

U.S. COMMISSION ON CIVIL RIGHTS
REPORT TO THE PRESIDENT AND THE CONGRESS
January 1981

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UNITED STATES COMMISSION ON CIVIL RIGHTS

Washington, D. C. 20425
January 1981

LETTER OF TRANSMITTAL

THE PRESIDENT
THE PRESIDENT OF THE SENATE
THE SPEAKER OF THE HOUSE

SIRS:

The U.S. Commission on Civil Rights presents these recommendations to you pursuant to Public Law 85-315, as amended,

In 1980 the Nation witnessed increased resistance to equal opportunity, deepening concern about the relationship between minorities and agencies responsible for the administration of justice, growing strength of groups that preach hate, and civil unrest in many communities. If these trends are to be resisted, it is imperative that strong leadership be exercised during 1981 by both the Executive and Legislative branches of the Federal government. Based on analyses and reports of the Commission, this report lists the steps we believe should be taken to move the Nation toward achieving equality of opportunity.

Recent decades have witnessed enactment of strong civil rights laws and the rendering of numerous court decisions that guarantee equal protection of the laws. The Nation is now implementing those laws and decisions. Important progress in civil rights enforcement has been made in many cases, but vigorous opposition has also resulted. That opposition must be met by taking immediate steps to secure the rights established by the Congress and the courts.

Because of the urgency of the situation, we urge your prompt consideration of the enclosed recommendations.

Respectfully,

Arthur S. Flemming, Chairman
Mary F. Berry, Vice Chairman
Stephen Horn
Blandina C. Ramirez
Jill S. Ruckelshaus
Murray Saltzman

Louis Nuñez, Staff Director

Introduction

The 1980's is a critical period for civil rights. Increased resistance to civil rights progress, the resurfacing of hate groups, the growing frustration of millions of Americans for whom promises remain unfulfilled--all make the present decade a watershed period for civil rights. Current conditions demonstrate the necessity for action by the Executive and Legislative branches to achieve equality of opportunity for all Americans. Equality can only become reality following effective actions by the President and the Congress.

To demonstrate the commitment of the Federal government, a number of steps need to be taken during 1981. The following recommendations address the areas of administration of justice; Presidential appointments; civil rights coordination; enforcement of civil rights laws; the elimination of sex discrimination in Federal programs; equal educational opportunity; nondiscrimination in employment; and fair housing. We believe that action described in these recommendations will help achieve equal opportunity for all Americans, regardless of race, sex, national origin, age, religion, or condition of handicap.

Recommendations

I. The Administration of Justice

The Federal government should address the rise of hate groups, often accompanied by violence, with a well-coordinated and vigorous program.

- The President should designate the Attorney General or another official to coordinate Federal response to activities of groups that practice violence against racial, ethnic and religious groups.
- Federal legislation should be amended to allow the Department of Justice to prosecute more readily police officers who abuse their authority.
- Congress should increase resources to hire additional personnel for the Criminal Section of the Civil Rights Division of the Department of Justice in order to handle cases involving alleged violations of civil rights by police effectively and expeditiously.
- Resources for the Community Relations Service of the Department of Justice should be increased to help provide early resolution of community conflict through existing conciliation and mediation functions.

The past year has seen a distressing increase in racially motivated violence and group hatred. Acts of animosity, such as cross burnings and vandalism of churches and synagogues, have become widespread. Repeated acts of senseless violence have led to insecurity and fear in communities throughout the Nation. Moreover, civil disorders across the country have been triggered through violent treatment of minorities by law enforcement officials. All of these circumstances have contributed to an atmosphere that impedes civil rights progress.

The U.S. Commission on Civil Rights believes that this situation warrants immediate Federal attention. The Federal government must have a coordinated plan for dealing with such violent acts. We believe that the President should designate the Attorney General or another official of comparable rank to coordinate the Federal efforts in this area. This assignment would bring national attention to this problem and to the commitment of the Federal government to end violence.

We also believe that assaults by police officers should receive prompt attention from the Federal government. Changes should be made in Federal legislation that authorizes the Department of Justice to seek Federal criminal convictions against police officers who violate civil rights of those they are charged to protect. Current law and its interpretation by the Supreme Court of the United States inhibit in some cases that Department from filing suit in cases of police misconduct. Specifically, we recommend that:

- Section 241 of volume 18 of the U.S. Code be amended to cover acts of violence against non-citizens as well as citizens, and acts committed by individuals who are not acting as part of a conspiracy.
- Section 242 of volume 18 of the U.S. Code be amended to remove the requirement that "specific intent" on the part of police officers be shown, and to treat violent acts committed under color of law as felonies, not misdemeanors.

