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# THE FIRST FORTY YEARS OF THE COMMISSION ON HUMAN RIGHTS

*Marta B. Varela\**

The New York City Commission on Human Rights (the "Commission") represents the triumph of a process-oriented approach toward intergroup conflicts, and as such is quintessentially American in its idealistic premises. The Commission, whose mission it is to foster positive intergroup relations and punish illegal discrimination,<sup>1</sup> uses a combination of moral suasion and enforcement to advance its vision of the City of New York (the "City"). The Commission's vision is that of a city in which a kaleidoscope of individuals is permitted to live, work, and play in an atmosphere of tranquility and mutual respect.

The Commission's present-day investigative, mediative, prosecutorial, and adjudicatory powers are essential components of its plan to assure that illegal discrimination in the City of New York is eradicated. However, the architecture that is the Commission's law has been erected over decades, and it exhibits an evolving awareness of the prevalence of discrimination and its cost to the City and its residents.

A brief history of the law of the Commission will illustrate this evolution and mirror national trends during the period 1955 to 1995.

In the 1950s, it was rare for individuals of different races, indeed of different ethnic backgrounds, to live in the same neighborhood.<sup>2</sup> If they were thrown together at work, as they might be if they were men working on a construction crew, they went home separately. If they worked in an office, chances were that the darker skinned co-worker occupied a subordinate, if not menial role, out of which there would be no advancement. This would also be true if the co-workers were a man and a woman, though women rarely worked

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1. See generally NEW YORK, N.Y., ADMIN. CODE §§ 8-101 and 8-104 (1996).

2. JIM SLEEPER, *THE CLOSEST OF STRANGERS: LIBERALISM AND THE POLITICS OF RACE IN NEW YORK* chs. 4 & 5 (1991).

outside the home.<sup>3</sup> If the co-workers were a homosexual and a heterosexual, the former would have to keep his or her sexual orientation a secret for fear of being disadvantaged as a result. And of course, if one of the co-workers was disabled by blindness or deafness, or if one was a paraplegic, there were no options, since the handicapped did not work, except for charitable institutions expressly dedicated to helping them.<sup>4</sup> If our hypothetical workers were immigrants, they could depend only on the benevolent "friendship societies" established by earlier arrivals to educate them as how to best proceed in the new country.<sup>5</sup> And if they were ex-offenders, they were consigned to a life of odd-jobs, since no one in their right mind would hire an "ex-con" for a permanent job.

The volatile mix of races, religions and ethnicities living and working under highly segregated conditions led to the Harlem race riots in 1935.<sup>6</sup> Mayor Fiorello La Guardia appointed a biracial commission to examine the causes of the riots. Based upon research conducted by the respected black sociologist E. Franklin Frazier, the commission issued a report criticizing the City's racial policies.<sup>7</sup> Nearly ten years later, the report became one of the bases for the creation of the Mayor's Committee on Unity.<sup>8</sup> Established by Mayor La Guardia in the aftermath of the Harlem riots of August 1943,<sup>9</sup> the panel of distinguished leaders from various racial and ethnic groups could make speeches about the evils of prejudice and the need for understanding, but no more, since the Commission lacked enforcement power.<sup>10</sup> The creation of the Commission on Intergroup Relations in 1955<sup>11</sup> was an attempt to

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3. Jane L. Ross & Melinda M. Upp, *Treatment of Women in the U.S. Social Security System, 1970-88*, SOC. SECURITY BULL., Fall 1993, at 56.

4. See STEPHEN T. MURPHY & PATRICIA M. ROGAN, *CLOSING THE SHOP: CONVERSION FROM SHELTERED TO INTEGRATED WORK 7-17* (1995).

5. See generally *IMMIGRANT INSTITUTIONS: ORGANIZATIONS OF IMMIGRANT LIFE* (George E. Pozzetta ed., 1991).

6. THOMAS KESSNER, *FIORIELLO H. LA GUARDIA AND THE MAKING OF MODERN NEW YORK* 368-74 (1989).

7. *Id.* at 374-75.

