

# LEADERSHIP CONFERENCE EDUCATION FUND CIVIL RIGHTS MONITOR

SPECIAL REPORT NO. 1: U.S. COMMISSION ON CIVIL RIGHTS

APRIL 1986

"[T]here [is] no doubt that the once proud  
Civil Rights Commission[is] in shambles...  
(Newsweek, April 21, 1986)

"The Rev. Theodore Hesburgh, a member of the original  
U.S. Commission on Civil Rights, said this week that the agency he serve  
for 15 years lacks leadership and integrity and ought to be dismantled."  
(Wash. Post, April 30, 1986)

The U.S. Commission on Civil Rights, already deeply mired in controversy, faced new troubles in March and April. Heading the list of problems was a U.S. General Accounting Office audit which found serious mismanagement at the reconstituted agency. GAO's findings, which detail abuses in personnel practices, travel payments, and financial records, confirm allegations the House Subcommittee on Civil and Constitutional Rights and the House Committee on Appropriations have received over the past two and a half years. The Director of GAO's General Government Division indicated that "the blame for mismanagement belongs primarily on Linda Chavez, the commission's staff director during most of the period under study" (The San Diego Union, Mar.26, 1986, A-16).

The Commission also faced internal dissension as Commissioner John H. Bunzel called publicly for Commission Chair Clarence M. Pendleton, Jr. to resign, concluding that Pendleton's "opportunity to make a significant contribution to the work of the commission has passed." During their tenure, Bunzel and Pendleton have voted in tandem on virtually all issues. Adding to the Commission's strife, was a fracas over the latest Commission report. The report which recommended a one year funding moratorium for minority business set-asides was characterized by some commissioners as superficial and shoddy. By a 5-3 vote, the commissioners sent the report back to the staff for a rewrite.

## BACKGROUND

The Commission was created in 1957 by the first federal civil rights statute in this century. Authorized as a temporary, independent, factfinding agency, the Commission was charged to

investigate complaints that blacks were being denied the right to vote. By law, the President nominated and the Senate confirmed the six members of the Commission and the Staff Director; and the membership of the Commission was to be bipartisan. Over the next 25 years as the Commission was reauthorized by the Congress, its statutory responsibilities were expanded. Often referred to as the conscience of the nation, the Commission consistently monitored and evaluated the federal government's policies and activities in civil rights enforcement and more often than not found the government lax in its efforts. Few Presidents welcomed the Commission's criticisms, but most of its recommendations for legislative and administrative action ultimately were accepted. And no President sought to tamper with the membership of the Commission.

### Reagan Administration Transforms the Agency

In 1981, breaking with tradition and piercing the independence the Commission had enjoyed for 25 years, President Reagan replaced two members of the six-member Commission. In 1982, the President nominated three other persons. Though the nominees were favorably reported by the Senate Judiciary Committee, the full Senate, in a rare development, did not act upon the names before the end of the 97th Congress. Again, in May 1983, the President nominated three persons.

On October 25, 1983, while consideration of the Commission's reauthorization was before Congress, and in response to the Senate's lack of action on his nominees, the President fired three more Commissioners. Fearing for the Commission's autonomy, concerned Senators and a majority of the civil rights community were prepared to take the agency out of the hands of the Administration, and replace it with a new Commission whose members would be appointed by the Congress. The proposal for a Commission under the legislative branch had 55 cosponsors. With the Commission's authority scheduled to expire and with the Senate scheduled to adjourn in a few days, the proposal was ripe for a filibuster. A further complicating factor was a House vote not to continue funding for the Commission unless the agency's independence was maintained.

As William Taylor wrote in "Farewell Civil Rights Commission," in The Nation (February 4, 1984):

... Senator Dole intervened, despite his earlier statements that the commission's composition was "a Beltway issue" of limited national political and substantive importance. On November 10, with time running out, Dole told civil rights lobbyists he had an offer that they "couldn't refuse" and that he could persuade the Administration to accept. The Dole proposal called for an eight-member commission -- four appointed by the President and four by Congressional leaders. The deal hinged on the selection of specific people as commissioners. Democratic Congressional leaders would reappoint Mary Frances Berry and Blandina Cardenas

Ramirez, two of the three outspoken commissioners whom Reagan had fired, and the House minority leader, Robert Michel, would reappoint Jill Ruckelshaus, a moderate Republican originally named by President Carter. Moreover, it committed Reagan to reappoint Mary Louise Smith, an Iowa Republican. Although she had been appointed by Reagan in 1981, Smith had taken positions contrary to the Administration's on issues before the commission.

