Prologue to the Report by the Washington Council of Lawyers

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BY THE WASHINGTON COUNCIL
OF LAWYERS

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The federal government has been, over the past twenty-five years, an unwavering ally in the battle for civil rights. In 1957 the executive created within the Justice Department a specialized Civil Rights Division,1 and Congress established the permanent United States Commission on Civil Rights,2 the two most prominent federal rights advocates. Throughout the 1960’s, Congress enacted historic legislation intended to eradicate the vestiges of discrimination in American society.3 Virtually every presidential administration, regardless of political affiliation, has vigorously enforced those laws. In the seventies, the civil rights campaign broadened to include women, handicapped and institutionalized persons, and Hispanics.4

By the mid-seventies the public mood had altered. Fueled by cries of “reverse discrimination,” by complaints about busing school children for purposes of integration and by economic recession, a small but determined group of political activists attempted to derail two decades of progress. Their efforts to sow the seeds of mistrust reached fruition with the 1980 election of President Ronald Reagan. His administration views the civil rights laws as imposing unnecessary regulatory and economic burdens upon private and public enterprises, no longer justified


2. Id.
by today's less overt discrimination. Consequently, civil rights advocates find that they must return to the frontiers in order to reestablish civil rights as a national priority.

In September 1982, the Washington Council of Lawyers\(^5\) issued a detailed examination of the Reagan Administration's civil rights record entitled *Reagan Civil Rights: The First Twenty Months*.\(^6\) At the time of its publication, the Report engendered considerable media attention and elicited a detailed and vigorous denial from the Justice Department.\(^7\) According to the Report, the Reagan Administration "has retreated from well-established, bipartisan civil rights policies that were developed during both Democratic and Republican administrations. At the same time, the Reagan Administration has failed to develop—and implement—cohesive and consistent civil rights policies. . . ."\(^8\)

In deciding to reprint portions of the Report in the *Human Rights Annual, Annual* editors have asked that its contents be updated to include the most current information available. The original Report was prepared by eleven different lawyers over a six-month period, and any significant update would require the same level of resources. The *Prologue to the Report* itself, then, represents one individual's attempt to highlight and review more than a year of civil rights controversies. In some ways things have changed considerably. But, in the most fundamental ways, things have changed little. Only the longer perspective of history will provide a fully accurate picture.

I. SCHOOL DESEGREGATION

Since the 1954 decision in *Brown v. Board of Education*, the Justice Department has played a central role in the battle against school desegregation. Aside from the sheer volume of

\(^5\) The Washington Council of Lawyers is a voluntary, bipartisan bar association that has sought, since its creation in 1971, to promote public service and public interest activities within the legal community. Its membership includes representatives from private law firms, public interest groups, and governmental agencies.


\(^8\) *Reagan Civil Rights* at 118-19.
lawsuits it filed, and the significant resources it brought to bear in those suits, it was the Justice Department that expanded the rule of civil rights law throughout the South and into the North and West. It helped to establish important legal principles, such as the duty of a school board to take affirmative steps to cure segregation. In recent years its major enforcement activity has been the monitoring of compliance with court orders in existing school desegregation cases. The Department’s litigation program has been supported by other relevant federal agencies. Help has usually come in the form of expert advice and/or monetary grants to support desegregation activities.

Segregated schools remain a reality, however, despite the concerted federal and private efforts to integrate them. Urban decay, economic recession, and the flight to suburbia are the modern reasons for separate schools. Although these causes are more subtle than the overtly discriminatory state and local policies of the 1950’s, the same effect has been produced. Not surprisingly, predominantly black schools are not only separate, but they are rarely equal to their caucasian counterparts in terms of teachers, books, equipment, and buildings.

The initial Report concluded that the Reagan Administration has undermined school desegregation efforts both in symbolic and in practical ways. That administration continues to redefine narrowly the acts that constitute illegal discrimination. It continues to back away from desegregation suits, and has still not announced its creative new remedies to replace the busing it so disfavors. Although it took more than two and one half years, the Reagan Justice Department finally filed its first school desegregation case, against the Alabama college system. It should be noted, however, that by filing a higher education suit, the Administration embellishes its statistics without confronting the busing issue. It is now also clear that the proposed Fiscal Year 1984 budget contemplates providing no additional resources to support desegregation activities.