8. SLEEPER, *supra* note 2, at 47-48.

9. The Mayor announced the creation of the Committee on February 27, 1944. *Fiorello H. La Guardia, Radio Broadcast* (Feb. 27, 1944)(transcript on file with the *Fordham Urban Law Journal*).

10. The Committee's duties included preparing studies, drafting reports, conducting research, and issuing pronouncements. *Id.* In fact, the Committee received its financial support from private donations solicited by the Mayor, and not from the City budget. *Id.*

11. New York, N.Y., Local Law No. 55 (June 3, 1955).

create an institutionalized mechanism to address individual problems of discrimination forcefully and systematically.<sup>12</sup>

In 1957, the Mayor's Executive Order No. 41 prohibited discrimination in employment on the basis of "race," "religion," or "national origin" by City agencies.<sup>13</sup> It also empowered the Commission to receive and investigate complaints and take action.<sup>14</sup>

In 1958, the Fair Housing Practices Law, Local Law 80 (known as the Sharkey-Brown-Isaacs Law)<sup>15</sup> banning discrimination in private housing, was signed into law. Together, Local Laws 55 and 80 formed the basis of the City's new Human Rights Law.<sup>16</sup>

In 1962, an Equal Employment Opportunity (EEO) component for all agreements between contractors and the City was imposed.<sup>17</sup> This component required City contractors to cooperate with the Commission's compliance reviews.<sup>18</sup> This expansion of the Commission's jurisdiction led to the establishment of a contract compliance program within the agency and a major investigation of employment discrimination in the building trades.

In 1965, Local Laws 55 and 80 were amended and incorporated into the Human Rights Law of the City of New York as Chapter 1, Title B of the Administrative Code.<sup>19</sup> By doing so, the City Council and the Mayor extended the Commission's jurisdiction to match that of the New York State Commission Against Discrimination. This gave the Commission the authority to combat discrimination on the basis of race, sex, age, and national origin in housing, employment, and public accommodations.<sup>20</sup>

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12. See SLEEPER, *supra* note 2, at 79-80 (The Commission on Intergroup Relations "was created with a \$500,000 budget and a mandate to avert or mediate interethnic and interracial disputes.").

13. Robert F. Wagner, Mayor of the City of New York, Executive Order No. 41 (June 7, 1957).

14. *Id.*

15. New York, N.Y., Local Law No. 80 (Dec. 30, 1957).

16. Local Law 55 created a city agency "through which the city of New York officially may encourage and bring about mutual understanding and respect among all groups in the city, eliminate prejudice, intolerance, bigotry, discrimination and disorder . . . and give effect to the guarantee of equal rights for all assured by the Constitution and the laws of this state and of the United States of America." New York, N.Y., Local Law No. 55 (June 3, 1957).

17. Robert F. Wagner, Mayor of the City of New York, Executive Order No. 4 (Feb. 7, 1962).

18. *Id.*

19. New York, N.Y., Local Law No. 97 (Dec. 13, 1965).

20. *Id.*

Nineteen hundred seventy was a milestone year for the Commission. New York State amended its law regarding the issuance of anti-solicitation orders to end the practice of blockbusting,<sup>21</sup> a development which augmented the Commission's power to combat blockbusting in New York City. In that same year, Executive Order 22 prohibited discrimination by any City agency on the basis of "race," "creed," "color," "national origin," "ancestry," "sex," or "age," and authorized the Commission to receive and investigate complaints of discrimination by City agencies.<sup>22</sup> It also ordered a review of all sex and age requirements for City jobs, which the Commission carried out in compliance with the Executive Order.<sup>23</sup>

In 1972, the Commission's jurisdiction over religious discrimination was strengthened. Previously the law outlawed discrimination on the basis of "religion," but did not formally recognize an employer's duty to allow for religious practice. The 1972 amendment required employers to accommodate the religious practices of employees, including Sabbath observance and "any other religious custom or usage," such as the wearing of religious garb.<sup>24</sup> In 1973, the Human Rights Law was amended to outlaw discrimination based on "sex" or "marital status" in housing.<sup>25</sup>

