DISCRIMINATION AGAINST MINORITIES AND WOMEN IN PENSIONS AND HEALTH, LIFE, AND DISABILITY INSURANCE

A CONSULTATION SPONSORED BY
THE UNITED STATES COMMISSION ON CIVIL RIGHTS IN
WASHINGTON, D. C., APRIL 24-26, 1978

Volume I: Proceedings and Papers

UNITED STATES COMMISSION ON CIVIL RIGHTS

The United States Commission on Civil Rights is a temporary, independent, bipartisan agency established by the Congress in 1957 to:

- Investigate complaints alleging denial of the right to vote by reason of 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 concerning denials of equal protection of the laws because of race, color, religion, sex, or national origin; and
- Submit reports, findings, and recommendations to the President and Congress.

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DISCRIMINATION AGAINST MINORITIES AND WOMEN IN PENSIONS AND HEALTH, LIFE, AND DISABILITY INSURANCE

A consultation sponsored by the United States Commission on Civil Rights, Washington, D.C., April 24–26, 1978

The U.S. Commission on Civil Rights met, pursuant to notice, at 7:30 p.m., Chairman Arthur S. Flemming presiding. Present: Stephen Horn, Vice Chairman; Frankie M. Freeman, Commissioner; Murray Saltzman, Commissioner; Louis Nunez, Acting Staff Director.

Proceedings, April 24, 1978

CHAIRMAN FLEMMING. I will ask the consultation to come to order, please.

The U.S. Commission on Civil Rights has called this consultation for the purpose of examining issues which have come to our attention regarding alleged discrimination against minorities and women in the area of pensions and in the areas of health, life, and disability insurance. Persons knowledgeable in these areas have submitted nine papers for our consideration. They will present a summary of their papers at this consultation, to be followed by comments by several discussants. The Commissioners will then ask questions designed to explore further the points raised by the presentors and the discussants.

This consultation will assist the Commission in developing plans for an indepth study of these issues. Upon completion of this study the Commission will report its findings and its recommendations to the President and to the Congress. In the interim we will be publishing the proceedings of the consultation.

Those of you who have looked at the agenda know that it is a full one. The presentors and the discussants are acquainted with the time

constraints, and we shall do everything we can to stay within those time restrictions with which they are acquainted in order to be fair to all the participants.

Also, the time restraints are such that presentations cannot be heard at this time by persons other than the persons who have been invited by the Commission. We, however, invite those who feel that they have a contribution to make in defining the issues to submit a paper or other documentation in the subject areas in which they are interested. Such material will be considered for possible inclusion as part of the final record of the consultation.

My colleagues and I feel that the issues to be discussed here are of vital importance to the economic well-being of minorities and women. We are aware that, despite our efforts to cover comprehensively issues of concern to women and minorities in the insurance and pension field, some problems remain to be covered. We are concerned about our inability to cover all substantive matters at this consultation, but it is our expectation that the presentations will enable us to establish a firm foundation for our future studies. We are deeply appreciative of the cooperation and help of those who are presenting papers and also those who are serving as discussants.

Overview of the Insurance Industry and Discrimination Against Minorities and Women in the Insurance Marketplace

CHAIRMAN FLEMMING. As you have noticed, in becoming acquainted with the agenda for this consultation, the first subject really is an overview of the insurance industry and discrimination against minorities and women in the insurance marketplace. We are fortunate to have as a person who is going to present this subject one who has established an outstanding reputation for himself in this area. Dr. Denenberg is a graduate of Johns Hopkins University, Creighton University, Harvard University, and the University of Pennsylvania, where he received his Doctor of Philosophy degree with distinction. He had a long and distinguished career as a member of the faculty of the Wharton School of the University of Pennsylvania. He served for a period of 3 years as Insurance Commissioner for the Commonwealth of Pennsylvania and later as special advisor to the Governor of the Commonwealth, dealing with consumer affairs, and still later, as Commissioner of the Pennsylvania Public Utility Commission. He now serves as a columnist with the *Philadelphia Bulletin,* as consumer editor for WCAU–TV in Philadelphia, which is the CBS station, and also as

consumer expert for WCAU radio, which is likewise affiliated with the Columbia Broadcasting System.

Dr. Denenberg, I know that I express the feelings of my colleagues when I say that we are grateful to you for preparing the paper that you have prepared, and we look forward at this time to your summary of that paper.

STATEMENT OF HERBERT S. DENENBERG, FORMER INSURANCE COMMISSIONER OF PENNSYLVANIA

DR. DENENBERG. Thank you very much, Mr. Chairman, members of the Commission, ladies and gentlemen.

I think I should first congratulate the Commission and its staff for putting together this consultation on such short notice. They not only put it together, but they produced a stack of papers which everyone will find useful. I also would like to congratulate them for turning their attention to this issue because I think it's an important one; I think it's neglected. My own analysis is that nothing really happens very much to change anything unless the Commission or some other third party, some civil rights group, some consumer group, some other organization, is actually pounding away at the insurance industry to bring about change.

I am sure that the Commission has already discovered that the insurance industry may be slightly hypersensitive to criticism in this area, and I think one of the reasons they might be hypersensitive to criticism is that they are vulnerable. I don't think they have responded as fast as they should; I think they have allowed too many abuses to continue that should have been changed a long time ago.

Now, much could be said about the insurance industry, and you can say a lot that's good about it and a lot that's bad about it. Just for a change of pace, I'll start by saying something that's good about the industry. I think the people who have worked with the insurance industry for long periods of time and have studied it would agree that it's basically an honest and straightforward industry. That's what's good. I think you could cite a lot of other statistics, but I think more important for the purposes of this Commission is to perhaps cite something about the spirit or personality of the industry which might tell you more about what has to be done to bring about change. To do that, I might cite a couple of case histories, situations that I have been involved in that may tell you something about what it takes to change the industry.

I might start by talking about the whole problem of insurance in the center city. There, of course, we are not talking about what this Commission is primarily interested in; we are talking about auto insurance and homeowners' insurance. But that has actually been a

problem for decades. Anybody that knows anything about it can tell you that people in center cities can't get the auto insurance and the homeowners' insurance that they need and want. Often they can't get it at reasonable prices.

Now, this problem has existed for about 20, 30, or 40 years, for as long as almost anyone can remember, and yet the insurance industry itself took little dramatic action to change that, until the riots of the 1960s—riots here in Washington and Watts, Detroit, Newark, across the United States; and then, when the insurance industry's vital financial interests were affected, they brought about swift and immediate changes.

One of the most interesting things about the riot commission reports of the late sixties is that the only things that got done in a hurry were those things that were done in response to what the insurance industry wanted. They were worried about their financial solvency because they thought major riots in urban America would destroy the industry if permitted to continue. It would wipe out the insurance business, perhaps bankrupt them.

As a result, a commission was appointed, a special presidential advisory committee, to study the problems of insurance in riot-affected areas in 1967. They produced a report in early 1968, and Congress had already acted in the middle of 1968. And that was probably the most dramatic response to the riot problem.

I think there is a lesson there, and that lesson is this: that if the insurance industry's vital financial interests are affected, they can bring about swift and immediate changes. Unfortunately, if it's any other group in our society whose vital interests are affected, the insurance industry moves very slowly.

I will give you a couple of examples of that. I can remember in the early 1970s a group of pediatricians came to me and they were concerned about the problem of the newborn infant exclusion in many medical expense policies and many hospital and surgical policies. That's a provision that denies benefits to the newborn infant for the first 14 to 30 days of its life, and it's often mentioned as a form of sex discrimination because, in a sense, it's a discrimination against motherhood.

Now, you could not find a more vulnerable or more defenseless group to discriminate against than the newborn infant. During those very early days, that's when he is most vulnerable. That's when he is likely to need medical care the most; that's when he may have a congenital defect; he may be a premature baby; he may have other medical problems. And yet, for decades, the insurance industry in many of their policies would exclude coverage of the newborn infant.

These pediatricians wanted something done about that, and they came to me while I was Insurance Commissioner of Pennsylvania, and I said that I thought it was an outrageous, really unconscionable, obnoxious discrimination, and that the exclusion ought to be taken out of policies, and we proceeded to do something about it. But I thought it was interesting, in that case, and almost every other case which I viewed firsthand as insurance commissioner, that when there were serious problems with an insurance policy or with an insurance contract or with the insurance market, it was never the insurance industry that was looking for remedies and relief; it was never the insurance industry that was proposing reform; it was always some other group in our society who had to understand the problem and formulate the problem and seek action.

This particular problem had a happy outcome. Finally, the Health Insurance Association became involved, and as of October 1977, according to the report of the American Academy of Pediatricians, which led the attack on this particular provision, 48 States have now legislated that newborn infant exclusion out of existence. It still exists in North Dakota, Rhode Island, and in the District of Columbia, and what is most interesting and what might be a commentary on reform in our society, apparently the District of Columbia is the only place where there hasn't even been a proposal to outlaw the newborn infant exclusion.

That's one example. I could go on and on with similar examples of people who had problems under the kinds of policies you are concerned with, life insurance, medical expense, annuities, disability, alcoholics, handicapped people, center-city people, the aged, on and on; those problems, auto and homeowners' problems, always the group that was aggrieved had to make a motion for the reform. I could even give you one other dramatic example to make this point.

I found that very often, even when the insurance industry would be helped and benefited directly by a reform, they would still resist it right down the line. The best example I can think of in that particular situation is the whole question of readability of insurance policies. One of the reasons it's possible to perpetrate so much discrimination and unfair treatment in the insurance marketplace is that the whole marketplace is covered with a thick fog of gobbledygook and doubletalk.

I can remember proposing that the insurance industry make its policies readable when I was insurance commissioner back in 1971 and 1972. We had done studies which actually documented from a strict quantitative point of view that the insurance industry's policies were less readable than Einstein's *Theory of Relativity.* There is a readability scale, and it found, for example, that a readable novel may score 80 on

the readability scale; Einstein's *Theory of Relativity* was at 17; the auto policy was at 10; and the homeowners' policy was at 3. So, many insurance policies were actually less readable than Einstein's *Theory of Relativity.*

The insurance industry, of course, resisted proposed simplification violently. They said it would disrupt hundreds of years of legal precedent; it would be impossible to simplify the policy. And it actually took them about 5 years to come around to the position that was actually to their own best interest, because now, by writing readable policies, they have reached the stage where their own claims men, employees, and agents can understand their own policies, and it's simplified their whole training process. That is an example of where it is to the industry's best interest to change and to move forward, and yet, change, improvement, progress, reform, which almost anyone would instinctively accept, were rejected.

Perhaps an even more dramatic example of that same situation is the whole question of discrimination against women. If you look at the women's market, as far as insurance goes in the areas we are talking about—like medical expense, disability, life—that, undoubtedly, is the greatest untapped market the insurance industry has. After all, we are talking about women, the emerging majority. They are participating more and more in the work force. They are staying in the work force longer than men. Yet, for decades—and I don't think this is disputable—the insurance industry discriminated against women in almost every way, not only in terms of employment, but in terms of the policy provisions that would be made available, in terms of the options that would be made available, and in terms of the premium structure.

It took forces outside of the insurance industry to start to change that. It took women's groups, civil rights organizations; it took a lot of litigation, some of which we will hear about tonight; it took a lot of work on the part of State insurance commissioners who actually appointed task forces to study the problem and to do something about it.

In 1973 as an insurance commissioner I appointed a task force of women to study the problem of sex discrimination in insurance. They documented the discrimination very carefully. We took immediate action to change that, and a lot of it was not even disputable. You can talk about a lot of fine issues tonight, and we will hear more and more about them, such things as whether or not there should be one rate for life insurance, whether or not there should be one rate for disability insurance and pensions; but in many areas, there really wasn't that much dispute.

For example, there was little dispute that women ought to have the same coverage as men. Very often a woman could not buy long-term disability, although a man could buy it. Very often, a woman could not buy certain kinds of life insurance, although a man could buy it. Other States and studies documented the same kind of thing: Michigan, California, Iowa, New Jersey, New York, the American Civil Liberties Union, Women's Equity League; and despite the fact, however, that it was in the industry's best interest to do something about this, they continued to ignore, neglect, and overcharge women and discriminate against over half the population.

To me, that is astounding. It was astounding to me in 1973 when I was involved firsthand in the investigation, when I told the committee of Congress that discrimination against women is serious, widespread, and up to now largely ignored. To me, it's more astounding that when I take another look at the same subject in 1978, 5 years later, I can say, as far as the insurance marketplace, that sex discrimination in insurance is still serious, widespread, outrageous, obnoxious, unconscionable—and any other adjective you want to throw in.

That's the bad news. The good news is that it's no longer largely ignored. It has been studied. The good news is that there has been progress, but more bad news: although the insurance industry has moved, it has not moved fast enough; although the insurance industry has taken action, it has not been fast enough.

Again, I stress that, as far as this criticism goes, I'm not talking about controversial areas, which will be disputed at great lengths and which eventually probably be settled by the courts and by the legislature. I'm talking about those areas not even in dispute.

Now, you might ask how you would proceed to document some of these allegations of discrimination. One of the things you might do—and it's one of the things I did—was simply to write the companies and say, "What's happened since 1973? Will you please send me a progress report? Will you send me your policies, your underwriting manuals, so I can see what kind of improvement has taken place in the 5 years since these formal allegations of insurance discrimination were made by State insurance departments, by women's groups, by congressional committees?"

I sent out a letter to 100 companies, and I thought I had given them an opportunity to do some good public relations and to tell me what an outstanding job they have done in eliminating sex discrimination against women. Unfortunately, I did not hear from most of the companies, and most of the companies that answered just sent me a very short and pious reply indicating that they were really working very hard to eliminate discrimination of all kinds. A few companies sent me a very helpful letter. But most of the companies that

responded sent nothing of value, as far as this investigation goes, and not a single company sent me a single policy underwriting guide or similar document, rate schedule, on their own which would document whether or not sex discrimination continues to exist.

The second thing you do is you might ask the trade associations. I tried that. I called one of the life trade associations, and I said, "Everybody that I talked to agrees that women are overcharged for life insurance in many cases. Overcharging is widespread. Women have much longer life expectancy, and yet they get inadequate credits." I said, "Could you send me a summary of what the insurance industry has done? Can you give me the names of the companies that have corrected their premium schedules and have lowered their premiums for women?"

They gave me a few hints, but they were unable to come up with any answers. Now, fortunately, I had a third course to review this whole question, and that is by looking at published documents which various publishing companies put out which summarize what kinds of coverage are available in the insurance marketplace.

For example, I looked in this book. This is called *Time-Saver for Health Insurance.* This is the 1977 edition, the latest edition, the 54th annual edition published by the National Underwriter Company.* If you have questions about sex discrimination in insurance and if you think that because allegations were made in 1973 that sex discrimination has somehow receded into the background, all you have to do is thumb through this book. You don't need any cooperation from any insurance company or any insurance trade association. All you have to do is buy this book and look at it. You will still find, for example, in this book, that companies have disability income policies available and that a man can buy coverage and get protection against disability at age 65, and the same company is telling the women of America that if they want protection against disability due to disease, they can only get 2 years of protection.

You can also look in this book and find that many companies still offer disability policies, but if there is disability caused by pregnancy or its complications, that is not covered. That is one of the things that everybody agrees ought to be changed, and yet it's still here, it's still in the public record, it's still being marketed in the United States.

To give you some idea of how pregnancy is still viewed by the companies, I was amused to find that one company excludes the following from its hospital expense coverage: it excludes any injuries resulting from war, from the insured's attempt to commit a felony,

* Since this paper was delivered, later editions of this and other publications may now be available.

from the insured being involved in an illegal occupation, and from pregnancy.

So, there is war, felony, illegal occupation, and pregnancy. And I might say, as far as the question of pregnancy coverage, the industry has stated its view and I had the paper, so I looked at the view and, basically, what they are saying—and this has got to be one of the more remarkable statements in human history—that, "Pregnancy is a voluntarily entered condition."

Now, I'm not going to dispute that. I will leave that to the women's groups to dispute.

You still find the newborn infant exclusion here. That's medical expense insurance.

You can take a look at life insurance, and all you need to do is to look in *Best's Flitcraft Compend,* 1977, published by A. M. Best Company, and that lists the life insurance offerings of the 250 largest companies in the United States. You will still find in here that very often a company will not issue term to dependent women. Term insurance ought to be a coverage that's available to everyone. More and more people are buying term insurance, and yet, there are companies in here that won't sell term to dependent women.

The waiver-of-premium coverage is a very important coverage. That in effect says that if the life policyholder becomes disabled, he will not have to pay his life insurance premium. There are companies in here that will sell waiver of premium only to self-supporting women, and there is no similar exclusion for self-supporting men. There are companies in here that will say, "We sell waiver of premium up to $150,000 to a man, and only $50,000 to a woman." There are companies in here that have accidental death and dismemberment policies. They will sell $100,000 to a preferred policyholder, $50,000 to a standard policyholder, and $25,000 to housewives.

Most of the companies in here make it very easy for you to document discrimination because all you have to do is turn to the little section marked "Women" on each company's listings, and they will tell you all of the special conditions and limitations and discriminations that are only placed on women in the United States.

Now, another interesting thing about this book. You can say discrimination can take place in many ways. There can be the overt discrimination where they say, "We will not sell you the policy." Then, there is insurance with just as important a kind of discrimination, and that's when they don't try to sell you the policy. Almost everybody agrees that insurance is not something that is bought; it's sold. It takes a consumer educational effort; it takes persuasion; it takes an agent out there selling it.

Many of the companies in here don't even list their rates for women. They will list rates for men; they will not list rates for women. I called up a publisher of the company, and I said, "Why is this so?" He said that the companies decide what they want to put in this book.

I also looked in some late issues, January, February, and March, of an insurance trade publication,† and there are many ads in there advertising life insurance, and the ads invariably quote rates for men, but not women, which suggests to me that the companies are still not geared up psychologically to go after the women's market.

Finally, here is a little book called, *Who Writes What,* and this is a listing of hard-to-place substandard or unusual coverages in life insurance. It's better to give you the flavor of the book than to list all of the special kinds of protection not readily available to women. They have a section in there called, "Kinds of Occupations and Groups that Are Ordinarily on the Prohibited List of Insurance Companies," and I will read from one list:

"Bomb search employees, private contractors going to war zones, horse race jockeys, movie stunt men, professional parachutists, skydivers, wild animals trainers." And then, to get to the particular area of interest, it has, "deep sea divers," that's followed by "domestics," and that's followed by "people involved in guard dog training." It says, "In training guard dogs, this person plays the villain, the person whom the dog attacks."

I think that might tell you something still about the psychology of the insurance industry toward the domestic and perhaps toward women altogether.

I have emphasized these documents because I think they show you that the problem still exists, and although progress has been made, we are still far, far away from any situation that we can be happy with or any case where we can relax. Five years after a major assault on sex discrimination, it's still widespread.

The insurance industry will undoubtedly say that this is all settled, that there is a model industry bill. But I think what this shows you is that it is not settled. The insurance industry can come in here and sweet-talk you from now until eternity and tell you, "We're solving the problem. We've got model bills. We are going to do this; we're going to do that." The fact of the matter is there is still serious and widespread discrimination in the marketplace and the insurance industry is not moving fast enough.

This raises a couple of other questions. We have looked at the things that can obviously be documented. You might ask, "What about the things that have not yet been documented or even discussed?" A prime

† *Best's Review* (life and health edition).

example of that—and I will give you just one—is the whole question of dividends. Now, most companies in the life insurance business are mutual companies, and they write participating policies, and that means they pay a dividend to the policyholder each year, which is a refund due to savings on mortality, savings on expense, or savings on interest.

Now, women have increased their superiority as far as life expectancy, vis-a-vis the male, over time; therefore, women should be earning larger and larger dividends from these companies. It is not clear at all, and it's very hard to document or even get information about dividends, but my suspicion is that women have not been paid the dividends they are entitled to, and this shows you that we have barely scratched the surface of documenting this whole problem of sex discrimination. This is the kind of thing that would be very difficult to get information on. This is the kind of thing that will really take some sort of a government investigation to uncover, because an individual investigator can't go out and get the facts. So, based on all of that, I would conclude that so diverse, so irrational, and so unjustified is the discrimination against women, that one can only wonder about the more subtle and devious forms of unfairness and discrimination which cannot always be easily documented by reference to policy language or numbers in rate tables.

I think that caution is important, and I think it's also important when you get to the other aspect of this consultation, and that's the question of racial and ethnic and religious discrimination. I don't think when you talk about racial or ethnic or religious discrimination you are going to find special rates or policies or provisions that are only applicable to blacks or some other minorities, but I think you will continue to find more subtle kinds of discrimination and very often things that are very difficult to document.

One of the areas which, of course, will be looked at in this consultation is the whole question of employment, but I think that the kinds of discrimination you see against racial and ethnic and religious groups are magnified for a couple of reasons, which I would like to make clear, very briefly. One, as I have already said, insurance must be sold; it is not bought. So, an insurance company can discriminate against whole segments of the population simply by not focusing its advertising on them, simply by not sending its agents after them, simply by ignoring them.

I noticed in the paper by Mr. Randall of Equitable that he says—and Equitable is one of the leaders—"Beyond that, a committee of officers is now planning a program of new sales approaches designed to reach women and minority markets." My own feeling is, even at this late

date, the companies have really not yet geared up to go after women and minority markets.

There is a second aspect of this kind of discrimination. Very often, if people are neglected, they are either not sold insurance altogether or substandard companies and agents go after them. So, when the major companies look away from a market, what you are likely to see is a vacuum, and if it's filled at all, it is filled by lousy agents representing lousy companies selling lousy policies at lousy premiums and providing lousy service. This has been a standard feature as far as insurance to many areas of American life.

There is a third aspect that magnifies all of this: the very groups that are discriminated against are less likely to get coverage through group insurance. In other words, when you look at the lower rungs of society economically, they are less likely to have the stability of employment and the kind of employer that will provide life and group health and pension plans and all the rest.

There is a further aspect and that is, to the extent these groups that are going to be ignored are underrepresented on payrolls and underrepresented on the boards and underrepresented in the officer ranks of companies, that magnifies the problem because very often they are simply ignored; and if their point of view is not expressed by employees and by board members, it may not be expressed at all.

I would throw one other consideration out to you in thinking about this whole problem of racial and ethnic and religious discrimination. I would guess that the figures that will be brought forth during the course of this consultation actually understate the problem of discrimination, because, although the numbers may be there, they are still not there in terms of decisionmaking, in terms of policymaking, in terms of action at all.

I myself often go to insurance conventions and I rarely see a black face where the people coming together are in positions of responsibility. There may be black employees out there and there surely are, because all the figures indicate there are, but still, I think there is a qualitative aspect of the whole problem that has to be evaluated and that is to the extent these minority employees are actually making decisions.

If you look through documents like *Who's Who in Insurance,* which I did, you'll find all kinds of underrepresentation suggested there even more dramatic than what some of the figures indicate. For example, I found in *Who's Who in Insurance* only 33 women were represented. I did not break that down based on ethnic groups or based on color or any other group, but I would imagine that that same kind of documentation would hold for those other groups.

And when you look at the boards of insurance companies, you'll find that this underrepresentation is still more obvious. For example, Korn Ferry International did a study of insurance company boards. They found that 60 percent of insurance company boards—and they're looking at the 35 major companies—had no women; 77 had no minority members. Back in 1973, when I testified before Congress, we checked 15 major companies in Pennsylvania, and we were looking at the question of women. We found 6 of the 15 companies did not have a single officer or director who was a woman; 11 of the 15 had either none or only one; and only 1 of the 15 had at least four women who were officers or directors.

I will add one final point for you to consider in terms of how significant racial, ethnic, and religious discrimination is. I called a lot of trade associations and some of them seemed very alert to the problem, but some of them seemed as though they were just coming into the 20th century as far as considering the problems of discrimination against women and minorities. For example, I called the American College of Life Underwriters, which is supposed to be one of the leading educational institutions of the life insurance industry. They had no idea of how many blacks were participating in their program, and they told me that they have no special programs for blacks or for women. The American Institute, which is their counterpart in the property liability insurance field, seemed to be much more alert to the problem.

I've only got a couple of minutes left and, of course, some of this I go into in more detail in my paper, but let me give you a few of the kinds of remedies that I've suggested.

I think one powerful remedy available to this Commission or any other group is simply the power of publicity, the power of consumer education. I found firsthand as insurance commissioner that you can shake the insurance industry up with, for example, consumer guides. I can remember putting out consumer guides in life insurance in which we listed the 10 highest cost companies, and those companies would come running in to change their premium structure. Now, perhaps someone ought to do that in terms of the 10 companies that discriminate most directly against women in terms of their life insurance pricing.

I think the second thing that my comments suggest is, despite all the talk about sex, racial, ethnic, and religious discrimination, there's still a need for further investigation of the field. All you have to do is read the insurance industry's paper presented in this consultation and you'll see how many questions are left completely unanswered, where they say, "We don't know," and where nobody else seems to know. I think that suggests that someone has to start documenting more evidence.

There have been some studies which for some reason have not been publicized. For example, there is a government study of religious discrimination in insurance. And when I called up to get that, I was told I'd have to go through the Freedom of Information Act. It wasn't available. For some reason, here's a government agency that does a study and yet that information doesn't get though to the public.

I think a third basic thing that I would suggest is that somebody—perhaps this Commission—ought to formulate some programs and deadlines and start applying pressure to the insurance industry because there's a tendency for the insurance industry to do the right thing, but to do it in 10 or 20 years instead of doing it in 1 year. Unless somebody is raising the issue and forcing accountability, nothing is going to happen.

Finally, I think it's important that women and minorities attempt to get more directly involved in the mainstream of decisionmaking in these companies. One place to go after that mainstream determination is on the boards of directors. Now, there is a situation: Blue Cross-Blue Shield has been moving in the direction of democratic elections, and it has become possible for various groups to organize and get people on boards. Mutual insurance companies are especially vulnerable because they theoretically represent policyowners.

But I think all of the lessons of health care that we've learned come down to the same kinds of questions and the same kinds of applications that will be needed to eliminate discrimination in insurance. What's been discovered in health care is that until consumers, until women, until minorities are actually in decisionmaking responsibilities, the system does not operate in their interest. I would suspect that the insurance industry and the question of racial, sex, religious discrimination requires the same kind of answer; and that is, in the final analysis, I think it will take intense pressure by these groups to get into the decisionmaking places of responsibility where they can start changing the company, where they can start changing the insurance marketplace.

Thank you very much.

CHAIRMAN FLEMMING. Thank you. We appreciate it.

[Applause.]

Legislation and Litigation Relating to Discrimination in Pensions and Health, Life, and Disability Insurance

CHAIRMAN FLEMMING. Thank you. You will note that the next subject that is listed on the agenda for the consultation is "Legislation

and Litigation Relating to Discrimination in Pensions, Health, Life, and Disability Insurance." I am very pleased that Ms. Lois Williams is here for the purpose of summarizing the paper that she had developed in this particular area.

Ms. Williams is a graduate of the University of California, Riverside; received her master of arts degree in Kansas State University in Manhattan, Kansas; and her *juris doctor, cum laude,* from the Ohio State University College of Law. During her career, she's served as instructor in English, the Mansfield Regional Campus of the Ohio State University; served as law clerk to the Honorable David W. Dyer, judge of the United States Court of Appeals, the Fifth Judicial Circuit; staff attorney in the Office of the Solicitor, Fair Labor Standards Division. She's now serving as the Acting Counsel for Appellate Litigation, Office of the Solicitor, Fair Labor Standards Division, of the Department of Labor.

We are very pleased to have you with us.

STATEMENT OF LOIS G. WILLIAMS, ACTING COUNSEL FOR APPELLATE LITIGATION, FAIR LABOR STANDARDS DIVISION, OFFICE OF THE SOLICITOR, U.S. DEPARTMENT OF LABOR

Ms. WILLIAMS. Thank you, Mr. Chairman.

It has occurred to me while I prepared this paper that the term "discrimination" means quite different things to lawyers and to insurers and probably to employers as well. It is really a neutral term, but in insurance it has a positive connotation. But in law, it has usually a negative connotation. This paper deals with the collision between these two concepts. The areas where litigation is most active—there are two significant areas now—are in Federal law in the areas of disability insurance and the pensions, and I will deal with both of those in some detail.

The direct regulation of insurance is a State matter, as we all know. Congress has said so. It passed a law to the effect that the business of insurance was to be left to State regulations. However, that law makes it quite clear that Congress could at any time legislate anything it wished to regulate the insurance business. All it has to do is declare the intention to do so. So far it has not directly done that. It has left the regulation of insurance to the States, and the States have done a great many different things in this area.

I cannot possibly deal with the State laws. They cover the whole gamut. I will just touch on a few. The standard State provisions prohibit unfair discrimination in insurance. This, I think, you will find in every State insurance code and it is a traditional insurance

formulation. But what is meant by "unfair" is not the same thing as when we speak in civil rights legislation in the law.

It means, to an insurer, discrimination between individuals who belong to the same class and have the same life expectancy or the same degree of risk. Obviously, that is not fair. But beyond that, I suggest that other kinds of discrimination practiced by insurers are also illegal under Federal law.

Now, I will not deal with the Constitution and the constitutional causes of action that we are familiar with except to mention that they are a much stronger remedy for racial minorities than they are for women or for any challenge based on sex discrimination. The 14th amendment does protect every citizen, but it is a much greater, more potent protection for racial minorities than for women. The Equal Rights Amendment, the effect of that amendment, should it ever pass, is speculative, but I suppose everyone agrees that it would be a 14th amendment, basically, for sex discrimination. That is, it would function in the area of sex discrimination as the present 14th amendment does in the area of race discrimination.

Having said that very briefly about State laws, I should mention that some States do prohibit the kind of discrimination in insurance that I'm going to speak about and I don't want to skip that. There are a very few that do.

Basically, the Federal law doesn't directly regulate insurance—it deals in employment discrimination. But these laws have been very, very potent tools in the area of insurance discrimination. And we're just at the threshold of this. The litigation is just beginning. These two areas that I mentioned happen to be the most active and most important right now. I don't suggest that they're the most important in the cosmic scheme of things. That's not always how we break ground anyway.

But I'd like to touch on the major employment discrimination laws and tell you a little bit about what's happening in the litigation under those laws. Obviously, the most significant Federal employment discrimination law is Title VII of the 1964 Civil Rights Act. That law, as we all know, makes it illegal to discriminate against an individual in any aspect of employment on the basis of, among other things, race and sex. It also prohibits the classification of employees in any way that would deprive an individual or tend to deprive an individual of his employment opportunities or status as an employee.

Now, with Title VII as the principal weapon, these two practices I mentioned have been attacked—the exclusion of disability coverage for pregnancy and unequal pension benefits. The pregnancy disability battle has for the moment been lost, I should say at the outset. You know that, no doubt. Two significant cases before the Supreme Court

have pretty much settled the question. The first was a 14th amendment challenge, *Geduldig v. Aiello,* in which a disability plan that the State of California maintained for its employees covered virtually all disabilities. Now, we're speaking of income programs; not talking, for the moment, about medical insurance. It covered virtually all disabilities except those arising from pregnancy. The plan was attacked as violating the 14th amendment rights of women, and the Supreme Court held that to discriminate on the basis of pregnancy is not a sex discrimination. It said that the world is divided into two groups, pregnant women and nonpregnant persons.

I submit that the Equal Rights Amendment wouldn't have made any difference to this Supreme Court for this problem, because they simply chose to define it as something other than sex discrimination.

So, finding no gender-based discrimination, the Court went on in classic constitutional terms to inquire what the effect of the plan was, and it found that there were no risks from which members of one sex were protected and members of the other sex were not. It covered all risks the same. In other words, nobody is protected against pregnancy, men or women. That was the analysis of the Court.

A number of cases were brought subsequently under Title VII. It has always been thought—and it was thought by six courts of appeals, unanimously—that Title VII had a stricter standard than the constitutional challenge brought in the Geduldig case. All six courts of appeals held that under Title VII to exclude pregnancy in a plan that covered every other disability violated the law.

But when the Supreme Court spoke again in a case called *General Electric v. Gilbert,* it followed the same line of reasoning as it had before, that pregnancy disability exclusion is not a sex-based exclusion. The Supreme Court drew heavily on its earlier opinion. It found no pretext for discrimination against women. It called the exclusion of pregnancy significantly different because pregnancy itself is significantly different from the typical covered disease or disability. The suggestion was that it was a voluntary disorder; that it is not a disease; it is not a sickness. The Court ignored the fact that every condition, whether disease or not, whether voluntary or not, that could disable a man was covered, including—you probably know because it's so famous—hair transplants, cosmetic surgery, vasectomies, and the like—all covered. Pregnancy only is not.

Again, it was not found to be sex discrimination. The reason this case is important—as I said, the issue for the courts is dead—is that in the process the Court rejected a guideline the EEOC had promulgated which required that pregnancy be treated like other temporary disabilities. The Court said the guideline was not contemporaneous with the statute. It found that the EEOC was inconsistent. The EEOC

had taken a different position earlier and changed its mind. The Court suggested that it liked better an interpretation of the Equal Pay Act which the Department of Labor administers, and I will deal with that a little bit more fully in a moment. It seems to me that Justice Rehnquist in his opinion in *Gilbert* reached out to indicate that the Labor Department interpretation was the preferred view, even though it really was not directly relevant to the case at hand.

Then I just mention the subsequent case, *Nashville Gas Company v. Satty,* in which the Supreme Court applied the same reasoning to sick leave pay as it had to pregnancy disability. But it finally drew the line when the employer wiped out the accumulated seniority of its female employees who returned to work after childbirth. That practice, said the Court, does violate Title VII because it deprives women of employment opportunities based on pregnancy. Justice Stevens suggests, in concurring, that the question is whether the employer's policy adversely affects a woman for the rest of her employment, or beyond the term of her pregnancy, in other words. And if it somehow diminishes her status beyond that term, then it violates the law.

So, anomalous as it may seem to those of us who thought that the capacity to become pregnant is one of the things that distinguishes men from women—maybe one of the most important things—that is not the law of the land. Now that kind of discrimination is not sex discrimination. You may be aware that there is a bill pending in Congress to overrule the effects of that case. It has passed the Senate; it is pending in the House. Action is expected soon. It would amend Title VII to make discrimination on the basis of pregnancy, in effect, illegal as well. It is, of course, still open to State courts to interpret their own constitutions in a manner contrary and at least one has done so, the highest court in New York.

Now, in all of these cases the framing of the question, I think, has suggested the answer. Justice Brennan deals with that at some length in his dissent. The Supreme Court in framing its question could talk about the underinclusiveness of a plan, rather than the exclusiveness of a plan. It's just that not all risks are covered. They didn't consider the problem to be that only one risk, a risk which affects women only, was excluded.

Now, that same point of view is brought to the area of pension practices. That's the next thing I'd like to talk about, and again, the way the question is framed suggests the answer. The problem in pensions is that women on the average live longer than men, which makes them excellent life insurance risks and poor pension risks. The basic insurance principle that we hear cited—if you begin to read in this area, you see it over and over again—is that a person who is insured should contribute his fair share to the risk that he brings to the

group; equity and fairness are discussed again and again in the insurance industry's information and material on the subject.

They talk about the inexorable facts of life, death, and arithmetic, and how can you require that people be treated equally when they're not equal as a matter of fact? Women just live longer. We all know it. It's true. Well, some do and some don't, and the question of equality depends on how you divide up the group, how you classify the risks. Once you've divided them into men and women, it appears to be quite fair to apportion the costs on that basis. But it's the classification by sex that I suggest presents a legal question when there are many, many other reliable predictors of life expectancy.

We can talk for a long time about what's fair, what's equitable, what's socially just; and actuaries are very fond of telling lawyers what is legally correct as well. Lawyers are not above all that. They often tell actuaries what's mathematically correct, too. But it's my business, really, to deal with the legal question, and it is not free from doubt, I should say. There is a great difference of opinion. A case is pending before the Supreme Court now—some of this may be settled soon—but for the moment I can speak as though my opinion mattered.

Title VII, which is administered by the EEOC, is the broadest Federal law there is on the subject of sex discrimination in employment. There is another Federal law, the Equal Pay Act of 1963, which is administered by the Department of Labor, and that law provides that men and women who do work that is equal under the law—and that's sort of a separate question—must be paid equally. Very simple, very narrow, just wages; just when they're doing equal work. It doesn't do a thing for a woman who can't get a job. But if she's doing work that's equal to a man, she's to be paid equally.

Now, when Title VII was passed a year later, a provision was inserted that said that a wage differentiation that was lawful under the Equal Pay Act would be lawful under Title VII. Basically, it imported the specific defenses to the Equal Pay Act into Title VII. The principal defense is where a wage differential is based on any factor other than sex, even if men happen to be paid more, that's not prohibited by the Equal Pay Act. The Title VII defense is what is called business necessity.

So, we are concerned with these two defenses. One is an Equal Pay Act defense; one is a Title VII defense. Either one will do under Title VII. The plaintiff proves the *prima facie* case of sex discrimination, sex differences in compensation. The employer then has to prove either that it's caused by a factor other than sex or that it's a result of some business necessity. I'll mention that again in a moment.

This little amendment that ties the two statutes together, called the Bennett amendment, is the source of all the difficulty in this area. If it

were not for that, I think there would be no question that Title VII would prohibit some of the practices I'm going to talk about. But that Bennett amendment provides that the acts must be construed in harmony. When you're looking to one, you have to look to the other to be sure that they're construed consistently.

I just want to mention, again, that these are laws that deal with employment. They do not regulate insurance. They cannot be used to attack the private purchase of insurance. They deal, essentially, with group insurance in the employment context, but you can see how widespread their impact could be.

The pension area: The problem, as I've said, is the use of sex-based mortality tables, and they are pervasively used by the industry, and when those are used in certain kinds of plans, one of two things happens: either the same amount is paid on behalf of the men as the women and the result is that the men get a larger pension benefit when they retire, or different amounts are paid—that is, more has to be contributed for the women in order to fund an equal benefit when they retire.

I've argued that that violates Title VII, and there are some cases now on that question. The use of sex-based mortality tables is quite a different thing from pregnancy disability. Here we're dealing with explicit, gender-based classification. The actuarial lines are drawn precisely on the basis of sex. In pregnancy disability, remember, the line was not drawn on the basis of sex, but on the basis of pregnant versus nonpregnant persons. Here no such argument can be made. It's men versus women. It cannot be said to be drawn on the basis of life expectancy, because that group life expectancy exists only after the group is defined; and secondly, because only sex and age are commonly considered in this employment context. When that happens, all other factors that are known to affect life expectancy are ignored.

Now, if you and I go down to the private market, everything about us that an insurer wishes to take into account will be taken into account. A great many things besides sex and age, typically, are considered—most importantly, your medical condition, your family medical history, and perhaps a great many other things, including your income, your socioeconomic status, and so on. Not so in group insurance.

The case that's pending before the Supreme Court is called *Manhart v. the City of Los Angeles.* It has been argued. We're awaiting decision now. It is the first of these cases to reach the Supreme Court. It involves a retirement plan in which men and women receive equal benefits on retirement, but to get that, the women are required to pay a higher contribution out of their own wages. The employer matches

that contribution, but the women actually take home a smaller paycheck to fund those equal benefits.

The Ninth Circuit held that that practice violates Title VII. It is a classic Title VII case. Sex stereotypes are what are responsible, said the court. It is like a weightlifting case. You can have a requirement if your job requires that a certain amount of weight be lifted, and if it turns out that men can lift that and most women cannot, then that will justify hiring men. That is, you don't put out a sign that says "Men Only." You put out a sign that says "Only Persons Who Can Lift 100 Pounds Need Apply."

It is obvious that some of these stereotypes are based in fact and some of them are based in fantasy. That doesn't make any difference under Title VII. Whether it's statistically true or not, each employee has to be treated as an individual. Unless the employer can come back and show the necessity for a factor other than sex, the practice can't stand.

So, the employer in *Manhart* argued that, because it's statistically true that women live longer than men and because you can't tell which women will not, the employer is justified in requiring these greater contributions. The court said that is a strict sex-based classification and it is not justified either by the business function of providing water and power to the city, nor by the pension function of providing a stable and secure pension benefit program. It's very significant that the court said you don't have to do this on the basis of sex in order to adequately fund your program.

The court deals also with the Bennett amendment problem. The court said longevity just isn't a factor other than sex. It wouldn't be a defense under the Equal Pay Act, and so it's not a defense under Title VII. I must mention that both the Labor Department and the EEOC took the position that this was an illegal practice under both laws, in the court of appeals and again in the Supreme Court.

It's a very troublesome trend in these cases that the employers are attempting to use the Equal Pay Act as though it's a defense to Title VII. It was never meant to be that. It's the same kind of protective statute, just a narrower one, with the same goal—eradicating sex discrimination.

There are elaborate rationales around for using the Equal Pay Act in this way. One of those is a little colloquy between two Senators on the Senate floor in which they, after the amendment had passed, tried to make a little legislative history. They agreed that where there were long-standing differences in treatment like those in the social security system—and they explicitly mentioned widows getting benefits automatically, but widowers having to prove dependency and female dependents receiving additional benefits, male dependents not (those

were the two examples they mentioned)—that where those practices exist in private industry, they will continue to stand. Right, Senator? Senator Humphrey says, "Right. That's right. We're not intending to disrupt those kinds of things."

But it seems to me that employers who don't have any defense—no business necessity and no factor other than sex—have this little colloquy on the Bennett amendment. That's what they have. That's the defense.

Both of the examples that were cited by the Senators had been abolished. The widow's benefit: the Supreme Court itself declared it an unconstitutional practice to require a widower to have to prove dependency. Numerous courts of appeals have struck down other kinds of inequities or differential treatments in the social security system.

One other thing, the examples the Senators mentioned were practices which arguably benefit women. The Supreme Court has occasionally upheld such practices, and those beneficent differences might even stand today, even though men are disadvantaged sometimes by that treatment. But that rationale isn't available here, because the treatment I'm talking about penalizes women.

The one troublesome thing about the Bennett amendment—forgive me if this is getting too involved in the technicalities, but this is really the only defense an employer has and that's why I feel I must treat it in some detail. Employers have attempted in their defense, and you'll see it in each of the cases, to draw in the interpretations of the Department of Labor as a defense to an action under Title VII.