9. Id. at 126-27.
11. New York Times, July 12, 1983, at A1, col. 6. The Administration claims that two more cases are “authorized” for filing, but has refused to identify the jurisdictions. Justice Department sources suggest they are relatively small school districts.
The most notable policy change instituted by the Reagan Administration continues to be that described in the pronouncement by the Assistant Attorney General for Civil Rights, William Bradford Reynolds: that this “Administration is... clearly and unequivocally on record as opposing the use of mandatory transportation of students to achieve racial balance.” As the original Report makes clear, this anti-busing policy contravenes several Supreme Court rulings to the effect that busing is, in some but not all cases, a necessary and essential element of an effective desegregation remedy. Not surprisingly, the Administration has failed to devise a truly new alternative to busing, and has, at the same time, reduced Department of Education funding to school districts attempting to desegregate.

The anti-busing policy has led the Administration to switch sides in an important desegregation case, Washington v. Seattle School District. There, the Justice Department had originally supported, against state challengers, a voluntary busing plan by the Seattle School Board. When the case reached the Supreme Court shortly after the Reagan inauguration, however, the Department reversed its position and supported the opponents of the busing plan. The Supreme Court finally rejected the Administration’s position and upheld the Board’s plan. Ironically, his opposition to the local school board’s initiative flies in the face of President Reagan’s rhetoric supporting local autonomy.

In East Baton Rouge, Louisiana, Mr. Reynolds ordered the Civil Rights Division to change sides in Davis v. East Baton Rouge Parish School Board, in an effort to abrogate a desegregation plan that had been proposed originally by the Justice Department during the Carter years and that included a busing component. A federal court had already concluded that the school board had failed to dismantle its dual school system after

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twenty futile years of voluntary efforts to comply with the law. Since the Report, the Justice Department proposed an alternative, non-busing plan, which even the local school board ultimately rejected.17 Further, the Civil Rights Division has, for the first time, argued against intervention in its cases by civil rights organizations seeking to assert the busing remedy. The Department argued publicly that it adequately represented the interests of minorities. Privately, Assistant Attorney General Reynolds advised his line attorneys to make "those bastards . . . jump through every hoop" before being permitted to intervene in the litigation.18

It seems clear, then, that this Administration continues its vigorous efforts to reformulate well-established legal precepts. Despite the fact that one desegregation suit has been filed, and others appear to be in the wings, there have been no policy initiatives to replace the still discarded strategy of mandatory busing where necessary, and there is diminished federal funding to encourage voluntary desegregation plans or to assist court-ordered plans.

II. Fair Housing

Discrimination in the sale and rental of housing has long been among the most insidious of discriminatory practices. Despite the passage of the Fair Housing Act of 1968,19 housing discrimination persists. As the Report established, such discrimination is subtle in practice and therefore difficult to detect. Minorities are subjected to higher prices, larger down payments, longer waiting periods, and higher interest rates than are whites. They are "steered" to minority neighborhoods or denied access to multiple listing services.20 As a direct result of these practices, segregated living patterns continue, which lead to inferior opportunities for education, employment, and public services.

The Fair Housing Act is enforced primarily by the Depart-

of Housing and Urban Development (HUD), which has the responsibility to receive and investigate complaints of housing discrimination, and to conciliate disputes. Meritorious cases that cannot be resolved are referred to the Justice Department for prosecution. The Justice Department also has authority to receive complaints directly from aggrieved individuals and to conduct its own investigations. According to the Report, between 1969 and 1978, the Civil Rights Division prosecuted more than 300 cases against more than 800 defendants, averaging about 32 new cases per year.21

After the Reagan appointees took office in 1981, more than a year elapsed before their first housing discrimination suit was filed. Only two others were filed in the Administration's first twenty months.22 Since the Report, several additional cases, including an important suit against the Town of Cicero, Illinois, have been filed.23 But it remains true that, in more than two years, a total of only nine new cases, or an average of 4 ½ per year, have been filed.24

Aside from this clear statistical disparity between the practice of the Reagan administration and that of previous administrations, the Report also found that the current leadership in Washington has implemented significant regressive policy changes. It has retreated from challenging discriminatory zoning practices, an important aspect of the housing discrimination problem. It has abandoned the “effects” test for establishing discrimination in a given case, and has urged instead that only “intentional” violations of the Fair Housing Act be prosecuted.25 There is no evidence today that these positions have changed.

