

Excerpts From Hesburgh's Statement on

Special to The New York Times

WASHINGTON, Oct. 12—Following are excerpts from a statement by the Rev. Theodore M. Hesburgh, chairman of the United States Commission on Civil Rights, regarding the commission's release of a report on civil rights enforcement by the Federal Government:

The report we are releasing this morning, "The Federal Civil Rights Enforcement Effort," is one of the most important documents the commission has issued in its 13-year history. What the commission has attempted to do in this report is identify with precision the current status of civil rights enforcement activities of virtually every federal department and agency having civil rights responsibilities.

This report, in a very real sense, is addressed not only to the President and Congress, but to the American people, who have the right to know whether the laws that govern us are working.

Our examination of various laws, executive orders, and judicial decisions has disclosed that there is indeed an impressive array of civil rights guarantees that provide protection against discrimination in virtually every aspect of life—in education, employment, housing, voting, administration of justice, access to places of public accommodation, and participation in the benefits of federally assisted programs. There is, however, a gap between what these guarantees have promised and what has actually been delivered.

We are a result oriented nation. We judge the effectiveness of institutions on the basis of the results they achieve. By this yardstick, progress in ending inequity by the application of law has been disappointing. In many areas in which civil rights laws afford pervasive legal protection—employment, housing, education—discrimination persists and the goal of equal opportunity is far from achievement.

Many Gains Found

The commission has examined the Federal civil rights enforcement effort and found it wanting. Each civil rights law that has been passed, each executive order that has been issued, and each court decision favorable to the cause of civil rights, has been viewed as another step

along the road to full equality for all Americans.

But perhaps what has been lost sight of is that these legal mandates in and of themselves, cannot bring about a truly open society, that they must be implemented—and it is at this point that we have found a major breakdown.

It is important to recognize that despite the shortcomings pointed out in this report, the civil rights laws have by no means been a total failure. In many areas—voting, education, hospital services, public accommodations—these laws have contributed substantially to ending discrimination. But despite the progress made possible by the various civil rights laws and policies, discrimination is still with us.

I want to stress two important points about the report. First, while the report necessarily discusses the programs and activities of particular departments and agencies, the purpose is not to single out any of them for blame—or, for that matter, for praise. The commission's concern in this report is with the system of Federal civil rights enforcement and our purpose is to identify the problems which are systemic and to seek systemic changes.

Second, while the report deals primarily with the current civil rights posture of the Federal Government, it should be understood that the inadequacies described have roots that lie deep in the past. These inadequacies did not originate in the current Administration, nor was there any substantial period in the past when civil rights enforcement was at a uniformly high level of effectiveness.

Staffs Seen Insufficient

The commission's study has revealed a number of weaknesses and inadequacies in civil rights enforcement that are common to most agencies, regardless of the programs they administer or the civil rights laws they enforce.

It is these inadequacies that are of principal concern. They cannot be corrected through actions of individual departments and agencies, but only through more basic, systemic changes involving the entire Federal bureaucracy. These are some of the major weaknesses the commission has found in the Federal civil rights enforcement effort.

First, the commission has found that no agency has

been provided with sufficient staff and other resources to carry out its civil rights responsibilities with maximum effectiveness. In most departments and agencies, the chief civil rights officer is of relatively low rank and reports to someone other than the head of the agency. This necessarily impedes the efforts of civil rights officials to assure that civil rights needs and goals are accorded an appropriately high priority among agency activities.

There are other impediments, systemic to the Federal civil rights enforcement effort, which would prevent agencies from fully carrying out their civil rights responsibilities even if staff and status were at a sufficiently high level.

Most agencies have failed to state the goals of their civil rights programs with sufficient specificity to enable them adequately to shape their civil rights policies and procedures. Other agencies, while they have stated civil rights goals, have stated them narrowly—often merely tracking the language of the civil rights laws which they administer.

Lacking civil rights goals of sufficient breadth and specificity, the inevitable result often is that agencies fail to establish systematic compliance priorities and strategies. They concentrate their efforts on precessing individual complaints, rather than attacking institutional patterns of discrimination and inequity.

