

Chapter 2

Recommendations of the Commission

The Citizens' Commission offers the following recommendations:

Presidential Leadership and Appointments

I. Secure Judges Committed to Equal Justice

We recommend that President Bush require his future nominees to have a demonstrated commitment to equal justice under law. In seeking out qualified candidates the President should hold genuine consultations with both Democratic and Republican senators. He should also consult with a wide range of scholars, respected lawyers, and civil rights experts to determine the likely impact of proposed nominations on his stated goal of securing equality of opportunity for all persons.

We recommend to the Senate, and particularly to Senate leaders and members of the Judiciary Committee, that they carefully and thoroughly review the President's nominees, especially nominations to the appellate courts, to determine whether these nominees have a demonstrated commitment to equal justice under law. Where senators conclude that a

nominee lacks such a commitment they should vote against confirmation.

A narrow majority of Supreme Court justices, along with many appellate judges named during the 1980s, has seriously eroded the civil rights protections secured by Congress and the courts beginning with *Brown v. Board of Education*. The trend of the decisions is to restrict the authority of other branches of government to protect rights and to move the nation toward resegregation and the constriction of opportunity.

We hope that the President will take a long, hard look at the mismatch between his rhetoric on fairness and opportunity and the ideology of many of the people he has nominated to the courts in his first year of office. Whatever the President does, the Senate should exercise its role as a full partner in the judicial appointment process. In the words of *The New York Times*, senators should not "move aside passively for confirmation of ideological jurists" whose appointment "could distort the balance of the judiciary for decades to come."

2. Establish a Vigorous Civil Rights Enforcement Program

- a. *We recommend that the President appoint or nominate to key civil rights positions in the executive branch people experienced*

in the field who are committed to strong enforcement.

President Bush has already nominated one such person as Chair of the Equal Employment Opportunity Commission. But he has also sought — particularly for the position of Assistant Secretary of Education for Civil Rights — to appoint persons opposed to the very laws they would be charged with enforcing. The time has also long passed when a lack of experience or commitment in civil rights can be regarded as an asset. The President should understand that the true test of his verbal professions on civil rights will be the appointment of people fully prepared to match his words with Administration deeds.

b. The President should vest civil rights responsibility with an official in the White House who reports directly to the President and whose responsibility should include providing guidance and direction to agency and department heads.

The lack of such leadership has been a failure of several Administrations. But the need is greater than ever to develop cohesive civil rights policies, to provide coordination where civil rights issues cross departmental lines, and to furnish guidance and assistance, particularly on controversial and sensitive issues.

c. The President should provide the tools and resources for civil rights enforcement. We recommend that the President send a clear message to all federal departments and agencies that he expects the civil rights laws to be vigorously enforced. The Administration and Congress also should ensure that the enforcement agencies have the resources they need to carry out their responsibilities.

Effective law enforcement is not possible without adequate resources. During the 1980s, the Citizens' Commission documented a decline in civil rights enforcement marked by decreased resources, failures to investigate and monitor, and failures by enforcement agencies to collect the data necessary to assess compliance. Some of these problems were addressed in the 1990s but resources still are not sufficient.

The Commission is particularly concerned about the Attorney General's statement in November 2001 that he would consider diverting staff and funding from civil rights enforcement to support the Administration's battle against terrorism. The need to combat terrorism and to protect our national security should not become a pretext for cutting back on the resources needed by the Justice Department's Civil Rights Division for vigorous and effective enforcement of anti-discrimination laws. Similarly, a weakening economy and compelling national security interests should not provide an excuse to fail to support either the congressional appropriations or the high-quality executive branch leadership needed to carry out the various federal agencies' civil rights enforcement obligations.

d. We recommend the use of affirmative remedies for violations of civil rights laws and encourage use of voluntary affirmative action plans.

President Bush should direct federal departments and agencies to continue the policies of his predecessor in support of affirmative action. Specifically, the Administration should continue to use affirmative remedies for violations of civil rights laws and should encourage the use of voluntary affirmative action plans. Federal departments and agencies (including the Office of Federal Contract Compliance Programs) should continue to employ and

should defend affirmative action programs and remedies.

