

**United States Commission on Civil Rights:  
Reports on Asian Pacific Americans**

*Edited by*

**Gabriel J. Chin**

**VOLUME 1**

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## Preface

### *The Conscience of the Nation: The United States Commission on Civil Rights*

Congress created the United States Commission on Civil Rights as part of the Civil Rights Act of 1957,<sup>1</sup> almost at the beginning of the modern civil rights movement. Charged by Congress with finding out and reporting facts and formulating policy recommendations, the Commission has had a unique opportunity to chronicle the issues facing our nation, and has done so with distinction. As the then-Chair, Father Theodore Hesburgh, President of Notre Dame, explained: “It has been the Commission’s main function to state the facts as they are—not as some would like them to be—to allow no self-deceptions or comfortable rationalizations for inequality to intervene.”<sup>2</sup>

One of the Commission’s great strengths has been the quality of the commissioners, particularly in the early years. They have typically been eminent figures from a variety of areas of public life, including former governors (John Battle of Virginia and Doyle Carleton of Florida), those who served in the White House or in other senior government positions (Eisenhower’s Secretary of Health, Education and Welfare Arthur S. Flemming; Arthur Fletcher, an urban policy staffer for Nixon and Ford), university leaders (Notre Dame President Father Theodore Hesburgh; Michigan State President and former Assistant Secretary of Defense John Hannah), retired judges (U.S. Circuit Judge A. Leon Higginbotham; California Supreme Court Justice Cruz Reynoso), editors (Eugene Patterson, Pulitzer Prize-winning editor of the *Atlanta Journal-Constitution*), and some who achieved distinction in more than one area, such as Erwin Griswold, who served as dean of Harvard Law School and Solicitor General of the United States, and Spottswood Robinson, dean of Howard Law School and later a federal judge. Some commissioners would later be elected to other offices, such as Stephen Horn who was president of California State University at Long Beach during most of his term on the

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<sup>1</sup> Civil Rights Act of 1957, Pub. L. 85-315, Pt. I, 71 Stat. 634, *superseded by* United States Commission on Civil Rights Act of 1983, Pub. L. 98-183, 97 Stat. 1301 (codified at 42 U.S.C. § 1975 *et seq.*). *See also* 45 C.F.R. Pt. 701 (regulations governing Commission operation). *See also* FOSTER RHEA DULLES, *THE CIVIL RIGHTS COMMISSION: 1957–1965* (1968); Jocelyn C. Frye et al., *The Rise and Fall of the United States Commission on Civil Rights*, 22 HARV. C.R.-C.L. L. REV. 449 (1987); Robert S. Rankin, *The Civil Rights Movement from the Vantage Point of the Civil Rights Commission*, 25 OKLA. L. REV. 97 (1972).

<sup>2</sup> Theodore M. Hesburgh, *Integer Vitae: Independence of the United States Commission on Civil Rights*, 46 NOTRE DAME L. 445, 446 (1971).

Commission and later served several terms in Congress. However, most were at points in their careers where they had satisfied or were beyond personal electoral ambition. Accordingly, as a group, the commissioners had the opportunity, often exercised, for candid, non-partisan analysis, unconstrained by the need to win an upcoming campaign.

Another unique quality of the Commission has been the breadth of its mandate. It does not focus on a particular civil rights issue such as voting, education, or housing, or limit its attention to a specific demographic group or geographical region. No other organization or entity has the same mission of investigating the big picture, all across the country. The Commission has no enforcement function, which allows it to focus on investigation and reporting. When it finds situations warranting judicial action, it can refer them to the appropriate agency, but in its research and public statements, it need not worry about compromising a litigation position; as chair Hesburgh explained, “[b]ecause the Commission has no program to defend, it has been able to become an ‘honest broker’ in civil rights.”<sup>3</sup>

The Commission has extremely strong fact-finding capacities. In addition to the commissioners and a professional staff, including regional offices, every state has a volunteer advisory committee of individuals familiar with local civil rights issues. As a result, the Commission has ready access to information across the country. Even though it does not adjudicate or litigate individual cases, the Commission has the power to subpoena documents and compel attendance of witnesses at public hearings, so it can obtain evidence only dreamed about by academic researchers, consultants and other public policy analysts.

