials.

Registration

In 1965 registration rates for blacks were very low. In Alabama, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Virginia, black registration ranged from 7 percent in Mississippi to 47 percent in North Carolina. In all, only 29 percent of the black voting age population or 994,000 blacks in these States was registered.

Bureau of the Census data, most recently available for November 1980, show substantial increases in black registration, with no statewide black registration rate lower than 49 percent and several above 60 percent. In all, 60 percent of the black voting age population in these States was registered in 1980. This is an increase of almost 2,000,000 black registrants since 1965.

Registration rates for Hispanics also have been historically low. Although reliable pre-1975 data are not available, Bureau of the Census data show that since passage of the minority language amendments to the Voting Rights Act in 1975, Hispanic registration has increased. From 1976 to 1980, there were 500,000 new Hispanic registrants, an increase of almost 20 percent. Bureau of the Census data for November 1980

show Hispanic registration rates in Arizona, California, Colorado, New Mexico, New York, and Texas ranging from 27 percent in California to 65 percent in New Mexico. In all, over 2,100,000 Hispanics were registered in these States in 1980.

Voting

The substantial increase in minority registration since passage of the Voting Rights Act also has been reflected in increased voting by minorities. Overall voting turnout in Presidential elections in the seven Southern States wholly or partially covered by the Voting Rights Act of 1965 has risen sharply, largely due to significant increases in black voting. In 1964 overall voting turnout in these States ranged from 10 percent to 28 percent below the national average. By 1980 two of these States were above the national average while the others ranged from 3 percent to 8 percent below the average.

The increase in Hispanic registration since the passage of the minority language amendments to the Voting Rights Act in 1975 also has been reflected in increased Hispanic voting. From 1976 to 1980, the number of Hispanic voters increased by more than 350,000. Bureau of the Census data for November 1980 show that Hispanic voter turnout in Arizona, California, Colorado, New Mexico, New York, and Texas ranged from 23 percent in California to 56 percent in New Mexico. In all, over 1,700,000 Hispanics voted in these States in 1980.

Minority Elected Officials

Increased minority registration and voting also has resulted in growing numbers of minority elected officials. Before 1965, there were fewer than 100 blacks elected to public office in the seven Southern States partially or wholly subject to the special provisions of the Voting Rights Act. In 1968, 156 blacks held public office in these States. By July 1980 the number had increased to 2,042.

Since the passage of the minority language amendments in 1975, Hispanic elected officials also have increased in number. For example, in 1970, there were 59 Hispanic State legislators in the States of Arizona, California, Colorado, New Mexico, and Texas. In 1982 there were 82 Hispanic State legislators in these States. 14/

Voting Rights Enforcement

The Department of Justice, which is responsible for enforcing the Voting Rights Act, has protected the voting rights of minority citizens in several ways. Since passage of the act, the Department's Voting Section, which is within the

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14/ The entire States of Arizona and Texas and political subdivisions in California and Colorado are subject to section 5 preclearance as well as to the minority language provisions, which require jurisdictions to give voting assistance in the applicable minority language as well as in English. Jurisdictions in New Mexico are covered by the minority language provisions.

Civil Rights Division, has used Federal examiners to list over 120,000 minorities as eligible to register and has sent over 5,000 observers to covered counties to ensure nondiscrimination in voting.

The Department has sought to enforce the Voting Rights Act in other significant ways. It has obtained consent decrees in two cases to enforce the minority language provisions of the act, one in San Francisco, California, 15/ and the other in San Juan, New Mexico. 16/ Further, the Department has participated in eight lawsuits filed under the amended section 2 involving challenges to election systems and redistricting plans and has created a new section 2 unit within the Voting Section to enhance its litigation activity.

Current Issues

Although the Department has done much to enforce the Voting Rights Act, its task is not completed. Some jurisdictions, for example, fail to submit changes in voting practices or procedures, as required by section 5, and others implement changes despite section 5 objections. The Commission continues to recommend, as it did in its 1981 report, The Voting Rights Act: Unfulfilled Goals, that the Department of Justice develop

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15/ U.S. v. City and County of San Francisco, No. C-78 2521 CFP (N.D. Cal., May 8, 1980) (consent decree).

16/ U.S. v. County of San Juan, New Mexico, No. 79-508 JB (D. N. Mex. Apr. 8, 1980) (consent decree).

a procedure for systematically identifying jurisdictions that fail to submit changes in voting practices or procedures or that implement changes over the Department's objections.

The Department also has not fully enforced the minority language provisions of the act, which is the responsibility of the U.S. attorneys located in States where the provisions apply. In its 1981 report on the Voting Rights Act, the Commission found that U.S. attorneys are not taking steps to ensure that jurisdictions comply with these provisions. The Commission found that none of the eight U.S. attorneys interviewed had developed any procedures for ensuring that jurisdictions comply with the minority language provisions and only three had engaged in any activity to enforce those provisions themselves. In its 1981 report, the Commission recommended adoption of a procedure to strengthen significantly the minority language provisions of the Voting Rights Act:

> The Attorney General should provide for effective enforcement of the minority language provisions in jurisdictions subject to section 203 [the minority language provisions] of the Voting Rights Act by requiring U.S. attorneys to monitor regularly compliance with the provisions in every section 203 jurisdiction in their districts.

The Commission continues to believe that this recommendation should be implemented.

Finally, while the Department has engaged in major litigation to enforce both section 2 and the minority language provisions, more litigation activity is warranted. The eight

section 2 cases in which the Department has been involved affect jurisdictions in only five States. Yet, section 2 is a nationwide provision covering all 50 States. Similarly, although jurisdictions in 23 States are covered by the minority language provisions, the Department has participated in only two lawsuits to enforce these provisions. In light of the geographical scope of section 2 and the minority language provisions, the Commission recommends that the Department of Justice increase its litigation activity to enforce the guarantees of the 15th amendment.

Conclusion

Since 1870 Congress has expressed its commitment to full voting rights for all Americans. As part of its commitment to end discrimination in voting, Congress gave the U.S. Commission on Civil Rights a specific mandate to investigate complaints alleging denial of the right to vote "by reason of race, color, religion, age, sex, handicap or national origin...." Under that mandate, the Commission, since 1959, has issued reports, held hearings, and testified before Congress on the problems that minority citizens encounter in their efforts to gain full participation in the political process. In fact, during congressional hearings on the proposed Voting Rights Act of 1965 as well as hearings on subsequent amendments to the act,

Congress has relied on Commission reports in analyzing the types of discriminatory voting practices that minorities encountered and in fashioning the remedies for such discrimination.

Recent Commission reports have noted significant gains in minority political participation since passage of the Voting Rights Act. Section 5 of the act has prevented covered jurisdictions from using voting practices or procedures that would restrict or deny minority access to the political process; the appointment of Federal examiners and observers has allowed minorities to exercise their right to register and vote; and provisions for bilingual election materials have eliminated language barriers to political participation. The Commission continues to believe that stronger enforcement of the Voting Rights Act is needed to enable all citizens to exercise their fundamental right to vote.

EDUCATION

Like the right to vote, the right to an education free of discrimination is essential to functioning in a democratic society. Education has always been the key to greater employment opportunities and successful participation in society at all levels. Because of its importance, education and desegregation have been a major focus of the Commission's efforts over the past 26 years. During this period, many strides have been made in providing the opportunity for all to achieve a quality education. Yet, many students remain isolated in schools attended almost totally by students of one race or national origin, and equity in the treatment of minority, female, and handicapped students remains unrealized. As the Nation strives to achieve excellence in education and to equip students with the skills necessary for success in a technological future, it must also continue to strive for equity.

School Segregation

Historically, public education in the Nation existed under a dual racial system of separate but equal. This doctrine enunciated in 1896 by the Supreme Court in *Plessy v. Ferguson* 17/ was in response to a 1890 Louisiana law which

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17/ 163 U.S. 537 (1896).

required "railway companies carrying passengers in their coaches...[to] provide equal but separate accommodations for the white and colored races,..." 18/ The Supreme Court rejected the argument of the black plaintiff that to be forced to ride in separate railroad cars stamped him with a "badge of inferiority," upholding the doctrine of "separate but equal." This decision set the stage for enactment throughout the South of State laws providing for racial segregation in all aspects of life including education. In other parts of the country, segregated education was institutionalized through public policy and tradition.

During the 1930s and 1940s, the National Association for the Advancement of Colored People (NAACP) began to challenge in the courts the segregation of graduate and professional schools. Supreme Court decisions during this time whittled away at the separate but equal doctrine, laying the foundation for direct confrontation of the concept in Brown v. Board of Education. 19/ In a unanimous opinion, the Court ruled that in public schools legally compelled segregation of students by race is a deprivation of the equal protection of the laws guaranteed by the 14th amendment.

18/ *Id*. at p. 540.

19/ 347 U.S. 483 (1954).

Although the holding in Brown was directed against legally sanctioned segregation in public education, the language in Brown gives support to a broader interpretation. The Court expressly recognized an inherent inequality of all segregation, noting only that the sanction of law gives it greater effect. Brown set the stage for the ending of Jim Crow laws and for prohibiting officially sanctioned racial segregation in almost every aspect of American life. 20/

Having disavowed separate but equal in public education, the Justices turned to the question of how to dismantle segregated education. Brown II, 21/ decided in May 1955, set the standard for implementation of school desegregation. Under the jurisdiction of district courts, the standard required a "good faith" start in the transformation from a dual to a unitary system "with all deliberate speed."