There is one very troublesome one that if you're familiar with this area you know. It is an interpretative bulletin by the Department that says if an employer pays equal benefits *or* equal contributions, he won't be considered to have violated the Equal Pay Act. In other words, there is no violation of the Equal Pay Act if you do one or the other. The Title VII rule, enforced by the EEOC, is that you must pay equal benefits. They don't care how you get there. It doesn't matter if it requires greater contributions, but you must pay equal benefits.

In *Manhart,* remember, there's no conflict between agencies, because there the women had to pay the extra contribution to get the equal benefit. But in the cases coming up, there is a direct conflict between the regulations of these two agencies. They're really guidelines. They're not regulations in the classic sense in either case. One, the equal benefits rule, the Title VII rule; the other, the either/or rule, which we've come to call it, for the Department of Labor.

First of all, I don't think there's any reason why the interpretations of the Wage and Hour Administrator should rule under Title VII. I don't think the statute requires it. The Bennett amendment does not

require it. And especially where the position was kind of a nonenforcement position in the first place is that true, and that's the case with the Labor Department's interpretation. If you read the whole interpretative bulletin of the Department of Labor, you will see that the whole matter is in some doubt. For example, the Department has never spoken conclusively on the question of whether contributions to a pension plan are even wages. If they're not, the Equal Pay Act doesn't apply at all because, remember, it only applies to wage differentials when work is equal. Another section of the bulletin talks about averaging the costs and prohibits basing any kind of wage differential on average cost that can be attributed to one sex or the other.

So, the interpretations of the Labor Department are far from clear on this question. They have never been updated to reflect experience. They were promulgated in 1965. The EEOC guidelines, on the other hand, were amended in 1968 and 1972, after some experience with the law. The Labor Department recognized that and had hearings on the equal benefits rule in 1974 and proposed changes. This Commission participated in the Equal Employment Opportunity Coordinating Council consideration of the equal benefits question. The Council submitted a recommendation to the President that clarifying legislation be enacted, but the President took no action. So the Department has reopened its consideration of that particular sticky interpretation and its continuing authority is in doubt.

That doesn't mean that the Supreme Court won't rely on it in *Manhart.* It could. It already said it liked it in *Gilbert.* But if the Labor Department should change its interpretation, the Court will have to find a somewhat different rationale than the conflict between agencies to support its holding.

There are other cases, as I say, coming up. There are two district court cases which have gone opposite ways on this question: *EEOC v. Colby College,* now on appeal in the First Circuit, and *Henderson v. State of Oregon,* now on appeal in the Ninth Circuit. One court found that the practice of paying unequal benefits violates Title VII. The other court found, based on *Gilbert v. GE,* that it did not. At least one State supreme court has considered the question and dealt with the sex-based table problem and has found that they violate both the Federal and the State constitutions. The State constitution interpretation is a matter for the State court and that ruling will stand. So that is good law in Indiana.

It is my view, and I'd like to close with this, that neither interpretation—neither the either/or rule nor the equal benefits rule—is a satisfactory interpretation of the law. Neither agency has done it right, in my opinion. Classification under sex-based mortality tables, no

question about it, adversely affects females for their entire lives, no matter how short or long those lives are, and they receive a smaller periodic benefit than males for the rest of their lives. We're not talking about a great majority of pension plans, but in those where equal contributions are made and unequal benefits are paid, I think that violates the law.

Similarly, I think it violates the law if the benefits are equal and the employer has to contribute more for women because that makes it more expensive to employ women, and that is a disincentive to hiring women which deprives or tends to deprive them of employment opportunities merely because they're women, in violation of the express language of the statute. Either one, unequal benefits or unequal contributions, is illegal, I think. The only way you can get to both equal benefits and equal contributions is to abolish the sex-based tables for this in the group insurance context.

We've been speaking only of the common, single-life annuity. Women are penalized there because of their sex. Of course, under a joint and survivor option, the opposite is true. Men are penalized because they have to take a reduced benefit to account for the long lives of their spouses. We have to be wary these days of reverse discrimination. I think what is meant by that is discrimination against a group which is not accustomed to bearing it. A classification which inevitably penalizes one sex or the other, no matter what the context, has to be suspect under the law.

Ironically, that reverse discrimination argument has been urged by employers and insurers who say, "Oh, if you make us change our practice, men have to subsidize women. That would be reverse discrimination. Wouldn't that be awful?" I think that it would just remove the advantage that men now have because of their sex.

The courts, especially the Indiana court and the Oregon court, have treated that question in some fashion, saying that subsidy is what insurance is all about. One subsidizes another all the time. Again, I suggest that the question dictates the answer. Subsidy only occurs after we've been divided into groups. It's just common sense that if we think in terms of classes for pension purposes, blacks subsidize whites; smokers subsidize nonsmokers; those with personal or family history of heart disease or cancer subsidize those without; and every single one of those factors and a great many more are significantly predictive of life expectancy, and we know the facts, yet only age and sex are considered. Nobody has explained to me why only women have to pay their fair share. As long as we're going to talk about fairness, I think that that ought to be addressed.

If women are to be charged extra for their longevity, then under the Labor Department interpretation, all factors that affect cost ought to

be considered—most importantly, turnover rates, forfeitures, salary changes. It is, I think, axiomatic that there are higher turnover rates for women. For example, fewer women vest. The forfeitures of the contributions they've made subsidize everybody who retires, and more men do that than women. So, when we're talking about subsidy, it gets very mixed up.

The suggestion is made that if we do away with sex-based tables, that's just the first step on a long road to doing away with all the classifications. "What will you have us do, not discriminate on the basis of age? We'll have uni-age tables," they ask.

I say no. Some classifications are illegal and some aren't. And it's quite legal under present law to discriminate in pension rate structures on the basis of age and on any other basis except those explicitly forbidden, one of which is sex. There is an age discrimination law. We administer that too. Its structure is the same as Title VII, but it has an exception, an explicit exception for pension plans. So, Congress recognized that it would cause chaos in the insurance industry if it were not allowed to make distinctions based on age. That seems to be a very strong indication that, when it didn't bother to do the same thing for sex—it knew how to do it, and it did it for age and didn't do it for sex—it didn't *intend* it for sex.

Another factor of fairness I would like to mention with regard to age: it happens to us all; we all enjoy the benefit of youth and the detriment of age, or vice versa, if we work the expected number of years. So we can all expect actuarial adjustments for age. It is not like sex and race, the detriment of which will be with you forever and ever.

I would like to just say one more thing about race. It is not disputed that whites as a group live longer than blacks and there isn't any Bennett amendment, there isn't any Equal Pay Act to mix the matter up. So Title VII prohibits race-based classification, I think, absolutely, without question. But it's unnecessary in this insurance rate context because, as I indicated, most States have already prohibited race-based classification in rates for insurance. But as a policy matter, I suggest that no argument that's made about sex-based classifications can't be equally strong about race-based classifications. Both are convenient; both are easy to use; both are statistically significant.

The difference in mortality between blacks and whites seems to be narrowing, but it's still at least as significant and at least as great as between men and women. Socioeconomic status, by the way, there's an even wider gap.

I don't suggest that if race-based distinctions were made, then sex-based distinctions would be okay, too. Both are illegal. I just suggest that somehow we've decided that it's unfair to do this on the basis of

race, and insurers seem to agree. At least they don't argue anymore that they ought to be able to do it. But the fact seems to be—and I've read this many places—that race-based classifications aren't used any longer in setting rates, and there isn't any evidence that the actuarial art has suffered, and there's no evidence that the same thing would not be true of sex-based classification.

So let me just say that there are a few basic assumptions that I've made. I'm not an actuary, but I acknowledge certain assumptions here. You can treat them for what they are worth. First, I assumed that it's actuarially possible to merge tables and still fund adequate benefits. As I've just said, it's possible with race. The argument is, "Well, we're dealing with a lot fewer people when we talk about race." But it depends on the employment context, doesn't it? I mean, we know very large employers who employ substantial numbers of minority groups, so I don't think that argument makes much sense. Anyway, I haven't seen any credible argument that suggests that it *can't* be done.

Secondly, any legal problems which might arise under the Pension Reform Act or any other law that I know of, if you allowed unequal contributions and you get into problems with ERISA, are completely avoided if we're not using sex-based mortality tables at all. We're talking about equal contributions and equal benefits, both. This legal theory is the only way to get both, as I've said.

Finally, I do acknowledge that there will be greater pension costs. I think that they have been exaggerated. The latest discussions I've seen and some of the papers here suggest that the cost is somewhere in the neighborhood of 2 to 3 percent, which is hardly cataclysmic, and it wouldn't constitute a defense under Title VII under normal circumstances. But reforms cost money. Civil Rights Act reforms of all sorts cost employers money, and that isn't enough of a reason not to do it. But moreover, I suggest that it's required by current law.

CHAIRMAN FLEMMING. Thank you very much.

[Applause.]

CHAIRMAN FLEMMING. Now, as a result of the presentations that have been made, I invite my colleagues to ask questions. First of all, the Vice Chairman of the Commission, Mr. Horn.

VICE CHAIRMAN HORN. Thank you, Mr. Chairman.

I'd like to address this question to Ms. Williams, but I'd like Dr. Denenberg to feel free to comment on any of the questions I ask, because since this area is so complicated for laymen such as members of this Commission, I'm going to be picking my way through it.

I thought, Ms. Williams, your statement was excellent in terms of its summary. When I got to page 31, I looked at the Inland Steel case and later the Colby College case—you've alluded to this—the thought came to mind, under the Equal Pay Act, to what extent is there a

rationale that we are not simply talking about "wages," but we are talking about total labor costs as borne by the employer through negotiated contracts, whatever, and that aren't we really saying that it would be unequal, in a way, if an employer paid more in benefits over time for the same amount of work that an individual does, regardless of whether the employer put in greater amounts for one group, in this case, based on sex or not, or whether he put in equal amounts, but the actual burden of those costs on the average, based on that group differentiation, was that to meet total labor costs for women in the form of retirement costs, that it costs the employers much more?

It seems to me that wages or compensation, including retirement benefits, are a part of that total labor cost, and I wonder why I, if I were a male on a group basis, should have to subsidize—even though I recognize your argument on group subsidy—females on a group basis for the same amount of work, assuming we have done equal work. I just wonder what's the rationale under the Equal Pay Act when we think of a broader concept than wages?

Ms. WILLIAMS. Well, I think the rationale under the Equal Pay Act is that it's not clear yet whether or not pension benefits are to be considered wages, probably for that very reason. The Labor Department, I think, would never try to pursue in litigation or, short of that, retirement benefits only, and try to prove the work as equal. Pensioners are not even doing work anymore. In other words, we have to go back for 20 years and know that they did work that was equal. We're having enough difficulty proving that in the professional context anyway.

Now, if your question is, assume that you and I have done equal work and the employer has paid a greater contribution to fund my equal benefit, doesn't that violate the Equal Pay Act? I'm saying that if you abolish sex-based tables, he's paying the same thing for you and me. The insurance that it buys will fund for my entire life, but I may live a far shorter time than you.

VICE CHAIRMAN HORN. But on a group basis, and we can move from that in a minute, the fact is, then, male employees would be subsidizing, on the average group, female employees under the plan?

Ms. WILLIAMS. But it's talking about the group basis that is the problem.

VICE CHAIRMAN HORN. All right. What you've pointed out is whether we like it or not, there is a law. It says eliminate sex as a criterion and that we could move to other sorts of criteria such as socioeconomic status, health of parents, and so forth.

Ms. WILLIAMS. That's right.

VICE CHAIRMAN HORN. Does the Labor Department have any study papers that speculate on what would be reasonable criteria as we

move away from group-based criteria which are based on sex? What other groups should be the basis for pension planning and total labor costs?

Ms. WILLIAMS. I am not speaking for the Labor Department here. I don't know of any studies in particular that have been done. But there's a great deal of information available about the possibilities for other groupings.

I mentioned—because I think I saw it in some of the papers submitted here—socioeconomic class as one of those. Age is obviously still the highest predictor and that could still be used. Merged experience doesn't really ignore the sex factor. It just figures it in with everything else. It is not asking anybody to do anything that's not actuarially sound as well.

There are a great many other possibilities, and I am told that actuaries do it all the time on an individual basis. I don't know of any reason why it can't be done on a group basis as well. Convenience is, of course, the big factor. They would have to decide what they could conveniently do, economically do, that would adequately fund. The Federal Government presently does this now. There's no reason it can't be done on a wide scale right now.

VICE CHAIRMAN HORN. Yes. But it just seems to me that, if major employers in the insurance industry are driven to having more fragmentation of smaller group experiences as a means of setting their rates, that what you might do is end up with less protection for most employees than you have now, because you will then have a high differentiation of cost between the very poor risks in an organization, which are now covered up by the total organization. For example, college professors are supposed to be pretty good risks in terms of group insurance. Well, that's probably a socioeconomic, class phenomenon; middle class, upper middle class, take care of their health, good health practices, so forth.

I just wonder when we look at the body politic as a whole if we might not be worse off driving people into those fragmented categories so that some people are then bearing a greater burden of gaining sufficient pension or health coverage or whatever during their working life than many others. It seems to me the detriment in that case might well be minorities or women. But let's take minorities in particular, because, proportionately, there are more minorities in lower socioeconomic classes. If we start moving to these other criteria, it seems to me, and pass on those burdens to minorities and employers that are matching, to some degree, the cost of that coverage, I just wonder if we're providing the protection we do now?

Ms. WILLIAMS. Well, for minorities, we already ignore the race-based factors.

VICE CHAIRMAN HORN. My point is if you start moving to socioeconomic class, you can treat everybody the same regardless of minority. The fact is, proportionately, there are more minorities in a low-income class than there are in the majority.

MS. WILLIAMS. Of course. Of course.

VICE CHAIRMAN HORN. Therefore, it seems to me, down the line it might well be detrimental to the total protection of health of the group which is now being protected.

MS. WILLIAMS. Sure. I don't think I want to suggest that more and more fragmentation is the best way. I really am trying to meet the argument that we hear from actuaries that, "You must leave us to our art. You must leave us to our classification making." And I say, "Fine, make all the classifications you want; whatever is economically feasible. Just don't do it on basis *A, B,* and *C,* because we've declared as a matter of social policy that that's illegal."

VICE CHAIRMAN HORN. Well, if we move to a different system of rate structure and a different definition of group, perhaps, Dr. Denenberg, you can enlighten me on this. I don't know what the state of the law or the obligation or the practice is, but what about companies who have taken in their funds over the years to pay pensions to males and females on a differentiated basis because of those group bases? With changes in the law, let's say, or changes in regulation or changes in practice, are they then expected to fund existing obligations now on an equal basis and how do you pay for this? Is this sort of the social security system where we expect all the new workers to be funding the old workers and that's why we're in the mess we are in that system? I mean, is that what the private pension system will get to? How will the transition occur?

DR. DENENBERG. Let me just go back a minute. Whenever you classify, I think it's very difficult to move away from your existing classifications. But I should say it is being done now, and more and more people, say, in auto insurance where several States have actually said, "We're not going to make auto insurance on the basis of age or sex." So the companies were able to come up with alternatives, and I'm not so certain that they can't come up with alternatives here.

You're asking a very complicated question as to the retroactive effect of this. I don't know where all that money could come from. I don't have it personally myself.

MS. WILLIAMS. Neither do I.

DR. DENENBERG. I would think if there were changes made, they would not be made retroactively so as to endanger the solvency of a pension plan.

I might also say that when I was still insurance commissioner, and this was not under all these Federal acts that you're discussing here—

those really were not within my jurisdiction—but I had to make interpretation of the law as far as what classifications were permissible. My lawyers were convincing me, and maybe I was convincing my lawyers, that sex had become just like race, at least in Pennsylvania. We were willing to say, "All right, we're not going to let companies make any kind of insurance classifications or rates based on sex. We're going to apply exactly the same rules; whether you talk about auto insurance or life insurance or disability, you will not be able to use sex as the basis of classification."

Now, we reached that conclusion and then we asked for the attorney general's opinion before we proceeded to put that into practice. We thought it was appropriate to get the highest legal officer of the State of Pennsylvania to pass judgment on our legal conclusion before we implemented it. This was in 1973, and he still hasn't come down with his opinion. So, I guess maybe that shows you that it's a difficult question.

VICE CHAIRMAN HORN. Let me, Dr. Denenberg, while you're there, ask you a couple of questions as I try to sort out some understanding of this area. Getting back to some of the areas we've already discussed, is it discriminatory, in your judgment, for insurance companies to charge different premiums for males and females for, say, health insurance coverage based on differences in expected claims? I take it from your testimony, I take it from the law, the answer to that is yes. But I think you'd agree that there are differences in expected claims.

DR. DENENBERG. Well, I'd like to answer that in a couple of different ways. First of all, I think that, no matter how you want to define discrimination, the insurance industry is still discriminating in many of these areas. They will say very religiously that, "We want to charge according to your actual experience." But the fact of the matter is, in a lot of these areas they're overcharging women quite clearly. That's admitted.

I wrote most of the insurance commissioners and I said, "Is the 3-year setback an adequate life insurance discount for women? The California insurance commissioner said no and the Wisconsin commissioner said no. In fact, I think every commissioner that replied and as far as I can see almost everybody agrees that large segments of the insurance industry are in the process of overcharging women, according to the industry's own definition.

Now you can say you want to do away with that distinction, and I say that's a legal question. Society might say that, "As far as we're concerned, sex is like race. We don't want distinctions being made on the basis of sex just as though we don't want distinctions made on the basis of race. Therefore, you can't charge a black man more than a

white man and you can't charge a white man more than an Oriental." That's not done in the insurance industry. Of course, it has adjusted to raceless premium structures.

I can tell you something else to kind of put things into perspective. Based on my own experience, any time you propose a change, however reasonable and however rational, the insurance industry will always come in here and predict the most momentous disaster conceivable. You can tell them two and two is four and if they don't believe it, they'll tell you, "Because two and two is four, we're going to have a disaster." Now, that's been my experience in every reform I can think of, including that readability thing, which is kind of funny because they were convinced if policies were made readable, that would somehow bring disaster to the industry. So, I can assure you that any idea that you come up with, however sound and reasonable, is going to be viewed as unsound and unreasonable by the insurance industry if it involves change. They do not believe in doing anything for the first time.

By way of background, to facilitate your passing judgment in this area, my own experience in dealing with not only the insurance industry, but with other groups as the health care people, the doctors, and the lawyers, is that very often the layman who is not an expert is in a better position to make rational judgments than the experts. In other words, if you're sitting there as a doctor and you do unnecessary surgery, you tend to overlook that. The layman does not overlook it. If you're a lawyer, you think that God gave you the right to charge a 50 percent contingent fee.

I think in insurance it's the same way. I think as you move away from the experts, and this is ultimately what should be done in a democracy, that the so-called uninformed layman is capable of more rational and intelligent judgments of difficult issues than the so-called experts who are so used to it. They were so used to that newborn infant exclusion that they never even thought about it. They're so used to writing health insurance in which they can cancel the policy once the person becomes old or disabled or sick that they don't see anything wrong with it.

VICE CHAIRMAN HORN. Let me ask you on this point of the pregnancy exclusion, do you see a difference in excluding pregnancy, but not excluding the complications which result after the delivery of the child to the infant or to the mother, and to what degree has there been any changes on that aspect in the last few years as a result of the pressures put on the industry by women's groups?

DR. DENENBERG. First of all, I would start by saying I do not understand the distinctions that the Supreme Court or the insurance industry makes at all. Someone would have to explain it to me, because

I don't understand how you classify the world into pregnant and nonpregnant.

Now, putting that aside, I think that there is a clear difference between complications of pregnancy and pregnancy, and the industry itself makes a distinction. So, even if you want to go by the insurance industry's rules, they will say that the regular pregnancy is somehow different because it's voluntary—which is something I also don't understand and I think a lot of women would not understand that; how it's distinguished from some of these other events, I don't understand—but in any event, the insurance industry itself would say the complications of pregnancy are insurable. It's not something that's voluntarily entered into. It's totally unpredictable.

What is even more important, if you're going to insure one or the other, obviously it's more important to insure the complications of pregnancy, because obviously it's conceivable—(that's the wrong word). Many people can obviously budget for routine pregnancy. No one is able to budget for the complications of pregnancy.

I have seen much progress. I don't think anybody can deny that. You can go through these books which I had out here and review changes over the years. And there is progress. More and more companies are, for example, covering the complications of pregnancy. More and more companies are writing long-term disability for women. What always amazes me, though, is why it takes them so long to take such obvious steps.

VICE CHAIRMAN HORN. One last question. You mentioned some study done by a government agency as to religious discrimination. What agency?

DR. DENENBERG. Well, it's the Social Security Administration, and I guess they're involved with insurance compliance.

VICE CHAIRMAN HORN. May I ask, Mr. Chairman, to have the General Counsel and the Acting Staff Director write to the Social Security Administration to secure a copy of that study for this consultation.

DR. DENENBERG. I was just going to say, on this question of religious discrimination, I guess it's something that you probably ought to look into too. I don't need EEOC figures to know that in segments of the industry religious discrimination is quite commonplace, just like sex discrimination has been and racial discrimination.

You can get a sense of it from just looking at the kinds of people you see at conventions and the kinds of people who show up on boards and the kinds of people you find in *Who's Who in Insurance.* And without seeing that study, I can assure you that religious discrimination is a problem that this Commission ought to look into, and there are many more aspects to it other than employment.

VICE CHAIRMAN HORN. We agree.

CHAIRMAN FLEMMING. Commissioner Freeman.

COMMISSIONER FREEMAN. Commissioner Denenberg and Mrs. Williams, I also want to express my appreciation to you for your very excellent papers.

My questions will probably be along another line, but they are related to employment. Referring to the statement that those members of the lower socioeconomic class are considered poor risks and then when you recognize that the large numbers of minorities and women are in lower socioeconomic class because of the effect of race and sex discrimination in employment, then you can see that this is sort of a vicious circle.

One of the questions that comes to mind—and I don't know whether you have the answer—but certainly, we need to look into the economic cost to this nation of race and sex discrimination. I saw somewhere that it had cost, in terms of foregone wages for underutilization of women and minorities as well as their being excluded from positions of employment, that the figure could probably well be about 4 percent of the GNP, which is a pretty big figure. Well, if that is taken to its logical conclusion, then the victims of discrimination are, in fact, subsidizing the white males in this country. Is that not correct?

MS. WILLIAMS. Absolutely.

COMMISSIONER FREEMAN. Well, I think it's important that we get the record straight as to who is subsidizing who.

MS. WILLIAMS. I would like to say, too, that it makes a difference whether we're talking about life insurance or pensions, and obviously the long-lived persons are good life insurance risks, as I say. The racial minorities and persons with lower life expectancy are high life insurance risks and excellent pension risks. But there isn't any real balancing; is there? I mean, the subsidy goes on, if we want to call it a subsidy, in both situations. But I certainly agree with you. The cost in pensions is borne by those groups you mentioned.

DR. DENENBERG. I just wanted to add to what you were saying, that sometimes there are places where the subsidy is not quite so apparent. I think auto insurance is really a beautiful example because for years the conventional wisdom was that somehow the suburbs were subsidizing the center city. Now even the insurance industry is beginning to take a look at that and because of the way classifications are made and because of the way rates are assessed and because of the way expenses are assessed, there are some people who are wondering whether or not it may not be the other way around; that this is really an unfair system and an unfair classification in which the subsidies may be going the other way.

COMMISSIONER FREEMAN. On the basis of that, would it not follow that "poor risk" is a perception rather than fact?

Ms. WILLIAMS. Yes. Depending on how you draw your lines, yes.

COMMISSIONER FREEMAN. The other question that I have is with respect to the pervasive discrimination that exists and I ask if you have any suggestions to this Commission as to whether perhaps a pattern and practice suit in litigation might be a more effective enforcement of the laws against discrimination?

Ms. WILLIAMS. More effective. Now, we're talking about—

COMMISSIONER FREEMAN. In employment.

Ms. WILLIAMS. Okay. Insurance and employment or just any kind of discrimination?

COMMISSIONER FREEMAN. Employment and insurance. To prohibit the continued discrimination by the insurance industry in employment.

Ms. WILLIAMS. Okay. More effective than direct legislation, you mean?

COMMISSIONER FREEMAN. Yes, of the existing laws while we're trying to get some additional legislation.

Ms. WILLIAMS. I think certainly litigation, both by government agencies and by private individuals, there's going to be no way to stop it. It's going to take place while we're considering legislation, yes. They say you can't litigate or legislate morality or good will and all that, but it certainly has been a very effective tool.

COMMISSIONER FREEMAN. But we're not talking about morality and good will.

Ms. WILLIAMS. I know we aren't. In a sense, as I've said, the law already prohibits some of these practices today. I think those tools are being used right now, and that can only expand. It doesn't begin to scratch the surface. So, as you suggest, that's only a stopgap while we consider further legislation.

COMMISSIONER FREEMAN. Should the Bennett amendment, in your opinion, because of the apparent confusion between the interpretation of the Department of Labor and the EEOC, be repealed or amended?

Ms. WILLIAMS. Well, that's a good question. I think it has created some very real confusion. I don't think it should be necessary to repeal it, because there is nothing inconsistent about the two laws. But when we find courts that are looking to construe either one restrictively, it has created a problem. I would hate to see the Equal Pay Act vitiated in any way because it has been a very effective remedy for women. There should be no reason why the Bennett amendment would cause Title VII to be construed narrowly, but I can't account for the way the courts have viewed it. I just can't.

COMMISSIONER FREEMAN. Except for the judges are male?

Ms. WILLIAMS. Well, it's hard to imagine a woman judge coming up with some of these things; I mean, it really is.

DR. DENENBERG. What you have to do is find a pregnant man and that will solve the whole problem.

Ms. WILLIAMS. That would help.

COMMISSIONER FREEMAN. Thank you.

CHAIRMAN FLEMMING. Commissioner Saltzman.

COMMISSIONER SALTZMAN. Mrs. Williams, would you hold it advisable at this stage with the intractable or seemingly intractable nature of discrimination in some of the areas that you have referred to, and Dr. Denenberg, that Congress change its mind about legislation in the area of insurance and not only change its mind, but would you recommend a specific kind of legislation on the Federal level? Do you think that's advisable?

Ms. WILLIAMS. I don't have specific Federal legislation to propose. But I do think, as in all of these areas where some States have made very earnest attempts and other States have ignored the problems and continue to ignore them, that this is the reason why Federal legislation happens, and I think it's needed here, yes.

A great deal of study is obviously needed as well, and I am not prepared to say that we should do *A, B, C.* But it does seem to me that there is no more classic example of operation in interstate commerce than the insurance industry today; that there is ample justification for Federal legislation in the kind of society in which we live where there is movement from one State to another and the problems of having an insurance policy in force. I don't suggest necessarily writing them on a national basis, but being able to move freely from State to State and to count on certain basic principles is a desirable thing. Some uniformity would be helpful, yes. I guess I do think further exploration of abolishing sex-based tables, for one thing, would be part of my recommendation, yes.

COMMISSIONER SALTZMAN. Has there been any consideration of Federal legislation that you know of by any of the groups associated with this area, any recommendations or studies that would lead to Federal legislation?

Ms. WILLIAMS. I don't know of any studies per se. There's a great deal of agitation for national reform, yes. The pregnancy disability one is the only one that comes to mind at the moment. You may know of more.

DR. DENENBERG. I would like to say something on this basic question. When I was a professor at the Wharton School, I used to think Federal insurance regulation was a grand idea. When I was insurance commissioner and the first time I ever had to deal with any Federal agency, I decided it would be an horrendous idea.

The Federal Government is absolutely impossible to communicate with because the agencies are so big. They are not functioning, in my view. Furthermore, as a consumer reporter, I cover some of these agencies; and you look at the Consumer Product Safety Commission and the EPA and the FDA, and they're so bad that they make State regulation look good by comparison. So I did not advocate Federal regulation as such, because I don't think the Federal Government is capable or regulating anything, including the things within its responsibility.

However, there is a middle ground, and there's no reason why the Federal Government, without taking over State regulation, can't pass certain guidelines that would be applicable. For example, there's no reason why the Federal Government could not have said we want to make it illegal for any medical expense policy to exclude the newborn infant or we want it illegal for any disability insurance policy to exclude the long-term complications of pregnancy.

But I think to go beyond that and to actually put the Federal Government into the business of insurance regulation, I'm absolutely convinced that there's only one entity in the whole wide universe that could do a worse job than the States at regulating insurance and that's the Federal Government. There would be no contest. I think that's on many different counts.

I'll just give you one other example. When I was insurance commissioner, almost anybody with any legitimate gripe or any legitimate ax to grind or anyone with any legitimate idea to put across in the insurance field could get through to me and could actually talk to me in person and I could make a decision, and that's in a big State like Pennsylvania. I found when I was dealing with the Federal agencies, say on wage-price control, I could not even talk to the 45th assistant of John Connally. So I actually at one point said, "Look, they wanted State insurance commissioners to administer their wage and price controls." I said, "You guys can't even talk. I can't even communicate with you. You administer your own damn wage and price controls." So that was my experience with Federal regulation and that's why I would say proceed with that very cautiously.

While I'm at it, I might say that many people are talking about national health insurance as an answer to the problems that we're talking about. That seems to me to be a total disaster. In fact, I think it's very funny that Joe Califano at the very same time he's telling the American people that we're wasting $5 billion or $10 billion on medicare and medicaid, he's sitting there drafting a national health insurance bill to expand medicare and medicaid by tenfold. I think that's almost laughable.

MS. WILLIAMS. May I say one more thing about that?

I think that, obviously, nobody would propose that the Federal Government take over the business of insurance. It may be true that the States have managed the insurance industry just fine. I don't think they've done so well in the area of discrimination and we have distinctly needed some Federal law. Now, maybe we're not so far apart. Maybe what we're suggesting is there are certain practices that could be prohibited on a Federal level.

COMMISSIONER SALTZMAN. Without Federal legislation.

MS. WILLIAMS. I'm not suggesting any more than that, I don't think.

COMMISSIONER SALTZMAN. Yes. I understand.

One final question, Dr. Denenberg, because of the time. With respect to the newborn infant exclusion, I understand that companies are now writing policies for newborn infants—that is, medical insurance policies—but within those companies that are writing, it has come to my attention that they exclude coverage for circumcision until at least 30 days after birth. What's the motivation for that? Are you aware of that component in these policies?

DR. DENENBERG. Yes. Well, first of all, I want to clarify one thing. The newborn infant exclusion is still in a lot of policies.

COMMISSIONER SALTZMAN. Yes.

DR. DENENBERG. It still has not been prohibited even in the District of Columbia.

COMMISSIONER SALTZMAN. Yes. Even in those States where they are.

DR. DENENBERG. As far as circumcision goes, as far as I know, no company has a specific exclusion dealing with circumcision. But the problem, as I understand it, is that most companies require that any procedure be performed by a doctor and, therefore, if it's a ritual circumcision and it's not performed by a doctor, then they don't pay it. That's the problem.

I see no reason why they don't pay it. In fact, I can guarantee that doctors are paying higher malpractice premiums than those that perform ritual circumcision. The guy who performs ritual circumcision is probably better at doing that, due to greater practice, than the M.D. So, I don't think it would be a great problem, although this is not my area of expertise.

[Laughter.]

COMMISSIONER SALTZMAN. I have been informed that the policies being written do disallow circumcision until 30 days after the birth of the infant, which would be discriminatory against Jewish children because the circumcision by tradition has to be done on the eighth day.

DR. DENENBERG. Yes. That is possible. In fact, one real difficulty I have when you talk about what's going on in the insurance

marketplace is that there are actually thousands of companies that are writing policies and they have all kinds of policies floating around. Each State is approving different policies, and then you have group policies that are being tailormade. So, it's very difficult to say such a policy does or does not exist. As far as I know, I don't think a major company would put that kind of a provision in it. It seems like it's really kind of discriminatory and obnoxious on its face.

I think the people who have encountered the difficulties either encountered them under newborn infant exclusion or under the requirement that the person performing any procedure be an M.D. or an osteopath or perhaps even a chiropractor. I might also say that the insurance industry has been broadening the scope of those health care providers it would pay for. At one time it was very, very restrictive and now more and more it's paying for providers like chiropractors and other alternatives to the M.D.

COMMISSIONER SALTZMAN. Thank you.

CHAIRMAN FLEMMING. I would just like to ask a couple of questions following up on the discussion on Title VII and relating that to the discussion overall. Dr. Denenberg, I assume that although you are vigorously opposed to the idea of the Federal Government getting into the regulatory aspects of the insurance business, that you do favor making it clear that Title VII of the Civil Rights Act is applicable to all aspects of the insurance business.

DR. DENENBERG. Yes. I would have no problem with that. I think it is, and I don't think there's really a question about that.

MS. WILLIAMS. Except that it implies only in the employment context, yes. It implies only in the employment context, Title VII.

DR. DENENBERG. Oh, I see what you mean. In other words, I have no objection to the Federal Government legislating and laying down standards like Title VII. There have even been proposals for standards relating to no-fault. I think that's a more efficient way to do it than by direct regulation. I think it probably would be a good idea.

My own conclusion would be that's probably not a good idea to make distinctions based on sex, except for certain obvious exceptions.

CHAIRMAN FLEMMING. What are those?

DR. DENENBERG. And insurance is not one of them.

CHAIRMAN FLEMMING. I would just like to stay with Title VII. Your discussions made it clear that we're in a state of flux as far as the attitude of the courts is concerned. I hope that the case that is now pending before the Supreme Court is decided in a manner consistent with the paper that you have presented to us. I assume that, if it happened that it was not decided in that manner, that you would favor some legislation designed to clarify that aspect of Title VII.

MS. WILLIAMS. Yes. I would.

CHAIRMAN FLEMMING. So that, either through a Supreme Court decision or if necessary through legislation, you would favor making it clear that Title VII, the employment title of the Civil Rights Act, is applicable to the insurance industry wherever the insurance industry touches the area of employment.

Now, let's assume that that is made clear. Then, Dr. Denenberg, would you favor the Federal Government making it clear that it was going to look to State insurance commissioners or commissions to monitor the application of Title VII within their States, that this was a part of their duties and responsibilities as State regulatory agencies?

DR. DENENBERG. I think that it would be a good idea to have them assume responsibility within the area of their expertise. Of course, they have no expertise anywhere beyond insurance annuities and pensions, but certainly I think that might be a good idea, to assign responsibility there within the area of their expertise.

CHAIRMAN FLEMMING. That would then put the Federal Government in a position where the appropriate agencies of the Federal Government, the EEOC or the Department of Labor, whatever agencies were given responsibility, could get help and assistance from the State regulatory agency in connection with certain aspects of the total responsibility as far as Title VII was concerned.

There's one other question I'd like to ask Dr. Denenberg. Once or twice you dropped the thought that there have been some changes made in the area of age, particularly as far as automobile insurance policies are concerned. What do you see as the possible developments in that particular area? Can you see that moving over into areas other than automobile insurance?

DR. DENENBERG. Yes. I think age discrimination is fairly pervasive, not only in employment, but in insurance. Now, the auto insurance situation is really a classic example because for years, as long as anyone can remember, the insurance industry always viewed the senior citizen as a bad risk, a worse-than-average risk. It never bothered to find out what the facts were. It finally found out what the facts were and now senior citizens get a discount.

Now, I'm not going to suggest that old people are better-than-average life insurance risks compared to young people, but I am going to suggest that there are still a lot of areas of age discrimination that have not even been explored in the area of life insurance.

I think one of them gets to what I said before, which opened up a whole Pandora's box, and that's the whole area of dividend structure, because that's an area that has not been well studied; it has not been well monitored. It is not susceptible to study because much of the information doesn't even get out to the regulatory bodies. But a kind of interesting discrimination that takes place there, which I've never

seen discussed in this context, is that companies are getting very competitive now in the life insurance business because people are finally catching on to the fact that they might pay three or four times more than they ought to if they don't know what they're doing and don't shop appropriately. So, as a result of this, companies are going after the new policyholder very vigorously. I think because of that the facts would show that they are paying very handsome dividends to new policyholders, so they look good competitively. The older policyholders are being shortchanged.

Now, those older policyholders are often senior citizens who actually, of course, are often in economic stress. Yet nobody has monitored that whole process. Now, that to me is a critical area. I think the same thing is going on as far as sex discrimination by the manipulation of dividends, and that's why I think this Commission can really have a unique role because many of these issues have not been well pursued and many of them have not been well pursued even at the level of the State insurance regulator.

You have to face the facts that these guys, even if they would want to pursue some of these issues, they are so under a whole avalanche of immediate crises that they don't get to look at some of these long-term issues, which I think this Commission would be in a position to examine, and I think which could have dramatic impact because it's obvious that, despite all of the attention to this and despite the attention of the insurance departments, all these problems are not only unsolved, but they're not even fully explored. I think this Commission is in a unique position to make contributions and to make recommendations. I think people will respond to them.

CHAIRMAN FLEMMING. Thank you very much.

Mr. Nunez.

MR. NUNEZ. Just one question. I notice in your prepared statement that you indicated that there were about 4,000 insurance companies. Do you see the possibility of forming and organizing insurance firms that are directed by women and minorities as a possible solution to some of these problems?

DR. DENENBERG. Well, I certainly think that is one of many solutions that ought to be explored. I would give you a nice analogy, if you're looking for one. Doctors, who are not ordinarily viewed as the oppressed minority, in the malpractice crisis actually became the oppressed minority. One of the things that they were smart enough to figure out in a hurry is that if they want to protect their own interest in the insurance marketplace, they ought to start thinking about setting up their own companies because, frankly, the insurance companies were walking away from them. They have actually set up their own

companies in many places, and they're finding this is a successful approach.

So, sometimes if any group wants their own problems addressed, one way to assure that is to organize your own companies. Now, there are two basic approaches as far as minorities go. There's the whole agency and brokerage business and the company organization. I think both of those are feasible. Insurance is not a kind of industry in which the barriers to entry are that severe.

You could set up minority companies. They could serve not only as training grounds for minority people, but as someone who would pay attention to that market, which has been neglected. So I think that is an excellent solution; and I just might throw in as part of the solution, I think education probably has more to offer in the insurance area than many other things because the insurance area is one which primarily involves the expert and the technician and the specialist and, therefore, to the extent that women and minorities and other groups can produce the specialists, they are going to be in demand. They will not only be able to organize their own companies, they will be in demand by the whole insurance industry itself.

I might say that women are being very successful in getting into some of these training programs. There's the so-called Charter Property and Casualty Underwriter (CPCU) degree, and they have a feeder program training people towards that designation. As I point out in my paper, I was astounded to find out that half of the completers in that feeder program—over half—are women.

So, I think women are catching on to what has to be done to get into the insurance business, and I think that holds for any other group.

CHAIRMAN FLEMMING. Thank you very much.

Again, may I express appreciation to both of you for being here with us this evening and making these presentations and responding to the questions that have come from the members of the Commission.

The consultation will continue at 9 o'clock tomorrow morning when the subject under discussion will be social security for the first part of the morning and the second part of the morning will be private pension coverage and benefits for minorities and women. Thank you all for being with us this evening.

Pardon me. We have an announcement.

MR. NUNEZ. Before you leave, I have several announcements for you. There is free literature in the back and I would suggest you pick it up before you leave. Will the presentors and panelists join us back here? There is transportation to downtown Washington.

Tomorrow's session, as Dr. Flemming has pointed out, starts at 9 o'clock, but our recess for lunch will be from 12 until 2. That is a

change in the program. Keep that in mind. Our recess for lunch will be from 12 until 2.

Thank you again for coming.

Proceedings, April 25, 1978

CHAIRMAN FLEMMING. For the benefit of those who were not here last evening, I want to make just a couple of comments relative to the consultation. It has been called for the purpose of examining issues which have come to the attention of this Commission regarding alleged discrimination against minorities and women in the areas of pensions and health, life, and disability insurance. This consultation will assist us in developing plans for an indepth study of these issues. Upon completion of the study, the Commission will report its findings and recommendations to the President and the Congress. In the meantime, we will publish the proceedings of the consultation.

You have had the opportunity of looking at the agenda and you know it is a full one. The presentors and the discussants are acquainted with the time constraints which we have suggested in each instance, and we shall do everything we can to stay within those time restrictions in order to be fair to all of the participants. As I pointed out last night, the restraints are such that presentations cannot be heard at this time by persons other than those who have been invited by the Commission. We invite, however, those who feel that they have a contribution to make in defining the issues to submit a paper or other documentation in the subject matter area in which they have a particular interest. Such material will be considered for possible inclusion as a part of the final record of the consultation.

In connection with the session this morning, I have asked my colleague, Commissioner Freeman, to serve as the presiding officer. Commissioner Freeman.

Social Security

COMMISSIONER FREEMAN. Thank you, Mr. Chairman. The first part of this morning's session will be to consider the subject of social security. We have a presentor, Dr. Nancy M. Gordon, senior research associate, program of research on women and family policy, The Urban Institute.

Dr. Gordon is a graduate of the University of California, Berkeley, with a B.A. in economics, and of Stanford University, with a Ph.D. in economics. Her fields of concentration are price and allocation theory and statistics.

She is a recipient of a Woodrow Wilson Fellowship, 1964–65; an IBM Fellowship, 1965–66; and a Stanford Wilson Dissertation Fellowship, 1967–68. She has published extensively and some of her papers are, "A Low Mobility Model of Wage Discrimination," with Thomas E. Morton, *The Journal of Economic Theory;* and "Faculty Salaries: Is There Discrimination by Sex, Race and Discipline?" with Thomas E. Morton, *The American Economic Review.*

Most recently, she provided testimony on the equal treatment of men and women under the social security system, at hearings of the Subcommittee on Social Security of the Committee on Ways and Means on President Carter's social security proposals, July 21, 1977.

Following Dr. Gordon's presentation, there will be three discussants. The first is Dr. Lucy Mallan, Ph.D., Northwestern University, 1968, Ph.D. in economics, who also has published extensively and from 1972 to present, Social Security Office of Research and Statistics as a social science research analyst, then supervisory social science research analyst.

