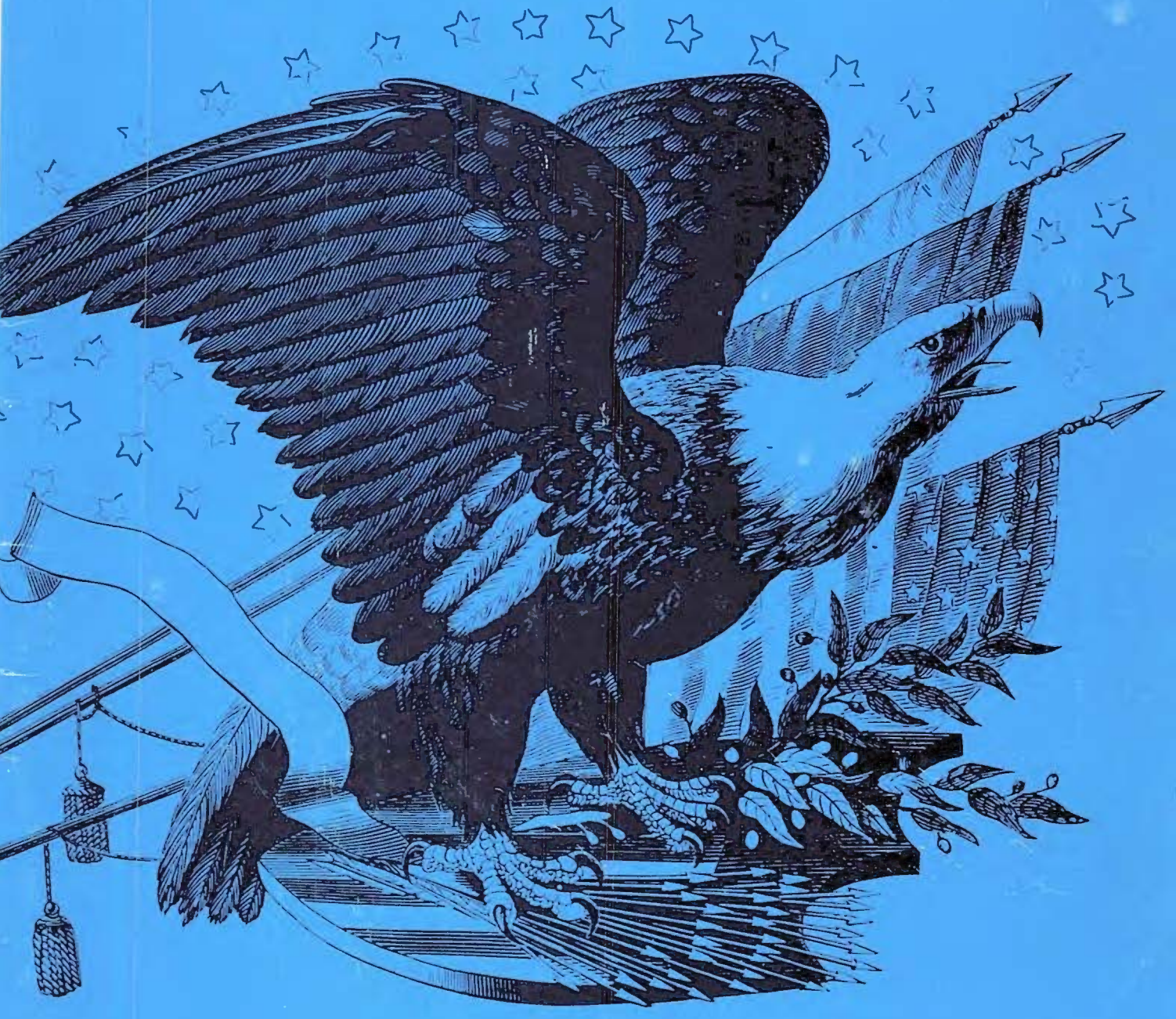
THE STATE OF CIVIL RIGHTS: 1977

A REPORT OF THE UNITED STATES COMMISSION ON CIVIL RIGHTS

February 1978



U.S. COMMISSION ON CIVIL RIGHTS

The U.S. Commission on Civil Rights is a temporary, independent, bipartisan agency established by Congress in 1957 and directed to:

- Investigate complaints alleging that citizens are being deprived of their right to vote by reason of their race, color, religion, sex, or national origin, or by reason of fraudulent practices;
- Study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, or national origin, or in the administration of justice;
- Appraise Federal laws and policies with respect to the denial of equal protection of the laws because of race, color, religion, sex, or national origin, or in the administration of justice;
- Serve as a national clearinghouse for information in respect to denials of equal protection of the laws because of race, color, religion, sex, or national origin;
- Submit reports, findings, and recommendations to the President and the Congress.

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Arthur S. Flemming, *Chairman*
Stephen Horn, *Vice Chairman*
Frankie M. Freeman
Manuel Ruiz, Jr.
Murray Saltzman

John A. Buggs, *Staff Director*

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Letter of Transmittal

U.S. COMMISSION ON CIVIL RIGHTS
Washington, D.C.
February 1978

THE PRESIDENT
THE PRESIDENT OF THE SENATE
THE SPEAKER OF THE HOUSE OF REPRESENTATIVES

Sirs:

The U.S. Commission on Civil Rights presents this report to you pursuant to Public Law 85–315, as amended.

This is the second in a series of annual Commission reports on the state of civil rights in the United States. These reports are intended to provide the President, Congress, and the American people with the Commission's views on the most significant civil and women's rights events and developments during the preceding year.

Each report reviews executive, legislative, and judicial actions, and other developments, favorable and unfavorable, that the Commission considers critical to the national goals of eliminating discrimination and enhancing equal opportunity for all Americans in fundamental aspects of our national life.

At a meeting with the President last July, the Commissioners commended him for his strong and forthright expression of support for civil rights programs when he addressed employees of the Department of Health, Education, and Welfare. At that same meeting, the President asked the Commission to keep him fully apprised of its reaction to efforts by his administration to address civil rights issues, as well as more general concerns in the area of human rights. This report has been prepared in the spirit of that meeting and the President's request.

In reviewing civil rights developments in 1977, the Commission is particularly encouraged by the new administration's commitments and initiatives to improve enforcement of civil rights laws. If carried to fruition, such efforts could lead to meaningful civil rights progress in coming years.

We remain deeply concerned, however, by the continuing high unemployment and poverty rates among minority groups and women and the inadequacy of programs to deal with the problems of low-income urban residents. The lack of economic progress for minorities and women is especially disturbing since the costs of meeting basic human needs continued to rise and the overall employment position of white males improved.

In education, there was further progress in 1977 in community adjustment to school desegregation. The Carter administration pledged to strengthen substantially enforcement of laws to ensure equal educational opportunity. On the other hand, congressional actions concerning school desegregation and challenges to affirmative admissions programs in higher education threatened to slow down progress toward achieving equal educational opportunity.

In employment, the administration also committed itself to more effective enforcement of equal employment laws, and initiated plans to reorganize Federal equal employment enforcement programs. A decision by the U.S. Supreme Court, however, placed severe limits on the eligibility of some victims of discriminatory

seniority systems for relief. Measures to provide jobs and job training in 1977 fell far short of the needs of minorities and women.

In housing, the rising costs of housing and various subtle patterns of discrimination continued to limit fair housing opportunities in 1977. Federal programs continued to fall far short of providing additional housing needed by low- and moderate-income groups and thus contributed to the lack of any measurable progress toward achieving the national goal of decent housing for all Americans.

In women's rights, little progress was made in 1977 towards enactment of the equal rights amendment, and efforts continue to enact laws that would have the effect of denying to poor women constitutional rights in the area of reproductive choice.

In the administration of justice, positive developments included proposed revision of the United States criminal code and steps toward establishing tribal sovereignty with respect to law enforcement and protection issues on American Indian reservation areas. The Commission is disturbed, however, that in a number of communities, police abuse of minority citizens intensified as a critical issue, poisoning police-minority community relations and contributing to disorders in several cities.

In political participation, the administration promised the appointments of significant numbers of minorities and women to important positions in the Federal Government. Although movement toward this goal has been slower than expected, various top-level posts have in fact been filled by representatives of these groups. Voting rights of minorities were also strengthened by several Supreme Court decisions. Full participation in the Nation's political process remains a distant goal, however, and vigilance must still be exercised to ensure voting rights of minorities.

Following firm Presidential commitments, steps were taken in 1977 to reorganize the Federal civil rights enforcement effort. It is anticipated that these efforts will result in more effective enforcement efforts in 1978.

While important beginnings were registered during the past year, it is hoped that 1978 will be marked by a determined commitment, fully shared by executive and legislative branches of government, to follow through on the encouraging first steps noted in this report and to undertake new and greater efforts to eliminate obstacles to the full protection of civil rights and equal opportunity for all.

We urge your consideration of the facts presented in this report and ask for your further leadership to guarantee equal opportunity for all the citizens of this country.

Respectfully,

Arthur S. Flemming, *Chairman*
Stephen Horn, *Vice Chairman*
Frankie M. Freeman
Manuel Ruiz, Jr.
Murray Saltzman

John A. Buggs, *Staff Director*

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The report was prepared under the immediate supervision of James B. Corey, Director, Program Operations, Office of National Civil Rights Issues, and the overall supervision of William T. White, Jr., Assistant Staff Director, Office of National Civil Rights Issues.

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Employment

Developments affecting the employment position of minorities and women in 1977 were generally discouraging. Although overall joblessness declined and employment increased during the year, the disparities between whites and minority groups persisted as minorities shared only marginally in the improvements. Black unemployment was the highest since the Second World War. The persistent income gap between white men as compared to minorities and women is another disturbing fact. Affirmative action efforts for minorities and women were, to some extent, offset by a Supreme Court decision regarding seniority systems. That ruling is an additional barrier to the achievement of equal employment opportunity.

Unemployment

Overall unemployment declined in 1977 from 7.8 percent in December 1976 to a low of 6.4 percent in December 1977. The decrease of 1.4 percentage points represented a reduction of 1,165,000 persons from the ranks of the unemployed.[1] Total unemployment, however, averaged 7 percent during 1977 compared to 7.7 percent in 1976. While the average jobless rate for whites fell from 7 percent in 1976 to 6.2 percent in 1977, the average unemployment rate for blacks increased from 13.8 percent to 13.9 percent during that period. The black unemployment rate thus was more than twice as great as that for whites during 1977. For workers of Hispanic origin, the average jobless rate dropped from 11.5 percent in 1976 to 10 percent in 1977 but unemployment among Hispanic was still 1.6 times higher than that among whites.[2]

Minority teenage unemployment remained very high. Black teenage unemployment rose from 39.3 percent in 1976 to 41.1 percent in 1977. The average unemployment rate for teenagers of Hispanic origin fell slightly from 23.1 in 1976 to 22.3 in 1977. The actual number of unemployed Hispanic teenagers, however, increased slightly as a result of their increased rate of entry into the labor force. Meanwhile, unemployment among white teenagers declined from 16.9 percent in 1976 to 15.4 percent in 1977.[3] The persistently high unemployment rate among Hispanic and black youths (roughly two to three times greater than that among white youths) is of special concern not only for its immediate effect on the minority community but also because of its likely long term effects on their job market success.

The average unemployment rate for women declined by less than one-half of a percentage point during the year—from 7.4 percent in 1976 to 7 percent in 1977—while the average unemployment rate for men fell from 5.9 percent to 5.2 percent during this period. The unemployment rate for women thus remained significantly higher than that for men. For black and Hispanic women, the average rate of joblessness was roughly twice that of white women in 1977. For white males, the average unemployment rate declined from 5.4 percent in 1976 to 4.6 percent in 1977; for white women the rate declined from 6.8 percent to 6.2 percent.[4]

During this same period, the average unemployment rate for Hispanic males fell from 9.3 percent to 7.5 percent, while the rate for Hispanic females declined from 11.5 percent to 10.1 percent. The average jobless rate for black males dropped from 11.2 percent in 1976 to 10.5 percent in 1977. In contrast, the rate for black females increased from 11.6 percent to 12.1 percent.[5]

Similar disparities between blacks and whites appeared in the employment statistics. The total number of employed persons in 1977 reached 92.6 million, a record increase of 4.1 million since December 1976. Of this increase, whites represented 3.5 million whereas blacks accounted for 646,000.[6] The Bureau of Labor Statistics reported, however, that "[D]espite strong employment gains, there was no downtrend in the unemployment rate for black workers over the past year as a result of sizeable labor force entry. There was, however, a reduction for black adult men."[7]

[1] U.S., Department of Labor, Bureau of Labor Statistics, "The Employment Situation: December 1977" (Jan. 11, 1978), table A.

[2] U.S., Department of Labor, Bureau of Labor Statistics, *Employment and Earnings* (January 1978), table 44. The Public Information Office of the Bureau of Indian Affairs estimated 40 percent unemployment among American Indians in December 1977.

[3] *Employment and Earnings* (January 1978), table 44.

[4] Ibid.

[5] Ibid.

[6] "The Employment Situation: December, 1977," table A–1.

[7] U.S., Department of Labor, Bureau of Labor Statistics, "Labor Force Developments: Fourth Quarter 1977," p. 1.

Unemployment figures alone do not portray the full extent of joblessness. The number of discouraged workers—those who want jobs but have stopped looking because they think they cannot find them—averaged 968,000 in the fourth quarter of 1977, down from 1.1 million in the second and third quarters and slightly below the 992,000 level in the fourth quarter of 1976. More than two-thirds of these discouraged workers were women; more than one-fourth were black men and women.[8] In addition, the number of part-time workers who would have preferred full-time work was slightly over 3 million, among whom women and minorities were disproportionately represented (2.2 million).[9] Taking discouraged and involuntary part-time workers into consideration, total joblessness was nearly twice as great as that recognized in official unemployment statistics.

The adequacy of unemployment statistics as a measure of true economic hardship has been questioned in recent years.[10] In response to these criticisms, a Presidential National Commission on Employment and Unemployment Statistics was created in 1977. The temporary Commission will "conduct a comprehensive assessment of methods, procedures, and concepts used to collect and analyze labor force statistics" and will present its findings to the Secretary of Labor.[11] This development will hopefully contribute to a more accurate understanding of unemployment and underemployment problems of millions of Americans.

Occupational Status and Income

Another disturbing trend in the employment and earnings situation is that minorities and women continue to earn much less than white men. The most recent data point to large, persistent income disparities. The 1976 median income for females was $8,312, or only 60 percent of the $13,859 median income for males. Average incomes of black and Hispanic families ($9,242 and $10,259, respectively) were roughly two-thirds that of white family income ($15,537). Year-round, full-time, white female workers who headed households also earned less than two-thirds the income of white male-headed families. A similar gap also exists in the incomes of minority female-headed households compared to minority male-headed households.[12]

A new Census Bureau report also cites continuing disparities in poverty rates between whites and minority groups. The poverty rate among blacks was three times that for whites; Hispanics were 2 1/2 times more likely to live below the poverty level than whites.[13]

Although the disadvantaged economic status of women and minority groups can be blamed partly on high unemployment, it is also associated with their underrepresentation in better paying jobs. While half of all white men are in professional, managerial, or skilled craft occupations—those paying relatively high wages—less than one-fourth of white women and about 30 percent of minority men and 15 percent of minority women are so employed.[14]

Employment Legislation

In light of the severity of the 1974–75 recession and the continuing employment problems of large groups of Americans, much attention has focused on a bill sponsored by Congressman Hawkins and Senator Hubert Humphrey, the Full Employment and Balanced Growth Act.[15] In mid-November President Carter endorsed a revised version of this bill which establishes a national goal of reducing the overall unemployment rate from 7 percent to 4 percent by 1983.[16]

In early 1977 the Commission urged a renewed official Federal Government commitment to the

[8] "The Employment Situation: December 1977," table A–8.

[9] U.S., Department of Labor, Bureau of Labor Statistics, *Employment and Earnings*, vol. 24, no. 12 (December 1977), table A–29.

[10] For example, the Bureau of Labor Statistics (BLS) does not collect monthly unemployment data for Hispanics, Asian and Pacific Island Americans, or American Indians. Monthly employment and unemployment data are published by BLS for "white" and "black and other" only. Some data for Hispanics are now published on a quarterly and annual average basis (April, July, October, January). Legislation designed to remedy this inequity was enacted on June 16, 1976. Public Law 94–311 (90 Stat. 688) is intended to provide for Federal collection, analysis, and publication of monthly employment data on Hispanics. A monograph to be published by this Commission will include an assessment of the actions of BLS to comply with Pub.L. 94–311.

[11] U.S., Department of Labor, *Monthly Labor Review* (April 1977). (Emergency Jobs Program Extension Act of 1976, Pub. L. No. 94–444, §13.)

[12] U.S., Department of Commerce, Bureau of the Census, *Money Income and Poverty Status of Families and Persons in the United States: 1976*, Advance Report, Current Population Reports, series P–60, no. 107 (September 1977), table 1.

[13] U.S., Department of Commerce, Bureau of the Census, *Characteristics of the Population Below the Poverty Level: 1975*, series P–60, no. 106 (June 1977), pp. 16–17.

[14] U.S., Department of Commerce, Bureau of the Census, *Population Profile of the United States: 1976*, Current Population Reports, series P–20, no. 307 (April 1977), p. 36.

[15] H.R. 50, 95th Cong., 1st sess., 123 Cong. Rec. 79 (1977); S. 50, 95th Cong., 1st sess., 123 Cong. Rec. 124 (1977).

[16] *Weekly Compilation of Presidential Documents*, Presidential statement, Nov. 21, 1977, vol. 13, no. 47, p. 1777.

concept of a right to a job and to full employment as essential to ensuring equal employment opportunity for all Americans.[17] The revised "Humphrey-Hawkins Bill" proposes that the Federal Government go on record in support of full employment, a step this Commission strongly endorses. While the bill calls for every effort, including action by the Secretary of Labor, to reduce differentials in unemployment rates between minorities, youth, women, and others in Federal programs, it does not specify the mechanisms to be used in support of this objective. Doubt therefore arises as to whether the revised Humphrey-Hawkins measure will effectively come to grips with the disproportionate unemployment burden borne by members of minority groups.

Other legislation was enacted in 1977 to provide, at least on a temporary basis, for more training and employment opportunities to meet the needs of large numbers of unemployed and underemployed workers. This legislation included: (1) a 1-year extension of the Comprehensive Employment and Training Act of 1973,[18] (2) a supplemental $4 billion appropriation for the Local Public Works Program,[19] and (3) passage of the Youth Employment and Demonstration Projects Act of 1977.[20]

The Comprehensive Employment and Training Act (CETA) gives financial assistance to State and local governments to enable these jurisdictions to furnish training and employment opportunities to economically disadvantaged persons, including the unemployed, the underemployed, and welfare recipients. CETA also provides funds for the National Job Corps Program.

The act, originally scheduled to expire in fiscal year 1977, was extended through fiscal year 1978 and additional funds were provided to increase public service jobs from 310,000 to 725,000 by December 1977.[21] Additional appropriations for the Local Public Works Program, administered by the Economic Development Administration of the Department of Commerce, went to support a Federal grant program to State and local governments to help create private sector jobs on federally-funded public works projects. This act contains a provision requiring that 10 percent of each grant be expended for minority business enterprises.[22] It was estimated that the additional funds would create 300,000 jobs in the construction industry alone.[23] Finally, the Youth Employment and Demonstration Projects Act established a Young Adult Conservation Corps to provide employment and training in work projects on public lands and waters.