If there is any lesson to be learned from the civil rights history of the last half-century it is that court decisions and laws are of little practical value to persons who have suffered discrimination until there are affirmative remedies to afford opportunity. This has proved to be the case in education, in employment, in housing, and many other areas. Now we have evidence that when in the name of “color blindness” affirmative remedies are dismantled, opportunities will be rapidly lost. In the 1990s, the federal government mended affirmative action so that it would continue to provide opportunity to those once denied without unduly trammeling the interests of others. Those policies should be continued.

3. Develop a Comprehensive Policy to Provide Opportunity to Disadvantaged Persons

We recommend that the President develop a comprehensive policy designed to provide economic and educational opportunity, particularly for those who live in high concentrations of poverty in inner cities, as well as the poor in rural areas.

It is incontestable that even in economic good times there are millions of people in this nation who remain trapped in poverty or in dead end jobs without the means to advance by dint of their own efforts.

Often the poor are faced with structural barriers that must be eliminated if they are to have a chance to succeed. For example, the large concentrations of poverty in which many African Americans, Latinos, and Native Americans (along with some recently-arrived Asian immigrants) live effectively deny them access to educational and job opportunities that they need to progress.

A comprehensive federal policy to address these barriers should include programs and initiatives in the following areas:

- *Housing:* The federal government should substantially increase the supply of affordable housing available to low and moderate income families and ensure that such housing is sited throughout metropolitan areas to give people access to jobs and services. Such a policy would also step up fair housing enforcement and promote smart growth policies that will make efficient and equitable use of urban resources.
- *Education:* In the area of education, a comprehensive urban policy would assist local school authorities in fighting off attacks in the courts on their policies of diversity and desegregation. It would call for strong enforcement of the No Child Left Behind Act of 2001 to ensure that school officials are held accountable for the progress of poor children. It would provide choice for children attending failing public schools to enroll in better performing public schools throughout the area.
- *Health and Social Services:* The policy should address such other basic and critical needs as health treatment and immunization, adequate nutrition, and childcare. It should ensure that welfare reforms provide practical opportunities for poor women and their children to become self-sufficient.
- *Jobs and Economic Opportunity:* The policy should ensure job training and provide incentives for job creation in inner cities. It should ensure that newcomers to our nation and its urban areas will receive the support and opportunities they need to succeed. It should also take into account the particular barriers that face

the rural poor with the goal of helping them to achieve long-term economic sufficiency.

Finally, the President should continue to discuss not only the need to avoid scapegoating Arab Americans but the barriers that racial isolation, prejudice, and misunderstanding pose and the ways in which we can surmount these barriers.

He should underline a lesson that we all should have learned in the last century, that neither our great cities nor any other area of the nation will thrive for very long if they continue to contain large groups of people who are afforded neither opportunity nor hope.

4. Promote Public and Private Leadership to Enhance Civility and Acceptance of Differences in Our Society

We recommend that the President, Congress, cabinet officials, and other political leaders undertake major efforts to help promote civility and acceptance of differences in our society. This should include seeking opportunities to speak out against bigotry, intolerance, and prejudice in our society.

As the nation witnessed a series of disturbing attacks against individuals perceived to be Middle Eastern, Arab, or Muslim, in the aftermath of the September 11 terrorist incidents, we were reminded once more of the need to directly confront the prejudice and intolerance that can lead to hate crimes — in our communities, in our houses of worship, in our schools, and, especially, in our homes.

It is hard to overstate the importance of outspoken leadership and funding for federal educational initiatives in opposition to all forms of bigotry. Our civic leaders set

the tone for national discourse and have an essential role in shaping attitudes.