In 1974, the Commission was designated as a Section 706 deferral agency by the Equal Employment Opportunity Commission ("EEOC"), the federal employment anti-discrimination agency.<sup>26</sup> This designation as a deferral agency signified the EEOC's confidence in the Commission and permitted the Commission to be compensated for prosecuting an agreed-upon number of employment discrimination cases on the EEOC's behalf.<sup>27</sup>

In 1977, New York State passed Section 753 of Article 23-A of the Corrections Law, which enumerates the factors an employer is required to evaluate in determining whether to hire a qualified ex-

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21. Act of May 8, 1970, ch. 493, 1970 N.Y. Laws 1131 (presently codified as amended at NEW YORK, N.Y., ADMIN. CODE §§ 8-201 through 8-208).

22. John V. Lindsay, Mayor of the City of New York, Executive Order No. 22 (Aug. 24, 1970).

23. *Id.*

24. New York, N.Y., Local Law No. 74 (Nov. 6, 1974).

25. New York, N.Y., Local Law No. 7 (Feb. 7, 1973).

26. New York City Commission on Human Rights, *Historical Development of the Human Rights Law 2* (Mar. 1990)(public information release on file with the Fordham Urban Law Journal).

27. The term used today to describe agencies which assume and are compensated for taking up some of the EEOC's prosecutorial burden is Federal Employment Practice Agency ("FEPA").

offender,<sup>28</sup> and the City's Human Rights Law was later expanded to include jurisdiction over discrimination in private employment on the basis of "conviction record."<sup>29</sup> Also in 1977, the Human Rights Law was amended to expand the prohibition against age discrimination in housing and employment with coverage for persons between the ages of eighteen and sixty-five,<sup>30</sup> and to prohibit discrimination on the basis of prior alcohol abuse or alcoholism, as protected disabilities.<sup>31</sup>

In 1981, Local Law 49 expanded the Human Rights Law to include another protected class, the disabled.<sup>32</sup> The amendment covered physical as well as mental "disability," and incorporated prior alcohol abuse or alcoholism.

In 1984, Local Law 63 (the "private clubs bill") amended the Human Rights Law to outlaw discrimination by private clubs.<sup>33</sup> The law did not affect clubs with fewer than 400 members and which were purely social.<sup>34</sup> Affected entities were clubs that regularly received income from non-members and were operated for business purposes. The bill was fairly controversial and garnered a great deal of press attention at the time.<sup>35</sup>

Nineteen hundred and eighty-six was another milestone year for the Commission. Local Law 2 amended the Human Rights Law to make "sexual orientation" a protected class,<sup>36</sup> a distinction that is unique in the United States and reflects a commitment to the rights of gays and lesbians in the City of New York. Local Law 59 amended the law applicable to housing accommodation to include "lawful occupation" as a protected class,<sup>37</sup> especially benefitting

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28. N.Y. CORRECT. LAW § 753 (McKinney 1987). Among the factors to be considered are the state's policy of encouraging the employment of persons previously convicted of criminal offenses; the relationship between the offense committed and the requirements of the employment sought; the person's age at the time of the offense, and the amount of time that has since passed; the seriousness of the offense; and the employer's interest in protecting property and individual safety. *Id.*

29. New York, N.Y., Local Law No. 39 (Sept. 16, 1991).

30. New York, N.Y., Local Law No. 61 (Sept. 6, 1977).

31. New York, N.Y., Local Law No. 90 (Dec. 19, 1977).

32. New York, N.Y., Local Law No. 49 (June 16, 1977).

33. New York, N.Y., Local Law No. 63 (Nov. 23, 1984).

34. *Id.*

35. *See, e.g.*, Editorial, *Private Clubs and Public Remedies*, N.Y. TIMES, Feb. 8, 1980, at A30 (arguing against the proposed law as violative of privacy rights, and potentially "arbitrary and a nightmare to enforce").