In light of past deficiencies, the Commission believes those administering these programs will have to take steps to assure the participation of unemployed minority workers and to ensure placement in jobs after completion of training. Public service jobs generally provide only temporary relief for unemployed persons seeking permanent employment; in the past, CETA officials had generally been only half as successful in placing minorities and women (compared to white males) in unsubsidized jobs upon program completion.[24] This perhaps reflected certain deficiencies in CETA administration and operations. The General Accounting Office in April criticized CETA programs for their lack of intensive formal training and support services and for ineffective monitoring stemming in part from insufficient staffing.[25]

Last Hired, First Fired

Another major employment problem for minorities and women has long been the discriminatory effects of seniority-based layoff policies.[26] Seniority systems operate at cross-purposes with equal employment opportunity efforts when employers lay off workers during economic slowdowns. Minorities and women, often the last hired, are the first fired when seniority is the basis for layoffs.

In its study of this issue released in early 1977, the Commission noted that one survey of firms failed to reveal a single employer who, in an effort to retain

[17] U.S., Commission on Civil Rights, *Last Hired, First Fired: Layoffs and Civil Rights* (1977).
[18] Comprehensive Employment and Training Act Amendments of 1977, Pub. L. No. 94-95, 91 Stat. 220 amending the Comprehensive Employment and Training Act of 1973, 29 U.S.C. §801 *et seq.* (Supp. IV 1974) and 18 U.S.C. §665 (Supp. IV 1974).
[19] Local Public Works Capital Development and Investment Act of 1976, 42 U.S.C.A. 6701, *as amended* by the Public Works Act of 1977, Pub. L. No. 95-28, 91 Stat. 116. New appropriations for the Local Public Works Program were made under the Economic Stimulus Appropriations Act of 1977, Pub. L. No. 95-25, 91 Stat. 123.
[20] Youth Employment and Demonstration Projects Act of 1977, Pub. L. No. 95-93, 91 Stat. 641.
[21] Comprehensive Employment and Training Act of 1973, 29 U.S.C. §801 *et seq.* (Supp. IV 1974), *as amended* by the Comprehensive Employment and Training Act Amendments of 1977, Pub. L. No. 95-44, 91 Stat. 220.
[22] Local Public Works Capital Development and Investment Act, Amendments of 1977, Pub. L. No. 95-28, §103, 91 Stat. 116 (amending 42 U.S.C.A. §6705 (West 1977)).
[23] *Daily Labor Report,* May 13, 1977, p. A-8.
[24] U.S., Department of Labor, *Employment and Training Report of the President* (1977), p. 49.
[25] *Daily Labor Report,* Apr. 12, 1977, p. A-8.
[26] See *Last Hired, First Fired.*

minority and female workers, refrained from using the "last in, first out" approach.[27] Recently hired, low-seniority minorities and women are therefore particularly vulnerable when layoffs begin, and their relatively recent and limited occupational and wage gains are also undermined.

Various alternatives that could minimize or forestall the necessity of laying off low-seniority workers include work sharing (spreading the available work or hours of work), labor force reduction through attrition, restrictions on subcontracting, payless holidays, and subsidization of workers who accept a shortened work week by supplementing their wages with unemployment insurance benefits.[28] The Commission has urged greater use by employers of these alternatives when layoffs would otherwise disproportionately affect minority or women employees.[29]

Supreme Court Decisions

In a case involving sex discrimination in seniority systems, the U.S. Supreme Court in 1977 ruled that an employer's refusal to permit female employees returning to work following pregnancy leave to retain their accumulated seniority deprives them of employment opportunities and adversely affects their status as employees in violation of Title VII.[30]

Another employment issue of concern to women in 1977 was pregnancy disability benefits and the implications of such employment practices for the job security and economic status of women. Concern over this issue was aroused by a 1976 Supreme Court decision in which the Court refused to invalidate, under Title VII, an employer's disability plan which excluded disabilities arising from pregnancy. The Court held that the challenged insurance, although it excluded pregnancy, contained no gender-based distinctions (i.e., there was no risk from which men were protected and women were not).[31]

In response to this ruling, the Senate passed legislation in September 1977 amending Title VII of the Civil Rights Act of 1964 to include a prohibition of discrimination based on pregnancy, childbirth, and related medical conditions as discrimination based on sex. The bill requires employers to include pregnancy among conditions which make employees eligible for benefits under employee disability plans.[32] A similar bill is pending in the House.

Another major decision by the Supreme Court upheld the legality under Title VII of seniority systems which perpetuated the effects of discriminatory acts that occurred prior to 1965.[33] *International Brotherhood of Teamsters* v. *United States* limits considerably the number of persons entitled to financial and seniority relief under Title VII of the Civil Rights Act of 1964.[34]

In *Teamsters,* lower courts had determined that a large trucking company had discriminated against minorities under Title VII. They further ruled that the seniority system established by the company and the Teamsters acted to perpetuate the effects of this discrimination. The case concerned the widespread practice of maintaining separate bargaining units for city and over-the-road (OTR) drivers. For competitive purposes, such as determining the order in which employees may bid for favored positions and are laid off, seniority was determined within each unit. The practical effect was that, to transfer to an OTR driver position, all competitive seniority would have had to be forfeited.

The Supreme Court found that the employer had indeed discriminated against minority workers and that this discrimination had occurred both before and after the enactment of Title VII. Where discrimination had occurred after enactment of the Civil Rights Act of 1964, retroactive seniority could be awarded to the victims of discrimination. Pre-1964 discrimination, however, was treated differently: the Court declared that seniority systems negotiated without discriminatory *intent* (as distinguished from discriminatory *effect*) were not unlawful under Title VII simply because they perpetuated pre-1964 discrimination. This conclusion rendered immune from Title VII litigation numerous seniority systems that do perpetuate such effects. Despite this interpretation of the law, Congress could act, as it did in response to the Court's ruling on pregnancy disability benefits, to amend Title VII to mitigate the effect

[27] Ibid., p. 25, citing *Business Week,* May 5, 1975, pp. 66–67.
[28] Ibid., pp. 50–55.
[29] Ibid., pp. 63–64.
[30] Nashville Gas Co. v. Satty, 46 U.S.L.W. 4026 (Dec. 6, 1977).
[31] General Electric v. Gilbert, 429 U.S. 125 (1976). See discussion of this decision in U.S., Commission on Civil Rights, *State of Civil Rights: 1976,* p. 9.
[32] S. 995, 95th Cong., 1st sess., 123 Cong. Rec. 15035–15059 (1977).
[33] International Brotherhood of Teamsters v. United States, 431 U.S. 324 (1977).
[34] 42 U.S.C. §2000e (Title VII, effective July 2, 1965, prohibits discrimination in employment on the basis of race, color, religion, sex, or national origin). In particular, the Court construed §2000e-2(h) as it pertains to seniority systems.

of this decision. The Commission would favor such legislation.

Federal Enforcement

Evidence was again presented in 1977 that Federal equal employment enforcement responsibilities were not being fully met. By simple default, many Federal agencies ignored or subverted affirmative action requirements, thereby impeding minorities and women from moving into higher paying professional, managerial, and skilled trades jobs.

In a study of the television industry published in August 1977, for example, this Commission found that white males held the overwhelming majority of decisionmaking positions and that women, particularly minority women, continued to be concentrated in the technical and clerical ranks.[35] A relatively high proportion of minority females were employed, however, in visible on-the-air positions, conveying the impression that great strides in equal opportunity were being made. At the same time, the status of minorities and women was misrepresented by television stations in work force reports filed with the Federal Communications Commission (FCC). These and other practices went undetected because the FCC did not require television stations to analyze their labor forces for representation of minorities and women at all levels of responsibility or to correlate recruitment and training efforts with the hiring and promotion of minorities and women. The FCC announced its intention to revise employment reporting forms, as the Commission recommended, but several other recommendations proposing more stringent employment standards were rejected by the FCC as beyond its statutory authority.

Another Commission study had found that low minority and female representation in the building trades and in the trucking industry was due in large part to discriminatory union practices relating to union admission, apprenticeship, and referral for employment.[36]

As in broadcasting, such unlawful practices have been abetted by the failure of Federal agencies to adopt adequate enforcement mechanisms. Some of these agencies did subsequently announce their intention to correct certain deficiencies. For example, the Department of Labor declared in 1977 that it would require Federal Government construction contractors to set employment goals not only for minorities but also for women[37] and to compel trucking industry firms doing at least $50,000 in Federal Government business to submit annual affirmative action plans.[38]

No action, however, was taken on several other fundamental issues. These included: requiring unions to file affirmative action plans where the union has a collective bargaining agreement with Federal construction contractors; the improvement of information storage and retrieval to help monitor affirmative action plans; and redirecting apprenticeship outreach programs to increase the number of minorities and women in journeyman positions.

Many of the problems stemming from the lack of effective enforcement of equal employment laws were identified in a Commission report published in 1975.[39] These problems have yet to be eradicated, although progress did occur in 1977. The administration's commitment to effective equal employment opportunity enforcement reflects its expressed determination to come to grips with the problem of employment discrimination.

Recent appointees to key leadership positions in the Civil Service Commission, the Department of Justice, the Department of Labor, and the Equal Employment Opportunity Commission have indicated a determination to strengthen enforcement of Federal equal employment laws and to use Executive orders effectively in mandating action in this area. Initiatives to strengthen Federal agency equal employment opportunity compliance programs to combat employment discrimination have already been undertaken.[40] Several of these agencies conducted critical self-assessments which resulted in organization and regulation changes and expanded litigation activities. These agencies have also renewed efforts to develop interagency coordination, to resolve longstanding differences among agencies, and to establish a uniform Federal enforcement policy. One notable example is the Equal Employment Opportunity Commission. Extensive internal reorganization began and other vigorous measures

[35] U.S., Commission on Civil Rights, *Window Dressing on the Set: Women and Minorities in Television* (1977).
[36] U.S., Commission on Civil Rights, *The Challenge Ahead: Equal Opportunity in Referral Unions* (1976).
[37] Proposed Labor Reg. §60-4.6, 42 Fed. Reg. 41378 (1977) (to be codified in 41 C.F.R. §60-4).
[38] Proposed Labor Reg. §60-2.1, 42 Fed. Reg. 3461 (1977) (to be codified in 41 C.F.R. §60-2.1).
[39] U.S., Commission on Civil Rights, *The Federal Civil Rights Enforcement Effort—1974*, vol. V, *To Eliminate Employment Discrimination* (July 1975).
[40] U.S., Commission on Civil Rights, *The Federal Civil Rights Enforcement Effort—1977, To Eliminate Discrimination, A Sequel* (December 1977).

were taken during the latter half of the year under the leadership of Eleanor Holmes Norton, who was appointed Chair of EEOC in June 1977. The Commission is encouraged by EEOC's early efforts to resolve its problems, which have limited the agency's ability to meet its important mandate.

For the most part, new initiatives were at varying stages of implementation and there was little measurable progress at the end of the year. The Commission has reason to expect, however, that the new spirit and the efforts renewed during 1977 will produce significant results in the coming years. These developments are among the most gratifying in the field of civil rights in 1977.

Education

While no new desegregation efforts of major significance began in 1977, the national movement toward greater equality of educational opportunity proceeded in an encouraging manner. As this Commission reported last year,[1] desegregation measures in numerous communities across the country continue to lessen racial isolation in elementary and secondary schools. However, the *Bakke* case and congressional activity have threatened to slow down the efforts to ensure equal educational opportunity at all levels. Actions of the executive branch, meanwhile, held the promise of increasing equal opportunity in education.

School Desegregation

Schools opened quietly throughout the country in September. This resulted in part from growing public acceptance of the adjustments needed to implement school desegregation plans.[2] In many districts, parents and others have remained more actively involved in school issues after desegregation has taken place. More effective communication between diverse groups in the community has been another byproduct of the desegregation process.[3]

In 1977 desegregation efforts received increasing support from some State governments. Stepped-up desegregation activity at the State level had a positive impact on desegregation in 19 States.[4] The federally-funded National Project and Task Force on Desegregation Strategies began a 3-year effort intended to "raise the quantity and quality of desegregation activities at the state level."[5]

The limited scope of the desegregation plans that were implemented this year was in part responsible for the prevailing calm. In localities such as Springfield, Illinois, Buffalo, Kansas City, Missouri, San Diego, and El Paso, limited desegregation measures, such as voluntary transfer programs and the establishment of magnet schools, were put into effect without major problems.[6] An exception was Chicago where demonstrations by small groups of white parents accompanied the transfer of slightly more than 1,000 black students into predominantly white schools.[7]

Large school districts, such as Boston and Louisville, which had undergone turmoil earlier, reported steady progress in returning to normal conditions. The atmosphere in the Boston schools continues to improve, and racial tensions have diminished. Indicative of a more positive desegregation atmosphere in Boston were the defeat of two antidesegregation members of the Boston City Council and the election of a black to the Boston School Committee (school board) to replace another desegregation foe.[8] As Louisville schools opened, minor disturbances were reported at only three schools. Antibusing demonstrations were smaller and less frequent than the previous year, indicating that support for antibusing groups had diminished.[9]

[1] U.S., Commission on Civil Rights, *Fulfilling the Letter and Spirit of the Law: Desegregation of the Nation's Public Schools* (August 1976).

[2] Gail Padgett, Operations Division, Community Relations Service, Department of Justice, Washington, D.C., telephone interview, Sept. 8, 1977 (hereafter cited as Padgett interview). Don M. Vernon, Chief, Compliance Program Branch, Technical Review and Assistance Division, Office for Civil Rights, Department of Health, Education, and Welfare, telephone interview, Nov. 23, 1977 (hereafter cited as Vernon interview). See also, *Fulfilling the Letter and Spirit of the Law,* which reported increasing acceptance of desegregation in most communities throughout the Nation.

[3] Reports from the 10 regional offices of the U.S. Commission on Civil Rights show that increased community involvement and more effective communication are two common results of school desegregation around the country.

[4] Ben Williams, Staff Director, National Project and Task Force on Desegregation Strategies, telephone interview, Jan. 17, 1978 (hereafter cited as Williams interview). The task force is funded by the National Institute of Education, U.S. Department of Health, Education, and Welfare, and the Ford Foundation. Cosponsors of the project are the Education Commission of the States, the National Association of State Boards of Education, and the Council of Chief State School Officers. The 19 States that have increased desegregation activity at the State level are: Illinois, Massachusetts, New York, Wisconsin, Delaware, New Jersey, Pennsylvania, North Carolina, California, Connecticut, Florida, Indiana, Iowa, Kentucky, Michigan, Ohio, Minnesota, South Carolina, and Texas. See also Bert Mogin, *The State Role in School Desegregation* (Menlo Park, Calif.: Stanford Research Institute, 1977).

[5] Williams interview.

[6] Mary von Euler, education policy fellow, Desegregation Studies Staff, National Institute of Education, telephone interview, Sept. 26, 1977.

[7] Valeska Hinton, equal opportunity specialist, U.S. Commission on Civil Rights, Chicago Regional Office, interview, Dec. 7, 1977. Ms. Hinton has the task of monitoring developments in the Chicago school system for the Commission.

[8] Martin Walsh, Operations Officer, Community Relations Service, Department of Justice, telephone interviews, Mar. 22, 1977; Sept. 1, 1977; Sept. 26, 1977; and Jan. 17, 1978. Eleanor Telemaque, field representative, U.S. Commission on Civil Rights, Northeast Regional Office, telephone interview, Jan. 13, 1978. Louise Day Hicks and John J. Kerrigan were defeated in their bids for reelection to the Boston City Council. John O'Bryant is the new member of the Boston School Committee, replacing Pixie Palladino.

[9] Richard R. Ensley, Operations Officer, Community Relations Service, Louisville, Ky., telephone interview, Nov. 23, 1977. For background on Louisville, see U.S., Commission on Civil Rights, staff report, "School Desegregation in Louisville and Jefferson County, Kentucky, Hearings, June 14–16, 1976."

While the absence of serious disruptions in the schools is gratifying, equal educational opportunity for all children clearly has not yet been achieved. According to the Commission's State Advisory Committees, effective desegregation remains a distant goal in numerous localities.[10] Desegregation efforts were delayed in cities such as Dayton, Cincinnati, Columbus, Omaha, Milwaukee, Indianapolis, Cleveland, and Wilmington. In some cities, such as Tucson, Arizona, and Davenport, Iowa, where minority groups have pressed for desegregation, virtually no desegregation steps have yet been taken by officials.[11]

Desegregation of the Los Angeles public schools remained stalled in 1977 by the failure of the school board to develop an effective desegregation plan. This Commission found a "record of dilatory conduct, resistance to its constitutional duty, and apparent bad faith" by the Los Angeles school board then in office in its failure to act with commitment to desegregate the city's schools effectively.[12] In June 1977 a Los Angeles superior court found the board's desegregation plan unconstitutional under the California State constitution on the ground that it "failed to desegregate a single school."[13] In December the superior court judge directed that the portion of the new plan prepared by the school board now in office requiring transportation of students in grades 4 to 8 be implemented in September 1978.[14] Controversies over the scope of this plan combined with an unsuccessful effort to remove the judge from the case continue to delay full desegregation in Los Angeles.[15]

In contrast to Los Angeles, school segregation in Seattle is scheduled to end by the fall of 1979 under a plan approved by a 6 to 1 vote of the school board in December. This plan is the first voluntary desegregation action calling for mandatory desegregation measures to be taken by a major city without being ordered to do so by a court or by HEW. It calls for the mandatory exchange of students in about half of the district's 86 elementary school areas, but also encourages voluntary transfer of students to magnet schools.[16]

A major problem previously reported by the Commission and other organizations persisted in 1977: That is, a disproportionate number of minority students continue to be suspended and to receive corporal punishment.[17] One 1977 report, concluding that corporal punishment is regularly directed at blacks, Hispanics, and poor whites, stated that "the repeated and extensive use of corporal punishment with these groups is particularly insidious as it tends to reinforce their alienation from learning in a white middle-class system."[18] The report implied that such punishment may, in fact, retard the learning process and may later lead to acts of violence against teachers, the schools, and society. The Commission's State Advisory Committees also documented discrimination against minority students as a national problem requiring greater efforts by government and education officials if it is not to undermine the desegregation process.[19] In 1978 this Commission will release an updated report on the national progress toward full school desegregation.

Bilingual-Bicultural Education

The growth of bilingual-bicultural education continued slowly in 1977, hampered by generally weak political support and widespread confusion and debate over its basic philosophy. For linguistically and culturally different groups, including Hispanics, Asian and Pacific Island Americans, and American Indians, bilingual-bicultural education is considered a critical component of equal educational opportunity.

With passage in 1977 of bilingual education bills in Connecticut and Minnesota, a total of 13 States now have legislation mandating bilingual programs under certain guidelines.[20] The President's request of $135

[10] Fifty-One State Advisory Committees to the U.S. Commission on Civil Rights, *The Unfinished Business, Twenty Years Later* (September 1977).
[11] Ibid., pp. 14–15, 65–66.
[12] U.S., Commission on Civil Rights, *A Generation Deprived: Los Angeles School Desegregation* (May 1977), p. 217.
[13] Crawford v. Board of Education of the City of Los Angeles, Minute Order C–822854 (Cal. Super. Ct., filed July 5, 1977), 551 P.2d 28 (1976). The California State Supreme Court had previously declared ". . .that in this state school boards do bear a constitutional obligation to take reasonable steps to alleviate segregation in the public schools, whether the segregation be *de facto* or *de jure* in origin." Id. at 34.
[14] Crawford v. Board, Pretrial Order, Jan. 3, 1978.
[15] *Los Angeles Times*, Jan. 4, 1978, pp. 1, 21.
[16] *Seattle Post-Intelligencer*, Dec. 15, 1977, pp. A1, A9–A15, and A20.
[17] Children's Defense Fund of the Washington Research Project, *School Suspensions: Are They Helping Children ?* (September 1975), p. 9. See also *State of Civil Rights: 1976*, p. 18.
[18] National Institute of Education, *Proceedings: Conference of Corporal Punishment in the Schools: A National Debate, Feb. 18–20, 1977*, pp. 5–6. Conference presented by the Child Protection Center, Children's Hospital, National Medical Center, and the National Institute of Education.
[19] *The Unfinished Business.*
[20] Alaska, California, Colorado, Connecticut, Illinois, Indiana, Massachusetts, Michigan, Minnesota, New Jersey, Rhode Island, Texas, and Wisconsin. Twelve States have legislation permitting bilingual education: Arizona, Hawaii, Iowa, Kansas, Louisiana, Maine, New Hampshire, New Mexico, New York, Oregon, Pennsylvania, and Washington. Ten States

million (an increase of $20 million) for bilingual education programs in 1978 reflects important support, but the controversy surrounding the concept raises the question as to whether adequate funding will be forthcoming.