Civil Rights Legislation and Policy

5. Education

We recommend that the Administration vigorously enforce federal education and civil rights statutes to ensure that no child is left behind by:

- a. *Enforcing provisions of Title I of the Elementary and Secondary Education Act designed to close achievement gaps and seeking the resources needed for its success.*

The No Child Left Behind Act of 2001, reauthorizing the Elementary and Secondary Education Act, was a centerpiece of the President's domestic agenda. The Act was approved with strong bipartisan support in Congress and contains important measures to direct assistance to high-poverty schools, to improve reading skills in the early elementary grades, and to hold schools and school districts accountable for improving student performance, lowering dropout rates and closing gaps that separate poor and minority children from their more affluent and non-minority peers. While similar measures were approved in 1994 during the Clinton Administration, they were met with resistance in many states and further limited by weak federal enforcement. The current Administration has yet to take up the mantle and demonstrate that it is serious about the President's commitment to closing achievement gaps. The test will come during 2002 and 2003, when the Department of Education is required to make key decisions about enforcement and guidance and the President

will submit his education funding proposals to Congress. How the Administration performs on these challenges will signal its true commitment to disadvantaged children and, ultimately, will determine whether the law will be an effective remedy for educational neglect and failure in high-poverty, high-minority communities.

- b. *Preserving and affirming voluntary diversity and desegregation plans in elementary and secondary education. See chapter 1 and recommendation 2.d.*
- c. *Affirming and promulgating fair testing guidelines.*

In December 2000, the Department of Education issued a resource guide on “The Use of Tests as Part of High-Stakes Decision-Making for Students.” The guidance tracks both legal requirements under federal laws prohibiting discrimination on the basis of race, gender, disability, and national origin and widely recognized standards on test use that have been developed by experts in educational measurement. The guidance was issued after substantial input from a body of the National Academy of Sciences and with the support of major test publishers, education associations, and civil rights groups.

Early in the Bush Administration, however, the guidance was withdrawn without explanation. To date, there has been no signal that the Administration intends either to follow the guidance in the Education Department’s own Office for Civil Rights (OCR) enforcement program or to disseminate it to the education officials who will be making high-stakes decisions (often with a disparate racial impact) about student promotion, placement, retention, and graduation. Particularly as additional tests to measure school progress proliferate under the President’s education program, it is important to ensure that tests are not used to visit

unfair and impermissible consequences on students.

- d. *Giving priority to the needs of particularly vulnerable student populations.*

Children with disabilities or with limited English proficiency, particularly when also poor and minority, are at tremendous risk of educational failure. Similarly, children who lack a stable residence and who change schools frequently suffer overwhelming educational and psychological harm. The Department of Education (along with other agencies where appropriate) should take steps to ensure such children are fully included in school reform and improvement efforts and are provided with qualified teachers and the educational programs and services they need to succeed.

- e. *Recommending that Congress reauthorize the Individuals with Disabilities Education Act (IDEA) and make good on its promise to provide adequate federal funding for IDEA-mandated services to students with disabilities. We further recommend that Congress pay careful attention to research documenting the adverse impact of overclassification on minority students.*
- f. *Taking aggressive steps to ensure that all agencies that administer federal education programs enforce Title IX’s prohibition against sex discrimination. The Department of Education should take the lead in Title IX enforcement by:*
 - *Conducting targeted compliance reviews to ensure that female students receive their fair share of athletic opportunities;*
 - *Working to eliminate (including through targeted compliance reviews) sex-segregation in career education*

programs, including School-to-Work, vocational education, and computer science and technology education programs; and

- *Ensuring that recipients of federal aid adhere to the Department's guidance on sexual harassment, including providing students and employees with information and procedures to address complaints.*

While Title IX has led to many gains by women and girls in education, female students continue to lag behind males in several significant respects. Girls are significantly underrepresented in high school courses that lead to high-tech careers or to postsecondary opportunities in mathematical and computer sciences. E.g., only 9% of students taking the Advanced Placement computer science exam are girls. Women now make up over half the undergraduate college enrollment, but receive only 41% of athletic scholarship monies and 33% of athletic operating budgets.