The Commission also has experience over all or part of six decades examining civil rights issues. It is therefore able to develop expertise over time, to investigate an issue, and come back to it years or decades later as circumstances warrant.

The structure, staffing, powers and duties of the Commission gave the promise of a special insight into civil rights. This promise has been realized in a series of reports, briefings and transcripts of hearings, published from the late 1950s to the present by both the state advisory committees and the Commission itself.<sup>4</sup> These materials have frequently been cited by the Supreme Court, and

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<sup>3</sup> *Id.* at 455.

<sup>4</sup> The Commission issues a variety of publications. The most formal is a “report” or “statutory report” which is approved by the Commission and transmitted to the President and Congress. State advisory committees and the national and regional staff issue reports; during some periods Commission approval has been required to publish a state advisory committee report, and sometimes committees had authority to issue



relied upon by Congress in enacting legislation. Commission reports were cited in important criminal cases, such as *Miranda v. Arizona*,<sup>5</sup> requiring warnings of constitutional rights before custodial interrogation, which relied on a Commission finding from 1961 that there was “much evidence to indicate that ‘some policemen still resort to physical force to obtain confessions.’”<sup>6</sup> The Court cited the Commission in *In re Gault*,<sup>7</sup> requiring due process protections for children charged with crime. The dissenters relied on the Commission’s work in *Swain v. Alabama*,<sup>8</sup> allowing prosecutors to challenge jurors on the basis of race; the dissent was vindicated when the Court overruled *Swain* twenty years later. In addition, the justices have cited the Commission in employment discrimination,<sup>9</sup> school desegregation,<sup>10</sup> voting rights,<sup>11</sup> affirmative

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them on their own. Consultations, briefings and hearings involve presentation of statements or testimony to the Commissioners, and may form the factual basis for Clearinghouse Reports, or reports by the Commission, state advisory committees, or staff. See GENERAL ACCOUNTING OFFICE, U.S. COMMISSION ON CIVIL RIGHTS: COMMISSION PUBLICATIONS DURING FISCAL YEARS 1978–1986, at 9 (Sept. 1987) (GAO/GGD-87-117BR).

<sup>5</sup> 384 U.S. 436 (1966).

<sup>6</sup> *Id.* at 446 (quoting 5 U.S. COMM’N ON CIVIL RIGHTS REPORT: JUSTICE 17 (1961)).

<sup>7</sup> 387 U.S. 1, 18 n.24 (1967) (“The 1965 Report of the United States Commission on Civil Rights, ‘Law Enforcement—A Report on Equal Protection in the South,’ pp. 80–83, documents numerous instances in which ‘local authorities used the broad discretion afforded them by the absence of safeguards (in the juvenile process)’ to punish, intimidate, and obstruct youthful participants in civil rights demonstrations.”).

<sup>8</sup> 380 U.S. 202, 231 (1965) (Goldberg J., dissenting) (“The United States Commission on Civil Rights in its 1961 Report, Justice 103, after exhaustive study of the practice of discrimination in jury selection, concluded that ‘(t) he practice of racial exclusion from juries persists today even though it has long stood indicted as a serious violation of the 14th amendment.’”), *overruled*, *Batson v. Kentucky*, 476 U.S. 79 (1986).

<sup>9</sup> See, e.g., *Connecticut v. Teal*, 457 U.S. 440, 449 n.10 (1982) (“The Committee Reports in both Houses, and Senator Williams, principal sponsor of the Senate bill that was ultimately enacted in large part, relied upon a report of the United States Commission on Civil Rights”) (citing U. S. COMM’N ON CIVIL RIGHTS, FOR ALL THE PEOPLE ... BY ALL THE PEOPLE—A REPORT ON EQUAL OPPORTUNITY IN STATE AND LOCAL GOVERNMENT EMPLOYMENT (1969)).