The amendments to current legislation will demonstrate clearly that acts of violence by police officers will not be tolerated.

While it is essential to have legal authority to pursue unlawful conduct by law enforcement officials, it is also necessary to have sufficient staff and resources to enforce laws effectively. The Civil Rights Division of the Department of Justice, responsible for enforcing those laws, is seriously understaffed. Congress should approve budgetary authority to hire additional personnel.

The Federal government also needs to respond more quickly and effectively to resolve community conflicts. Despite a substantial increase in the number of complaints, the Community Relations Service of the Department of Justice is severely limited in both staff and resources. The Commission believes that mediation and conciliation efforts of that agency should be increased to provide an alternative to costly and lengthy litigation.

II. Presidential Appointments

The President should appoint women and minorities to the Judiciary and to Cabinet-level and other policymaking positions, to help strengthen the formulation and implementation of Federal policy.

Appointments of minorities and women have increased during recent years. As of October 6, 1980, minorities represented 17.0 percent of all full-time Presidential appointees (nominations confirmed or pending), and women, 12.5 percent (18.9 percent of women appointees were minority). (See the chart in the attached appendix.) The Nation is still confronted, however, with a need

to achieve a greater utilization of qualified women and minorities in positions of authority. The inclusion of representatives of diverse groups with demonstrated commitment to civil rights in policymaking roles will help ensure that minorities and women participate in a significant manner in the decisionmaking process.

III. Establishing a Coordinated Federal Civil Rights Mechanism

The President should provide for coordinated efforts to eliminate discrimination in Federal programs and activities, and to ensure that all departments and agencies are working toward this goal at all levels. For example:

- Appointing a senior White House advisor for civil rights would provide a long-needed focal point for coordinating Federal civil rights programs. The advisor should have direct access to the President and should be recognized as the President's representative to speak for him in establishing management goals in the area of civil rights.
- Strengthening the Civil Rights Division at the Office of Management and Budget (OMB) would provide systematic monitoring of Federal civil rights activity. The Division should continue to report to the Director of OMB who would then be in a position to provide information to the White House for oversight of Federal civil rights efforts. OMB should require agencies to report their progress in meeting their performance standards for programmatic activities that impact on minorities, women or citizens with handicaps, including (but not limited to) employment practices and the delivery of services.

To assure the inclusion of concerns of minorities and women in the development of Federal policies and programs, the Commission has recommended that the President appoint a senior White House advisor with responsibility for improving and coordinating Federal civil rights efforts, and that the Director of OMB establish a Division of Civil Rights within the Office of the Director.

These recommendations have been acted on only partially. No senior White House official is responsible for Federal civil rights efforts. Although an OMB Civil Rights Division has been established, it lacks sufficient budget and authority to serve the director effectively in the civil rights area.

A senior White House advisor who has authority to speak on behalf of the President and has direct access to him would strengthen the coordination of agency activities in the civil rights field.

In order to monitor effectively resource allocations for civil rights, the Director of OMB, acting through a Civil Rights Division, should:

- . Require agencies to submit sufficiently detailed data to determine whether they are fulfilling their civil rights responsibilities;
- . Require departments and agencies to identify the civil rights impact of program operations, and to propose corrective action, where appropriate; and

- . Require departments and agencies to report on their civil rights goals and timetables.

The President, acting through a senior White House advisor on civil rights and through the Director of OMB, can strengthen his leadership role in ensuring equal opportunity in the operation of Federal programs at the national, State, and local levels.

IV. Civil Rights Enforcement

The President should direct all Departments and agencies empowered to extend Federal financial assistance to ensure compliance with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, and the Age Discrimination Act of 1975.

- . When complaint investigations or compliance reviews reveal that a recipient of Federal funds is not complying with civil rights laws, and timely voluntary compliance cannot be secured, administrative proceedings to enforce the requirements of the law should be instituted immediately and completed expeditiously; and
- . When compliance cannot be achieved, the sanction available under the law--termination of Federal financial assistance--should be invoked.

In numerous reviews and studies on enforcement of Title VI, Section 504, Title IX, and the Age Discrimination Act, the United States Commission on Civil Rights has consistently found that Federal departments and agencies have not vigorously enforced these laws. Departments are frequently slow to issue regulations, to

investigate complaints, to conduct compliance reviews, to make preliminary determinations that compliance cannot be achieved, to bring administrative enforcement proceedings, and to terminate Federal funding upon a finding of noncompliance.