On May 5, 1983, Senators Mathias (R-Md.) and Kennedy (D-Mass.) introduced a new Fair Housing Bill,26 designed to strengthen the enforcement mechanisms available under the 1968 Fair Housing Act. Approximately two weeks later, on May 19, 1983, the Reagan Administration announced that it was sub-

21. Id. at 121.
22. Id. at 124.
25. Reagan Civil Rights at 125.
mitting its own bill to amend the Fair Housing Act.⁷⁷ Although both bills recognize the need to strengthen the enforcement scheme under the Fair Housing Act, civil rights groups have complained that the Administration's bill is too narrow and cumbersome to provide significant protections.

Under current law, when a housing discrimination complaint is filed with HUD, that Department is limited to investigating the complaint and attempting to resolve the dispute by "conciliation." The complainant may file a lawsuit in federal court, but only if HUD fails to take any action or if conciliation fails.⁷⁸ The Attorney General may file suit to enforce the law, but only if a "pattern or practice" of discrimination seems evident.⁷⁹

The Mathias-Kennedy Bill would close this enforcement gap by making several changes. First, the bill would establish an administrative adjudication procedure for housing discrimination complaints, which would provide a swift and inexpensive alternative to bringing a lawsuit in federal court.⁸⁰ HUD would retain its conciliation powers, and would also be authorized to refer cases to the Justice Department for binding arbitration, and to state and local fair housing agencies. The bill would also increase civil penalties to $10,000, plus attorneys' fees for the prevailing party. Finally, the proposed bill would add two new classes of persons protected by the fair housing laws: handicapped individuals and families with children.

The Administration proposal, on the other hand, while expanding the enforcement procedures available to the government, differs significantly from the Mathias-Kennedy Bill. It does provide for more severe civil penalties than does the Mathias-Kennedy Bill, ($50,000 for a first offense and $100,000 for a second offense), but it would create no new means of redress for individual victims of housing discrimination. The Adminis-

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²⁹. Id. at § 3613.
³⁰. The hearings would be conducted by administrative law judges selected by a three-member Fair Housing Review Commission, which would be appointed by the President. The decisions of the administrative law judges could be appealed to the Commission and then to the federal courts. Fair Housing Amendments Act of 1983, S. 1220, 98th Cong., 1st Sess., 129 CONG. REC. S6153 (1983).
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tration proposal would supplement the current conciliation procedure, not by creating an administrative adjudication process, but by expanding the authority of the government to initiate lawsuits in federal court. In addition to the current "pattern and practice" cases, the Secretary of HUD would be empowered to recommend that the Justice Department file suit in certain individual cases. As a result, complainants would remain wholly dependent upon the government's willingness to take enforcement initiatives.31

Given this administration's demonstrated lack of enthusiasm for vigorously enforcing fair housing laws, its proposed change would afford little added relief to victims of discrimination. Civil rights groups have criticized the administration's bill as "clearly inadequate" to solve the problem, and have endorsed instead the Mathias-Kennedy proposal.32

III. EMPLOYMENT DISCRIMINATION

Title VII of the 1964 Civil Rights Act is the primary legal prohibition against employment discrimination. The Justice Department has authority to enforce this law with regard to state and local governments, recipients of federal financial assistance, and federal government contractors. The EEOC is responsible for enforcing its provisions, as well as other nondiscrimination laws, against private employers and the federal government. In all, the EEOC protects some seventeen million minority employees.33

Until recently, the cornerstone of federal enforcement activity in this area was the proposition that once discrimination was established, the violator was required to take affirmative steps to correct the effects of its past discrimination.34 The Justice Department has argued for this position successfully in landmark

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31. The administration has explicitly announced its intention to retain enforcement power in the hands of the government. In releasing the proposal, HUD Secretary Pierce stated, "This keeps the burden of enforcement where it belongs, on the federal government rather than on the individual victim." Briefing Paper, Administration's Fair Housing Amendments Proposal, at 2 (June 7, 1983); Washington Post, May 20, 1983, at A2, col. 1.
34. Reagan Civil Rights at 158.
cases in which courts have sustained the use of numerical goals and timetables as part of the affirmative obligation of those guilty of discrimination.