- g. Defend civil rights statutes (including Title VI, Title IX, section 504, and the Americans with Disabilities Act) against challenges that would limit their scope in protecting students and employees from discrimination.*

6. Voting

We recommend that reform of voting procedures and full enforcement of the Voting Rights Act of 1965, as amended, be raised to a high priority on national, state and local agendas.

- a. We recommend that Congress enact legislation to ensure that within each state all qualified persons will have equal and ef-*

fective access to registration and voting. Such legislation should include the following:

- *A requirement that under the aegis of a federal election entity each state develop standards to ensure ballot access;*
- *A requirement for computerized state-wide voter registration that will reduce erroneous purging;*
- *A requirement that eligible voters who are challenged (e.g., for appearing at the wrong precincts) be allowed to vote provisionally so that their ballots will be counted for all offices for which they are eligible to vote;*
- *A requirement that accommodations be made to ensure that polling places and ballots will be accessible to people with disabilities and, through ballot translation, to non-English speakers; and*
- *A requirement that federal funds be made available to the states and used for computerized registration systems, provisional voting, providing access to disabled and non-English speaking citizens, and training election personnel.*

The elections held in 2000 amply demonstrated the need for the reforms recommended above. As to some provisions, Congress has authority to act with respect to all elections under the 14th and 15th Amendments to the Constitution. As to others its authority may be limited to federal elections, where it has broad regulatory authority under Article I, section 4. But since the cost to states of maintaining two electoral systems is very high, the legislation recommended may lead to reform across the board.

While Congress may soon take action on some of the reforms recommended above, the effort should not end there. New efforts should be mounted in Congress to complete the agenda.

- b. *The Administration should fully and vigorously enforce the Voting Rights Act and Congress should consider legislation to facilitate private suits under the Act.*
- c. *As noted in the following section, action should be taken by both the federal government and the states to restore the franchise to ex-offenders.*

7. Criminal Justice

We recommend that Congress and the states seriously address pervasive bias and disparities in the enforcement of the criminal laws in the areas of sentencing, felony disenfranchisement, profiling (including traffic stops), and juvenile justice.

Since 1989, the Citizens' Commission has issued reports comparable to this volume assessing the nation's progress on a variety of civil rights subjects. In many areas of civil life, progress has been made, particularly when there has been responsive leadership at the federal and state levels. Yet, as we detail in chapter 14 of this report, the massive and pervasive bias in the Administration of criminal justice in the United States is a serious threat to civil rights progress. Thus the Commission is impelled to issue a set of recommendations that, while by no means comprehensive, would begin to redress racial injustice in criminal law enforcement, to hold officials accountable, and to restore public confidence in the system, including in policing agencies. Our specific recommendations are as follows:

- a. *Congress should consider legislation to reduce disparities in sentencing.*

Sentencing guidelines are often based on sentencing statutes that are infected by racial distortions. For example, the Controlled Substance Act includes a 100-to-1 ratio between the amount of powder cocaine and the amount of crack cocaine needed to trigger the statutory mandatory penalty, a policy which results in great racial disparities.

- b. *Congress and affected states should act to end or severely restrict the practice of transferring juveniles into the adult criminal justice system.*

Many states and the federal government have adopted laws that permit or require juveniles to be tried as adults and transferred into adult prison populations. Because they are overrepresented in the juvenile justice system, minority youth bear the brunt of these laws. Black, Hispanic and Asian American youths are far more likely to be transferred to adult courts, convicted and incarcerated than white youths. Within the federal system, 60% of youths in federal custody are Native American. Because the federal government often has jurisdiction over crimes committed on reservations, Native American youths who engage in minor criminal conduct often receive penalties that are far harsher than those that ordinarily would be imposed by a state court.