Agencies Called Passive

In many agencies, civil rights and substantive programs are carried out in isolation from one another. Civil rights officials often are excluded from the decision-making process governing the operation of substantive programs and many of these programs tend to perpetuate racial and ethnic inequity. In some agencies, civil rights responsibility is assigned to program officials, many of whom lack civil rights training and are unsympathetic with civil rights goals.

One of the major weaknesses in the Federal civil rights enforcement effort has been the passive role that many agencies have adopted in carrying out their civil rights responsibilities. In some cases, agencies have been content to rely on assurances of nondiscrimination

and make no effort to determine for themselves whether these assurances are in fact being honored. A number of agencies rely on the receipts of complaints as the principal or sole indicator of civil rights compliance.

Another major weakness has been the failure to make sufficient use of the sanctions available to enforce civil rights laws. In the contract compliance program, for example, the sanctions of contract termination and debarment never have been used.

Under Title VI, many of the agencies that administer programs subject to that law never have imposed the sanction of fund termination, the principal weapon available to enforce nondiscrimination requirements. Instead, agencies have placed undue emphasis on obtaining voluntary compliance, permitting delays and interminable negotiations.

Further, the Government has not instituted a sufficient number of lawsuits to make litigation a viable alternative to the imposition of administrative sanctions. As a result, the credibility of the Government's total civil rights effort has been seriously undermined.

Permanent Unit Urged

There also has been a failure to provide over-all coordination and direction to the entire Federal civil rights enforcement effort. This, in the commission's view, has been the most serious flaw in the administration of the Federal civil rights program.

The commission believes that the President's recent reorganization of the White House and his executive office presents a unique opportunity for establishing the kind of systematic coordination and direction of Federal civil rights enforcement that is so badly needed.

Under the reorganization plan, the President has created a Council on Domestic Affairs, chaired by the President and including as members the Vice President and the heads of all Cabinet departments except the Departments of State, Defense, and the Post Office.

The Domestic Affairs Council has the potential of structuring and institutionalizing many important civil rights functions that previously were performed on an ad hoc

Rights Enforcement

basis by the President's personal staff. We believe it is important for the President to establish a permanent civil rights subcommittee of the council to assure systematic direction and coordination of civil rights goals, policies, and priorities. The commission has made this its first recommendation in considering ways of strengthening the Federal Government's total civil rights effort.

The President has also reorganized another of his principal staff arms—the Bureau of the Budget. The President has established the Office of Management and Budget to replace the old Bureau of the Budget and has directed that its duties will focus on such matters as program evaluation and coordination. Thus while the Council on Domestic Affairs is concerned with what policies are established, the concern of O.M.B. is with how these policies should be carried out and how well they are carried out.

The commission believes that the Office of Management and Budget can play a significant role in assuring that civil rights laws and policies are carried out with maximum effectiveness. The commission recommends establishment of a division of civil rights within the Office of Management and Budget to work closely with the civil rights subcommittee of the Council on Domestic Affairs and to provide civil rights guidance and direction to budget examiners and other office units within O.M.B.

The commission also recommends that the various office units of O.M.B. be directed to rights considerations in their dealings with Federal departments and agencies.

Up to the President

The commission realizes that achievement of civil rights goals and the full exercise of equal rights by minority group members will involve more than adjustments in civil rights machinery. Many of the weaknesses we have identified also reflect more deep-seated problems—problems of hostile bureaucracies that view civil rights as a threat to their prerogatives and programs, and problems of inadequate or misordered national priorities.

These problems can be resolved only through dedication and effort on the part of Government officials, private civil rights organizations, and

the American people, alike. The commission concludes in its report:

In the final analysis, achievement of civil rights goals depends on the quality of leadership exercised by the President in moving the nation toward racial justice. The commission is convinced that his example of courageous moral leadership can inspire the necessary will and determination, not only of the Federal officials who serve under his direction, but of the American people as well.

We feel that the matter raised in this report has grave implications. As a nation firmly rooted in the rule of law, we are firmly committed to the principle that laws must be enforced.

Failure to implement those court decrees, executive orders, and legislation relating to civil rights, weaken the fabric of the nation. Those who look to the law as an impartial arbiter of right and wrong and find that some laws are implemented while others are not despair of the fairness of the system.

This cannot be allowed to happen. What we have proposed is nothing more than that use be made of existing laws to assure all Americans equal opportunity.