The proposal met general acceptance and was enacted into law. Then, the Administration, led by White House Counsellor Edwin Meese, repudiated the compromise. The Administration refused to reappoint Smith and induced Michel not to appoint Ruckelshaus. Instead, the Administration appointed persons who shared the Administration's views on civil rights, creating a Commission in its own likeness. The President appointed Clarence M. Pendleton, Jr., President of the San Diego Urban League, Morris Abram, partner in the law firm of Weiss, Rifkind, Wharton and Garrison, John Bunzel, senior research fellow at the Hoover Institution, Stanford University, and Esther Gonzalez-Arroyo Buckley, a science and math teacher in Laredo, Texas. The Senate appointed Ramirez and Francis Guess, Commissioner of Labor for the State of Tennessee. Berry and Robert Destro, assistant professor of law at Catholic University, were appointed by the House. Destro had been nominated by the President in 1982 and 1983.

With the additional appointment of Linda Chavez as Staff Director, the Administration had a Commission whose criticism of its civil rights policies would be almost nonexistent.

#### **THE GAO AUDIT**

The GAO audit was requested by four House Committee and Subcommittee Chairs: Representative Don Edwards (D-CA), Subcommittee on Civil and Constitutional Rights; Representative Augustus Hawkins (D-CA), Committee on Education and Labor; Representative Pat Schroeder (D-CO), Subcommittee on Civil Service; and Representative Matthew Martinez (D-CA), Subcommittee on Employment Opportunities. The audit was requested to respond to allegations of mismanagement at the Commission since its reconstitution.

GAO was able to document a series of abuses despite the unusually bad condition of the Commission's records. In subsequent testimony before the House Subcommittee on Civil and Constitutional Rights, William J. Anderson, Director of GAO's General Government Division, stated:

[W]e had great difficulty in performing this audit. Some records were missing; some were incomplete; and still others were conflicting. This situation seriously hampered our ability to come to firm conclusions on some of the allegations, using the standards of evidence that we require. We were particularly concerned that documents

critical to our ability to determine whether the Commission had followed merit principles in personnel actions were not in the files.

The GAO found ...

-The Commission hired consultants and temporary and political employees in place of career staff: "From the beginning of fiscal year 1983 through December 31, 1985, the period covered by our review, the Commission made 212 noncareer appointments vs. 60 career appointments. The total of 212, was composed of 151 temporaries, 41 consultants and 20 Schedule Cs. The largest number of these (102) were made in fiscal year 1984.11 Schedule C employees are commonly referred to as political appointees. At the end of fiscal year 1985, 55 of its 236 permanent career positions were unfilled.

-Procedural violations of Office of Personnel Management (OPM) requirements were found in all 31 consultant personnel files reviewed. "The poor records maintained on consultant appointments precluded us from making firm determinations on their propriety. However, all 31 appointments contained indications of irregularities. None of the personnel files for the 31 appointments contained the statement of duties and responsibilities that OPM requires be in the files. Thus, we could not determine whether the consultants' services were needed or whether each consultant possessed the necessary background to render advisory services to the Commission." GAO found that "at least five of the consultants appeared to be performing operating duties [managing a Commission project or supervising career employees]. Performance of operating duties is considered by OPM to constitute illegal employment. "Hiring of consultants allowed the Commission to avoid competitive employment procedures. Indeed the Federal Employment Manual states that: "The improper employment of experts and consultants is not only illegal, it is wasteful and destroys the morale of the career specialists."

And, the GAO raised serious questions about still other practices...

-about improper use of a car and driver by Staff Director Linda Chavez to go from home to work-related meetings and activities. The staff director's driver left the Commission for a job at the White House at approximately the same time Chavez left the Commission to become White House deputy assistant for public liaison. While the driver maintained a trip log during his tenure at the Commission, he did not turn the log in when he left the Commission. "He acknowledged," the GAO reported, "that he took the logs he prepared during the 3-month period he drove the automobile with him when he left the Commission in April 1985. He said he disposed of them approximately 6 months later."

Coincidentally, the GAO auditors requested the log the same month the driver disposed of it. Both Linda Chavez and the driver in written statements maintained that she was not transported from home to work.

-about the propriety of a trip to Israel by Chavez at U.S. taxpayers' expense during her tenure as Staff Director. The trip was made at the request of the Government of Israel and the travel authorization states that the purpose was to discuss affirmative action and civil rights issues with Israeli officials.

-about travel by Commissioners and staff which in some instances was inappropriately paid for by organizations other than non-profit tax-exempt organizations. Among the groups picking up the tab were "an oil company, television networks and political organizations."

The GAO revealed dubious financial practices by the Commission's leadership

...