The debate over bilingual-bicultural education centers on whether "transitional" programs or "maintenance" programs should be supported. Transitional programs are designed to assist linguistically different students to "catch up" with English-speaking children in English-speaking ability so that they may enter quickly into the traditional education program. Maintenance programs emphasize the use of the child's language and cultural traditions as media of instruction before and after English competence is achieved.[21]

Both forms of bilingual education face major threats in many State legislatures and in Congress through bills that would reduce or even eliminate funds for bilingual programs. This Commission supports congressional efforts to extend the Bilingual Education Act (Title VII of the Elementary and Secondary Education Act of 1974) that would provide continued Federal funding of bilingual education for 5 years. The Commission's State Advisory Committees reported a need for continued monitoring of bilingual programs in those States that operate such programs to ensure compliance with existing laws.[22]

A 1977 evaluation of bilingual education programs in several large States identified the following major problems:

- lack of commitment by State education agencies and local school districts to the development of quality programs.
- insufficient funds for programs;
- token programs or programs designed to fail;
- lack of enforcement despite flagrant noncompliance by local school districts;
- continued widespread misunderstanding of the concept, resulting in weak political support for bilingual-bicultural education;
- a severe shortage of trained bilingual-bicultural teaching specialists;
- inadequate training programs;
- differences over teaching methodologies; and
- lack of research evaluating the effectiveness of programs.[23]

Although bilingual education continues to encounter such difficulties, important support for bilingual programs was recorded this year. A decision in a New York case brought by Hispanics supported bilingual education as an appropriate educational response for linguistically different children. The court noted that the ultimate test of a school district's response to such children is the benefits they receive from the school's curriculum as compared to the English-speaking students.[24] The legal controversy over bilingual education continues, however, and several suits are pending in Federal courts.[25]

Higher Education

Efforts to improve minority access to professional schools through affirmative admissions programs were the subject of major controversy in 1977, as the Supreme Court considered the case, *Regents of the University of California* v. *Bakke.* [26] The *Bakke* case was filed by a white male against the University of California Medical School at Davis on the grounds that he was passed over for admission even though his grades and test scores were superior to those of minority applicants who were accepted. The university had set aside 16 of 100 first year places for educationally and economically disadvantaged applicants. Bakke claims that because the special admissions program accepted minorities whose numerical qualifications were not as good as his own, his 14th amendment right to equal protection of the law was denied.[27]

retain laws making English the exclusive language of instruction in their educational systems: Alabama, Arkansas, Delaware, Idaho, Montana, Nebraska, North Carolina, North Dakota, Oklahoma, and West Virginia.

[21] This Commission has supported the broader concept of "maintenance" bilingual education. See U.S., Commission on Civil Rights, *Bilingual-Bicultural Education: A Better Chance to Learn* (September 1975), pp. 29–78, 137–41.

[22] *The Unfinished Business.* See, for example, reports from Alaska, Arizona, California, Colorado, Idaho, Illinois, Kansas, Maine, Massachusetts, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Texas, Vermont, and Washington.

[23] The Chicano Education Project, *Un Nuevo Dia* (Lakewood, Colo.: Summer 1977), pp. 2–18. Articles on California, Colorado, Massachusetts, and Texas.

[24] Rios v. Read, 73 F.R.D. 589, 595–596 (E.D.N.Y. 1977).

[25] See Perry A. Zirkel, "The Legal Vicissitudes of Bilingual Education," *Phi Delta Kappan,* January 1977, p. 409–11. See also Betsy Levin, Salvador Castaneda, and Mary von Euler, "Legal Issues Related to School Desegregation and the Educational Concerns of the Hispanic Community" (prepared for a conference sponsored by the National Institute of Education, Washington, D.C., June 26–28, 1977).

[26] 18 Cal. 3d 34, 553 P.2d 1152 (1976), *cert. granted,* 429 U.S. 1090 (1977).

[27] Ibid. This assertion was accepted by the district court that first ruled on the matter, and that decision was upheld by the California Supreme Court, which ruled that the university unconstitutionally considered race in its admissions process.

In the last decade graduate and professional schools have turned away from heavy reliance on test scores and grade point averages to determine applicants' qualifications. At present, almost all law and medical schools consider racial or ethnic origin and economic and educational background among many factors in reaching admissions decisions.[28]

In its brief filed in the *Bakke* case, the Department of Justice acknowledged the validity of properly designed, minority-sensitive programs in the college admissions process:

> The United States is committed to achieving equal opportunity and preventing racial discrimination. . . . [B]oth goals can be attained by the use of properly designed minority-sensitive programs that help to overcome the effects of years of discrimination against certain racial and ethnic minorities in America.[29]

President Carter expressed his support for such programs in response to a question about the *Bakke* case:

> I think it is appropriate for both private employers, the public governments, and also institutions of education, health, and so forth, to try to compensate as well as possible for past discrimination, and also to take into consideration the fact that many tests that are used to screen applicants quite often are inadvertently biased against those whose environment and whose training might be different from white majority representatives of our society.[30]

This Commission strongly supports race-conscious college admissions programs that will compensate for past discrimination and segregation and increase the numbers of minority professionals.[31] The outcome of the *Bakke* case may have consequences for affirmative action programs in employment and other areas, as well as education.

Supreme Court Decisions

The Supreme Court further developed in 1977 the principles set forth in several previous school desegregation rulings.[32] In so doing the Court did not retreat from its basic position that unlawful segregation must be eradicated, even if systemwide remedies are required to correct substantial violations of the Constitution.

In *Dayton Board of Education* v. *Brinkman,* [33] the Court reiterated that intentional segregative acts by local officials must be proven before the results of unconstitutional discrimination can be eliminated by court order.[34] The systemwide desegregation plan for Dayton, Ohio, ordered and approved by lower courts, was deemed excessive by the Supreme Court, which did not find sufficient evidence of unlawful official discrimination. The Court remanded the case to determine how much purposeful discrimination actually had taken place and advised the district court that where constitutional violations have less than systemwide impact, only the "incremental segregative effects" of school officials' actions must be eliminated. However, the desegregation plan initially ordered by the district court was allowed to continue, pending a new decision by the district court. At the same time it announced its *Dayton* decision, the Supreme Court also remanded two similar desegregation cases to lower courts in Omaha[35] and Milwaukee[36] in light of *Dayton.*

Another significant ruling in 1977 stemmed from the Supreme Court's rejection in 1974 of the

[28] Dario O. Prieto, director, minority affairs, Association of American Medical Colleges, interview, May 27, 1977. Brief for the Association of American Law Schools as Amicus Curiae at 2, Regents of the University of California v. Bakke, *cert. granted* (1977).

[29] Brief for the United States as Amicus Curiae at 3, Regents of the University of California v. Bakke, 18 Cal. 3d 34, 533 P.2d 1152 (1976), *cert. granted,* 429 U.S. 1090 (1977).

[30] *Weekly Compilation of Presidential Documents,* news conference, vol. 13, no. 31 (July 28, 1977), p. 1126.

[31] U.S., Commission on Civil Rights, *Statement on Affirmative Action* (October 1977), and *Toward Equal Educational Opportunity: Affirmative Admissions Programs At Law and Medical Schools* (to be published in early 1978).

[32] See U.S., Commission on Civil Rights, *The State of Civil Rights: 1976,* pp. 5-12, for discussion of Washington v. Davis and Austin Independent School District v. United States, which held that a plaintiff must show discriminatory intent, and not solely discriminatory effect, in order to establish a violation of the equal protection clause of the 14th amendment.

[33] —U.S.—(1977), 97 S. Ct. 2766. U.S. District Judge Carl E. Rubin had found in 1973 that deliberate segregation existed in the Dayton school system. But upon remand of the case by the U.S. Supreme Court, Judge Rubin determined in December 1977 under the Supreme Court's announced guidelines that the plaintiffs (National Association for the Advancement of Colored People) failed to meet the required burden of proof to establish a constitutional violation. He held that there was no evidence of segregative intent and incremental segregative effect and therefore the Dayton school board had no legal obligation to continue the court-imposed desegregation plan. The NAACP has indicated its intent to appeal this decision at once. R. Gary Winters, senior law clerk to Judge Rubin, telephone interview, Jan. 17, 1978. On Jan. 16, 1978, the U.S. Court of Appeals for the Sixth Circuit ordered that the desegregation plan, in effect since September 1976, "be maintained pending an appeal of [Judge] Rubin's ruling of last month or until the appeals court issues another order." *Washington Post,* Jan. 17, 1978, p. A7.

[34] See Arlington Heights v. Metropolitan Housing Corp., 429 U.S. 252, 265 (1977) and cases cited therein.

[35] School District of Omaha v. U.S.,—U.S.—(1977), 97 S. Ct. 2905.

[36] Brennan v. Armstrong,—U.S.—(1977), 97 S. Ct. 1907, 53 L.Ed.2d 1044.

interdistrict remedy ordered for Detroit in *Milliken* v. *Bradley* (Milliken I).[37] In Milliken II[38] the Supreme Court affirmed the district court's determination on remand that compensatory measures involving remedial reading, inservice training, testing, and career guidance were necessary "to assure a successful desegregative effort and to minimize the possibility of resegregation."[39] The Supreme Court concluded: "Pupil assignment alone does not automatically remedy the impact of previous, unlawful educational isolation; the consequences linger and can be dealt with only by independent measures."[40]

Thus, when substantial evidence shows that unlawful segregation has existed, the Supreme Court has confirmed the broad, flexible powers of lower courts to develop measures necessary to compensate for past discrimination. Further evidence of this came in a Wilmington, Delaware, desegregation case *(Evans* v. *Buchanan)* where the district court found interdistrict constitutional violations and imposed an interdistrict remedy that was upheld by the court of appeals.[41] The U.S. Supreme Court refused to review the appellate decision, thereby leaving the metropolitan remedy in effect.[42] This action by the Court is particularly gratifying to this Commission, which has maintained that metropolitan desegregation is vital to the Nation's continuing desegregation progress and is constitutionally required under certain circumstances.[43]

Congressional Action

That Congress retreated further in 1977 from the national goal it set out in 1964 is evidenced by legislation that lessens minority access to equal educational opportunity. Of particular concern are congressional efforts to limit student reassignment and transportation for school desegregation.

Two years ago, Congress passed the Byrd Amendment,[44] which prohibits the use of Federal funds for student transportation to other than the nearest school offering the appropriate curriculum. The Carter administration interpreted that amendment to allow the transportation of students to the nearest paired or clustered school.[45] Last year, however, Congress sought to bar the use of Federal funds to compel these desegregation techniques by passing an antibusing amendment to the 1977 Labor-HEW Appropriations Act (frequently referred to as the Eagleton-Biden Amendment).[46]

This Commission advised the President that this provision conflicts with the Federal Government's responsibility under the fifth amendment and the 1964 Civil Rights Act not to fund racially discriminatory activities.[47] As he signed this measure into law as part of the Labor-HEW appropriations bill, President Carter acknowledged that the limits it places on student transportation ". . .may raise new and vexing constitutional questions, adding further complexities to an already complex area of law."[48] The constitutionality of the Eagleton-Biden Amendment was immediately challenged in Federal district court by a coalition of leading civil rights groups.[49]

Whereas this amendment was directed toward school desegregation required by HEW, an even more restrictive bill to limit court-ordered desegregation was approved by the Senate Judiciary Committee in August. Senate bill 1651 stipulates that no court can order pupil transportation unless it has determined that "a discriminatory purpose in education was a principal motivating factor in the constitutional violation. . . ."[50] The bill also requires courts to determine how much segregation resulted from each intentional constitutional violation before ordering student transportation to correct that violation.[51]

With regard to this legislation, the Attorney General observed that:

> relates to school districts unwilling to voluntarily adopt HEW requirements for Title VI compliance, by requiring judicial intervention. This enforcement substitute, namely judicial proceedings by the Department of Justice, would necessarily diminish enforcement. . . . The net result would be that the Federal Government would continue to fund unconstitutionally segregated school districts in violation of the prohibitions imposed by the 5th Amendment and Title VI." Arthur S. Flemming, Chairman, U.S. Commission on Civil Rights, letter to President Jimmy Carter, Sept. 15, 1977.

[37] 418 U.S. 717 (Milliken I) (1974).
[38] —U.S.—(1977), 97 S. Ct. 2761 (Milliken II).
[39] 402 F. Supp. 1096, 1118 (E.D. Mich. 1975).
[40] —U.S.—(1977), 97 S. Ct. 2761 (Milliken II).
[41] 555 F.2d 373 (3d Cir. 1977).
[42] —U.S.—, 98 S. Ct. 235 (1977) (Chief Justice Burger, Justice Powell, and Justice Rehnquist dissenting).
[43] See U.S., Commission on Civil Rights, *Statement on Metropolitan School Desegregation* (1977).
[44] HEW Appropriations for FY 1977, Pub. L. No. 94-439, sec. 208 (1975).
[45] Griffin Bell, Attorney Geueral, letter to Joseph A. Califano, Secretary of HEW, May 25, 1977.
[46] Labor-HEW Appropriations for FY 1978, Pub. L. No. 95-205, sec. 208,—Stat.—(1977).
[47] "The amendment would seriously erode the authority and ability of the Executive Branch of government to meet its constitutional obligations. . .[and] would eliminate executive enforcement action, at least as it
[48] *Weekly Compilation of Presidential Documents*, bill signings, vol. 13, no. 50 (Dec. 12, 1977), p. 1840.
[49] Motion for Declaratory and Injunctive Relief, Brown v. Califano, No. 75-1068 (D.D.C., filed July 3, 1975).
[50] S. 1651, sec. 1, 95th Cong., 1st sess., 123 Cong. Rec. S-9228 (1977).
[51] Ibid., sec. 3,—. No action has been taken by the full Senate on S-1651, and no comparable bill has been acted upon in the House.

> . . .the enactment of this legislation would, without adding significant substance to already existing legal standards, unnecessarily and detrimentally complicate the area of school desegregation, generate unnecessary litigation, and unconstitutionally delay, in some instances, the vindication of constitutional rights.[52]

Such legislative activity continues despite the fact that, as this Commission has repeatedly pointed out, the Supreme Court has ruled that student transportation and reassignment are lawful remedies for unconstitutional school segregation.

Another measure in the House of Representatives has a potentially greater effect on desegregation efforts than either the Eagleton-Biden Amendment or S. 1651. A constitutional amendment was introduced in January 1977 that prohibits "compelling attendance in schools other than the one nearest the student's residence."[53]

The House also attempted to limit methods designed to promote desegregation in higher education. The Walker Amendment to the Labor-HEW appropriations bill would have prohibited HEW funding for enforcement of "compliance with any timetable, goal, ratio, quota, or other numerical requirement related to race, creed, color, national origin, or sex" in employment or admissions.[54] A similar Senate amendment was defeated, and a House-Senate conference committee dropped the amendment.

Federal Civil Rights Enforcement in Education

In early 1977 the administration promised more vigorous enforcement of civil rights legislation. President Carter told Department of Health, Education, and Welfare employees that:

> . . .I'm committed. . .to complete equality of opportunity in our Nation, to the elimination of discrimination in our schools, and to the rigid enforcement of all Federal laws. There will never be any attempt made while I'm President to weaken the basic provisions or the detailed provisions of the great civil rights acts that have been passed in years gone by.[55]

In February the Secretary of Health, Education, and Welfare announced steps aimed at "rekindling the commitment of the Department. . .to forceful and fair enforcement of the civil rights laws. . . ." The Secretary specifically warned schools that "to ensure compliance. . .we will order fund cutoffs if we must."[56]

The Carter administration also strongly urged effective enforcement of Title VI of the Civil Rights Act of 1964, which has particular importance in the area of education:

> . . .the government of all the people should not support programs which discriminate on the grounds of race, color, or national origin. There are no exceptions to this rule; no matter how important a program, no matter how urgent the goals, they do not excuse violating any of our laws—including the laws against discrimination. This Administration will enforce Title VI.[57]

The President further directed the Department of Justice to coordinate the Title VI enforcement efforts of all agencies providing Federal assistance.[58] As a result, the Federal Programs Section of the Department's Civil Rights Division has conducted a more intensive program that includes: sponsoring a Title VI conference for representatives of Federal agencies and the private sector, providing technical assistance to many of the 28 Federal agencies having Title VI responsibility, and reviewing the compliance programs at several of those agencies.[59] On December 20, 1977, the Assistant Attorney General for Civil Rights issued a directive to each of those agencies requiring them to develop a Title VI enforcement plan within 45 days.[60]

Department of Justice

Department of Justice positions in several key desegregation cases indicated that the administration was proceeding with a case-by-case approach to school desegregation to assure constitutional conformity.[61] In the Wilmington case,[62] the Department

[52] Griffin Bell, Attorney General, letter to Senator James Eastland, July 1977.
[53] H.R. J. Res. 19, 95th Cong. 1st sess., 123 Cong. Rec. 82 (1977).
[54] H.R. 7555, sec. 211, 95th Cong., 1st sess., 123 Cong. Rec. 6099 (1977).
[55] *Weekly Compilation of Presidential Documents*, addresses and remarks, vol. 13, no. 8 (Feb. 21, 1977), p. 203.
[56] Statement of Joseph A. Califano, Jr., Secretary of Health, Education, and Welfare, HEW news release, Feb. 17, 1977.
[57] *Weekly Compilation of Presidential Documents*, memorandums to Federal agencies, vol. 13, no. 30 (July 25, 1977), p. 1047.
[58] Ibid.
[59] Stephen Koplan, Chief, Federal Programs Section, Civil Rights Division, Department of Justice, letter to William T. White, Assistant Staff Director, U.S. Commission on Civil Rights, Jan. 18, 1978.
[60] Drew S. Days, III, Assistant Attorney General, Civil Rights Division, Department of Justice, Memorandum for the Heads of Executive Department Agencies Re: Title VI Enforcement Plan, Dec. 20, 1977.
[61] In March 1977, for example, the Assistant Attorney General for Civil

argued that city, suburban, and State officials had been found to have engaged in interdistrict acts of racial discrimination which produced segregated schools in the metropolitan area. It therefore recommended that desegregation be accomplished with a metropolitan plan, including the transportation of students across city and suburban boundaries.[63] In the *Indianapolis* case[64] the Department called for a rehearing to determine whether there had been intentional acts of interdistrict segregation that would justify the remedy ordered by the lower courts.[65]

Later in the year, the Justice Department argued to the Supreme Court in a Dayton, Ohio, school desegregation case that once racially discriminatory practices by school officials had been proved, the courts should shift the burden of proof onto school officials to show that all racial separation within the schools was not the result of purposeful segregative acts.[66] Systemwide desegregation including pupil transportation would follow unless school administrators could demonstrate that official action was not responsible for the racial identity of the schools.

