

United States Commission on Civil Rights: Reports on Voting

Edited by

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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 1957,¹ 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."²

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

¹ 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 I, 71 Stat. 634, *superseded by* United States Commission on Civil Rights Act of 1983, Pub.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).

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

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 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.”³

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.⁴ These materials have frequently been cited by the Supreme Court, and

³ *Id.* at 455.

⁴ 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

relied upon by Congress in enacting legislation. Commission reports were cited in important criminal cases, such as *Miranda v. Arizona*,⁵ 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.’”⁶ The Court cited the Commission in *In re Gault*,⁷ requiring due process protections for children charged with crime. The dissenters relied on the Commission’s work in *Swain v. Alabama*,⁸ 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,⁹ school desegregation,¹⁰ voting rights,¹¹ affirmative

a state advisory committee report, and sometimes committees had authority to issue 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).

⁵ 384 U.S. 436 (1966).

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

⁷ 387 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.”).

⁸ 380 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).

⁹ 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)).

¹⁰ 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

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

In recent years, the Commission has lost some of its luster. Although parties criticized are given the opportunity to comment,¹⁵ 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.¹⁶ 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.

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

¹¹ *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)).

¹² *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).

¹³ *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).

¹⁴ *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)).

¹⁵ 45 C.F.R. § 702.18.

¹⁶ *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).