-Commissioners are appointed as part-time employees of the Federal Government, although "the Commission does not limit the number of days the Commissioners or their Special Assistants can work each year." Chairman Pendleton has billed the Federal Government at an almost full-time rate during his tenure at the Commission. In fiscal year 1985, the Chair billed the government for 240 days (assuming a 5 day work week, there are 260 work days in a year) for a total of \$67,334. The Commissioner receiving the next highest salary, John Bunzel, received \$28,781 for 103 days, less than half of Pendleton's salary. Pendleton's assistant, Sydney Novell, in fiscal year 1985 billed the Federal Government for 239 days and received \$41,328. Commissioner Berry's assistant, Linda Edwards, received the next highest salary, \$15,478 for 99 days.

-Further, in 1985, Pendleton received an additional \$29,300 from the government for expenses, and his assistant billed the Commission for almost \$15,000 in expenses. Corresponding figures for the Commissioner and assistant receiving the next highest amounts in expenses were \$17,200 (Bunzel) and \$1,000 (Commissioner Guess's assistant). Moreover, in 1985 Sydney Novell billed the government for 21 trips, while other assistants billed for one trip each. At oversight hearings, Pendleton did not respond to Representative Schroeder's questioning as to whether the number of days for which Commissioners can bill the agency should be limited.

-Commission officials are unable to account for \$175,000 of FY 1985 funds. These funds represent part of \$421,000 the Commission was allowed to shift from three budget activities to a hearing budget in fiscal year 1985; the hearing in fact was not held until fiscal year 1986. Commission officials informed GAO that \$175,000 of the shifted funds "was spent

on various other, unidentifiable, program activities" (emphasis added). Moreover, before responding to GAO's repeated requests for documentation on how the monies were spent, "the Commission's General Counsel changed his own time charges, as well as the time charges of the staff he said worked on planning the November hearing... Most of the increases, however, were to the time charges of the General Counsel and his Deputy. [GAO] questioned four other staff members who are still at the Commission; only one agreed that the changes to his time charges were correct."

#### The GAO report documents the changes in the State Advisory Committees ...

-The Commission's State Advisory Committees (SACs) have changed drastically since the Commission was reconstituted. The Commission has Advisory Committees in each State and the District of Columbia that help in investigations and act as clearinghouses for Commission information. (According to the Commission's Employee Handbook, the Committees are composed of citizens who serve without compensation and who are familiar with local and state civil rights problems.) Although referred to as the "eyes and ears" of the Commission, the Committees have decreased in size and in their activities. Prior to 1985, SAC memberships ranged from 11 to 33. When the SACs were rechartered, each committee was limited to 11 members. The representation of women and minorities as SAC chairpersons declined drastically. Committee chairs are now 72 percent white vs. 29 percent previously, and 92 percent of the chairs are male compared to 61 percent before.

According to Representative Don Edwards, the "shocking problems" at the Commission, detailed in the audit, help explain why the Commission is no longer performing effectively its statutory responsibilities of fact-finding and monitoring of the Federal Government's enforcement efforts in civil rights. "It's been nearly two and a half years since Congress reconstituted the Commission ... [T]he Commission has spent close to \$30 million and the American taxpayer has seen almost nothing for it."

#### The Commission's Response

Commissioners Pendleton, Abram and Destro, and Staff Director J. Al Latham, Jr., at an April 22, 1986 hearing before the House Subcommittee on Civil and Constitutional Rights, assailed the GAO report as a political hatchet job, and asserted that the report "presumes guilt in the absence of evidence, is riddled with mistakes and half-truths, and fails to highlight a single deliberate violation of law, statute, or regulation, or a single ethically improper act" (emphasis added).

In contrast, Commissioners Ramirez and Berry asserted that "the Commission on Civil Rights, as described in the GAO audit, is an agency out of control ... [A]ccording to the GAO report, we are an

agency whose Staff Directors, Linda Chavez and Max Green, engorged the staff with political appointees and created a mess of paperwork and administrative confusion." These Commissioners observed with regret, "We had hoped the Staff Director would come here prepared to promise to strengthen administration and management and to avoid the defects cited in the GAO report. That has not happened. Instead we have testimony by the Staff Director, who was not even at the Commission when the activities analyzed by GAO occurred, which defends the actions of previous Staff Director Linda Chavez and Acting Staff Director Max Green."