- c. *Congress and the Administration should encourage the repeal of state felony disenfranchisement laws, and states should act to restore the franchise to ex-offenders.*

State laws disenfranchising convicts are pervasive and contribute to lower voting participation among black and Hispanic adults. As a result, it is estimated that 1.4 million black men are denied the right to vote. In

two states — Alabama and Florida — 31% of all black men are permanently disenfranchised. These laws are antithetical to democracy and are not necessary to protect the public, or for deterrence or rehabilitation purposes.

d. Congress and the Administration should support legislation requiring federal and state law enforcement agencies to collect and report data on traffic stops and other activities associated with racial profiling, including INS enforcement and airport security activities.

The practice of racial profiling — the identification of potential criminal suspects on the basis of skin color or accent — is widespread. The collection of data by major racial groups is essential in order to understand the dimensions of the problem and to devise workable solutions.

8. Hate Crimes

We recommend that Congress and the Administration take action to investigate and prevent crimes motivated by bias.

a. Congress should enact the Local Law Enforcement Act.

The legislation should authorize the prosecution of cases in which the bias violence occurs because of the victim's actual or perceived sexual orientation, gender, or disability. Congress and the Administration should provide the resources necessary to develop training materials to successfully implement this expanded authority.

b. We recommend that Congress and the Administration promote improved data collection and analysis on hate crimes.

The Justice Department's Bureau of Justice Statistics has funded a necessary study on the differences in Hate Crimes Statistics Act (HCSA) reporting rates among national law enforcement agencies. The federal government should use its full range of resources to implement policy recommendations from that study and encourage comprehensive participation in the national data collection initiative.

The Justice Department should make participation in the HCSA program a prerequisite for receiving money through either the Office of Community Oriented Policing Services (COPS) or its Office of Justice Programs (OJP). Congress and the Administration should require that new officers hired under the COPS initiative receive training in how to identify, report, and respond to hate violence. Congress and the Administration should make the receipt of OJP technical assistance grants dependent on participation in the HCSA data collection effort.

c. Congress and the Administration should provide funds for a national assessment of juvenile hate violence, its causes, the prevalence of the problem in public schools, the characteristics of the offenders and victims, and successful intervention and diversion strategies.

The problem of bias-motivated gang activity and youth violence has not been effectively studied. Additional efforts are necessary to identify and promote effective programs, including community service and alternative sentencing options.

d. The Departments of Education and Justice and other involved federal agencies should step up their response to prejudice-motivated violence — including gang violence — through educational programs and initiatives developed for elementary

and secondary schools, colleges and universities, and in community settings.

The American Psychological Association (APA), in a landmark 1993 report, documented the role of prejudice and discrimination in fostering social conflict that can lead to violence. Educational resources are effective tools to alter attitudes and behaviors — which in turn can prevent and reduce acts of hatred and discrimination. The Administration and Congress should support adequate funding for new and existing programs such as Partners Against Hate, an initiative funded by the Justice Department’s Office of Juvenile Justice Delinquency Prevention.

9. Protecting the Rights of Immigrants

We recommend as follows:

- a. *The Immigration and Naturalization Service (INS), in cooperation with community organizations, should invest resources and personnel to remove barriers to naturalization.*

Many legal immigrants lack effective access to the naturalization process. Many face language and socio-economic barriers. For example, many do not complete the forms correctly and are turned down. Affirmative steps are needed both to examine government-created barriers and to simplify the process and assist immigrants through it.

- b. *Congress should repeal provisions of the IIRIRA (Illegal Immigration Reform and Immigrant Responsibility Act of 1996) and the Anti-terrorism and Effective Death Penalty Act of 1996 (AEDPA) which require mandatory deportation of legal immigrants for minor offenses.*

The 1996 amendments removed judicial discretion to prevent deportation in cases where legal immigrants had received a one-year sentence or more, even if the defendant never served any time. Judges are precluded from considering the defendant’s ties to the United States, the extent of rehabilitation, or family hardship. As a result, the deportations mandated under the law have resulted in harsh consequences for many legal immigrants and their families. The legislation also stripped legal immigrants of an array of due process protections.