Under Ronald Reagan, the Report found, there was no significant drop in the statistical data indicating vigorous enforcement activity, and this appears to be true today. In June, the Justice Department sued the Suffolk County, New York police department, alleging discrimination against women, blacks, and Hispanics in hiring and promotion practices. In all, about 20 new cases have been filed by the Reagan Administration.

There remains, however, a controlling change of philosophy with regard to the relief that is pursued in employment discrimination cases. First, the Administration refuses to permit the use of quotas, timetables, or racial preferences in hiring, on the grounds that any discrimination, whatever the reason, is morally wrong and legally improper. Second, it insists upon remedying past violations by identifying the "actual victims" of discrimination and compensating them for their lost pay opportunities.

This policy means that Reagan law enforcement officials have ignored past federal practice and prior judicial approval of affirmative action plans, and have unalterably limited their remedial arsenal in every case, regardless of the circumstances. No longer are discriminating employers required to hire and promote members of groups previously banned. Now, only those who actually applied for a job, or failed to obtain a promotion, will benefit. This new approach protects a far smaller group, with correspondingly less social impact. The position also fails to take into account discrimination in promotions, where the "applicant pool" may be predetermined by an existing, racially imbalanced work force, thus extending inequality into the higher levels of the employer's payroll.

The implementation of these policies has raised a storm of protest. The Justice Department has resolved some twenty-six cases by consent decrees consistent with this philosophy. Since the Report, in police-force discrimination cases in Boston, Detroit, and New Orleans, the Justice Department has moved to

38. Id.
undo affirmative action plans ordered by courts.\textsuperscript{39} There has been an open policy break between the EEOC and the Justice Department over this issue, and the White House has refused to permit the EEOC to file a separate brief defending affirmative action before an appellate court in the New Orleans police case.\textsuperscript{40} Some congressional sources assert that the Administration has gone so far as to refuse to publish recent Labor Department studies that demonstrate the effectiveness of affirmative action plans.\textsuperscript{41}

The various civil rights interest groups are not, however, united on this issue. Those who support affirmative action do not maintain that the relief is necessary, or appropriate, in every case. They note, however, that hard-fought legal battles have upheld its propriety in certain situations. These groups object both to the abandonment of the affirmative action remedy by the federal government, and to the government’s active attempts to undo pro-affirmative action legal precedents. A lingering fear of affirmative action supporters is that even if the Administration’s policy does not actually undermine recent legal gains, the public’s perception of that policy may encourage employers to ignore or evade the discrimination laws in the belief that no prosecution will occur.

Other civil rights groups, most notably among Jewish organizations, agree with the Administration’s position. They believe that any racial, sexual, or religious preference is, \textit{per se}, illegal and immoral. This fundamental disagreement has hampered the ability of the Leadership Conference on Civil Rights, a key civil rights group, to adopt unified positions on several related matters.

\textbf{IV. Voting}

For decades, numerous states, through unremitting and ingenious efforts, denied blacks the right to vote. Congress addressed the situation in the three separate Civil Rights Acts of 1957, 1960, and 1964, with little success. This led to the enact-

\begin{footnotesize}
\textsuperscript{39} Washington Post, April 6, 1983, at A12, col. 1; \textit{id.}, May 3, 1983, at A10, col. 5.
\textsuperscript{40} Washington Post, April 7, 1983, at A1, col. 1.
\textsuperscript{41} Washington Post, June 20, 1983, at A3, col. 1.
\end{footnotesize}
ment of the Voting Rights Act of 1965,42 which contained novel, sophisticated, and extraordinary remedies to enforce the right to vote.