Vice Chair Morris Abram, after insisting upon the impeccable credentials of Commission staff, confirmed that two Commission employees cited in the GAO report because of their unusually rapid advancement at the Commission were college friends of Mr. Abram's son. In response to questioning from Representatives Schroeder and John Conyers, Jr. (D-MI), Abram said that he had recommended the individuals in question (one a former roommate of his son), but "had nothing to do with anyone's grade level." Both were hired as GS-7 temporary employess (starting salary \$17,824), one was promoted to a GS-11 job in nine months (starting salary \$26,381), and the other to a GS-12 position in 13 months (starting salary \$31,619). Because the young men were hired as temporaries, their promotions were not governed by OPM's requirement that "career employees above GS-5 must serve at least 1 year in grade before becoming eligible for promotion."

#### **MORRIS ABRAM ON MERIT AND FAIRNESS**

- 1981 Abram states that the Commission's proposed Statement on Affirmative Action supporting numerically based remedies "is the very antithesis of our struggle ... It is directed against the principles of merit in the Federal civil service and throughout life; it will be a brake on productivity which we sorely need so that we can have a larger pie that fairly distributes."
- 1986 Abram tells Robert Pear of the New York Times: He favors "equality of opportunity - a fair shake" for all individuals, while the old commissioners supported "equality of results -- a fair share" for particular groups.
- 1986 At oversight hearing, Abram admits that he recommended two of his son's college friends for jobs at the Commission. The two were cited in the GAO report for their rapid advancement at the agency. "I recommended them but had nothing to do with anyone's grade level." One of the young men, in an article in a magazine of his alma mater, blandly observed "Through pluck and grit and nepotism I landed a job at the U.S. Commission on Civil Rights" (Diary of a Mad Bureaucrat," Columbia Magazine).

## INTERNAL DISSENSION AT THE COMMISSION

Adding to the Commission's problems was Commissioner Bunzel's public call for Chair Pendleton to resign. Bunzel, who has uniformly supported Pendleton's civil rights policies, said that the Chair's "inflammatory rhetoric" and "fulminations" had diverted attention from the work of the Commission and tended to "undermine the credibility" of the agency. Bunzel's letter continued:

During the two and a half years I have been a member of the commission, I have been increasingly disturbed by your inflammatory rhetoric. It has too often stifled, rather than contributed to, the kind of rational and respectful debate of complex issues that is much needed today.

During Pendleton's tenure as Chair he has frequently taunted black civil rights leaders, referring to them as "new racists" and "seducers" who are guilty of leading black Americans into a "political Jonestown."

I say to America's black leadership: Open the plantation gates and let us out. We refuse to be led into another political Jonestown as we were led during the presidential campaign. No more Kool-Aid ... (Rolling Stone Magazine, March 13, 1986).

### Pendleton's financial problems ...

Bunzel's letter also made reference to Pendleton's financial difficulties. "Although I know nothing of your personal finances, I do know that the cloud that continues to hang over you has not reflected well on the agency." The reference was presumably to pending investigations by the Small Business Administration inspector general and the California attorney general of a contract Pendleton arranged for his assistant, Sydney Novell, while he was chairman of a federally funded nonprofit organization in San Diego. The contract ultimately provided for Novell to receive \$60,000/year plus commissions for packaging loan applications to the Small Business Administration, though the organization had previously paid only commissions for the same work. In 1985, Novell received \$77,000 under the contract. Both Novell and Pendleton ended their association with the organization in January 1986 (Wash. Post, April 22, 1986).

### Berry says Pendleton is a Scapegoat ...

Commissioner Berry who has consistently been at odds with Pendleton has said she does not think the Chair should resign and that he is being used as a convenient scapegoat by Commission officials wishing to divert attention from the GAO audit and the serious problems at the Commission.

Bunzel is looking for someone to blame for all the difficulties and Penny is a convenient scapegoat because



everyone knows what a bumbler he is (USA TODAY, April 9, 1986).

Berry noted that "the problems at the Commission are more than Penny deep" (Wash. Post, April 8, 1986). Pendleton was quoted as saying he had "absolutely no intention of resigning" (Wash. Post, April 8, 1986).

### **FRACAS OVER MINORITY SET-ASIDES**

With the GAO audit report less than a month old, the Commission found itself once again embroiled in controversy over a draft staff report on minority set-asides. Commissioners charged that the report had not been authorized by the commissioners, and that the product was "shoddy". Another commissioner characterized the report as superficial.

The report is a statement on Federal Government programs which "set aside" specified percentages of government procurement money for firms owned by minorities. The report, which if adopted by the Commissioners would constitute the Commission's policy on set-asides, is highly critical of the programs and recommends a one-year moratorium on set-asides, including the Small Business Administration's 8(a) program, the Department of Transportation's Surface Transportation Assistance Act 105(f) set-aside, and direct set-asides between Federal agencies and Disadvantaged Business Enterprises and Women's Business Enterprises.