Another discussant is Dr. Frank G. Davis, professor of economics, Howard University, recipient of his Ph.D. from the State University of Iowa. He has been professor of economics and research at Howard University from 1971 to the present and also has published extensively, including, *The Economics of Black Community Development,* Rand McNally College Publishing Company, 1972; and *The Black Community's Social Security,* now being published by University Press of America, Washington, D.C., 1977.

Has the third discussant, Ms. Burris, arrived? Not yet? Well, when the third discussant arrives, she is Ms. Carol Burris, president, Women's Lobby, and we will ask if someone will bring her directly to the podium platform as soon as she arrives.

As the Chairman indicated, the presentors and discussants have been informed of the time in which they are to make their presentation. Dr. Gordon will be allowed 15 minutes to summarize her paper and each of the discussants will be allowed 10 minutes for interaction. Following the presentation by the presentor and the discussants, there will be questions from the Commissioners until the close of this first section and that should be about 10:45 a.m.

STATEMENT OF NANCY M. GORDON, SENIOR RESEARCH ASSOCIATE, THE URBAN INSTITUTE

DR. GORDON. Thank you. I am pleased to be here to talk about the treatment of women under the social security system. I have recently completed a research project that examines alternative proposals for modifying the social security system. This research was sponsored by the German Marshall Fund of the United States and by the Ford

Foundation and undertaken at The Urban Institute. However, my testimony today reflects my own views and should not be attributed to The Urban Institute or to any of its sponsors.

Two of the most serious issues regarding the treatment of women under the social security system are the differential treatment of one-earner couples vis-a-vis both two-earner couples and single individuals and the adequacy of protection for divorced homemakers. Both of these issues are related to the recent dramatic changes of the role of women in American society, changes that can be expected to continue in the future.

Many aspects of women's lives have remained the same over time; for example, the ages at which they start to bear their children and their ages when their last children marry. However, life expectancies have increased significantly, and increased more for women than for men. As a result, women can now expect to live many years after their children have left home and can expect to be widowed for a longer time than in the past.

More dramatically, women are now completing their childbearing at much younger ages. This observation is closely tied to the decline in the proportion of women who are having large families. Consequently, women now have many more years in which all of their children are in school or have left home. This factor has increased their labor force participation considerably.

Their labor force participation has also risen as a result of the increasing frequency of divorce. First, divorced women are much more likely to work because they must do so in order to support themselves and their children. Second, women who have greater economic independence may be more likely to terminate unhappy marriages.

Divorce rates have risen substantially in recent years. For example, it took from 1920 to 1965 for the divorce rate to double, but it doubled again in the 10 years between 1965 and 1975. Furthermore, estimates of the percentage of recent marriages that will eventually end in divorce are between 30 and 40 percent.

All of these factors have combined to result in many more women being in the labor force. If we consider some representative years, for example, 1948, 1976, and forecasts for 1990, we find that the increase has been startling. Only 22 percent of married women who are living with their husbands were in the labor force in 1948. The proportion had risen to 45 percent by last year and is expected to go up to 63 percent by 1990.

Even more dramatic has been the increase in labor force participation by women whose children are all less than 6 years of age. Only 9 percent of such women were in the labor force in 1948. By 1976 the

proportion had risen to 40 percent, and it is expected to increase to 55 percent by 1990.

Consequently, the traditional view of the family is no longer a valid one. Women do not marry and remain at home for the rest of their lives, caring for their husbands and their children. Many marriages end; even among married women, a high proportion participate in the labor force. The current social security system, on the other hand, was designed to protect the traditional family in which the husband was expected to work and the wife to remain at home caring for the children.

The social security system provides old age protection in the following ways. When a worker retires, the benefit is calculated on the basis of earnings averaged over his or her working life. An aged spouse of a retired worker is eligible for a dependent's benefit equal to 50 percent of the worker's benefit.

In addition, an aged spouse who also has a claim to a benefit as a worker receives either the dependent's benefit or the benefit as a worker, whichever is higher. When a worker dies, the remaining widow or widower is entitled to receive a benefit equal either to the deceased spouse's benefit or to his or her own benefit, whichever is higher.

Finally, aged divorced wives (but not divorced husbands) are eligible to receive the same benefits as a current spouse, provided the marriage lasted at least 20 years before the divorce occurred. This duration-of-marriage requirement will be reduced to 10 years starting in 1979.

Why is it that these provisions are subject to an increasing amount of criticism? First, let us consider the benefits that would be received by a one-earner couple versus those that would be received by a two-earner couple. In this example, let us assume that the worker in the one-earner couple had average earnings of about $12,000, but that each worker in the two-earner couple had average earnings of $6,000. The total money income of the couple was the same in both cases and they paid the same social security taxes over their lifetimes. In retirement, the one-earner couple will receive benefits equal to $7,640, while the two-earner couple will receive only $6,346. The result is that the one-earner couple's benefit is 20 percent higher than the two-earner couple's benefit.

After the death of one spouse, the survivor of the one-earner couple will receive $5,093, whereas the survivor of the two-earner couple will receive only $3,173. That is, the survivor of the one-earner couple will receive 61 percent more than the survivor of the two-earner couple.

These differences of 20 percent in retirement and 61 percent after the death of one spouse apply to couples who have had the same

earnings and paid the same social security taxes over their working lives. Hence, many people view these differences as inequitable.

Now, let us consider the benefits that are awarded to divorced wives. Starting in 1979, aged divorced wives whose marriages lasted at least 10 years and who did not remarry will be eligible for the same benefits they would have received had their marriages remained intact. However, while the ex-husband is alive, the aged divorced wife will receive a dependent's benefit equal to 50 percent of the ex-husband's benefit. This amount will often be below current poverty levels. Furthermore, the divorced wife may have reentered the labor market and may be entitled to a benefit as a worker. However, this benefit is likely to be low because of her years out of the labor force when she was caring for her husband and children. There is no provision in the Social Security Amendments of 1977 for combining the low benefits to which she will be entitled as a worker with the low benefits to which she will be entitled as a homemaker. She will receive only the larger of the two, neither of which is likely to exceed the poverty line. Only after the death of her ex-husband will her financial situation improve because, upon his death, her social security benefits will double.

Various policy options have been suggested to respond to these two issues: the differential treatment of one-earner versus two-earner couples and single individuals and the adequacy of protection for divorced homemakers.

There are two major types of proposals. One is called "earnings sharing." This approach treats marriage as a full partnership where each spouse would be credited with half of the total taxable earnings of the couple, regardless of the amounts each actually earned. Benefits would then be based on each individual's record, which might include periods of marriage when earnings had been shared, as well as other periods when the individual's own earnings were credited. Both the Federal Republic of Germany and Canada have adopted this type of proposal for couples who eventually divorce.

The second type of proposal is called "homemaker credits." This approach would assign credits to the social security records of homemakers that would then be treated in the same way as actual earnings. Specific proposals vary in terms of their eligibility conditions. Some suggest credits only for parents who stay at home with young children, while others would provide credits to all women who spend most of their time at home. Benefits would then be based on each individual's own record; that is, on earnings or credits or a combination of the two.

Many different arguments have been presented for and against each of these two types of proposals. The purpose of my research was to examine the long-run effects of specific versions of earnings sharing

and homemaker credits and to compare them with the current system. That is, I wanted to consider how people would be affected if they had always been under an earnings-sharing form of social security or if homemaker credits had always been provided.

I considered five specific options. One is a wage-indexed system that is similar to the one that will take effect in 1979. Another is an earnings-sharing approach. I looked at two homemaker-credit plans, one far more generous than the other, and I looked at a combination plan that included elements of both homemaker credits and earnings sharing.

I do not have time to go into the assumptions that were necessary for the analysis, so I would like to move directly to the results.

First, all of the options that I considered are equally progressive. That is, lower income individuals receive more benefits relative to the taxes they pay than do higher income people.

Second, earnings sharing is by far the most effective approach for reducing the differential treatment of one-earner couples vis-a-vis two-earner couples and single individuals. Third, earnings sharing and the combination of homemaker credits and earnings sharing provide the best protection for divorced women. The only exception is for women who are in the lowest income category for whom homemaker credits represent a large amount relative to their earnings. For these people, supplemental assistance seems to be in order.

However, the combination proposal results in even larger differentials than the current system in the treatment of one-earner couples versus two-earner couples and single individuals. The result is that only earnings sharing moves towards solving both of these problems at the same time. It both reduces the differential treatment of one-earner couples vis-a-vis two-earner couples and single individuals, and it increases protection for divorced women.

For this reason, I believe that the earnings-sharing approach is the one that should be pursued. However, before a comprehensive proposal can be developed, further study would be necessary. For example, my research has considered benefits provided in retirement and to survivors. It has not considered other forms of benefits that the social security system provides, for example, to disabled individuals, to children, and to young survivors who are caring for dependent children.

These aspects of the social security system would also have to be examined, and some administrative questions would have to be resolved. However, my conclusion stands; that is, the earnings-sharing approach has far more to recommend it as a way of resolving these two major issues in the treatment of women under social security than

would either homemaker credits or a combination of credits and sharing. Thank you.

COMMISSIONER FREEMAN. Thank you very much. Dr. Mallan?

DISCUSSION BY LUCY MALLAN, ECONOMIST, OFFICE OF RETIREMENT AND SURVIVORS STUDIES, SOCIAL SECURITY ADMINISTRATION

DR. MALLAN. I have been asked to comment on issues raised in Dr. Gordon's paper, which clearly discusses women rather than minorities. Therefore, in this first round of remarks, I will confine myself, as she did, to the treatment of women. Later, I may also be able to comment on some of the questions Dr. Davis will raise, no doubt, about the treatment of minorities, if that seems appropriate.

Another ground rule: I am not going to comment on Dr. Gordon's methodology because she did not discuss it, and it would also take too long.

I think her paper is a valuable addition to the debate on the treatment of women under social security. It is a sensitive discussion, and though it is clear, it keeps away from oversimplification. The hard thing about commenting on Dr. Gordon is that she takes comments so seriously and keeps improving the product so that, as she continues to work on it, there is very little to say except "yes," but I think we will find some things to say nevertheless.

An important aspect of her paper is that she considers these plans within constraints on cost so that they can be considered within the current discussion on social security, which is very concerned with costs. She considers all plans as if their total cost were the same and sees how they treat different elements of the population. She asks: How are women treated under social security? The discussion distinguishes divorced women, married women who work, married women who do not work outside the home, single women, rich or poor women. There are many different kinds of interests that have to be considered.

We all know the world has been changing. Dr. Gordon documents some of the changes in the family roles of women. What these changes have produced is a very mixed picture. Some women work all their lives, some work most of their lives, most work some. Divorce is rising and also separation, but most adult women are married at any particular time; about three-fourths of all women aged 30 to 64 are married in any given year, although that does not mean that all of these women stay married.

Most women still earn less than their husbands when they are working. The median salaries for full-year, full-time women workers rest around 60 percent of men's salaries. Most women over 65 are

widows, over half, and only a very small percentage of men at that age level are widowers. We do not have a country where most women are either workers or nonworkers over their lifetime.

What is the effect of all this on social security? It is wrong to say the system was set up with the idea that all women are dependents. The system was set up to protect women workers or women dependents. What wasn't envisioned was the situation where roles alternated over the same lifetime.

The so-called transition stage, which we are in at present, which shows no sign of moving to anything else, seems like a very stable transition. We have to assume we are going to have to live with a mixed world for a long time.

The situation for women who move in and out of the labor market is not getting easier as far as social security goes. Women have serial roles, mother and labor market worker, but overlapping benefits where the system classifies them as either workers or dependents. Dr. Gordon has pointed out some of the disturbing consequences of this.

Congress is worried; women's groups are worried, and HEW is also worried. The task force with a mandate to study this particular issue has already completed its report, and a new study, mandated by the Social Security Law of 1977, is underway and will be built on the first study.

It should be emphasized here, as Dr. Gordon does, that the few instances of outright discrimination in the law are on their way out. The recent Supreme Court decision that widows, widowers, wives, and husbands must be treated the same went a long way to removing these remnants, though, to be sure, a few remain. For example, the 1977 legislation contains what amounts to a grandmother clause, so that women returning in the next 5 years are not subject to a pension offset, though men are. Nevertheless, Dr. Gordon's emphasis is, as it should be, on different treatment which arises from women's different work roles.

The HEW task force report outlines a few program issues in addition to the two Dr. Gordon mentions; i.e., the divorced women and the one-earner versus the two-earner couple. To recapitulate, she stresses the fairness issues, that retirement and survivor benefits differ under present law according to how much of the couple's earnings are earned by which spouse.

Some important issues are not touched upon by Dr. Gordon. For example, benefits to single persons are less that half those of one-earner couples with twice the earnings. The return on contributions of a married woman is less than those of single people or married men, since a women is entitled to a dependent's benefit, no matter what else she may do. As a matter of fact, this situation is also occurring with

men because, under new rulings, men are also entitled to dependent's benefits.

Dr. Gordon mentions the gap in protection for homemakers, which becomes a particular hardship when a marriage ends before retirement. She does not mention the issues with treatment of homemaker's disability, which, if she has no protection as a worker, is not covered under the present system. Furthermore, the protection has to be current under present law; that is, she has to have worked within 5 years in order to have disability protection.

An important problem with Dr. Gordon's report in my opinion is that, in evaluating new proposals, it is not enough to have in mind criteria for treatment of women who are neglected under the present program. Aspects of the present program which are handled well cannot be assumed to be automatically recognized in the new proposals. Explicit recognition must be made. Most important examples are the treatment of survivors. The present system provides for survivor benefits equal to about two-thirds of the couple benefits, assuming a dependent spouse. This has an enormous effect on reducing poverty in old age.

At the moment, almost one-third of widows rely on social security for 90 percent or more of their income, and about two-thirds rely on it for half or more. Note that the present plan, as Dr. Gordon shows in one of the tables, gives higher average benefits to women living alone than to married women. All the other plans are more favorable to married women. Of course, the women living alone in these age groups are predominantly widows.

There is no doubt that the current research Dr. Gordon mentions, which does include survivor benefits, will change the cost estimates and the distributive effect of the program she mentions.

Dr. Gordon presents us with proposals which all have in common the establishment of individual earnings records for married women, whether or not they are actually earning. Therefore, all proposals speak to some of the major problems which have been complained of, and some speak better than others to problems of equal treatment of different groups.

There is more than one criterion of fairness to women; agreement is not easy to come by. Should contributions made to the system be the measure? The system is predicated on earnings replacement, which does not always come to the same thing as return on contributions, espcially when young survivors and disability are considered, along with retirement.

Should families be the unit or should individuals be the unit on what the system should treat fairly? Unresolved criteria of fairness are evident in unresolved issues in all the proposals she has. Analysts are

uneasy about all of the proposals, though some make us less uneasy than others.

For example, homemaker proposal A, the limited homemaker proposal which gives credits equal to the minimum wage with a 10-year maximum dependent on child care, does fill in some of the zero years which working mothers, who drop out of the labor force for a comparatively short time to raise children, would otherwise have to average in with their lifetime earnings. It is not surprising that Dr. Gordon finds this plan does not give more benefit, the less the participation; on the contrary, this plan is essentially a fill-in plan, most beneficial to those with fairly heavy lifetime participation patterns. If a woman has stayed home most of her life, particularly if she is divorced and does not remarry, a plan which gives her minimum wage credits for a maximum of 10 years will not be very helpful.

Proposal B, on the other hand, gives unlimited years of credits to those who work less than a quarter time. This plan, of course, will favor one-earner couples. It will be more helpful to widowed and divorced women than homemaker plan A, provided they have had higher earnings when they are working.

COMMISSIONER FREEMAN. Two minutes.

DR. MALLAN. Two minutes, okay.

Both of these proposals reduce protection for aged survivors. This is the reason why plan A is relatively inexpensive. Moreover, as Dr. Gordon herself says, both of these plans give "free" credits; that is, they are financed out of payroll or income taxes, not directly by beneficiaries. This sort of plan has very different implications from homemaker credits financed by the homemaker. First, different treatment between single people (including single women) and couples eligible for homemaker credits is heightened. Second, people who manage a home, but work outside the home for more than the amount of credits, might object to financing credits for those who work less (especially under plan B), and very bizarre results might follow in terms of income redistribution. Basing plan B on the amount of employment, rather than the amount of homemaking a person does, raises problems in any context, but when the credits are financed by the rest of society, particular difficulties appear. Domestic workers, for example, may end up financing credits for their bosses.

On the other hand, homemaker plans which involve taxes collected from the homemakers themselves also raise other issues. If the taxes are voluntary (along with the credits), those who will need protection most in old age may not see themselves able to afford the taxes while young. If compulsory, the reverse situation may occur; couples may find themselves hit with extra taxes exactly when they are in the worst

financial bind, when young women quit work to have babies and income falls.

Earnings-sharing plans also generate new issues. With most earnings-sharing plans, including the two Dr. Gordon presents, the larger earnings record can no longer be used to generate disability or survivor benefits. This means that if income to the family is cut off by either of these two events—disability or death to the high wage earner—replacement is at a lower level than under present law. The obverse of this situation is also a problem. Replacement may be said to be too high if the nonearner becomes disabled and the earner's income continues, along with a benefit based on half the family's earnings record.

Moreover, if the high earner retires before the low earner for a few years, the replacement will be at a low level. If the low earner retires before the high earner, "replacement" will be quite high; that is, the family will have the major part of its customary earnings plus a benefit based on half the family combined record.

These situations persist for the straight earnings-splitting plan as well as the combination plan. As Dr. Gordon points out, the combination plan also makes difference of treatment between one- and two-earner couples greater than under the present system.

Both of the plans, however, will give equal credits to husband and wife in the event of divorce. Under straight earnings splitting, benefits to couples where one earner provides all or most of the income will be the same, on retirement, as those to couples where the earnings are split.

COMMISSIONER FREEMAN. Thank you. Dr. Davis.

DISCUSSION BY FRANK G. DAVIS, PROFESSOR OF ECONOMICS, HOWARD UNIVERSITY

DR. DAVIS. I want to thank the Commission for the opportunity to do two things. One, I will comment on Dr. Gordon's paper and, two, I will present some pertinent issues on social security with respect to blacks.

I have three main points which I think summarize Dr. Gordon's paper. The first point is that there is a portion of women whose marital status is such that, at any given time, they are either housewives, outside the labor market, or who, because of change in marital status, have a belated entrance to the labor market.

The next point in her paper is that these social characteristics, such as divorce, early completion of childrearing, and late labor market entry, are becoming more pronounced.

Third is the point that, therefore, primary social security benefits should be extended to all of these women, whatever happened to have

been their marital status or their economic status, and that the amount of primary benefits versus taxes paid should be equitable with respect to standard-of-living categories achieved prior to retirement.

I have no quarrel with the demographic and social facts in connection with women, but insofar as Gordon is referring to women outside the labor market and housewives, she has missed the main problem of social insurance. The problem of social insurance is basically that of spreading the risk of economic insecurity in the labor market among all persons subject to the risk during their time of labor market participation.

When the risk occurs, whether it be man or woman, he is entitled to replacement of his income, at least above the poverty level. The theory here is that the economic system generates both inequality and poverty as a residual of economic processes during the preretirement life of wage earners. That is, one of the risks imposed by the private enterprise economy is insecurity in old age. So the basic problem is the effect of market behavior upon old age security; and, specifically, how the social security program meets this problem of old age insecurity through its tax and benefit system.

If we believe that the ultimate significance of old age insurance is alleviation of old age poverty, then the problem becomes the relationship between labor market behavior and poverty, on the one hand, and poverty and old age insurance, on the other hand.

So the crucial question is, to what extent is old age insurance a substitute for income when the individual is withdrawn from the market on account of age?

I find that, in the third section of the paper, Gordon mentions the changing labor market behavior of women by pointing out a rise in the labor market participation rate of women; but she is not talking about the behavior of economic forces in the market and how these economic forces in the labor market generate economic insecurity for women. Rather, her approach is not what the labor market does to women, but how women behave with respect to the labor market. That is, their employment may be irregular; they may or may not be able to go to work until their children have completed school or left home; or women may become divorced and have to go to work to provide for themselves and their children.

In other words, the problem that Mrs. Gordon is concerned with is the relation of women to the labor market in terms of changes in the traditional life cycle of women. While Mrs. Gordon's approach to the problem is interesting and pertinent to the behavior of women, the problem she poses is really a problem on the supply side of the market, which really says that the supply of women seeking employment in the labor force has risen and that family problems of one kind or another

precipitate irregularity in the supply and, in many cases for some women, the supply is affected by the age of the children.

The basic problem of old age insecurity arises from the employer side of the market, from the demand side. This demand side is in terms of wage rates, earnings, occupational mobility, employment and unemployment, and the impact of productivity changes through technology upon employment and shifts in industrial composition of the labor force.

For example, in my studies on blacks, I have observed the following: (1) Black workers are reallocated out of high-wage employment at the rate of −1.15 annually and moved into low-wage employment at the rate of +2.23 percent annually. You can accumulate that over time. (2) The ratio of black to U.S. aggregate real wages is declining over time at a rate of −2.98 annually and that this change in the ratio of black to the U.S. aggregate income is explained by the change in the manufacturing productivity. That is, a 1 percent increase in productivity is associated with a −1.05 percent decrease in the ratio of black-U.S. real wages. (3) The ratio of black per capita real income to U.S. per capita real income, as a function of time, is declining at a rate of −4.04 per unit of time. The basic problem of blacks, in terms of the demand side for labor, is declining real income over time relative to that of the U.S. average.

This is due to fundamental shifts in industrial composition of the labor force. That is to say, the proportion of the labor force engaged in high-paying and high-productivity jobs in manufacturing is falling, and the proportion of labor engaged in lower productivity, low-wage, service-producing industries is rising. The incidence of this shift falls heaviest upon black unskilled workers.

The next question is: How do these economic and institutional changes affect the old age security of women and blacks? Since there is no indication in Ms. Gordon's paper of changes in the market demand for women, due to operation of these economic forces in the marketplace, I shall now discuss further how the social security of the black community is affected by its declining personal income relative to U.S.

The question boils down to a determination of what is the impact of the insurance features of the Social Security Act upon the relatively declining, per capita real income of the black community? Does the social cost of social insurance generate a positive or net change in the per capita real income in the black community? That is, does the ultimate cost of the black community in terms of shifted payroll taxes to the employment of black community labor and higher prices to lower wage workers really yield a net benefit to the community over time?

COMMISSIONER FREEMAN. Two minutes.

DR. DAVIS. Okay. In reality, in answer to this question, for every $1 increase in income for blacks, there is an increase of 6 cents in benefits, but a 12 cents increase in taxes. For every dollar payout in taxes, the black community gets back 54 cents.

Let me give you my final interpretation of what should be done. I am saying here that if the problem of old age poverty is to be eliminated in this country, the risk of old age insecurity should be spread among all factors of production, including government, as well as land, labor, and capital. All income of the participating factors would share the risk through a graduated tax, according to income.

Furthermore, the funds emanating from the social security system would be invested, just as any private system invests part of its reserves, in profitable enterprises. Such investment would not only cut down on the costs of maintaining the system, but could be used in community development projects as a means of raising the income of lower income groups.

The economic implication of the experience of poor blacks under the present Social Security Act is that we must view the social security program as a social instrument designed to do the following: equitably to spread the social overhead risk of personal income insecurity among the factors of production; assess the costs of each factor, or subdivision thereof, in accordance with the average income of the factors; and secure the personal income of the labor force in accordance with the combined average earnings of all workers. In other words, the benefit formula would be tied to the average earnings of labor as a whole instead of the low or high earnings of the individual worker. Using the average earnings of all industry capitalizes upon the risk of economic insecurity to which the workers in all industries are subjected. Furthermore, this formula would permit workers who worked all their lives in low-wage, low-productivity industries finally, upon retirement, to share in the overall rises of productivity in industry as a whole.

In conclusion, Ms. Gordon's paper does not provide us with any indication of the magnitude of economic insecurity among women being generated by the market system. It is, however, clear from her paper that there are individual cases of inequity between couples with the same income and that the lower standard-of-living categories, consisting primarily of lone, single women, would probably need supplementary public assistance.

However, in the case of blacks, we may say that both the social security tax structure and the benefit formula are not only not geared to prevent poverty in the black community, but actually to perpetuate poverty in the sense that the social security tax structure reduces the

per capita real income in the black community without offsetting this tax cost with average benefits above the poverty level. Thank you.

COMMISSIONER FREEMAN. Thank you, Dr. Davis. Ms. Burris.

DISCUSSION BY CAROL BURRIS, PRESIDENT, WOMEN'S LOBBY, INC.

MS. BURRIS. Thank you. I want to start out, Dr. Gordon, by thanking you for a wonderful paper and also apologizing for my tardiness. My son's school only allows him to be dropped off at 8:55 a.m., so that we can discuss two-earner families in context.

I would like to start out by discussing the political problem of two-earner families, on which Dr. Gordon touches, primarily in an economic context. Therefore, she discusses the rise in the work force participation of married women, the rise in the work force participation of women with children under 6 years of age, and the relative wage rates that we have all discussed before.

I think it is important to realize that as she gets to the question of conclusion, she is discussing the cost; and what it is we are going to do, if we do earning sharing, is make more and more clear to ourselves that we see people marching off into eternity in couples and that a provision must be made for single-earner couples.

I think as we discuss how few families are supported—Carolyn Shaw Bell's figures are that only 6 percent of American families are a mother and a father and two children solely supported by the male breadwinner. As we discuss how we are going to make that nonlabor force participant wife more eligible for benefits—I was totally struck by the HEW booklet in which the large amount of income transfer that is being done to support a generation of widows not labor force participants. As the increase in married women in the paid labor force goes on, I think any discrimination against two-earner families, not just a redistribution that cuts down on the discrimination but any discrimination at all, is probably going to become less and less acceptable and, therefore, an earning-sharing system is only a short-term kind of thing that might move us closer to the time when we would all earn our own benefits.

I would like to make an analogy in terms of the income transfer to another project on which Women's Lobby works, which is welfare reform. Welfare reform is a problem of women who have been left to take care of their children, and yet it is extremely difficult to get a guaranteed annual income at all in the size and scope and scale of what we are providing for older women without children who are not in the paid labor force and whose primary job was the care of children.

I looked at the massive amount of welfare reform that all these two-earner couples are providing for a group of people who seem to be

more desirable than the current group of welfare recipients. It seems to me that we are perpetuating an inequity there that is not only not just, but leaves all of us who are in two-earner families with the question of exactly how we want to do that.

In HEW's study, they considered the Campbell plan, which provides that each person compiles their own earnings record rather than earnings sharing. It seems to me that, as long as the termination of dependence benefits is done over a long enough period of time, that those women who are now perhaps born—shall we do it in 60 years?—or those women who are now in high school—so that you do it in 55 years—as long as the rules are not changed under that group people currently not participating in the paid labor force, because they understood an agreement made, either a private agreement or societal agreement, so that they should be eligible.

I think we could change to a system of individual benefits and you would solve the same problems occurring under the marriage penalty when you discuss tax reform. That is that the family is not a wage-earning unit; the individual is the wage-earning unit and the individual should be the tax-earning unit, therefore. One of the things that makes me feel so strongly about this is that I think as we look toward the real change in family structure, we want to make sure that the Congress, which has never been noted for its speed in transferring programs, does not take a system like earning sharing, finally we would get it passed in, say, 5 or 10 years, and then find it was totally out of date at the time of its passing and have another 20 or 30 years to change what we now see as a system that is still discriminatory just a little against two-earner families, when they become 70 or 80 percent of all American families.

I think, to use Carolyn Shaw Bell's figures again, to do an earning-sharing system, to provide at all is to provide no work requirement for the middle class while we are providing a work requirement for women on welfare and one that welfare women themselves welcome because they feel they will otherwise be dependent to the welfare system. How then can we pretend that all of us really intend to support another group of women, more middle class when that group becomes a more and more diminished segment of upper middle class, high-earning white men, and I think that becomes then a dinosaur preserve, and they are nice to have around, but I do not know if we can afford both the swampland and ferns for them.

We use this example in tax reform as well. If you take the Jane Eyre case, the minute she said, "I do," then Rochester had all of the previous governess services with no social security deduction, no employer filing, and, as well, sexual services.

The same thing would apply if we are now going to do earning sharing. What we are doing essentially under the current system of dependence benefit is providing Jane Eyre with a lifetime income after the age of 62, as a welfare stipend, and I do not think that is necessarily the system we want to continue.

Politically, I think individual earnings benefits may not be possible at this time because the Congress contains a sizable number of the high-earning, white men who can afford to have a dependent.

I think that the working class, which is unwilling to pay for welfare reform, is also unwilling to pay for income transfers at the lower end of the scale. I think the group that probably suffers the most is the very poor black and white family—but predominantly blacks because black women earn the least of all groups in this society—which has two earners earning just about the same amount, who have absolutely no way to afford the level of leisure and services that could be provided by a worker in the home and now are subsidizing that for another high-income man.

Some of that problem would be mitigated if what we did was take off altogether the earnings ceiling on social security and make sure that Harold Geneen pays social security up to his $400,000 salary limit, but we do not see in the Congress, at this time, a real desire to make that ceiling the total amount of income. Therefore, we have to look at earning sharing as a short-term, carryover system that mitigates the damage to two-earner couples but does not end it and a system that will have individual's earnings records as the final sort of answer to what it is that we want to do about the entry of women into the labor force.

In conclusion, only when we really say that everyone is expected to work and carry their own weight in the social security system will we ever be able to address the problems of low earnings for women in the terms of economic planners.

I run into economic planners all the time who say, as the Assistant Secretary of Labor said to Dr. Gordon, that the increase of women in the labor force may be a short-term trend, and I think that only when we make it clear that we do not intend a dependent system, and that there are no dependents, are we ever going to force people to really give women, and minority women particularly, the nontraditional jobs and the well-paying jobs to which they are entitled. Thank you very much.

COMMISSIONER FREEMAN. Thank you very much. Dr. Gordon, before turning to my colleagues for their questions, I would like to give you 2 or 3 minutes to respond to any burning issues stated by the discussants.

DR. GORDON. Yes, thank you. I appreciate the opportunity to respond. I wish that I could share Carol Burris' view of the probability that the future that I would like to see come to pass will actually come to pass in the near term.

My personal view is that women should be in the labor force, they should acquire labor market skills, and they should realize that they will probably have to support themselves for a significant portion of their life and that alimony is practically nonexistent these days. I have done work on the determinants of child support payments and found that child support payments were seldom made, and when made were usually small. Women have to realize that they are going to be responsible for their own economic position and for that of their children. However, I do not see women learning that lesson very quickly, so I am concerned about taking social policy steps that are predicated on the notion that they will. The research that I summarized briefly was supported by the German Marshall Fund and involved looking at several European countries. Carol Burris' view is very much like the one held in Sweden, with which I am in sympathy; namely, that the solution to the problems of women is to get them into the labor force, have them acquire skills, and provide promotion opportunities, so that their economic scenario will be the same as men's.

To do this, we have to provide support for maintaining and caring for children. The reason that I disagree to some extent with the Swedish view is that many people believe that when children are young, it is better for the children to have someone stay at home with them. I personally would not ever do that, but I am very disturbed at the thought that we would take steps to disallow couples to choose that option.

I think we would be better off to provide a social program that would enable couples to make that choice without imposing large costs on the person who remains at home. We have now encouraged women to stay at home to care for the children, and then we have thrown them out on their own without labor market skills and without income-earning potential.

I favor, therefore, an approach like earnings sharing, which will provide protection for the spouse who remains at home (which I just think is going to be the woman because I do not see a vast increase in the number of men who are staying at home caring for their children).

COMMISSIONER FREEMAN. Thank you. Now the Commissioners and staff will have an opportunity to question the presentor and the discussants. First will be Vice Chairman Horn.

VICE CHAIRMAN HORN. Dr. Gordon, I was very impressed by your paper and the policy analysis and the implications through which you

went. It seems to me, as I read your paper and listened to you, that when you balance the economics, the equities, the fairness, the choice one ought to have as a woman, and not be compelled to be in the labor force, and also not be compelled to be at home, that to have an option and have some security based on whatever choice the woman makes, not what social planners or woman's rights groups think she ought to make, it seems to me it gets down to some combination of earning sharing, as you suggest, and a homemaker option that gives credits for that work which is done in the home.

Indeed, this Commission, in its Chicago hearings several years ago, this Commissioner, among others, certainly strongly advocated that we give consideration to a type of homemaker credit.

As you look at this, does this seem to parallel the concept of community property that we have in many States of the Union in terms of a splitting of the income or the assets acquired during marriage should there be a separation in the family? Therefore, is not this, in terms of evolution of the American law, and weighing these varying considerations, probably the most reasonable and perhaps the most feasible option we really face?

DR. GORDON. I think, if I understand you, you are talking about earnings sharing.

VICE CHAIRMAN HORN. Plus a combination of some sort of homemaker credit.

DR. GORDON. No, this is where I disagree most intensely. The earnings-sharing aspect, I think, does follow the lines of community property law.

VICE CHAIRMAN HORN. Right.

DR. GORDON. And is strongly supported by me. I think couples should be viewed as partners during the time they are married. The reason I oppose including a homemaker credit as part of this option is that this continues a subsidy to families where one person stays at home. If we think about a couple where both husband and wife are in the labor force, both earning maybe $6,000 to $10,000, this couple cannot afford to hire the full-time housekeeper that the higher income, one-earner family can afford in the form of a stay-at-home spouse.

Let us consider the example I discussed before, with the $12,000, one-earner couple, and compare them with two workers who each earn $6,000 or perhaps two workers, one of whom earns $8,000 and the other who earns $4,000. The one-earner couple with the $12,000 income is much better off than the other couple where both members are in the labor force. Why is this? The one-earner couple has 40 hours a week of work that generates the same amount of income that the other couple is generating with 80 hours of work. So, to add a subsidy

to the one-earner couple, which is already better off, does not seem to me the right way for social policy to move.

VICE CHAIRMAN HORN. How do you account for some sort of recognition for the tasks that usually the woman performs in the home as a homemaker? Would you favor then the right of the one-earner family to buy credits in the social security system to recognize the role of the housewife?

DR. GORDON. I think that would be an option. I agree with Dr. Mallan's comment that those who need it most would not choose to pay for it, and if it were compulsory, it would be difficult for some families to find the money to pay for it.

I think a superior option would be to have earnings sharing, but to have the taxable maximum be twice the amount for a couple that it is for a single individual. This way in a single-earner couple, the worker making $40,000 would be paying taxes for both the husband and the wife; they would each have a maximum earnings record because the $40,000 would be in excess of twice the current taxable maximum of $17,700. In this way, protection would be provided for both the husband and the wife.

I believe that relatively well-to-do couples ought to pay for their protection. In other words, the problem now is that both members of the two-earner couple are in the labor force, both paying social security taxes up to the taxable maximum. The one-earner couple stops paying these taxes when the maximum is hit on the one income, so that we are providing a tremendous subsidy for one-earner couples who are, in fact, already better off.

When I go home, there was no one there to do the dishes or dust the furniture or vacuum the rug, unless my husband got home earlier and did it. What we do not have is time, and that is the problem of all two-earner couples. If you look at some of the studies of how time is allocated, especially among poor people who cannot afford this full-time, spouse-housekeeper, women who work full time spend almost as many hours on child care and homekeeping operations as women who stay home full time. The difference is that the one-earner couple has far more leisure time.

VICE CHAIRMAN HORN. You said that on page 17 and I grant you many of us go through life reasoning by example, and I am sure you have some excellent statistical studies to support your conclusion.

As I look around me at two-earner couples and I look at one-earner couples, I find many one-earner couples working 60 to 70 hours a week and the two-earner couples, I would argue, seem to be living in the aggregate income a much better life than a lot of one-earner couples I know. I realize you probably have data to support it, but maybe as a one-earner person, I am feeling sorry for myself some days,

but I must say, I read with great fascination the assumptions on page 17 of your paper.

My concern is how do you get recognition for the woman who makes the decision to stay at home to provide a very crucial role in a society, which is a decent environment to bring up one's children, and yet needs that protection, if she spends 10 or 20 years of her life doing that, might have been in the labor market early, might go back later, and has lost all that credit? It seems we somehow ought to provide either a buy-in or some sort of recognition for that type of service to society.

DR. GORDON. But why is it that earnings sharing does not accomplish that objective in your mind? Earnings sharing argues that when a couple chooses a certain style of life where one person is in the labor force and one person is at home the couple should share that which they have. Specifically, they should share their social security earnings record; that is, the couple has made a joint decision and they should receive equal claims to social security benefits in the future. Also, if one wants to increase the taxable maximum for the one-earner couple, that would provide the higher income, one-earner couple with larger social security earnings records and, hence, higher benefits in the future.

VICE CHAIRMAN HORN. Which, as you know, Congress recently increased the maximum which essentially affects the one-earner couple, paying substantial funds in the next 5 to 10 years into the social security system.

DR. GORDON. But the one-earner couple is also receiving substantial untaxed income. My mother is a traditional woman in the sense that she has never worked; from the time she married, she has never been employed. She, however, wallpapers walls, refinishes furniture, reupholsters furniture, and makes my clothes and her clothes. She creates a tremendous amount of income for her family which is not taxed. That means it is worth considerably more than if she went to work and had to pay both social security taxes and income taxes on her income. My father and my mother are really much better off for her productivity outside the labor force.

To then give an additional "present" from the rest of society to this type of couple seems to me is subsidizing people who, in some sense, need less, while taking away from those who need more; namely, two-earner couples whose incomes are much lower.

VICE CHAIRMAN HORN. Do you feel, as you analyze this problem, that we should stick with the funding of social security through the social security tax or should we move to a combination of general revenue plus social security to fund these benefits?

DR. GORDON. I think that is a difficult question to answer and not one on which I can claim any expertise as a researcher. My personal view is that the social security system will have severe financial problems in the coming years because of the changing age distribution of the population. I would not be opposed to general revenue financing. However, personally, I would prefer that general revenue financing be used for some specific subset of the program. I think there is an advantage in forcing Congress to raise taxes when it raises benefits. Therefore, I would rather see general revenues used for something like medicare, which is not earnings related, and have the payroll tax continue to supply the funds for retirement and survivors.

VICE CHAIRMAN HORN. I agree with you, and I am glad you said that because, if you had not, I would argue that the so-called one-person worker in the family, generally the middle income people of, say, $15,000 to $35,000 to $40,000 a year, are providing substantial total tax revenue to the Federal treasury, while often lower income individuals are not even on the tax rolls.

DR. GORDON. It is clear that for lower income people, social security taxes are far, far more important than the income tax.

VICE CHAIRMAN HORN. Thank you.

COMMISSIONER FREEMAN. Commissioner Saltzman.

COMMISSIONER SALTZMAN. May I just crystallize in my mind, Dr. Davis, the point you made about shifting of the black worker in the economic forces that work in our nation, in the high-productivity, high-paying jobs to the low-productivity and low-paying jobs, service areas rather than the manufacturing, and that has produced a decline in the black aggregate income vis-a-vis the white. Is there a parallel within the economic market affecting women as the economic forces are affecting blacks?

DR. DAVIS. I really do not know that there is. I have not—of course, this is an overall phenomenon in the sense that all workers in manufacturing are subject to the reallocation process due to technology and also the rise in service industries, so all workers would be affected.

The only problem with blacks is that they are predominantly unskilled, and the incidence of this shift falls upon the unskilled. That means that they are shifted in the low-paying, service-producing industries where they are already concentrated. With respect to women, I would not think the magnitude of the problem would be the same.

COMMISSIONER SALTZMAN. That is, that because women do achieve higher skills levels, therefore, the magnitude of the problem is not—

DR. DAVIS. I am primarily talking about the reallocation of labor out of unskilled positions in manufacturing industries. Of course,

women, I guess, would be mostly white-collar workers in that industry. I was thinking more in terms of production labor.

COMMISSIONER SALTZMAN. I see. Thank you. I have no further questions.

COMMISSIONER FREEMAN. Chairman Flemming?

CHAIRMAN FLEMMING. On the earning-sharing concept, your studies include pricing this out in terms of the impact that these, in order of magnitude, might have on the financing of the social security system?

DR. GORDON. Yes, the research that I reported today was based on an earnings-sharing option that did not provide *additional* benefits for survivors. In other words, an individual's benefits would not change after it had been calculated at retirement, regardless of what happened to the spouse.

That seems to me less desirable than another version of earnings sharing: when individuals reach retirement, they each receive their own benefit, but when one member of a couple dies, the survivor receives two-thirds of the total benefit the couple had been receiving beforehand. Computing benefits for survivors in this way would enable a survivor to maintain the same standard of living as the one enjoyed by the couple when both were alive.

If we provide a survivor's benefit equal to two-thirds of the couple's total benefit when both were alive but otherwise retain the provisions of the earnings-sharing approach described above, total costs will be almost exactly the same as under the current system, less than 1 percent more.

The reason for this is, and I find it quite amazing, that women really are in the labor force. Under earnings sharing, a couple in which one person *never* was employed would receive lower benefits, but that couple is practically nonexistent. In almost all cases, the woman works during part of her life. And, under earnings sharing, all of the earnings records that have accumulated when the woman works would be taken into account in computing the benefits. The people whose benefits would be lowered under earnings sharing are men who are divorced when they retire. In other words, a man who shared his earnings with a homemaker and then divorced and did not remarry would have a lower benefit. However, if he remarried, then the couple's benefit would be higher because of remarriage to a woman who was also under an earnings-sharing scheme. The result of all of these factors that would cause some benefits to go up and some to go down is that the total costs are about the same.

CHAIRMAN FLEMMING. I assume that is why you commended Dr. Gordon for keeping cost restraints in mind in connection with development of her plan?

DR. MALLAN. She did two things. First, she saw what each would cost and then she assumed they all cost the same and saw how the benefits would be distributed.

CHAIRMAN FLEMMING. I have one other question I would like to ask. That is whether or not, in your study, you related this to the supplemental security income program in any way?

DR. GORDON. No, I did not. I considered only the social security benefits provided by the normal program.