Progress in the first decade following Brown was frustratingly slow. Resistance to desegregation placed great pressures on Federal judges in States having constitutionally impermissible dual systems of public education. Generally,

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20/ U.S., Commission on Civil Rights, Twenty Years After Brown (1975), p. 31 (hereafter cited as Twenty Years After Brown); Laughlin McDonald, "The Legal Barriers Crumble", in Just Schools (Institute for Southern Studies, May 1979), p. 25 (hereafter cited as "The Legal Barriers Crumble").

21/ 349 U.S. 294 (1955).

however, these judges transcended the sanctions applied by their communities and met their responsibilities as Federal officers courageously and honorably.

In 1961 the Commission recommended in its report Education that Congress enact legislation "making it the duty of every local school board which maintains any public school from which pupils are excluded on the basis of race to file a plan for desegregation with a designated Federal agency...." Further, the Commission recommended a formula for allocating Federal grants to States for elementary and secondary programs based upon the degree of nondiscrimination.

Ten years after the Brown decision, Congress enacted the Civil Rights Act of 1964 providing for further protection of the laws in voting rights, employment, access to public accommodations, and education. Title VI of the Civil Rights Act prohibited "discrimination under any program or activity receiving Federal financial assistance" and "required all Federal agencies to establish regulations to ensure that Federal assistance would be used by school districts in a non-discriminatory manner." 22/ Termination of Federal

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22/ "The Legal Barriers Crumble", p. 26; Title VI, 42 U.S.C. §2000d (1976).

funds could result if school districts refused to desegregate. Through Title IV of the act, the Attorney General was given authority to sue school districts that refused to desegregate.

During the years immediately following the passage of the 1964 Civil Rights Act, more substantial progress was made toward implementing school desegregation than had been made through litigation in the preceding 10 years. This movement was accomplished by the Federal Government's threatening and occasionally using the fund termination enforcement mechanism available under Title VI of the act. 23/ In 1964, 1.2 percent of black students in the South attended school with whites. By 1968 that figure had risen to 32 percent. 24/

Segregation of black students declined significantly in the United States between 1968 and 1980. However, most of the decline occurred by 1972. In 1968, 76.6 percent of black students were in schools that were predominantly minority (more

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23/ Twenty Years After Brown, pp. 34, 36; see also Marion Wright Edelman, "Southern School Desegregation, 1954-1973, A Judicial-Political Overview," Blacks and the Law, Annals of the American Academy of Political and Social Science (May 1973), p. 40.

24/ Twenty Years After Brown, p. 50.

than 50 percent); in 1972 the percentage was 63.6; and in 1980 the percentage was 62.9. Further, the percentage of blacks in 90-100 percent minority schools decreased from 64.3 percent in 1968, to 38.7 percent in 1972, to 33.2 percent in 1980. 25/

Hispanic students have become more segregated as their numbers have grown rapidly in American society. In 1970 Hispanics were a twentieth of the public school population; in 1980, a twelfth. In 1968, 54.8 percent of Hispanic students attended predominantly minority schools; in 1980 the percentage had increased to 68.1 percent. The percentage of Hispanics in 90-100 percent minority schools increased from 23.1 in 1968 to 28.8 in 1980. 26/

Since Brown, the courts have played a predominant role in school desegregation, often relying on transportation of students to achieve desegregation as upheld by the Supreme Court in Swann v. Charlotte-Mecklenburg Board of Education. 27/ In a unanimous opinion written by Chief

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25/ Gary Orfield, Desegregation of Black and Hispanic Students from 1968 to 1980 (Washington, D.C.: Joint Center for Political Studies, 1982), pp. 1, 11.

26/ Ibid., p. 12.

27/ 402 U.S. 1 (1971).

Justice Burger, the Court found that bus transportation is "a normal and accepted tool of educational policy" and held that "desegregation plans cannot be limited to the walk-in school." 28/ In recent years, however, Congress has tried consistently to limit the Federal Government's involvement in school desegregation when transportation of students is required. Further, in 1981 the executive established a policy opposed to busing as a desegregation remedy and has consistently sought the reversal of court decisions that determine that transportation is necessary to remedy segregation. Further, the new policy emphasized alternative methods such as magnet schools and voluntary programs. Magnet schools may provide broad educational opportunities for some students; however, there is almost total agreement that magnet schools alone cannot effectively desegregate a school district. A survey of magnet schools found that such schools "do not have a large effect on district-wide desegregation of the public schools." 29/ Among the school districts surveyed, an average of five percent of the student enrollment attended magnet schools. 30/ To the extent they are a useful

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28/ Id. at 29, 30.

29/ James H. Lowry and Associates, Survey of Magnet Schools: Interim Report (Sept. 30, 1982), p. ix.

30/ Ibid.

desegregation technique, they must be instituted as one component of a comprehensive desegregation plan. In 1976 the Commission noted in _Fulfilling the Letter and Spirit of the Law_ that "magnet schools have a particularly deleterious effect when they are used as the only device for reassigning students in a desegregated district." 31/

School desegregation has occurred in numerous districts across the country. In many, the reassignment and transportation of students have proven effective techniques for remedying past discrimination. Further, courts have ordered the desegregation of schools and transportation of students only after being presented with overwhelming evidence of segregation. History has shown that school desegregation can be accomplished and have positive effects on all students as well as the community-at-large when local leaders are committed to making it work and provide the necessary leadership and resources.

Federal financial support for school desegregation has declined since the Emergency School Aid Act (ESAA) was eliminated as a categorical program and included in state block

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31/ See also Abt Associates, _Study of the Emergency School Aid Act Magnet School Program_ (1979).

grants. ESAA provided financial assistance to school districts to help eliminate minority group segregation and to encourage the voluntary elimination of minority group isolation. 32/ Legislation to reauthorize ESAA is currently pending in Congress, and the Commission has expressed support for reauthorization of such legislation.

Tax Exempt Status of Discriminatory Schools

The Commission long has been concerned about the Federal Government's tax policies concerning private schools whose operations conflict with the constitutionally based national policy of eliminating segregated education. In a 1967 report, *Southern School Desegregation 1966-67*, the Commission reviewed the progress of Southern and Border State school districts in complying with the Supreme Court's decision in *Brown*. In assessing school desegregation, it also examined the development of private schools to circumvent public school desegregation. The 1967 report concluded:

> Many private segregated schools attended exclusively by white students have been established in the South in response to public school desegregation. In some districts such schools have drained from the public schools most or all of the white students and many white faculty members.

32/ Pub. L. No. 92-318, tit. VII, §702, 86 Stat. 354 (1972).

The Commission noted that many of the racially segregated private schools established to circumvent public school desegregation had been granted tax-exempt status by the Internal Revenue Service, and that Federal tax exemptions constituted a form of indirect government assistance.

The question of whether schools that discriminate on the basis of race should be granted tax-exempt status became the source of extensive public debate in January 1982 when the Treasury Department, with the advice of the Justice Department, announced that the Internal Revenue Service would no longer revoke or deny tax-exempt status for religious, charitable, educational, or scientific organizations on the grounds of their non-conformity with fundamental policies--including the national policy against racial discrimination. The administration maintained that the enactment of a separate statute, enabling the IRS to deny tax-exempt status to schools that practice racial discrimination was required. 33/

33/ Department of Treasury News Release, Jan. 8, 1982.

The Commission strongly disagreed with this interpretation of the law and so testified in hearings before the Subcommittee on Civil and Constitutional Rights of The House Judiciary Committee. The Commission stated that the Constitution, Title VI of the Civil Rights Act of 1964 and the IRS Code support the policy of denying tax-exempt status to private schools, religious or nonsectarian, that engage in racial discrimiation. 34/

The administration's position resulted in the Justice Department dropping its defense of the 10-year policy denying tax exemptions to racially discriminatory private schools in Bob Jones University v. U.S. 35/ and Goldsboro Christian Schools v. U.S. 36/ and requesting that the Supreme Court appoint counsel to argue the defense's case. 37/

34/ Arthur S. Flemming, Chairman, U.S., Commission on Civil Rights, testimony before the Subcommittee on Civil and Constitutional Rights of the House Committee on the Judiciary, Jan. 28, 1982; See also U.S., Commission on Civil Rights, "Statement on the Administration's Decision to Revoke its Revenue Roles and to Grant Tax-Exempt Status to Schools that Discriminate on the Basis of Race," Jan. 19, 1982.

35/ ____ U.S. ____, 103 S. Ct. 2017 (1983), 468 F. Supp. 890 (D.S.C. 1978), rev'd 639 F. 2d 147 (4th Cir. 1980).

36/ 436 F. Supp. 1314 (E.D.N.C. 1977), aff'd per curiam No. 80-1473 (4th Cir. Feb. 24, 1981) (unpublished opinion).

37/ Department of Justice News Release, Feb. 25, 1982.