#### Criticism of the Report ...

Commissioners Ramirez and Berry issued a statement criticizing the report and asserting that the Commissioners never voted to direct the staff to prepare such a report.

This report provides fresh evidence of the credibility and management problems of the reconstituted U.S. Commission on Civil Rights ... The report is an example of Commission work at its shoddiest, exhibiting a disdain for Commission procedure in its inception and an obtuseness about exploring the issues which extends to ignoring factual matter in the hearing transcript, and an overall product which concludes with the flimsiest findings and recommendations possible. In sum, anyone who is interested in ascertaining the value or legality of minority business set-asides must look elsewhere than in the Commission's report.

During Commission review of the study, Berry revealed that the SBA's Associate Administrator for Minority Small Business and Capital Ownership Development, who reviewed a section of the study, had expressed concern over the report's "lack of accuracy and objectivity." In a letter to the Staff Director, the Administrator stated:

[W]e are concerned with the lack of accuracy and objectivity

of those parts of the report dealing with the 8(a) program, since they appear to be based on dated 1970s General Accounting Office reports and existing rules and regulations and not on a meaningful analysis on the present state of the 8(a) program or its performance over the last 4 years. One particular issue I want to clarify is that contrary to the report's conclusion ... that one of the continuing problems of the 8(a) program is its inability to graduate firms, the opposite is true. Since the passage of Public Law 96-481, 8(a) firms have indeed been graduating from the program. For example, in the 5 years prior to Public Law 96-1181 (1977/1982) only 82 firms graduated from the program while, since the law's implementation in late 1982 through FY 1985, 468 firms have graduated. Through 5 months of the current FY, 117 firms have exited from the program.

The uproar over the Commission's opposition to set-asides took a strange twist when reports surfaced alleging that Pendleton had at one time tried to set up a minority business enterprise to take advantage of the Federal set-aside programs. Reportedly, Pendleton was to serve as a "front" for two white businessmen (New Republic, April 14, 1986). The chair has stated that any such suggestion is "a blatant outright lie."

On April 11, the Commissioners voted 5-3 to send the report back to the Staff for rewriting on the basis of Commissioners' comments and questions. It has been stated in the news media that the report was tabled following pressure from the White House as President Reagan has on several occasions expressed support for business set-asides (Wash. Post, April 12, 1986). On July 14, 1983, President Reagan signed Executive Order 12,432 which requires federal agencies to establish objectives and methods for increasing minority business subcontracting by federal contractors.

#### **LACK OF INDEPENDENCE AND PERFORMANCE**

The problems the Commission faced in March and April exemplify broader concerns over the Commission's independence and fulfillment of its statutory mandates, concerns which have been voiced since the Commission's reconstitution in 1983.

##### The Importance of Independence ...

Since its inception the Commission's independence has been the cornerstone of its integrity. At the Commission's first hearing in Montgomery, Alabama (December 8, 1958), Chair John A. Hannah stated:

I would like to emphasize that the Commission on Civil Rights is an independent agency of the Government, in no manner connected, even administratively, with the Department of Justice ... The emphasis of the commission and its staff is on objectivity, and, as the commission views it,

objectivity presupposes getting all of the facts.

During the 7 month Congressional battle in 1983 to maintain that independence, members of Congress highlighted its importance:

We need a Civil Rights Commission with an abiding commitment to equality, an independent, apolitical commission that can give the American people the unvarnished truth. Sen. Lloyd Bentsen (D-TX), 129 Cong. Rec. S15912, November 9, 1983.

The legislative history which surrounds the initial establishment of the Commission reflects a strong desire on the part of Congress that the Commission be an independent, fact-finding agency. Rep. William Clinger (R-PA), 129 Cong. Rec. H6488, August 4, 1983.

Despite the legislative intent, the Commission since 1983 has been nothing more than a public relations agent for the Administration and its civil rights policies:

The day after President Reagan's re-election, Staff Director Linda Chavez informed the Commission's executive staff (many of them veteran commission employees) that "Anyone who thought the election results would be different and would change things, should know that the Commission will go forward in the direction it has been taking. I expect better cooperation and those who are unhappy should make a hard choice." In a debate with an Hispanic leader, Chavez declared that she did not speak for Hispanics, but "only for myself and the Reagan Administration." Similarly, Clarence Pendleton, the President's hand picked Chair, stated in a speech to the National Press Club on March 5, 1985:

Since 1980, and the election of Ronald Reagan, we have a team of people attempting to enforce the 14th Amendment. This team, led by Ronald Reagan, is trying to create a society that is truly colorblind ... Many of you wrote that we are political... Yes, we are political. Everything in this city is political.