CHAIRMAN FLEMMING. I noticed in the discussion on the part of some of the members of the panel that the question of the adequacy of the social security benefit came into the picture. I wondered whether or not any of the members of the panel had related this in any way to the social security income program as it affects the aged, blind, and disabled?

DR. MALLAN. You want me to talk about the relationship of SSI to social security income?

CHAIRMAN FLEMMING. It seems to me that one of the basic problems that has confronted us in connection with the social security system, over a period of years, has been the problem of adjusting the system from time to time in order to make payments that would be regarded as adequate. We have increased the minimum payments, with that in mind, just about everytime there has been an adjustment in the benefit structure. When we have done that, there are those who have alleged that we have begun to mix the concept of an insurance program with the concept of a welfare program, and that has created some of our funding problems for us. In reality, if we are going to have a supplemental security income program, we should keep strengthening it, rely on it, and so on, rather than going too far in the direction of mixing the two.

We have done it, and that is a fact of life, and we are not going to back away from it by any means, but as I have listened to some of the discussion relative to the earning system and also relative to the impact of the system on the minority community, the black community, and so on, I am wondering if, when we look at this particular type of issue in connection with social security, we are, at the same time, linking it in our thinking and our planning with SSI or whether we are going to put them in two compartments and look at one separate and apart from the other?

DR. MALLAN. I did not understand whether the question was about the level of benefits or about the concept of the elements of welfare in social security, but now I understand you are talking about the second kind of thing?

CHAIRMAN FLEMMING. Right.

DR. MALLAN. I think here we are talking about Ms. Burris' dinosaurs, so-called, and before she came in, I was saying that we had to protect survivors because, if you really believe that marriage is a partnership, then when one member dies, it seems to be an assumption of the present system that the survivors should continue to receive a fraction of the couple's benefit, based on past earnings of the couple, the wage earner.

I guess, as we have seen today, there is quite a lot of disagreement on whether that is an appropriate social policy. Speaking for myself, I believe that marriage is a partnership and that kind of thing should go on. I believe that adequate benefits, based on earnings in the past of the couple, should continue. I think that speaking for the agency I would have to say about the same thing.

Ms. Burris' proposal to do away with widow and spouse benefits in a generation would not be helpful to women. It does not appear that we are heading toward a system where women's labor force participation and earnings approach men's, and to act as if we were would, I believe, have very destructive effects. Social security actuaries predict a 65 percent participation rate by 1990—a high rate, but by no means equivalent to universal labor market activity for women. Women's benefit levels are not expected to rise greatly relative to men's—partly because their earnings have shown great stability relative to men's. Finally, the policy of restricting the choice a couple may make as to whether it is permissible for one member to stay home to take care of young children would, I believe, be most undesirable.

The plans that have been proposed in Dr. Gordon's simulations of the data explicitly do not include survivor benefits. Some of the plans that have been proposed to Congress though, and the plans that the HEW task force considered, do have in them a survivor's benefit based on a certain fraction of the couple's previous benefit.

What is different between these proposals and the present system is that the present system gives the survivor two-thirds of the highest earner's benefit, in effect—of the benefit based on the highest earner, whereas the proposals make no difference who earned the income; the survivor would receive two-thirds of the couple's benefit, the family benefit, after one member is deceased.

It is certainly the survivor that provides the greatest so-called welfare elements in social security. It is really a matter of opinion whether you believe they should continue to be protected under a wage-related, payroll-tax finance system.

CHAIRMAN FLEMMING. Before I recognize Dr. Davis, I assume that this earning-sharing concept is one of the concepts that will be

developed for presentation to the new Social Security Advisory Council that has just been appointed? Am I correct in that assumption?

DR. MALLAN. Yes. I guess you can still divide the proposals into two basic kinds, homemaker and earning sharing. Some of us make a rather strong division whether the homemaker plans are financed out of general revenue or general payroll taxes or whether they are paid for by the couples involved.

Then there are other plans such as the one that Ms. Burris mentioned which are based totally on the individual record. I agree with Dr. Gordon, though I am not so certain about the personal predilection, certainly my prediction is that we are not going to be ready for that for a while.

CHAIRMAN FLEMMING. The only thing I was interested in was kind of assuring myself. The basic issue at which we are taking a look, in connection with this dialogue, is going to go before the Social Security Advisory Council and will be given consideration by that Council because they will be into this a little earlier than we and will be coming out with a report probably sooner than we.

DR. DAVIS. You have to look at the totality of the situation, your frame of reference being what is happening in the labor market. If you have, say among blacks, a declining relative income, a gap between median is getting bigger and bigger in absolute terms, this is reflected in social security payments, in his benefit payment. His benefits would be relatively low, so you get a widening gap in benefits. This raises the question about who you are going to tax; whether the money should come out of general revenue, say under SSI, to pay these people more.

What I am saying is that instead of basing the earnings of the individual on variation in individual industries, for example, low-paying, low-productivity industry, that we should base the earnings on the average of all industries. The reason for this is that you have increases in productivity over time in industry as a whole. That increase in productivity should go to the people, the workers. However, if you are working in a low-productivity industry, you never get that.

If you based your benefit formula on average earnings, this would enable everybody to get some of the benefits of increased productivity, and it would also eliminate the problem of the reallocation of labor, especially like blacks, to lower paying jobs.

CHAIRMAN FLEMMING. You did not get a chance to go into it in any detail, but I gather also that you would handle the trust fund a little differently than it is handled at the present time in terms of the investment of the trust fund?

DR. DAVIS. Here is a study put out by me at Howard University called the *Burden-Benefit under Social Security,* and I have a section

here on economizing the tax fund. I show in this section that the opportunity cost is the cost of the foregoing alternative.

If blacks had a chance to take the total amount of money they have put in in taxes, and the contributions they have received, the excess of taxes over contributions would have been able to yield some fantastic amounts. I have the compounded excess taxes paid by the black community, compound at 6 percent.

COMMISSIONER FREEMAN. Dr. Davis, will you identify the study?

DR. DAVIS. Yes. This is *Burden-Benefit under Social Security, The Case of Poor Blacks* by Frank G. Davis, Occasional Paper No. 3, volume III, put out by the Institute for Urban Affairs and Research, Howard University.

COMMISSIONER FREEMAN. Will you make a copy of it available to the Commission?

DR. DAVIS. Yes.

CHAIRMAN FLEMMING. I would like to suggest that it be made a part of the record of the consultation.

COMMISSIONER FREEMAN. It will be so received and ordered.

CHAIRMAN FLEMMING. Did you want to make a further comment on that?

MS. BURRIS. One of the reasons that welfare reform is so interesting is that you have these 3,000,000 women and 8,000,000 children and about 70,000 men who are receiving welfare benefits. Because women live longer, as Dr. Gordon pointed out, one of the things you see in SSI is that, although this is a massive transfer program in social security, it is not adequate to meet the needs of these women and, therefore, the whole system, except for the blind and disabled, is really keyed a lot toward women. Even then, the matching benefits are not adequate, and they do not go anywhere near the poverty level.

What I think is so interesting about social security vis-a-vis SSI is that none of the income transferred has the stigma of other income-transfer payments, so you have elderly people who will not use food stamps and States trying to cash them out for the elderly. You have people who do not apply for SSI, and none of that accrues to social security; but the data clearly supports the idea that those people have not paid into the insurance nature of the scheme.

I also want to say that I am not against marriage and it is not that I do not think it is a partnership, it is that I think clearly one's affectional preference should not be supported in income tax systems.

CHAIRMAN FLEMMING. I might just make this comment. I noted with interest the number of times when certain suggestions have been accompanied by the statement that this would be something that would be good to finance out of general revenues as contrasted with

financing it from the payroll tax. I welcome suggestions of that kind. Personally I feel that the recommendation that President Carter made to the Congress was a sound recommendation when he suggested that we utilize general revenues when unemployment, for example, exceeded 6 percent or above.

I had the opportunity of chairing the Social Security Advisory Council from 1969 to 1971. At that time, we recommended that we divide the financing of medicare three ways, to finance a third of it from the tax on employees, a third from tax on employers, and a third from general revenues.

I think there are aspects of the social security system that certainly lend themselves to financing through general revenue without jeopardizing something we don't want to jeopardize; namely, making Congress realize that when they increase benefits, then they have got to devise a method for financing those benefits. That has been one of the great assets connected with the trust fund.

VICE CHAIRMAN HORN. Although I must say, Mr. Chairman, the built-in regulator, good in theory, has not been too easily recognized in actuality, as Congress has generally extended benefits beyond what they have extended in terms of raising the funds to finance those benefits.

CHAIRMAN FLEMMING. Until they got into the problems involved in a combination of inflation and depression, the trust fund was on a pretty solid basis, at least as judged against the kind of standards we drew for the trust fund.

VICE CHAIRMAN HORN. The trust fund, as you know, was based historically simply on new workers coming into the market to pay the bills of those retiring. It never was "actuarially sound."

CHAIRMAN FLEMMING. No, I know. The Advisory Council that I chaired recommended to the President and the Congress that you keep in the trust fund enough money to take care of benefit payments over a period of 12 months. That recommendation was accepted; that has been the test that has been applied. In applying that test, it fell below the particular level because of a combination of the depression and inflation. The action taken by the Congress, although it is not particularly popular in certain quarters at the present time, would have the effect of correcting that particular situation. I have no further questions.

COMMISSIONER FREEMAN. Dr. Gordon, I want to ask for your further comments with respect to what appears to me to be certain assumptions you have made as to the family, the choice the couple makes, with respect to women, when we recognize that between one-fourth and one-third of the total population of women would be members of the minority population? Was there any consideration

given to whether the choice of such families is diminished, as to whether the husband or wife or both should work?

DR. GORDON. I am not sure I understand your question. Are you asking me about the data on which the analysis was based?

COMMISSIONER FREEMAN. Yes.

DR. GORDON. The data was created by longitudinal simulation model. We start with a sample of individuals from the 1960 census. A model that has been developed at the Urban Institute over the last 10 years moves these people through time. There are very complicated modules that determine—

COMMISSIONER FREEMAN. May I first ask, are these people identified by race, creed, color, or national origin?

DR. GORDON. Many characteristics of people are taken into account when the model determines wages, labor force participation, education, marriage, divorce, and so forth. Race is one of them; religion is not.

For example, when we simulate what will happen to individuals between 1960 and 2000, blacks are more likely to marry blacks, whites are more likely to marry whites, and there are some interracial marriages.

What the model tries to do is duplicate what might actually happen to people in the real world. We can duplicate, in aggregate, what we know has happened between 1960 and 1976. By using this information, we have some hope that our forecasts for future years are reasonable.

COMMISSIONER FREEMAN. Any of the discussants have a comment?

DR. GORDON. May I make just one clarifying comment on the question of the financial costs of these various alternatives? If we were to adopt earnings sharing but not include any additional benefits for survivors, that option would save a considerable amount of money over the cost of the current system. If, instead, we were to adopt an earnings-sharing plan that provides a survivor with two-thirds of the benefit the couple had been receiving (the version I personally would prefer), then the cost would be about the same as the current system. Thank you.

COMMISSIONER FREEMAN. Mr. Hope?

MR. HOPE. Dr. Mallan indicated earlier that if time permitted, she would like to come back and say something about how Dr. Gordon's formulation might impact on minorities or the social security system or what. It was not clear.

DR. MALLAN. There is one comment I would like to make in relation to a question the Chairman asked a minute ago of Dr. Davis about women's occupations in industrial shifts.

It has not been so much a shift; what has happened is that women's occupational distributions have stayed pretty much the same. They

stayed quite stagnant, and women have continued to enter traditional occupations; even with this large labor force movement, we have been seen women moving into the labor force, but when they have been in the labor force, they have done the same things they have always done.

About one-third of them are in clerical occupations and that has always been the way. Service workers, about one-fifth of women are in service occupations, a little bit more actually. Very few in the lucrative occupations, about the same percentage of men in professional and so on, but the women who are in professonal occupations are in the lower paying ones like lab assistant, librarian. Very few are in managerial occupations, in lucrative craft occupations. One-quarter of men are in crafts occupations and 1 percent of women. That is the way it has always been.

The stories you read about Hard Hat Hattie who is on the construction crew, well, she gets a story about her because she is the only one; it is not a trend. That is not an answer to your question, but it is an answer to a question I was asked before.

I did say that there might be some comments about minority issues that I might be able to make later on because I was supposed to comment on Dr. Gordon's paper which dealt with women.

Dr. Davis suggested that since social security is, in part, a redistributive social device, that the funds should be used specifically for redistributive purposes. Then we heard Chairman Flemming say that the trust fund has gone beyond the amount that would pay 12 months of benefits, and so what we are really saying is that the new taxes that are to be raised in order to get the trust fund up to where it has a year's worth of benefits in it, these taxes should then go to be invested in a certain part of the economic community, the low-income community, specifically the low-income black community.

This is an interesting idea, but I do not know if it is a generally accepted idea; that is, that the payroll taxes to pay for wage replacement should be used as investment. There really is not that much at present in the social security trust fund, although in the past there has been a large excess. At the moment, I do not know whether it would be possible to use the trust fund in that way.

COMMISSIONER FREEMAN. That is a very interesting question that we can probably pursue at other points during the next 2 days. I want to thank you, Dr. Gordon, and the discussants, for a very comprehensive and interesting analysis of this topic of social security. Thank you.

We will now have the 5-minute recess before we go to the next topic of private pension coverage and benefits for minorites and women.

Private Pension Coverage and Benefits for Minorities and Women

COMMISSIONER FREEMAN. For the next portion of our consultation, we will follow the same procedure we followed earlier. The presentors together will be allotted 15 minutes, and the discussants will comment for 10 minutes. We, as you know, will call time, so we are asking you to observe it and anticipate when we will call time.

Our presentor will be Ms. Gayle Thompson, of the Office of Research and Statistics, Social Security Administration. The discussants will be Walter Kolodrubetz, Chief, Division of Research, Labor-Management Services Administration, Pensions and Welfare Benefit Program, Department of Labor; Fred J. Ochs, Director, Employee Plans Division, Internal Revenue Service; and Ms. Judy Ellis, Office of Policy Implementation, Equal Employment Opportunity Commission.

Ms. Thompson, you may proceed.

STATEMENT OF GAYLE THOMPSON, OFFICE OF RESEARCH AND STATISTICS, SOCIAL SECURITY ADMINISTRATION

MS. THOMPSON. This presentation summarizes some of the available research dealing with the extent to which women and racial minorities are protected by private pension plans.

For those who receive it, pension income is an important component of retirement income. Data from the Social Security Administration's Retirement History Study show that, among recently retired persons, those receiving employee pensions tend to have higher preretirement incomes than those not receiving such pensions. In addition to being better off prior to retirement, private pension recipients receive a higher replacement of their preretirement incomes after retirement. Moreover, their income position relative to nonrecipients is somewhat higher after retirement than before retirement. Notwithstanding the importance of employee pension income in maintaining preretirement standards of living, most retired persons do not receive such income and must rely solely on social security benefits, possibly augmented by small amounts of interest from personal savings.

Women and racial minorities are much less adequately protected under private plans than are white men. We have five major points to make on this subject. First, women and racial minorities are less likely than white men to be employed in jobs covered by private plans. Second, women and racial minorities are less likely than white men to receive private pension benefits in retirement. Third, among those fortunate enough to receive private benefits in retirement, women and

racial minorities receive smaller absolute amounts and a smaller replacement of their preretirement earnings.

Fourth, although protection under private plans varies by both sex and race, the differences between men and women generally are more pronounced than they are between racial groups. If we rank the sex and racial groups from the most to the least advantaged with respect to coverage, receipt, and size of benefits, the tendency is for white men to be in first place, then the minority men, then the white women, and last of all, the minority women.

Our final point is that women and racial minorities are in a relatively disadvantaged position with respect to pensions partly because of their job characteristics and labor force participation patterns. Generally speaking, these groups are more likely than white men to be employed in those industries with low coverage. Their shorter job tenure and lower earnings also appear to contribute to their relatively poor position.

Before turning to a detailed discussion of each of these findings, we would like to call your attention to three attributes of the data.

First, most of the data are from studies conducted prior to the effective dates of the Employee Retirement Income Security Act of 1974, more commonly known as ERISA. The liberalization of the participation and vesting provisions mandated by ERISA may affect the proportion of workers covered by private pension plans and the proportion of covered workers with vested rights. The nature and magnitude of that change, however, is unknown at this time. Because this paper reports pre-ERISA data, it provides a background against which to measure the effectiveness of that legislation in narrowing the gap between men and women and between whites and racial minorities.

Second, this paper does not deal with the extent to which women receive survivor protection under private pension plans. Rather, it focuses primarily on coverage, receipt, and size of benefits among women workers. We would like to call to your attention, however, a project being conducted by James Schulz of Brandeis University on survivor protection. Preliminary findings of this project will be published this summer in *The Compendium on Mid-Life Women* by the House Select Committee on Aging.

Third, the data pertain to individuals rather than to pension plans or firms. Therefore, no direct conclusions can be drawn about the effect of specific pension plan characteristics on reported patterns of coverage, receipt, and size of benefits.

The remainder of this discussion presents some details on coverage rates, receipt rates, and size of benefits. First, let us take a look at coverage under private plans. Although coverage under an employee

pension plan is the initial step towards receiving plan benefits at retirement, less than 47 percent of all workers employed in private industry were covered in 1975.

Data from the 1972 Pension Study show that, among full-time, private wage and salary workers age 16 and older who were employed in April 1972, men were more likely than women and whites more likely than racial minorities to have been covered by a pension on their current job. Coverage rates were highest for white male workers, 53 percent, and lowest for minority female workers, 32 percent.

Although both sex and race were related to coverage, sex was the more important of the two predictors. That is, the difference in coverage rates between men and women within each racial group was more pronounced than that between whites and racial minorities within each sex group. To illustrate, among whites there was a 17 percentage point difference in coverage rates between men and women, whereas among men there was a 10 percentage point difference between whites and all other races.

Substantial numbers of the workers covered by private pensions on their current job in 1972 did not have a vested right to their benefits (a nonforfeitable right should they leave their job). Only 35 percent of the covered white men and an even smaller proportion, 25 percent, of the covered workers in the other three sex and racial groups reported vested rights.

Coverage rates among newly retired workers followed the same sex and racial patterns as observed for all currently employed, full-time workers. Among private wage and salary workers newly entitled to social security retired-worker benefits between July 1968 and December 1969, private pension coverage rates on the longest job were as follows: 54 percent for white men, 33 percent for minority men, 25 percent for white women, and 9 percent for minority women.

Differences in private pension coverage for men and women partly result from differences in the job characteristics of the two groups. Data from the Retirement History Study show that, among private wage and salary workers, coverage rates on the longest job were lowest among those with the following characteristics: (1) employed in wholesale and retail trade or in service industries other than professional services; (2) employed as service workers, salesworkers, or laborers; (3) low annual earnings; (4) left their longest job several years prior to the survey when pension coverage was less extensive than it is today; and (5) short job tenure.

These data also show that, in general, nonmarried women were more likely than men to have had those job characteristics associated with low coverage rates. Moreover, coverage rates within each category of each job factor were generally lower for nonmarried

women than for men. Among those employed in manufacturing, for example, 63 percent of the men but only 31 percent of the nonmarried women were covered by a pension.

Data from the Social Security Administration's Survey of Newly Entitled Beneficiaries indicate that black workers are more likely than white workers to possess some of the job characteristics associated with low rates of pension coverage. For example, blacks newly entitled to retired-worker benefits were more likely than whites to have been employed for less than 20 years on their longest job and more likely to have been employed as service workers on that job.

A minority of older Americans receive private pension income. Again, women and blacks are particularly disadvantaged in this regard. Information from the March 1976 Current Population Survey indicates that, among social security beneficiaries age 65 and over, proportionately fewer blacks received retirement benefits in 1975 than similarly situated whites. (By retirement benefits, I am referring to private pension benefits.) Among nonmarried persons, for example, 24 percent of the white men and 13 percent of the white women received private pension benefits, compared to 11 percent of the black men and 4 percent of the black women.

Unquestionably, private benefit receipt is preconditioned by an attachment to the labor force and by coverage under an employee retirement plan during one's working years. But survey data from the Retirement History Study show that neither factor is sufficient to assure the receipt of benefits during retirement.

Among persons in their early to middle sixties who had been covered under private plans on their longest job and were completely retired in 1972, 72 percent of the men but only 55 percent of the nonmarried women received private benefits in that year. That is to say, a significant number of workers, particularly women, who had been covered under private retirement plans on their longest job receive no pension benefits upon retirement.

For persons covered by retirement plans, recency of the longest job and tenure on that job are important determinants of retirement benefits received. Significantly, nonmarried women tend to have had shorter job tenure than men and to have left their longest jobs at an earlier date than men.

The importance of tenure and job recency to benefit received is closely associated with the conditions for vesting under private plans prior to the enactment of ERISA in 1974. The data linking recency of employment to benefit receipt strongly suggest that the lack of vesting provisions in many plans prior to ERISA resulted in the loss of retirement benefits. The data on tenure suggest a loss of benefits due to stringent provisions requiring many years of service for the receipt of

benefits. Other possible factors contributing to the loss of pension benefits are the bankruptcy of business firms or the termination of their pension plans or the withdrawal of employee contributions from contributory plans.

Not only are women less likely than men to receive private pension benefits upon retirement, they also receive substantially smaller benefit amounts. Findings of the Retirement History Study show that the 1972 median pension income for completely retired nonmarried women was $1,200, compared to slightly over $2,200 for men. Although the addition of social security benefits pension income somewhat improved the income status of nonmarried women, women's conbined benefits amounts remain substantially below those for men.

Another factor frequently used in judging the relative adequacy of pension income is the proportion of preretirement earnings replaced by pension benefits. An analysis of the earnings replacement rates computed from the Social Security Administration's Survey of Newly Entitled Beneficiaries illustrates again that women are in a relatively poorer position than men.

The median replacement ratio from private benefits for women who were awarded social security retired-worker benefits from July 1969 through June 1970 was 19 percent, compared to a median replacement ratio of 25 percent for similarly situated men. The median amount of private benefits received by black men in this survey was lower than that of white men, but somewhat higher than the amount received by white women. The median replacement ratio for these black men was also lower than that for white men, but about the same as for white women.

Pension plans covering slightly more than half of the private wage and salary workers base benefits on some combination of earnings and years of service. The remaining plans generally base benefits on length of service alone or provide a flat benefit to all who fulfill specified service requirements. Since women and blacks tend to have shorter job tenure and lower earnings than white men, it is not surprising that their private benefits are lower than those of white men.

To summarize briefly, while a minority of all American workers are protected under private pension plans, women and racial minorities are particularly disadvantaged in this area of employment-related benefits. They are less likely than white men to be covered under private plans, those who are covered are less likely to receive benefits during retirement, and those who do receive benefits receive lower amounts.

In general, women workers of all races are more disadvantaged than black male workers. The difference between sex and racial groups stems, at least in part, from differences in their job characteristics and labor force participation patterns. Thank you.

COMMISSIONER FREEMAN. Mr. Kolodrubetz.

DISCUSSION BY WALTER KOLODRUBETZ, CHIEF, DIVISION OF RESEARCH, PENSION AND WELFARE BENEFIT PROGRAMS, LABOR-MANAGEMENT SERVICES ADMINISTRATION, DEPARTMENT OF LABOR

MR. KOLODRUBETZ. The Thompson-Yohalem paper presents a much needed look at the situation of women and minorities with regard to the receipt of private pensions. Their findings indicate that these groups are much less likely to be covered by private pension plans; but when they are covered, they are less likely to receive benefits and those benefits received are likely to be small. Finally, the study indicates that the situation of women workers is probably weakest in terms of potential pension income. The paper brings together a great deal of new and old evidence to support these findings. While the conclusions are not that surprising, I think it is extremely important that the subject be reviewed and studied systematically.

I would like to concentrate my comments on a number of issues that are not emphasized in the study to help broaden the perspective of the discussion. I am certainly not faulting the Thompson-Yohalem review for not doing everything. First, it would be interesting to investigate to what extent women and minorities are provided with less adequate pension coverage as a result of labor market discrimination. While differences in occupation, industry, earnings, and job tenure are noted, it is important to realize that many of these differences stem from the unequal labor market treatment of women and minorities. Studies abound which document that both occupational segregation and wage discrimination persist against these groups. To the extent that programs such as EEOC and OFCC are successful, we should witness an increase in pension adequacy for these groups. I would suspect that the situation of minorities is most heavily influenced by these labor market factors.

The case of women is complicated, as the study indicates. For this reason, in part, it concentrates on the situation of never-married women workers. Eventually, however, we want information on pension income of married women as well. In the future, of course, as more and more married women are likely to receive pensions on their own, the situation will change. At present, the receipt or nonreceipt of pension income by widows is an important issue and is uniquely tied to the enactment of ERISA. I would like to stress that the law applies to private pension plans and not to public plans.

Let me first outline how the enactment of ERISA directly affects the receipt of benefits by wives and widows. Then I would like to go

over some of the other provisions that should directly benefit women and minorities. In other words, these provisions are likely to change the findings of future studies of the type presented by Thompson and Yohalem.

In the past, for most aged spouses, the death of the private pension recipient, usually a husband, involved termination of benefits. Although the data are skimpy, it is estimated that less than 5 percent of aged widows were receiving private pensions, mostly because many plans made no automatic provision for continuing part of the pension to the survivor. Under ERISA, pension plans must provide an automatic joint and survivor benefit, unless the retiree rejects it in writing. The survivor annuity must be at least half the amount paid to the retiree. ERISA allows plans to make actuarial reductions for providing the joint and survivor annuity.

Another provision which could help the situation of women and minorities is the minimum standard for participation in pension plans under ERISA. Before ERISA, the rules under which many plans operated were varied and sometimes stringent. Generally, ERISA provides that participation may not be postponed beyond the time an employee reaches age 25 and completes 1 year of service. Earlier participation, of course, means earlier vesting and higher benefits.

Another area ERISA has improved is the vesting provisions of pension plans. Before ERISA, some plans had such stringent eligibility requirements in order to vest or qualify for benefits that many workers with lengthy service found themselves ineligible for benefits at retirement age. One of the chief purposes of ERISA is to protect the interests of plan participants by seeing that persons who work for some minimum specified period under the pension plan are assured of at least some pension at retirement.

Plans must vest under several schedules of ERISA; the most common schedule adopted by private pensions today is full vesting after 10 years of service. These provisions should help women and minorities to the extent that they tend to have shorter tenure with employers than white males.

ERISA also prohibits pension plans from excluding an employee on the basis of part-time or seasonal employment if the employee has completed a year of service—generally, 1,000 hours during a 12-month period. Many women are part-time workers.

Another ERISA improvement concerns what happens when an employee incurs a break in service. This can occur through plant shutdown, layoffs, sickness, and so forth. Before ERISA, in many plans a break in service could wipe out all pension credits earned. Circumstances under which this could happen are more limited due to ERISA. Although I will not go into the precise rules, in certain

circumstances the requirements are helpful to women who have short leaves of absence—for instance, for maternity leave—and return to the same employer. Under ERISA, an employee in a defined benefit plan who is not vested and incurs a break in service will not lose previously earned benefits until the number of years of the break equals the number of years of the prebreak service which are counted for vesting.

There are still some gray areas which possibly could be improved to provide greater equity in pension plans for minorities and women. For example, vesting provisions may still mean that women with more intermittent labor force participation pay for pensions received by men. As another example, the joint and survivor provision may still fail to protect nonworking wives adequately. Finally, although other issues are important as well, perhaps one of the thorniest problems still being discussed is the equity of paying women actuarily reduced benefits on the basis of longer life expectancy.

In summary, I believe that ERISA will improve the situation of women and minorities with regard to pension income although there are still issues to be resolved. Surely, the major determinant of pension equity will be the attainment of equal employment opportunity in the labor market itself. I would hope that future studies, using post-ERISA data, are undertaken in the years to come which investigate the adequacy of retirement income for all Americans.

COMMISSIONER FREEMAN. Thank you very much. Mr. Ochs.

DISCUSSION BY FRED J. OCHS, DIRECTOR, EMPLOYEE PLANS DIVISION, INTERNAL REVENUE SERVICE

MR. OCHS. I, too, agree that the paper reflects a great deal of interesting and valid observations and conclusions concerning the obvious. Another element I would like to discuss, which is briefly mentioned in the paper, is the concept of integration of social security in private pension plans.

I am going to limit my comments to those four principal areas which relate most directly to the administration of qualified employee plans by the Internal Revenue Service.

The employee patterns, as mentioned in the report, are very important because there is a disproportionate probability of adoption of employee retirement plans within given industries.

I think it is obvious and mentioned in the report that the service industries, as opposed to manufacturing and banking, are less likely to have retirement programs. The recency of employment is extremely important. As an example, in December 1964, the Internal Revenue Service had records of only 102,000 corporate plans in existence in the United States. However, within the 10-year period ending in 1974, this had increased to 423,000 plans. I do not have the figure of the number

of participants, but obviously it was greatly increased, the number of people covered by plans. To the extent that people, about which we are concerned here, were employed in those earlier years, it is obvious that their chance of being covered by a plan was far diminished over what it would be today.

I might also mention that the statistical data that the authors were able to accumulate is quite old; it predates ERISA, as mentioned, and also fails to recognize the dramatic increase in the number of pension plans in existence in the United States. Obviously, the data were extracted during the mid and early sixties for some of the people on retirement that were questioned and incorporated in the report. It obviously needs an updating once ERISA has had an opportunity to be fully operative.

The other area I would like to discuss is the tenure of employment. The report deals with this extensively, but I think the enactment of ERISA may change the pattern emerging from minorities and women not earning benefit rights by reason of the change in the vesting standards.

Prior to the passage of ERISA, a plan needed only provide for full vesting at date of retirement as specified in the plan. That could be a long time. ERISA now provides for much accelerated vesting, mainly the three alternatives my associate has mentioned, 100 percent vesting after 10 years of service; a graduated vesting, 5 to 15, 25 percent after 5 years, and 100 percent at the end of 15 years; and a so-called rule of 45 which has to do with the combination of the sum of the age and years of service, which essentially would attain 100 percent vesting in approximately 10 years.

I believe the implementation of those minimum vesting standards will substantially increase the number of rank-and-file employees, and most particularly minorities and women, who have a rather short tenure in the work force to accumulate some vested benefits, though it is too early to determine the extent of those accruals.

The Internal Revenue Code has contained, since 1942, a provision requiring nondiscrimination. Discrimination in this respect does not relate to race or sex, but relates to a prohibition against discriminating against rank and file in favor of the prohibited group, the officers, the stockholders, and the highly compensated. Though I say it does not relate necessarily to race and sex, it is certainly inclusive of those groups of employees. They could not be excluded if the exclusion resulted in discrimination in favor of the more fortunate members of the firm.

I would say that the most important factor impacting on the number of covered employees in the United States by private pension plans is the fact that creation of those plans is still voluntary. They are

voluntary on the part of the employer and oftentimes overlooked; they are voluntary on the part of employee groups who, through collective bargaining, can bargain themselves out of the plan coverage for the sake of current dollars.

I want to talk now about one factor which I believe is probably most important in excluding certain classes of employees from coverage under the private pension arrangement. That is what I mentioned previously: integration of the private plan to the social security plan. You might view it as having the private plan supplement the social security benefits or at least to have social security taken into consideration in the overall projection of employment benefits.

Under present law, a plan can provide to, in effect, exclude employees that are at the social security wage base or below from participating in the private portion of the plan contributions. That is to say that they could legally wind up with merely the social security benefits.

I am happy to say that there is an administrative recommendation in the 1978 tax reform package which, when in effect, would prohibit that. If there are to be contributions from the employer into the private portion of the pension plan above the social security wage base, it will then be required that there be a ratio of contributions to those people at the wage base or below the wage base. I think that will go a long way to avoid excluding employees in the lower wage bracket from participating in the private pension portion of the contributions. I think that concludes my comments principally. I appreciate being here and, indeed, it is a privilege.

COMMISSIONER FREEMAN. Thank you very much. Ms. Ellis?

DISCUSSION BY JUDY ELLIS, OFFICE OF POLICY IMPLEMENTATION, EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Ms. ELLIS. The report we have just heard on private pension coverage gives us yet more bad news on the economic position of women and minorities in America today. The paper presented by Ms. Thompson and Ms. Yohalem points out that women and minorities have less pension coverage, receive pensions at a lower rate, and get less income from their pensions than do white males. This is ultimately due to many interlocking, historical-sociological phenomena which result in members of these groups getting bad jobs, having shorter job tenure, receiving lower earnings—all factors which impinge on their pension benefits.

The Equal Employment Opportunity Commission was mandated by Congress to eliminate employment discrimination throughout the public and private sectors. Section 703(a)(1) of Title VII makes it an

unlawful employment practice for an employer "to discriminate against any individual with respect to his. . .terms, conditions, or privileges of employment because of such individual's. . .sex."

Further, section 703(a)(2) proscribes classification by an employer which would "limit, segregate or classify his employees. . .in any way which would deprive an individual of employment opportunities or otherwise adversely affect his status as an employee because of such individual's. . .sex."

Faced with these data on poor pension coverage of those segments of the work force which can least afford it, it becomes even more important that those women covered by pension plans and who do receive benefits not see their wages or pensions reduced by pension plans which discriminate against them on the basis of sex. I am speaking here of retirement plans which either charge women more for the same benefits received as men receive or charge women the same as men, but reduce their benefits. I am speaking uniquely of sex discrimination here for several reasons:

First of all, the insurance industry, by and large, has dealt with the race issue in this context by merging the black and white actuarial tables. Secondly, as this paper points out, sex is a more important predictor than race in each of the areas of pension coverage study. Let me also point out that more than half the black, Hispanic, and Asian American population in this country is female, and so sex discrimination has a very powerful impact on the economic health of minority communities.

The Equal Employment Opportunity Commission's views on pension plans which violate Title VII have evolved since 1964. The original sex discrimination guidelines did not specifically discuss pension and retirement plans.

In 1968 the agency amended its guidelines, and at this time, stated specifically that a difference in retirement ages, based on sex, violated Title VII; it then noted that the Commission would decide, on a case-by-case basis, whether other differences based on sex, such as survivor benefits, would also violate Title VII.

The current sex discrimination guidelines were issued in 1972. Section 1604.9 of the guidelines, entitled, "Fringe Benefits," states, "it is an unlawful employment practice for an employer to discriminate between men and women with regard to fringe benefits," or to have a pension which "differentiates in benefits on the basis of sex."

Paragraph (e) of the same section adds, "it shall not be a defense, under Title VII, to a charge of sex discrimination in benefits that the cost of such benefits is greater with respect to one sex than the other."

In 1974 the Commission published its first pension decision in which it found an employer guilty of violating the act by paying lower

monthly pension payments to females than to males on the basis of sex-segregated actuarial tables which indicate a longer life expectancy for females. The employer had argued that equal monthly payments to female retirees would discriminate against male retirees because statistics show that women live longer than men. The Commission pointed out that the employer, in this argument, set out the very essence of discrimination by purporting to treat an individual member of a group in a special way because of what are or what appear to be group characteristics. This clearly is what Title VII proscribes.

The next year, in another decision, the Commission held an employer also violates Title VII by requiring a higher contribution from members of one sex where benefits to both sexes were the same.

The Commission is currently involved in litigating this very issue. The agency filed suit against Colby College as defendant and TIAA–CREF, as parties having an interest in the outcome of the litigation. In this case, female annuitants received lower monthly payments than male annuitants, and in similar fashion, the insurance plan paid to males insurees lower death benefits than to similarly situated women. In the view of the Commission, this plan discriminates simultaneously against women and men with respect to different parts of the insurance plan.

Last October, a district court in Maine granted summary judgment to the defendants. The Commission has appealed to the First Circuit. Briefing has been stayed, however, pending the Supreme Court's decision in *Manhart v. City of Los Angeles, Department of Water and Power.*

The *Manhart* case emanates from the Ninth Circuit; it was argued last fall before the Supreme Court. The United States and the EEOC filed as *amicus curiae.* In this case, the Ninth Circuit held that a retirement plan which required women employees to contribute 15 percent more than similarly situated males in return for a contingent future right to an equal monthly amount violated Title VII.

The court pointed out that the overriding purpose of Title VII is to require employers to treat each employee as an individual and to make job-related decisions about each employee on the basis of individual characteristics. The court was not insensitive to the dilemma produced in the situation such as this where there is, in fact, no way of predicting how long a person will live and, hence, no way of predicting how large an individual's retirement contribution should be. But the court went on to find that, even where generalizations relating to sex are statistically valid, they cannot be permitted to influence the terms and conditions of an individual's employment.

Along with many courts, the Commission is awaiting the Supreme Court's decision in *Manhart.* Much will be determined: the validity of the Commission's guidelines on sex discrimination; the way in which

the exceptions to the Equal Pay Act provide a defense to what would otherwise be Title VII violations. This issue will affect the future direction of the agency and the economic well-being of countless American women.

COMMISSIONER FREEMAN. Thank you. Before turning to my colleagues, I would like to give the team of Thompson-Yohalem about 3 minutes to respond.

MS. THOMPSON. I just had one point I wanted to clarify. Wally [Kolodrubetz] had mentioned that we need to know more about married women, and I got the feeling he was implying that I was talking about never-married women in this paper.

When I use the term "nonmarried women," I am talking about all women who are not currently married, and if I am talking about the older population, this includes primarily widows. So we are talking about women who had once been married, but they are widows, divorced, separated, and never-married women.

There are some data that indicate married women are, in fact, very poorly protected under private plans. In 1971 about 8 percent of the nonmarried women and 4 percent of the married women received private pension benefits. Of these married women, if you include their husband's plan benefits, approximately 25 percent received protection. I do not have any data that will show exactly what happens to these married women after their husbands die, but I think it is probably pretty safe to say that they lose these pension benefits of their husbands and then begin to look like the widows.

COMMISSIONER FREEMAN. Chairman Flemming, do you have any questions?

CHAIRMAN FLEMMING. I would like to make this observation. The picture is certainly a very dismal picture, looking at it from the standpoint of women and minorities. I share the feeling that was expressed by one of the members of the panel that it is a direct byproduct of job discrimination, and that it seems to me, therefore, the correction has to be a more vigorous enforcement of affirmative action programs and a greater insistence on the part of the private sector that affirmative action programs be put into effect.

I would like to note that reference was made to the actuarially reduced benefits for women. Has the Department of Labor taken a position on that?

MR. KOLODRUBETZ. The question that is raised by the court cases?

CHAIRMAN FLEMMING. Yes. EEOC clearly has taken a position, and I was wondering whether the Department of Labor has taken a comparable position?

MR. KOLODRUBETZ. I cannot really respond. I do not know.

Ms. ELLIS. I am treading on dangerous ground, but I would like to respond in a very limited way. In the brief filed before the Supreme Court, it was a joint filing by the Department of Labor and the EEOC through the Solicitor General. At this point, the Department of Labor and EEOC have said that this kind of a pension plan violated both the Equal Pay Act and Title VII. Though there are some conflicts of different points in our administrative regulations, though we all think they are being worked out, clearly in this case we all stood together.

CHAIRMAN FLEMMING. So we are really awaiting the decision of the Supreme Court in that particular case to clarify that whole issue. Could I ask this question, either of the presentor or members of the panel. In your judgment, would the situation be improved at all if we required portability in the area of private pensions?

MR. KOLODRUBETZ. There is very limited portability under ERISA now. For instance, the individual retirement annuity certainly is akin to the portability concept. There is the possibility for workers who leave pension plans to roll over these funds into IRA accounts. In addition, workers not covered by private pension plans can establish their own "plans" as IRAs which are retained over job changes. A number of portability options are currently permitted, but very little study has been done on these ERISA provisions. We intend to do some work in this area this coming year.

MR. OCHS. I might say, Mr. Chairman, I think the problem—and I think my associate is absolutely correct in terms of the vested interest, once they are assumed or accrued can be transferred into IRA accounts and there is a degree of portability.

The problem that exists is the credible service to get to the first year of vesting. Once you leave employment, you lose that and that is what would probably have to be portable, which would be extremely difficult transferring between companies, let alone between industries.

CHAIRMAN FLEMMING. Haven't we had some experience with portability in the field of higher education through the TIAA-CREF?

MR. OCHS. That I am not familiar with.

MR. KOLODRUBETZ. Yes, that cerainly is an example of portability that works very well. There are other examples in the private pension area as well. Multiemployer plans cover about one-third of all participants in private pension plans today and provide various limited degrees of portability. TIAA-CREF is yet another special situation as it is a money purchase and not a defined benefit plan. Complications arise in extending the portability concept precisely because of the many plan types and benefit structures found within the private sector.

CHAIRMAN FLEMMING. I recognize, under the existing law, if you get to the place where your rights vest, there is an element of portability that is introduced into the picture, but that is a 10-year wait.

What I am wondering is if—I know the issue was looked at at the time the legislation was passed and I know they turned aside from it in terms of meeting it head on. What I am asking is whether or not, if that issue were met head on, whether it would tend to improve the kind of picture that has been presented to us by this study?

MR. OCHS. You are talking about the credible years of service towards vesting?

CHAIRMAN FLEMMING. That is right.

MR. OCHS. I think that was considered extensively and, although I was not a party to that consideration, I would suspect that the mechanics and the cost factors involved in transferring credible service is probably the deterrent; but it certainly is something needed to avoid the exclusion of this group of people from private pensions because they traditionally have a low tenure in employment.

CHAIRMAN FLEMMING. That is correct.

MR. OCHS. And to have a break in employment and lose that credible service—

CHAIRMAN FLEMMING. It always costs something to correct an inequitable situation, and it seems to me this creates, when you consider the labor market and the way the labor market is operating in relation to the groups at which we are looking here, an inequitable situation.

Ms. Thompson, did you want to comment on this particular issue at all?

MS. THOMPSON. I was just looking at some of the figures and about 28 percent of the women, older women, people in the middle to early sixties, have 5 years or less tenure on their longest job. That is not very good. Another 20 percent had between 6 and 10 years of tenure on that job. If you add those two together, you have almost half of the women with 10 years or less.