<sup>10</sup> See, e.g., *Keyes v. School Dist. No. 1, Denver, Colo.*, 413 U.S. 189, 197 & nn.7–8 (1973) (determining that African Americans and Latinos should be considered together in the evaluation of whether schools were segregated) (citing U.S. COMM’N ON CIVIL RIGHTS, MEXICAN AMERICAN EDUCATION STUDY, REPORT 1, ETHNIC ISOLATION OF MEXICAN AMERICANS IN THE PUBLIC SCHOOLS OF THE SOUTHWEST (Apr. 1971); U.S. COMM’N ON CIVIL RIGHTS, MEXICAN AMERICAN EDUCATIONAL SERIES, REPORT 2, THE UNFINISHED EDUCATION (Oct. 1971)); see also, e.g., *San Antonio Independent School Dist. v. Rodriguez*, 411 U.S. 1, 57 nn. 113–14 (1973) (citing, inter alia, U.S. COMM’N

action,<sup>12</sup> and other civil rights cases.<sup>13</sup> In the voting rights context in particular, the Commission's work has been influential in legislation.<sup>14</sup>

In recent years, the Commission has lost some of its luster. Although parties criticized are given the opportunity to comment,<sup>15</sup> the publications are not peer-reviewed, and the quality of recent analysis has been challenged. Moreover, the operation and management of the Commission has been objected to from various quarters.<sup>16</sup> Even if some part of recent criticism is attributable to the success of the Commission in demonstrating the existence and persistence of discrimination, and to cuts in Commission funding that began in the 1980s, there may be some degree of truth to it. None of this can detract from the conclusion that the Commission investigations and reports are an indispensable factual source for anyone interested in civil rights in America.

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ON CIVIL RIGHTS, INEQUALITY IN SCHOOL FINANCING: THE ROLE OF THE LAW 37 (1972)).

<sup>11</sup> See, e.g., *Allen v. State Bd. of Elections*, 393 U.S. 544, 556 n.22 (1969) (citing U.S. COMM'N ON CIVIL RIGHTS, POLITICAL PARTICIPATION 164–65 (1968)).

<sup>12</sup> See, e.g., *Metro Broadcasting v. FCC*, 497 U.S. 547, 553 (1990) (upholding FCC minority preference policies) (citing 1 U.S. COMM'N ON CIVIL RIGHTS, FEDERAL CIVIL RIGHTS ENFORCEMENT EFFORT—1974, at 49 (Nov. 1974)); *Fullilove v. Klutznick*, 448 U.S. 448, 466 (1980) (noting that Congress relied on the Commission's work in establishing a minority business program).

<sup>13</sup> See, e.g., *Walker v. City of Birmingham*, 388 U.S. 307, 325 n.1 (1967) (Warren C.J., dissenting) (“The United States Commission on Civil Rights found continuing abuse of civil rights protesters by the Birmingham police, including use of dogs, clubs, and firehoses.”) (citing REPORT OF THE UNITED STATES COMMISSION ON CIVIL RIGHTS 114 (1963); *Reitman v. Mulkey*, 387 U.S. 369, 381–83 (1967) (Douglas J., concurring) (citing several Commission publications in housing case).

<sup>14</sup> See, e.g., *Reno v. Bossier Parish School Bd.*, 528 U.S. 320, 364–65 (2000) (Souter J., dissenting) (noting that Congress relied on information from the Commission when extending the Voting Rights Act in 1969); *City of Pleasant Grove v. United States*, 479 U.S. 462, 468 n.9 (1987) (noting that in the 1982 Voting Rights Act amendments Congress relied on *U.S. Comm'n on Civil Rights, The Voting Rights Act: Unfulfilled Goals* 65 (1981)).

<sup>15</sup> 45 C.F.R. § 702.18.