Fund termination is a necessary sanction. Without its use, the Federal government is in the position of subsidizing the violation of various civil rights laws. Because the sanction is utilized only sparingly and in extraordinary cases, recipients of Federal financial assistance believe that discrimination can continue with Federal acquiescence. It must be clear that fund termination will be invoked when timely compliance cannot be obtained.

Congress is attempting to limit Federal enforcement of civil rights laws by attaching amendments to various appropriations bills. An amendment sponsored by Rep. John M. Ashbrook (R-Ohio) would prohibit expenditure of Federal funds to enforce certain provisions of current Title IX regulations. These regulations, which are intended to enforce nondiscrimination on the basis of sex in education programs receiving Federal funds, prohibit sex discrimination in employment by educational institutions. The Ashbrook amendment would disallow the use of Title IX as a mechanism for relief in employment discrimination cases. The Commission believes that this avenue should remain open to provide the important linkage between nondiscrimination in programs and nondiscrimination in employment.

V. Eliminating Discrimination Based on Sex

The President should issue an Executive Order prohibiting discrimination on the basis of sex in any program or activity receiving Federal financial assistance. Each Federal department and agency that extends Federal financial assistance should be responsible for enforcing this prohibition and should issue, within 180 days, regulations implementing the Executive Order.

Discrimination on the basis of sex still occurs in programs receiving Federal financial assistance where sex discrimination has not been explicitly banned. Sex discrimination cannot be tolerated any more than can discrimination on the basis of religion, age, handicap, race, or national origin. Although discrimination on the basis of sex has been prohibited in some Federal programs, the Federal government now needs to provide systematic direction for the elimination of sex discrimination in all programs.

Regardless of the ratification of the Equal Rights Amendment, for which we reaffirm our support, Federal agencies will still need a uniform mechanism for eliminating sex discrimination. An Executive Order can provide such a mechanism. Following its issuance, the Department of Justice should be directed to prepare implementing regulations expeditiously. In addition, all agencies should be directed to adopt these regulations, or develop comparable ones, within 180 days. Enforcement of the order would be the responsibility of each agency, under overall coordination by the

Department of Justice, carried out through existing civil rights enforcement mechanisms. Vigorous enforcement of the Executive Order and its implementing regulations can be an effective tool for ending sex discrimination in programs receiving Federal financial assistance.

VI. Equal Educational Opportunity

The Congress and the President should vigorously enforce laws and regulations designed to foster equal educational opportunity, including the elimination of illegally-segregated schools.

- The President should instruct the Office for Civil Rights of the Department of Education to increase its efforts to enforce Title VI of the Civil Rights Act of 1964, which prohibits discrimination in programs receiving Federal financial assistance.
- The Department of Justice should be directed to expedite desegregation cases referred to it by the Department of Education.
- The Congress should reject riders to appropriations bills that have the effect of tying the hands of the Executive branch in enforcement activities under Title VI.
- The President should veto appropriations bills containing riders which would make it virtually impossible for the Executive branch to terminate funds in cases where schools are illegally segregated in violation of Constitutional and statutory requirements..

The U.S. Commission on Civil Rights has consistently viewed Brown v. Board of Education as one of the most important rulings by the Supreme Court of the United States in the Nation's history. Despite this decision, equality in the Nation's schools has still not been achieved. The evidence we have gathered from field studies and public hearings makes abundantly clear that the statement by the Supreme Court of the United States in 1954 is still true: "Separate educational facilities are inherently unequal." We are especially alarmed by Congressional efforts to undermine Constitutional and statutory guarantees by attaching riders to various appropriations bills. Each year since 1978, the Congress has attached an amendment offered by Senators Eagleton (D-Mo.) and Biden (D-Del.) to the Appropriations Act for the Department of HEW (now the Department of Education) forbidding that Department from terminating funds in desegregation cases where compliance would require transportation of pupils beyond the school nearest their residence. In addition, an amendment was passed by the Congress that would have prohibited the Department of Justice from participating in school desegregation cases where the last available remedy would be student transportation. This amendment would have made it impossible in many situations to enforce Title VI.

We commend President Carter for his veto of the appropriations bill to which this amendment was attached. We agree with his statement that if the State - Justice - Commerce Appropriations Act of 1980 were enacted with the amendment it

...would impose an unprecedented prohibition on the power of the President of the United States and the Attorney General to seek a particular remedy in the Federal courts that in some cases may be necessary to ensure that our Constitution and laws are faithfully executed.