36. New York, N.Y., Local Law No. 2 (Apr. 12, 1986).

37. New York, N.Y., Local Law No. 59 (Nov. 25, 1986)(codified at NEW YORK, N.Y., ADMIN. CODE §§ 8-102(18) and 8-107(5)(n)).

performing artists and lawyers who had long been victims of housing discrimination on the basis of their professions.<sup>38</sup>

In 1989, in recognition of the need of immigrants for protection against discrimination, Local Law 52 amended the Human Rights Law to afford protection against discrimination in employment, housing, and public accommodations on the basis of "alienage or citizenship status."<sup>39</sup> The protection so offered to immigrants by the City of New York exceeded the protection by the anti-discrimination provisions of the Immigration Reform and Control Act of 1986,<sup>40</sup> which covered employment, but not housing or public accommodation discrimination.

The Commission's range of enforcement remedies includes compensatory damages, injunctive relief, and civil penalties.<sup>41</sup> The range of remedies raises the agency's profile above that of many civil rights agencies, which unfortunately lack these enforcement tools and must resort to moral suasion when stronger sanctions are required.<sup>42</sup> In 1991, the City Council and the Mayor, recognizing that there are cases of discrimination so heinous and pervasive that compensatory damages do not sufficiently convey the opprobrium in which the conduct is held, enacted Local Law 39, which authorized the Commission to pursue civil penalties of up to \$100,000 against respondents engaging in systematically discriminatory practices or conduct infected and permeated with discriminatory animus.<sup>43</sup> Local Law 39 also outlawed discrimination against minors in public accommodations and housing.<sup>44</sup> The same law also gave

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38. See generally Peter Hellman, *New York's Snobbiest Apartment Buildings*, NEW YORK MAG., Nov. 6, 1995, at 27.

39. New York, N.Y., Local Law No. 52 (July 18, 1989).

40. Pub. L. No. 99-603, 100 Stat. 3359 (1986)(codified in scattered sections of 8 U.S.C., starting at § 1160).

41. NEW YORK, N.Y., ADMIN. CODE §§ 8-120(8) (compensatory damages), 8-122 (injunctive relief), and 8-124 to 8-126 (enforcement of civil penalties).

42. See, e.g., IOWA CODE § 216.5 (1995)(powers of Iowa Civil Rights Commission); MASS. GEN. L. ch. 6, § 56 (powers of Massachusetts Commission Against Discrimination); PITTSBURGH, P.A., CITY CODE chs. 651-59 (powers of Pittsburgh Commission on Human Rights); R.S.O. HUMAN RIGHTS CODE, ch. H.19 (1990) (powers of Ontario Human Rights Commission).

43. New York, N.Y., Local Law No. 39 (June 18, 1991) (codified at NEW YORK, N.Y., ADMIN. CODE § 8-126). Earlier this year, the Supreme Court, Appellate Division ruled on the first civil penalty assessed by the Commission. 119-121 E. 97th St. Corp. v. New York City Comm'n on Human Rights, 220 A.D.2d 79, 642 N.Y.S.2d 638 (1st Dep't 1996), *aff'g* Baca v. 119-121 East 97th Street Corp., Compl. No. AH 92-0280, Dec. & Ord. (N.Y.C.C.H.R. May 28, 1993). The court upheld the civil penalty, but reduced the amount assessed from \$75,000 to \$25,000. *Id.*

44. The regulations attempt to balance the minor's interest in the enjoyment of the public accommodation and the provider's desire to avoid damage to his property.

those complainants wishing to pursue relief via a private right of action in state or federal court, rather than in the Commission's own tribunal, the ability to do so.<sup>45</sup> Also during that year, the language of the Human Rights Law was amended to substitute the term "gender," a biological definition, for "sex," a societal construct.<sup>46</sup>

In reviewing the Commission's legislative history, it becomes apparent that the Commission is that *rara avis* among civil rights prosecutorial agencies: a governmental unit dedicated to fostering intercommunal harmony which actually has the tools to accomplish its task. Although there are many civil rights agencies at the state and local levels, few have enforcement powers, and even fewer have the extensive enforcement powers the Commission has. This leads to more success in altering patterns of discriminatory behavior on the part of landlords, employers, and providers of public accommodations for the same reason that large damage awards in product liability cases lead manufacturers to improve the safety of their products: Affirmative and negative injunctions and civil penalties caution would-be perpetrators of institutional or individual bias.