Department of Health, Education, and Welfare

In its 1976 assessment of civil rights developments, the Commission reported that major deficiencies continued in HEW enforcement of Titles VI of the Civil Rights Act of 1964 (barring discrimination based on race, color, or national origin in federally-assisted programs) and IX of the Education Amendments of 1972 (barring sex discrimination in federally-assisted programs).[67] In elementary, secondary, and higher education, inadequate enforcement of antidiscrimination laws persisted in 1977, despite the new administration's commitment to implement thoroughly civil rights legislation.[68]

A report of the General Accounting Office (GAO) confirmed the limited success of HEW's Office for Civil Rights (OCR) in enforcing Titles VI and IX. The GAO attributed this record to a number of problems including:

> lack of a comprehensive and reliable management information system; lack of uniform policy guidelines and compliance standards; failure to determine job skills and knowledge required for effective staff performance; absence of uniform criteria for allocating staff resources among enforcement activities; lack of coordination between OCR and program agencies; and limited communication between headquarters and regional offices.[69] The difficulties cited by GAO have been compounded by OCR's failure to fill its vacancies,[70] a backlog of complaints,[71] and an increasing number of lawsuits and court orders which require considerable staff time.[72] In an attempt to remedy this situation, OCR announced in June 1977 a major reorganization that would allow for a more balanced compliance program monitoring all laws and Executive orders requiring nondiscrimination in federally-funded programs.[73]

In late December a major breakthrough in civil rights enforcement occurred as settlement was reached on three longstanding lawsuits against HEW. Under the settlement agreement, discrimination based on race, sex, or handicap should receive much more efficient and effective enforcement action from OCR. The agreement calls for elimination of 3,000 backlogged discrimination cases by

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Rights emphasized that any Justice Department support of metropolitan-wide desegregation action would have to be based on a finding that an "inter-district violation" had occurred. In those circumstances, he said, "the violations might be very widespread and that would justify a broad remedy. In other situations, the violations may be very minor and perhaps the remedy would be somewhat restricted." The Assistant Attorney General stressed that the Justice Department would not "dash ahead in terms of school desegregation." He indicated future support for extensive desegregation measures in cases where there was evidence of intentional segregation throughout an entire school system, but hoped that desegregation plans would not "overreach." *St. Louis Post-Dispatch,* Mar. 17, 1977; *Los Angeles Times,* Mar. 21, 1977.

[63] Evans v. Buchanan, 379 F. Supp. 1218 (D. Del. 1974), 393 F. Supp. 428 (D. Del. 1975) (three-judge court); *summarily aff'd,* 423. U.S. 963 (1975); 416 F. Supp. 328 (D. Del. 1976), *appeal dism'd on jurisdictional grounds,* 423 U.S. 1080; *aff'd as modified,* 555 F.2d 373 (3d Cir. 1977).

[64] Brief for the United States as Amicus Curiae, Evans v. Buchanan, 555 F.2d 373 (3d Cir. 1977).

[65] Buckley v. Board of School Comm'rs of the City of Indianapolis, 541 F.2d 1211 (7th Cir. 1976), *vacated and remanded,* 429 U.S. 1068 (1977).

[66] Brief for the United States of Amicus Curiae, U.S. Board of School Comm'rs of the City of Indianapolis, Nos. 75-1730 through 1737, 75-1936, 75-1964, 75-1965, and 75-2007 (7th Cir., filed March 1977), *on remand* from Buckley v. Board of School Comm'rs of the City of Indianapolis, 429 U.S. 1068 (1977).

[66] Brief for the United States as Amicus Curiae at 17, Dayton Board of Education v. Brinkman,—U.S.—(1977), 97 S. Ct. 2766.

[67] *State of Civil Rights: 1976,* pp. 22-23.

[68] Statement by Joseph A. Califano, Jr., Secretary of Health, Education, and Welfare, *HEW News,* Feb. 17, 1977, p. 1.

[69] Elmer B. Staats, Comptroller General of the United States, letter to Senator Birch Bayh, Mar. 30, 1977, pp. 4-11. This letter was in response to a request by Senator Bayh that GAO review and report on management of civil rights enforcement responsibilities and resources by HEW's Office for Civil Rights.

[70] Ibid., p. 3.

[71] The Office for Civil Rights will begin fiscal year 1978 with a backlog of approximately 3,025 complaints; it expects to receive an additional 2,455 complaints during the year. The agency believes it will be able to resolve a total of 1,255 outstanding complaints and investigate 246 new complaints. 42 Fed. Reg. 39824 (Aug. 5, 1977).

[72] Affidavit of David Tatel, Director of the Office for Civil Rights, filed June 6, 1977, Adams v. Califano, 430 F. Snpp. 118 (D.D.C. 1977).

[73] 42 Fed. Reg. 39824 (Aug. 5, 1977).

September 3, 1979, and for more frequent review of discriminatory practices in elementary, secondary, and higher education. To accomplish this stepped-up enforcement activity, the settlement commits HEW to expand OCR's staff size from its present level of approximately 1,100 to nearly 2,000.[74]

In 1977 HEW initiated enforcement proceedings under Title VI in 24 districts; similar proceedings in 15 other districts have moved further toward a finding of compliance or an order to terminate Federal funds.[75] Secretary Califano announced in March that the Department would also begin strict enforcement of Title IX provisions by terminating Federal aid to institutions not complying with them.[76] Prior to this year, HEW had seldom cut off funds from such education entities.

HEW collects the data necessary to enforce Titles VI and IX through survey forms 101 and 102,[77] which are sent to 16,000 school districts annually. However, HEW cancelled the 1977–78 survey and decided that the fall 1978 survey will be sent to only 3,500 school districts. The survey data will then be collected on a biennial basis.[78] This action will impede compliance activities under both titles, since school districts will now have 2 years to comply instead of one.[79] This Commission, having long supported the collection of data sufficient for a full civil rights enforcement effort, will closely watch HEW's new data gathering methodology to determine its adequacy. Of critical importance is whether HEW will not only gather but also use data in a manner that will result in full desegregation of this Nation's schools.

In April 1977 a district court ordered HEW to develop specific criteria for desegregation of statewide higher education programs.[80] The order requires more aggressive enforcement by HEW of Title VI regulations under which "States are required to take affirmative remedial steps and to achieve results in overcoming the effects of prior discrimination."[81] The criteria apply directly to six States (Arkansas, Florida, Georgia, North Carolina, Oklahoma, and Virginia) "that have operated *de jure* racially segregated college and university systems in the past."[82] HEW would, however, use these standards as guidelines for remedial measures where other State-sanctioned segregated systems of higher education are found.[83]

In early February 1978 HEW announced that desegregation plans of three States—Arkansas, Oklahoma, and Florida—met the Department's criteria as did a portion of North Carolina's plan. Georgia and Virginia, however, were notified that their plans submitted to date "did not meet the court-ordered guidelines." Secretary Califano pointed out that the ultimate failure to comply with the desegregation criteria "could result in the termination of all HEW funds to States' educational institutions."[84]

Although some concern has been expressed that these criteria for desegregation in higher education may weaken the structure and quality of traditionally all-black colleges, there is a provision "that equivalent resources be allocated to equivalent institutions, regardless of whether those institutions are at present predominantly white or predominantly black."[85] Secretary Califano stressed that this new effort "recognizes the unique role of black colleges

[74] Statement of Joseph A. Califano, Secretary, U.S., Department of Health, Education, and Welfare, Dec. 29, 1977.

[75] U.S., Department of Health, Education, and Welfare, "Status of Civil Rights Compliance Interagency Report," Cumulative List No. 369, Dec. 8, 1977. Of the 24 new enforcement proceedings, 22 involved school districts in Alaska that had not met the bilingual education requirements imposed by the U.S. Supreme Court in Lau v. Nichols, 414 U.S. 563 (1974). Also Vernon interview.

[76] *HEW News*, Mar. 17, 1977, p. 1. See also, "OCR Getting 'Basketful' of Late Title IX Assurances," *Title IX News*, Sept. 1, 1977, p. 1.

[77] These forms are designed to collect data on race, sex, discipline, and handicaps pursuant to Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, and Section 504 of the Rehabilitation Act of 1973. Form OS/CR 101 requests information from entire school districts; form OS/CR 102 requests more detailed information from individual elementary and secondary schools.

[78] Joseph A. Califano, Secretary, Department of Health, Education, and Welfare, letter to Senator Warren Magnuson, July 19,1977. The 3,500 selected districts include those under court order to desegregate, those that have filed desegregation plans with OCR, and Emergency School Aid Act grant recipients.

[79] Compliance with Title IX has been minimal. Of 20,318 school districts and colleges obliged to meet requirements prohibiting sex discrimination, only 5,504 school districts and 1,338 colleges submitted acceptable compliance forms due Mar. 15, 1977. *HEW News*, Mar. 17, 1977, p. 1. It now takes 12 to 18 months to process termination of Federal funds under Title IX. A.J. Howard, Acting Director, Compliance Enforcement Division, Office for Civil Rights, HEW, telephone interview, Nov. 18, 1977.

[80] Adams v. Califano, 430 F. Supp. 118 (D.D.C. 1977).

[81] 42 Fed. Reg. 40780 (Aug. 11, 1977).

[82] Statement of Joseph A. Califano, Jr., Secretary of Health, Education, and Welfare, July 5, 1977, p. 1. These criteria establish the following objectives: through the use of goals and timetables, in 5 years substantially increase the total number of black college students, in part by increasing the black enrollment at 4 year white colleges; after 2 years set goals and timetables to increase the number of white students at black colleges; and immediately establish specific goals for attaining proportionate representation of blacks in faculty and administrative positions at each State institution. They further stipulate that the disparity between college graduation rates of whites and blacks should be reduced and that the same proportion of in-State black and white graduates of State public schools should enter postgraduate education.

[83] Ibid., p. 6.

[84] Statement of Joseph A. Califano, *HEW News Release*, Feb. 2, 1978.

[85] Califano Statement, p. 6.

in meeting the educational needs of black students and aims at protecting these institutions as an integrated and integral part of state higher education systems."[86]

[86] Ibid., p. 8.

Housing

Twenty-nine years ago Congress pledged a decent home and a suitable living environment as basic rights of every American family.[1] In 1968 Congress declared that, as a matter of national policy, housing discrimination must end.[2]

In 1977 these two promises remained unfulfilled for millions of minority and female-headed households. Rising housing costs, the markedly lower incomes and high levels of joblessness among minorities and female-headed households, and continuing discrimination in the housing marketplace stand as major obstacles to the achievement of equal housing opportunities in this Nation. Disproportionately large numbers of minorities remain concentrated in residential areas with the worst living conditions in America.[3] Federally-subsidized housing programs and fair housing enforcement activity in 1977 both fell far short of meeting the national need. The 1977 report by the Commission's State Advisory Committees outlines significant housing problems confronting minorities, women, and female heads of households in some 30 States and the District of Columbia.[4]

Housing Costs

The astronomical spiral in housing costs has limited homeownership opportunities of many Americans, including most minorities. Female-headed families and minorities whose level of income not long ago would have allowed them a relative degree of choice in deciding where to live now find themselves excluded from the market on economic grounds. In June 1977 the average price of a new home was $54,700, compared to $48,000 for all of 1976.[5] New home prices rose at an annual rate of 4 percent above the increase in disposable personal income,[6] and in some metropolitan areas homes have been reported to have appreciated in value at rates of 30 percent and up.[7] On the basis of costs alone, homeownership has grown beyond the reach of disproportionately large numbers of minorities and women,[8] who are limited to a rental market which, in 1977, was also increasingly costly.

Housing Discrimination

Discrimination remains the prime factor in containing minorities in neighborhoods with decaying housing, minimal public services, and serious social problems.[9] Job discrimination results in lower incomes and higher unemployment among minorities. As a result, they often lack the income needed to move from poor housing.

In a detailed, 3-year study completed in 1977, the American Bar Association reported that post-World War II urban growth in the United States has been accompanied by "serious racial and economic polarization."[10] The study concluded that exclusionary zoning and other local governmental action "have prevented access to decent housing and have reinforced and aggravated patterns of racial and economic segregation." Furthermore, "courts and legislatures have done far too little to prevent this governmental abuse of power."[11]

The ABA study predicted that without basic changes in the future direction of urban development, planning, and housing programs, "greater numbers of Americans will be denied housing choice, our cities will continue to decline, and racial and economic segregation will be perpetuated."[12] The study challenged local governmental bodies to

[1] Housing Act of 1949, Pub. L. No. 171, 63 Stat. 413, *as amended* (codified at 42 U.S.C. §1441 (1970)).

[2] Fair Housing Act of 1968, Pub. L. No. 90-284, 82 Stat. 81 (42 U.S.C. §3601(1970)).

[3] Eleanor Clagett, program analyst, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, telephone interview, Oct. 5, 1977 (hereafter cited as Clagett interview). See also, U.S., Commission on Civil Rights, *Twenty Years After Brown: Equal Opportunity In Housing* (December 1975), pp. 137-66. Census figures for 1970 note that black Americans are more than twice as likely to live in housing lacking some plumbing and in overcrowded conditions. The urban ghettoes and barrios where serious housing and social problems coalesce offer the worst living conditions in this country. For example, the South Bronx in New York City, which President Carter visited in October, is often described as a "war zone" plagued by joblessness, crime, arson, vandalism, drug problems, and decayed housing. See, *Washington Post*, Oct. 6, 1977, p. 1, and *New York Times*, Oct. 6, 1977, p. 1.

[4] Fifty-One State Advisory Committees to the U.S. Commission on Civil Rights, *The Unfinished Business, Twenty Years Later* (September 1977) (hereafter cited as *The Unfinished Business).*

[5] U.S., Department of Commerce, Bureau of the Census, *Price Index of New One-Family Houses Sold, Second Quarter 1977,* Series C27-77-01 (September 1977), p. 3.

[6] Ibid., and U.S., Department of Commerce, Bureau of Economic Analysis, *Business Conditions Digest* (September 1977), p. 10.

[7] *Washington Post*, Oct. 1, 1977.

[8] See income and poverty data in the chapter on employment.

[9] *Twenty Years After Brown: Equal Opportunity in Housing*, pp. 1-13; and Clagett interview.

[10] American Bar Association Advisory Commission on Housing and Urban Growth, *Housing for All Under Law : New Directions in Housing, Land Use, and Planning Law,* Executive Summary (Cambridge: Ballinger, 1978), p. 7.

[11] Ibid.

[12] Ibid., p. 8.

assume the "affirmative legal duty to. . .1) plan for present and prospective housing in a regional context; 2) eliminate those local regulatory barriers that make it difficult to provide housing for persons of low- and moderate-income; and 3) offer regulatory concessions and incentives to the private sector in this regard."[13]

The ABA study advocated strengthened judicial action on exclusionary zoning cases with the view that "opportunities for decent living accommodations in decent environments, freedom from law imposed discrimination based on income (and income as a surrogate for race), and access to employment opportunities are fundamental values."[14]

Discrimination against minority homeseekers by property owners and sales and rental agents undercuts the will of many minority families to seek better housing in traditionally all-white areas. Housing discrimination and the resulting residential segregation have fostered dual school systems that in turn require pupil transportation to eliminate their segregated character.[15]

One housing expert recently emphasized that discrimination in the housing market has in recent years become increasingly subtle and more difficult to detect. He noted that no region of the country yet appears to be free of discrimination in the housing market, although the fair housing provisions of the Civil Rights Act of 1968 have, in his view, had some limited effect in halting the worst abuses.[16]

Housing discrimination during 1977 took various guises, none of them new. Outright refusals to rent or sell to minorities have lessened as landlords and their agents have had to resort to more covert means. The availability, price, and terms of payment are all matters which can be misrepresented to minority homeseekers in order to discourage them from seeking better, integrated housing.[17]

Blockbusting, although illegal,[18] is still employed by unscrupulous individuals willing to induce panic selling of houses in white and transitional neighborhoods by convincing homeowners that increasing numbers of minority residents will destroy property values. The practice continues partly because of difficulty in taking effective legal action against the persons and practices involved.[19]

Racial steering, also illegal,[20] is used by those sales agents who show homes in white neighborhoods only to whites while showing minorities housing only in minority, transitional, or integrated neighborhoods.[21] Racial steering is also a principal tool of blockbusting.[22]

Another discriminatory practice is "redlining." Mortgage lenders redline a neighborhood when they either refuse to make loans there or impose stiffer terms on purchasers because of a neighborhood's minority composition.[23] This problem is complicated since it is often accompanied by discrimination based on race, national origin, sex, or marital status in the making of the loan itself. Redlining has the effect of worsening conditions in neighborhoods most in need of bank financing for sales and revitalization and leaves such areas vulnerable to well-funded speculators.[24]

Federal Fair Housing Enforcement

Enforcement of fair housing legislation remained deficient in 1977. The volume of housing discrimination complaints received by the Department of

[13] Ibid., p. 9.
[14] Ibid., pp. 9–10.
[15] *Twenty Years After Brown: Equal Opportunity in Housing,* pp. 11, 107–08.
[16] Edward L. Holmgren, executive director, National Committee Against Discrimination in Housing, telephone interview, Oct. 6, 1977 (hereafter cited as Holmgren interview).
[17] Phyllis White, National Committee Against Discrimination in Housing (NCDH), telephone interview, Nov. 3, 1977. The national committee, under contract to the Department of Housing and Urban Development, conducted a 1977 study which unearthed evidence of pervasive, continuing housing discrimination. See National Committee Against Discrimination in Housing, *Trends in Housing* (Fall 1977), p. 1.
[18] 42 U.S.C. §§3604(1970).
[19] Linmark Associates, Inc. v. Township of Willingboro, 431 U.S.85 (1977). This case struck down local efforts to prohibit the display of "for sale" or "sold" signs which are often used by blockbusters to create the impression that a neighborhood is undergoing rapid transition.
[20] 42 U.S.C. §§3604(1970).
[21] National Association of Human Rights Workers, Thirtieth Annual Conference, Detroit, Mich., Housing Workshops, Oct. 15–16, 1977. And see U.S., Commission on Civil Rights, *Equal Opportunity in Suburbia* (1974), p. 18.
[22] Ibid., and Zuch v. Hussey, 394 F.Supp. 1028 (1975). The court enjoined several real estate salespersons in the Detroit, Michigan, area from using blockbusting and racial steering as sales stratagems in transitional neighborhoods.
[23] For example, see *Des Moines Register,* June 26, 1977, p. 1, and June 27, 1977, p. 1. Two articles by *Register* business writer Len Ackland outline how redlining operates and affects a typical Midwestern community. Ackland has prepared another article (available upon request from the *Columbia Journalism Review,* Columbia University, New York) which discusses how reporters and the public can seek to uncover evidence of redlining.
[24] Real estate speculation has always been particularly threatening to the poor, but the current energy crisis has renewed the interest of investment in the central cities and led to intense speculation in older, decayed properties from which minorities are now being evicted in growing numbers. During the last 3 years, for instance, growing numbers of blacks and Hispanics in Washington, D.C., have lost homes and rental properties to affluent middle-income persons seeking rehabilitated housing in the Nation's capital. Those displaced have become part of the steadily growing body of low-income families contending for the severely limited numbers of low-income units available in the city and its suburbs. On July 7–8, 1977, the Senate Committee on Banking, Housing, and Urban Affairs held hearings on "neighborhood diversity" to examine the problem.