The Act includes three major provisions: it prohibits all practices, procedures, and tests that have the effect of denying the right to vote on account of race; it requires jurisdictions that historically discriminated to obtain prior approval from the Attorney General for any changes in their election laws; and it permits the Attorney General to send federal examiners and observers into local areas to protect the right to vote. Originally limited to five years, the Act was extended in 1970 and 1975, and the number of jurisdictions subject to its pre-clearance provisions was expanded. The results achieved by the Act are dramatic: prior to its enactment black voter registration in the covered states was 29% (white registration was 73%); today black registration in the same areas is 50%.43

Although few would dispute the significant gains in this area, the evidence continues to demonstrate that wide disparities between registered minority voters and registered white voters still exist.44 Registration offices and polling places are often inaccessible to minorities; gerrymandering in order to avoid black majority districts remains common. Annexations of suburban areas to dilute inner city minority voting strength is a destructive new phenomenon.

The Reagan Administration has attempted to project a strong civil rights image on the voting issue. This effort was undermined, however, by its stubborn opposition to the 1982 extension of the Voting Rights Act. As the Report recounts, under the pretense that the new law would “compel reorganization of electoral systems to guarantee” representation of minorities in proportion to their presence in the electorate,45 the Administration held up passage of the bill for seventeen months. In truth, the proposed legislation did not require proportional representation. The Administration smokescreen was finally lifted when Senator Dole offered an amendment that expressly disclaimed

44. Id.
such a purpose, and the Act was finally extended.

Actual enforcement of the Voting Rights Act by this Justice Department has generally been maintained under pre-Reagan policies. Due to the expanded coverage of the Act, as well as to electoral changes resulting from the 1980 census, the Department has reviewed a record number of preclearance submissions from the covered jurisdictions. Many of these changes are non-substantive, i.e., changing the filing date from Tuesday to Wednesday, but a high proportion have an impact on minorities' rights. So long as these are handled in routine fashion by the career staff, the enforcement of the law will be at a level consistent with that achieved in the past.

Efforts to bolster this government's civil rights image since the Report have, interestingly, continued to focus upon voting issues. Assistant Attorney General Reynolds toured areas of rural Mississippi with the Reverend Jessie Jackson, listening personally to the complaints of blacks concerning local interference with their right to vote. He subsequently dispatched federal observers to oversee the election process, bemoaning the continued existence of such discrimination. Cynics have observed that, if an experienced civil rights attorney was in charge of the Civil Rights Division, such educational trips would be unnecessary.

Mr. Reynolds' media roadshow also obscures the fact that in his tenure he has not initiated a single suit pursuant to section 2 of the Act. Those few suits actually filed were all interventions in pending litigation initiated by private parties. In Louisiana, for example, Mr. Reynolds rejected his staff's recommendation that he refuse to approve its congressional redistricting plans because it discriminated against blacks. Shortly thereafter, private litigants successfully challenged the same plan before a three-judge federal court. Much less heralded than the Mississippi trip undertaken by Mr. Reynolds was the fact that he conferred personally with the Louisiana governor about the redistricting plan in at least two visits and nine telephone calls.

Various interest groups remain dubious about this Adminis-

tration's commitment to strict enforcement of the Voting Rights Act of 1982. They are especially fearful that political expediency will override the rule of law.

V. HANDICAPPED PERSONS

The 1970's saw the emergence of a new minority: handicapped people. A smaller, heretofore silent group, discriminated against not because of race, sex, or national origin, but by reason of physical and mental conditions that cut across all other lines of classification. This group first emerged into the public consciousness through a series of federal court lawsuits challenging conditions in barbaric public institutions that warehoused mentally ill and retarded adults and children. Spurred by these gruesome reports, Congress enacted legislation designed to protect their basic rights.

The most significant protection is section 504 of the 1973 Rehabilitation Act. It prohibits discrimination on the basis of handicap by federal agencies, and by programs and activities that receive federal financial assistance. It was implemented, after intense pressure from disability groups, by an extensive set of Department of Health, Education, and Welfare (HEW) regulations setting out enforcement guidelines and definitions. All federal agencies are required to use these rules as a model for their own regulations, and are additionally required to devise an affirmative hiring plan for handicapped persons.