On May 24, 1983 the Supreme Court held in the Bob Jones and Goldsboro cases that "[i]t would be wholly incompatible with the concepts underlying tax exemption to grant tax-exempt status to racially discriminatory private educational entities. Whatever may be the rationale for such private schools' policies, racial discrimination in education is contrary to public policy. 38/

Sex Equity

In 1972, the Congress passed Title IX of the Education Amendments of 1972, which prohibits sex discrimination in schools receiving Federal financial assistance. 39/ Title IX has served to reverse the most obvious forms of overt sex discrimination. Thus, in 1979 the number of women attending college was greater than the number of men for the first time since World War II, 5.9 versus 5.7 million. In 1972, 45 percent of B.A. degrees were awarded to women; in 1980 the figure was 49 percent. 40/ Similarly in 1972, 16 percent of Ph.D.s were awarded to women; in 1980 the figure was 30 percent. Only 6 percent of first professional degrees went to women in 1972; the figure was 25 percent in 1980. 41/

38/ ____ U.S. ____, 103 S. Ct. at 2020 (1983).

39/ 20 U.S.C. §1681 (1978).

40/ Title IX: Half Empty, Half Full, p. 28.

41/ Ibid.

However, women continue to receive degrees mainly in traditionally female professions--education and social science. Further, in 1980 less than one percent of school superintendents were female--154 of 16,000. 42/

Minority women cotinue to suffer the double jeopardy of sexism and racism and have not achieved educational parity. Thus, in 1980 while slightly under 50 percent of undergraduate students were female, less than 10 percent were minority females. 43/ Similarly, in 1981 26.8 percent of first professional degrees were awarded to women, but less than three percent were awarded to minority women. 44/

The Commission has consistently favored broad interpretation of Title IX. Most recently, the Commission called upon the Department of Justice in *Grove City College* v. *Bell* 45/ to pursue broad guarantees against sex discrimination under Title IX to preserve the progress made and to address the problems that remain. 46/ Instead, the administration

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42/ Ibid., p. 34.

43/ Scientific Manpower Commission, *Professional Women and Minorities* (June 1983), Table 1-16, p. 15.

44/ Ibid., Table 3-5, p. 51.

45/ 687 F. 2nd 684 (3d Cir. 1982), *cert. granted*, 103 S. Ct. 1181 (1983).

46/ U.S. Commission on Civil Rights, "Statement of the U.S. Commission on Civil Rights on the Government's Brief in Grove City College v. Bell," Aug. 9, 1983, and "Statement of the U.S. Commission on Civil Rights on Civil Rights Enforcement in Education," June 14, 1983.

has urged the Court to adopt a narrow view of Federal civil rights protections and, thereby, failed to give a clear defense or explanation of Federal enforcement policy. The Justice Department brief in *Grove City* argues that the college's financial aid program is covered by Title IX and, therefore, that the college must file an assurance of compliance. The brief, however, maintains that *only* the financial aid office is covered, not any of the college's educational programs that ultimately are supported by the Federal student aid.47/

Students with Limited Proficiency in English

In 1974, in *Lau v. Nichols*, 48/ a case brought by parents of Chinese American students in San Francisco, the Supreme Court unanimously ruled that Title VI applies to the needs of students with limited proficiency in English. Although the *Lau* ruling did not require bilingual education as a remedy for limited English proficiency (LEP) students, the former Department of Health, Education, and Welfare (HEW) issued policy guidelines (*Lau* Remedies) that required schools

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47/ Brief for Respondents, Grove City College v. Bell, 687 F. 2nd 684 (3d Cir. 1982), *cert. granted*, 103 S. Ct. 1181 (1983).

48/ 414 U.S. 563 (1974).

to teach elementary students in their strongest language. The <u>Lau</u> remedies permitted school districts to rely on English-as-a-second-language instruction only if they could demonstrate that their program was as effective as the bilingual programs described in HEW's policy guidelines. Final regulations have been long awaited on this issue. Proposed regulations mandating bilingual education for limited English proficient students were issued for public comment in August 1980, but were rescinded in February 1981 after considerable public outcry and Congressional disapproval.

In commenting on the proposed regulations, the Commission supported the basic premise underlying the rules: "students whose primary language is not English should be taught English as expeditiously as possible while receiving instruction in other subjects in their native language during the transitional phase." 49/ Strong guidance and enforcement from the Office for Civil Rights of the Department of Education are needed to ensure equality of educational opportunity for students with limited proficiency in English. Further, continued Federal financial support is needed through Title VII of the

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49/ Arthur S. Flemming, Chairman, U.S. Commission on Civil Rights, letter to Antonio J. Califa, Office for Civil Rights, Department of Education, Nov. 20, 1980.

Elementary and Secondary Education Act of 1965, as amended, which provides for programs to meet the special educational needs of children with limited ability to speak English. The need for such programs is clearly demonstrated by the number of limited English proficient students: in 1980 there were 2.4 million such students between the ages of 5 and 14. Further, it is projected that that figure will reach 3.4 million by the year 2000.50/

Handicapped Students

In 1975 Congress enacted the Education for All Handicapped Children Act. 51/ It was determined at that time that a million handicapped children were "completely excluded from school" and another three million were receiving an inadequate education. 52/ The act provides grants to States to assist them in providing a "free appropriate public education" to all

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50/ See, National Clearinghouse for Bilingual Education, Projections of Non-English Language Background and Limited English Proficient Persons in the United States to the Year 2000 (October 1980), p. 1.

51/ Pub. L. No. 94-142, 89 Stat. 773 (1975) as amended, codified at 20 U.S.C. §§1232, 1400, 1401,1405-1420, 1453 (1982 & West Supp. 1983).

52/ Children's Defense Fund, A Children's Defense Budget: An Analysis of the President's FY 1984 Budget and Children (1983), pp. 107-108.

handicapped children. In addition, the act sought to ensure equal educational opportunity for handicapped children by requiring participating States to provide free public education in the least restrictive environment possible for every handicapped child. 53/

The act has resulted in substantial progress. Nevertheless, as the Commission reported in its 1983 report *Accommodating the Spectrum of Individual Abilities*, almost a decade after the enactment of this law, a great many handicapped children continue to be excluded from the public schools, and others are placed in inappropriate programs. The Federal Government must not retreat from its commitment to provide handicapped children, too long neglected, a free appropriate education. Strong Federal enforcement of the Education for all Handicapped Children Act and adequate Federal financial assistance are both needed.

Higher Education

Before the 1960s, higher education opportunities for blacks were limited severely by segregation and discrimination. Until the late 1950s, the 17 Southern and Border States operated

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53/ Ibid., p. 108; Pub. L. No. 94-142, 89 Stat. 773 (1975) as amended codified at 20 U.S.C. §§1232, 1400, 1401, 1405-1420, 1453 (1982 & West Supp. 1983).

public higher education systems that were segregated by law. Other colleges and universities, including many in the North, had policies that restricted or barred the admission of blacks. Although the *Brown* decision outlawed official segregation in public education, very little desegregation occurred in the higher education institutions in the Southern and Border States.

In 1960 the Commission issued a report--*Equal Protection of the Laws in Public Higher Education*--which found that unconstitutional discrimination by public colleges and universities was a serious national problem. The Commission recommended that the Federal Government, by executive or legislative action, take appropriate measures to prevent discrimination in publicly controlled institutions of higher education. These measures included denying Federal funds to institutions that discriminate and instituting affirmative Federal programs to assist disadvantaged students.

Federal initiatives have been the major impetus for eliminating segregation in higher education and for increasing educational opportunities for blacks and other minority students. Title VI of the Civil Rights Act of 1964, which prohibits the granting of Federal funds to institutions that discriminate, gave the Federal Government the tool to require the dismantling of dual State systems of higher education.

Although the Southern and Border States had eliminated legal requirements for segregation, they had not taken affirmative steps to desegregate the student bodies or the faculties in their public colleges and universities. In 1969, HEW began its first efforts to implement Title VI in these States. These efforts, however, had little success because HEW did not take appropriate enforcement sanctions against recalcitrant States. In 1970 private plaintiffs filed suit in Adams v. Richardson 54/ to force HEW to carry out its Title VI responsibilities. As a result of a 1977 decision in the Adams case, HEW developed a set of criteria outlining the elements of an acceptable plan to desegregate State systems of higher education.

In 1981 the Commission issued a report--The Black/White Colleges: Dismantling the Dual System of Higher Education--that examined the potential effectiveness of the HEW criteria as a means of aiding States in desegregating their higher education systems. The report applauded the Adams decision as a milestone in desegregation law that clearly

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54/ 356 F. Supp. 92 (D.D.C. 1973), modified and aff'd., 480 F.2d 1159 (D.C. Cir. 1973), supplemental order sub. nom., Adams v. Weinberger, 391 F. Supp. 269 (D.D.C. 1975), second supplemental order sub. nom., Adams v. Califano, 430 F. Supp. 118 (D.D.C. 1977).

establishes the duty of the Federal Government to take steps to enforce Title VI when efforts to secure voluntary compliance fail to achieve desegregation within a reasonable time. The Commission also emphasized the need for a strengthened commitment at the Federal level to monitor and enforce the implementation of the criteria if desegregation is to occur.