Housing and Urban Development under the fair housing law (Title VIII of the Civil Rights Act of 1968)[25] has been limited by a lack of public knowledge of the rights and protections the law includes.[26]

The Commission has in the past strongly criticized HUD's Title VIII enforcement and has urged the Department to initiate an active program of Title VIII community-wide pattern and practice reviews in localities throughout the country.[27] Such reviews would be aimed at uncovering violations of Title VIII and countering discriminatory local practices and policies through the examination of "State and local fair housing laws, the types and quality of activity conducted by fair housing agencies, zoning ordinances, marketing activities. . .mortgage financing practices. . .and data showing the racial and ethnic composition of neighborhoods. . . ."[28] In 1978 action is needed to implement fully such a program as a means of enforcement.[29]

During 1977 HUD was again unable to investigate and close a large number of housing discrimination cases. A substantial backlog of complaints[30] now blocks the efforts of minority complainants to gain redress under the fair housing law. HUD's often lengthy case conciliation procedures have also led many minorities to believe that the Department's investigative and enforcement machinery is ineffectual.[31] Efforts in Congress to empower HUD with cease and desist powers in housing discrimination cases,[32] as recommended by the Commission,[33] are now in subcommittee and will need strong administration support for passage.

Positive action was taken during 1977 by Federal regulatory agencies against discriminatory lending practices.[34] For example, the possibility of future enforcement action under the Equal Credit Opportunity Act of 1974[35] and the Federal Home Mortgage Disclosure Act of 1975,[36] was strengthened. The National Urban League and other groups had brought suit in 1976 contending that the Federal agencies which regulate mortgage lending institutions in this country were guilty of "the continuing failure and refusal to end discriminatory mortgage lending practices."[37] The suit against four Federal regulatory agencies sought to compel them to enforce effectively fair housing laws when regulating member lending institutions. Out-of-court settlements in 1977 with three of the agencies—the Federal Home Loan Bank Board, the Federal Deposit Insurance Corporation, and the Comptroller of the Currency—now require the agencies themselves to collect and analyze data on all mortgage applicants by race and sex and to employ stepped-up complaint and enforcement procedures.[38]

In January 1977 the Federal Reserve Board amended its regulations to require recordkeeping by regulated lenders on the sex, marital status, race, national origin, and age of applicants. Lenders must now explain to applicants the "action taken" on all loans.[39]

Another agency, the Federal National Mortgage Association (FNMA) issued new guidelines in 1977 prohibiting discrimination by FNMA-approved lenders against minority neighborhoods, residential

[25] 42 U.S.C. §3601 (1970). With few exceptions, Title VIII, the fair housing provisions of the Civil Rights Act of 1968, bans discrimination on the basis of race, color, religion, or national origin in the sale and rental of housing.
[26] Holmgren interview.
[27] U.S., Commission on Civil Rights, *The Federal Civil Rights Enforcement Effort—1974,* vol. II, *To Provide. . .For Fair Housing* (1974), pp. 48–50.
[28] Ibid.
[29] During 1977 the Department of Housing and Urban Development did contract with the National Committee Against Discrimination in Housing for a national survey to measure the nature and extent of racial discrimination in the housing market. The survey was done in 40 major metropolitan areas, and it uncovered discriminatory practices in each. Since the survey was carried out for research purposes, no direct enforcement action will result from it.
[30] Kenneth F. Holbert, Director, Office of Civil Rights Compliance and Enforcement, Department of Housing and Urban Development, staff interview, Nov. 15, 1977.
[31] Holmgren interview. A recent step by HUD, however, offers the possibility of strengthened action under Title VIII. On December 7, 1977, the Department's Office of General Counsel issued an opinion clearing the possible development of "substantive" regulations under Title VIII. Such administrative regulations, reportedly now under consideration, would buttress HUD's enforcement efforts by specifying, for the first time, conduct prohibited under Title VIII.
[32] H.R. 3504, 95th Cong., 1st sess., 123 Cong. Rec. 1115 (1977).
[33] *Twenty Years After Brown: Equal Opportunity in Housing,* p. 181.
[34] These changes were recommended by the Commission on Civil Rights in *The Federal Civil Rights Enforcement Effort—1974,* vol. II, *To Provide. . .For Fair Housing* (1974), pp. 134–64.
[35] 15 U.S.C. 1691 *et seq.* (1976).
[36] 12 U.S.C. 2801 *et seq.* (1976).
[37] National Urban League v. Office of Comptroller of the Currency, Civil Action No. 76–718 (D.D.C., filed Apr. 26, 1976). Other original plaintiffs to the suit were the National Committee Against Discrimination in Housing, National Association for the Advancement of Colored People, American Friends Service Committee, League of Women Voters of the United States, National Neighbors, Housing Association of Delaware Valley, Leadership Council for Metropolitan Open Communities, Metropolitan Washington Planning and Housing Association, Rural Housing Alliance, and the National Association of Real Estate Brokers. Other Federal agencies that are parties to the suit are the Federal Reserve Board, the Federal Deposit Insurance Corporation, and the Federal Home Loan Bank Board.
[38] Settlement Agreements completed in the above case cover the Federal Home Loan Bank Board (signed March 23, 1977); the Federal Deposit Insurance Corporation (May 17, 1977); and the Office of the Comptroller of the Currency (November 28, 1977).
[39] 42 Fed. Reg. 1242 (1978) (to be codified in 12 C.F.R. 202.13; and see, *Equal Opportunity in Housing,* vol. IV, no. 15 (Jan. 18, 1977), p. 3.

areas with older housing, and borrowers relying on female wage earners to qualify for loans.[40] In November 1977 the Federal Home Loan Bank Board proposed similar regulations in a move to counter redlining of older neighborhoods.[41]

Exclusionary Zoning and Land Use Litigation

Local zoning that does not permit the construction of higher density, multifamily housing has the net effect of shutting out low- and moderate-income persons. Most minorities in this country seek housing in the low- and moderate-income price range, and such exclusionary zoning means that few minorities are able to afford to live in localities that impose restrictions against multifamily housing[42] In jurisdictions where minorities make up the bulk of all low-income persons in the area, it seems clear that the race of potential residents of multifamily housing is often a strong motivating factor in the enactment of exclusionary zoning ordinances.[43]

Village of Arlington Heights v. *Metropolitan Housing Development Corporation* [44] was a major case during 1977 involving exclusionary zoning. The locality had refused a developer's request to rezone a tract of land for multifamily residential use. In January the U.S. Supreme Court held that discriminatory intent had not been proved in the case and thus there was no constitutional violation. The case was returned to the U.S. court of appeals for determination of whether Arlington Heights may possibly have violated the statutory provisions of Title VIII of the Civil Rights Act of 1968.[45] The appeals court later remanded the case to district court to determine whether in fact the village had violated the 1968 act.[46]

A complicating factor in exclusionary zoning cases involves the issue of standing: Which individuals or groups challenging zoning provisions have the right to do so under law? On this issue the Supreme Court, in a landmark case, ruled that:

> [A] plaintiff who seeks to challenge exclusionary zoning practices must allege specific, concrete facts demonstrating that the challenged practices harm him, and that he personally would benefit in a tangible way from the court's intervention. . . .[47]

State courts, however, recently ruled in New York and New Jersey that exclusionary zoning may violate the general welfare clause of the constitutions of those two States. Henceforth, in those particular States, plaintiffs who were nonresidents were granted standing to sue under "some" circumstances.[48]

Nevertheless, the New Jersey Supreme Court ruled in 1977 that localities which are already "fully developed" have the right to maintain "the character of a. . .predominantly single family residential community. . . ."[49] Under this ruling it would appear that any New Jersey community with more than 95 percent of its land in use would have no obligation to provide for multifamily housing, if it has always excluded it.

Exclusionary zoning, despite repeated legal attacks, continued in 1977 to serve as an effective means of discriminating against minorities through the use of seemingly neutral ordinances and policies that bar families by income rather than by race. In this more "respectable" guise, exclusionary zoning continues to limit the housing choices of millions of minority Americans seeking better homes.

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[40] Federal National Mortgage Association, Conventional Home Mortgage Selling Contract Supplement, Section 310–11, Oct. 17, 1977.

[41] 42 Fed. Reg. 58953 (Nov. 1, 1977).

[42] See U.S., Department of Commerce, Bureau of the Census, *Annual Housing Survey: 1975, General Housing Characteristics,* Series H–150–75A (April 1977), pp. 10, 40. Black families, for instance, are more likely to reside in the central cities in older, less valuable housing. The median income of black renters living in the central cities is about one-third that of predominantly white homeowners living in the suburbs.

[43] See *Equal Opportunity in Suburbia,* pp. 31–33; and *Twenty Years After Brown: Equal Opportunity in Housing,* pp. 91–105 and 109–14.

[44] 429 U.S. 252, 97 S. Ct. 555 (1977). In its decision in *Village of Arlington Heights* v. *Metropolitan Housing Development Corp.,* the Supreme Court refused to invalidate on constitutional grounds a zoning ordinance that operated to exclude low-income, racially integrated housing from the Arlington Heights, Illinois, subdivision, even though the effect of the ordinance fell disproportionately on blacks. The Court stated that, although disproportionate impact is one factor to be considered in determining whether the ordinance is constitutionally defective, that factor is only relevant as an indication of intent. Citing the case of *Washington* v. *Davis,* the Court reiterated the requirement that there must be a showing of discriminatory intent as a prerequisite to a finding of invidious discrimination. The Court examined the evidence of intent in the record and ruled that it found it wanting. Nevertheless, as noted, the Court returned the case to the court of appeals for consideration of whether the statutory provisions of Title VIII of the Civil Rights Act of 1968 may have been violated.

[45] Id. at 271.

[46] Metropolitan Housing Development Corp. v. Village of Arlington Heights, 558 F.2d 1283 (7th Cir. 1977).

[47] See Warth v. Seldin, 422 U.S. 490, 508(1975).

[48] Suffolk Housing Services v. Town of Brookhaven, 397 NYS 2d 302(1977); and Urban League of Essex County v. Township of Mahwah, 147 N.J. Super. 28, 370 A.2d 521(1977).

[49] Pascack Association, Ltd. v. Board of Adjustment of Township of Washington, 397 A.2d 6, 74 N.J. 470(1977). Associates v. Mayor of Demarest, No. A–129 (Sup. Ct. of New Jersey, Mar. 23, 1977).

Federal Housing Programs

As the private market had traditionally failed to provide housing for low-income persons in this country, the Federal Government in 1937 began a series of housing subsidy programs. Currently, the four major subsidized housing programs are public housing,[50] housing for the elderly,[51] Section 235 homeownership housing,[52] and Section 8 rent subsidies.[53] The Section 8 program now accounts for the majority of all housing units subsidized by HUD under these programs.

HUD estimates that 4.5 to 5.5 million subsidized housing units will be needed during the next 10 years for low-income persons who cannot buy or rent in the private market.[54] Congress this year offered support for subsidized housing programs with a supplemental appropriation for 134,000 Section 8 rent subsidy units.[55] The House and Senate agreed to another $1.16 billion in contract authority for Section 8 and public housing,[56] and support for housing for the elderly under the Section 8 and Section 202 programs increased substantially during 1977. Unit reservations funded under the two programs rose from approximately 3,400 in 1976 to almost 19,000 during 1977.[57]

The picture for low-income housing consumers in 1977 was still not bright. The Department of Housing and Urban Development's funding request for Section 8 and public housing shrank in Congress from just 400,000 low-income units to approximately 350,000 (or possibly less) under the 1978 budget.[58] (HUD's fiscal year 1979 funding request is for 400,000 units.)[59] An additional problem rests with in the fact that Section 8 assistance has been largely confined to existing, in-place housing. Thus, millions of dollars in Section 8 subsidies have had virtually no effect to date on existing patterns of residential segregation.[60]

The Section 235 homeownership program, resumed last year after a 3-year moratorium, has also been disappointing, both in terms of the number of units subsidized and for the population the program serves. As of June 1977—8 months into fiscal year 1977—less than $22 million of the $265 million authorized for the program had been used.[61] HUD foresees funding 40,000 to 50,000 units only under this program in fiscal year 1978.[62] Because of rising maintenance and utility costs, the Section 235 homeownership program has now become too expensive for many low-income families, but HUD has responded by increasing mortgage limits and lowering interest rates and down payment requirements.[63] Nevertheless, these Federal housing subsidy programs have yet to come close to meeting the national need.

Urban Revitalization and Community Development Block Grants

The new administration placed major emphasis during 1977 on urban revitalization with the following objectives: maintaining viable neighborhoods while retaining area residents, encouraging the development of integrated neighborhoods, and bringing middle-income families back to the central city.[64]

The bulk of Federal money for urban revitalization comes from the Community Development Block Grant Program,[65] which received fiscal year

[50] Public housing programs provide loans for the construction or rehabilitation of low-rent housing for low-income families. 42 U.S.C. §1401 *et seq.* (Supp. V, 1975).

[51] Section 202 of the Housing Act of 1959 provides loans to not-for-profit corporations for providing rental housing and related facilities for the elderly and handicapped. 12 U.S.C. §1701q (1970) (Supp. V, 1975).

[52] Sections 235 and 237 of the Housing and Urban Development Act of 1968 created a homeownership program providing special mortgage insurance and cash payments to help low-income home purchasers meet mortgage payments. 82 Stat. 477 (1968).

[53] Section 8 of the Housing Act of 1937, as amended by the Housing and Community Development Act of 1974, provides for rent subsidy payments for low-income families in newly constructed, substantially rehabilitated, or existing rental units. 42 U.S.C. §1437f (Supp. V, 1975).

[54] *Housing and Urban Affairs Daily,* Aug. 16, 1977, p. 69.

[55] *Housing and Urban Affairs Daily,* June 3, 1977, p. 120.

[56] *Housing and Development Reporter,* vol. 5, no. 8 (July 25, 1977), p. 146.

[57] Fred Dow, chief, Assisted Housing Branch, Office of Management, Department of Housing and Urban Development, telephone interview, Jan. 20, 1978.

[58] William Van Lowe, Director of Program Budget Development, Office of the Assistant Secretary for Administration, Department of Housing and Urban Development, telephone interview, Dec. 14, 1977.

[59] U.S., Department of Housing and Urban Development, *Summary of the HUD Budget for Fiscal Year 1979* (January 1978), p. H–1.

[60] See for example, *The Section 8 Program for Existing Housing in Cuyahoga County,* prepared for Cuyahoga Metropolitan Housing Authority by Joseph H. Battle and Associates. This 11-month study found that most families subsidized by the program in Cleveland did not "make moves which led to dispersal." The study pointedly noted that minority and female-headed families encountered discrimination in their homeseeking efforts. Most families settled "in place" without moving from the neighborhood in which they were already living. Critics charge that the program has functioned similarly in other cities.

[61] *Housing and Development Reporter,* vol. 5, no. 2 (June 13, 1977), p. 22.

[62] Patricia Roberts Harris, testimony before the Senate Committee on Banking, Housing, and Urban Affairs, Jan. 27, 1978.

[63] Ibid.

[64] See, for example, *Housing and Development Reporter,* vol. 4, no. 16, (Jan. 10, 1977), p. 688; vol. 4, no. 18 (Jan. 24, 1977), p. 730; vol. 4, no. 20 (Feb. 7, 1977), p. 780; and vol. 4, no. 22 (Feb. 21, 1977), p. 868.

[65] The Community Development Block Grant program provides funds to units of local government for a variety of community development activities aimed at promoting "the development of viable urban communities by providing decent housing and suitable living environment and expanding economic opportunities, principally for persons of low and

1978 funding in October. A total of $3.5 billion was authorized for housing and community development with a $400 million authorization for a new Urban Development Action Grant Program aimed at countering the deterioration of cities with stagnant or declining populations or tax bases. Debate has continued on the formula for distributing funds. Some older cities with large numbers of low-income minority citizens could potentially lose millions of community development dollars under the current funding formula.[66]

Figures from the Community Development Block Grant program show that those whom the program was intended to serve—low-income families—are often not the beneficiaries. More than 80 percent of the funds spent in low- and moderate-income areas are, in fact, spent only in moderate-income census tracts,[67] leaving needy, low-income residents with limited assistance. This situation can be traced in part to the lack of specificity in HUD's list of activities that can be funded. During 1977, however, the Department moved to tighten Community Development program regulations by establishing as priorities "activities which will benefit low- or moderate-income families or aid in the prevention or elimination of slums or blight."[68] HUD's scrutiny of local spending of Community Development Block funds led to the reprogramming of about $45 million to meet this goal.[69] Progress on housing goals would also be a priority, and HUD has indicated that it will place heavy emphasis on "the substance of what communities are [actually] accomplishing."[70]

The community development program requires local jurisdictions to file a "housing assistance plan" (HAP) in which communities are to consider carefully the housing needs of lower income persons, large families, female-headed households, minorities, the elderly, the handicapped, and others now residing or "expected to reside" in the local community.[71] The HAP requirement is a potentially powerful tool in moving local communities to develop low- and moderate-income housing. HUD has failed in the past to test forcefully the full usefulness of this requirement.[72] Proposed new program regulations indicate that the Department now intends to review far more carefully local action on housing needs.[73]

Secretary Patricia Roberts Harris has cited strengthened administration of the housing assistance plan requirement as a major accomplishment of her first year at HUD.[74] She noted that 1977 statistics indicated that "Federal programs are [once again] producing subsidized housing for deprived families in meaningful numbers."[75] Subsidized housing production, she predicted, would continue to rise during 1978.

moderate income." 42 U,S.C. § 5301 *et seq.* (Supp. V. 1975). The Housing and Community Development Act of 1977, 91. Stat. 1111, signed by President Carter on October 12, establishes as a new CDBG program goal "the alleviation of physical and economic distress through the stimulation of private investment and community revitalization." *Housing and Development Reporter,* vol. 1, no. 20 (Oct. 17, 1977), p. 443.

[66] *Housing and Development Reporter,* vol. 5, no. 8 (July 25, 1977), pp. 136–37. HUD programs formerly operated under categorical grant funds. Activities such as urban renewal, planning, and water and sewer development were funded individually with payment guaranteed for each project. With the development of the Community Development Block Grant Program, these payment guarantees continued to be honored through a 3-year extension. However, under the new Urban Development Action Grant program, eligible "distressed" cities will compete for funding under a formula measuring age and condition of housing stock, average income, population loss, and stagnating or declining tax base. Some city officials fear that such a determination may lessen the total dollar amount they receive from HUD when measured against earlier funding under the categorical grant programs.

[67] U.S., Department of Housing and Urban Development, *Community Development Block Grant Program: Second Annual Report* (1976), pp. 32–33.

[68] Robert C. Embry, Jr., Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development, "Notice to HUD Field Staff: Management of the Community Development Block Grant Program," Apr. 15, 1977.

[69] Harris testimony.

[70] Robert C. Embry, Jr., "Notice to HUD Field Staff: Monitoring of Entitlement Communities Under the Community Development Block Grant Program" (undated).

[71] 24 C.F.R. 570.303(c)(1975).

[72] See Harris testimony and Clagett interview.

[73] 42 Fed. Reg. 56450 (1977) (to be recodified in 24 C.F.R. Part 570).

[74] Harris testimony.

[75] Ibid.

Women's Rights

During 1977 two of the most critical women's rights issues—the proposed Equal Rights Amendment to the Constitution and the right to reproductive choice—were subjected to serious attack. Little progress was made toward ratification of ERA, first introduced more than 54 years ago, and ground was lost in assuring the right of reproductive choice, particularly to poor women.

