

# The Civil Rights Commission Backslides

By NEAL DEVINS

When Arthur Fletcher, the man President Bush named as chairman of the U.S. Civil Rights Commission, started work on March 2, he was greeted by Commissioner Mary Frances Berry with a kiss. Ms. Berry's kiss—and her exclamation that it's time for "the commission to be wonderful"—is surprising only to those who imagine that Mr. Bush is keeping faith with the civil rights policies of President Reagan.

Mr. Bush may well maintain his conservative credentials by vetoing the Civil Rights Act approved by the House Wednesday and by permitting the Justice Department to continue to argue against racial quotas in court. But his record of appointments suggests that his principal civil rights agenda is the appeasement of the civil rights community. While Mr. Reagan's most outspoken civil rights appointees denounced racial and sexual preferences, color-consciousness and all numerical measures of equality, George Bush's "old friend Art Fletcher" successfully pressed for race-conscious hiring by government contractors when he served in the Nixon administration and said in August that the government's "specifying the number of person-hours to be worked by minorities and women" is "typical contracting practice" and not a "quota."

## Forced Busing

Ronald Reagan ignited a firestorm when he tried to remold the commission by replacing Ms. Berry and other liberal commissioners with appointees who, as the former president put it, "don't worship at the altar of forced busing and mandatory quotas" and "don't believe you can remedy past discrimination by mandating new discrimination." Without public uproar, Mr. Bush has been tilting the balance of the commission back again, so that—in the words of presidential spokesman Marlin Fitzwater—it "could be stronger and more forceful in representing the concerns of minorities" than its predecessor.

The weapon with which Mr. Bush has attacked the Reagan commission is the president's power to appoint commissioners and key agency personnel. While Mr. Reagan was condemned for using this power extensively, no one has batted an eyelash about Mr. Bush's strategy to re-fang the commission. The commission now boasts a 5-3 liberal majority, thanks to the appointments of Chairman Fletcher and of another Bush appointee, Charles Pei Wang, who used his commission credentials to lend support to the (now rescinded) effort by Actor's Equity to prevent a white actor from playing a Eurasian role in the Broadway production of "Miss Saigon."

Mr. Bush's choice for commission staff director is also revealing. Wilfredo Gonzales, the new director, was formerly a

staffer in the Small Business Administration's "disadvantaged business enterprise" (a.k.a. minority set aside) office. He makes a practice of requiring agency employees to watch multicultural sensitivity tapes. And he has begun to purge the commission of Reagan political appointees.

The ax fell on the appointees several days after they voiced opposition to the 1990 Civil Rights Act as a "quota bill." Their letters of dismissal emphasized the leadership's right to "select staff with whom it has personal confidence to carry out its policy goals." The commission's

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general counsel, William Howard, was among those sacked.

These changes in personnel are achieving the desired effect. The commission has vigorously supported the pending Civil Rights Act of 1990—support that led the act's sponsor, Sen. Joseph Biden (D., Del.), to commend the commission for "helping the Senate to pass strong civil rights legislation." When the Bush administration tried to moderate the act, Chairman Fletcher expressed "outrage," and questioned the administration's "sincer[ity] about civil rights."

The commission while recognizing that the act subjects some "employers whose practices are legitimate" to liability, and acknowledging that the act may prompt a degree of race conscious decisionmaking, nevertheless endorsed the act because it believes that, on balance, it does more good than harm. This position simply cannot be reconciled with the Reagan commission's moral imperative of 1984 that the preferring of nonvictims of an employer's discrimination over innocent third parties solely on account of their race or sex "merely constitutes another form of unjustified discrimination, creates a new class of victims, and offends the Constitutional principle of equal protection."

The reconstitution of the Civil Rights Commission tells only part of the story. Critical appointments at the Department of Education, the Federal Communications Commission and the Equal Employment Opportunity Commission also suggest dramatic differences between Mr. Bush's approach to civil rights and Mr. Reagan's.

In 1986, the Reagan FCC decided to re-examine its use of race and sex prefer-

ences in the awarding of broadcast licenses. Congress was outraged by this action and prohibited the FCC from any re-examination. The FCC changed course after Mr. Bush appointed three new commissioners—Alfred Sikes, Sherrie Marshall and Andrew Barrett—in the summer of 1989. All three expressly supported the preferences in their confirmation hearings and their support into action last year by vigorously (and successfully) defending the program before the Supreme Court in *Metro Broadcasting v. FCC*.

The Department of Education is much the same. Under William Bennett's leadership, the department's Office for Civil Rights refused to enforce court-approved numerical targets for the desegregation of higher education systems in 10 states. In sharp contrast, President Bush's nominee to head the department's Office for Civil Rights, Michael Williams, stated at his confirmation hearing that he would seek the "advice and counsel" of civil rights groups and that his office would be attentive to numerical measures of equality. He seemed too to endorse congressional criticisms of the Bennett regime.

Measuring change at the Equal Employment Opportunities Commission is more speculative but when (and if) the change comes it is likely to be more profound. True, Evan Kemp, the Bush-appointed chairman, has asserted that he will keep faith with his Reaganite predecessor, Clarence Thomas. But, Mr. Kemp has already played a key role in expanding EEOC authority. A former executive director of the Disability Rights Center, Mr. Kemp helped persuade Mr. Bush to adopt the Americans With Disabilities Act.

## Expansive View

This legislation requires state and private employers (of 15 or more) to make "reasonable accommodations" in order to employ otherwise qualified people with disabilities, and puts the task of writing the implementing regulations for, and enforcing the provisions of, this legislation largely into the hands of the EEOC. With Mr. Kemp at the agency's helm and Robert Funk, also a former disability rights activist, as its chief of staff, there is reason to expect that the EEOC will take an expansive view of what constitutes a "reasonable accommodation."

Mr. Bush's civil rights appointments tell a revealing story. Rather than follow "in the tradition of Ronald Reagan," as the 1988 Republican platform promised, the Bush administration is clearly unwilling to stay the course in civil rights.

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