Also, portability does not really get around the fact that women do have intermittent labor force participation patterns. Even if there were some portability, the amounts of creditable service are still likely to be low because they do not spend the full 40 years in the labor force. Women's work lives do tend to be expanding and that may make things better in the future.

CHAIRMAN FLEMMING. That all bears out what we are saying here. Thank you.

COMMISSIONER FREEMAN. Commissioner Saltzman?

COMMISSIONER SALTZMAN. Mr. Kolodrubetz, I believe, had indicated that patterns of discrimination in employment probably have an impact on the pensions. Earlier, a participant, Dr. Davis, had said that the forces in the economic market presently are tending to widen the gap in the income between blacks and whites and the parallel is not

occurring, as far as he can tell, with white women. In projecting the future problems of private pensions, can we suggest that with respect to the women, as you indicated here, they are at a greater disadvantage today than minorities but in the future, if what Dr. Davis has said happens, women will catch up and will be in a better position than minorities will be in the future? Would that seem to be factual?

MS. THOMPSON. I think the critical factor in being covered by a private pension is not earnings; it is being in the industries where there are plans. Earnings do affect the size of the benefits in some plans, and in some plans, earnings has nothing to do with it at all; but the primary factors in coverage would be being in manufacturing rather than in service industries, other than professional services, and tenure and recency of the job. So though the earnings differential may widen, I do not think it should affect the ranking as we have reported here.

COMMISSIONER SALTZMAN. Thank you.

COMMISSIONER FREEMAN. I want to thank you very much. Was there any additional material that either of you had that was not submitted before that you want included in the record?

[No response.]

COMMISSIONER FREEMAN. Thank you very much. Mr. Chairman, I have received a paper from Mr. Roy Cooksey, Committee for Economic Opportunity, affirmative action officer, Tucson, Arizona, that is to be included for consideration by this Commission as part of the record.

CHAIRMAN FLEMMING. Without objection, that will be done. At this point, we will recess the consultation until 2 o'clock this afternoon. This is a change in what is on your printed agenda. Thank you.

Afternoon Session, April 25, 1978

CHAIRMAN FLEMMING. Commissioner Horn will be the presiding officer for our afternoon session.

Discrimination in Health, Life, and Disability Insurance

VICE CHAIRMAN HORN. Thank you, Mr. Chairman. The afternoon session will concern discrimination in health, life, and disability insurance. The presentor of the major paper will be Ms. Naomi Naierman, who is a health policy analyst with ABT Associates, Inc. She has had extensive experience both as deputy project director and project director of studies related to the delivery of health care

services in the United States. Particularly impressive is the book which she wrote, in conjunction with two colleagues, called *Sex Discrimination in Insurance,* which was published by the Women's Equity Action League in April of 1977. Ms. Naierman is now with ABT Associates. I will introduce the panel after she has made her presentation.

STATEMENT OF NAOMI NAIERMAN, SENIOR HEALTH ANALYST, ABT ASSOCIATES

Ms. NAIERMAN. My charge today is to recount, in some detail, the kinds of discriminatory practices women face as consumers of health, disability, and life insurance and to convey some of the concepts which underlie this very complex area with which we are grappling.

First, it may be helpful to begin with a discussion of exactly what constitutes sex discrimination in insurance. Judicial interpretation of Title VII of the Civil Rights Act provides a legal framework by which discriminatory practices can be grouped into three categories: overt discrimination, disparate treatment, and differential consequences of a neutral practice.

Overt sex discrimination in insurance results from practices which deny women certain types of insurance policies or options which are available to men. A specific example of overt discrimination is the unavailability of disability insurance to women who work at home while such insurance is available to men with identical jobs and risk factors. Another example of overt sex discrimination is the practice of offering men increased life insurance coverage on special occasions such as marriage or birth of a child while women often do not have this option.

Disparate treatment refers to the use of a different set of rules for each sex. For example, women are subject to disparate treatment when they are denied coverage for reasons which do not apply to men. In their dissenting opinion in *General Electric v. Gilbert,* Justices Brennan and Marshall argued that women are treated disparately when disability insurance excludes pregnancy because it is deemed a voluntary condition, while the same insurance covers so-called male voluntary conditions. Disparate treatment also occurs when the rules are the same for both sexes, but in reality, they are applied unequally. For some insurance companies, illegitimacy of children constitutes a reason for refusing life insurance to both men and women. In practice, however, only women are queried about the legal status of their children and can be denied life insurance on the basis of the industry's moral judgment.

A third type of discrimination is probably the most subtle and insidious because it results from practices which, on the surface, seem neutral, but nevertheless have more adverse consequences for women

than for men. The practice of excluding pregnancy conditions from disability and health insurance can be viewed as a neutral practice, but this practice has a more deleterious effect on women because they assume the cost of childbearing, the benefits of which are shared equally by men.

I will elaborate on this point in a moment. Keeping in mind what constitutes sex discrimination in insurance, let me now recount the specific kinds of discriminatory practices women face in health, disability, and life insurance.

Health Insurance

Maternity coverage is essential to women's health insurance needs, yet many women in this country cannot obtain insurance protection from conditions related to pregnancy and childbirth. Small firms averaging 25 employees or less often do not offer maternity benefits because of the high premiums charged by the insurance industry to small groups. Where maternity coverage is available in group policies, it is almost always restricted to dependent coverage. A single woman or a married woman who wishes to buy insurance separately, while her family is covered by her husband's policy, cannot get maternity benefits without buying a family policy which is costed out for an average family of four.

Some insurance companies refuse maternity coverage to single women under any type of policy, for any kind of premiums. Maternity coverage often carries more limitations and restrictions than benefits and may be subject to an initial waiting period for as long as 10 months during which no benefits can be claimed. The insurance industry uses this particular restriction to discourage adverse selection of women who would purchase maternity coverage for planned and imminent pregnancy. However, these companies rarely lift the waiting period for such unplanned occurrences as premature births, miscarriage, or other complications of pregnancy.

In some States, newborns are excluded from coverage altogether for the first and most vulnerable 7 to 15 days of life. Maternity benefits are often established without regard to true expenses of normal pregnancy and delivery. In Michigan a 1975 survey showed that commercial health insurance plans cover only 38 to 44 percent of maternity costs. A Pennsylvania study reported that in 1974 some companies were still using 1958 hospital rates to set the maximum limit on maternity coverage.

Disability Insurance

As Dr. Denenberg has pointed out, one of the most serious problems facing women is the prevalent insurance practice of eliminating

pregnancy from disability coverage. Women do not receive adequate protection for loss of income due to pregnancy, childbirth, miscarriage, abortions, and related complications. On those rare occasions when pregnancy coverage is available, it is usually subject to additional premium costs and to a time limitation which falls short of the benefit period applicable to other disabilities covered by the same policy.

Women with jobs such as domestic aides or waitresses have difficulty obtaining any kind of disability insurance, while men in the same jobs do not. Part-time workers of both sexes face problems also in obtaining disability insurance; but many more women than men are part-time workers, and so they are more seriously affected by this gap in availability.

Disability insurance for homemakers is almost universally unavailable. Although homemakers do not lose income when they are disabled, they do suffer the risks of housekeeping and child care. Yet homemakers meet impenetrable resistance when attempting to purchase disability insurance. When such insurance is available to them, it is subject to severe restrictions. Maximum benefits often fall far short of the cost of homemaking and child care.

Policy restrictions and limitations not imposed on men further reduce availability of disability insurance for women. For example, accident disability insurance, which is usually available to men for life, may be offered to women only until the age of 65. Many policies carry a provision which reduces benefits to women who, at the time of disability, are employed on a part-time basis or working at home on a full-time basis. No such condition is applied to men. Thus, when a female who usually works full-time must permanently reduce her workload, or do her work at home because of family obligations, she runs the risk of decreased disability benefits.

Premium rates are a source of much discrimination in all types of insurance, including disability. In 10 out of 13 companies surveyed in Pennsylvania, premium rates were consistently higher for women than for men who carried identical or better coverage.

A New York study reported that women were charged as much as 150 percent higher rates than men in the same job classification.

Companies surveyed in Colorado reported that premium costs for women ranged from 45 to 115 percent greater than for men in white-collar and professional job classifications. Two companies in Colorado admitted, for the purpose of rating, that they grouped professional women in the same classification as saleswomen and female office workers, while male professionals were classified separately in a higher job category which carried lower rates.

Life Insurance

Based on the outdated notions that women's earnings are not crucial to the family, the insurance industry, until recently, did not believe that women needed much life insurance coverage; therefore, life insurance policies marketed to women have been limited in scope and availability.

Many options available to men still are not available to women. For example, guaranteed purchase options to buy additional coverage without evidence of insurability are not available equally to men and women. Men may increase their coverage on special days such as marriage and birth of a child, while women often do not have the option to buy additional coverage for their families on those kinds of occasions.

The waiver-of-premium option, commonly available to men in all risk classifications, is restricted to women in low-risk classifications. When women in high-risk classifications are granted this option, they must pay higher rates than men in the same group.

Ordinary life insurance premiums for basic coverage are lower for women than for men in the same risk classification. Premiums are usually based on a 3-year setback, which means the woman pays the same rate as a man 3 years younger. However, mortality data show that on the average, women live 6 to 9 years longer than men in every age group.

In a 1975 study conducted in Michigan, life insurance companies were asked the reason for using the 3-year setback. The two most common responses were that a 3-year setback is a maximum according to State law and that 3 years is a limit established in the 1955 to 1960 basic tables, which are used prevalently throughout the industry. This kind of a law deprives women of a setback of 6 to 9 years. Thus, even when a woman could benefit from a sex-based rating structure, the advantage is curved by insurance laws and practices.

In order to put these practices into perspective, I think it is important to understand at least three basic concepts which underlie sex discrimination in insurance: (1) sex as a suspect classification; (2) pregnancy coverage in disability insurance; and (3) financial responsibility of childbearing.

Sex as a Suspect Classification. —Legal interpretations of suspect classifications are based on Title VII of the Civil Rights Act of 1964. In the 1960s and early 1970s, the courts reviewed numerous cases which pronounce race as a suspect classification. Under this definition, the use of race as a basis of classification is automatically subject to close scrutiny by the law, and the burden of proving the absence of discrimination is placed upon those who use race classification.

Sex classification, on the other hand, has not been deemed as suspect and is, therefore, not scrutinized for possible discriminatory effects, unless the victim of such classification brings it to the attention of the courts. The courts, even when ruling in favor of the victims of sex discrimination, have stopped short of labeling sex as a suspect classification.

Pregnancy Coverage in Disability Insurance. —As you recall, Lois Williams pointed out that the Supreme Court ruled that pregnancy exclusion does not constitute sex discrimination, that pregnancy exclusion is an issue of underinclusiveness, and that policies cover certain disabilities and not others.

It seems to me, however, that a comprehensive insurance plan which is less comprehensive for one group of individuals than for another denies equal protection to that group. In stating that there is no risk from which men are protected and women are not, the Supreme Court ignores the purpose for which disability coverage is intended. If an insurance plan covers disability due to voluntary risks, and disabilities unique to men, then it must offer comparable options to women.

Financial Responsibility of Childbearing. —The insurers in the General Electric case maintain that the exclusion of pregnancy from coverage prevented women from receiving additional benefits which are also not available to men. Their view is that the benefits and responsibility of pregnancy are limited to the individual mother. This is, however, a rather narrow understanding of the relationship between childbearing and social welfare.

The district court opinion in *Gilbert* expressed a wider view that childbearing, as a necessary means of procreation, is an essential part of human existence. If additional costs are generated by women as a result of pregnancy and childbirth, the court reasoned that these costs should be shared by the whole society which benefits from the birth of children.

In her testimony before the House of Representatives in 1973, Barbara Shack of the New York Civil Liberties Union argued this point very persuasively. She said that the insurance world mirrors the societal view that, when a woman becomes pregnant, she makes a choice for which she is solely responsible and for which she alone should suffer the consequences. Indeed, Ms. Shack suggested that because women serve the biological function of continuing the species, society should share the disabilities and costs instead of penalizing them for their necessary physiological role. Under current practices of excluding or limiting pregnancy coverage in health and disability insurance, women are subsidizing the costs of reproduction in our society.

In the past, legal and legislative action to challenge sex discrimination in insurance have attacked only one portion of problem at a time. What is needed is a method by which sex discrimination is eradicated with a full sweep rather than through a patchwork of efforts. To this end, I would like to recommend to the Commission a twofold approach which can be undertaken by the Federal Government. First, the pronouncement of sex as a suspect classification, and secondly, the overturning of the McCarran-Ferguson Act so as to allow for Federal regulation of the insurance industry.

The first of these would place sex classification under close scrutiny by the law and would force the insurance industry to prove the absence of discrimination in its practices. Overturning the McCarran-Ferguson Act would allow the Federal Government to see to it that regulations and laws are properly implemented by the industry. Thank you.

VICE CHAIRMAN HORN. Thank you very much. We appreciate the paper which, I might add, was co-authored by your colleague, Ms. Brannon. Mr. Chairman, I assume all these papers will be presented in full in the final publication?

CHAIRMAN FLEMMING. That is correct.

VICE CHAIRMAN HORN. Let me now go to the panel for 10 minutes of commentary by each panelist and begin with Marcia Greenberger. Ms. Greenberger received her bachelor's degree with honors from the University of Pennsylvania and went on to its law school, where she received her *juris doctor cum laude* in May of 1970. She has been extremely active in a number of women's rights projects since the early seventies to the present. She has been with the Center for Law and Social Policy on the women's rights project, and this is a public-interest law firm here in Washington, D.C. We are delighted to have you join us and would appreciate having your reaction to the paper and your comments on the subject in general.

DISCUSSION BY MARCIA GREENBERGER, ATTORNEY, WOMEN'S RIGHTS PROJECT, CENTER FOR LAW AND SOCIAL POLICY

Ms. GREENBERGER. Thank you very much. I believe my reaction to the paper would be shared by most people; it was an excellent paper and details very clearly and well many of the problems that women face in securing insurance in this country.

I would like to talk a little bit about some of the problems that women have been facing in changing the system and what I hope might be some of the issues that could be addressed and answered after future study.

First of all, I think it is important to remember that under most laws prohibiting sex discrimination, and the Constitution itself, we are at a relatively early stage in defining what really is sex discrimination and what is not, let alone the kind of discrimination unlawful under different applicable standards.

The Supreme Court has dealt with relatively few sex discrimination cases, either under Title VII or the Constitution. In the area of insurance, we are at a particular disadvantage because there are relatively few laws on a national basis which directly prohibit sex discrimination in insurance.

I think Ms. Naierman is very right that the closest precedent we have to look at is Title VII. Many of the challenges to the sex discriminatory practices have come through Title VII, which prohibits sex discrimination in employment. Title VII has dealt with insurance when it is provided as a fringe benefit in employment. It is in that context mostly that courts and the Supreme Court have dealt with discrimination.

I think one of the problems and the reasons we are at this early stage in sex discrimination generally is that there have been relatively few laws prohibiting sex discrimination. It is only since the early 1970s that there has been real attention paid to the problem on a consistent basis. In particular, in the area of insurance, I think there has been even less attention paid than in other areas, like employment. So we are really at the infancy in deciding what the problems are, what seems to be wrong, and what isn't under constitutional standards, let alone statutory prohibitions.

There is a case that just came down from the Supreme Court today, *City of Los Angeles v. Manhart,* having to do with pensions, where again, in the Title VII context, the Supreme Court dealt with the issue of whether requiring female employees to contribute more of their paychecks to pay for pensions than comparably situated men violated Title VII and was unlawful sex discrimination.

The city's theory was that, since women as a class live longer than men, the women would ultimately collect as much as the men did or more; and therefore it was fair for them to pay more into the system. The Supreme Court said that was unlawful sex discrimination under Title VII and struck it down in opinion issued this morning. I think that raises some very interesting issues about rates and the kinds of discrimination that can lawfully and unlawfully be required and that should deserve some further study.

Most importantly, I would like to look for a minute at the structure of regulation of insurance which, as the paper pointed out, is basically on a State-by-State basis. I think that is also the source of some of the real difficulty in remedying the real problems of sex discrimination in

insurance. Because insurance is regulated on a State-by-State basis, it is very hard to identify consistent problems and get overall consistent solutions. Each State may take a different approach to the problem.

There has been an organization, the National Association of Insurance Commissioners, which has attempted to provide, through model regulations and model legislation, some guidelines to States to help in passing laws that will provide some uniformity in regulation of insurance. They have begun to address the issue of sex discrimination in insurance, but only on the first step. They looked at problems of availability. They did not, in the model regulation that they developed, deal with the issue of pregnancy, and they did not deal with the very troubling issue of rates.

I think in the area of rates, in particular, we are at a major disadvantage. There is very little work that has been done with people of proper expertise and background on actuarial rates, background, and statistics, which back up present insurance practices. I think it is very important that those kinds of studies be undertaken because they often do form the basis for State regulation of insurance as well as insurance companies' own behavior. There has yet to really be an independent look at the actuarial statistics and assumptions upon which all of this behavior is based, and, without that, it is very difficult to get very far in determining what is fair and unfair in the area of insurance.

The other thing that I did want to talk about is the importance of not overemphasizing what the Supreme Court has done, or at least overextending what the Supreme Court has done in *Gilbert* on the issue of pregnancy. There seems to be a fair amount of confusion as to exactly where the condition of pregnancy should fit, what treatment of pregnancy is fair, what is not. States are looking for guidance in trying to fashion their own remedies. As the Federal Government gets involved in the issue, I expect it would be looking at the issue as well, certainly the area of national health insurance and in determining whether, for purposes of Title VII, the Gilbert decision should be overturned.

There was a more recent Supreme Court decision after *Gilbert,* the Satty case, in which the Court seemed to define a little more narrowly what it meant by discrimination on the basis of pregnancy and seemed to draw some lines between the cases where, at least for Title VII purposes, the treatment presented a burden to women as opposed to withholding a benefit from them. That line is very difficult to draw.

I do have a copy of the Manhart decision; I have not had a chance to read it in great detail yet, but at least one Justice, Justice Blackmun, seems to think that the Manhart decision calls into even greater question the Supreme Court decision in *Gilbert.*

In sum, even in the area of pregnancy, when after *Gilbert* it might have appeared that pregnancy was out of the context of sex discrimination, there is confusion and the law is uncertain. There is legislation pending in Congress at the moment to overturn, for purposes of Title VII, *Gilbert* and define the law to prohibit discrimination on the basis of pregnancy.

I think one of the things that ought to be looked at very carefully is the role of Federal regulation of sex discriminatory practices in insurance. I think the fact that there is no uniform prohibition against sex discrimination in insurance is a very dramatic deficiency in our present system. It would seem to me that it would be very difficult to get the kinds of remedies that are appropriate and necessary without some Federal legislation prohibiting sex-discriminatory insurance practices. There have been several bills introduced in Congress, and, as the paper points out, unfortunately, they have not received the attention they deserve.

Some people now are looking at the whole issue of Federal regulation of insurance on a broader basis, and it is especially important to bring into play the role of discrimination in insurance and how that would be factored into the question of whether Federal regulation of insurance might be more appropriate than initially thought.

It would be terribly important to look at a mechanism for getting information on rating practices, actuarial statistics, the information upon which assumptions for insurance purposes are based.

I was also glad to see a look at the employment practices of insurance companies on the program tomorrow, which I think relates directly to insurance companies' concepts of what kind of insurance is necessary, what ought to be sold under what terms, and what strikes the insurance companies as fair and unfair. Thank you.

VICE CHAIRMAN HORN. Thank you. We appreciate your comments. Our next discussant, for a 10-minute period, is Professor David Abner III, who combines a background in business with an extensive career as a scholar-teacher in business, almost two decades of service at Texas Southern University in Houston, where he rose to be a professor and head of the department of business administration, and then a stint as a visiting professor at California State University, Hayward, University of California, Berkeley. Since 1970 he has been a professor of business administration and coordinator of the graduate programs for the Schools of Business and Public Administration at Howard University here in Washington, D.C. We are delighted to have you with us, Professor Abner.

DISCUSSION BY DAVID ABNER III, PROFESSOR OF BUSINESS ADMINISTRATION, HOWARD UNIVERSITY

DR. ABNER. Thank you. I have some brief written remarks. I must confess that after hearing Attorney Greenberger, I am not sure I am in the right place. I was not quite as enamored of the paper as she. Perhaps in the discussion period I will get an opportunity to say one or two things in that connection.

At this point, I have three brief sets of comments I would like to make. One set deals with the paper; another set has to do with the performance of the life insurance and health insurance industry as it relates primarily to blacks; and a third set summarizes some of the comparative health data on a minority versus whites basis, that I think is important in the context of the ability to afford what protection is available.

In connection with the paper, I think the emphasis in the paper which is placed on disabilities relating to pregnancy, maternity, and its aftermath does point to a real need which I agree is not now being adequately met for most women. I am not sure that the private insurer, profit or nonprofit, can provide the level of service which I infer from the paper would be deemed adequate at a cost which most wage earners, men or women, could afford.

I seem to detect a lack of understanding of the nature of the insurance mechanism and a lack of appreciation of what it takes to make that mechanism work effectively. I also detect a rather one-sided presentation of the coverage of disabilities which are described as unique to men. One would conclude from a reading of the paper that no coverage is provided for any disabilities which are unique to women. This simply is not true.

On the performance of the industry, where blatant discrimination by the life and health insurance industry against blacks is concerned, in connection with their employment, the availability to them of life and health insurance protection, and the rates charged for such protection, the Commission is about 30 years late; but, of course, the Commission can hardly be charged with an oversight in that regard, in that it is only a little over 20 years old.

Generally, the employment picture is good, particularly among the larger companies in the industry. Blacks are well represented in the ranks of agents, branch or district managers, and clerical staff. I know of one major company which boasts five black vice presidents and 11 black agents and managers. Nonetheless, a gap does exist. There are far too few blacks in line or operational positions of authority in the managerial hierarchy of most major corporate enterprises in this country. The insurance industry is no exception.

On comparative health data, let me just read to you a few of the following. I am going to read a summary from a chart book on the health of the disadvantaged, published in December 1977 by the U.S. Department of Health, Education, and Welfare.

One, health status, for most critical measures of disease, the poor, compared to the nonpoor, and racial and ethnic minorities, compared to whites, had higher incidence. Some examples of the difference, mortality overall, racial minorities to white, racial minorities are 42 percent higher than that of whites. It is 60 percent higher among those of low income than it is among those of higher.

Mortality due to tuberculosis is more than five times as high for racial minorities as it is for whites. Infant mortality is 81 percent higher for racial minorities than it is for whites and 90 percent higher among low-income families than among high-income families. Maternal mortality is 351 percent higher among racial minorities than among whites.

Hypertension is 66 percent higher among racial minorities than it is among whites. The incidence of tuberculosis is 465 percent higher among racial minorities than it is among whites.

The higher incidence of disease among racial and ethnic minorities was partially accounted for by socioeconomic factors. Nevertheless, other factors were also operating since racial and ethnic minorities suffered more than whites for most conditions even when they were within the same income categories.

In connection with the utilization of services, the amount of contact with medical services increased significantly for the poor and racial minorities between '64 and '73. By '73, the poor had a greater number of physician visits, on the average, than did the nonpoor. However, racial minorities still had less visits than did whites.

Racial minorities and the poor utilize medical services to a lesser degree relative to their need in comparison to whites and the nonpoor respectively. A greater proportion of racial minorities and the poor received medical services from clinics and emergency rooms rather than a private physician as compared to whites and the nonpoor, respectively.

This proportion increased between 1963 and 1970. The percentage of medical visits that were for preventive services was significantly less for the poor and racial minorities in comparison to the nonpoor and whites, respectively.

Financial expenditures, out-of-pocket expenditures were twice as great for both whites and the nonpoor as compared to racial minorities and the poor, respectively. However, relative to their income, the out-of-pocket expenses for the lowest income group

was 3-1/2 times the amount paid by the highest income. Nevertheless, total expenditures, including government contributions for the nonpoor, were 20 percent greater than for the poor. For whites, it was 50 percent greater than for racial minorities.

Where medicaid and medicare are concerned, disparities exist between whites and racial minorities as to the benefits received from medicare and medicaid. Under medicaid, 75 percent greater payments were expended for white as compared to racial minority medicaid recipients, and 40 percent more was spent on private physicians for white recipients, while 60 percent more was spent on hospital outpatient services for racial minority recipients.

Under medicare, per enrollee, 20 percent more was spent for whites on inpatient hospital care, 60 percent more for physician services, and more than twice as much for extended care than for racial minorities. In contrast, 50 percent more was spent on hospital outpatient care for racial minorities.

These racial differences were even greater in the South.

Medicaid specialist, prevailing charges, averaged around 70 percent of medicare prevailing levels and 60 percent of the levels used by commercial insurers as reported from the Health Insurance Association of America.

The poor and minorities were at a twofold disparity healthwise. They were in poorer health and had less spent on them for health services. Poor minorities were at the greatest disparities on both accounts.

That is the summary which precedes the data which appear in this document.

In conclusion, let me just point out that it is from current income that most of us purchase and pay for life and health insurance protection. In general, the lower is current income, the poorer is the quality of the environment one inhabits and the more susceptible is one to disease, disability, and premature death. Thus, and conversely, the lower is current income, the greater is the need for protection against disease, disability, and premature death. Thus the paradox, the dilemma which blacks and other minorities must confront, and inasmuch as it is a dilemma created by society, it is one which can be resolved only by our society, rather than by one segment of it. If this sounds as if I am advocating some form of national provision for health care, I am. Thank you.

VICE CHAIRMAN HORN. Thank you. Our next panelist is Mr. Paul Barnhart. After graduating from the University of New Mexico with his bachelor of science in mathematics, he attended Wittenberg University in Ohio where he received a master of divinity degree. I

suspect those are interesting combinations for one pursuing an actuarial career.

In 1954 he began that career with Occidental Life of California and then in 1963 joined the American National Insurance Company. He became a member of the Society of Actuaries in 1960. He opened his consulting office in St. Louis in 1964, and since that time he has specialized as a consulting actuary, working on all phases of health insurance, serving both the consumer and the industry, both private and government.

He is the president-elect of the Society of Actuaries to serve for the 1978–79 year. He is also currently serving as chairman of the Accident Health Valuation Technical Advisory Committee assisting the National Association of Insurance Commissioners' Task Force on Valuation and Nonforfeiture Regulations.

DISCUSSION BY E. PAUL BARNHART, CONSULTING ACTUARY, ST. LOUIS, MISSOURI

MR. BARNHART. Thank you, Mr. Chairman. The reason for that unusual combination of an actuarial and theological career is that the first insurance company that hired me wanted me to help them construct a new immortality table.

[Laughter.]

MR. BARNHART. Mr. Chairman, I have a number of problems with this paper, I am afraid, because I feel it contains many inaccuracies and significant omissions. Because of that, I felt it necessary to prepare a written discussion of which I have given copies to Mr. Nunez. At the back of that written discussion, there is a chart that provides some statistical information on the relative incidence of death rates among females as compared to males and also some health insurance statistics, ratios of disability claim costs, and ratios of hospitalization claim costs. My comments will refer just briefly to those and the written discussion certainly takes up more than my allotted 10 minutes.

VICE CHAIRMAN HORN. All of this will be put in the record in full and you might wish to summarize.

MR. BARNHART. That is what I will attempt to do, simply touch on the highlights of the written discussion.

The first problem I found with the paper is that many of the facts presented by way of discrimination as to provisions and availability of insurance are badly out of date by at least a decade. I had to wonder, as I read it, whether it had not been written sometime around 1965. For example, the paper describes as "prevalent" the practice of eliminating complications related to pregnancy from disability coverage. A decade ago, this would have been true enough.

Today, however, several major States, including California, New York, Pennsylvania, and others, prohibit the exclusion of complications relating to pregnancy. This has a powerful effect on what is actually done in other States that lack such a prohibition because once several major States either prohibit or require some particular provision, insurance companies operating either multistate or nationally tend to follow such rules everywhere, rather than sell policies with provisions that vary State by State, a situation that can greatly complicate their advertising, sales literature, rate structures, and administration of policy claims. Other companies operating in only a few States must then compete with such liberalized products and also must anticipate the likely spread of such rules to one or more of their States and therefore also have a tendency to follow suit.

While instances of exclusion of complications still indeed exist, the practice is increasingly uncommon. It is hardly accurate, therefore, to characterize this as "prevalent."

Again, the paper asserts that many policies carry a provision which reduces benefits to women who, at the time of disability, are not employed away from home on a full-time basis. This provision is rapidly becoming as rare as the dodo bird, becoming an item for collectors of quaint, old insurance contracts. During the last 5 years, I have assisted more than 15 different insurance companies, some of them very large nationally operating companies, in the development of new disability insurance products. Not a single one of these recent disability plans still retains this obsolete provision. Provisions of this kind probably are not being sold today in more than perhaps 5 to 10 percent of the disability insurance that is available on the market.

Again, the paper states, in defining the basic benefit relating to the total disability of the insured, "after the basic benefit period has expired, the disabled individual must show that he or she is unable to perform the duties of any job, even if it is unrelated to the original occupation." This restriction is rarely used anywhere today and, again, is prohibited outright in many States, yet the authors appear to be presenting it as a standard restriction in customary use.

The fact is, today the usual "prevalent" requirement, following the basic period, is that the disabled person be unable to engage in any occupation which is reasonable for that person's education, training, experience, and, often, even her prior level of income. The assertion by the authors that a woman, as of the end of the basic period, would have to prove that she could not even perform as a salesperson or telephone operator would be an exceedingly unlikely circumstance. I challenge the authors to document even one single instance of this involving any disability policy issued within the past 15 years.

Again, the paper asserts that women, but presumably not men, find that certain types of disability insurance plans are totally unavailable or severely restricted. Again, this occurs with increasing rareness today.

Again, "accident disability insurance, which is usually available to men for life, is offered to women only to the age of 65." All such distinctions such as this as to availability of coverage are today rapidly disappearing.

The paper goes on and on in this way citing obsolete practices of the past as though they are the prevailing state of affairs in 1978.

Why can I assert with such confidence that the paper presents a totally out-of-date and, therefore, seriously inaccurate and distorted picture of the availability of coverage in 1978? Simply because, in a rapidly growing number of States, including the major population States I have cited, regulations in effect today *prohibit* an insurance company from (1) offering disability plans to men that are not also available to women in the same occupational class; (2) observing underwriting rules that permit higher income amounts to be issued to men than to women in the same class; (3) including any provision in a disability policy that restricts coverage purely on the basis of the sex of the policyholder.

In these States, which, as I have said, strongly influence what multistate insurers do in every other State, the only distinction now generally permitted is rate classification based on sex. Many of these regulations, to be sure, are quite recent, but I presume we are here today to discuss what is happening today, not what may have been happening 5, 10, or 15 years ago.

The second major problem I find in the paper is that it fails correctly to define disability and health insurance. The authors state that disability insurance protects an individual from loss of income due to inability to work. That is an incomplete and incorrect statement.

The correct definition would have added "inability to work *because of injury or sickness.*" The authors' omission of these key words is significant because the paper makes much of the fact that few disability policies cover normal pregnancy, which simply cannot be regarded as an injury or sickness, unless resulting complications arise. In other words, normal pregnancy is not being *eliminated* from disability contracts: it is not covered in the first place, unless under an *extension* of coverage, because it is not an injury or a sickness. Fewer and fewer contracts today exclude complications related to pregnancy, but most very definitely continue to exclude normal pregnancy on the grounds that this simply is not an injury or a sickness.

Disability insurance is a subdivision of "health insurance" generally, and the National Association of Insurance Commissioners defines

"health insurance" as "insurance against loss resulting from injury or sickness." That is the category of insurance about which we are talking. We are not talking about insurance designed to cover loss of time due to unemployment, for example, nor are we talking about some kind of "insurance" normally intended to cover expense or loss of time arising on account of conditions not arising from injury or sickness.

Most disability insurers quite definitely intend, in general, to limit coverage, whether it is sold to men or women, to loss of time resulting from injury or sickness, contrary to the authors' inference that it is commonplace to cover male elective procedures such as vasectomies and facelifts. Normal pregnancy is not excluded on the excuse that it is a "voluntary condition," as suggested by the authors, but because, along with many other conditions, it simply is not injury or sickness.

One example of an area where many disability insurers have expanded coverage beyond pure injury and sickness insurance, in the process of competing in the marketplace, has been to extend limited coverage to loss of time due to *donation* of an organ, such as a kidney, for transplantation to another person.

Even though the voluntary, private health insurance industry is moving rapidly toward virtually universal coverage of complications relating to pregnancy, difficult problems yet remain. Complications are not easy to define, and it is not easy, once complications are no longer limited or excluded, to draw the line between what is normal and what is abnormal.

Some companies have tried to specifically list certain complications. For example, they will state that they will cover complications in relation to "postpartem hemorrhage," "eclampsia," or "ectopia."

This remains unsatisfactory because other very serious complications arise which deserve to be covered as well. If there are justifiable social and economic reasons for spreading the cost of maternity and childbearing more broadly across the population, and there may well be such reasons, I suggest that voluntary, private injury and sickness insurance is not the proper medium to shoulder the burden of the additional cost and underwriting difficulties associated with this. This is not really an "insurable" loss; it is extraneous to insurance which is intended to cover loss resulting from injury or sickness.

To quickly summarize several of the other major problems I see, I think the paper fails to recognize that it is actually discussing a voluntary U.S. insurance system, and I think it is vital to recognize that it is a voluntary system, both from the point of view of the buyer and also the seller.

Buyers of insurance have the free right to buy or not to buy and, further, the right to select among various plans with various prices and

provisions which compete against each other in the marketplace. Buyers, in general, will tend to select those plans that best meet their own needs. From the point of view of the seller, since under a voluntary system buyers elect whether to buy or not to buy and will obviously tend to decide based on their own perceptions of their best interests and what they can afford, insurance companies are obliged to do two things.

They must (1) design a variety of plans and provisions at various prices to appeal to the broadest possible spectrum of the buying public; (2) they must *underwrite;* that is, they must select and evaluate applicants for insurance in relation to their most probable or most potential risk. Otherwise, the buyers, free to select and to buy or not buy, will inevitably take advantage of the system.

The whole name of the game in voluntary insurance is *risk.* Everything that has to do with voluntary insurance is, in some way, related to the concept of risk. The insurance company simply must assess and measure the risk it proposes to insure and, with reasonable equity, classify and price each particular risk in relation to the insurance provisions and the scope of coverage. If government, through law, court edict, or regulation, deprives the voluntary insurance industry from the right to objectively and realistically measure and price risk, it has simply taken from it its one most central and fundamental tool.

It is a little bit like saying to the automobile industry, "You are expected to provide smooth-riding powered automobiles, but, meanwhile, engines and pneumatic tires are outlawed." You simply withdraw from the industry its single, most basic tool which it simply has to use in order to operate in a free and voluntary market.

My time is up and I had hoped to get a little bit into some of these statistics of death rates and disability and hospital rates, but those are contained in the written discussion. I think they provide some useful insights and information into the fact that there are very distinct and direct differences in death rates and morbidity rates that are attributable directly to sex.

VICE CHAIRMAN HORN. Very good. Our last panelist is Mr. Oscar Cerda. He is the health field coordinator for the National Health Insurance Project of the National Association of Farmworker Organizations. He formerly was executive director of the Organized Migrants in Community Action of Homestead, Florida. He has had 10 years' experience working with the farmworker issues and other community organizations. He is also a former director of communications in the liaison office of the National Association of Farmworker Organizations.

DISCUSSION BY OSCAR CERDA, HEALTH FIELD COORDINATOR, NATIONAL HEALTH INSURANCE PROJECT, NATIONAL ASSOCIATION OF FARMWORKER ORGANIZATIONS

MR. CERDA. Thank you. I must apologize for Mr. Vecchio who was scheduled to be here to speak to you, but some other pressing commitment has prevented his being here today.

NAFO is a national coalition body of community-based, farmworker-governed organizations with affiliates in all of the United States as well as Puerto Rico. In reacting to the paper prepared by Ms. Naierman and Ms. Brannon, we shall do it as it involves parallels to those issues involving farmworker women, farmworkers, and the Spanish speaking in general.

I think if those gathered here can sympathize and empathize or support the contention and reality of discrimination in insurance for women, then we can also agree that farmworkers are victims rather than beneficiaries in this industry.

We preface our remarks with some basic characteristics and statistics on farmworkers. One, there are an estimated 6 million farmworkers in this country, of which the average family size is 3.4 to 4.5 people. In 1975 the Bureau of Labor Statistics estimated that $9,838 is a low standard of living. However, the average farmworker family median income is at or below $3,000 per year.

Even more dismal are statistics for Hispanic women. For example, the educational attainment of Hispanic 14-year-old women and over is 9.0 years, as compared to 12.3 years for white males and females. Less than 3 percent of Hispanic women within the ages of 25 to 34 have completed 4 or more years of college.

The annual income for 48 percent of Chicanos is estimated at below $2,000 per year, of which 36.6 percent earn between $2,000 and $4,999 and 13.8 percent between $5,000 and $9,000, and only 1.1 percent earn over $10,000 per annum. Approximately 13 percent of Hispanic women support households on their own.

But the economic aspect of farmworkers is only one of the indicators of their status in society. The problems are further compounded by the diversity of cultures and languages within the farmworker community. Approximately 90 percent are of Hispanic origin, Puerto Rican, Filipino, Mexican American, and Mexican. The remaining 10 percent is composed of blacks, Arabics, Asians, and whites, with blacks being the largest percentage.

Naturally, the migrant patterns of the farmworker are an issue of great concern and further complicate the matter in terms of discrimination. As a working force, an estimated 20 percent of the American farmworkers is comprised of females. So the problem is compounded further by the following reasons for women: low

economic base, ethnic situation of language and discriminatory barriers, high fertility factor, low educational levels, and a migrant pattern that prevents the establishment of a political, social, or residency base.

We would like to outline some of the barriers and obstacles faced by farmworkers that limit, if not prevent, their access to insurance. These, in our opinion, constitute *de facto* discrimination.

As a buyer of insurance, the farmworker is limited by a variety of factors which we will discuss in further detail; however, we must impress upon you the fact that insurance and farmworkers are strangers to each other in every manner imaginable.

Based upon preliminary data gathered by NAFO via its research and study on developing a national health insurance plan, we have identified only two plans in the country which address the needs of farmworkers. A cursory view of the coverage provided may reflect the status of the art of insurance coverage carried by farmworkers. The two plans are the Robert F. Kennedy Farmworkers Medical Plan, provided by the United Farmworkers–AFL–CIO, and the Puerto Rican Agricultural Workers Insurance Plan.

The UFW plan provides three options, the eligibility of which depends on the number of hours worked in the previous specified time period. The plan outlined here is the high option plan. The low and medium options provide similar benefits, except that the medium option has a $2,000 limit for major medical and the low option provides no benefits in this category at all. The two plans are structured differently so that an exact comparison is not possible, but the following is a general comparison.

In life insurance, UFW carries $2,000, as well as in the Puerto Rican plan. Accidental death and dismemberment is not applicable in the United Farmworker plan, where there is a provision for $4,000 coverage in the Puerto Rican plan.

Disability income is not applicable in the UFW plan, but $31 per week is provided in the Puerto Rican plan. For hospitalization, $800 is provided in the UFW plan and $5,575 in the Puerto Rican.

Under the UFW plan, $500 is provided for surgery and $400 under the Puerto Rican plan. The rest of them I can go through, but I think it would be best to just summarize them and say that, compared to regular insurance plans, the coverage is very, very limited, and yet these are the only two existing plans in the country.

Given some of the facts about farmworkers and the women within this segment of the population, our reactions will be all-inclusive because certainly the women are the unwitting victims of this situation.

As the document, "Sex Discrimination in Insurance" states in its introduction, "Companies try to maximize their own profits by containing costs of the benefits they offer and by predicting the financial risks of the policyholders." With respect to farmworkers, this lends itself to many problems of discrimination.

Insurers operate to make a profit by election of risks; i.e., containing what claims will cost, operating expenses such as what it costs to acquire and administer premium dollars and claim payments, and the investment of premium dollars; that is, putting dollars collected to work.

By their method of operating, insurance companies will discriminate against farmworkers or anybody they may want to. For example, an insurance company may not choose to underwrite a class of risk because the acquisition costs may be too high. The possibility of claim payment may be too imminent.

Today's farmworker, because of his economic state, does not represent a "quality" prospect to the insurance industry. The cost of writing the size of policy he could afford is not worth the marketing effort of the insurer.

The high mobility of the farmworker also contributes to the insurers' avoidance of farmworkers as policyholders. Any carrier would need to retain a basic number of itinerant agents to "service" the population, a costly prospect with little or no economic return, thus making it less attractive for carriers to market to this population.

For an insurance company to want to design a marketing effort for a "spread of risk" to include farmworkers would immediately cause severe underwriter concerns about the acceptability of risk, which is based on the insurable basis of the financial need for coverage, health and physical risk, and moral risk. Farmworkers present too many unknowns to the underwriter, so an actuarial study would have to be performed to gather and evaluate mortality and morbidity data, thus adding to the cost and to the waning interest of the insurer to get into this market.

The issue of language becomes a barrier also in providing coverage. Current language in insurance plans is admittedly confusing and difficult to appreciate, even for the average English speaker. This problem is further compounded for farmworkers with low reading levels. The variety of language also presents a problem—Spanish, French, pig Latin, and Arabic. In this regard, even the most simple of instructions on how to file a claim would present a maze of barriers for the farmworker.

Our observation of the authors' view on stereotyping of women as homogeneous, nonworkers, dependent on their husbands' wages and employment benefits, points out prevailing attitudes of stereotyping

tendencies, with the example that farmworkers are foreigners who are dirty, immoral, live like trash, unreliable, ignorant, uneducated, drink too much, and die young. It would be logical to conclude that if women in general experience high-risk classification and discrimination in the selection process of insurance because of this stereotyping, then certainly the plight of the farmworker and the farmworker family as a whole is the same, but it is reasonable to assume that the situation is much worse for this class of people.