A second important statute is the Civil Rights of Institutionalized Persons Act, which took effect in 1980. This law gives the Attorney General authority to investigate conditions in public institutions and, where voluntary corrections are not undertaken, to sue the offending jurisdiction. Because the Act was not passed until late in the Carter Administration, the Carter Justice Department had little time to undertake vigorous enforcement. It should be recalled, however, that for nearly ten years prior to the Act, the Justice Department had participated in civil rights litigation to benefit institutionalized persons. Since the Report was issued, the Justice Department still has

not filed a single suit against an institution for mentally or physically handicapped persons. There were, at the time the Report was issued, a number of investigations well under way; yet, more than a year later, none has matured into litigation.

In the Reagan Administration, policies with regard to handicapped people have been restructured along lines similar to those applied to other minority groups. Thus, affirmative action plans are not highly regarded, although the substance of such plans for this population differs considerably from that for blacks and women. Efforts to limit the scope of 504's financial coverage have been initiated, in an attempt to restrict the obligations of federal grantees. Investigations of public institutions are being conducted, but the remedies employed by the government to correct identified violations are, as in other areas, less comprehensive and strict than those sought by private groups or previous administrations. Standards for access to public transportation systems also have been made more restrictive than in the past. The usual monetary justifications have been offered for the diminished protections. Funds for educating and training handicapped people, needless to say, have been reduced by inflation if not by actual dollar amounts.

By the end of 1983, the Justice Department had not filed a single substantive action on behalf of a handicapped person under section 504, except for its notorious “Baby Doe” litigations. Despite its constant efforts to limit the application generally of section 504, the Administration, hoping to mollify right-to-life groups, proposed a rule requiring all hospitals receiving federal aid to post warnings that prosecutions and fund cut-offs would be initiated in the event that babies born with defects were denied food or medical treatment. As soon as the rule took effect, it was challenged by doctors and hospitals on grounds that it interfered with medical judgments, and that it was illegally adopted. A federal court threw out the rule on grounds that it was arbitrary and capricious and failed to take into account the sensitive issues involved. The Administration has not changed its position on this issue and it is reported that a virtually identical regulation will be issued, pursuant to proper legal guidelines this time, for final adoption.

VI. GENERAL ENFORCEMENT OF CIVIL RIGHTS LAWS IN FEDERALLY FUNDED PROGRAMS

Most civil rights laws are constitutionally justified by their connection to federal funds. In essence, a grantee or contractor promises that when it receives federal funds it will observe the applicable anti-discrimination laws. Over the years, federal regulations have established, as a matter of both law and policy, that these promises should be interpreted liberally so as to include all the activities of a grantee, i.e., a university or hospital, and not only those departments actually receiving federal funds.

This Administration, spurred by a Supreme Court decision holding that a major civil rights statute’s coverage was limited to the specific program for which funds were granted, has attempted to revise all federal civil rights regulations, under a variety of statutes, to the “program specific” enforcement approach. Had this effort been successful, it could have reduced—perhaps by as much as one-half or one-third—the coverage of these laws without a single legislative authorization. These attempts, however, have met such stubborn and uniform resistance from interest groups that Vice President Bush announced that the major redrafting of these regulations has been abandoned.

The Justice Department has not, however, abandoned this “program specific” theory in its litigation. Indeed, it is likely that the strategy here is to establish the new position as the prevailing rule of law, thus necessitating amendment of federal regulations to comply with the court decisions. Assistant Attorney General for Civil Rights Reynolds has refused to appeal federal court decisions applying the “program specific” theory. Recently, in a case now pending before the Supreme Court, Grove City College v. Bell, the Justice Department apparently dropped its defense of the existing regulations, which apply

54. Id. at 164-65.
56. E.g., Reagan Civil Rights at 166.
broadly to all activities of a recipient, arguing that a recipient is oblied to comply with antidiscrimination laws only in those specific programs or activities directly receiving the aid. A bipartisan group of congressional representatives filed its own brief with the Court, arguing that the narrowed interpretation posed by the Justice Department would permit widespread discrimination by recipients of federal funds.

VII. PRESIDENTIAL APPOINTMENTS

The Report did not look specifically at appointments made by the President, but recently released data in this area lend credence to the Report's basic assessment of the Reagan Administration as antagonistic to improved conditions for minorities and other groups facing discrimination.