At the beginning of these remarks, I characterized the Commission's triumph as "process-oriented" and "quintessentially American." It has often been noted that under the American system of government, the dependence on process leads to long delays in achieving a consensus, but in the final analysis, the right decision is reached. The importance of that fact cannot be over-emphasized. Of all the hundreds of decisions rendered by the administrative law judges in the Hearings Division in the agency's recent history, only two have been reversed on the merits.<sup>47</sup> Certainly that is something to be proud of.

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Providers who establish that the admission of children increases their risk of property damage are exempted from the law. In the alternative, the provider may prevail by showing that the general public's enjoyment of the accommodation would be compromised by the admission of children. New York, N.Y., Local Law No. 39 (June 18, 1991)(codified at NEW YORK, N.Y., ADMIN. CODE §§ 8-107(4), 8-107(5)).

45. New York, N.Y., Local Law No. 39 (June 18, 1991) (codified at NEW YORK, N.Y., ADMIN. CODE § 8-502).

46. New York, N.Y., Local Law No. 39 (June 18, 1991).

47. *Mittleman v. Pace Univ.*, Nos. EM00071-1/22/87-DE, EM03181-6/14/89-DE (N.Y.C.C.H.R. Mar. 29, 1991), *annulled sub nom* Pace Univ. v. New York City Comm'n on Human Rights, 85 N.Y.2d 125, 647 N.E.2d 1273, 623 N.Y.S.2d 765 (1995); *New York City Comm'n on Human Rights v. Ancient Order of Hibernians in America, Inc.*, No. MPA-0362 (N.Y.C.C.H.R. Oct. 27, 1992), *overruled sub nom* New York County Bd. of Ancient Order of Hibernians v. Dinkins, 814 F. Supp. 358 (S.D.N.Y. 1993).

In its forty year history, the Commission has played a major role in the development of new approaches to intergroup problems and, in so doing, inspired other similarly-oriented state and local institutions to follow its lead. The enactment of the Commission's law preceded the enactment of federal laws which outlaw discrimination in housing, employment, and public accommodations. Internationally, the Commission is also an educational resource for countries seeking to develop processes to address the problems created by the confluence of ethnic groups in formerly homogeneous nation-states, such as those experienced in Europe by immigrants from former colonies. Such problems are an inevitable development, given the ease of transit between nations and the breadth of world-wide population movements. The Commission is, and will always be, willing to contribute its expertise to the forging of solutions to inter- and intra-communal problems.<sup>48</sup> The uniqueness of New York's population mix makes the Commission especially qualified to offer its expertise in the development of legal, institutional approaches to problems faced by developed countries, whose legal systems are highly evolved and not dissimilar to our own.

In conclusion, the New York City Commission on Human Rights will continue, I believe, to be a bellwether of change as it nears the twenty-first century. As the engine of an approach-proven success in addressing discrimination in housing, employment, and public accommodations, and as a symbol of New York's diversity and tolerant spirit, the Commission can look back on its forty-year history with a sense of accomplishment at a job well done. As it looks forward to a future in which technological innovations help it to perform its task of tracking bias accurately, as well as prosecuting discrimination, it can today, at Fordham, briefly rest on its laurels, knowing that its continued success is the greatest guarantor of its future.

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48. On December 9, 1994, the author participated in a panel on Human Rights Education sponsored by the United Nations to launch the "International Decade of Human Rights Education." She also met with Peter Rodrigues, a member of the Dutch Equal Treatment Commission, on November 8, 1995 to discuss comparative legal approaches to discrimination problems in the Netherlands and the United States.