By the end of 1983 all of the 19 States that operated *de jure* segregated systems of higher education or maintained colleges specifically established for blacks were in some stage of implementing, negotiating, or litigating plans to desegregate their public colleges and universities. Progress, however, continues to be slow as States fail to meet their goals and the *Adams* plaintiffs must continuously seek court intervention to compel the Department of Education 55/ to take appropriate action. Moreover, actions by both the Department of Education and the Department of Justice (which has or is in the process of litigating desegregation plans for several States) indicate a backing away from the steps necessary for effective desegregation. Both agencies have negotiated

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55/ Responsibility for the majority of the Federal educational programs and activities previously lodged in the Department of Health, Education, and Welfare was transferred to the Department of Education on May 5, 1980. The new agency was created by law on Oct. 17, 1979. 20 U.S.C. §3441 (1982), 20 U.S.C. §3411 (1982).

settlements with States that fail to address previously identified vestiges of segregation and that fail to incorporate the *Adams* desegregation criteria. These actions can only be interpreted as a retreat from the Federal commitment to effective civil rights enforcement.

The second Federal initiative that affected significantly equal opportunity was the Higher Education Act of 1965 and subsequent amendments. 56/ This act established a number of financial aid programs to assist needy students in pursuing higher education opportunities. These student aid programs, in combination with the affirmative admissions programs instituted by many colleges and universities in response to the civil rights quest for equality during the 1960s, have led to substantial increases in minority enrollment in higher education over the last two decades.

In recent years, there have been efforts to cut or realign many of the student financial aid programs. In 1983 the Commission issued a *Statement on the Fiscal Year 1984 Education Budget* that examined the various student aid and other higher education programs that have been instrumental in increasing higher educational opportunities. The Commission believes that

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56/ 20 U.S.C. §§1051-1089 (1982 & West Supp. 1983).

the progress that has been achieved in providing equal access to higher education for minorities and women would be seriously jeopardized by any reductions in Federal financial support for higher education and disadvantaged students.

Almost three decades have passed since the Supreme Court declared that State imposed segregation in public education on the basis of race is a denial of the equal protection of the laws as guaranteed by the 14th amendment. The Nation has made much progress toward ending discrimination and legally imposed segregation in our Nation's public schools and colleges, but there is still much to be done. Continued progress in school desegregation will be jeopardized if the Federal Government abandons the pursuit of effective remedies in favor of voluntary techniques that, over the years, have proven unsuccessful. Similarly, significant desegregation of State systems of higher education will not occur as long as the Federal government is unwilling to require States to implement plans that fully eradicate the vestiges of the dual system. Stringent enforcement of both the letter and the spirit of civil rights statutes is also essential in order to ensure continued progress in providing educational equity for women, the handicapped, and students with limited proficiency in English.

The Commission has long believed that education is the principal tool for achieving equality of opportunity. The importance of education as a means of fulfilling the American dream has become more evident in the 30 years since *Brown*. As a Nation, we must recommit ourselves to the promise of *Brown* and the achievement of equal educational opportunity for all Americans.

HOUSING

Beginning with its earliest reports and continuing over the years, the U.S. Commission on Civil Rights has concluded that many minority Americans are denied equal opportunity in housing, are subjected to acts of discrimination, and, consequently, live in blighted and overcrowded neighborhoods. In its first report, issued in 1959, the Commission found that the poor housing conditions faced by many minority Americans were the result of discriminatory practices that were exacerbated by a shortage of sound housing within the means of low-income persons. In its 1961 report, the Commission found that the national goal of "a decent home and a suitable living environment for every American family" 57/ had not been achieved and that the Federal Government had done little to ensure equal housing opportunity in the United States.

Historically, the American housing market has denied minority home seekers access to sound housing in nonsegregated locations. For decades local law required residential segregation: blacks and other groups were precluded from living in specified neighborhoods. In addition, restrictive convenants in deeds forbade the sale of properties to

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57/ Housing Act of 1949, Pub. L No. 81-171, 63 Stat. 413 (1949) (codified at 42 U.S.C. §1441 (1976)).

minorities. Even after the Supreme Court struck down these forms of discrimination, 58/ residential segregation continued because discrimination by individuals, members of the real estate industry, and financial institutions had not ceased.

The Commission concluded in its report _Twenty Years After Brown_, issued in 1977, that the Federal Government had been "the single most influential entity...in creating and maintaining urban residential segregation" in America. For example, the Federal Housing Administration (FHA) in the mid-1930s had warned of the "adverse influences...of undesirable racial or nationality groups" 59/ and as late as 1947 had recommended the use of restrictive convenants. 60/ _Twenty Years After Brown_ also found that FHA and Veterans Administration loans were made readily available to white households moving to the suburbs, while minorities were left behind in the cities and that the Federal Government heavily contributed to the declining conditions in the cities by continuing to permit the development well into the 1960s of segregated, high-density public housing marked by poor construction and frequently inadequate services.

58/ Buchanan v. Warley, 245 U.S. 60 (1917). Shelley v. Kraemer, 334 U.S. 1 (1948).

59/ U.S., Federal Housing Administration, _Underwriting Manual_ (1936), Section 310.

60/ Brian J.L. Berry, _The Open Housing Question_ (Cambridge, Mass.: Ballinger, 1979), p. 11.

In the early 1960s, Federal policy and legislation began to attempt to correct the harmful effects of housing discrimination. In 1962, President John F. Kennedy issued an Executive order forbidding discrimination on the basis of race, color, creed, and national origin in Federal housing assistance programs. 61/ The passage of the Civil Rights Act of 1964 broadened prohibitions against discrimination in all federally assisted programs, including housing. 62/ Finally, the Civil Rights Act of 1968 63/ outlawed almost all discrimination in the sale, rental, and financing of housing and required the Department of Housing and Urban Development to administer its programs "affirmatively" to achieve fair housing in the United States. 64/ In addition, the Housing and Urban Development Act of 1968 65/ established a national 10-year housing production goal that included 6 million new units of low- and moderate-income housing assistance. 66/ This goal offered a means for

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61/ Exec. Order No. 11,063, 3 C.F.R. 652 (1959-1963 Comp.).

62/ 42 U.S.C. §2000d (1976 & Supp. V 1981).

63/ Pub. L. No. 90-284, tit. VIII, §804, 82 Stat. 81, 83 (1968) (codified at 42 U.S.C. §3604 (1976)).

64/ Id. §808(e)(5) (codified at 42 U.S.C. §3608(d)(5) (1976)).

65/ Pub. L. No. 90-448, 82 Stat. 476 (1968).

66/ 42 U.S.C. §1441a(a)(1976).

the Federal Government to foster the development of new, affordable housing outside segregated locations.

Enactment of legislation to counter residential segregation and housing discrimination has not yet brought significant change in housing practices. A 1983 study by Karl Taeuber of the University of Wisconsin found that racial residential segregation continues to exist in every American city with a substantial black population. The study found some decline in segregation between 1970 and 1980, but the rate of decline was so limited that 50 years from now the average American city still will be seriously segregated. 67/

Residential segregation persists for at least two reasons. The Nation continues to lack an adequate supply of decent, uncrowded, and affordable housing. And discrimination in housing continues to be a major obstacle for minorities and women seeking improved housing for themselves and their families.

The Department of Housing and Urban Development (HUD) reported after a major study in 1979 that widespread housing discrimination still pervades metropolitan areas throughout the Nation. 68/ In the same year, the Commission found that

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67/ Karl Taeuber, Center for Demography and Ecology, University of Wisconsin, "Racial Residential Segregation, 1980" (paper based on preliminary results of research on 1980 Bureau of Census data) (March 1983), p. 4.

68/ U.S., Department of Housing and Urban Development, Measuring Racial Discrimination in American Housing Markets: The Housing Market Practices Survey (1979), p. ES-27.

Federal enforcement of Title VIII of the Civil Rights Act of 1968 had failed to prevent and eliminate discrimination and segregation in housing. The Commission also found that Title VIII was a weak law, lacking effective means of enforcement. 69/

The Commission's original findings in the field of housing remain accurate today. Even though housing conditions have improved for many Americans in the last 25 years, subtle and damaging forms of discrimination in housing persist today. Substantial numbers of families continue to live in seriously substandard housing, with segregated neighborhoods exhibiting the most serious concentrations of this deteriorated housing.

Over the years, the Commission has recommended that the Federal Goverment make fair housing enforcement a far higher policy and budgetary priority. The Commission also has recommended that the Federal government should fund adequately federally assisted housing programs that offer minorities and women the opportunity for improved housing in a wide range of neighborhoods, particularly outside segregated locations. The Commission has also recommended that Title VIII of the Civil Rights Act of 1968 be strengthened significantly as a major step toward improving Federal fair housing enforcement.

69/ U.S., Commission on Civil Rights, The Federal Fair Housing Enforcement Effort, p. 231.

ADMINISTRATION OF JUSTICE

The Commission's work on the administration of justice includes police practices, the Federal trust relationship with American Indian tribes, racially motivated vandalism and violence, immigration, and domestic violence. From the outset, the Commission has strongly criticized the public officials whose meting out of justice has violated the constitutional guarantee of equal protection of the laws, and proposed appropriate changes in laws and policies to remedy the unequal treatment received by minorities and women.