At NAFO we conducted a very informal survey of 15 insurance companies. As basic criteria, we sought to identify those larger carriers that specialized or focused on group health plans. Our staff contacted these various insurance companies to determine whether they had any actual data on farmworkers and whether they provided group health benefits to this population. Needless to say, all of the insurance companies responded negatively on both questions.

Another fact which surfaced indirectly out of our inquiry was that farmwork/agricultural labor is not an occupation as defined by the *Dictionary of Occupational Titles* published and compiled by the Department of Labor. This is responsible, in part, for the lack of "hard" statistical data on farmworkers. Yet, generally farmworkers and farmwork are regarded as a "high-risk" class or occupation when correlating exposure to pesticides, pests, unsanitary living conditions, and so forth. Yet, again, no data exist to support this contention. On the contrary, any attempts at furthering this hypothesis have been quashed by the agricultural industry or by Federal agencies. More often than not, we find regulatory agencies and the industry in an unconscious, incestuous relationship of attempting to provide protection, but, in practice, becoming one of the obstacles to access to insurance coverage.

Discrimination practices can be grouped into several categories: overt discrimination, disparate treatment, and differential consequences of a neutral practice.

For farmworkers, we would begin with the consequences of a neutral practice and work downward as far as economic considerations are concerned. That is to say that insurers and other financial institutions ignore or avoid involvement with this class of people. Should the farmworker seek out the services of an insurance company, they are often confronted with the disparate treatment, poor service, high costs, and discouraging acts of complicating the premium payment and the claims administration.

Overt discrimination comes with the rejection or refusal to cover the risk of the farmworker. This is practiced by employers, insurers, and various governmental organizations. Examples are most frequent-

ly found in the area of health insurance, group and employer coverages.

To react to the high incidence of discrimination to which women are subjected as far as the exclusion of pregnancy conditions from the disability and health insurance offered employees can be viewed as a neutral practice, very insidious and subtle, but to match this form of discrimination in the farmworker community, where the occurence of births is not only higher, but in a community which relies heavily on family income, both husband and wife, to sustain livelihood.

The family has no insurance, thus because of economic conditions does not have any money even to pay for the maternity expenses. This neutral practice of discrimination is worse than subtle; it is harmful, insidious, and a problem that cries for a solution, tantamount to halting the practice of genocide.

VICE CHAIRMAN HORN. Mr. Cerda, we have about a minute left for your presentation, so you might want to summarize and move to the recommendations. All of your statement will be presented as if read in the record.

MR. CERDA. In summation, we concur in principle and, in fact, embrace and support the findings presented in the paper on sex discrimination in insurance. Further, we agree that future efforts must seek legislative and judicial remedies to the present state of the art, but more importantly there needs to be a comprehensive strategy focusing on ameliorating the abuses within the industry.

The dialogue at this forum is only a preliminary task of many that lie ahead. We would urge insurance companies to engage in dialogue with consumers, with the regulatory bodies, and Congress to agree on a consensus of strategy.

With respect to insurance regulators, we would recommend the establishment and expansion of a minority affairs commission, which would have oversight authority on issues related to minorities, women, and farmworkers. We would also recommend an office of consumer advocacy within the present system which monitors the insurance regulators to assure equal protection under the law.

We would urge insurance companies to establish outreach efforts and programs for minorities which would include issues of employment, as well as consumer education. Additionally, we would urge the insurance companies to commit capital to begin to serve these markets which have gone neglected.

We thank you for your time and attention, and we hope to work together to solve the many problems we have discussed.

VICE CHAIRMAN HORN. We thank you. I think it is only fair, Ms. Naierman, that you have a chance to respond to the panel if you wish to make any additional comments besides what is in your paper.

Ms. NAIERMAN. There is quite a bit to respond to. So let me be selective and brief. I will start with a response to Mr. Barnhart's paper. If all of these practices are as obsolete as you would have us believe, Mr. Barnhart, I would like to see documentation to that effect. I have a feeling there is much disparity between regulations, if they are in place, and actual practices. For example, I know that in Massachusetts there is still a practice of excluding newborn coverage from maternity policies. That is unlawful in Massachusetts according to State regulations, yet the practice still goes on.

The extent that these practices are still remaining is hard to say unless you can document them. I think the only way one could do that is to review what policies are actually sold rather than what is being regulated. There is a great distance between regulation and implementation of those regulations, I find.

I think Dr. Denenberg's suggestion that we need further documentation and update of what is currently going on was very well taken. I wholeheartedly support him.

VICE CHAIRMAN HORN. Thank you. Chairman Flemming?

CHAIRMAN FLEMMING. I was very much interested in Mr. Barnhart's paper and his summary of the paper. I was particularly interested in the concluding comment, or near the end, where you say that the authors seem to presume that any sex-based differentiation in underwriting and available plans and options, or even premium rates themselves, is *ipso facto* unfair and improper.

Presumably discrimination is unfair when it is inequitable, arbitrary, or prejudiced, not based on objective, relevant, valid facts and principles, which are, in turn, applied without bias and with equitable treatment. In other words, that statement is in support of the group approach to the issues in the area of sex discrimination or in other areas involving the industry.

Do you feel, however, that there is the additional issue of whether or not the individual who falls within the group, feeling that as far as she or he, as an individual, does not belong within that group as far as the facts of her particular case are concerned? Because she does not belong within that group, she, in fact, is being treated inequitably and unfairly?

MR. BARNHART. Could you elaborate, Mr. Chairman, on what you mean by "falling within that group"? I did not quite follow what you meant by "falling within the group."

CHAIRMAN FLEMMING. Your statement, as I understand it, would be a defense of dealing with all persons falling within a particular group—namely, in this particular case, women—because of the fact that there are certain facts relative to the total group which you feel lead to a valid conclusion as far as the treatment of the total group is concerned.

However, if those facts are not relevant to an individual or to certain individuals within that particular group, can that individual conclude that she is being treated fairly?

MR. BARNHART. I think in any rate classification system there have to be some known set of parameters that are regarded as being a fair and reasonable measurement or definition of a class. As I mentioned in my discussion, there certainly are a number of potential factors, sex, age, medical history, and so forth, and depending on the medium of insurance or the type of insurance, more of these or fewer of these might, as a practical matter, be applicable.

For example, in group insurance that is 100 percent paid by the employer, where there is no contribution by the covered employees, it is really possible to go a long way in disregarding any risk parameters at all and deal with the total group population. For example, the U.S. social security system is an example of one gigantic group where contribution rates in the form of social security taxes do not vary by sex, age, or any of these parameters known to affect risks.

A second stage would be a group where the people are contributing part of the cost of their insurance, which might therefore need age groupings, sex groupings, salary class groupings, and so forth.

Finally, when you get to individually underwritten insurance, where I think this problem really becomes quite extreme, where every buyer has the right to buy or not to buy, he pays his entire premium and, therefore, will try to select in his own best interests.

I think when it comes to individual insurance the industry simply cannot function effectively unless it is able to make reasonable risk classifications in terms of what is known. There can be a variety of these things. For example, you have nonsmoker discounts, nondrinker discounts, and good driver discounts in automobile insurance and so on. It is a matter of judgment, of course, as to how many of these possible parameters, which may or may not have a major bearing on the risk, should be applied and how practical it is.

Some of them are more expensive to apply than others. For example, one of the expensive types of risk classifications is medical history. Here you have to get doctor statements, maybe request a medical examination, and so forth. For that reason, the insurance industry often tries to get away from any very extensive underwriting or classifying on the basis of medical history simply because it is an expensive and time-consuming means of determining risk classes.

Am I addressing myself adequately to your questions?

CHAIRMAN FLEMMING. I am interested in your elaboration of the point, looking at it from the standpoint of the industry; however, I assume that the industry has taken note of the fact that, through legislation, through regulation, and to some extent, through decisions

by the courts, the serious question is being raised as to the fairness and equity of making decisions relative to the individual on the basis of the fact that the individual belongs to a particular sex.

Recognizing that development as a fact of life, what are some of the alternatives that are open to the industry, assuming just for the sake of discussion that classification on the basis of sex will no longer be regarded as sound public policy or as in conformity with the law? What are some of the alternatives that confront the industry when confronted with that kind of an evolution?

MR. BARNHART. Well, I think when that happens, the alternatives available to the industry are limited. One of them simply tends to be withdrawing of options. People like to have options available in life insurance and pension plans and so on.

To the extent that a reasonable classification of risks cannot be followed by the industry, I think one inevitable result is withdrawing from the public those options that people really would like to have available to them. If you cannot classify in relation to those options, for example, a cash settlement versus a life annuity in a pension plan; if the insurance industry cannot classify in relation to the risks bearing on those options, it may well have little choice but to withdraw such options. This is one response or alternative—to simply withdraw options that otherwise could have been available to the people.

Other than that, I think it becomes a matter of simply rising costs and simply less and less choice and freedom available to the public in what it has available. It becomes a more and more compulsory system that has to gravitate, say, in the direction of a statutory program like social security, which necessarily tends to become compulsory.

And under a fixed program with a large number of persons participating in it, there is no consideration whether it suits personal preferences or peculiar financial situations or not. So I guess I am saying that I think the public loses as much as it gains, maybe, from many regulations that have good intentions.

I would like to offer just one other comment. I did not mean at all to suggest that *unfair* discrimination does not in fact occur and occur with disturbing frequency. For example, I agree with the authors in that I think most of the time women are not able to buy life insurance at as favorable a rate as their mortality would entitle them to. I think there should be a greater differential in most cases between male and female life insurance rates and that women are not getting the break they deserve because of their better mortality.

CHAIRMAN FLEMMING. What do you think is the cause of that?

MR. BARNHART. Oh, I think many things. I think it is true that there has been a lack of aggressive marketing on the part of the insurance industry toward the women's market. I have advocated, for

example, to many of my clients, for a long time, that there is a big, untapped women's market out there. If some company would be willing to go out there and aggressively and competitively write women's insurance, it could write a lot of very excellent business. Women do need more disability and life insurance coverage. I think there has been an absence of aggressive marketing on the part of the industry.

CHAIRMAN FLEMMING. Do you think the trend is in the direction of being more aggressive in terms of that particular market?

MR. BARNHART. I think very much so, particularly within the last 5 years, because I think the industry is coming to recognize that women certainly are a career part of the work force, replacing the concept of a woman as being not the primary wage earner, for example; I think old concepts rapidly are changing. I think in the future we are going to see a far more receptive and aggressive attitude on the part of the industry.

CHAIRMAN FLEMMING. You have to link that up with the trend in the direction of the kind of legislation and the kind of regulations and court decisions that we have been talking about?

MR. BARNHART. Yes, I think there is certainly an obvious connection. I think the concern I am trying to express is simply that those laws and regulations be realistic, that they not ignore basic facts of life and actuarial statistics in a way that, in the long run, impairs the voluntary insurance industry and thereby really acts to the detriment of the public.

CHAIRMAN FLEMMING. You feel that there have been some practices in the past that have laid the groundwork for the laws, the regulations, and the court decisions about which we are talking?

MR. BARNHART. Oh, yes, oh, yes. I think there have been rampant examples of unfair discrimination that certainly had to be addressed.

CHAIRMAN FLEMMING. Thank you very much.

VICE CHAIRMAN HORN. Commissioner Freeman?

COMMISSIONER FREEMAN. Mr. Barnhart, you may have been asked this, but I want to be sure that I have the correct interpretaion of your final paragraph when you indicated that the paper—in fact, you say, "It is unfortunate that so much out-of-date information, inaccuracy, and omission is included therein." I wanted to ask if you have more up-to-date information.

MR. BARNHART. In what sense?

COMMISSIONER FREEMAN. In the sense that you were—one of your criticisms of the paper was that the information is out of date. My question to you is, do you have information that is up to date concerning the matters referred to in the paper?

MR. BARNHART. I have that information only in the form of my own knowledge and experience. I have had only a week, for one thing, to study this.

COMMISSIONER FREEMAN. But actuaries do not make their determination, purportedly, based upon knowledge and experience, do they?

MR. BARNHART. I think definitely, yes.

COMMISSIONER FREEMAN. What I would like to ask you on behalf of this Commission is, if the information which has been provided is not up to date, and if your organization has data that are up to date, if you will make that information available for inclusion in the record?

MR. BARNHART. I would be glad to see what can be assembled, yes.

VICE CHAIRMAN HORN. Without objection, that material will be placed in the record.

COMMISSIONER FREEMAN. Until we receive any later information, we would have to assume that the information that comes in the paper is the most recent data.

MR. BARNHART. All right, I will be glad to see what up-to-date information we can provide.

COMMISSIONER FREEMAN. Thank you.

VICE CHAIRMAN HORN. Commissioner Saltzman?

COMMISSIONER SALTZMAN. Ms. Naierman, along with the argument against insurance relative to pregnancy, based on the voluntary nature of it, I found another argument that has been offered, and I wonder whether you can respond to that issue.

The argument is that insurance companies seek to insure only those who have an interest in not bringing about that for which they are being insured. That is, for example, the insurance companies are interested in writing life insurance only for those not interested in dying, who want to preserve their lives.

The argument they make against writing a policy that would include pregnancy benefits is that women would not be disinterested in becoming pregnant and, therefore, they should not be writing such policies, since the general rule is not to write a policy for a person who is not interested in achieving that particular purpose.

MS. NAIERMAN. In other words, if we stop being interested in pregnancy, then we might get insurance for pregnancy?

COMMISSIONER SALTZMAN. That is what their argument is—since women are interested in getting pregnant, there can be no pregnancy insurance, because if people were interested in dying, then they would not write life insurance policies. Do you get the argument?

MS. NAIERMAN. I sort of get the argument, but I am not sure it makes any sense to even debate it because my main point is that we have been irreversibly charged with a childbearing responsibility. I am

not sure we want to assume full costs, the economic costs, of that responsibility. It is not simply financial responsibility; it has much further implications for the kind of economic dependency that women are trying to reverse at this point in their development as independent workers and society members.

The argument that, for every woman who has a child there ought to be a husband supporting her, does not hold if you expect that we are moving towards a society wherein men and women can take full economic responsiblity for themselves so that an interdependence does not get in the way of equal status within personal relationships. My main concern is that we all share the costs of the benefits we also share.

Ms. GREENBERGER. I wonder if I might add something as well. I am not sure that it really is true that insurance companies only provide insurance for those things people are not interested in having occur. Moreover, even assuming that all pregnancies are voluntary, which I am sure we all recognize is not necessarily the case, for those pregnancies that are voluntary, women do not desire the disabilities that are attendant to the pregnancy; they do not desire the medical costs attendant to the pregnancy any more than people who go skiing desire to break their leg. Yet those medical costs are traditionally covered. Nor do those who are not pleased with the shape of their nose desire the disability attendant in having the shape of their nose fixed or the hair added to their scalp if their hair falls out. Yet, those are all conditions that are routinely covered in disability insurance and health insurance. I do not see that they are very distinguishable from pregnancy, even in the cases of voluntary pregnancy.

COMMISSIONER SALTZMAN. I appreciate the response to that argument. Let me also project to you another argument dealing with the insurance of domestics, that there is no real market for that kind of insurance. How would you respond to that?

Ms. NAIERMAN. What do you mean by market, that domestics do not want to buy insurance?

COMMISSIONER SALTZMAN. Yes. Not that they do not want, but that there has not been a discernible market or interest in buying insurance on the part of domestics.

Ms. NAIERMAN. As Dr. Denenberg pointed out the other day, insurance is sold, not bought. If the insurance companies thought they could benefit by selling insurance to domestics, then the market would be created.

COMMISSIONER SALTZMAN. Mr. Barnhart, do you agree with that point of view expressed by Dr. Denenberg that insurance is not bought but sold; that is, the market is created and the absence of a market is

generally attributable to the fact that the insurance companies have not cultivated that market?

MR. BARNHART. I think that is true, depending somewhat on the nature of the insurance. For example, two forms of insurance are so universally recognized as needed that I would say they are bought rather than sold. That would be hospital and medical insurance, for one example, and automobile insurance for another. People normally assume they need to be covered for these things.

Disability insurance is another example that tends to be the opposite; it does have to be sold rather than bought. I have seen many instances of companies that developed a product presumably for a market that needed that product and then simply failed to produce much business. One of these with which I have had some experience, and which is commented on in the paper, is homemakers' disability insurance. I have been involved several times in developing disability coverage for homemakers. Generally where this product has been put on the market, only a very limited quantity has, in fact, been sold. Maybe it is a matter of people not knowing of its availability sufficiently, but that is one example.

COMMISSIONER SALTZMAN. Dr. Abner, I gathered that you were disappointed with the paper and am I right in assuming your disappointment flows—I am not sure I understood exactly what your reasons were for expressing that disappointment.

DR. ABNER. I think, in general, there were two reasons. One was that I was not quite sure that the kinds of disabilities that were being cited as requiring attention were those which were insurable in the first instance.

COMMISSIONER SALTZMAN. Like pregnancy?

DR. ABNER. Like pregnancy. Secondly, there was reference in several places to the industry providing coverage for disabilities which were unique to men, without mention of the fact that the industry also provides coverage for disabilities which are unique to women. I am thinking of mastectomies, either partial or radical, hysterectomies, either partial or radical, and even mamoplastes, for example. You can get them shifted sideways, moved up, down, or around, or made larger or smaller. These are all, in my estimation, voluntary procedures which are not disabilities which men suffer, but which were completely ignored in the treatment of the disability picture. I had some feeling that we were not giving equal treatment to the discussion in connection with the whole discussion of disability.

COMMISSIONER SALTZMAN. But relative to the general overview of discrimination against women in the insurance industry, are you able to generalize that this has been a pattern? Would you agree with that?

DR. ABNER. I would have to agree that there has been sex discrimination. I would certainly be hesitant to say that there is none now. I would be very surprised if there were not.

COMMISSIONER SALTZMAN. And yet our major focus, you think, should be on—what I heard you say was the far greater discrimination practiced against minorities?

DR. ABNER. Well, yes, in light of the fact, as has been pointed out, insurance is a protection that someone has to buy. If one's ability to earn income is impaired, then the ability of one to acquire whatever is available is impaired. It seems that the paper was emphasizing maternity, pregnancy, postnatal kinds of care, which I would agree is inadequately provided for in large segments of the population. I simply question whether or not the provision of such care might not be better approached from a social cost point of view, which costs would be assumed by our society through something like social security rather than attempt to provide such coverage through private insurance programs, which are going to have to be based, in some way or another, in the notion that people have to buy this or these coverages and, hence, must be able to afford them in the first place.

COMMISSIONER SALTZMAN. Thank you.

VICE CHAIRMAN HORN. Mr. Barnhart, I would like to get back to this perennial we hear about in these consultations of the pregnancy inclusion or exclusion. What is the basis, from an actuarial standpoint, why insurance companies historically have not wanted to include in, say health insurance, the coverage of pregnancy and delivery, exclusive of the disability question? Is it that the assumption is that most young women who get married will have children and, therefore, that will be an assured cost to pay out on benefits as opposed to some of the other operations which we have heard which, while interesting, are really sporadic in terms of total volume and total burden on the particular financial assets of a company? Could you explain to me, so that I can try to understand this, what the historic reason for this is?

MR. BARNHART. Yes, I believe so, at least to some extent. The main area of reluctance on the part of insurance carriers to provide coverage—you are speaking here more of the medical, hospital—

VICE CHAIRMAN HORN. On this one, yes. Disability, I would like to separate and get into that next.

MR. BARNHART. Okay, the main reluctance of insurance companies to provide that has been in the area of individually underwritten insurance, much more so than group. The reason for that is simply this matter of buying what you expect to use. I do not think it has to be characterized in the sense that people can only be provided with insurance against what they do not want to happen, but more in the

area of what is imminent, what is likely, what they are really expecting or planning.

Under individually underwritten insurance, where there has been maternity coverage for hospital expense—and this has been very widely offered in individual insurance—what typically occurs is that the young couple that are interested in the maternity coverage will buy the policy, the baby will be delivered, or the pregnancy will be terminated, and then they will simply lapse the policy. In the other words, the only thing they frequently are looking for is the maternity coverage itself and having utilized the policy to pay the maternity benefits, they simply lapse, so that companies have found they just cannot operate in a sound way where that kind of basically uninsurable condition is being covered.

That has been true even where the coverage has been severely limited. For example, a lot of individual policies may pay simply a flat benefit for pregnancy, such as $300, never mind if it actually costs $1,200; the policy may simply say, "in lieu of all other benefits, it will pay $300." Even then, this kind of antiselection of buying and the lapsing has been very prevalent. Lapse rates in individually purchased hospital and medical insurance have been very, very high at the young ages, with sometimes as much as 50 percent of people lapsing at the end of the first policy year, so that it becomes virtually impossible for the carrier to provide that coverage on anything other than a serious loss basis to the company.

VICE CHAIRMAN HORN. On this point, does the Society of Actuaries have compiled, or where in the insurance industry is it compiled, the lapse rates by type of policy at the end of 1 year? How does one get that information?

MR. BARNHART. Most of that information, as it happens, has not actually been gathered by the Society of Actuaries but by one or more of the trade associations. For example, the Life Insurance Agency Management Association, better known as LIAMA, has conducted lapse studies, or "persistency studies." Data is available, but as it happens, that has been collected more through insurance trade associations than by the Society of Actuaries itself.

VICE CHAIRMAN HORN. At this point, I want inserted in the record the section which staff will request from the appropriate groups to show the lapse rates at the end of the first year by some of the types of policies that include or exclude some of the types of operations about which we have heard in terms of allegations of sexual discrimination. I think the only way you get at this problem is to try and get the data into the record. Without objection, that will be put in the record at this point.

MR. BARNHART. Would you wish me to contact them?

VICE CHAIRMAN HORN. Fine, if you could, or talk to staff and suggest who they might contact.

MR. BARNHART. In connection with this other matter of the availability of provisions in contracts, the availability of coverage, that I did say I would endeavor to document more adequately, about what deadline would you want observed, about how much time?

VICE CHAIRMAN HORN. Well, Mr. Nunez, I assume in 30 days we would want to complete the record on this. Is that convenient?

MR. BARNHART. All right.

VICE CHAIRMAN HORN. Let me move from the maternity benefits—

DR. ABNER. Mr. Chairman, may I interject with one comment at this point?

VICE CHAIRMAN HORN. Please.

DR. ABNER. While I am sure lapsed data after 1 year would be of some use, it would seem to me that lapsed data after first claim would be of some further value in getting at what you are talking about. If it is true that young couples lapse, say, maternity policies, after the young wife has had a baby, then the lapse rate after the first claim would seem to either bear out that or not.

VICE CHAIRMAN HORN. Sure, provided it is a maternity claim.

DR. ABNER. Yes.

VICE CHAIRMAN HORN. If we can pin that down.

DR. ABNER. Yes.

VICE CHAIRMAN HORN. I would agree and I would assume that is what staff would follow up.

MR. BARNHART. That would be even more relevant, but I doubt if that particular statistic would be available. I think it would be more in terms of at the end of the first year.

VICE CHAIRMAN HORN. Mr. Barnhart, based on your experience as a consultant, do you see a change in insurance industry coverage on both the maternity aspect as to change in the benefits, perhaps increasing the cost to do so, as opposed to the disability benefits and the complications that might result from a maternity operation? Is there a difference here?

I think sometimes in the discussion we sort of confuse the health benefits and the disability benefits derived from complications after a particular operation and what is excluded and what is included. Could you give us the benefit of your experience as to what changes you see, if any, in the industry in both these categories, the provision of maternity benefits, the provision of disability for women, as a result of complications in the pregnancy or maternity operation?

MR. BARNHART. All right. First of all, in the areas of covering complications, I think in both disability income and in so-called health insurance, or hospital-medical and major medical coverage, there has

been a very rapid movement in the direction of pretty much full coverage of complications, not always initiated by the industry, sometimes initiated by State regulation.

For example, as I mentioned, and I will try to provide some specific documentation of the States involved, there are a number of States today that prohibit outright the coverage of complications of pregnancy on a basis any more limited than "any sickness." In other words, it has to be the same as whatever the sickness coverage is in the contract; that coverage has to extend without restriction to complications of pregnancy. That is becoming increasingly the standard and the prevailing situation under both disability and the hospital-medical coverage.

When it comes to pregnancy itself, that remains pretty much not covered by *disability* contracts; again, fundamentally on the ground that it is not an injury or sickness if it is normal pregnancy. It is fairly commonplace for normal pregnancy to be covered on some limited basis, such as I described, for *medical expenses;* $300 or some fixed amount. There are also increasing examples, particularly under group insurance, but to a much lesser extent individual insurance, to extend coverage to normal pregnancy as though it too were a sickness.

I think to describe this accurately, we should say it is covered, not the same as any "other" sickness, but *as though* it were a sickness. There are an increasing number of medical expense contracts that do that, that extend pretty much full coverage to normal pregnancy. This can be done with reasonable success under group insurance contracts where the individual selection of covered people is not such an element. When it is done under individually written contracts, it does present significant problems as to ability to underwrite without the carriers taking losses for the reasons I mentioned.

I might also comment here that I would have to disagree with the view that has been expressed in the consultation that the insurance industry is excruciatingly slow in making changes of this kind. I think, particularly in the area of covering complications of pregnancy and in making available to women amounts of coverage and plans of coverage, the same as what is available to men, the insurance industry has moved with extraordinary speed in doing that.

If you compare what is done today in 1978 with what was typical even 5 years ago, it is unbelievable the evolution that has occurred. Often the companies will do this in every State, even if they are required to do it in maybe only two or three States. They will anticipate the problem. I think the transition in this area has been extraordinarily fast, so fast that it really astonishes me.

VICE CHAIRMAN HORN. Let me ask you one last question. You said earlier, in an exchange with one of my colleagues, that the insurance

industry was reluctant to go to individual health medical exams because of the high cost that is involved, yet we are faced with increasing court decisions that do exclude sex as a consideraton, as a basis for a group decision. This was the thrust of the Chairman's question as to how an individual would feel if one was adversely affected by being included in that group.

Obviously one alternative, and it has been mentioned several times in this consultation, is socioeconomic class or, earlier, this medical history that you mentioned as being precluded perhaps because of expense. If we take socioeconomic class and some of the data in this exchange, and I believe Professor Abner showed that HEW study, that while there are still differences within income groups between majorities and minorities, in terms of some substantial differences, socioeconomic class certainly did seem overall to make a difference.

If we take that, wouldn't we be faced with the situation that since there are proportionately more minorities in a low-income, socioeconomic class, by deciding the rates of coverage, the extent of coverage, based on that, the insurance industry, forced to resort to that because they cannot use their present group basis by reason of law, would really be increasing the cost of coverage to minorities, perhaps women, in particular, who are in the low-income group. Would that be where you see this ending?

MR. BARNHART. Yes, I think I would, if that trend occurred. Of course, in all of these matters of social policy, I guess we have to deal with our own perception of what is fair and reasonable.

In my opinion, to classify on the basis of socioeconomic characteristics would be a big step backwards. I would feel that would put an unfortunate burden on minority groups who have been disadvantaged and have not had the same opportunities.

VICE CHAIRMAN HORN. Well, if it is not going to be socioeconomic, and if it is not going to be private individual medical exam, is not our only choice then to put everybody in the same group and then, in reality, let some within that group subsidize others within the group? What other reasonable criteria can be developed to help isolate the risks for the insurance industry which, in turn, affects particular costs?

MR. BARNHART. I guess one thing I am trying to suggest, and I realize I may be flying in the face of recent acts of law and courts, is that the insurance industry ought to be permitted to exercise those measures of risk classification that are inexpensive and practical to recognize.

One thing that bothers me about the idea of prohibiting sex, for example, as a parameter in classification, is that I think it is a very logical and easy step to move from there to age. One might say age has not been prohibited by Federal law, for example, but I have to say,

what really is the difference, if there is something wrong with differentiation by sex, why isn't there also something wrong with differentiation by age?

Of course, you get into the question of age discrimination just as easily as you do sex discrimination. I think if these readily determinable factors, which are known to have a very significant impact on risk, are denied the industry, then I think what will have happened here is that the voluntary insurance industry will have been deprived of its most fundamental tool in doing what it has to do, which is to measure and price the risk that it has to assume.

I guess what I am saying is that I have difficulty in discerning what alternatives or what other parameters really could be utilized here.

VICE CHAIRMAN HORN. Do you have a comment?

CHAIRMAN FLEMMING. I would just like to say this. I think we ought to assume our society is certainly moving in the direction, and rightly so I think, of saying whenever you make decisions other than on the basis of the facts surrounding the individual, these decisions relative to the individual because of the fact that the individual happens to belong to a particular group—whether it is race, sex, or age—your practices, whatever area of life we are talking about, are really going to be called into question.

Age is not a part of this consultation, but it looks as though the extension of the authorization of the work of the Commission on Civil Rights, that our jurisdiction will be enlarged to include discrimination on the basis of age and handicap, just as it was enlarged 2 years ago to include sex.

Commissioner Horn has identified some alternative classifications that have been suggested in our discussion up to the present time. I would not want anybody to get the idea that any of us have embraced those alternatives.

I agree with you and Commissioner Horn that the socioeconomic approach, I think, would be disastrous as far as the minorities and many women are concerned. I do not think that is a viable alternative. I recognize the fact that when we move in the direction of dealing with individuals as individuals, dealing with the facts surrounding the life of an individual, the life gets more complicated and possibly more expensive, but it seems to me that is the price well worth paying in view of the dividends that flow from that kind of an approach.

MR. BARNHART. Let me just offer this comment in response to that. I think if that is the end result or, if we reach a point where it is regarded as discriminatory or in violation of civil rights generally that individuals may not be classified into any kind of risk grouping, then I think you will have destroyed the whole foundation of the concept of

insurance itself because that necessarily depends on some kind of groupings of people in order to develop any kind of credible statistics.

In other words, even if a company is underwriting on medical history, it still has to define that class of people who have a history of heart disease, for example. Any way you look at it, there has to be some classification of risks into groups or there is no possibility to develop the credible statistics that make it possible to price the risks.

I think if we get to that end result, we will do so at the expense of having destroyed the whole concept of insurance coverage based on groups and on risk.

CHAIRMAN FLEMMING. The question that confronts us is whether or not there are groupings that can be agreed upon and that can be administered without violating the concept that I just have been discussing. For example, you mentioned heart disease. I appreciate the fact that you have to define that. I appreciate the problems of defining it, yet there may be groupings of that kind that will stand up under the test of fairness and equity.

MR. BARNHART. Possibly so. I guess I would feel that any parameters you choose that are regarded as meaningful simply necessarily lead to the classification of people into groups of some kind. I guess I have trouble conceiving of how one set would be acceptable while another would not. I think any way you go about it people have to be put into classes and into groups.

VICE CHAIRMAN HORN. We will have an opportunity to continue this with the next panel, which is what I am going to reluctantly move to now, since I have enjoyed the discussion.

MS. GREENBERGER. Mr. Commissioner, I wonder if I might say something?

VICE CHAIRMAN HORN. I would like to make just one point. May I say that I am delighted that my colleague has stressed the need to judge people on their individual merits. I concur in that. My only concern is that I find many people want to judge people on their individual merits when it works favorably to their interests and to have themselves judged as part of the group when it works favorably to their interests. I find a lot of people inconsistent in this regard, but hope springs eternal.

MS. GREENBERGER. Hopefully, this will be brief. I was just distressed about exactly what the statistics might show that you had requested on lapse rates. The reason is because, so long as the practice is prevalent that some insurance policies will be offered with pregnancy coverage and some will not, it would be expected that a young couple would buy insurance, including pregnancy coverage, would lapse it after they feel it is not useful anymore, and what you

would not see is that they bought another insurance policy which excluded pregnancy coverage.

I think what we are really talking about is treating pregnancy like heart disease or other kinds of physical conditions, requiring either the health costs for pregnancy-related disabilities or the hospital cost for pregnancy, whatever, be included as a routine matter in all insurance policies and to spread the risks among the population as a whole. I am not sure that the statistics requested would show that kind of situation.

VICE CHAIRMAN HORN. Well, staff will follow up on this. We welcome the input from any member of this panel or any other panel as to the appropriate questions that might be framed. Mr. Nunez will implement that.

I would like to again thank our panelists and the presentor of the paper. We appreciate the discussion that resulted from your participation.

Risk Classification and Actuarial Tables

VICE CHAIRMAN HORN. At this time, I would like to call the next panel on risk classification and actuarial tables. We are delighted to have with us to make the major presentation and summarize his paper in about 20 minutes' time, Mr. Robert J. Randall.

Mr. Randall is currently the vice president and actuary for The Equitable Life Assurance Society. He is a graduate of Yale in mathematics; pursued studies in mathematics and statistics at Columbia and New York University before joining The Equitable in 1967. He was president and actuary of a newly formed company, the Inter-America Life Insurance Company in New York. Before that, he was affiliated with a firm that is best known to those of us in higher education, the Teachers Insurance and Annuity Association and the College Retirement Equities Fund where he was associate actuary, and he also has had experience prior to this over a decade with TIAA and CREF with the New York State Insurance Department and previously the Mutual Life Insurance of New York. He has had a vast range of experience in large, small, private, nonprofit, and State agencies, and we are delighted to have Mr. Randall with us to present the paper in this area.

Following his presentation, I will introduce each of the panelists for 10 minutes of commentary.

STATEMENT OF ROBERT J. RANDALL, VICE PRESIDENT AND ACTUARY, THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES

MR. RANDALL. Thank you very much. I would like to begin by establishing my credentials a little differently by saying, first, that I am here as an individual and not as a representative of The Equitable Life or the insurance industry or the actuarial profession, although I am an employee and officer of The Equitable and a fellow of the Society of Actuaries. This might become a little clearer if I relate that I distributed my paper among my colleagues at The Equitable and got back favorable comments except for one person. I would like to read his comment and my answer.

> Your draft has a grave omission. It states that little or no business was written years ago on women and minorities and implies that this was the result of prejudice. The reason that so little business was done in these markets, however, was that they barely existed. There was little or no economic purchasing power to insure. There is today because society has greatly changed in the past two decades, but it is ignorant to impute today's conditions to former times and to suggest that insurers held back from financially attractive markets because of wrong-minded prejudice. Have you no more understanding of free market forces than that?
>
> Whether the paper's lack of historical perspective is fatal depends on the specific use to which it is to be put, and this you did not identify. It seems to me, however, that the omission must importantly limit any reasonable use and that you owe a clear disclaimer in the paper that you are offering your own views rather than those of your employer or an actuarial body.

Well, I have given the disclaimer and here is my answer.

> Thanks for your comments. I think you have read a narrow implication into the paper that was neither stated nor intended. I did not attempt to analyze the reasons for past treatment of women and minorities by insurers. I believe prejudices and attitudes of the time played a role, along with free market forces, but I am sure I do not understand all of the causes and interactions.
>
> If you believe that there was no wrong-minded prejudice at all, I feel you are mistaken.

So much for that.

Before going on to my paper, since the previous papers have really dealt with the same subject, I would like to comment very briefly on two or three of them. The first is Mr. Denenberg's last night.

In a very general sense, I do not think this was a serious paper. It was not a reasoned attempt to analyze all of the problems involved in the treatment of women and minorities by the insurance industry. Instead, it was a sort of all-out, no-hold-barred attack. It did not give any picture of the industry's development and efforts to cope with all the problems that were discussed, and there is a picture to be given.

Beyond that, I would like to comment specifically on one comment in his paper and presentation with respect to the attempt of the Society of Actuaries to recruit black students. He says:

> That is an apparent failure. The program is the equivalent of a medical school attempting to recruit candidates to become brain surgeons before any general practitioners are produced. This noble effort seems to have been misdirected with unrealistic goals, when resources might have been better spent at more generalized training and career objectives.

He seems to be saying that the Society of Actuaries should not be attempting to recruit black students as actuarial trainees. I just cannot accept that. One reason I cannot is that I happen to be the founder and first chairman of the society's committee on minority recruitment.

The program has been in existence since 1970. It has not achieved great success. The problems are being studied, and the program is actually being enlarged tremendously and we hope for success in the future.

The basic problem is that it is extremely difficult, very difficult, to find black students who are majoring in mathematics and interested and able to take the actuarial examinations. They are very, very scarce, and if they do exist, they have other attractive offers that take them off into other fields. The problem seems more to be one that exists in the high schools. There are not enough students who are ready to major in mathematics in college being produced. Perhaps the Society of Actuaries can attack that problem as well as working with college math majors.

It is working on this and its present program includes a $100,000 yearly support to the actuarial science program directed almost entirely at minority students at Carnegie-Mellon University in Pittsburgh. This program is a very well-run program and has produced engineering students over the last 10 years from minorities in greatly increasing numbers. The support for the actuarial program is about a year or two old, and we hope it will be successful. I do not accept his comment on the Society of Actuaries' recruitment program.

To go on to my paper, it attempts to give a clear picture of how the pricing system in the life insurance industry operates, using the tools of risk classification, which is often referred to as underwriting, and

actuarial tables. The process is then related to the treatment of minorities and women.

I am going to interrupt and go back because I did mean to comment on Ms. Williams' speech last night. That speech has been prejudiced or put into a different context by the Supreme Court decision which we just heard about. It is not clear whether that decision simply refers to employee benefit plans and tells them that they cannot take sex into account in determining benefits, but whether it also applies to the pricing of annuity benefits by insurance companies. It may apply only to the first; I do not know.

VICE CHAIRMAN HORN. May I say at this point, we will put, as part of the consultation, that decision into the record, and we would appreciate the comments from yourself or any other individuals involved in this, as well as our own General Counsel, as to what are the implications of this particular decision. At this point, since the Commission just received a copy 10 minutes ago, we are not in a position to really comment or go into this deeply. However, we would welcome your comments if you would like to file them later on.

MR. RANDALL. These comments are very brief on Ms. Williams' speech. She seemed to think that outlawing the use of sex-differentiated tables would change the cost of pensions. It cannot possibly change the cost, if there is a real difference in cost between men and women. It can change the way in which the cost is apportioned and might shift the costs from the employee more to the employer or from the employer to the male purchaser of annuities, but it cannot change the cost itself.

Secondly, she thinks that the differences between mortality among the races, white and nonwhite, and between the sexes are really the same sort of question. There is a real difference in the pattern of those differences, and it is my conclusion, although I am not the greatest expert in the world on this, that the differences observed between races stem almost entirely from differences in socioeconomic conditions. Beyond that, there is a crossover in the mortality between races. At the higher ages, the death rates are lower among nonwhites, and this crossover occurs somewhere around age 75. The result of this is that the cost of pensions for people age 65, which is the usual retirement age, is almost identical by race.

There are important, substantial differences in the life expectancy by sex at age 65. The cost for women is much greater. The other important consideration is that the evidence on the mortality by sex seems to be pretty clear, although there is much room, I am sure, for further study, but it seems to be pretty clear that the difference is inherently physical and biological, and it is not related to lifestyles or

social conditions. There is some evidence that those conditions have some effect, but the predominant element does not seem to be that.

There is a completely different consideration as to whether the sexual differences in mortality are of the same nature as the racial differences that have been observed. My conclusion is that they are of a completely different nature.

So much for Ms. Williams' paper, which was a very reasoned presentation, I felt.

Now to finally get to my paper, it attempts to give a clear picture of how the pricing system operates, using the tools of risk classification and actuarial tables.

The process is then related to the treatment of minorities and women with a historical account of the evolving practices in the last few decades. I conclude that the system has evolved towards fair and equitable treatment of women and minorities and the flexibility to continue this development.

My paper aims toward understanding through describing the system, understanding of the process and also some of the questions now being raised about the process. The best way, I guess, is to go through each section and try to emphasize the important points that are made, since I do not have time to read the whole paper.

I begin with a description of the main types of insurance coverage, individual and group, life, health, disability, and pensions. Of course, I am omitting those coverages offered by the casualty companies, auto and so forth. It is important to understand the differences in these different arrangements. Group insurance leans toward treating groups, normally employer groups, equitably. Individual insurance deals with individuals. The different types—life, health, and disability—all have different problems, and so you have to keep in mind at every point with which situation you are dealing.

Then I come to a description of actuarial tables. What is an actuarial table? There are various types. The basic type is a mortality table. A mortality table is simply a display of death rates by age. It shows the number of people who die at each age, going from normally zero to some age like 100 or 110, which is called the terminal age. The Life Insurance Trade Association each year puts out a book called *The Life Insurance Fact Book,* and in the back of that book they have listed the death rates that are in some of the principal existing mortality tables.

Another key point is that tables are derived from experience at specific periods of time among specific groups. You have census tables derived at the time of the decennial census for the whole population of the United States. There are also tables by States. The U.S. Census makes a distinction that produces tables by sex and tables based on

race, white versus nonwhite. The nonwhite group is mostly blacks, but it does contain other groups.

Tables are constructed for various purposes. The purpose of the table is important. Some tables are constructed to set insurance rates, and they have to have a margin for future contingencies. Others are set to represent the actual experience that has occurred in the recent past. Depending on the purpose, the margins may be added to the basic experience rates or, if the purpose does not call for the margins, then there are no margins needed to be added.

Some of the currently important mortality tables are the 1970 United States Life Tables representing census data for the whole country, and that is based on death surrounding the year of the census, 1970, deaths in the years '69 to '71.

There is a 1958 Commissioners Mortality Table, which is the legal table for individual life insurance reserve purposes. The 1965 to 1970 Select and Ultimate Mortality Table represents the current level, actually the level experienced in those calendar years, of mortality under individual insurance policies.

There are 1971 Individual and Group Annuity Tables, and these are tables representing mortality among pensioners or annuitants, individual annuitants who bought their pensions as individuals and group annuitants who were members of pension plans.

The most important source of tables on lives insured by insurance companies comes from the intercompany study which is conducted annually by the Society of Actuaries. These tables come from data furnished to the society by as many insurance companies as are willing to furnish data. I made a rough calculation that the data in the 1965–1970 Select and Ultimate Table represents about 30 percent of the life insurance business in force in the United States, so that is a pretty large experience study.

The 1973 reports of the Society of Actuaries—I have a copy which I can leave with the Commission—not only does it represent what the reports are like, but there is a very excellent summary section of mortality by sex; and it gives a resume of all the experience that exists from the census and insurance data of the degree of difference in the mortality results by sex.