The area of appointments is one in which a strong example of commitment to equal opportunity principles could be made easily by the appointment of minorities and women to a significant number of the approximately 1,000 government positions controlled by the President. Such appoints would bring often excluded groups into the decision-making process and carry out the purpose of the civil rights laws. Indeed, during the Carter Administration, appointment of minorities and women to these posts was an important symbol of government adherence to the cause of civil rights.

According to a recent statement by the U.S. Commission on Civil Rights, President Reagan has appointed fifty percent fewer blacks and women to these jobs than did President Carter over a comparable time period. The largest difference involved blacks: 4.1% of this Administration's jobs have gone to blacks compared to 12.2% in the previous Administration. Of 121 judicial appointments by President Reagan, 2.5% were black and 8.3% were women.

One of the major civil rights controversies of this term has

61. U.S. COMMISSION ON CIVIL RIGHTS, STATEMENT ON EQUAL OPPORTUNITY IN PRESIDENTIAL APPOINTMENTS (June 1983).
62. Id. at 5-7.
63. Id. at 7.
64. Id. at 11.
involved appointments to the U.S. Commission on Civil Rights itself. Dissatisfied with the objections and public disagreements presented by several Commissioners, the President recently removed three of them, and replaced them with nominees of his own choosing. Civil rights groups have responded with a great hue and cry. A majority of groups in the Leadership Conference asserts that the Commission is intended to be an independent body and not a captive of the President. It also challenges the credentials and beliefs of the replacement appointees, noting that all are opposed to busing and affirmative action. Congress has recently enacted a measure redefining the appointment process for Commissioners. Under the new law, some Commissioners are to be appointed by the President, others by Congress.

VIII. THE CIVIL RIGHTS BUDGET

The original Report did not address separately the budget issue. But again, recent analyses of the Reagan Administration's budgetary plans support the Report's thesis that civil rights has been relegated to the back of the bus.

The federal budget is an important policy statement. The resources allocated for civil rights enforcement activities are a clear indication of an Administration's commitment to solving existing problems. There are six agencies with major responsibility for civil rights law enforcement: the Departments of Health and Human Services, Justice, Education, HUD, and Labor, plus the Equal Employment Opportunity Commission. These agencies engage in a variety of enforcement activities which are expensive because they require large staffs to investigate complaints and monitor general compliance. In a report on the Reagan Administration's proposed FY 1983 civil rights budget, the U.S. Commission on Civil Rights stated that "funding for all Federal civil rights enforcement . . . has dropped. The proposed FY 83 figure of approximately $536 million is $17 million less than provided in FY 80."

The Administration's proposed FY 84 budget has likewise

67. Fiscal Year 1983, supra note 33, at 5.
been criticized this year by the ACLU: “key civil rights expenditures are even lower than last year and [funds] . . . are being channeled away from important enforcement programs.”

The current Administration claims that it has proposed increased civil rights expenditures, and that this reflects the priority accorded to civil rights. The actual proposal, in dollar amounts, is $634 million; this figure, it is claimed, is $27 million larger than what will actually be spent in FY 1983.

Of this increase, however, less than one-third is allocated to the six principal civil rights agencies identified above. The rest has been targeted for *internal* Equal Employment Opportunity costs, primarily in the Department of Defense, and thus will have little or no effect on civil rights enforcement beyond federal employees. Additionally, funding cuts in several major enforcement programs have been proposed.

The President’s budget would reduce funds for assisting local fair housing agencies in processing discrimination complaints, during a period when these agencies are viewed by the administration as being the primary law enforcers. In education, it proposed to cut severely funds to school districts for use in desegregation efforts and to reduce the resources in the Education Department’s Office of Civil Rights. At Health and Human Services, the Office of Civil Rights is to be reduced by fifteen staff persons. At Justice, Labor and the EEOC, civil rights enforcement will be funded at roughly the same levels, except that voting rights will be increased at the Justice Department.

In sum, despite public statements that would suggest a considerable budgetary commitment to the civil rights area, an examination of the actual proposals discloses that the major federal agencies will see little or no increase. Not surprisingly, budget increases at the Department of Defense continue to lead the way, even in the field of civil rights.

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69. *Id.* at 1.
70. *Id.* at 2.
71. *Id.*
72. *Id.* at 3.
73. *Id.*
74. *Id.* at 4-5.