Police Misconduct

In 1961 the U.S. Commission on Civil Rights issued its first statutory report on denials of equal protection of the laws in the administration of justice. The report focused on police brutality, which the Commission had determined was the problem of the greatest magnitude in this area. Citing previous 1931 and 1947 Presidential committee reports, the report concluded that "police brutality is still a serious problem throughout the United States." A comprehensive survey of the Department of Justice's records also showed that blacks disproportionately bore the brunt of official brutality, at a rate far higher than any other group in America.

In 1962 the Commission surveyed hiring in municipal police departments nationally and found disproportionately low

minority employment figures. In a 1967 report, the Commission found that it took the police almost four times as long to respond to robbery calls from the Hough area of Cleveland than to calls from nonblack areas of the city.

In 1978, the Commission embarked on a national study of police practices, culminating in the 1981 report, _Who Is Guarding the Guardians?_. That study, based in part on hearings in Philadelphia and Houston, confirmed that some of the findings of the earlier Commission reports were valid 20 years later. The 1981 report found that there was still serious underutilization of minorities and women in local law enforcement agencies and that, within some communities, there was a perception that there is a dual standard of justice for minorities and whites.

Among the recommendations for Federal action were that the provision of the the U.S. Code criminal code under which most officers of the law are prosecuted should be amended to remove the judicially imposed requirement of "specific intent" 70/ and that Congress should enact legislation specifically authorizing civil actions by the Attorney General of the United States against appropriate officials and departments to enjoin

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70/ 18 U.S.C. §242 (1982). This element of the statute was construed by the Supreme Court to require the prosecutor to prove that a police officer specifically intended to violate the constitutional rights of the victim, that is, the officer either knew or acted in reckless disregard of the fact that his or her actions deprived the victim of a defined constitutional right. Screws v. United States, 325 U.S. 91, 104 (1945).

proven patterns and practices of police misconduct. Neither of these recommendations has ever been implemented, although variations of them have been introduced recently in Congress.

Among the other issues addressed in the report was the disproportionate use of deadly force against minority suspects. Upon finding that police departments' policies governing its use are often ambiguous and training insufficient, the Commission suggested that use of deadly force be restricted to those situations in which it is necessary to protect the officer's life or the life of another. The Commission also recommended that police departments very strictly regulate the issuance of firearms, qualification for handling them, and investigation of incidents of firearm discharges in the line of duty.

The Commission also suggested that all police departments should have a clearly defined system for handling complaints, that the public should be fully informed about its use, that complaints should be promptly and thoroughly investigated, and that records and statistics should be kept.

Indian Rights

The Commission has devoted significant time and resources to the administration of justice on American Indian reservations, first examined by the Commission in 1961. In theory, the civil and criminal jurisdiction of Indian tribes is much like that of sovereign states, except as limited by

Federal statute. In 1961, Federal jurisdiction was limited to major offenses involving Indians or Indian property--murder, manslaughter, burglary, arson, rape, incest, serious assaults, and embezzlement of tribal funds. Civil actions and misdemeanors were tried in tribal courts. Tribal police, independent of the Bureau of Indian Affairs (BIA), were responsible for most law enforcement. There were, however, a large number of Indian police employed by BIA.

That part of the 1961 report examining Indians was a preliminary study without specific recommendations. The Commission did note, however, that there was inadequate law enforcement on Indian land and that Indians were treated unfairly by the police and courts. In addition, the number and repetitive nature of allegations by Indians of civil rights violations led the Commission to believe that there was widespread discrimination and further study was warranted.

In 1981 the Commission issued a major report on Indians, Indian Tribes: A Continuing Quest for Survival. The Indian Crimes Act of 1976 71/ broadened the scope of Federal law enforcement to 14 serious crimes. 72/ The Federal

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71/ Pub. L. No. 94-297, §2, 90 Stat. 585 (codified at 18 U.S.C. §1153 (1982)).

72/ These are as follows: murder, manslaughter, kidnaping, rape, statutory rape, assault to commit rape, incest, assault to commit murder, assault with a dangerous weapon, assault resulting in serious injury, arson, burglary, robbery, and larceny.

Government also has jurisdiction over all offenses committed on reservations by non-Indians against Indians and Indians against non-Indians. The Federal Bureau of Investigation (FBI) investigates serious felony offenses falling under the Indian Crimes Act. These investigations, however, were found frequently to overlap and duplicate those of the BIA and tribal investigators. In addition, FBI investigations are hampered by agents' lack of training in Indian law, culture, and language, and Indians' perceptions that they are outsiders biased against certain Indian political activity.

The Commission also found that United States attorneys decline to prosecute more than 80 percent of major crimes occurring in Indian country, which has contributed to Indians' eroding faith in the Federal Government.

Indian tribes lack jurisdiction over offenses committed by non-Indians, and many reservations have significant numbers of non-Indian residents. This lack of jurisdiction has led to confusion as to whether tribal police can arrest and detain non-Indians, how to determine if an alleged offender is an Indian or non-Indian, and whether and under what circumstances the Federal or State government has jurisdiction over offenses committed by non-Indians.

The Commission has recommended that the status of law enforcement on Indian reservations be reviewed by the Department of the Interior and communicated to the Department of Justice (DOJ). Pursuant to that review, DOJ should take

steps to resolve the conflicts surrounding disposition of offenses committed by non-Indians by encouraging cooperative agreements between tribal and local governments and by ensuring the prosecution of non-Indian offenders in appropriate courts. Further, Congress should enact legislation giving Indian tribes jurisdiction over all persons residing on reservations in compliance with the limitations and procedural guarantees in the Indian Civil Rights Act.

In addition, the primary responsibility for investigating major crimes should be removed from the FBI and placed in the BIA and tribal investigators with additional resources allocated for investigative training. The U.S. attorneys should be directed to take prosecution referrals directly from these investigators. Additional U.S. attorneys and magistrates should be assigned to Indian country to ensure more effective law enforcement.

Indian Tribes also dealt with two other very complex problems in Indian relations with the Federal Government: fishing treaty rights and Eastern land claims. Indian tribes share a unique political relationship with the Federal Government: they are "domestic dependent nations," 73/ i.e., nation-states for whom the Federal Government has a trust responsibility. Generally, the Commission found that

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73/ Cherokee Nation v. Georgia, 30 U.S. 1, at 12, 5 Pet. 1, at 17 (1831).

significant, sudden swings in direction have characterized U.S. Indian policy. Such vacillations went from support for Indian assimilation to fostering tribal autonomy.

The Commission held hearings in Washington State on the abrogation of fishing treaties. It noted the ineffectiveness of the Federal Government's guarantee of these rights and the contradictory roles it has played in the conflict between whites and Indians over the matter.

Claims by Indian tribes in Eastern States, e.g., Maine, Rhode Island, Massachusetts, Connecticut, New York, and South Carolina, against land long held by non-Indians have been the subject of intense public debate. The Commission recommended that acceptable settlements of land claims be determined jointly by the Federal Government and the tribes in a prelitigation task force. This could end the need for full litigation and the involvement of Congress, States, and localities, as well as reduce the likelihood of interracial conflict and ill will.

Racial and Religious Bigotry

The Commission has expressed its concern on numerous occasions about acts of violence perpetrated against racial and religious minorities, usually blacks and Jews, and the quality of response to such acts by the police, community leaders, and the courts. In 1981 four State Advisory Committees to the Commission conducted studies and issued reports on the subject,

and in 1982 all of the Commission's 51 Advisory Committees were asked to provide information about the nature and frequency of such incidents. In 1983 the Commission issued a statement entitled Intimidation and Violence: Racial and Religious Bigotry in America.

The major conclusions reached by the Commission are:

- Federal and State authorities, under the leadership of the FBI's uniform crime reporting program, should develop workable reporting systems that will provide an accurate measurement of the extent of criminal activity having racial and religious overtones.
- The criminal justice system, especially the law enforcement components, should intensify efforts to ensure forceful response to incidents of racial and religious violence and also to ensure that staff who confront such incidents are broadly representative of the racial, ethnic, and religious makeup of the communities they serve.
- The President should continue to denounce overt acts of racism and anti-Semitism.
- Educational programs should be developed to combat racism and anti-Semitism.
- The Civil Rights Division of the U.S. Department of Justice should intensify its prosecution of those who commit acts of racially and religiously motivated violence.

Immigration

In the wake of a huge wave of immigration in the 1970s, the Commission conducted a study to assess the current immigration system and the civil rights problems faced by Americans, particularly citizens and resident aliens who are racially and culturally identifiable with major immigrant groups. In its 1980 report The Tarnished Golden Door: Civil Rights Issues in Immigration, the Commission concluded that immigration laws continue to have discriminatory provisions, and that these laws and enforcement practices and procedures result in denials of the rights of American citizens and aliens. Legislative and administrative remedies were recommended to solve specific problems that ranged from the discriminatory effect of the selection system and the lack of resources for the U.S. Immigration and Naturalization Service to employer exploitation of noncitizen employees and inadequate protection of detainees' right to counsel during the deportation process.

In May, 1983, the Commission unanimously re-affirmed its opposition to employer sanctions and national identity systems because of the likelihood that the former would foster employment discrimination and that the latter raises serious privacy considerations. As an alternative to employer sanction legislation, the Commission recommends a three-pronged approach to reducing the participation of undocumented workers in the domestic labor market: (1) vigorous enforcement of the Fair

Labor Standards Act and other labor laws which would reduce the attractiveness for an employer to hire undocumented workers; (2) strengthening the enforcement program of the INS by authorizing the hiring of additional personnel and through the use of more modern law enforcement technology such as computerized arrival/departure records; and, (3) vigorous efforts to enter bilateral or multilateral agreements with the major source countries for undocumented workers in order to reduce and regulate the population flow between those countries and the United States.