So much for actuarial tables. The next section goes on to discuss the four main elements of the pricing process. The first element is collecting the basic underlying data, and the most notable part of the data is the actuarial table, but there is other data needed to calculate insurance rates.

The question here is, is the data correct, is it meaningful, and is it relevant? One important question is, is sex a proper and useful criterion?

The next step is to use the data to calculate the insurance rates. This is the basic actuarial process. The end product is a set of premiums for each plan of insurance offered, varying by age, sex, and rating class. I will come back to describe what a rating class is.

The important concepts are those of equity, adequacy, or safety for the insurer and competition. Equity represents fair treatment of all policyholders and is important for its own sake. I think actuaries and insurers do want to be fair in their treatment of their policyholders. It is also important to the soundness of the insurance operation in that equitably priced products, we feel, do produce sounder marketing results. If our products are not priced properly, we invite antiselection.

I would like to emphasize that these concepts are competing concepts. There is a need to make the rates as low as possible in order to compete in the market, a need to make them high enough to cover the expected claim costs, and a need to make them equitable between different classes of policyholders.

The actuary is balancing all these goals and needs as he constructs a table of premium rates. He ends up with a book like this which is the rate book and has the rates of all our principal life insurance policies. That rate book may be changed with respect to the premium rates periodically, not at fixed periods, but perhaps every 4 or 5 years or so.

Mutual life insurance companies adjust the price of the insurance product by paying dividends, and so the calculation of the dividends, which is somewhat comparable to the calculation of the rates in what is involved, is part of the pricing.

The third element is risk classification, which is the evaluation of an applicant so as to place him in the proper premium class. In the paper, I have described this process in a fair amount of detail. The goal is to make the fairest evaluation possible, taking account of all pertinent facts reasonably obtainable. One important point is that this process is constantly being updated to reflect both emerging facts on past experience and informed assessment of future trends.

An application for insurance comes into the insurance company. The company, by various documents that describe the applicant, the underwriter, who is often assisted by a medical doctor, must use this information in determining whether the policyholder can be issued a policy at standard rates or whether he has to be issued or offered a policy at higher rates, reflecting the particular impairments he might have. Sex is one of the criteria that enters into that process. It is not part of the underwriting process, as such, but it is embedded in the premium scale. If we did not have it as an allowable criterion, then we would have to somehow adjust the premium rates to take account of that.

The next section of the paper is a discussion of mortality by race and sex; first by race, and I have attempted to describe the data that does exist. There is no doubt that there are substantial differences displayed in the census data over the years coming forward from 1900 in mortality rates by race. Those differences have decreased sharply with time. The difference in the life expectancy between 1930 and 1970 by race was halved. It is one-half of what it used to be, and the difference at age 65 is just about zero; it is less than 1 year for both sexes.

One conclusion that is drawn from that phenomenon of decreasing differences is that the reasons for the differences relate to social environment rather than inherent differences, which might be called biological. However, it would seem to me that a more direct way of studying the differences would be to classify the statistics according to the economic conditions, according to income class, educational class, or occupational level.

It is somewhat strange that studies that attempt to do this are almost nonexistent. There is one report of the National Center for Health Statistics which was made in 1961 and actually based on an analysis of 1950 census data that did attempt to classify mortality results for the entire population by several criteria—occupation, educational level, income level, and so forth. It was designed more to study the differences by those levels rather than the difference within each level by race, but it is possible to look at those second differences also and the differences persist; but they reduce as you go up the scale, regardless of which criteria you look at, occupation, income, or education.

It is probably very likely that if you classify whites and nonwhites into people with the same amount of education, that you will still have a group that has an environmental disadvantage for nonwhites. That may explain part of the persisting difference.

At any rate, this is a subject that has not been studied really and needs more study. Nevertheless, the evidence is that the racial differences relate mostly to social disadvantages and environment.

With sex, once again, there are substantial differences, but the nature of those differences is different. The differences have increased over time rather than decreasing. I will not attempt, since I frankly do not understand it all, to discuss all the biological concepts that have been advanced to explain this difference, but there is quite an amount of investigation going on.

Perhaps the best reference is a book called *The Handbook of Aging,* which was published this year. I have the name of the publisher. This analyzes all sorts of reasons for differences in mortality. It studies fruit flies, animals, as well as people, and it attempts to assemble all the current information that has been produced on this subject. The

conclusion, as I draw it, is that the differences are not yet fully understood; but the evidence seems to point almost overwhelmingly to the fact that the difference in mortality by sex is a biologically inherent difference for the most part.

Let me go from mortality differences to go through the history of how treatment of racial differences and sexual differences in underwriting and insurance pricing has evolved over the years. I think the general picture is a picture of gradually removing improper distinctions, as I tried to state in my opening statement. First, I will start with individual, ordinary life insurance.

The practice has changed from one of higher rates for blacks and general avoidance of black markets to no rate distinctions at all and increasing sales efforts directed toward the black market. I can speak mostly for The Equitable, and the best way to describe our increasing sales efforts is to recount the efforts of our affirmative action program in employing agents, which has been successful and is going on and aims toward greater success.

We have 160 sales agencies scattered throughout the country and that number has remained fairly constant for some years. Among the 160 agency managers, 10 years ago there were no blacks, and today there are 11. There is also one woman agency manager, and there are plans to increase greatly the number of women in coming years. There are four Hispanic agency managers, I believe, where 5 years ago, there were none. I may be a little off on that.

We have concluded that to approach the minority market, we need to do more than hire minority sales agents. So we are now devising special sales programs directed especially towards those markets. I cannot report in detail what those programs are at this point. I believe The Equitable may be somewhat out in front of many other insurers in this respect, but, nevertheless, I believe its efforts are typical of a growing trend.

VICE CHAIRMAN HORN. You have about 5 minutes to go, Mr. Randall. We will put the whole text in the record as if delivered.

MR. RANDALL. I will speed up and say that I do go through each type of coverage and detail how the treatment of women and minorities has changed over the years. I might mention disability insurance, since that was discussed in the last section, only to say that the New York State Insurance Department in 1975 made a comprehensive study of the treatment insofar as disability policies go.

The result of their study is a set of rules which outlaws all distinctions in the coverages offered to women. It is no longer possible or legal in New York State to withhold certain disability coverages from women. However, the department concluded that there was clear evidence that the claim experience differed by sex, and they

allowed rate distinctions to be made by sex. They described one standard for rate distinctions which came from a study of the differences they had made, and they allowed other standards to be used, based on validated experience of individual insurers.

Maybe I had better go to my summary. I attempt to summarize by asking and answering three questions. The first is, has the life insurance industry's pricing system produced fair and equitable results? Can it continue to do so? My opinion is yes; there have been past inequities, but the system has removed most of these practices and has the flexibility to maintain and improve equity for the future.

The second question is, are pricing differences based on sex fair and equitable? Yes, because there are substantial and statistically valid differences in mortality and morbidity rates, and the best evidence to date is that such differences reflect inherent biological factors which can only be recognized through pricing by sex.

Third, to what extent are oversight and regulation by and for the public desirable? In my opinion, the aim should be informed, restrained, and responsible government oversight, leaving with the insurance industry the maximum flexibility feasible for the risk classification process. The general principle of fair and equitable treatment for all should be public policy. On the other hand, by specific directives or restrictions, demonstrably unfair practices should be limited.

VICE CHAIRMAN HORN. Thank you very much. We are delighted to have that presentation, and I am sure, as we get into the discussion period, you can make some of the other points that are in your paper, especially those concerning unisex tables, which I think it is important to lay out.

Let me move to the panel for 10 minutes of commentary by each of them. I am going to start with Dr. Keyfitz because I know he has a plane to catch. Are you okay on that?

DR. KEYFITZ. I have deferred the plane.

VICE CHAIRMAN HORN. Very good. We might just start with Marjorie Smith. Ms. Smith has a master's degree in history from the University of Chicago and then graduated from the Columbia Law School in 1970, and she has a very interesting background in the sense that she has been deeply involved in some of the subjects concerned with this Commission. She is a staff attorney on the prisoner rights project of the Legal Aid Society of New York and a staff attorney of the women's rights project with the American Civil Liberties Union in New York. Recently, as of March 1978, she has been Deputy Commissioner, Legal Affairs, General Counsel, New York City Department of Consumer Affairs. We welcome you and your comments.

DISCUSSION BY MARJORIE SMITH, DEPUTY COMMISSIONER, LEGAL AFFAIRS, DEPARTMENT OF CONSUMER AFFAIRS, NEW YORK CITY

Ms. SMITH. I might say that, in general, Mr. Randall's presentation does not—the written presentation, that is—take the most extreme insurance industry position which is, as I understand it, eliminating the use of sex as a criterion in setting premium rates and more benefits would drive insurance companies out of business or very severely hamper them.

He has recognized in a letter that I have seen, published in *The Actuary* in April of 1977, that the "ultimate decision concerning whether to forbid sex differentials in the pricing of pensions rests with the people and their elected representatives and not with actuaries and other experts."

Insurance companies and actuaries, in my experience (and part of my experience involves being counsel for the plaintiffs in a lawsuit which challenges the TIAA–CREF pension plan which is offered by a major public university in Michigan where the insurance company is very determined not to make any changes in the sex-differentiated benefits which are provided to men and women faculty members), have taken the position that simply the fact of women's greater average longevity controls the issue, and I think that is why there is such an attempt to belabor the fact that the racial disparity in longevity is decreasing and is more related to environmental factors, to make all these decisions, because they seem to take the position that, if women really do live longer than men, that is dispositive of the issue and, if you have established that, that is the end of the discussion and we should not interfere with the insurance industry's position and the way they want to price and set rates.

I think there are two general factors to be kept in mind in this discussion. As Mr. Randall states in his paper, underwriting is not a cut-and-dried process, but it involves considerable skill and judgment.

The way that judgment has operated in the past is frequently sex and/or race biased. For example, as the New York State Department of Insurance noted in its 1975 report which is set out in Mr. Randall's paper, insurance companies had been engaging, up to that time, in a number of practices which discriminated against women; for example, offering disability coverage to males who were gainfully employed at home while denying or offering only reduced coverage to women who were similarly employed or requiring female applicants to submit to a medical examination while not requiring that of males.

As that report concluded, more often than not such underwriting distinctions emanate from unjustified, subjective views of the role of women in our society. In addition, underwriting rules are not rules in

the traditional sense. Instead, they are rough guidelines which at best may be applied in a very haphazard and arbitrary fashion by insurance company underwriting and sales personnel. As a result, the report and the insurance department concluded, because these guidelines, based on sex, are not derived from objective data and are subject to uneven and discriminatory application, all underwriting distinctions based on sex were outlawed.

Therefore, I think we have to start with the proposition, which I think Mr. Randall agrees with, at least in the case of race, that insurance companies in the past have utilized actuarial tables and risk-classification principles to the disadvantage of certain minority groups. Given this fact, I think it is appropriate to approach with healthy skepticism the claims about what will befall the industry if government regulation prohibits other distinctions which are based on sex.

The question is sometimes asked, if women do live, on the average, longer than men, why is it unfair to give them lower monthly benefits, as in the case of a defined contribution pension plan, since each woman will have the same chance of receiving *X* amount of benefits over her total lifetime as each man when they start out into the period of retirement?

To answer this question, I think it is necessary to consider some of the special disadvantages which women and minorities labor under in this country even to the present time. As the House Committee on Education and Labor wrote in explaining the need for the 1972 Civil Rights Act Amendments, women then, and still, earn only about 60 percent of the income of men during their working lives. This status continues into old age. This Commission has explained that women over 65 receive the lowest median annual income of any age or sex group, approximately half the amount received by men in the same age group.

In other words, it is because women and minorities are disadvantaged in and of themselves that there has to be a special sensitivity to a classification system which results in each individual in the disadvantaged group receiving less money in retirement, for example, than she would if sex were not utilized as a classification device. I think this sensitization process has proceeded further in the case of race than it has in the case of sex. This is probably due to the fact that the disparities in black and white longevity are less than those between male and female and that the distinctions are probably more related to economic status.

At the same time, I think it is clear that the law, which has since the 1950s stood pretty firmly against racial distinctions and discrimination and general social disapproval of racial distinctions in this area, is also

largely responsible for the dying out of risk classification using race as a criteria.

But, again, I think that there is this certain tension between the basic notion that you do not want to make discrimination based on race, and when the insurance industry and the actuarial profession comes back and tries to make their argument about why the distinctions are necessary in the case of sex, sometimes they do suggest that it wasn't such a good idea to eliminate race as a discriminating or differentiating factor at all.

Mr. Randall, in his letters to the American Academy of Actuaries, comes out very strongly against their sort of implied statement that really it was improper for government interference to eliminate the insurance industry's distinctions based on race.

What is the argument made by those who oppose the use of sex classifications in the insurance industry? No one expects the insurance companies or actuaries to make individual predictions of longevity. Rather, what is claimed is that insurers can accommodate to the demand that individual men and women who are, for example, working on the same job, for the same number of years, and retiring at the same date get the same benefits by pooling the mortality experience of men and women, just as the mortality experience is pooled for all other groups with different average longevity rates, for example, blacks and whites, smokers and nonsmokers, persons with high blood pressure and those who have normal blood pressure, the fat and thin, and so forth. As I think has been mentioned by others, there are many plans in existence now which provide contribution rates and benefits based on such poolings, so it is not anything that is an impossibility.

It sometimes is argued that equal benefits would unfairly penalize men by forcing them to subsidize women, but I think that argument is no more accurate than it would be to charge that the failure to segregate by race means that blacks subsidize whites, or the failure to segregate on some of the other bases I mentioned. These arguments are really all the same, and yet there are no efforts made to make them part of the insurance industry practice in all those other regards. The effort has really drawn the line at sex as a classification device.

The argument is also made that eliminating sex as a criterion would result in adverse selection, with men leaving the insurance pool and a reversion, therefore, to the female rate. With regard to employer pension plans, there is no likelihood that would happen; since, again, none of the other groups were theoretically disadvantaged by not having a special rate applied to them and, in addition, there are certain benefits that the employer could not get in any other way than by participating in the group plan.

Again, I would like to quote from Mr. Randall's letter to *The Actuary* in which he said:

> Some differentials in insurance or pension costs in the past were more a matter of convenience to insurers than a fundamental risk difference. Statistics might well show that members of one religious faith show consistently higher mortality than members of another. More careful examination of the individuals on the basis of acceptable risk criteria, would, undoubtedly, enable insurers to sort them into risk equivalent classes without reference to religion.
>
> In any event, it seems that risk classification based on religion could properly be prohibited by the government.

The point has been made in a recent article by Daniel Halpern, a professor at the University of Pennsylvania Law School, on "Sex Discrimination and Pensions," at the 13th Annual NYU Conference on Labor, that classification by sex purports to segregate insurees into homogeneous groups in which all members have equal risks. In fact, however, it fails to accomplish this, in part because the difference in average mortality between the sexes appears to be associated with personal habits such as smoking and drinking. Such characteristics may be more frequent in one sex than the other, but obviously do not divide entirely by sex. Thus, sex classification puts a significant number of people into the wrong group.

VICE CHAIRMAN HORN. Ms. Smith, we have about a minute. We will insert your written comments.

MS. SMITH. As to the point that, if you eliminated sex as a classification device, you would be opening the gate to arguments that would eliminate all such classification principles, including, for example, age, that simply does not apply. One of the major distinctions there is that while no one can change their sex, everyone is a certain age at one point, assuming that they live to the next age in question and will go through that period, so you are not singling out people on the basis of an immutable classification.

The basic point I would like to make is that, while actuaries sometimes seem to act as if the system cannot function unless they have this right and ability to use sex as a classification device, in fact, they can function perfectly well and this would be an appropriate thing to have done. Thank you.

VICE CHAIRMAN HORN. Thank you. Next is Dr. Nathan Keyfitz, professor of sociology and demography at Harvard University. After receiving his doctorate from the University of Chicago, he was on the faculty at the University of Toronto, Canada; the University of California, Berkeley; as well as the University of Chicago, where he

was also chairman of sociology. He is a trustee of the National Opinion Research Center, a member of numerous professional groups, and a member and past president of the Population Association of America. His book *Introduction to the Mathematics of Population* is a standard in the field. He has contributed numerous articles to professional journals. We are delighted to have you with us.

DISCUSSION BY NATHAN KEYFITZ, PROFESSOR OF SOCIOLOGY AND DEMOGRAPHY, HARVARD UNIVERSITY

DR. KEYFITZ. Thank you, Mr. Chairman. Despite all those credentials that you have attributed to me, I seem to be the only person among the speakers this afternoon who does not know what equity is. I am in favor of it, and yet I want to tell you a little about my puzzlement as to what constitutes equity between the sexes.

If a man of 60 wants to buy a life annuity of $1,000 a year, his expectation of 16.8 years, if you forget about interest to make the matter simple, forget about the variation among individuals and take expected values, determines that he will ultimately receive $16,800. A woman, on the same assumptions, will, on the average, collect $21,900. What is a fair charge to these two annuitants? What is equity?

One school says that it means charging them the same amount, based on a unisex table; that would be $19,300. The man would pay $19,300, and he would get back only $16,800. He would lose $2,500. The woman would pay $19,300 and be ahead $2,500.

The man is paying part of the cost of the woman's annuity. This may or may not be a desirable arrangement. It may be recommended for all sorts of social reasons like injustice to women in the past and many disadvantages from which women still suffer, but we should recognize it for what it is.

I have left off, among other things, office expenses and the many complications of the insurance industry, but ask you to think of the insurance industry as an arrangement for transferring funds, as you heard in the detail provided by Mr. Randall.

The question is, what is equity? I am genuinely ignorant; I genuinely do not know whether equity consists of charging men and women the average cost or charging men the cost for men and women the cost for women. To put the matter in extreme form, but yet to retain the essential issue, if Bill lends me $10 and Joe lends me $20, is equity my paying them $15 each, or is it my paying the one $10 and the other $20?

It is also true that if you charge the same life insurance rates to smokers and nonsmokers, then the nonsmokers are subsidizing the smokers. It also is true that if you charge the same rates for all the different ages, the younger individuals would be subsidizing the older

ones. That last instance, which was extensively discussed in the earlier session this afternoon, is something on which we do not need to speculate; the consequences of it are well-known from the history of the insurance business in the 18th century.

What happened regularly then, and what even today would happen if there were not State insurance bodies controlling the matter, is that the insurance company that sets up and charges everybody the same rate prospers for a while, but then its body of policyholders gets a little older and they start to die, and it finds itself bankrupt. From prosperity to bankruptcy may be a period of time extending over only a very few years.

I do not think it is the case that eliminating the difference in the sexes would destroy the insurance business; I don't think that would happen. But it positively is the case that eliminating the difference among ages would destroy voluntary insurance. There is no way of setting rates that disregards age; there is no way of setting a uniform rate that would make insurance attractive for anybody younger than the very oldest age.

Working back from the fact that disregarding age would destroy insurance, we can say that disregarding sex would not destroy it, but would have a corresponding effect on a smaller scale. It certainly is true, not for group pension plans, but for the ordinary voluntary insurance bought by individuals, that if you charge the unisex rates, the sex that was disadvantaged would turn to other ways of investing its money. The sex that was advantaged would buy more, and there would be a drift in the constitution of the policyholding body, not as extreme as in the case of age but extreme enough to handicap the industry and make it less able to serve the legitimate functions that we hope it will continue to serve for a long time to come.

Where genuine inequity arises is in smokers being subsidized by nonsmokers. If you happen to have the misfortune of being a man, a smoker, and black, on each of those counts, you lose about 6 or 7 years, according to whatever data we have. The black differential is diminishing. The smoker differential—I am speaking of a level of smoking about a pack a day—is not diminishing. One difference may be environmental and the other may be biological, but I am not sure that distinction is all that important.

The important thing is that when you insist on uniform rates, you insist on the nonsmoker subsidizing the smoker. Do you regard that as good policy? I do not think you do. You could well regard it as good policy considering past injustices to have men subsidize women, but what you have to think about very carefully is whether the subsidy should be carried out through the insurance business. In other words, does a woman who is to get a subsidy on account of her sex have to go

out and buy an annuity policy in order to get it? Shouldn't she get a subsidy irrespective of whether she buys an annuity policy or not?

I would like to promote affirmative action towards women, but detach it from the insurance business. In other words, do not make the insurance business solve all of the injustices that have occurred in society. Let us try to find more effective means.

VICE CHAIRMAN HORN. Very good. Thank you, Dr. Keyfitz.

Our last panelist is Dale R. Gustafson, who is vice president and actuary of Northwestern Mutual Life Insurance Company, located in Milwaukee, Wisconsin. Previously, he had been vice president, administration, of American Life Insurance Association in Chicago. He received his B.A. and M.S. from the State University of Iowa at Iowa City and his M.S. was in mathematics and actuarial science. For a decade and a half, he was with the United Benefit Life Insurance Company in Omaha and was named its vice president and chief actuary in 1963. He is the president-elect of the American Academy of Actuaries and has held various positions in the Society of Actuaries as well as the American Risk and Insurance Association.

DISCUSSION BY DALE R. GUSTAFSON, VICE PRESIDENT AND ACTUARY, NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY

MR. GUSTAFSON. Thank you. I am the last scheduled speaker today, and I am sure it will displease none of you to learn that I do not intend to use my 10 minutes. I would start with a comment that may be of interest to you. I am an actuary, Mr. Randall is an actuary, and Mr. Barnhart, in the previous group, is an actuary; we are not a valid sample of hairstyles in the actuarial profession.

[Laughter.]

MR. GUSTAFSON. Much of what I would have planned to comment in this slot has already been covered very adequately. I do not intend to repeat points that have already been well made, except one. I have just a couple of small comments and then one major point that I want to emphasize, and it has been made several times.

The Randall paper is very thorough, quite useful, and contemporary. It does a most excellent job of summarizing, in understandable and yet quite definitive and accurate terms, how the pricing and underwriting processes work for the principal different kinds of private, voluntary insurance mechanisms. It brings together many of the most current and cogent experience studies and commentaries on the risk classification process, especially as it has to do with race and sex.

This paper will be most useful as a general background briefing on the risk classification process. Mr. Randall has made extensive

references to the evolving practices of The Equitable Life Assurance Society, his employer. He several times identifies The Equitable as "the leader in this area" and also identifies it as "generally typical of many other life insurance companies." I simply want to affirm the accuracy of both of these statements.

As my main point, I would like to attempt, in a slightly different way than has been done heretofore, to articulate a basic principle. This is implicit in Mr. Randall's paper and is almost explicitly described in his final section on the adverse consequences of mandated unisex rates, and it has been articulated in other discussions. I believe it to be extremely important that this principle be articulated and understood by all those interested in the areas of concern that underlie this consultation.

The basic principle is quite simple to state: The risk classification process is essential to the viability of private, voluntary insurance mechanisms. Where substantive differences in risk of loss exist, they must be recognized in a private, voluntary insurance mechanism to avoid antiselection by those subject to high risks against those subject to low risks.

Of course, the other side of the basic principle stated above is that, under universal social insurance schemes, different risks of loss can and probably should be averaged over the entire covered population.

It is, at best, questionable, and more likely, impossible, that broad social cost-spreading objectives can be accomplished through voluntary private insurance mechanisms. Three aspects of these basic principles are the source of much of the current difficulty being experienced.

First, unfortunately, each insurance mechanism is not always clearly and easily categorized as essentially a universal social insurance mechanism or, on the other hand, essentially a voluntary private insurance mechanism. Thus, even with a full understanding of the basic principles, unexpected or unfortunate results can come about from an inappropriate or incomplete understanding of the nature of a particular insurance mechanism.

Second, a lack of understanding of the above-stated principle can lead to restrictions or mandated provisions for private insurance mechanisms that can severely impair their operation or even destroy them. Quite frankly, this is one of the most commonly seen errors today. I hesitate to cite any specific examples because each seems to be surrounded with strong emotions and loud voices.

The third major area of difficulty has to do with whether or not the discrimination necessary in a particular risk classification is fair or not fair. Discrimination is an essential attribute of risk classification, but there is no need for any unfair discrimination. Risk classification needs

to be based on real differences, not imaginary differences. Unfortunately, again opinions vary on what is real, what is imaginary, and what constitutes definitive evidence of reality.

My memory tells me (I have not been able to research the exact circumstances, but some time in the past, whether it was in one of the early colonies or earlier than that in Europe) a legislature passed a law that said, the value of "pi" shall be 3.00. Question, did that change the area of a circle? Of course, they saw their error soon; you cannot change facts by passing laws.

Serious consideration has been given, within the last year or so, in a few States to passing of legislation that would say, in effect, that in providing insurance benefits, the benefits provided to men and women shall be equal and the contributions for men and women shall be equal.

That cannot be. The costs will be paid. In both voluntary and social insurance mechanisms, the costs will be paid. As has been mentioned by Dr. Keyfitz and others, there are differences between the various insurance mechanisms; e.g., group insurance, pensions, where an employer is involved and there is a captive group of people. Already many such plans are written on a unisex basis; defined benefit pension plans generally tend to be on a unisex basis with the contribution being calculated to cover all costs.

That does not mean that the actuaries, in developing what the costs of the plan are going to be, have not taken full account of the difference in mortality experience between men and women and the proportion of men and women in the employment, but the possibility of such averaging becomes more and more difficult as you leave that simple example of a defined benefit, employer-pay-all pension plan.

As we heard, the Supreme Court has ruled in a money purchase plan where it has been—and again, I have not seen it either—apparently said that both the contributions and benefits must be equal for men and women.

Where there is stable employment, a stable group of people, it is a fairly simple matter to calculate the uniform contribution, as a percent of pay or as a number of dollars a month, to provide the pensions promised.

If you would imagine two reasonably similar employers, as far as age distribution and salary distribution are concerned, and the number of employees, one of them being predominantly women and the other predominantly men, there is no way that the costs of those two pension plans can be the same, as Mr. Keyfitz very amply demonstrated in his example.

There is a small side aspect of this that I have heard here during the last 2 days a couple of times. It is kind of a heads-you-win, tails-I-lose proposition. It had its first formal outing that I knew of, or that came

to my attention, in a report by a commission on sex discrimination in Pennsylvania, appointed by Mr. Denenberg, although its report came out after he had left.

In that report, the two key recommendations were: "It is not fair that the cost for pensions and annuities for women should be higher than it is for men; it should be the same. On the other hand, the difference in life insurance premiums for women is not great enough; it should be greater." There is a logical inconsistency in that argument.

As another small aside, if you will ignore for the moment monies put into pension plans by employers and consider only direct payments into the insurance mechanisms by women, I believe the aggregate total of premiums paid on life insurance is greater than the aggregate total of personal premiums paid into annuities. Thus, unisex would have one immediate effect if applied uniformly, and that is the aggregate cost of insurance mechanisms of this nature to women would probably go up.

I appreciate this opportunity to comment on Mr. Randall's paper. As you can tell, I have had little to add because it was an excellent piece of work. Thank you.

VICE CHAIRMAN HORN. Thank you very much. Mr. Randall, would you care for a response at this point before we move to my colleagues?

MR. RANDALL. I would like to thank Ms. Smith for mentioning all of my letters. You may want to know what that is about. The Academy of Actuaries appointed a task force to study the question of risk classification. The insurance industry and the actuaries are very concerned because they feel the government bodies are intervening in unwise and increasing manners in the industry's ability to manage this process of risk classification.

I took exception to some parts of that report. One part was the section on race, which I felt was inaccurate and almost racist. I think I finally succeeded in getting across my point to the officials of the academy, including the president-elect.

The second point was that it seemed to have a hostile attitude toward all government intervention and the point to my mind is making the intervention wise and reasonable, but I should add that I agreed with some parts because I do feel that there have been some unwise actions, and some of them direct the insurance industry to offer standard rates to risks that clearly are substandard. For example, I think in some States handicapped people must be given standard rates. I do not know that the private voluntary insurance mechanism is the right way to accomplish that sort of thing.

VICE CHAIRMAN HORN. Thank you. Commissioner Freeman?

COMMISSIONER FREEMAN. Mr. Randall, I also want to express my appreciation for this very excellent paper. My questions relate to the relationship between the actuary and the underwriter, and particularly

with respect to the determination of criteria in making up the differentials in rates and ask if you can—first of all, what is that relationship?

MR. RANDALL. The actuary sets the rates based on past experience, and that experience is based on the risk classified in various classes by the underwriters. There is continuous interplay back and forth.

Then, as the premiums are set, the underwriters attempt to continue to classify new risks so that the experience, take life insurance, the death rate will fall within the limits covered by the premiums.

As medical treatments improve, the underwriters consult with the actuaries to try to determine what weight can be given in rating that particular type of impairment, moving it downward to a lower rating in the existing rating scheme, so that there is a continual interplay between the underwriters and the actuaries in this rating process.

COMMISSIONER FREEMAN. Does this mean that the death rates, for instance, which would be statistical data, would be actually hard data? Are there any other instances in which the so-called data or fact is not necessarily so available?

MR. RANDALL. You lost me.

COMMISSIONER FREEMAN. A death certificate will indicate not only the death, the age, the illness. Are there any other differentials which are made, such as demographic features, which the underwriter may experience but which may not actually be, in fact, related or have any relevance at all?

MR. RANDALL. I really cannot answer that question specifically but, in general, yes. The underwriter is making judgments as to how a particular applicant fits within the overall rating scheme. There may be things about that applicant that fit into well-established statistics. There may be things for which no statistics exist, and he has to conjecture as to where that particular element or characteristic fits into the overall scheme.

MR. GUSTAFSON. May I comment on this?

VICE CHAIRMAN HORN. Please.

MR. GUSTAFSON. I think this will be at least indirectly responsive to the area of your concern. I will cite three specific examples of this interplay and how it is a dynamic process and is changing.

Prior to about World War I, life insurance was sold on a different rate basis in the South as compared to the North because of the prevalence of tropical diseases in the South. Mortality was simply higher. With the rapid spread of chemical medicine after World War I, that quickly was eliminated, and since then life insurance in this country does not have any demographic-geographic distinctions.

Not too many years ago, it was impossible for a diabetic to obtain life insurance. Over the past 15 years, we have learned that chemical therapy and chemical treatment of diabetes has proven to be remarkably successful. Competition has served to produce the point where a controlled diabetic can usually obtain insurance at standard rates. That is a dramatic change over a few years, from not being able to obtain insurance at all, and the experience justified that, to a new opening experience.

A third example, in disability insurance; we have been learning, to our dismay, that disability claim experience in the State of California is significantly worse than in the other States. We do not really know why, but it is pervasive and continuing and some companies are now—I think one company has and others are seriously interested in—exploring the introduction of different rates for disability insurance in the State of California.

VICE CHAIRMAN HORN. May I say that is probably due to the decisions of our workman's compensation commission in a related area which sort of spreads the disease across the State of California. Dr. Keyfitz?

DR. KEYFITZ. Just to take this occasion to stress that we really do not know enough of the matters you were asking about and only now do we know the fact that probably the smoker of one pack a day has something like 7 years of life less than the nonsmoker; that was not known at all 25 years ago. There are a whole host of things we do not really know.

MR. GUSTAFSON. It is still not accepted by the medical consultants to the tobacco companies.

DR. KEYFITZ. The fact that the matters are controversial does not help to attain accepted knowledge on them. In respect to many occupations, in respect to incomes, the amount of material that we have on mortality is really very, very sketchy. It would seem to me much to the advantage of all concerned to know more on these things. I believe we ought to put more effort into a medical rating of personal habits that would enable the risk assessment process in the insurance companies to be carried out in sharper fashion.

VICE CHAIRMAN HORN. Fine. Commissioner Saltzman?

COMMISSIONER SALTZMAN. Dr. Keyfitz spoke of equity, and yesterday there were speakers who reflected on the concept of subsidization. These are tricky, who is subsidizing who? It used to be that it was believed that the rich subsidized the poor; then there was the suggestion yesterday that, indeed, the poor might be subsidizing the rich. On that whole issue of equity, in establishing actuarial risk programs and policies within the insurance industry, it would seem these tables are based more on empirical, hard evidence, but they do

reflect the values of a society, as much as they do reflect any empirical evidence. Would that be a fair kind of conclusion?

DR. KEYFITZ. Well, sir, we try to keep the values of the society out of those numbers as far as we can and try to deal with them separately. It is the case that on present mortality rates for the United States for 1975, the man who buys an annuity at age 60, disregarding interest and other complications so as to enable us to discuss it simply, will be getting $17,000 worth and a woman will be getting $22,000 worth.

I do not think that has anything to do with the values of the society. Where they come in is in the fact that women have certainly been unjustly treated in many regards, not particularly related to this, and it is very desirable to make up for that and get women to be equal citizens as soon as possible. I have written on that matter in other contexts.

That does concern the values of the society. The question for the Commission, I think, is whether the rectification of injustice should be via the insurance business or whether there are other and more appropriate instruments.

COMMISSIONER SALTZMAN. You did indicate, Dr. Keyfitz, that the nonsmoker does subsidize the smoker, for example.

DR. KEYFITZ. If they are both charged the same insurance rates, that is positively the case. I am glad to see that policies are now being offered at lower rates to nonsmokers. We should encourage a sharper assessment of risk, though there are some technical matters in deciding whether a person is a smoker or not.

COMMISSIONER SALTZMAN. Is there any other situation in which someone might make a claim with regard to pregnancy, for example, the social benefit to a civilization of a woman becoming pregnant is such that, as our prior presentor indicated, she does not think women should have to bear the entire financial burden of childbearing.

DR. KEYFITZ. I could not agree more. I attended a session at Radcliffe in the last month and the main theme was how the society can offset the disadvantages to women of the fact that they are the only bearers of children among us. That is going to be an increasingly severe problem as women see their role in the work world as important and see that it is a sacrifice of their career to bear children. Ways of encouraging children are going to be very much required if we are to maintain anything like a level population, let alone an increasing population.

The population of the United States at this very moment would be actually decreasing if it was not for the bulge of young married couples at the childbearing age, due to the baby boom. What you are raising is a problem we are going to have to face in a very serious form

if the population of the United States is not to decline in number, but to try to solve it that through the insurance business is what I object to.

COMMISSIONER SALTZMAN. So you are suggesting that social benefits ought not to be charged to insurance?

DR. KEYFITZ. Yes, I say that there are very clear limits on the capacity of the insurance business to bear this load.

MR. GUSTAFSON. May I comment on that?

COMMISSIONER SALTZMAN. Please.

MR. GUSTAFSON. I would be more comfortable in the frame of not stating it, "Social benefits ought not to be accomplished through voluntary insurance mechanisms." Rather, I would say, "Before attempting to accomplish a social purpose through a voluntary insurance mechanism, one needs to be reasonably confident that it will accomplish the social purpose."

The point I am trying to make is that there is often confusion, at least the rhetoric certainly demonstrates it, between a social insurance mechanism and a private insurance mechanism; and they are, substantively, quite different. There are some social purposes that you may be able to accomplish through requirements on the voluntary insurance mechanism, but that is not an assumption that can be made without careful analysis.

COMMISSIONER SALTZMAN. Can you point to any social goals presently being addressed within the voluntary system?

DR. KEYFITZ. Yes. The main function of the control of insurance by the State commissioners is to see to it that the buyer of insurance knows what he is getting and gets what he is paying for and that the whole thing is above-board. It is a very important accomplishment, I think, of the State regulation of insurance that, whatever we say about it, people are not cheated; each policy says what the person is going to get and the whole thing is above-board.

That, it seems to me, is a very major social purpose and it is accomplished, not only without damage to the private insurance industry, but actually as it has turned out, to its benefit. Some restraints on competition, I am very much in favor of, and I am sure there is not any actuary who will dispute that.

COMMISSIONER SALTZMAN. Chairman Flemming?

CHAIRMAN FLEMMING. In the earlier panel, the factor of age got dropped into the discussion. This Commission has been concerned with the area of discrimination on the basis of age. We are charged, by the Congress, with making a study in that area.

I recognize that we are dealing with two different situations, both from the standpoint of social policy, where social policy stands at the present time, and also from a technical point of view.

As far as sex is concerned, the Congress has made it clear, and apparently the courts are reaffirming the fact, that sex is not to be a factor in the job area or the employment area.

When they passed the Age Discrimination in Employment Act, they exempted, for example, pension systems from the provision of that act, recognizing the factor that you brought out in your discussion.

However, I do want to say that I think the insurance industry, along with other industries, has got to take a look at the way in which it uses age. For example, it was brought out in the testimony that there was a time when the insurance industry would automatically refuse to grant automobile insurance to an older person. Studies reveal that did not have a valid basis and, today, the policies are being issued, and in fact in some instances at discounts, I understand, because of the fact that the older persons have established a good record in that area.

I suspect there may be other uses of age by the insurance industry that should be looked at and looked at very carefully, just as there are uses of age by other segments of our society, along that line.

I am very much interested in the paper. In looking at the section on the adverse consequences of mandated unisex rates, I was particularly interested in your point, Mr. Randall, that if unisex requirements are extended to the rates charged by insurance companies, I believe the main problem would come from antiselection by male purchasers of individual annuities. The insurer would have to estimate the probable sex distribution of individual annuities.

In any event, the resulting average rates, relative to true costs, would represent an overcharge for males and a bargain for females somewhere in the neighborhood of 7 percent. The result might well be a withdrawal of males from the market, especially if alternative annuity arrangements priced by sex were available. "This would be true, for example, if purchases from foreign insurers, not subject to unisex requirements, were conveniently available."

I just wanted to ask you and the other members of the panel whether you felt that, if the unisex tables are required as a result of legislation, as a result of court decisions and so on, that we would really be faced with a major problem of withdrawal of males from the market?

MR. RANDALL. Well, I think so. I think we are really speculating about what would happen. I should point out that Canadian companies are very accessible, and they have competitive annuity rates. If men could buy their annuities at 7 percent or more cheaper by going to the easily accessible Canadian company, I think that is what would happen.

CHAIRMAN FLEMMING. Is there any experience of any country shifting to the unisex; is something of this kind happening?

MR. RANDALL. I do not know of any.

MS. SMITH. If I can just make one point, by way of hearsay. At the trial I mentioned previously, another actuary, Mr. Arthur Anderson from Boston, testified; and I believe his testimony was that he did not think these consequences would flow from having unisex tables used. In his opinion, there was not such a great competitive marketing of these things now and people were not that tremendously in tune; that it simply would not have these drastic consequences.

MR. RANDALL. I do not think that comment is correct at all about individual annuities. Individual annuities are most competitively priced, and the price differentials are very important to older people who are putting tremendous parts of their savings into an annuity purchase.

I would like to make another comment. The group pensions, the employee benefit plans, would not be affected in the same way, I do not believe, and they are much, much larger than the individual annuity market. I do not know what the individual ratio might be, but they are much more important than individual annuity.

CHAIRMAN FLEMMING. Would not have an adverse impact on that?

MR. RANDALL. I do not believe it would because the employer would absorb the cost of the unisex treatment.

DR. KEYFITZ. Yes. It would be the equivalent of the employer raising the pay of his women employees and lowering the pay of his male employees, and you might consider that to be desirable. It is certainly feasible.

MR. RANDALL. In fact, most group plans now are what they call defined benefit plans, where the retirement income to the employee of either sex is the same percentage of salary per years of service. We are already at that point insofar as the benefits go, and most employer pension plans are that way.

DR. KEYFITZ. But especially on large individual purchases of annuities, there is not only the competition of foreign companies, but also of other kinds of investment in competition with insurance. We should not handicap insurance in relation to other kinds of investment for this sector of the market.

CHAIRMAN FLEMMING. Do you have any comment? Thank you very much.

VICE CHAIRMAN HORN. Mr. Nunez, do you have any questions?

MR. NUNEZ. Yes. I would like to ask Mr. Randall, you have some very impressive statistics as to the minority hiring pattern of The Equitable Life Insurance Company, but I note that your statistics are focused mainly on the sales end of the company. I am aware that there is a distinction between the sales force and the administrative-executive staff in the headquarters of insurance companies. Could you

comment on that aspect of minority and women employment in your corporation, as well as perhaps the larger companies in the industry?

MR. RANDALL. I can comment more for The Equitable than the others. Once again, I do think we are a leader and I hope that we represent the trend. We have 7,000 administrative employees, 300 of whom are officers. There was one woman officer 10 years ago and no minority officers. Today, there are 28 women officers, and I think it is either 10 or 11 minority officers. The improvement, in percentage terms, has been greatest at the lower grades, and there is a problem in getting that improvement to work towards the higher grades.

MR. GUSTAFSON. May I comment on this?

VICE CHAIRMAN HORN. Please.

MR. GUSTAFSON. Nearly all, if not all, of the large life insurance companies are Federal contractors and are under affirmative action programs. There is a whole session tomorrow morning on this subject.

VICE CHAIRMAN HORN. Very good. Is that all, Mr. Nunez?

MR. NUNEZ. Yes.

VICE CHAIRMAN HORN. Mr. Randall, actuaries are in a unique situation in the sense that you are taking past experience and projecting in a way, for the insurance industry, what the likelihood is in the future, during the life of a particular type of policy. I wonder, have the actuaries, as a whole or individually, such as Equitable, looked back over this century and tried to see if their actual projections made in 1910, for what the period 1910 through 1940 or 1950 might have looked like, were borne out by what actually happened? If they have, which way did the trend go; how close were they to hitting it on the mark?

MR. RANDALL. I do not think I can really answer your question in the way you phrase it. I think an awareness of the need to project has grown over the years, and life insurance has had a trend toward improvement which lowers the costs.

If you set costs on past experience, you have a built-in safety margin. What has happened is that the improvement, which was very sharp following World War II, leveled off for a period of years and that margin almost evaporated. Then in the last 5 years, it has picked up again. I believe that is roughly accurate.

In annuities, you have the opposite situation, mortality is improving, but that increases the cost of annuities. I guess it was in 1949, there was a monumental study on projecting annuitant mortality, which set forth scales of improvement factors. The actual improvement has really exceeded those factors, but the important thing is that we are providing for some improvement in what we hope is a rational way.

VICE CHAIRMAN HORN. In other words, for the annuitant, based on the actuarial tables, the annuitant is better off today than he or she would have been?

MR. RANDALL. According to those projections made in 1949, yes.