Equal Rights Amendment

Indiana was the only State to ratify the Equal Rights Amendment (ERA) in 1977, bringing the total number of States to 35, three short of the number required for ratification. Although only one State did ratify the amendment, action was taken in 1977 defeating the amendment in one or both houses of seven State legislatures.[1] In four additional States, the amendment was defeated or not acted upon in legislative committee.[2]

In eight State legislatures,[3] recission resolutions brought to a vote were defeated in 1977. Such a resolution was successful in Idaho, however, which joined Nebraska and Tennessee in rescinding earlier ratification. Recission resolutions were introduced but not brought to a vote in six other States.[4]

Views expressed within the Congress, as well as those set forth in an advisory opinion issued in February 1977 by the U.S. Attorney General's office, suggest that State actions rescinding earlier ratifications would be ignored in tabulating totals, with such States counted as having duly ratified.[5] The recission efforts, however, are a barometer of strong opposition that has placed in doubt the likelihood of securing the three additional States required for ratification by March 22, 1979.[6] Efforts have begun, however, to extend the deadline. In November the House Subcommittee on Constitutional Rights held hearings on H.J. Res. 638, a bill which provides an additional 7 years for ratification.

The Commission believes that the ERA will provide a needed constitutional guarantee of full citizenship for women and will assure the rights of both women and men to equal treatment under the laws.

Ratification of the ERA is an important and appropriate means of alleviating sex discrimination—just as the adoption of the 13th and 14th amendments was vital to the cause of racial equality.[7] Given the history of pernicious racial discrimination sanctioned by law in the Southern States, it is striking to note that 8 of the 15 States that have not ratified the ERA are in the South.[8]

In the substantial controversy surrounding both ratification and recission efforts, several issues cited by anti-ERA forces are based on incorrect legal interpretations of the effect of the amendment. One is the charge that separate public restrooms would no longer be provided for women and men. The U.S. Supreme Court has ruled clearly that a right of privacy is well grounded in the Constitution; the ERA could not supersede this right which would guarantee the privacy of restroom facilities.

Another concern based on legal misinterpretation is that the amendment would sanction homosexual marriage. Congressional legislative history is clear that the only effect of the ERA would be that, if a State permits single sex marriage between two males, it must likewise permit such marriage between two females. The ERA could not be used to overturn a State statute forbidding homosexual marriage.[9]

Opposition also centers on the ERA's potential effect on military service. Congress has always had the authority to conscript women,[10] and the Selective Service Act provided for many exemptions and deferments. In the event that the current volunteer force is discontinued and conscription returns, similar exemptions could be expected and would apply to women as well as men. Thus, a mother with

[1] Arizona, Florida, Illinois, Missouri, Nevada, North Carolina, and Virginia.
[2] Georgia, Louisiana, Mississippi, and Oklahoma.
[3] Connecticut, Kansas, Montana, North Dakota, Oregon, Rhode Island, South Dakota, and Wyoming.
[4] Indiana, Iowa, New Hampshire, Ohio, Texas, and Wisconsin.
[5] John H. Harmon, Acting Assistant Attorney General, memorandum to Robert J. Lipshutz, Counsel to the President, Feb. 15, 1977.
[6] Ratification is required by three-fourths of the States 7 years from the date of approval (Mar. 22, 1972) by Congress.
[7] Statement of the U.S. Commission on Civil Rights on the Equal Rights Amendment (June 1973).
[8] Tennessee is the only Southern State which has ratified the amendment.
[9] 92d Cong., 2d sess., 118 Cong. Rec. 9331 (1972).
[10] During the Second World War, for example, H.R. 4906 was introduced to draft "unmarried, unemployed women into the services," 78th Cong., 2d sess., 90 Cong. Rec. 5191 (1944). The Nurses Selective Service Act of 1945, H.R. 2277, had passed the House and been reported out favorably by the Senate Military Affairs Committee when the war ended.

young children or a woman whose absence would cause "hardship to dependents" would not be subject to the draft. Further, only 1 percent of all eligible males were ever assigned to combat duty in the field in 1971.[11] Since more women currently wish to volunteer than the services will accept,[12] the ERA would, in fact, extend the possibilities of G.I. benefits (learning skills, job preference, medical benefits, mortgage insurance, and education) to a greater number of women.

Perhaps the greatest opposition directed at the ERA is centered on its effect on wives not employed outside the home. The first of three usual charges is that the ERA would eliminate the husband's "duty of support." In fact, the duty of support is a legal issue (subject for court relief) only upon separation or dissolution of a marriage. While a husband and wife reside together, the husband is required to provide only the basic necessities, and he is the sole judge of the adequacy of same.[13]

The second charge is that the ERA would force wives to work outside the home to support husbands. In fact, the amendment applies only to Federal and State law and not to private action. There is no law compelling any person to work, and the ERA cannot effect one. Further, in States that have adopted State equal rights amendments, the amendment has not been interpreted to require wives to support husbands.[14]

The third charge is that alimony would be eliminated. Support upon dissolution of a marriage is more fiction than fact at present. Most studies show that few women request alimony and fewer still are granted it; such payments are generally inadequate, and relatively few men pay support obligations (alimony and/or child support) with regularity or for any substantial length of time after the initial court order.[15] Nonetheless, congressional debate on the effect of the ERA noted that both husband and wife would be entitled to fairer treatment upon dissolution of a marriage on the basis of individual circumstance rather than sex.[16] In other words, payments would be based upon ability to pay and receipt would be based upon need.

To respond to these concerns, the U.S. National Commission on the Observance of International Women's Year issued throughout 1977 a series of State-by-State analyses of the legal status of homemakers. Since the majority of States base their laws applicable to homemakers in the common law principle that earnings determine ownership, homemakers may need the Equal Rights Amendment more than any other class of women.

Finally, opponents argue that State and Federal laws requiring reform to eliminate sex bias can be amended on a piecemeal basis in the absence of the ERA. Without the amendment, however, it is unlikely that such revision would be undertaken with thoroughness, especially since no compelling mandate would exist. Further, such an effort would require a single coherent theory and consistent national application to achieve equity for the majority of American citizens. In a title-by-title review of the U.S. Code released in April 1977, the Commission found a myriad of unwarranted sex-based differentials, the cumulative effect of which was to assign to women, solely on the basis of their sex, a subordinate or dependent role.[17]

Reproductive Choice

In the area of reproductive freedom, there was a sharp abridgement of a woman's right to choose abortion as set forth by the 1973 Supreme Court rulings.[18] This development resulted from the

[11] 92d Cong., 2d. sess., 118 Cong. Rec. 9332 (1972).

[12] M. Rawalt, *The Equal Rights Amendment for Equal Rights Under Law* (Women's Equity Action League, 1976), p. 5.

[13] Brown, Emerson, Falk, and Freedman, *The Equal Rights Amendment: A Constitutional Basis for Equal Rights for Women*, 80 Yale L.J. 871, 943 (1971); Citizens' Advisory Council on the Status of Women, *The Equal Rights Amendment and Alimony and Child Support Laws* (1972), pp. 2–3.

[14] National Commission on the Observance of International Women's Year, *To Form a More Perfect Union* (1976) pp. 27–28; and Rawalt, *The Equal Rights Amendment for Equal Rights Under Law*, p. 5.

[15] *To Form a More Perfect Union*, pp. 229, 233–4; and *The Equal Rights Amendment and Alimony and Child Support Laws*, pp. 4–8.

[16] 92d Cong., 2d, sess., 118 Cong. Rec. 9523, 9526–7, (1972).

[17] U.S., Commission on Civil Rights, *Sex Bias in the U.S. Code* (April 1977), p. 204.

[18] See Roe v. Wade, 410 U.S. 113 (1973), in which the Supreme Court ruled that State criminal laws that prohibit abortions without regard to the state of pregnancy violate the due process clause of the 14th amendment which protects the right of privacy. Id. at 163. The Court, however, held that this right to privacy is not unqualified, that the State has legitimate interests in protecting the health of the pregnant woman and the potentiality of human life, and that these interests become more compelling as the pregnancy progresses.

The Court thus ruled that in the first trimester of pregnancy, the decision as to abortion must be left solely to the judgment of the pregnant woman and her physician. After the first trimester, however, the State may regulate the abortion procedures in ways reasonably designated to protect the health of the pregnant woman. After the stage of viability of the fetus, the State may prohibit abortion altogether in the interest of protecting the potentiality of human life. Id. at 164.

See also Doe v. Bolton, 410 U.S. 179 (1973), in which the Court held that a State cannot erect procedural barriers to the obtaining of an abortion not reasonably related to the protection of legitimate State interests in maternal health and potential of human life, as enunciated in Roe v. Wade, supra. See also Doe v. Bolton, 410 U.S. 179 (1973). The *Doe* decision held that States could not make abortions unreasonably difficult to obtain. In *Doe*, the Supreme Court ruled that States could not "create elaborate procedural

reintroduction of the Hyde Amendment in Congress and Supreme Court decisions which held that under existing laws States are free to exclude elective abortions from medical procedures funded by Medicaid,[19] and that public hospitals are not required to provide elective abortions.[20]

The Hyde Amendment

In 1977, as in 1976, Congress restricted the use of Federal Medicaid funds for abortion by amending the appropriation bill for the Departments of Labor and Health, Education, and Welfare. The so-called "Hyde Amendment," which was first passed on September 30, 1976, provided that none of the funds appropriated were to be used to perform abortions except where the life of the mother would be endangered if the fetus were carried to term.[21] That section was not enforced until August 1977 because it was immediately challenged in court and was enjoined.[22]

In June 1977, the House voted to insert a second Hyde Amendment, even more restrictive than the first, in the 1977 appropriation bill.[23] The Senate passed the amendment only after modifying language was added permitting use of Federal funds for abortions in cases of rape or incest, or when necessary to save the life of the woman, or when medically necessary.[24] Finally, in December 1977, the House-Senate conference committee agreed upon compromise language.

This language, signed into law by the President on December 9, 1977, provides for Medicaid abortions: where the life of the mother would be endangered if the fetus were carried to term; where there was rape or incest, reported promptly to a law enforcement agency or public health service; or where two physicians determine severe and long-lasting physical health damage to the mother if the pregnancy were carried to term.[25]

The Commission views with concern the tendency of Congress to deal with major, substantive issues involving a fundamental constitutional right of this kind by attaching riders to appropriations bills. This practice of using appropriations bills as legislative vehicles deprives substantive committees of thorough deliberations of such issues and is inappropriate for discussing matters of such importance. This Commission therefore welcomes the efforts in the House to develop rules designed to prevent similar amendments from being attached to appropriations bills.[26]

Supreme Court Decisions

The injunction banning implementation of the Hyde Amendment was lifted following June 1977 Supreme Court decisions in three cases. In *Beal* v. *Doe* [27] the Supreme Court ruled that the exclusion of elective abortions from Medicaid coverage is not unreasonable. Although the Court accepted the contention that such an exclusion could not be justified as an effort to protect either the health of the woman concerned or public expenditures, it held that the exclusion rationally furthered the State interest of protecting the potentiality of human life. In effect, the Court concluded that the denial of Medicaid funds for elective abortions does not unduly burden or interfere with a woman's privacy rights.

In *Maher* v. *Roe* [28] the Supreme Court concluded that the State of Connecticut had not violated the equal protection clause of the Constitution by excluding elective abortions from Medicaid cover-

barriers and residency requirements" (Id. at 200) that would make the obtaining of an abortion unreasonably difficult.

[19] Beal v. Doe, 432 U.S.—. 97 S. Ct. 2366 (1977), and Maher v. Roe, 432 U.S.—. 97 S. Ct. 2376 (1977). In Maher v. Roe, the Court ruled that the State need only assert a rational relationship between its decision to exclude elective abortions from Medicaid coverage and the furtherance of a constitutionally permissible State purpose. The "constitutionally permissible purpose" in this case and in Beal v. Doe was the State's "unquestionably strong and legitimate interest in encouraging normal childbirth." Beal v. Doe, 432 U.S. at—, 97 S. Ct. at 2372 and, Maher v. Roe, 432 U.S. at—, 97 S. Ct. at 2385. The Court further indicated in a footnote that one additional interest might be a State's "legitimate demographic concerns about its rate of population growth." 97 S. Ct. at 2385, n.11. This could set a very dangerous precedent since the rate of population growth of minority people in a particular State could be a demographic concern. Continuing this rationale, the rate of minority population growth then becomes a State interest as well as the private concern of minority individuals.

[20] Poelker v. Doe,—U.S.—,97 S. Ct. 2391 (1977). Abortions performed in public hospitals in 1974 constituted only 17 percent of the estimated number needed by low-income women, and in 1975 only 18 percent of all public hospitals in the country provided abortion services, according to "Legal Abortions in the United States 1975–1976," *Family Planning Perspectives,* vol. 9, no. 3 (May/June 1977), pp. 116–29. This decision will decrease the already small number of public hospitals that provide abortion services. In 10 States there were no public hospitals providing such services in 1975. Ibid., p. 128.

[21] Pub. L. No. 94–439, §209, 90 Stat. 1418, 1434 (1976).

[22] McRae v. Mathews, 421 F. Supp. 533 (E.D.N.Y. 1976). The injunction was subsequently lifted by the Supreme Court, *sub nom.,* Califano v. McRae, 97 S. Ct. 2993 (1977).

[23] 95th Cong., 1st sess., 123 Cong. Rec. H-6098, (June 17, 1977).

[24] 95th Cong., 1st sess., 123 Cong. Rec. S-11056, (June 29, 1977).

[25] Pub. L. No. 95–205, §101, 91 Stat. 1460 (1977).

[26] As a result of the conflicts caused by attaching the abortion amendment onto the Labor and Health, Education, and Welfare appropriation bill, a move was initiated in Congress to ban such riders. Charles Johnson, assistant parliamentatian, Office of the Parliamentarian, U.S. House of Representatives, telephone interview, Jan. 12, 1978. See also, *Washington Post,* Jan. 4, 1978, p. A2.

[27] Beal v. Doe, 432 U.S.—, 97 S. Ct. 2366 (1977).

[28] Maher v. Roe, 432 U.S.—, 97 S. Ct. 2376 (1977).

age. The Court held that permissible State purposes might include protecting the life of the nonviable fetus, an interest acknowledged as existing though not compelling in *Roe* v. *Wade.*

Finally, in *Poelker* v. *Doe,* [29] the Court reversed a decision of the U.S. Court of Appeals for the Eighth Circuit which required public hospitals to perform nontherapeutic abortions. The decision in *Poelker* removed any obligation on the part of public hospitals, and most certainly, by analogy, private hospitals, either to use already existing facilities or to procure equipment and facilities for the performance of abortions.

These three recent decisions coupled with the Hyde Amendment have resulted in the nullification of a poor woman's right to choose abortion. Particularly affected by this nullification are rural women,[30] young women,[31] and minority women[32] since they are disproportionately represented among the poor and/or are disproportionately dependent on the services provided for by Federal funds or in public hospitals.[33]

The seriousness of the present abortion issue is apparent when considering the effects these legislative and judicial developments are expected to have. One HEW estimate predicts that strict interpretation of the Hyde Amendment would result in the performance of 292,000 illegal abortions, 25,000 female illnesses or injuries, and 250 female deaths.[34] A woman sometimes pays as little as $25 to $30 for an illegal abortion[35] and nothing, in monetary terms, for a self-induced abortion. Owing to the withdrawal of Federal funds for abortions, poor women in need of the abortion procedure are now required either to forego their right to choose abortion or to submit to dangerous, unsanitary procedures unless $150-$200 (the price of a safe, legal abortion) can be raised out of a poverty level income.[36] Few public hospitals are providing abortions[37] and, if the woman happens to live in a rural area, in addition to being poor, she may not have access to any service within her State which performs abortions.[38] If a woman is one of the million teenagers who become pregnant each year, she may be faced with the additional obstacle of needing parental or spousal consent for the abortion.[39]

Young women, rural women, and minority women are disproportionately represented among the poor and are thus most severely affected by the present curb on Federal funds for abortions. There is good reason to believe that the decline in abortion deaths linked to the reduction of need for illegal abortions since 1973[40] will cease and that once again women, especially poor, minority, young, and rural, will die as a result.

These and other questions and fears have surfaced since the use of Federal funds to cover abortion costs has been curbed. Many questions arise out of the controversy as to what exactly constitutes a threat to the pregnant woman's life. There is disagreement about precisely what makes an abortion "medically necessary" rather than elective, and fears exist about where and to whom poor women will now turn.

[29] Poelker v. Doe, 432 U.S.—, 97 S. Ct. 2391 (1977).

[30] Wyoming Advisory Committee to the U.S. Commission on Civil Rights, *Abortion Services in Wyoming* (June 1977), pp. 12–15.

[31] "Legal Abortions in District Top Births for 1976," *Washington Post,* Sept. 1, 1977, p. 1. See also *New York Times,* Aug. 22, 1977, p. 23, which notes that of approximately 300,000 women in 1975 who had received Medicaid-funded elective abortions, one-third were teenagers, 15,000 of whom were under 14 years of age. "Again, Back-Alley and Self-Induced Abortions," *New York Times,* Aug. 22, 1977, op. ed. sec., p. 23.

[32] See, for instance, Fifty-one State Advisory Committees to the U.S. Commission on Civil Rights, *The Unfinished Business, Twenty Years Later* (1977), p. 129.

[33] Ibid., pp. 95, 102, 111, and 129.

[34] *Washington Post,* Aug. 3, 1977, p. A4.

[35] Center for Disease Control, *Abortion Surveillance, 1975* (April 1977), p. 9.

[36] Since 40 percent of minorities depend on the Medicaid program to meet their health needs, and since a relatively affluent woman will find it considerably easier to spend $200 for a safe legal abortion, the current curb on Federal funding for abortions has a strong disparate effect on minority women. Poelker v. Doe,—U.S.—, 97 S. Ct. 2391, 2395, n.1, 2397–98 (1977) (Marshal, T. dissenting). For poverty income data, see employment chapter of this report.

[37] "Legal Abortions in the United States 1975–1976," *Family Planning Perspectives,* vol. 9, no. 3 (May/June 1977), pp. 116–29.

[38] Alan Guttmacher Institute, *Abortion 1974–1975 Needs and Services in the United States, Each State and Metropolitan Area* (1976), pp. 7–19.

[39] *Washington Post,* Aug. 15, 1977. In addition to the cutoff of public funds to cover the cost of abortions, some States have parental and spousal consent requirements which disproportionately affect women who are young and/or unmarried. Furthermore, State requirements of this type present a barrier to poor women in need of elective abortions beyond the financial curb presently in effect. Missouri has a parental and spousal consent requirement, Planned Parenthood v. Danforth, 428 U.S. 52 (1976). Massachusetts has a parental consent requirement, Belotti v. Baird, 428 U.S. 152 (1976).

[40] Center for Disease Control, *Abortion Surveillance, 1975,* p. 9, and Alan Guttmacher Institute, *Abortion 1974-1975 Needs and Services,* pp. 7–19. In 1972, 1 year before the legalization of elective abortions nationwide, there were 39 known deaths because of illegal abortions. In 1975 there were 4 such deaths. The decline in deaths caused by illegal abortions has been linked to the reduction in illegal abortions performed in 1975. Despite legalization of elective abortions, an estimated 17,000 illegal abortions were being performed in 1974. One key explanation for the remaining illegal abortion rate is the difficulty of obtaining elective abortions. Ibid.

Domestic Violence

Another issue of concern to women that has received increased attention in 1977 is that of domestic or marital violence.[41] Some States have initiated innovative programs (shelters, halfway houses, specifically trained police units, legal assistance) to assist battered women. The majority of States, however, do not provide these women with services or protections. In January 1978 this Commission held a consultation that brought together persons actively involved in this matter to address the issues and recommend to the Commission effective means to grapple with them. A review of domestic violence issues will appear in the Commission's report on the state of civil rights for 1978.

[41] See, for example, Colorado Advisory Committee to the U.S. Commission on Civil Rights, *The Silent Victims : Denver's Battered Women* (1977).