Domestic Violence

Following the 1972 Congressional mandate to the Commission to examine sex discrimination, the agency began to study the civil rights problems of women. One of the most serious, the Commission found, is the often hidden problem of spouse abuse. A major study of the issues surrounding this type of domestic violence was launched in 1977, culminating in a report published in 1982, Under the Rule of Thumb. The report evaluated the manner in which the criminal and civil justice process and social service agencies treat women who are victims of domestic violence and concluded that the treatment differs markedly from that of other assault victims and their perpetrators. The Commission's research revealed that at every stage of the criminal justice system, a significant number of battered women are turned away, thereby not obtaining relief from the violence. Even though wife beating is a crime in

every State, the existence of laws prohibiting it does not ensure protection of the victims. The police, prosecutors, and judges many times do not act appropriately, either regarding domestic violence as a private family concern or allowing their views to be colored by the common law legacy when women were considered to be property and husbands had the right to punish their wives physically.

The Commission believes that State and local officials and officers must recognize the seriousness of this offense and cease erecting barriers to or discouraging the use of the justice system to its victims. Alleviation of this tragic, age-old problem depends on the responsive actions by members of the executive, legislative and judicial branches of government at all levels--Federal, State and local.

Conclusion

The areas falling within the category of administration of justice are diverse but have one common denominator. Although local law enforcement agencies, officials and officers are directly involved in policing, Indian affairs, halting incidents of racially- and religiously-motivated violence and immigration matters, the underlying responsibility to ensure that constitutional rights are vindicated rests with the Federal government. In each of these areas, the Commission has, over the years, called for vigorous enforcement of the relevant Federal laws to enforce the requirements of the

Constitution and the exertion of leadership by the President and other Federal officials to make clear the legal and moral obligations of the nation's citizens and that violations of the Constitution cannot and will not be tolerated.

"Where [strong] leadership is lacking there has been little progress--and sometimes regression to violence. Where it is present, there is no challenge that cannot be met," read the Commission's conclusion to its 1961 report. It is a statement as applicable today as it was then.

EMPLOYMENT

In its 1961 report, the Commission found that black workers were disproportionately unemployed and concentrated in the ranks of the unskilled and semiskilled in both private and public employment. The Commission further reported that while in one sense problems of cyclical and structural unemployment are no different for members of minority groups than for others, in another sense these problems have a special dimension for minority groups who bear more than their share of the economic and social ills that are the material consequences of unemployment and underemployment. In addition, past and contemporary discrimination in employment practices and in training and educational opportunities was identified by the Commission as an extra burden borne by minorities.

In its 1963 report, the Commission found that federally assisted vocational programs under Title VIII of the National Defense Education Act (NDEA) discriminated against blacks in their admission and qualifying policies, and in post-training job development policies. The Commission found significant disparities between the participation rates of blacks and whites in these programs.

In a series of regional reports--¿_Que Lejos Hemos Venido? How Far Have We Come?_ (1975); _The Working and Living Conditions of Mushroom Workers_ (1977); _A Roof Over Our Heads_ (1980); and _Migrant Workers on Maryland's Eastern Shore_ (1983)--the

Commission's State Advisory Committees have found that migrant workers, disproportionately black and Hispanic, labor under harsh and sometimes brutal employment conditions, earning pay at or below the poverty level.

Other reports by the Commission, as well as data from the Bureau of the Census, the Bureau of Labor Statistics, and from other sources, have demonstrated significant disparities in income and employment between minorities and women on the one hand and white men on the other.

In its 1982 report, Unemployment and Underemployment Among Blacks, Hispanics, and Women, the Commission examined the nature and extent of employment disparities between these groups and white males. The study also analyzed statistically factors which might account for such disparities such as economic expansions and contractions; regional and industrial variations in the economy; and individual characteristics, such as education, training and age. The report showed that improvement in the overall health of the economy and in the education or skill levels of minorities have led in some cases to the reduction of disparities, but not to their elimination. The suspicion remains, therefore, that discrimination continues to be an important determinant of employment disparities.

A 1983 Commission report, A Growing Crisis: Disadvantaged Women and Their Children, found that women who are heads of families continue to experience poverty at a much greater rate than other families. Their plight is exacerbated by

significant employment barriers, such as occupational segregation and sex stereotyping, wage disparities between men and women; and exclusion of women from higher-paying jobs.

These two reports bear out the relationship between poverty, unemployment, and employment discrimination. The inescapable conclusion is that affirmative efforts in employment are needed to break the cycle of unemployment and poverty for minorities and women.

Recent statistics show that disparities in income and employment continue unabated. Although unemployment rates have fluctuated considerably over the last 25 years, the rates for minorities have remained about twice as high as for whites. Black males had an unemployment rate 1.8 times higher than the majority male rate of 4.7 when the census was taken in 1960. The rate for black females was 1.9 times higher than the majority male rate at the time, but the rate for majority females was exactly the same as for majority males. By 1983, the black men rate was 2.4 times that of white men and the black female rate 2.1 times that of white men. Hispanics have also had higher unemployment rates than whites. In 1973 the Hispanic rate was 1.7 times that of whites; in 1983 it was 1.4 times that of whites.

Disparities in median family income for families where no family members are unemployed remain as well. Families headed by minority couples in 1981 had median family incomes far below that for families headed by white couples and female-headed

households were even further behind. Families headed by black married couples earned 80 percent of the income earned by families headed by white married couples, and Hispanic families earned 73 percent of the white income. Median income for families headed by white, black, and Hispanic women, was 53 percent, 38 percent, and 41 percent, respectively, of the income earned by families headed by white married couples.

Thus, while employment discrimination has been declared illegal for 19 years, qualified minorities and women have been unable to close significantly the gap in employment status or in median income between themselves and similarly qualified white men.

Disparities in employment also exist for Americans of Eastern and Southern European ancestry. At the Commission's December 1979 consultation on *Civil Rights Issues of Euro-Ethnic Americans in the United States: Opportunities and Challenges*, participants voiced concern that Americans of Eastern and Southern European ancestry are being excluded from upper management in particular industries and firms in the United States. Unemployment was also thought to be growing because of the movement of industry away from areas of the country where these ethnic groups are concentrated. The full scope of the problem was not clear, however, because data on Eastern and Southern European ethnics historically have been scarce.

At the time planning for the consultation was under way, Congress specifically mandated the Commission to continue to appraise Federal equal protection laws involving Americans of Eastern and Southern European ancestry, including the impact of affirmative action programs. Thus, following the consultation, the Commission undertook a study of the employment status of these ethnic groups. However, progress was severely hampered by the presistent lack of adequate data. Federal agencies responsible for enforcing equal employment opportunity laws prohibiting national origin discrimination, including the Office of Federal Contract Compliance Programs and the Equal Employment Opportunity Commission, have made no move to collect relevant data despite a long-standing recommendation by the Civil Rights Commission that they do so. The 1980 Census, in which substantial improvements were made in identifying Americans of Eastern and Southern European ancestry, is perhaps the most significant source of current socioeconomic data. Unfortunately, these data are only now becoming available for analysis. For these reasons, the Commission's report on employment of these European ethnic groups stands uncompleted.

The primary laws combating discrimination are Title VII and the Federal contract compliance program under Executive Order 11246. The enactment and enforcement of these laws has played an instrumental part in securing increased employment opportunities for qualified minorities and women. The contract compliance program, like Title VII, prohibits discrimination

based on race, sex, religion, and national origin, but applies only to businesses with Federal contracts. It also requires these contractors to undertake affirmative action. In a series of indepth studies during the 1970s, the Commission documented the major shortcomings of the civil rights enforcement efforts behind these laws. It was not until late in the decade that Government equal employment opportunity efforts began to have the consistency and clarity essential to credible law enforcement programs.

Until 1972, Title VII covered only private employers, and the Equal Employment Opportunity Commission (EEOC) had no administrative enforcement mechanisms other than negotiation and conciliation. In that year its coverage was extended to Federal, State, and local employers. Rejecting overreliance on voluntary compliance, Congress also gave EEOC the right to sue noncomplying private employers. As a result, the 1970s saw numerous successful Government and private class action lawsuits under Title VII against major industries and numerous municipal employers.

Similarly, it took until the mid-1970s for the United States Supreme Court to construe authoritatively the act's major substantive provisions. In its most important decision in this area, the Supreme Court in *Griggs v. Duke Power Company* 74/ held in 1971 that Title VII prohibits

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74/ Griggs v. Duke Power Co., 401 U.S. 424, 431 (1971).

employment practices that have a discriminatory effect, regardless of whether there was an intent to discriminate behind them, unless the employer can demonstrate that they are justified by business necessity.

Affirmative action became the centerpiece of new Federal contract compliance program regulations in 1971 and 1972. Defined as a "results-oriented" program that insisted on accurate measures of qualification and merit, the program was greatly aided by a major civil rights administrative reorganization in 1978. By the end of the 1970s "utilization analyses" and "goals and timetables" were established parts of Federal contractors' enterprises, as well as the operations of many other employers, both public and private.