Thus, the agency that had once been known as the conscience of the nation in matters of civil rights, became a propaganda voice for the Administration. And, its spokesperson, Linda Chavez was rewarded with a White House job as deputy assistant to the President for public liaison.

#### Productivity suffers ...

While the Commission has been busy performing its public relations function for the Administration, it has neglected its statutory responsibilities of fact-finding and monitoring. getting aside political orientation, the reconstituted commission has been a much less productive agency:

The GAO Report indicates that-

In FY 1983, the Commission's State Advisory Committees published 36 reports, in FY 1984 the SACs published only 3 reports and in FY 1985 the number was down to 2.

In FY 1983, the SACs had 40 projects-in-process, in FY 1984, 29 and in FY 1985, 14 were in process.

The number of SAC fact-finding meetings decreased from 12 in FY 1983 to 9 in '84 and to 5 in '85.

Further, a review of the Commission's Request for Appropriations and Budget Estimates documents that--

In FY 1982, the Commission completed 9 clearinghouse and statutory reports. In 1983, again 9 such reports were completed. In FY 1984, and in FY 1985, however, the Commission completed only 3 reports.

Moreover, the Commission appears to have redefined one of its principal duties monitoring the civil rights performance of federal agencies out of existence. The Commission's statute requires it to appraise the laws and policies of the Federal Government. In the 1970s, the agency issued detailed reports pointing out strengths and deficiencies in the programs of many federal agencies. Now, things have changed.

Rep. Schroeder pointed out at the April 22, 1986 oversight hearing that the Commission's Office for Federal Civil Rights Evaluation has not issued one analysis of federal civil rights enforcement since the reconstituting of the Commission. Characterizing the monitoring function as the "heart and soul" of the Commission, she questioned why two years after the Grove City decision, the Commission has been silent on the impact. (Grove City limited the prohibition against discrimination by recipients of federal financial assistance to the specific program receiving federal funds. Prior to the decision, receipt of federal funds was believed to require non-discrimination institution-wide. The result has been to limit severely the ability of the Federal Government to prohibit discrimination in institutions receiving federal funds.) In contrast, "During fiscal year 1983, the Commission undertook a sustained effort to monitor and evaluate executive branch policy concerning enforcement of civil rights protections in Federal financial assistance ... This involved tracking and commenting on litigation, as well as regulatory and legislative actions and reviewing closely policy developments at the Departments of Justice and Education. Work products included public statements, congressional testimony, and extensive correspondence."

Few and Feeble ...

Derision has surrounded most of the Commission's work since it was reconstituted. The Commission's report on Comparable Worth (1985) was highly criticized by the GAO, which questioned the Commission's basic definition of the concept. The report has

## THREE YEARS IN THE LIFE OF THE COMMISSION

1965

Commission holds public hearing in Jackson, Mississippi on denials of voting rights and racial violence in the administration of justice, taking testimony from black citizens, voting registrars, sheriffs and others. Issues a report on VOTING IN MISSISSIPPI. After enactment of the Voting Rights Act (which adopts Commission recommendations), Commission issues a VOTING RIGHTS ACT HANDBOOK, and publishes a study of the first months of implementation, THE VOTING RIGHTS ACT ... The first months. Agency also issues REGISTRATION AND VOTING STATISTICS by State and County for 11 States. The Commission publishes studies assessing the Federal Government's enforcement activities in several areas: EQUAL OPPORTUNITY IN FARM PROGRAMS: An Appraisal of Services Rendered by Agencies of the U.S. Department of Agriculture; ENFORCEMENT: A Report on Equal Protection in the South; CIVIL RIGHTS UNDER FEDERAL PROGRAMS: An Analysis of Title VI; and EQUAL OPPORTUNITY IN HOSPITALS AND HEALTH FACILITIES, Civil Rights Policies Under the Hill Burton Program.

1975

The Commission issues THE VOTING RIGHTS ACT: TEN YEARS AFTER which recommends extension of the Act. Congress extends the Act for seven years. Commission holds hearing in Boston, Mass. on SCHOOL DESEGREGATION, and issues DESEGREGATING THE BOSTON PUBLIC SCHOOLS: A CRISIS IN CIVIC RESPONSIBILITY which recommends that the Federal District Court consider placing the school system in receivership. The court subsequently places South Boston High in receivership. Commission issues six volumes of a major study evaluating THE FEDERAL CIVIL RIGHTS ENFORCEMENT EFFORT. Consultations are held on AFFIRMATIVE ACTION IN EMPLOYMENT IN HIGHER EDUCATION, and SCHOOL DESEGREGATION: THE COURTS AND SUBURBAN MIGRATION. The agency publishes: THE NAVAJO NATION: An American Colony; MINORITIES AND WOMEN AS GOVERNMENT CONTRACTORS; MAKING CIVIL RIGHTS SENSE OUT OF REVENUE SHARING DOLLARS; CONSTITUTIONAL ASPECTS OF THE RIGHT TO LIMIT CHILDBEARING; TWENTY YEARS AFTER BROWN: Equality of Educational Opportunity, Equality of Economic Opportunity, and Equal Opportunity in Housing; and a CIVIL RIGHTS DIRECTORY.