We also agree with him that the precedent that would be established if this legislation were enacted

...would effectively allow the Congress to tell a President that there are certain constitutionally-mandated remedies for the invasion of constitutional rights that he cannot ask the courts to apply. If a President can be barred from going to the courts on this issue, a future Congress could by similar reasoning prevent a President from asking the courts to rule on the constitutionality of other laws and the constitutional necessity of other remedies upon which the President and the Congress disagree. That would be a most undesirable interference with the constitutional separation of powers.

An amendment by Rep. Ashbrook would prohibit expenditure of funds other than those for bilingual education to enforce proposed rules issued under Title VI, requiring State or local education agencies to meet the needs of limited English-speaking students through programs other than intensive English instruction. Passage of this amendment would hamper the efforts of the Federal government to ensure equal educational opportunity for students whose primary language is not English and who have limited proficiency in English.

Another amendment by Rep. Ashbrook would prohibit expenditure of funds pursuant to an injunction or court order for any purpose specifically prohibited by the Education Appropriations bill. This amendment would erode judicial authority to interpret the law and to require remedial action.

Amendments sponsored by Rep. Ashbrook and Rep. Robert K. Dornan (R-Calif.) would limit authority of the Internal Revenue Service (IRS) to deny tax-exempt status to private schools found to be racially discriminatory. These amendments, already in effect for one year, require the Federal government to support, through tax exemptions, the existence of racially discriminatory private schools. The Commission deplors these ongoing attempts to deny educational equality to America's young people.

VII. Employment of Minorities and Women

The Federal government must enforce vigorously all laws related to nondiscrimination in employment, including Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, and Executive Order 11246, as amended by 11375.

The employment status of minorities and women has long lagged significantly behind that of white males. Despite civil rights laws prohibiting discrimination, there is ample evidence that employment and promotional opportunities are not available to minorities and women on an equal basis with white males. In its report, Social Indicators of Equality for Minorities and Women, the Commission found that disparities in the unemployment rates of minorities and women, compared with white males, increased between 1970 and 1976. This situation did not change between 1976 and 1979. Recent Department of Labor (DOL) statistics show that the 1980 recession further exacerbated the unfavorable employment position of minorities. In July 1980, 6.0 percent of white males, and 5.9 percent of white females, were unable to find work. By contrast, the unemployment rate among minorities was far higher; 15.2 percent of blacks and 10.9 percent of Hispanics were unemployed. Furthermore, over one-third of nonwhite youths ages 16 through 19 (34.6 percent of males and 38.9 percent of females) were out of work, compared with 16.4 percent of white youths.

Employed minorities and women are also in a disadvantaged position relative to white males. In 1979 only one out of twelve white males was a service worker, but one out of five females and one out of four minorities held such a job. By comparison, almost one-third of all white males were in professional or managerial positions, but fewer than one out of four females, and one out of six minorities, were in those occupational categories.

In order to combat discrimination, it is necessary for employers to establish effective affirmative action plans. Discrimination is a process that combines attitudes or actions of individuals, organizations, and social structures into patterns that maintain subordination, exclusion, and/or segregation, and thereby deny equal employment opportunities. Antidiscrimination efforts that supposedly guarantee "neutrality" in employment decisions are inadequate to eliminate entrenched discrimination. In these circumstances, only affirmative measures that consider race, sex, or national origin in decisions regarding employment can succeed in dismantling the discrimination process. The Executive branch should play a major role in combatting discrimination in employment. First, the Federal government, functioning in its capacity as an employer, should set an example for employers in the rest of the Nation to follow, through effective enforcement of the Federal Equal Opportunity Recruitment Program (FEORP). Second, the Equal Employment Opportunity Commission should be provided adequate resources to continue to enforce vigorously Title VII of the Civil Rights Act of 1964, conduct compliance reviews and complaint

investigations on a timely basis, and where conciliation does not produce compliance, file suit against violators. Finally, the Office of Federal Contract Compliance Programs (OFCCP) within the Department of Labor should be given resources necessary to monitor Federal contractors closely to ensure that they develop and implement affirmative action plans, as required.

Central to the success of this process are the efforts of companies to develop voluntary affirmative action plans, given additional impetus by the decision of the Supreme Court of the United States in United Steelworkers v. Weber. The Commission believes that strong support for private voluntary affirmative action efforts, as well as vigorous enforcement of affirmative action requirements to help overcome discriminatory treatment in employment, past and present, should be a cornerstone of Federal civil rights policy.