<sup>16</sup> See, e.g., GENERAL ACCOUNTING OFFICE, U.S. COMMISSION ON CIVIL RIGHTS: AGENCY LACKS BASIC MANAGEMENT CONTROLS (1997) (GAO/HEHS-97-125); GENERAL ACCOUNTING OFFICE, U.S. COMMISSION ON CIVIL RIGHTS: CONCERNS ABOUT COMMISSION OPERATIONS (1988) (GAO/GGD-88-71).

## Introduction

The United States Commission on Civil Rights has been a leader in identifying, studying, and writing about issues of concern to Asian Pacific Americans (“APAs”). One of the most critical events in the modern history of APAs came in 1965, when Congress ended a century of discrimination against immigrants of Asian racial ancestry, putting immigration on a race-neutral basis.<sup>1</sup> As a result, the APA population grew rapidly. Immigration law reform was fueled by the general concern for civil rights in that period; the Commission played a critical role in creating a climate of reform by identifying and documenting the discrimination which flourished in the Jim Crow era. Perhaps of necessity, the Commission’s early work focused primarily on conditions affecting African Americans. By the early 1970s, the Commission and its State Advisory Committees had turned to the concerns of other groups as well, particularly in regions of the country where non-white, non-African American populations were numerous.

The Commission’s work was pathbreaking in many ways. First, the Commission understood that even though APAs were tiny compared to the size of other racial groups, they were not homogeneous. The population formerly lumped together as “Orientals” or “Mongolians” was composed of more than just persons of Chinese and Japanese ancestry; there were also those whose lineage traced to Hawai’i and the Pacific Islands, the Philippines, Korea, India, South East Asia and elsewhere. The Commission also recognized that these group differences were often meaningful, in that the groups had different histories, experiences and circumstances of entry into the United States, and therefore different problems and challenges in living here. The Commission’s knowledge of these groups put it in a position to challenge the “Model Minority” stereotype of APA success, which obscured the poverty and educational challenges experienced by members of some APA groups, and the employment discrimination experienced even by some APAs whose education and income seemed to fit the stereotype of achievement. The Commission was also an early reporter of the problem of hate crimes against APAs.

The Commission’s major activities with respect to APAs began in 1973, when the California Advisory Committee held public hearings in San Francisco

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<sup>1</sup>See generally Gabriel J. Chin, *Segregation’s Last Stronghold: Race Discrimination and the Constitutional Law of Immigration*, 46 UCLA L. REV. 1 (1998), reprinted in 19 IMMIGR. & NAT’LITY L. REV. 3 (1998); Gabriel J. Chin, *The Civil Rights Revolution Comes to Immigration Law: A New Look at the Immigration and Nationality Act of 1965*, 75 N.C. L. REV. 273 (1996), reprinted in 17 IMMIGR. & NAT’LITY L. REV. 87 (1995–96).

and Los Angeles concerning Asian Americans and Pacific peoples. In 1975, they issued the report *Asian Americans and Pacific Peoples: A Case of Mistaken Identity*. The report recognized the increasing diversity of the Asian American population; it was based on testimony from not just Chinese and Japanese Americans, but also on witnesses who were of Korean, Pilipino, Samoan and Guamanian background. It concluded that more needed to be known about these groups, but that characterizing this ethnically and economically diverse group as the “model minority” was inaccurate. Another report followed the concerns raised in the public hearings, *A Dream Unfulfilled—Korean and Filipino Health Professionals in California*, dealing with the difficulty some immigrant professionals faced when attempting to obtain California licenses.

The New York Advisory Committee issued a report, *The Forgotten Minority: Asian Americans in New York City* in 1977. The report concluded that Asian Americans faced social problems like poverty and unemployment, as well as underrepresentation in public employment and certain other fields, based on stereotypes. As with the reports in California, the New York Committee urged further research and investigation because of the paucity of information about this group.<sup>2</sup> This call was answered by a consultation before the Commission in 1979, held during Asian Pacific American Heritage Week declared by President Jimmy Carter, the proceedings of which were published as *Civil Rights Issues of Asian and Pacific Americans: Myths and Realities*. Witnesses included leading scholars and activists.