1985

Commission holds consultation on AFFIRMATIVE ACTION TOPICS IN EMPLOYMENT AND BUSINESS SET-ASIDES. Civil rights groups decline to testify after Commission refers to their position on affirmative action as "divisive, unpopular, and immoral". Commission holds hearing on THE PROTECTION OF HANDICAPPED NEWBORNS receiving testimony from physicians, parents, federal officials etc. Commission issues reports on: COMPARABLE WORTH: ANALYSIS AND RECOMMENDATIONS; DIRECTORY OF STATE AND LOCAL FAIR HOUSING AGENCIES; and TOWARD AN UNDERSTANDING OF STOTTS.

been useless in the continuing debate on this important topic. A second report released by the Commission, Toward An Understanding of Stotts (1985), is little more than a recitation on of the opinion, most of the 64 page report consisting of the printed text of the Supreme Court's ruling. The "legal analysis" in the report failed to mention any of the post-Stotts federal court of appeals and district court cases, all of which were at odds with the interpretation of the decision given by the Justice Department and the Commission.

A much ballyhooed study of Affirmative Action in Higher Education was scheduled for completion in February 1986, but in response to questions raised by the House Subcommittee on Appropriations, the Commission indicated that an "intensive review of the project" was underway. "Upon completion of this review, a recommendation on the project will be made to the Commissioners." The project director, who began working on the study on February 24, 1984, left the Commission on April 18, 1986 before completing the study. Elliot C. Lichtman, a civil rights attorney, who represents plaintiffs in the Adams case (suit to require the Federal Government to enforce the Civil Rights Act and compel States to eliminate segregated higher education systems), wrote, with respect to the project director's draft of a chapter on the Adams litigation:

Instead of objective scholarship, it is a diatribe against the good faith efforts of the NAACP Legal Defense Fund, representing the victims of racial discrimination, to secure effective executive enforcement of a vital civil rights statute. Moreover, your chapter also attempts to indict the Federal Government for carrying out its constitutional duty of ensuring an end to segregation and discrimination by the recipients of Federal funds ... In addition ... the tone of your document ... is frequently hostile and snide ... there are numerous errors of fact.

Similarly, the Commission's study on Voluntary and Involuntary Methods of School Desegregation is behind schedule and has been mired in controversy. The Commission initially contracted with a major research organization whose project staff had substantial experience in school desegregation research. In fact, this was one of the criteria used to evaluate the firm's ability to do the study. After problems arose with the contractor, the Commission transferred the project to a research organization with no experience in school desegregation which hired a technical consultant who has played an "active partisan role in desegregation litigation in creating evidence used against desegregation or to permit resegregation and return to neighborhood schools" (Statement of Gary Orfield, Professor of Political Science, Before the U.S. Commission on Civil Rights, December 10, 1985). The scope of the study was narrowed substantially. Professor Orfield resigned from the study's advisory panel citing numerous problems with the new contractor, commission staff handling of the study, and substantive problems with the scope of the study:

My basic objections to the study concern the lack of the necessary professional skills in the contractor's staff, the strong ideological tilt in the key leadership positions of the study, the lack of fair treatment of those who were not anti-busing activists on the advisory committee, and the exceedingly narrow focus of the research as it is now defined.

By the Commission's own assessment, 8 studies are behind schedule. While the Commission correctly asserts that it is not unusual in social science research for schedules to be adjusted to account for new research etc., the accumulation of deadlines not met, a decline in productivity, and charges of bias and inaccuracy has cast a cloud over the operations of the agency, and led many to question how the Commission has spent its annual budget of \$12 million.

#### **WHAT CAN BE DONE?**

In testimony before the House Subcommittee on Civil and Constitutional Rights, Commissioner Berry stated that Congress should not permit the situation at the Commission to continue. Responding to the agency's request for an appropriation allowing its activities to be combined under one line item --thus permitting total flexibility in how the agency spends its funds-- she said: "This GAO report, if it does anything, underscores the need for less rather than more flexibility." She also recommended that appropriated funds not be used to hire noncareer civil service staff except for one assistant assigned to each Commissioner; that the Staff Director be a top-level career civil servant with management experience; that the Staff Director be instructed by Congress to abide by laws and regulations governing the management, appointment, and promotion of employees; and that frequent, detailed reporting requirements on the status and use of funds be imposed on the Commission by the relevant House Committees.