Administration of Justice

Aspects of the administration of justice in the United States were the focus of public concern and important developments during 1977. One major area of controversy concerned allegations of serious police abuse of citizens and of tense, troubled relations between police and minority communities. Questions involving the treatment of American Indians in the administration of justice and far reaching proposals regarding regulation of undocumented aliens were also prominent. Proposed changes in the U.S. criminal code represented positive steps that may reduce discrimination in the criminal justice process. The proposed changes in the code with respect to American Indians, however, have been actively opposed by most Indian groups as restricting tribal jurisdiction.

Police Misconduct

Allegations of police abuse, brutality, and harassment of citizens, particularly minorities, have for too many years constituted an unresolved and galling public problem in America. Instances of police misconduct, beatings, shootings, and intimidation of citizens undermine public safety, trust, and confidence in law enforcement. In 1977 the Commission on Civil Rights received an increasing number of citizen complaints and reports indicating that police misconduct remains a widespread phenomenon that has, in some cities, become so pervasive as to appear to be officially sanctioned.[1]

Serious allegations of police misconduct were made in cities throughout the country. Philadelphia,[2] New York,[3] Houston,[4] Chicago,[5] Los Angeles,[6] Memphis, Tennessee,[7] Jackson, Mississippi,[8] and Montgomery, Alabama,[9] among others, all came under scrutiny during 1977 for questionable police practices and poor police-community relations.

Complaints from citizens have alleged verbal and physical abuse by police of persons stopped for minor violations as well as beatings and violations of constitutional rights during lengthy interrogations.[10]

While the majority of complaints allege excessive force and police brutality, most have not involved shootings.[11] In fact, the Police Foundation noted "a clear national trend among police agencies toward establishing restraint in the use of firearms."[12] Nevertheless, the study warned that local police continue to need clear directives regarding the use of deadly force.[13] Police use of firearms, the study said, "can have a powerful, deleterious effect on the life of a community. Presidential commissions established to study violence and urban riots have

[1] See, for instance, *Philadelphia Inquirer,* Apr. 24-28, 1977, for a detailed review of alleged police misconduct in Philadelphia, Pennsylvania. One former detective offered the following assessment of police practices among some Philadelphia detectives:

> The rule down there [is] convictions at any cost. A detective will say, "Chief, we know it's him, but we haven't got it [a statement of confession] yet." And then [the chief inspector] will say, "get it." And they know it doesn't matter how they get it. Beatings? Yes, I've seen them. Really. Why beatings? It's very simple. They do it because they're told to. It's very lucrative. . . .Convictions is the name of the game. Not truth. . . . *Philadelphia Inquirer,* Apr. 24, 1977, p. 12A.

[2] See *Philadelphia Inquirer,* Apr. 24-28, 1977. On May 5, 1977, following the *Inquirer's* articles on the Philadelphia police, United States Attorney David W. Marston announced that his office would begin investigation of police practices in the city.

[3] See *New York Times,* Mar. 5, 1977, p. 18. The *Times* editorial for this date discusses past shooting deaths in New York City and sees "chillingly similar patterns" in which black citizens are killed by white police under questionable circumstances. The *Times* urges the tightening of psychological screening and testing procedures to halt such incidents.

[4] See *New York Times,* May 20, 1977, p. 14; *Wall Street Journal,* Oct. 10, 1977, p. 1; *New York Times,* Oct. 12, 1977, p. 1; and *Houston Post,* Oct. 13, 1977, p. 1. The *Wall Street Journal* quotes Houston's mayor as charging, "Our police department is white supremacist. There is an illness afoot here—a frontier mentality—that has condoned police excess for years, especially to keep minorities in their place." See also U.S., Commission on Civil Rights, *Mexican Americans and the Administration of Justice in the Southwest* (1970). This report discusses earlier abuses and problems encountered by Mexican Americans in the law enforcement and criminal justice system.

[5] Ruth Wells, executive director, Citizens Alert, Chicago, Ill., letter to Arthur S. Flemming, Chairman, U.S. Commission on Civil Rights, Aug. 5, 1977. Wells' letter reviewed recent allegations of police use of excessive force in Chicago.

[6] Philip Montez, Regional Director, Western Regional Office, U.S. Commission on Civil Rights, memorandum to Office of General Counsel, U.S. Commission on Civil Rights, Sept. 1, 1977. Police-community relations in Los Angeles were characterized as an "uneasy truce." Complaints from south central Los Angeles (largely black) and eastern Los Angeles (predominately Chicano) most frequently accuse police of excessive and unnecessary force in dealing with minority citizens.

[7] The Commission on Civil Rights conducted a 1-day hearing on police-community relations in Memphis, Tennessee, on May 9, 1977.

[8] See U.S., Commission on Civil Rights, Southern Regional Office staff report, "Police Community Relations in Jackson, Mississippi: An Overview" (Feb. 15, 1977).

[9] See *New York Times,* Feb. 6, 1977, p. 24, which reported that the Montgomery, Alabama, director of public safety resigned after he failed a polygraph examination during an investigation into the circumstances of the shooting death of a local black citizen. An investigation revealed that the citizen had been killed by a police officer and that a gun earlier held in police custody was placed with the victim's body to create the impression that he had been armed when shot.

[10] See, for instance, *Philadelphia Inquirer,* Apr. 24, 1977, pp. 1 and 12a; Apr. 26, 1977, p. 1; and May 15, 1977, p. 1.

[11] See, for example, Tom Curtis, "Support Your Local Police (Or Else)," *Texas Monthly,* September 1977, p. 83.

[12] Police Foundation, *Police Use of Deadly Force* (1977), p. 11.

[13] Ibid., pp. 5, 130–36. The Police Foundation noted that many officers view efforts to reduce the use of violent force by the police as attempts to undermine the fight against crime.

pointed out that the precipitating event is often a police shooting of a civilian which, at the time, seems questionable or pointless."[14] It also observed that police are seldom punished in cases involving the questionable use of firearms against citizens.[15]

Some instances of alleged police brutality have resulted in death without shots being fired. One suspect in Philadelphia reportedly was beaten with gun butts and blackjacks by seven police officers and then dropped head first onto a parking lot. The victim died as a result. The police misconduct alleged in this case was corroborated by 16 eyewitnesses, but the matter was never prosecuted.[16] In response to this and other incidents, the United States Attorney in Philadelphia began a grand jury investigation of police practices in Philadelphia, and 15 officers were indicted on 12 charges of brutality and 3 of corruption. Further indictments are expected.[17]

In a well-publicized case in Houston, Texas, a man involved in a disturbance at a bar was arrested, later beaten, and finally taken to police headquarters. The duty sergeant ordered that the man be taken to an emergency room for treatment prior to booking. Instead, officers took the man to a bayou and pushed or threw him into the water. The cause of death, when the body was found, was drowning.[18] Two of the officers involved were indicted, found guilty of negligent homicide (a misdemeanor), and were sentenced to a year in jail and fined $2,000. Their jail sentences were suspended.[19]

During 1977 several major cities were the scenes of disorders triggered in large part by hostility between local police and minority groups. In June, for example, police attempts to disperse a crowd after a shooting in a West Chicago, Puerto Rican neighborhood led to 2 days of rioting.[20] Tampa, Florida, was also the site of 2 days of looting, burning, and rioting in June, when a white officer killed a black youth suspected of breaking into a warehouse.[21]

A March 1977 report described the problems encountered by American Indians in the criminal justice system in Flagstaff, Arizona.[22] Abuses were cited in the treatment of Indians, including setting of excessive bail, refusal to release Indians on their own recognizance, failure to ensure that Indian suspects understood their rights (which are explained in English), and illegal arrest procedures in traffic cases.

Another 1977 study found similar civil rights violations in the administration of justice in two South Dakota counties, Pennington and Charles Mix.[23] Findings included physical abuse of American Indians in police custody, warrantless searches of Indian homes, and selective enforcement of laws by police resulting in the arrest of Indians (but not of non-Indians in similar circumstances). The study also found that Indians are generally excluded from jury service, and that unfair, subjective hiring standards also block them from employment as police officers. The report concludes that there is general police insensitivity to American Indian defendants and their rights in these two South Dakota counties.

Nationally, the Federal Bureau of Investigation and the Department of Justice have taken action in some cases of police brutality and misconduct. Limited resources and personnel, however, have prevented more thorough investigation of local complaints.

Supreme Court Decisions

During 1977 the potential effect of the Supreme Court's earlier decision in *Rizzo* v. *Goode* [24] was a matter of concern in light of allegations of police misconduct. The Court in the *Rizzo* case limited the remedies available to victims of police abuse when it ruled that citizens in suits against officials must prove that the officials directly participated in the deprivation of citizen rights by encouraging or

[14] Ibid., p. 3.
[15] Ibid., p. 11. See also *New York Times,* Dec. 2, 1977, p. A26.
[16] *Philadelphia Inquirer,* Apr. 27, 1977, p. 8.
[17] David W. Marston, U.S. Attorney for the Eastern District of Pennsylvania, telephone interview, Nov. 11, 1977.
[18] Curtis, "Support Your Local Police (or Else)," p. 83.
[19] *New York Times,* Oct. 12, 1977, p. 17. Subsequent to the suspension of the sentences, a Federal grand jury indicted the two policemen for civil rights violations, specifically, §1983 of the Civil Rights Act of 1871.
[20] *New York Times,* June 5–6, 1977, p. 1. In the wake of the Chicago disturbances, the Commission on Civil Rights released a statement on June 23, 1977, noting the discrimination and economic and educational disadvantages faced by Puerto Ricans living in the mainland. The statement recalled that Chicago was the scene in 1966 of similar disturbances arising from similar causes.
[21] Fifty-One Advisory Committees to the U.S. Commission on Civil Rights, *The Unfinished Business, Twenty Years Later* (September 1977). This study reports conflicts in police-community relations in 28 States.
[22] Arizona Advisory Committee to the U.S. Commission on Civil Rights, *Justice in Flagstaff: Are These Rights Inalienable?* (March 1977).
[23] South Dakota Advisory Committee to the U.S. Commission on Civil Rights, *Liberty and Justice For All* (October 1977).
[24] 423 U.S. 362 (1976).

expressly authorizing illegal and unconstitutional conduct.[25] In this suit under section 1983 of the Civil Rights Act of 1871,[26] the Court also held that without evidence of direct participation in unconstitutional actions by local officials, any relief ordered by the courts would constitute an unwarranted intrusion by the Federal judiciary into the discretionary authority of State and local officials to perform their official functions. Proof that such officials learned of violations by subordinates, but did little or nothing to prevent these acts, is no longer sufficient ground for action under section 1983.

During 1977 the Court continued a trend restricting the availability of Federal review of State criminal convictions through Federal habeas corpus petitions.[27] In *Wainright* v. *Sykes,* [28] the Court held that a prisoner who failed to comply with the State's "contemporaneous objection"[29] rule could not gain Federal habeas corpus relief on a claim that his or her confession was obtained involuntarily.

The Court issued two other decisions on the rights of prisoners. One ruled that inmates' constitutional right to access to the courts required prison authorities to provide them with access to adequate law libraries or legal assistance programs.[30] The other decision ruled that deliberate indifference by penal authorities to the serious medical needs of inmates is prohibited by the eighth amendment's ban on cruel and unusual punishment.[31]

The Court continued to narrow the use of the exclusionary rule under which defendants have in the past challenged the prosecution's use of illegally obtained evidence. Court rulings on this question during 1977 came in cases involving self-incrimination[32] and electronic eavesdropping.[33]

Proposed Legislative Reform

Criminal Code

In early May 1977, bills entitled "The Criminal Code Reform Act of 1977" were introduced in both Houses of Congress[34] in an attempt to codify and reform Federal criminal law. Current Federal law makes conspiracy to violate a citizen's civil rights a crime; the reform bill would enlarge upon this by making individuals acting alone subject to prosecution, and by providing that the citizenship or noncitizenship status of the person whose civil rights are violated is irrelevant. This merely reflects the fact that aliens in this country are protected by numerous Federal and statutory provisions and, therefore, deserve the protection of the sanctions provided under the reform bill.

Conspiracies against the civil rights of citizens would be recodified under the act as substantive offenses, permitting prosecution of an individual action taken alone and not as a member of a group.[35] The Criminal Code Reform Act would also extend Title I of the Civil Rights Act of 1968[36] by prohibiting interference, injury, or intimidation on the basis of sex as well as race, color, religion, and national origin,[37] an extension recommended by the Commission.[38] Added to the U.S. Code for the first time would be prohibitions against the obstruction of voter registration and political activities.

Perhaps the most significant civil rights aspect of the reform bill is the creation of a commission to establish sentencing ranges for specific categories of offenses. Sentencing decisions would be subject to appellate review. The proposed sentencing changes promise to reduce the subjectivity, lack of uniformity, and absence of due process that have often led to disparate treatment of minority and women defendants under current Federal practices.

[25] In dissent, Justice Blackmun pointed out that the Court in so ruling "casts aside reasoned conclusions to the contrary reached by the Courts of Appeals of 10 circuits." Id. at 611.
[26] 42 U.S.C. §1983 (1970).
[27] Habeas corpus petitions request a Federal court to review the State conviction of a prisoner to determine whether the prisoner's Federal constitutional rights have been violated.
[28] 97 S. Ct. 2497 (1977).
[29] The contemporaneous objection rule requires a defendent in a criminal case to object to the introduction of unconstitutionally obtained evidence at the time the evidence is first presented in court.
[30] Bounds v. Smith, 430 U.S. 817 (1977).
[31] Estelle v. Gamble, 429 U.S. 97 (1976).
[32] Oregon v. Mathiason, 429 U.S. 492 (1977).
[33] United States v. Donovan, 429 U.S. 413 (1977).
[34] S. 1437 was referred to the Senate Committee on the Judiciary, Subcommittee on Criminal Law and Procedure. The Subcommittee held hearings on the bill from June 7 to Aug. 5, 1977; H.R. 6869 was referred to the House Committee on the Judiciary, Subcommittee on Criminal Justice.
[35] The requirement of proving a conspiracy often reduces the chance of conviction. Prosecution of individuals would be made possible by the proposed changes.
[36] 18 U.S.C. §245 (1970).
[37] 18 U.S.C. §245 (b) (2).
[38] See U.S., Commission on Civil Rights, *Sex Bias in the U.S. Code* (April 1977).

Bilingual Court Proceedings

Other positive legislative action during 1977 included the introduction of bills to provide for bilingual proceedings in all Federal district courts.[39]

Undocumented Aliens

The status of undocumented workers was a major national issue in 1977. In August the Carter administration outlined its plan to take action on the question of undocumented aliens in the United States.[40] The administration proposes civil penalties for employers who knowingly hire undocumented workers, criminal penalties for those who secure jobs for undocumented workers or who act as agents for smugglers of such workers, and stricter enforcement of the Fair Labor Standards Act and the Federal Farm Labor Contractor Registration Act.

The most widely publicized section of the plan provides that permanent resident status will be granted to aliens who can prove continuous residency in the United States from anytime before January 1, 1970, to the present. Five years after the granting of such permanent resident alien status, an individual could apply for U.S. citizenship if residency has been maintained. Other undocumented aliens residing in this country on or before January 1, 1977, who register with the Immigration and Naturalization Service during a 1-year registration period, will be granted temporary resident alien status for 5 years. The plan would also substantially increase enforcement by U.S. border patrols, particularly at the U.S.-Mexican border.

Legislation based on the administration's proposals was introduced in October in the House of Representatives.[41] The bill, known as the Alien Adjustment and Employment Act of 1977, contains only three aspects of the President's earlier proposals. These are the adjustment of status provision, the creation of a new temporary alien status, and the use of employer sanctions. Not contained in the proposed bill are increased border enforcement, the review of immigration statutes, and economic assistance to countries from which illegal aliens are leaving. The Commission in 1977 initiated a study of the civil rights implications of the proposed legislation and of the enforcement practices of the Immigration and Naturalization Service.

Jurisdiction—The American Indian Reservation

Another controversial and important issue involves legal jurisdiction over American Indian reservation areas, specifically, which units of government are responsible for law enforcement and protection. Without congressional authorization, States currently have no administration of justice jurisdiction over Indians who reside on reservations. Such jurisdiction is currently the joint responsibility of the tribal government and the Federal Government.

The Federal Government, through the Federal Bureau of Investigation and local United States attorneys, is responsible for the investigation and prosecution of major felony offenses.[42] Critics have alleged a lack of effective and impartial FBI investigation and a low level of interest on the part of U.S. attorneys in pursuing prosecutions.[43] Reliable estimates indicate that approximately 80 percent of reported felony cases are not prosecuted.[44] As a result, a substantial burden is placed on tribal justice systems, which are limited by law to the imposition of penalties not to exceed 6 months' imprisonment, or a $500 fine, or both. Tribal justice systems are further strained by the continuing decline in aid received through the Law Enforcement Assistance Administration (LEAA) appropriation levels.[45] In fiscal year 1977, the total LEAA budget for tribal justice systems was $3 million compared to $4,363,000 in fiscal year 1974. A further, major reduction in the budget is projected for fiscal year 1978.[46] Tribes have had to meet criminal justice costs through the use of tribal funds that otherwise could have been spent on badly needed social or economic development programs.

Federal law permitted a number of States to assume, without tribal consent, civil and criminal jurisdiction on Indian reservations,[47] a move actively opposed by most tribes. In a May 1977 report, the

[39] H.R. 342, 1996, 2350, and S. 1315.

[40] Office of the President, Press Secretary, Undocumented Aliens—Fact Sheet, Aug. 4, 1977.

[41] H.R. 9531, 95th Cong., 1st sess., 123 Cong. Rec. 10865 (1977).

[42] Major Crimes Act, 18 U.S.C. §1153 (1970). Other areas of Federal jurisdiction are spelled out in the General Crimes Act, 18 U.S.C. §1152 and the Assimilative Crimes Act, 18 U.S.C. §13.

[43] American Indian Policy Review Commission, "Task Force Report: Federal, State, and Tribal Jurisdiction" (July 1976).

[44] National American Indian Court Judges Association, *Justice and the American Indian,* vol. 5, p. 5.

[45] 42 U.S.C. §3711 *et seq.* Funds are provided for this purpose through the Law Enforcement Assistance Administration.

[46] The fiscal year 1978 LEAA-funded budget is just under $2 million.

[47] Pub. L. No. 83-280, Aug. 15, 1953, codified as 18 U.S.C. §1162 and 28 U.S.C. §1360 (1970). The 1968 Indian Civil Rights Act permits States not covered by 18 U.S.C. §1162 and 28 U.S.C. §1360 to assume civil and

American Indian Policy Review Commission recommended that tribal governments be given the option to remove all or part of State jurisdiction.[48] The recommendation was based on findings that State jurisdiction was repugnant to tribal sovereignty and self-government and on the failure of States to provide adequate nondiscriminatory services in the administration of justice.

Also in 1977, the U.S. Court of Appeals for the Ninth Circuit struck down the State of Washington's piecemeal assumption of jurisdiction as violating equal protection standards.[49] In an equal protection ruling, the appeals court invalidated the State statute with the ultimate result (unless overturned by the U.S. Supreme Court) that the State of Washington no longer has criminal or civil jurisdiction on Indian trust lands where that jurisdiction was assumed without tribal consent.

Related to the issue of jurisdiction within Indian reservations is the question of defining the legal boundaries of such reservations. Generally, boundaries have been established by treaty, Executive order, or specific legislation. Until recently, the thrust of caselaw has been that, to alter these boundaries, a clear intention of the parties must appear in subsequent legislation or agreement.[50] Starting with *De Coteau* v. *The District Court,* [51] however, the Supreme Court has increasingly ruled in favor of reducing or disestablishing reservation boundaries.