An amendment sponsored by Rep. Robert S. Walker (R-Pa.) to the Departments of Labor, Health and Human Services, and Education Appropriations bill would prohibit the expenditure of any funds by these departments to implement or enforce any program which includes ratios, quotas, or other numerical requirements in employment or admissions policies or practices. Passage of this amendment would seriously hamper the ability of OFCCP to enforce executive orders requiring the development of affirmative action plans.

VIII. Fair Housing

The Federal government should act to ensure that discrimination on the basis of race, sex, national origin, or religion is eliminated in the sale and rental of housing.

- . The Congress should pass legislation strengthening Title VIII of the Civil Rights Act of 1968 to give the Department of Housing and Urban Development (HUD) authority to issue "cease and desist" orders in cases where housing discrimination is found.
- . The President should direct HUD to enforce Title VIII vigorously.

Families headed by minorities and women have long faced discriminatory treatment in their search for adequate housing. As a result, segregated neighborhoods remain a persistent feature of urban and suburban settings.

Title VIII of the Civil Rights Act of 1968 is intended to ensure nondiscrimination in the sale and rental of housing. The law gives HUD the authority to investigate complaints, attempt to conciliate, and refer to the Department of Justice for possible litigation cases in which a "pattern or practice" of discrimination exists. HUD has failed to pursue energetically avenues for curtailing discrimination. Twelve years have elapsed since the enactment of Title VIII, yet HUD has not issued implementing regulations. They should be issued immediately, to ensure strong enforcement of Title

VIII and resolution of complaints in an effective and timely fashion. If immediate compliance on the part of violators cannot be obtained, HUD should refer "pattern or practice" cases to the Department of Justice for prompt action.

The U.S. Commission on Civil Rights has also long supported amendments to Title VIII that would grant HUD authority to issue cease and desist orders where violations of Title VIII are discovered. Fair housing amendments proposed in the 96th Congress, however, did not pass. We urge the 97th Congress to enact appropriate legislation in order to provide HUD with authority to combat housing discrimination effectively. When this legislation becomes law, the President should direct HUD to issue revised regulations at once reflecting this new authority.

Conclusion

Although equality of opportunity is guaranteed by the Constitution and by statute, its attainment remains elusive for millions of Americans. Discrimination in every facet of life remains a bitter reminder of unfulfilled promises. Recurring civil disorders are symptoms of the failure of the Federal government to ensure equality of opportunity. Meanwhile, hate groups encouraging violence against racial and ethnic minorities and religious groups have become increasingly strident.

These circumstances require immediate action on the part of the President and Congress. The recommendations in this report describe those actions which we believe will help to alleviate violence and to bring about equal opportunity for all Americans, regardless of race, national origin, sex, age, religion, or condition of handicap.

Documentation for the preceding recommendations is contained in the following publications of the U.S. Commission on Civil Rights:

U.S., Commission on Civil Rights, Desegregation of the Nation's Public Schools: A Status Report, 1979.

U.S., Commission on Civil Rights, The Federal Civil Rights Enforcement Effort--1974, Volume VI, To Extend Federal Financial Assistance, 1975.

U.S., Commission on Civil Rights, The Federal Civil Rights Enforcement Effort--1974, Volume VII, To Preserve, Protect, and Defend the Constitution, 1977.

U.S., Commission on Civil Rights, The Federal Civil Rights Enforcement Effort--1977, To Eliminate Employment Discrimination: A Sequel, 1977.

U.S., Commission on Civil Rights, The Federal Fair Housing Enforcement Effort, 1979.

U.S., Commission on Civil Rights, Fulfilling the Letter and Spirit of the Law: Desegregation of the Nation's Public Schools, 1976.

U.S., Commission on Civil Rights, Police Practices and the Preservation of Civil Rights, 1980.

U.S., Commission on Civil Rights, Social Indicators of Equality for Minorities and Women, 1978.

APPENDIX

Race, Ethnic Origin, and Sex of Full-Time
Presidential Appointees

October 6, 1980

	<u>Male</u>	<u>Female</u>	<u>Total</u>	
			<u>Number</u>	<u>Percent</u>
American Indian	4	0	4	0.3%
Asian and Pacific Island American	6	1	7	0.6%
Black	122	22	144	12.0%
Hispanic	45	4	49	4.1%
White, not Hispanic	862	116	978	81.3%
Other, undesignated	13	6	20*	1.7%
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Total	1,052	149	1,202	100.0%
Number				
Percent	87.5%	12.5%		

*Includes 1 person for whom sex was not reported.

Source: Presidential Personnel Office