Representative Schroeder, expressing concern that the Commission as reconstituted is "throwing away the taxpayers' money," has called for a defunding of the agency. This would mean a refusal by Congress to appropriate further funds for the Commission. Others have expressed an interest in establishing a Congressional Commission, an idea which first surfaced during the 1983 fight over reconstitution of the agency (see Background Section).

Father Theodore Hesburgh, a member of the Commission for 15 years, four of them as Chair, recently reflected on the role the Commission played in gaining passage of key civil rights legislation: "We changed the face of America with those bills." Now, he says, the agency has "no leadership or the kind of integrity it should have." His solution is dismantlement of the agency.

As William Raspberry, a syndicated columnist, wrote in response to Hesburgh's assessment:

[The Commission] has now become just another federal agency ... It is no longer a cutting edge for change, but a drag-anchor; no longer a part of the solution for what ails minorities but a part of the problem.

Hesburgh is right. It's time to end the charade (Wash. Post, April 30, 1986)

#### **CHRONOLOGY: DEATH OF AN INDEPENDENT AGENCY**

**November 1981:** White House notifies Chair Arthur Flemming, former Secretary of HEW and President of Ohio Wesleyan University, and Commissioner Stephen Horn, President of the University of California, Long Beach that President Reagan plans to replace them.

**February 1982:** White House announces its plans to nominate the Rev. B. Sam Hart. A controversy over Hart's alleged lack of credentials results in the withdrawal of his name from consideration. He is never formally nominated.

**March 1982:** Senate confirms the President's nomination of Clarence Pendleton, President of the San Diego Urban League, to be Chair, and Mary Louise Smith, former chairwoman of the Republican National Committee, to be Vice Chair. Later in 1982, the President nominates three other persons: Robert Destro, general counsel for the Catholic League for Religious and Civil Rights, Nicholas Domalis, and Guadalupe Quintinilla to replace Mary Frances Berry, professor of history and law at Howard University, Blandina Cardenas Ramirez, director of development at the Intercultural Development Association, and Murray Saltzman, Senior Rabbi, Baltimore Hebrew Congregation. Though the nominees are favorably reported by the Senate Judiciary Committee, the full Senate, in a rare development, does not act upon the names before the end of the 97th Congress.

**May 1983:** The President again nominates Robert Destro, now assistant professor of law at Catholic University, Morris Abram, partner in the law firm of Weiss, Rifkind, Wharton and Garrison, and John Bunzel, senior research fellow at the Hoover Institution, Stanford University to replace Berry, Ramirez and Saltzman.

**October 1983:** Responding to the Senate's lack of action on his nominations, and the Senate Judiciary Committee's scheduled vote to expand the Commission to eight members and maintain the independence of the agency, the President fires Berry, Ramirez



and Saltzman on the morning of the Grenada invasion.

Berry and Ramirez file suit in U.S. District Court asserting that the President does not have the statutory authority to fire sitting Commissioners without cause, and seeking an injunction against their removal.

**November 1983:** House refuses to appropriate funds for the Commission. Compromise proposal offered by Senator Robert Dole is accepted by the civil rights community and key members of Congress. The proposal provides for expansion of the Commission to eight members, four to be appointed by the President, two by the House and two by the Senate. The civil rights community accepts proposal with assurances from Dole and Baker that Meese has agreed that the President will reappoint Mary Louise Smith, the House Republican Minority Leader will appoint Jill Ruckelshaus, and the Senate Majority Leader will appoint a Republican with strong civil rights credentials.

Judge issues preliminary injunction against the firing action. Berry and Ramirez are reinstated.

President indicates he might not sign the legislation citing constitutional issues.

The President signs the legislation on November 30, the day the Commission is scheduled to go out of business.

**December 1983:** White House states it had made no commitment to reappoint Mary Louise Smith. Vice President Bush indicates that Mary Louise Smith presents a problem for the President because she will not guarantee a positive vote for the President's designated Chair.

Commission is reconstituted: President Reagan appoints Pendleton (Chair), Morris Abram (Vice), John Bunzel, and Esther Buckley; the Senate appoints Ramirez and Francis Guess; and the House appoints Berry and Destro. It is notable that Destro was twice nominated by the President, but not confirmed by the Senate.

**January 1984:** Commission holds its first meeting and while declaring its independence from the Administration, adopts a position on affirmative action in tune with the Administration's Without holding one hearing or conducting one study, the Commission begins its reversal of positions taken by the old Commission after careful study and research.

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