- c. *Congress should act to remove barriers to voting faced by citizens with limited English proficiency (see Voting, recommendation 6).*

10. Closing the Digital Divide

We recommend that the Administration develop and implement a comprehensive set of policies to close the “digital divide” that has meant unequal access to information technology. These policies should include:

- a. *Continuing the E-rate program, which supports telecommunications access for schools, libraries, and rural health care centers;*
- b. *Devoting more resources (through the Federal Communications Commission and the Departments of Agriculture, Education, Housing and Urban Development, Interior, and Health and Human Services) to informing low-income consumers, as well as carriers in rural and high-cost areas, of their eligibility for benefits and support under the 1996 Telecommunications Act.*
- c. *Supporting investment in community technology centers in low-income and rural neighborhoods across the country.*

- d. *Conducting studies of “information red-lining” to determine the extent to which private telecommunications providers avoid poor or minority communities.*

The “digital divide” refers to the disparate access that poor and minority communities have had to a variety of information technologies, from basic telephone service to high-speed Internet access and other advanced services. We urge the Bush Administration to continue the progress made under the Clinton Administration in closing the divide with the aid of federal intervention and assistance.

11. Employment Discrimination

We recommend as follows:

- a. *Federal agencies, including the Equal Employment Opportunity Commission (EEOC) and the Office of Federal Contract Compliance Programs (OFCCP) at the Department of Labor, strategically target litigation and enforcement activities to remedy systemic patterns and practices of discrimination.*

We advise strongly against returning to the policies of the 1980s, when investigation and enforcement on a class or systemwide basis were discouraged as Administration policy. While many individual cases have merit, addressing barriers that affect large numbers of employees is a more efficacious use of agency resources and expertise.

- b. *The EEOC should ensure that it is accessible to members of affected communities and that addressing all forms of discrimination remains a high priority.*

The EEOC should continue to investigate claims of sex discrimination (including “glass

ceiling” issues), racial and sexual harassment, and national origin discrimination. In addition, widespread age discrimination and exclusion of persons with disabilities from the workplace remain critical issues for the Administration to tackle. Finally, more outreach should be done to ensure that EEOC is an effective resource for the affected communities.

- c. *As noted in recommendation 2.d, the federal government, including EEOC, OFCCP and the Civil Rights Division of the Justice Department, should continue to use affirmative remedies for problems of discrimination.*
- d. *Congress should pass and the President should sign the Employment Nondiscrimination Act (ENDA) to protect the rights of gays and lesbians to be free from harassment and discrimination in the workplace.*

12. Housing

We recommend as follows:

- a. *The Secretary of Housing and Urban Development (HUD) should move quickly to reaffirm the agency’s commitment to fair housing enforcement, to ensure that the Office of Fair Housing and Enforcement (FHEO) is staffed with competent leadership committed to aggressive and effective enforcement of the nation’s fair housing laws, and to put in place a team of top investigators and other officials and to develop credible plans and goals that will:*
- *Resolve the Department’s backlog of fair housing complaints; and*
 - *Increase significantly the number of complaints charged, and Secretary-initiated complaints filed, including*

cases involving unfair lending practices.

- b. Between now and the end of FY2002, the Department of Justice should increase the number of new pattern and practice cases brought (including cases involving discrimination in lending and insurance).*

Since 1999, the Justice Department has received additional attorney positions and the number of case referrals from HUD has declined. The Citizens' Commission believes a reasonable goal would be for the Civil Rights Division to increase by half the number of new pattern and practice cases filed by the end of FY2002.

- c. The Department of Justice should continue its successful testing program while expanding its role in addressing discrim-*

ination in the areas of lending and insurance.

The Housing Section's testing program has been extraordinarily successful, leading the Department to file 62 cases between 1992 and August 2000. Fifty-nine of these cases were favorably resolved, resulting in \$7.4 million in compensatory damages, \$1.4 million in civil penalties, and the opening up of housing opportunities to the victims of discrimination and their families. The program should be expanded to focus on realtors that engage in interstate commerce and explore ways to test lending and insurance practices.

- d. The federal government should substantially increase the supply of affordable housing. See recommendation 3.*