The New York State Advisory Committee issued a conference summary in February, 1980, entitled *Asian Americans: An Agenda for Action*. It reported that Asian Pacific Americans were underrepresented in various aspects of civic life, such as in appointed and elected office, and that their voter participation was less than that of many other groups. It also noted the problems of elderly persons of Asian Pacific American ancestry, and that Asians faced employment discrimination. The Commission itself issued a clearinghouse publication in 1980 addressing a similar point. Entitled *Success of Asian Americans: Fact or Fiction?*, the report noted that some Asian Pacific American subgroups faced significant economic and educational challenges. For all APA groups, even those individuals with educational attainments often earned less than their credentials would predict. This topic was revisited in 1988 in a study entitled *The Economic Status of Americans of Asian Descent: An Exploratory Investigation*. This study disaggregated the various subgroups, and differentiated between the native-born and immigrants. The study found evidence of employment discrimination in some parts of the country, and with particular sub-

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<sup>2</sup>See, e.g., Su Sun Bai, Comment, *Affirmative Pursuit of Political Equality for Asian Pacific Americans: Reclaiming the Voting Rights Act*, 139 U. PA. L. REV. 731, 738 & n.31 (1991) (citing report).

groups, such as Filipinos in the West but not the East, and Chinese American men in the East but not the West. It also found that the evidence of employment discrimination was much stronger based on 1960 data than in 1980, suggesting that anti-Asian animus was decreasing.

The killing of Vincent Chin focused attention on the phenomenon of anti-Asian violence.<sup>3</sup> The Commission addressed this problem in *Recent Activities Against Citizens and Residents of Asian Descent* in 1986. Although identifying a number of episodes of violence, intimidation, and harassment, it noted that there were no reliable national statistics on hate crimes, making it difficult to draw broad conclusions.

Subsequent reports reflected the ever-increasing diversity of APAs. The Connecticut Advisory Committee issued a report in 1990 entitled *Southeast Asian Refugees and Their Access to Health and Mental Health Services*. Several publications addressed the problems faced by native Hawai'ians, including *Breach of Trust: Native Hawaiian Homelands* (1980), *A Broken Trust: The Hawaiian Homelands Program: Seventy Years of Failure of the Federal and State Government to Protect the Civil Rights of Native Hawaiians* (1991), and *Reconciliation at a Crossroads: The Implications of the Apology Resolution and Rice v. Cayetano for Federal and State Programs Benefiting Native Hawaiians* (2001).

A series of conferences held around the country, published as *Voices Across America: Roundtable Discussions of Asian Civil Rights Issues*, led to the report *Civil Rights Issues Facing Asian Americans in the 1990s* (1992). The increasing size and geographical diversity of the APA population was reflected by the Illinois Advisory Committee's follow-up report, *Civil Rights Issues Facing Asian Americans in Metropolitan Chicago* (1995).

The most recent publication focusing on APAs shows them as a victim of their own success. As early as 1959, the Commission had recognized the historical legal barriers to APA participation in political life in America.<sup>4</sup> The Commission published a *Briefing on Civil Rights Implications in the Treatment of Asian Pacific Americans during the Campaign Finance Controversy* (1998), which shows that when they did participate, they were not met with universal welcome.<sup>5</sup>

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<sup>3</sup>See, e.g., Jerry Kang, Note, *Racial Violence Against Asian Americans*, 106 HARV. L. REV. 1926, 1926 n.2 (1993) (citing Commission reports).

<sup>4</sup>See REPORT OF THE U.S. COMMISSION ON CIVIL RIGHTS 40 (1959) (noting that "the constitution of Idaho provides that 'Chinese, or persons of Mongolian descent, not born in the United States,' shall not vote, a holdover from the era of oriental exclusion").

<sup>5</sup>See generally L. Ling-chi Wang, *Beyond Identity and Racial Politics: Asian Americans and the Campaign Fund-Raising Controversy*, 5 ASIAN L.J. 329 (1998).