The challenges to this controversial policy were substantial and still persist. The lower courts repeatedly have ordered and approved both quotas (ratio and percentage selection systems that regularly and predictably work to overcome a marked nonparticipation by qualified minorities and women) and goals and timetables (numerical objectives used to judge the overall effectiveness of an affirmative action plan).

The Commission has endorsed affirmative action as an essential policy for undoing the legacy of exclusion, isolation, and underrepresentation of qualified minorities and women in employment in testimony to congressional committees, in comments to enforcement agencies, and in innumerable publications. Every 4 years, starting in 1973, the Commission

has issued statements on affirmative action. Its latest statement, Dismantling the Process of Discrimination: Affirmative Action in the 1980s, was released only after a public consultation at which noted proponents and opponents of affirmative action commented on a draft statement.

In this 1981 statement, the Commission calls for a "problem-remedy" approach for answering the hard questions raised by critics of affirmative acton. Because remedies do not exist in a vacuum, they cannot be understood, or even intelligently discussed, without an appreciation of the problem they seek to address. The Commission's starting point, therefore, is its understanding of discrimination as a self-reproducing system that will continue indefinitely unless there is affirmative intervention. Its position is that the most critical element of any affirmative action plan is the initial analysis that identifies specific discriminatory processes, and that the particulars of the plan must be tailored to the identified problems.

By affirmative action, the Commission means active efforts that take race, sex, and national origin into account for the purpose of remedying discrimination against qualified persons. Numerical standards such as goals, timetables, and quotas are examples of affirmative action. The question for the future in the Commission's judgment is not whether numerical remedies are to be used, but which measures are to be used under what circumstances. In many situations, numerical remedies are

absolutely essential if civil rights guarantees are to be implemented.

Title VII and Executive Order 11246 do not need major overhauling. The Commission is concerned about gaps in coverage (for example, congressional committees and agencies should be covered, and handicap discrimination should be banned under Title VII), but the primary employment discrimination issues concern refining and streamlining Federal equal employment opportunity enforcement machinery and methods. Effective and efficient law enforcement that convinces employers that serious negative consequences will flow from noncompliance is essential.

Strong enforcement activities can help assure that civil rights promises will be kept. But more than such basic protections is needed. Our extensive study of employment discrimination and affirmative action compel the conclusion that minorities and women will continue to be unemployed and underemployed until employers, public and private, recognize the business and societal benefits of well-designed and thoughtfully implemented affirmative action plans. For achieving and maintaining a diverse work force, affirmative action is simply sound personnel practice. To this end, the Government, in addition to maintaining its enforcement efforts, needs to collect and disseminate technical assistance material, such as that included as an appendix to the Commission's 1981 affirmative action statement. The stick of credible law

enforcement and the carrot of concrete, helpful information are needed to dismantle the relentless process of discrimination that continues to restrict employment opportunities.

Efforts to foster equal employment opportunity are at a crucial crossroad. Reasonable people may differ on the best means for achieving a nondiscriminatory future, but that disagreement will be more productive and less polarized if we seek a common understanding of the discrimination that prevents the dream from becoming a reality.

THE EQUAL RIGHTS AMENDMENT

One of the most significant issues with respect to the civil rights of women, in the Commission's view, is the Equal Rights Amendment to the Constitution (ERA). This amendment provides:

> Equality of rights under the law shall not be denied or abridged by the United States or any State on account of sex. 75/

The ERA was passed overwhelmingly by Congress in 1972, and the Commission endorsed it in 1973. In its brief statement on that occasion, the Commission said, "Ratification of the ERA is an important and appropriate means of alleviating sex discrimination--just as the adoption of the 13th and 14th Amendments was vital to the cause of racial equality."

By 1978, 35 States, three short of the three-quarters necessary for approval, had ratified it. Congress extended the March 1979 ratification deadline to June 1982, but no other States voted to endorse it (several attempted to rescind their earlier favorable votes) and it expired. National opinion polls on the subject continually have shown a majority of the American public support the amendment.

75/ H.J. Res. 208, 92d Cong., 2d sess., 86 Stat. 1523 (1972).

In order to counter what it views as myths about the impact of the ERA on the Nation, the Commission released a _Statement on the Equal Rights Amendment_ (1978) and an update, _The Equal Rights Amendment: Guaranteeing Equal Rights for Women Under the Constitution_ (1981). These publications examine the ERA's likely effect on laws and governmental action concerning women in employment, spousal property rights, divorce, retirement income, education, and the military. They also assess the amendment's probable effect on States' rights and the courts. The following are examples of beneficial changes the Commission has determined the ERA would bring about:

- Unwarranted legal restrictions on women's labor force participation would be invalidated.
- Loopholes in existing Federal and State antidiscrimination laws would be closed, protecting public employees (including those who work for elected officials) from gender-based employment discrimination.
- Laws denying women equal rights to marital property would be nullified.
- A constitutional basis for recognition of homemakers' economic contribution to marriages would be established.
- Gender-based discrimination in insurance, pensions, and retirement security programs would be prohibited.
- Educational institutions receiving Federal assistance would be required to dispense with policies and practices that discriminate against women and men.

- The armed forces would have to eliminate policies and practices that limit opportunities and obligations women can undertake in military service to the Nation.

The Commission concluded that State legislators and the public have been confused by a lack of clear understanding of ERA's outcome, and this confusion was "a significant barrier to ratification." Given the "patchwork quilt" of laws at all levels of government nationwide which sanction sex discrimination and the piecemeal process required for reform, the Commission asserted that only a constitutional amendment can effectively secure equal rights for women. The Commission also stated that adoption of the ERA would bring issues of women's equality from the relative obscurity where they presently languish to the forefront of governmental attention. The ERA would "set a standard of equal dignity before the law" by informing government that rights and obligations may not be imposed on one sex and not the other.

Despite the failure of the Equal Rights Amendment to win ratification in 1982, the Commission believes that its resurrection and incorporation into the Constitution are worthy goals possible of achievement.

ENFORCEMENT

This report has outlined the major civil rights legislation enacted during the last three decades and has noted significant court decisions addressing patterns, practices, and laws that resulted in discrimination based on race, sex, religion, national origin, age, and handicap. It has also noted the contribution the U.S. Commission on Civil Rights has made to the enactment of most civil rights legislation. Another significant contribution of the Commission has been its appraisal of the Federal Government's enforcement of these laws. Commission evaluations published during every administration since 1959 have identified several problems experienced by most Federal agencies with civil rights enforcement responsibilities.

Lack of Sufficient Staff

Enforcement of civil rights laws is a "labor-intensive" process in which staff investigators must evaluate individual discrimination complaints, carry out compliance reviews, and provide technical assistance to organizations or individuals to induce compliance with the laws. Negotiation is another part of the enforcement effort, and litigation may become necessary to enforce the laws. Extensive data must be collected and analyzed throughout these efforts. Clear and effective guidelines and regulations must be developed as the courts and

Congress continue to develop the body of civil rights law. Such tasks require well-trained specialists working many hours.

A 1971 Commission report, _The Federal Civil Rights Enforcement Effort--Seven Months Later_, found that staffing at virtually all key Federal civil rights agencies, for example, the Office of Federal Contract Compliance and the Equal Employment Opportunity Commission, was inadequate, given the scope of their responsibilities. The small number of attorneys assigned to the Employment Section of the Justice Department's Civil Rights Division was a major problem, the report said, and without a sizable staff increase, that section would be able to participate in few cases in an area requiring extensive litigation. The report expressed satisfaction that the Nixon administration had recommended significant staff increases for civil rights enforcement in fiscal year 1972.

Commission reports issued since then, including separate evaluations of the proposed FY 82, 83, and 84 enforcement budgets, have reiterated concern over the adverse effect of inadequate staffing on vital enforcement functions and the continuing need for greater resources to handle new Federal civil rights enforcement responsibilities.

Inadequate Leadership and Direction

From its beginning, the Commission has called on the executive branch, including each President, to assert stronger leadership in support of civil rights. It has repeatedly

criticized the Government for being too lethargic and passive in this regard. In 1971, for example, the Commission found "lack of aggressiveness," one element most characteristic of the Federal Government's civil rights position over several administrations,

> so flagrant as to cause the Commission to conclude that the Federal Government had virtually abdicated its responsibility to enforce civil rights laws. Some agencies that should have been in the forefront of the enforcement effort seemed scarcely aware of their obligation; others had made only minimum efforts....The most deepseated problems...were lack of commitment to civil rights goals by Federal officials and hostile or narrow-purposed bureaucracies that view civil rights as a threat to or as outside of their prerogatives, programs, and personal inclinations. 76/

Various Commission reports have called for institutionalization within the executive branch, specifically, the Office of Management and Budget, of a formal civil rights coordinating function. They also have called for greater efforts to place more women and minority men in top-level Federal Government positions. More active use of available sanctions, such as debarment of Federal contractors not in compliance with contract compliance program requirements, has been another frequent and consistent Commission recommendation to strengthen the leadership, direction, and credibility of the Federal civil rights enforcement effort.