In 1977 the Supreme Court ruled in *Rosebud Sioux* v. *Kneip* [52] that a clear expression of congressional intent in either the statute or its legislative history is not necessary if surrounding circumstances make it clear that the intent was to diminish the land area which had been reserved for the tribe under an existing treaty. The Court ruled that the questionable "opening" of part of reservation lands to settlement by non-Indians should be viewed not just as an arrangement under which the United States would sell parcels of land within the original reservation (with proceeds going to the tribe), but also, more germanely, that such action should be treated as a jurisdictional retaking of the land by the United States Government.[53] Jurisdictional control over other reservation lands similarly "opened" to settlement by non-Indians may now be questioned in the light of this case.[54]

In off-reservation areas Indian Americans are subjected to the jurisdiction of local and State administration of justice systems. These systems, particularly in border town areas, have been the subject of past and continuing criticism, including complaints of discriminatory law enforcement practices. Problems found by the Commission with respect to the exercise of law enforcement by non-Indians over Indians clearly illustrate the importance of the issue of jurisdictional control over reservation lands.[55]

criminal jurisdiction on Indian reservations, but only with the consent of the affected tribes. 25 U.S.C. §1321 (1970).

[48] American Indian Policy Review Commission of the United States Congress, *A Policy for the Future* (1977).

[49] Confederated Bands and Tribes of the Yakima Indian Nation v. State of Washington, No. 74–1225 (9th Cir. Apr. 29, 1977). The State of Washington had moved to assume jurisdiction over: compulsory school attendance, public assistance, domestic relations, mental health, juvenile delinquency, adoption proceedings, dependent children, and operation of motor vehicles.

[50] Mattz v. Arnett, 412 U.S. 481 (1973).

[51] 420 U.S. 425 (1975).

[52] 97 S. Ct. 1361 (1977).

[53] Three dissenters unsuccessfully argued that to base a diminishment of reservation lands on an act (or acts) of Congress, which did not clearly express diminishment as the intent of Congress, was both an erroneous legal presumption and a possible source of confusion. Id. at 1377.

[54] For example, the city of Tacoma, Washington, recently filed suit against the Department of Interior over taking land into trust for the Puyallup Tribe. This litigation is based in part on the claim that the Puyallup Reservation was similarly diminished.

[55] See, for example, New Mexico Advisory Committee to the U.S. Commission on Civil Rights, *The Farmington Report: A Conflict of Cultures* (1975).

Political Participation

While 1977 was not a major election year, the increasing involvement of women and minorities in the political process continued. Opportunities for effective and full participation in public affairs were enhanced by Presidential appointments and several Supreme Court decisions concerning voting rights.

Presidential Appointments

President Carter committed himself to increasing the proportion of minorities and women in top level Federal Government jobs because of their underrepresentation in the past.[1]

By December 1977 the President had announced 632 appointments; of these, 77 (12 percent) were female and 91 (14 percent) minority. Blacks comprised the largest number of minorities with 56 appointments, followed by Hispanics with 28 appointments, and Asian Americans and Native Americans with 4 and 3 positions, respectively.[2]

It is significant that certain of these appointments were to key top level positions. For example, Juanita M. Kreps, a white woman, is Secretary of the Department of Commerce; Patricia Roberts Harris, a black woman, is the Secretary of the Department of Housing and Urban Development; Andrew Young, a black man, was appointed U.S. Ambassador to the United Nations; and Leonel Castillo, a Hispanic man, was appointed as Commissioner of the Immigration and Naturalization Service.[3]

As yet there has been no indepth study of the personnel policies of the administration for comparative analysis. Such an analysis would be helpful, together with the establishment of a "benchmark" by which the administration's commitment to minority and female representation can be evaluated.

Voting Rights Enforcement and Litigation

Enforcement of key provisions of the Voting Rights Act[4] continues to affect the participation of minorities in the political process. During 1977 jurisdictions covered under section 5 of the act continued to submit (as required) changes in voting laws, practices, and procedures to the U.S. Attorney General for a determination that the changes would not discriminate against racial or language minorities.[5] From October 1976 through June 1977, 1,204 such submissions involving 2,544 voting changes were forwarded to the Department of Justice.[6] They included changes in bilingual procedures and polling places, and the form of local government, reapportionments, and annexations. During this period, 40 objections were raised by the Department of Justice requiring modification of the changes before they could be enforced.[7] This process can significantly advance minority voting rights.[8]

During the past year a number of cases pertinent to the Voting Rights Act proceeded through the courts. In *Williamsburgh* v. *Carey,* an important ruling issued in March 1977, the U.S. Supreme Court upheld a New York legislative redistricting plan for Kings County. The plan was developed to overcome a Voting Rights Act objection to previous plans that appeared to dilute minority voting rights.[9] The plan increased nonwhite majorities in some of the districts, but it did not change the number of districts with nonwhite majorities. The Court held that using racial factors for redistricting to comply with the Voting Rights Act did not violate the 14th or 15th amendment.[10] While the long term implications of this decision are still difficult to gauge, the ruling appears significant because the Court found

[1] *Washington Post,* June 19, 1977, p. A17.
[2] Office of the President, Presidential Personnel Office, *Profile: Presidential Appointments* (Dec. 28, 1977).
[3] Ibid.
[4] 42 U.S.C. §1973 (1976).
[5] Id. See U.S., Commission on Civil Rights, *Using the Voting Rights Act* (1976), p. 9.
[6] Drew Days III, U.S. Assistant Attorney General, "The Department of Justice Voting and Elections Activities" (speech delivered to the Advisory Panel of the Federal Election Commission's Clearinghouse on Election Administration, July 25, 1977), pp. 13–14.
[7] Ibid., p. 14.
[8] For example, in April 1976 the Attorney General had objected to 13 of 23 proposed annexations by the city of San Antonio, Texas, because the city had not shown that the annexations would not result in dilution of minority voting strength in a system in which the nine city council members (including the mayor) were elected at large, with numbered posts and a majority requirement. Such features frequently have been identified as restricting minority voting rights, and the Department of Justice suggested that adoption of a single-member ward system of election could remedy the problem. The city developed a single-member system, which resulted in the spring 1977 city council election of five Mexican Americans, one black, and four whites. The previous city council was composed of two Mexican Americans, one black, and six whites. J. Stanley Pottinger, U.S. Assistant Attorney General, letter to James M. Parker, city attorney, city of San Antonio, Apr. 2, 1976; George Korbel, U.S. Commission on Civil Rights, Southwestern Regional Office, telephone interview, Aug. 30, 1977.
[9] 430 U.S. 144 (1977).
[10] Id. at 161.

that, in some circumstances at least, a race-conscious plan does not violate the Constitution.

In *Briscoe* v. *Bell* the Supreme Court rejected a Texas effort to avoid coverage under the Voting Rights Act Amendments of 1975, which extended the protections of the act to and required bilingual elections in Texas, among other jurisdictions.[11] The Court held that section 4(b) of the act clearly prohibits judicial review of rulings on the act's coverage issued by the enforcing officials—the Attorney General of the United States and the Director of the Bureau of the Census. The only recourse available to the State is a (bailout) suit to terminate coverage under strict limitations and burden of proof outlined in section 4 (a) of the act.[12] Since coverage of all voters in Texas was a major aim of Congress in its 1975 deliberations on the Voting Rights Act, the outcome of *Briscoe* v. *Bell* was positive.

Despite the gains made by minorities and women in the political arena in 1977, full participation remains an unattained goal. Women and minorities continue to be underrepresented in elected positions at all levels of government.[13] Also, while the minority electorate played a major role in the 1976 Presidential election, recent data reveal that fewer than 50 percent of the minority voting age population voted in that election.[14] A substantial problem of nonparticipation clearly remains.

While significant court cases have been decided in favor of minority voting rights, and opposition to bilingual elections among State and local election officials appears to have diminished, several possible problem areas have emerged in litigation and enforcement of the Voting Rights Act. Several cases in lower courts raise issues that could adversely affect minority voting rights. For example, challenges to the reach of the Voting Rights Act preclearance requirements[15] and to coverage under the minority language provisions[16] bear watching. Also, some covered jurisdictions have not submitted bilingual election plans to the Attorney General for review, and they may not have conducted bilingual elections.[17] Justice Department enforcement of bilingual requirements in some jurisdictions has been delegated to U.S. attorneys around the country who are neither trained nor staffed for such monitoring.[18]

[11] —U.S.—(1977), 97 S. Ct. 2428 (1977).

[12] Id. at 2431. To win such a case, Texas would have to prove that its English-only elections were not used with a discriminatory purpose or effect for 10 years preceding its suit. 42 U.S.C. §1973b (1976).

[13] For example, although the number of black elected officials continues to increase (8 percent increase from June 1976 to July 1977), they "continue to account for less than one percent of the more than 522,000 elected officials in the Nation." Joint Center for Political Studies, *JCPS News* (press release), Dec. 1, 1977.

[14] Southwest Voter Registration Education Project, "The Latino Vote in the 1976 Presidential Election" (1977), p. 1; Maebell Bennett, research department, Joint Center for Political Studies, telephone interview, Aug. 31, 1977; U.S., Department of Commerce, Bureau of the Census, *Voter Participation in November 1976,* Series P–20, No. 304, p. 1.

[15] E.g., U.S. v. Board of Commissioners of Sheffield, Alabama, 430 F. Supp. 786 (N.D. Ala. 1977), appeal pending, No. 76–662.

[16] E.g., Choctaw and McCurtain Counties, Oklahoma v. U.S., Civil No. 76–1250 (D.D.C., filed July 6, 1976); Doi v. Bell, Civil No. 77–0256 (D. Hawaii, filed July 19, 1977).

[17] This statement is based on comparison of the list of covered jurisdictions and the section 5 weekly submission lists prepared and circulated by the Voting Section of the Civil Rights Division, Department of Justice.

[18] See memorandum from James P. Turner, Acting Assistant Attorney General, Civil Rights Division, to U.S. Attorneys (in districts covered by section 203 of the Voting Rights Act), Oct. 22, 1976, and staff interview with David P. Bancroft, Assistant U.S. Attorney, Northern District of California, San Francisco, Calif., June 30, 1977.

Civil Rights Reorganization

One of the more significant civil rights developments in 1977 was the active involvement of both the executive and legislative branches of the Federal Government in efforts to reorganize Federal civil rights enforcement programs. This Commission has documented the need for substantial reorganization. As a number of Commission reports point out, current Federal civil rights enforcement efforts suffer from duplication, inconsistent policies and standards, and lack of overall leadership.[1]

One of President Carter's commitments during the 1976 campaign was to seek authority to carry out a major reorganization of executive branch agencies. In February 1977 he specifically emphasized his intention to consolidate the Government's equal employment effort.[2] In April the President received authority from Congress to carry out such a reorganization of the executive branch.[3] Shortly thereafter, he established the President's Reorganization Project within the Office of Management and Budget. A Task Force on Civil Rights Reorganization was set up within the reorganization project.

The civil rights task force sought to evaluate and make recommendations for improving civil rights enforcement by specific subject matter areas. The first area the task force studied was equal employment opportunity enforcement. All Federal agencies with equal employment opportunity enforcement responsibilities were closely examined and were asked for opinions and ideas as to how equal employment enforcement efforts could be improved.[4] The task force simultaneously solicited the views of private civil rights organizations and advocacy groups, and representatives from the business community and major labor organizations.[5] The task force also asked this Commission to reassess the agencies discussed in its 1975 report on Federal equal employment enforcement efforts.[6] The task force has also begun to assess Federal civil rights enforcement efforts in housing, education, and programs of Federal financial assistance.

Activity generated by the Task Force on Civil Rights Reorganization was only part of the reorganization effort during 1977, particularly in the area of employment. The Equal Employment Opportunity Commission, Civil Service Commission, and Departments of Labor and Justice each conducted independent evaluations of their current equal employment enforcement responsibilities and proposed or made major changes as a result.

EEOC, under the direction of the newly appointed Chair, Eleanor Holmes Norton, began a complete reorganization of its headquarters and field offices and redefined its approach to complaint processing and systemic litigation.

Other EEOC initiatives include: combining the agency's field investigation and legal personnel in unified field offices so that compliance process under Title VII is more cohesive; establishment of a specific program for accelerating the processing of new individual complaints by emphasizing early settlement procedures; creation of special teams to handle the backlog of complaints; and redefinition of the concept "reasonable cause" to ensure that a complaint has merit so that such "reasonable cause" findings will now be equivalent to an agency determination that a case is worth litigating.[7] While it is too early to judge the effectiveness of these

[1] In particular, volumes II, V, and VII of the series of this Commission's reports entitled *The Federal Civil Rights Enforcement Effort—1974* describe the difficulties the Federal Government has encountered in enforcing fair housing and equal employment laws and Executive orders, and in providing clear executive leadership to civil rights enforcement. Volumes II and V recommend substantial reorganization and restructuring of the enforcement process within Federal agencies. Volume VII calls for "comprehensive executive oversight and direction" in guiding the Federal civil rights effort.

[2] *Weekly Compilation of Presidential Documents*, vol. 13, no. 7, Feb. 14, 1977.

[3] Reorganization Act of 1977, 5 U.S.C. §501 (1977).

[4] Separate meetings were held in July between task force members and representatives of the Departments of Justice and Labor, the Civil Service Commission, and the Equal Employment Opportunity Commission.

[5] Among the civil rights groups were the Lawyers' Committee for Civil Rights Under Law, the Leadership Conference on Civil Rights, the Urban League, the National Association for the Advancement of Colored People, the Mexican American Legal Defense and Education Fund, and the Women's Legal Defense and Education Fund. In the business community, a sample of task force contacts includes the Business Round Table, the Equal Employment Advisory Council, the U.S. Chamber of Commerce, and the National Association of Manufacturers. The major labor organizations included the American Federation of Labor-Congress of Industrial Organizations, the American Federation of Government Employees, and the International Union of Electrical, Radio, and Machine Workers.

[6] *The Federal Civil Rights Enforcement Effort—1974*, vol. V, *To Eliminate Employment Discrimination* (1975). Commission staff evaluated changes and developments which had occurred since 1975 at the agencies discussed in volume V, as well as at the Employment Section of the Department of Justice's Civil Rights Division. A report was submitted to the task force in September and published in December as *The Federal Civil Rights Enforcement Effort—1977 : To Eliminate Employment Discrimination, A Sequel* (December 1977).

[7] EEOC's reorganization plans are presented at length in the Bureau of National Affairs, *Daily Labor Report* (July 21, 1977).

initiatives, they do represent the kind of major reforms needed to enable EEOC to carry out its vital task.

The Labor Department conducted a detailed evaluation of its contract compliance program. Its major internal report recommended, among other things, consolidation of contract compliance responsibilities within the Department of Labor.[8]

The Civil Service Commission proposed to institute a number of special employment selection processes to correct the underutilization of minorities and women in Federal employment.[9] In addition, the Civil Service Commission, together with the Office of Management and Budget, are involved in the Federal Personnel Management Project, a comprehensive study of Federal personnel management that is part of President Carter's executive branch reorganization effort. The project found inherent conflict between the Civil Service Commission's role in personnel management and its role in adjudicating complaints against the Federal personnel system. One remedy the project proposes is the creation of an independent counsel to handle appeals, including equal employment opportunity appeals.[10]

The Justice Department has moved to consolidate all equal employment litigation functions in the Civil Rights Division's Employment Section[11] and to resolve a longstanding dispute between the Department's Civil Rights Division and the Civil Division. For years the Civil Division's positions on equal employment law provided less protection to Federal employees with discrimination complaints than was afforded employees in the private sector by the Civil Rights Division. In late August, the Attorney General notified all U.S. attorneys and Federal agency general counsels that the Federal Government would henceforth apply the same equal employment opportunity principles to its own employment practices that it imposes on private employers and State and local governments.[12]

Furthermore, all of the aforementioned agencies have finally arrived, after nearly 5 years of division, at a common position on uniform Federal guidelines for employee selection procedures.[13] These and similar efforts in the Federal agencies stem from motivation at the highest levels to support and carry out the President's commitments.

Interest in reorganization of the Government's civil rights efforts is not confined to the executive branch. In February Congressmen Don Edwards and Robert Drinan introduced legislation to reorganize both the equal employment and fair housing responsibilities of the Federal Government.[14] Major provisions in the bill include consolidating all Federal equal employment enforcement in EEOC, and giving cease and desist authority to both EEOC and HUD. Hearings were scheduled in January 1978 on the housing sections of the bill (Title II). Action on the employment sections of the bill (Title I) was postponed (with the sponsor's consent) until the President submitted his own employment reorganization plans.

More recently, the proposed Civil Rights Act of 1977[15] was introduced and submitted to the appropriate House subcommittees. This proposal would consolidate all civil rights subject matter areas under one law, placing all enforcement responsibilities in the Department of Justice.

Additional congressional interest in civil rights reorganization is reflected in positions taken by such groups as the Congressional Black Caucus, which devoted considerable attention to this issue in 1977.[16] The Caucus favors substantially consolidating equal

[8] U.S., Department of Labor, Employment Standards Administration, Office of Federal Contract Compliance Program's Task Force, *Preliminary Report on the Revitalization of the Federal Contract Compliance Program* (September 1977).

[9] See U.S., Civil Service Commission, *A Plan For Special Emphasis Employment Programs*, revision of Sept. 19, 1977, developed by CSC Vice-Chairman Jules M. Sugarman.

[10] "Federal Personnel Management Project, Option Paper Number One: Staffing and Equal Employment Opportunity" (Sept. 7, 1977). Numerous project recommendations for strengthening equal employment opportunity could, if adopted, eliminate some major barriers to the employment of minorities and women in Federal Government. For example, one proposal includes the modification of current provisions for providing preference for hiring veterans, who are more frequently male than female. The project also suggests, as one possible approach to affirmative action, the development by Federal agencies of self-imposed "consent decrees" which would set prescribed goals for hiring minorities and women and would be in operation until past discrimination is corrected.

[11] A proposal to accomplish this consolidation was submitted by Drew S. Days III, U.S. Assistant Attorney General, Civil Rights Division, Department of Justice, to the Attorney General.

[12] Griffin Bell, Attorney General, Memorandum to United States Attorneys and Agency General Counsels, "Title VII Litigation," Aug. 31, 1977.

[13] Proposed Uniform Guidelines on Employee Selection Procedures were published jointly by the four agencies in the Federal Register for public comment on December 30, 1977. 42 Fed. Reg. 65542 (1977).

[14] H.R. 3504, Civil Rights Amendments of 1977, Feb. 16, 1977. The proposed legislation has two titles. Title I, which would amend Title VII of the Civil Rights Act of 1964 and related equal employment provisions, and Title II, which would amend Title VIII of the Civil Rights Act of 1968 relating to fair housing.

[15] H.R. 9804, Oct. 28, 1977.

[16] See the detailed *Reorganization Proposal for Federal Employment Rights Efforts* (April 1977), which the Caucus sent to President Carter. The Caucus' letter of August 23, 1977, enabled it and other major civil rights groups to express a common position on reorganization to the Task Force on Civil Rights Reorganization.

employment enforcement responsibilities in the Equal Employment Opportunity Commission and giving that agency primary policymaking authority for this program. The Caucus' position resembles that of the task force in that it opposes an immediate total consolidation.

With the foundation laid for a major reorganization of civil rights enforcement, close executive and legislative cooperation could lead to major improvements in the next 12 months.

The Commission, meanwhile, again urges that the Office of Management and Budget establish a Division of Civil Rights to be located in the Office of the Director, as a necessary step to further improve Federal civil rights enforcement.[17]

[17] See U.S., Commission on Civil Rights, *The Federal Civil Rights Enforcement Effort — 1974: To Preserve, Protect, and Defend the Constitution* (June 1977).

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