76/ U.S., Commission on Civil Rights, The Federal Civil Rights Enforcement Effort--Seven Months Later (1971), p. 3.

Lack of Coordination and Consistency

Another longstanding problem of concern to the Commission has been confusion and inconsistency with regard to Federal civil rights enforcement standards and activities. A large amount of money in Federal assistance is provided each year to institutions and programs nationwide. Under Title VI of the Civil Rights Act of 1964 and section 504 of the Rehabilitation Act of 1973, and under other civil rights laws, recipients are bound to implement civil rights guarantees against discrimination based on age, race, sex, handicap, and other categories. The many Federal agencies that disburse this money are responsible for enforcing those guarantees. Commission reports have found that agencies differed markedly in the quality of that enforcement, and that confusion and inconsistency characterized the effort overall. Compliance guidance provided aid recipients was vague or inconsistent, for example, and the data required from recipients was inadequate to monitor compliance effectively.

Similar problems have existed with regard to enforcement of equal employment laws, such as Title VII of the 1964 Civil Rights Act and Executive Order 11246. In a 1975 report, for example, the Commission concluded that:

> The diffusion of authority for enforcing Federal equal employment mandates among diverse agencies is one of the paramount reasons for the overall failure of the Government to mount a coherent attack on employment discrimination. Agencies have different policies and standards for compliance. They disagree, for example, on such key issues as the definition of employment discrimination, testing, the use of goals and

> timetables, fringe benefits, and back pay. Moreover, there is inadequate sharing of information, almost no joint setting of investigative or enforcement priorities, and little cross-fertilization of ideas and strategies at the regional level. This fragmented administrative picture has resulted in duplication of effort, inconsistent findings, and a loss of public faith in the objectivity and efficiency of the program. 77/

One early formal effort to coordinate and standardize enforcement of the new civil rights laws was made in 1965 when Executive Order 11197 78/ created a President's Council on Equal Opportunity responsible for, among other things, recommending ways to improve coordination of Title VI. Other steps were taken to improve civil rights enforcement coordination, such as consolidation within the Labor Department's Office of Federal Contract Compliance Programs of the Executive Order 11246 responsibilities previously shared by 11 different agencies and the assignment to EEOC of coordination responsibilities for Title VII, equal pay, and age discrimination in employment enforcement.

Major problems persist, however. For example, the Commission's 1983 report on Federal civil rights enforcement and resources criticized the Justice Department for failing to

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77/ U.S., Commission on Civil Rights, The Federal Civil Rights Enforcement Effort--1974, vol. V, To Eliminate Employment Discrimination (1975), p. 618.

78/ 3 C.F.R. 278 (1964-1965 Comp.).

meet many of the requirements of Executive Order 12250, 79/ which recently gave that Department responsibility for coordinating enforcement of all prohibitions against race, sex, and handicap discrimination in federally assisted programs. The report noted, among other things, that the Department had failed to publish necessary regulations or to provide case referral procedures for agencies seeking Justice Department litigation as an enforcement tool, and had taken legal positions on Title IX and section 504 enforcement, and also affirmative action, that are inconsistent with long-established Federal policy.

Weakness of Some Laws

The Commission long has noted the need to strengthen civil rights laws in some areas, such as housing and employment, and the authority of enforcement agencies. For example, the Commission in a 1979 report noted that HUD was empowered to seek redress of violations only through conciliation and administrative action and urged that it be provided cease and desist enforcement authority.

The Commission also concluded in a 1973 report that EEOC should be authorized to issue cease and desist orders to eliminate discriminatory practices through administrative action. In congressional testimony in 1979 the Commission

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79/ 3 C.F.R. 298 (1981), reprinted in 42 U.S.C. §2000d-1 (Supp. V 1981).

supported amending Title VI of the Civil Rights Act to prohibit discrimination based on sex, as well as race, color, or national origin. Further, a 1975 report urged Congress to amend the Voting Rights Act to provide for civil penalties or damages against State and local officials who violate that act by enforcing or implementing changes in their electoral laws and procedures without having first obtained preclearance from the Attorney General of the United States or the District Court for the District of Columbia.

These and many other steps have been recommended to strengthen civil rights laws and agency authority to enforce them. In addition, through detailed comments over the years on the guidelines and regulations that implement these laws, the Commission has stressed the need for broad yet clear interpretations of the requirements of those laws.

State and Local Civil Rights Enforcement

Strong civil rights enforcement efforts by some States, such as Michigan, New York, and Wisconsin, were under way before the major Federal civil rights laws were enacted in the 1960s. For example, the Michigan Legislature passed a law in 1885 establishing the right of all Michigan citizens to use all places of public accommodation. State and local civil rights laws and enforcement approaches today often parallel those of the Federal Government. For example, State contractors in many

States are subject to equal employment requirements similar to those that bind Federal contractors. State and local agencies also process individual job and housing discrimination complaints, relieving Federal agency complaint workloads.

In other States, however, racial segregation and discrimination were deeply embedded, and few State or local political leaders were willing to push for change. Today, civil rights protections remain uneven and inconsistent from State to State.

Since its inception, the Commission has monitored the civil rights enforcement activities of State and local, as well as Federal, governments. Reports by its Advisory Committees in the 50 States and the District of Columbia have evaluated State and local enforcement of civil rights laws in many areas, including housing, employment, school desegregation, credit, community development, immigration, health care, revenue sharing, municipal services, and the administration of justice.

A 1977 compilation of reports by the 51 Advisory Committees and also more recent studies found that State and local enforcement efforts have suffered some of the same problems found in the Federal enforcement effort. Committed political leadership on behalf of civil rights has been lacking in some States and communities. Inadequate resources for State and local agencies has been another problem. For example, a 1982 Nebraska State Advisory Committee report concluded that if the

Federal Government now is committed to increased deferral of civil rights enforcement activity to State and local government, increased resources are necessary. Those resources do not appear to be forthcoming, however.

CONCLUSION

Most of the legislation necessary to guarantee civil rights to women, to the Nation's racial, ethnic, and religious minorities, and to its older and handicapped persons has already been enacted. To be sure, some legislation needs strengthening. Notably, Title VIII of the Civil Rights Act of 1968, the Fair Housing Act, needs enhanced enforcement provisions (which Congress is now considering), and the concept of reasonable accommodation for the handicapped should be more clearly delineated by statute. In addition, a majority of the Commission has always supported the Equal Rights Amendment to the Constitution as the best means by which to assure constitutional protection against discrimination based on sex.

The Commission has played a central role in urging this legislative change for a fairer society. It contributed significantly to the enactment of laws, such as Title VI of the 1964 Civil Rights Act and the Voting Rights Act of 1965, that signaled a turning away from the past and towards this vision of the future. Its work influenced congressional action to extend the Voting Rights Act in 1975 and 1982. Congress incorporated a number of the Commission's recommendations into the 1978 Amendments to the Age Discrimination Act of 1975.

The executive branch also has adopted many of the Commission's recommendations for implementing civil rights laws regarding, for example, organizational consolidation of Federal

equal employment opportunity enforcement; issuance of various regulations and guidelines concerning equal employment opportunity and affirmative action; Federal agencies' reporting of information on the status of their civil rights programs to the Office of Management and Budget; improved coordination of cross-cutting nondiscrimination laws such as Title VI, Title IX of the Education Amendments of 1972, and Section 504 of the Rehabilitation Act of 1973; and access to Federal loans for black farmers.

The major efforts to eliminate discrimination in the future will not solely be in the enactment of new legislation but also in the effective enforcement of those laws now on the books. The Commission has consistently concluded that legally mandated or tolerated segregation and discrimination in our society can be dismantled only with the leadership and assistance of the Federal Government. Virtually every Commission report since the first one in 1959 to the last one in 1983 has reported that important progress has been made in developing an effective body of Federal civil rights protections and enforcement mechanisms to guarantee constitutional rights. Those reports also have made clear, however, the Commission's continuing view that more funds and staff are needed to more effectively monitor and promote compliance with civil rights laws.

There is a critical need for a continuing, strong Federal role in civil rights enforcement. The Commission has warned in the past of the importance of steadiness and vigilance in this

regard. The Commission's 1981 statement, Civil Rights: A National, Not a Special Interest, noted, for example, that the promises of the 13th, 14th, and 15th amendments to the Constitution--"the keystone in the arch of freedom we call civil rights"--were not realized for many years after because the Federal Government abandoned its role of guarantor and permitted slavery to be replaced by legally mandated segregation. The tragic consequences of that development continue to haunt this Nation today.

In this context, the Commission believes the national interest compels the continuing existence of an independent bipartisan Federal agency mandated to appraise civil rights issues and progress throughout the Nation and to recommend to the President and Congress, without regard to political considerations, steps it believes necessary to ensure equal opportunity for all Americans. Only a fully independent Federal agency can perform this vital role effectively and contribute to the public understanding of very sensitive matters. As then-Attorney General Herbert Brownell, Jr., said in 1956, on the eve of the creation of the U.S. Commission on Civil Rights, "Through greater public understanding...the Commission may chart a course of progress to guide us in the years ahead." 80/

80/ Letter to the Vice President and the Speaker of the House of Representatives, April 6, 1956, reiterated before the House Judiciary Committee. See 85th Cong., H.R. 291, Apr. 1, 1957, p. 14.