VICE CHAIRMAN HORN. And the industry has generally lived with these projections, or how frequently are they adjusted?

MR. RANDALL. Any individual company would attempt to assess the validity of the projections and add some margin. I think the annuity rates have remained reasonably adequate.

VICE CHAIRMAN HORN. As you know, the charge—

MR. RANDALL. Maybe Dale has a comment on this. He looks a little disturbed over there.

MR. GUSTAFSON. We do not consider ourselves to be one of the competitive annuity companies. The individual annuities are an extremely competitive market, and we do not try to be the leader; that is too risky, so I am trying to put us in his frame of reference. Yet, we revise our annuity rates every year or two and that is to adjust to our current assessment of what we think the right price should be, having in mind the investment income that we can expect to receive and the mortality. It is not something where we set the premiums for annuities and then look at them 10 years hence. We are looking at them continuously, and that would be true of all the major companies.

VICE CHAIRMAN HORN. Very good. Last night, we asked for a study from the Social Security Administration in terms of religious discrimination in insurance companies. I have here a report of the Anti-Defamation League, entitled "Employment in Insurance Companies." I will ask this be inserted in the record with yesterday's testimony at the appropriate point where the Social Security Administration study will also be inserted. Without objection, that will be done.

I believe I am correct that there is a reception for the participants in this panel from 6:30 p.m. to 8:30 p.m., in the Executive Club of the Capital Hilton, which is the old Statler Hilton at 16th and K Streets. Everybody is invited. If you want to mix with the experts and pro and con in the insurance industry, this is your chance, as well as other interested groups.

Tomorrow morning, the session will begin at 9 a.m. on the employment of minorities and women in insurance companies, followed by State regulation of the insurance industry. Then following lunch, the one afternoon panel will be discrimination against minorities and women in pensions, health, life, and disability insurance—the insurance industry's response. If there are no further comments, then the meeting will stand adjourned until 9 a.m. tomorrow morning.

CHAIRMAN FLEMMING. The first part of the morning we're going to be considering the subject of employment of minorities and women in insurance companies. I've asked my colleague, Commissioner Saltzman, to preside during the morning session.

Commissioner Saltzman.

Employment of Minorities and Women in Insurance Companies

COMMISSIONER SALTZMAN. Thank you, Mr. Chairman.

The paper this morning originally to be presented by Linda Fletcher is going to be presented by her husband. She's not well this morning.

Dr. Fletcher is a professor at Louisiana State University and special assistant to the director of the Office of Civil Rights in the EPA.

Just a note on Mrs. Fletcher, the author of the paper. She has received degrees and has been a postdoctoral scholar in finance at the University of Pennsylvania and got her Ph.D. at the University of Pennsylvania. She is a professor of insurance and risk, School of Business Administration, Temple University. She has been on the faculties of Louisiana State University and the Wharton School, the University of Pennsylvania; consultant to the administrator of Pension and Welfare Benefit Program, the United States Department of Labor at present. She is also employee benefit consultant to the TVA and a member of the Advisory Council, New England Retirement Law Council. There are a host of journals and professional activities in which she is involved.

Dr. Fletcher, we appreciate your standing in for your wife.

STATEMENT OF F. MARION FLETCHER, PROFESSOR OF MANAGEMENT, LOUISIANA STATE UNIVERSITY

DR. FLETCHER. Thank you.

Mr. Chairman, Commissioners, fellow panelists, and ladies and gentlemen, on Monday night Herb Denenberg reminded this group that, in 1973 testimony before a congressional committee, he characterized discrimination against women as widespread. He further said that there has been little change in the intervening 5 years.

As recently as 10 years ago, one could have said, at least with respect to the employment of women and minorities in the insurance industry, that Denenberg was too temperate in his criticism of the insurance industry. That may be the first time anybody ever accused

Herb Denenberg of being too temperate in criticism of the insurance industry.

As recently as 1966, black employment in the industry was a measly 3.3 percent. Women—white women, mostly—were employed in substantial numbers, but were relegated to the clerical jobs. About 46 percent of total employment was female. There was so much clerical work to be done, and women were more available at attractive pay rates to the industry.

In attempting to analyze employment in the insurance industry, it is important to keep in mind that there is virtually no blue-collar employment in the industry. Ninety-six percent of the jobs are white-collar jobs. This accounts partially for low minority employment totals historically. Blacks and other minorities might have been able to find blue-collar jobs in a variety of industries, but were largely excluded from white-collar jobs.

As of 1966, then, minorities—men and women—had a strong position in custodial jobs; white women dominated the clerical jobs, and the high-pay, high-status jobs were reserved for white males. These desirable jobs have grown in the 1966–75 period, both numerically and proportionately. From 1970 to 1975 alone, they increased from about 44 to about 49 percent of total industry employment. That excludes the clerical workers. Therefore, if minorities and women are to obtain significant employment in the industry, the desirable jobs must be open to them.

The paper that I am summarizing this morning has 29 tables that present a variety of employment figures between 1966 and 1975, but I will not even attempt to discuss them this morning. It would take quite a bit more time. Rather, I want to give you some highlights to show what progress women and minorities have made on the employment front and where progress has been lacking. These highlights should give EEOC, OFCCP, FSA, and others with regulatory responsibility in the area some ideas as to where they should concentrate their enforcement energies.

As a typical example, I want to cite employment data for agents and brokers—not insurance companies, I want to emphasize—for Atlanta, for 1975. The desirable jobs are as follows: officials and managers, 98.0 percent white; professionals, 93.3 percent white; technicians, 91.7 percent white; sales employees, 98.1 percent white. Even the blue-collar jobs in Atlanta were 80 percent white. Minorities get the service jobs, 40 percent of them.

Parenthetically, we should take notice of the fact that the population of Atlanta is over 50 percent black. This suggests to me that regulatory officials need to pay more attention to the smaller employers, including small insurance companies, because the brokers and agents

are typically employers that have under 100 employees. That attention should not by any means neglect northern metropolitan areas, because their employment figures are much the same.

White women, however, are beginning to make inroads in the desirable jobs among agents and brokers. For example, they now constitute about 17 percent of the officials and managers among agents and brokers in Atlanta. Of course, that is only about half what it should be, but it's much better than it has been.

For insurance companies I will cite national employment data for 1970, 1972, 1974, and 1975. For blacks, employment has skyrocketed since 1966 when they amounted to 3.3 percent of the total employment. By 1970 black employment had more than doubled, rising to 7.6 percent. These increases have continued: 7.7 percent in 1972, 8.8 percent in 1974, and 9.4 percent in 1975. If the trend continues, black representation in insurance companies will equal black representation in the population by around 1980, which should be cause for celebration.

Other minority groups, however, have not fared as well. They constituted, altogether, 3.2 percent of employment in 1970 and 4.2 percent in 1975. Employment growth for the Hispanic minority has been particularly slow. From 2.3 percent in 1970, it had grown to only 2.8 percent by 1975. At that rate and given the expected population growth of Hispanics, it will be 40 or 50 years before Hispanic employment will be roughly comparable to the Hispanic population in the Nation.

White women have not had the problem of overall underrepresentation as have the minority groups. They were 47.2 percent of total employment in 1970 and 47.6 percent in 1975. Given labor force participation rates, white women are actually overrepresented by about 12 percentage points.

To summarize, inadequate representation on an overall basis is not a substantial problem in the industry except for Hispanics, which should be about doubled in number. That does not mean, however, that employment problems in the industry are minor. Quantity of jobs is one thing; quality of jobs is an entirely different matter.

To assess this aspect, I shall cite the national data for insurance companies for 1970 and 1975. Without question, the best jobs in the industry are still held by whites. Among the officials and managers category—and that includes everybody from first-line supervisors to chief executives—97.1 percent were held by whites in 1970. In 1972, it was 96.7; in 1974, it was 96.0; in 1975, it was 95.6; a very, very slow decline.

White male dominance has lessened because many more white women are found than in previous years. In 1970, white women held

10.7 percent of the jobs and white males had 86.9 percent of those jobs. By 1975 the percentage of white women had grown to 15.7 percent and that of white men had declined to 79.8 percent. Although minority men and women have gained, the gains have been miniscule. By 1975, they constituted only 4.4 percent of these jobs. There's no doubt that the great majority of gains by minorities and women also have been at the lowest supervisory levels. That does not bode well for the future, especially for minorities. So few are at the first rung of supervisory management that, even if all should rise to the executive level, there still would be considerable underrepresentation at the highest level of pay and status.

To indicate roughly what needs to be done in the officials and managers category, there needs to be approximately a doubling of white women, a 250 percent increase in black men, a 450 percent increase in black women, 850 percent increase in Hispanic men, and about 1,800 percent increase for Hispanic women; about 350 percent for Asian American men and about 1,000 percent increase for Asian American women and about 500 percent for American Indians.

Even if these increases at the beginning managerial level were made today, it would still take 20 years or so to move the people through the managerial ranks to the senior level. The record here is abysmal and the prospect for rapid change, especially for the minorities, is practically nil.

What I have just said about officials and managers can also be said for the professional category, except for the fact that white women have acquired even more professional jobs than they have managerial jobs. As of 1975 white women held 25.1 percent of the professional jobs, compared to 17.6 percent in 1970. Minority-group representation grew rapidly in the professional ranks, but still accounted for only 6.8 percent of professionals by 1975. This figure is about half the expected number.

The situation in technician jobs, again, is almost identical for the professionals except black women have been employed in substantial numbers as have white women.

In many ways, minorities and women are most underrepresented in sales jobs. Black men have done well according to the statistics collected by the Equal Employment Opportunity Commission, but one suspects that many of these are the debit group insurance agents who have traditionally been fairly common throughout the South. Women and other minority men are almost absent from this occupation.

To summarize, the insurance industry has a long way to go before women and minorities are adequately represented. White women have made inroads of late, but not in all the occupations. Black women now have clerical jobs, but little else. Minority males have extremely poor

representation almost everywhere. Of course, women and minorities are not found as chief executives or board of directors members.

I will close on a personal note. Linda was to give the summary of our paper today, but she's been laid low temporarily by a virus, so I can include something that she never would. Now, suppose the insurance companies were to say that there are few qualified women to serve on boards of directors. Linda is one of those unqualified women. She is the first and only woman to earn a Ph.D. in economics with a specialization in insurance at the Wharton School. She did that 14 years ago, so she has lots of years of experience in the field.

I might also point out that at the time she did her graduate work and applied for a scholarship to the S.S. Huebner Foundation for Insurance Education at the Wharton School of Finance and Commerce at the University of Pennsylvania, she was told by the then director of the foundation that although she looked like an excellent candidate—grades, records, and everything—their scholarships were limited to white, male American citizens under age 35. Fortunately, her father was interested in seeing her further her education.

She along the way, of course, picked up the CLU and CPCU designations which are important to people in the insurance industry, and her actual work experience includes these insurance companies: Southland Life of Dallas, Texas; the Aetna, and the New York Life Insurance Company. She's also, as has been mentioned, a professor of risk and insurance at Temple University; served as consultant to many organizations, notably the Health Insurance Association of America, TVA, various other Lousiana agencies that I'm familiar with, and God knows what else. She has a list of publications as long as my arm and they're in outstanding academic journals. Finally, she's the only person, other than Naomi Denenberg, I have seen able to make Herb Denenberg shut up.

On second thought, I realize that she is now one of those women that we hear about a lot; that she is overqualified.

Thank you.

COMMISSIONER SALTZMAN. Thank you, Dr. Fletcher.

I would like to correct myself for my introductory remarks. You are co-author with your wife of the paper.

DR. FLETCHER. Yes.

COMMISSIONER SALTZMAN. Mr. Bussell.

DISCUSSION BY HORACE BUSSELL, OFFICE OF THE EXECUTIVE DIRECTOR, EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

MR. BUSSELL. Mr. Chairman, Commissioners, when I read this paper, I wanted to open by saying welcome to good news because the

conclusions seem to suggest that the insurance company has learned how to ensure equal employment opportunity. Having heard Professor Fletcher's remarks this morning, it's quite clear that isn't the message. If I were to restate the message, I think it is that we stop focusing on national numbers and start focusing on specific problems.

I'm reminded, when I read these numbers, of a seminar that I attended in Brookings Institute a number of years ago. Kermit Gordon was then in one of his many jobs in the government and was leading the seminar, giving us a 4-year course in economics in about 20 minutes. He spent a good deal of his 20 minutes on the macroeconomic policies and their effect upon the unemployment rate. He was somewhat proud of the fact that the overall unemployment rate had gone below 4 percent.

Some of us asked him why he was so happy about that when the unemployment rate for blacks was 8 percent. He responded by saying, "Happier than I was when they were 14 percent." I guess that's sort of the reaction that my colleagues at EEOC have to the gains that you've reported this morning, Professor.

We have some difficulty looking with great pleasure at the last 10 years of experience when we look at the 8 to 97 years ahead of us. Rather than spending a good deal of time reiterating the numbers, I would like to focus on what our charges and cases are telling us about discrimination in the insurance industry. Most of these conclusions, of course, have been known generally, but I don't think it will do any harm to reiterate them.

When you see the gains in the professional area and in the technical area of both women and black females, you suspect that some people have learned how to report and make their scorecard look good. As you dig into the numbers in the actual cases, you find this substantially true. Some of the titles that are called professional or technical don't look very much different in their work content from some of the things we once called clerical. But more importantly than that, within the professional or technical categories, consider job titles such as claims representatives or examiners as distinguished from claims adjusters. The practice is one of limiting claims representatives or examiners to inside work, rather than to outside work, and you note quickly that the insiders are females and the outsiders are male, and that pay is substantially different.

You notice that the raters and the underwriters are females and the senior raters and underwriters are males, and the promotion ladder doesn't bring the former to the latter. You find that the inside adjusters are unable to reach the ranks of managers because of job qualification requirements that say you've got to have outside experience to be a manager.

Then, finally, there is the segregation by type of insurance lines; that is, personal liability lines and disability and workmen compensation lines are primarily dominated by females. Whereas the other commercial lines, particularly, are dominated by males. In some of the cases that we have, and I can mention them without naming them, that there are at least 10 major pattern and practice cases that are either underway in the Commission charge process or in litigation at some stage.

The message with respect to sales is that the experience of black males entering the sales profession is spotty geographically and far below what it ought to be. One of the things we find as the cause of this is the way the insurance companies go about building up their sales forces of white males. Generally, it is by bringing in large numbers and let them weed themselves out by their lack of success, as opposed to minorities and women seeking credentials or experience of one type or another. That was true in a concrete case recently settled and not a fiction.

COMMISSIONER SALTZMAN. Two minutes more.

MR. BUSSELL. The summation is that women are earning approximately half what males earn in the insurance industry.

The budget director asked that I give some summary of what our enforcement or monitoring activities would be in the insurance industry. As you all must know, we do not monitor an industry or pick out an industry to say we are enforcing the law against. However, we have, as you probably know, Mr. Chairman, instituted totally new procedures in the Commission to try to get our backlog down to some levels where we can begin to concentrate our resources on broad, systemic kinds of problems.

We are making very significant headway in that effort and our systemic program is beginning to unfold. We are already promulgating to our field activities instructions about how to go about selecting employers against whom to bring their initial cases. There will be cases conducted by the headquarters organization and by each of the district offices once these district offices come fully into being.

The criteria for selecting these companies range from whether they're growth industries, size of companies, kind of experience we've had with them, what potentials there are. These are some of the factors that were mentioned by Professor Fletcher this morning, and it would not be surprising if some of these companies are in the insurance industry.

I think that adequately summarizes. Thank you.

COMMISSIONER SALTZMAN. Thank you.

Mr. Robie.

DISCUSSION BY EDWARD A. ROBIE, SENIOR VICE PRESIDENT, HUMAN RESOURCES, THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES

MR. ROBIE. Mr. Chairman, am I to understand that you wish a limitation of 10 minutes precisely on this?

COMMISSIONER SALTZMAN. Right. Well, as close to that as possible.

MR. ROBIE. Okay. Well, I'll skip through the some of the elements in my paper that might have taken me a little bit over that.

COMMISSIONER SALTZMAN. Your entire paper will be placed in the record, if you would just present the summary.

MR. ROBIE. Thank you.

The Fletchers have reached an essentially valid general conclusion, in my judgment, when they state that insurance companies are becoming as successful at ensuring equal opportunity as they have been at insuring lives, homes, and other things of value. They're also correct when they indicate that the achievement of complete equality of opportunity requires continued aggressive effort.

My comments will deal exclusively with the life and health insurance company experience, because I'm simply not knowledgeable about the casualty part of the experience to which Mr. Bussell referred considerably or the independent agent and broker sgement of which Dr. Fletcher talked.

Furthermore, despite some experience in industry trade associations, I cannot pretend close familiarity with the affirmative action program of any company except The Equitable. Given the time limits imposed on the preparation of the paper, I think the Fletchers have done a remarkable job of gathering together and analyzing EEO data. My comments on specific elements of their paper are designed to be constructive, indicating areas for further study and refinement or indicating points where their stated conclusions, if quoted out of context, might prove misleading.

In that part of the Fletcher paper dealing with insurance company employment in selected SMSAs, it is unfortunate that they did not include data for New York, the SMSA employing by far the largest number of people, or for other large urban concentrations such as Chicago, Los Angeles, San Francisco, and Atlanta. In addition, it would have been helpful if black population and work force proportions had been included by SMSA, as well as data on proportions of college graduates within these populations and work forces.

This would, I think, begin to give a clue as to the degree to which this work force is currently qualified for what the Fletchers describe as the desirable jobs. The Fletchers have used proportions of minorities

and women in the labor force as their measure of adequacy of representation of these groups within the insurance industry.

I have no argument with this approach as a way to establish a long-range goal. In fact, in my company we have stated our long-range goal in just these terms. But one needs a more currently relevant measuring rod than proportion of labor force to evaluate progress over a period of 5 to 10 years.

For example, while the male minority proportion in the work force is 6.4 percent, to judge the availability of these people for the more demanding higher level jobs, we need to have some idea of how many of them have the basic qualifications necessary to perform these jobs. While a college degree is not and should not be a prerequisite for the better jobs, it is increasingly and justifiably relevant as a broad qualification standard.

Just over 6 percent of the adult, black male population had completed college in 1976, compared with almost 20 percent of the white male population. Achieving full parity is, therefore, simply not realistic in the short run and is heavily dependent on improving educational exposure for minority males in years ahead.

The Fletchers correctly emphasized the relatively slow progress of minority males toward the desirable nonsales jobs. However, I do not think the data support the statement that the worst showing is for minority males of all kinds and that they are not found anywhere except in the sales force. In these desirable nonsales jobs, there was an increase between 1970 and 1975 of about 5,200 minority male employees. In percentage terms, this was an increase of 112 percent, compared with 233 percent for minority women and 104 percent for white women and 23 percent for white males. Granted the 1970 base for all groups except white males was quite small, the fact remains that there has been a significant breakthrough for all groups, not just for white women, and that minority males have, relatively speaking, done even better than white women in breaking into this desirable category.

It seems to me also that the Fletcher paper gives too little emphasis to the critical importance of the clear-cut minority breakthrough in sales. In insurance, upward mobility is most readily available for those with sales talent, and performance is, very simply, objectively measured by individual productivity.

Furthermore, mobility is not limited to the achievement of the higher income levels that successful agents earn, but also extends to the opportunity to branch into sales management and then to executive positions in the top management structure. All of Equitable's seven divisional agency vice presidents were successful agents and agency managers, and one is currently a minority. Among our 176 agency managers, 15 are currently minority.

Perhaps one of the reasons for the overrepresentation of minorities in the sales force is the fact that this is such an effective entry point for mature, experienced, and talented people who are anxious to reach the high income and responsibility levels rapidly.

Finally, a word about boards of directors. I believe Dr. Fletcher said verbally here that women and minority members of boards of directors just don't exist. Granted that there are few of them, it's just wrong to say that they don't exist. Little comparative data is offered over time either by the Denenberg or Fletcher papers. The latter documents a significant increase in women directors in 1 year, but from a very small base.

While I did not have time to make any kind of comprehensive survey, I know that the Prudential, the Metropolitan and The Equitable—the three largest metropolitan New York companies—each have women and minorities represented on their boards. The Equitable has 4 women and 2 blacks, 1 of them a woman, on a board of 31 people.

Let me stress that these comments on specific interpretations should not be viewed as a criticism of the overall conclusion of the paper, including the statement that much improvement is needed for women in sales and for minority-group members in the officials and managers category. Virtually all of those concerned with affirmative action in the industry are hard at work on bringing about this improvement, and based on our previous progress, there is no doubt that improvement will continue to occur.

I believe it would be helpful to the Commission to supplement the Fletcher paper with some practical examples of what constitutes affirmative action. I shall refer first to activity reflective of the affirmative posture the industry as a whole has expressed through trade association programs. Then I shall cite examples from my own company and describe briefly some of our efforts.

With strong support from the American Council of Life Insurance and the Health Insurance Association of America, this industry has established a unique Clearinghouse on Corporate Social Responsibility which is professionally staffed and is guided by a strong and highly respected committee of top executives, chaired by John Filer, chairman of Aetna Life and Casualty. Equitable chairman John Fey also serves on this committee.

The clearinghouse has for some time published a broadly circulated monthly magazine titled *Response,* which describes efforts by individual companies to define and carry out positive and innovative programs responsive to social needs. It also publishes an annual social report. These two publications put a great deal of emphasis on affirmative action and innovative approaches.

Another major trade association, the Life Office Management Association, has put major emphasis on affirmative action, issuing special reports on that subject. The LOMA has just started a project undertaken by over 100 companies to develop an objective and valid entry selection test battery that would, if successful, be completely free of any bias.

Let me now take a few concluding moments to describe to you the important elements of Equitable's affirmative action program, elements which no doubt are not unique to our company and would be found in various combinations in a number of other insurance companies. I have, incidentally, noted descriptions of many similar efforts by other companies in the magazine *Response* to which I previously alluded.

First, we have recognized that affirmative action clearly starts with strong, top management commitment and aggressive followthrough down the line. Our affirmative action policies are clearly stated and are frequently repeated. Goals and timetables are carefully set on an annual basis with substantial bottom-up participation and demanding top-down review to make sure that they are both realistic and challenging. Careful records are kept of progress, including the monitoring of promotion rates. Our promotion rates to and among the more desirable jobs have been consistently higher for both women and minorities than for white males during the past few years.

We've undertaken a variety of special training and attitude-building approaches. For example, separate career development programs for women and for minorities to help them develop attitudes and skills to take full advantage of career opportunities; meetings of women and minorities with leaders, such as Gloria Steinem and Vernon Jordan, to establish the credibility and accessibility of high achievement goals; supervisory meetings and seminars to identify affirmative action problems and concerns, to emphasize management commitment, and to develop coaching and counseling skills; meetings of the senior management of major organization units and of the top executives of the entire company, spending an entire day, not once, but several times discussing nothing but affirmative action; separate rotating advisory panels—we calls them RAPs—for women and minorities which meet monthly with the president and the senior officers—I go to each one—to exchange ideas, to sensitize each other, and identify needs; sales force advisory councils representing separately women, blacks, and Hispanics, which meet periodically with senior sales officers to discuss the special problems and needs of the sales force; and an annual equal opportunity day dinner to which minority leaders from The Equitable and from the community join together to honor Equitable people who have made significant contributions to affirmative action.

Special recruitment is undertaken with emphasis on job opportunities of key importance in our industry. Mr. Denenberg has apparently given up on special programs to recruit high potential minorities into the actuarial profession, taking the position that our attention would be better focused on the improvements in basic education, and it is true that so far programs that have been tried have had very limited success, but we don't give up so easily at The Equitable. We're continuing to work on and improve our own actuarial recruitment program while at the same time supporting a new effort at Carnegie-Mellon based on their success in recruiting minority engineering students. I might say, parenthetically, we hope we can get into support for the Howard program.

Well, I have here, Mr. Chairman, another two pages of specific elements of our affirmative action program indicating it extends well beyond employment and career development, gets into purchasing, gets into investment policies, gets into a wide variety of activities which, in my judgment, are all part of management commitment and part of an affirmative action effort.

I'm convinced that these activities of The Equitable are not unique, although in combination they may be more than some other companies. But they do indicate, it seems to me, a substantial and aggressive initiative and one that, in my close experience with many executives in most other industries, is unmatched in any other industry.

Thank you, sir.

COMMISSIONER SALTZMAN. Thank you.

Mr. Friedman.

DISCUSSION BY EVERETT M. FRIEDMAN, CHIEF, INSURANCE COMPLIANCE STAFF, SOCIAL SECURITY ADMINISTRATION

MR. FRIEDMAN. I welcome this opportunity to address the Civil Rights Commission and, in doing so, I would like to have an opportunity to place in perspective the role of the Insurance Compliance Staff in reviewing compliance in the industry.

The basis for the Insurance Compliance Staff of the Social Security Administration for reviewing companies in the insurance industry is that they hold contracts or subcontracts with the Federal Government. The Insurance Compliance Staff came into existence with the enactment of the medicare law in 1975 and, subsequent to that time, our jurisdiction has grown in a limited fashion as a result of Labor Department rulings.

The Insurance Compliance Staff is governed by the Labor Department, which has the responsibility under an Executive order to provide the general policies for the several compliance agencies that

review all government contractors. Until recently, the universe of contractors that we reviewed was approximately 200, and a major portion of them were Blue Cross-Blue Shield programs. However, while the number of contractors is relatively small, we have been reviewing most or the large companies in the industry, most within the first 25. When I say within the industry, I'm talking about the life and health insurance industry as distinguished from the insurance industry entirely. There is another major part of the insurance industry over which we've had little reach; namely the liability-property, also known as the casualty section, of the industry. The only time we've been able to review them is where we've had multiple-line companies that were in the life and health as well as the property lines. That would be with rare exceptions.

I think, as you have analyzed your paper, one of the problems that you noted was a relatively low employment pattern in the casualty-property side of the industry.

Another point that I'd like to bring to the attention of the Civil Rights Commission is the fact that, under the Executive order, the government has reached only into employees and is not able to reach independent agents. The insurance industry markets its products in essentially two different fashions. A goodly part of the life industry uses its own field force, most of which consists of employees who are subject to review. When it comes to the casualty and property industry, that's quite different. Most of those people who are engaged in selling the company's products are independent agents. The Executive order does not give reach into such people, with rare exceptions.

With regard to the brokers, a situation has developed where recently efforts have been made by the Labor Department and the Insurance Compliance Staff to establish the right to review brokers. For the most part, it has been resisted, and there's a stalemate situation. A sophisticated rationale has been developed by the Labor Department to have the right to review brokers. Historically, brokers have not been subject to review by the Insurance Compliance Staff.

The Insurance Compliance Staff operates out of the Social Security Administration headquarters in Baltimore, Maryland, conducting onsite reviews selectively throughout the United States. While some of the contracts under the ICS jurisdiction conduct their operations at essentially one location, most contractor employees under ICS jurisdiction are employed at multifacility companies, usually working at offices throughout the country. Considering the wide dispersion of field offices and the usually strong direction and controls that the contractor home offices exercise over them, the Insurance Compliance Staff operations are geared to concentrate on contractors on a

company-wide basis and also according to regional or similar structures, in addition to individual offices with very low equal employment opportunity records.

To effectuate this approach, the equal opportunity specialists are assigned to serve as liaisons to one or more contractors, depending upon the size of each company. We have had on our staff, historically, between 15 and 20 persons doing these throughout the United States. But what I mentioned was about 200 contractors in the insurance industry.

Recently, the Labor Department made some rulings saying that the Federal employee group life insurance reinsurers are also subject to the order, which in effect reversed a determination by the Civil Service Commission to the opposite effect about 15 years ago. That raised the responsibility of the Insurance Compliance Staff to about 500 to 600 insurance companies.

As I indicated earlier, we have been reviewing for about 11 or 12 years a great number of the largest life insurance companies in the country. Among them are The Equitable Life Assurance Society, Metropolitan, Prudential, and multiple-line companies like Aetna Life and Casualty and Travelers.

I would like to make some observations in addition to the one I made about the brokers and the fact that there should be some way that there can be a reach into brokers and independent agents and also a way of reaching into the casualty and property lines to make them subject to review. The fact that there are, as has been indicated before, considerable evidences of progress also makes clear that there is a great deal of progress that still has to be made in regard to the dispersion of women and minorities throughout the work force. In the analysis made of the insurance industry by the Fletchers, they indicate that the employment has averaged somewhere around 14 percent. Among the contractors in the insurance industry that we have been reviewing, the figure is somewhere around 17 to 18 percent. Notwithstanding the difference, we agree that the problem is one of movement of minorities and women into the better jobs.

We've identified minority and female utilization in the insurance industry as taking place in essentially three stages. Phase 1 consists of employing minorities in substantial numbers in white-collar office and clerical jobs which they had not held in the past. Generally, this phase has been achieved in most of the larger installations of subject contractors, especially those located in urban centers.

In essence, phase 2 is the employment of minorities and women in positions above the clerical level, such as technical, first-line supervisory, and sales jobs. Movement of minorities and women into technical and first-line supervisory positions is substantially on its way

among Federal contractors reviewed by the Insurance Compliance Staff, especially at larger locations. As for sales jobs, there has been limited progress in the employment of blacks and other minorities and relatively negligible growth in the employment of women in sales positions. However, within the past year or two, possibly as a result of our emphasizing that the companies had to work to overcome this deficiency, there have been some very substantial gains made by insurance companies in the life field.

COMMISSIONER SALTZMAN. Another minute, please.

MR. FRIEDMAN. I would at this point make these suggestions to the Civil Rights Commission: Require contractors to place the equal employment opportunity clause in insurance policy contracts. By that I mean, where there are large defense contractors and manufacturers and any other government contractors, that they should specifically be required to put an EEO clause in their subcontracts where they purchase insurance, such as group insurance and property and liability insurance. This would help to bring more companies subject to compliance activities.

One of the major difficulties, I think, of our era is the conflict that is present as between the desire of people to have privacy on one hand and the demand of people to have freedom of information. We are in a situation where I think it's important that the Civil Rights Commission look into this particular point, which in a way is a dilemma because it has a very substantial impact on EEO activities in the insurance industry.

On the one hand, we've heard certain information with regard to employment patterns. When public interest groups, minority groups, and women's groups want such information, the general reaction of companies in the insurance industry has been to resist the disclosure of affirmative action programs in what are known as reverse FOIA [Freedom of Information Act] cases. On the other hand, requesting organizations are insistent that these affirmative action programs be published. It is not only a matter of contention, but it also creates a problem of credibility; not only an incredulousness with regard to the insurance companies, but about the commitment and effectiveness of the government agencies in working to ensure equal employment opportunity.

I would recommend that there be some way that contractors be required to publish staffing information, but in such a way as to avoid competitive harm to themselves. I believe such a way could be found if there was a will to do it.

COMMISSIONER SALTZMAN. Mr. Friedman, are these recommendations written out?

MR. FRIEDMAN. I do not have them, unfortunately, in a written way.

COMMISSIONER SALTZMAN. Are there further recommendations that you would like to make to the Commission, beyond what you've already done?

MR. FRIEDMAN. May I just name them without going into detail?

COMMISSIONER SALTZMAN. Okay. Then can we ask for a statement to be entered into the record of the enlargement of those recommendations?

MR. FRIEDMAN. Certainly.

CHAIRMAN FLEMMING. I would suggest that you amplify your formal statement and include the recommendations in it so that they will be included in the record.

MR. FRIEDMAN. Another one is, examine into the cost-benefit effects of the Freedom of Information Act. That's a summary of what I was saying before. Examine the effects on equal opportunity of the movement of business from cities to the suburbs. In summary, I think it's had a negative effect on the employment of minorities, particularly blacks. Whereas it also has had, in many ways, a positive effect on opportunities for women, particularly nonminority women who have higher educational attainments and may be returning to the labor market.

I also recommend that publicly assisted nonconstruction contracts be made subject to Executive Order 11246. At present only publicly assisted construction contracts are subject. This would bring contracts under programs such as medicaid into review.

I believe that would be the end of my recommendations.

COMMISSIONER SALTZMAN. Thank you. I do hope that you will amplify these and submit them for the record at a later time. We would like to close the record within 30 days, if that would be possible.

Dr. Fletcher, is there any quick response you'd like to make at this moment?

DR. FLETCHER. To Mr. Robie, I would say that any women and minority-group members that I run into who are looking for employment in the industry, I would recommend, certainly, his company.

And although The Equitable, as he says, I'm sure, does have 4 women and 2 blacks among its board of 31 people, in *Best Review* in an article that appeared in December 1977, by Ellis H. Carson, it was stated there that among the 31 largest insurance companies in the United States, membership on those boards of women accounted for 2.26 percent of the directors. But that was an improvement over the 1.51 percent of 1975.

Clearly, your company is making the rest of the 31 companies look good.

COMMISSIONER SALTZMAN. Okay. Thank you.

I will ask my colleagues now to present their questions. We'll begin with Mrs. Freeman.

COMMISSIONER FREEMAN. Mr. Robie, you indicated concern that the Fletcher paper did not include data from a study of certain cities which you indicated, including information concerning college graduates. Well, of the cities that are included, Atlanta, Boston, New York, San Francisco, I would submit that there are in each of those cities large numbers of college graduates. Professor Fletcher referred to Atlanta by stating that it has a high black population. There's one other fact that is generally known about Atlanta, and that is that it has five institutions of higher learning. It's probably among about the highest percentage of black college graduates than any other city. Atlanta University, Spellman, Morehouse, Clark, Morris Brown, and another theological center are located there.

So, in all of these instances, the problem is not the absence of black college graduates, especially for any of the cities which you gave as an example. I would like to ask you a question and give you an opportunity to add to the record something about investment policies of Equitable.

MR. ROBIE. Commissioner, I wonder if I could first respond to that part of your question dealing with SMSAs. I believe I'm correct that the Fletcher paper contained SMSA data only on independent insurance agents and brokers for the cities that you mentioned, which is a very small segment of the industry and is really not what I was talking about at all.

With respect to the larger part of the industry—the part that the Fletchers paid the most attention to, and certainly the more important part in terms of job opportunities—they didn't include any data whatsoever on the cities I mentioned. In the set of tables beginning with table 14, those large cities were not included.

COMMISSIONER FREEMAN. Sir, may I ask you this: Does your company have such information? If so, would you make that information available to this Commission?

MR. ROBIE. Well, the information that the Fletchers used was all EEO data and I believe it is freely available to the Commission from the EEOC. The Fletchers didn't deliberately, as I understand it, leave this information out to in any way give a distorted picture.

The reason was, I think, that Dr. Fletcher had some data from a study she did in 1966 for a selected group of cities and so she used that same selected group of citits for the more recent data. I'm not objecting to the data they put in. I'm simply saying there's a big hole in

their data when you leave out the major employment centers for the insurance industry. That's what I meant.

COMMISSIONER FREEMAN. Well, because you indicated that Equitable is in the leadership, it would seem to me that you could add to that by submitting to the Commission that data with respect to Equitable in those cities that you indicate.

MR. ROBIE. I'd be glad to do that, Commissioner. I would suggest, also, to get a fuller picture, the Commission should have SMSA data for the large urban employment centers for the major segment of the industry, which are available from the EEOC. We can certainly give you data on The Equitable situation in those cities.

COMMISSIONER FREEMAN. Mr. Chairman, I would like to ask that the data to be submitted by Mr. Robie would be received and inserted in the record at this point, within a 30-day period. Mr. Robie, would you be able to get that to us?

MR. ROBIE. Yes. I certainly would. Would you want me to get the EEOC data for the industry as a whole? I don't want to leave that dangling.

COMMISSIONER FREEMAN. No. No. I think because of the information which you gave us about your company, that more detailed information coming from your company would be very helpful. We could get the additional information from EEOC on the industry as a whole.

MR. ROBIE. I'd certainly be glad to do that, Commissioner. Now, you also asked about investment activities.

VICE CHAIRMAN HORN. Excuse me. Mr. Chairman, I'd like to make sure that in this part of the presentation that the staff has not simply The Equitable, but if EEO data is available on these standard metropolitan statistical areas, I believe that should be put in. I don't believe because by chance a witness comes from a particular firm that we should only have that firm. We're looking at the insurance industry as a whole. I think the staff should request that.

COMMISSIONER FREEMAN. That was what I said.

VICE CHAIRMAN HORN. I want to make sure that it doesn't fall between the cracks.

CHAIRMAN FLEMMING. Yes. My understanding of Commissioner Freeman's request is that the information from The Equitable, when supplied, be inserted in the record at this particular point, without objections, and that the staff obtain comparable information from other companies from the information that is on file.

MR. ROBIE. That's correct.

COMMISSIONER FREEMAN. That is the request.

Now, Mr. Robie, the investment policies.

MR. ROBIE. With respect to the second question, I really think I have to go a little beyond that to give you the scope of it and a proper answer. We have, first of all, on our board of directors a committee of social responsibility. We also have a separate staff, professionally manned, full time, devoted to designing, implementing, monitoring, stimulating social responsibility within the company. Then that spreads out into a number of areas.

In investments, particularly, just to cite some examples, we have a Minority Enterprise Small Business Corporation, so-called MESBIC, which is specifically designed to funnel investment money to minority-owned small businesses. That's one activity.

We maintain specific relationships with both women- and minority-owned banks—a second area. This perhaps goes a little bit beyond investment, but we have a specific affirmative action goal with respect to our purchasing. With respect to a certain proportion of our purchasing, we seek out and try to find minority-owned organizations from which to purchase. We direct a portion of our advertising budget specifically to women and minority media.

To our general investment criteria, we've added the element of social utility. In the past we tended to look at investment opportunities on the basis of reasonable safety and reasonable return. If you were a policyholder, we felt we owed that to you. We have now added the third element of social utility in the factors that we consider for any investment. Among our investments, therefore, are some that have to do with rehabilitation of deteriorating neighborhoods and so on.

Those are the kinds of things that I meant. Some of them go a little bit beyond the investments per se.

COMMISSIONER FREEMAN. Thank you, Mr. Robie.

Now, Mr. Friedman, you made certain recommendations to this Commission concerning changes which would improve the enforcement of equal employment opportunity as it relates to government contractors. My question to you is, as the chief compliance officer for the Social Security Administration, if you have made any recommendations to the President or the Congress, if such recommendations have been initiated by the Social Security Administration?

MR. FRIEDMAN. Our activity is governed by an Executive order rather than congressional enactment. My recommendations are essentially with reference to what I call the coverage of the President's Executive order.

We have made recommendations to the Office of Federal Contract Compliance, which is a component of the Labor Department, to this effect. We've also sought to have the coverage broadened through interpretations and rulings made by the Labor Department, some of

which I've indicated are being resisted. But, yes, we have made these recommendations.

With reference to the recommendation that publicly assisted nonconstruction contracts be brought within the description of the Executive order, that recommendation has been made. I'm unaware as to what's been done with it.

COMMISSIONER FREEMAN. You have made this recommendation for the revision of the Executive order to the President?

MR. FRIEDMAN. Through the lines that I've described to you, rather than doing it independently as an individual to the President.

We're a component of the Office of Federal Contract Compliance, and as a matter of fact, based on the President's recent decision, the compliance agencies that are now within various governmental departments will be absorbed and consolidated in the Labor Department effective October 1. The specialization by industry, such as the Insurance Compliance Staff, will go out of existence in terms of an operational method.

COMMISSIONER FREEMAN. Well, I recognize that. First of all, I want to make it very clear that the Civil Rights Commission would welcome these recommendations, and we would certainly transmit any recommendations to the President for improvement.

What we have found, however, in the past is that sometimes the agency responsible for executing a particular program could very well have made a recommendation for change or improvement based upon its experience and had not done so. That was why I was asking if the Social Security Administration had initiated any recommendations to the President for a revised Executive order.

MR. FRIEDMAN. I've answered to the best of my ability. I just haven't taken it upon myself, nor do I feel that we have the direct line to the President. We follow the regular channels. It has been communicated and, in addition, we've tried to get rulings to broaden the interpretation of the Executive order.

COMMISSIONER FREEMAN. Thank you.

COMMISSIONER SALTZMAN. Vice Chairman Horn.

VICE CHAIRMAN HORN. Mr. Friedman, the other night we heard there was a study that had been made somewhere in the Social Security Administration concerning religious discrimination in the insurance industry. Was that study made by your office?

MR. FRIEDMAN. Yes.

VICE CHAIRMAN HORN. What were the findings of that study?

MR. FRIEDMAN. I think it should be indicated that the study was made somewhere before 1970. I'm not certain, but it may have been around 1968 or 1969. The study was made in order to focus on the executive suite and the pipelines to the executive suites of insurance

companies. The focus was in that direction as a result of requests by religious organizations which had centered on those particular jobs, I guess, maintaining that the other areas of employment were ones that didn't present the kind of problem that they viewed as requiring government investigation.

At that point in time, there were relatively few persons of the Jewish faith in these positions, although this was not a situation with an absolute absence of them, and there were Jews employed in those positions in certain of the companies in significant numbers. Since that time, which is a period of maybe 6 or 7 years, we've found that there has been—this is without methodical review—an increasing number of Jews employed in higher positions in the insurance industry.

Historically, where they had been found had been in the actuarial and legal professional positions, as distinguished from the executive positions. But in more recent times we find that there are an increasing number of Jews in positions of executive as well as high professional positions.

I think I should volunteer the fact that a regulation was put into effect by the Labor Department subsequent to our investigation in which the regulation calls for outreach activities, as distinguished from affirmative action, with regard to national origin as well as religion; takes kind of juidcial notice of the fact that Catholics as well as Jews have historically been discriminated against; and in addition that, with regard to national origin, persons from the eastern sector of Europe, particularly Italians, Greeks, and Slavic people, also historically had experienced discrimination.

VICE CHAIRMAN HORN. What was your methodology for determining who was and who was not in that 1968 study?

MR. FRIEDMAN. I would like to make a broad description that we approached it as a matter of great delicacy. It was an era when a lot of the terms that are now discussed with great candor, or just as a matter of fact, were discussed in a very sensitive way.

With regard to how Jews were identified, we set up a methodology whereby we asked first for private meetings with the highest officer of a company and also the highest personnel officer. It could be a senior vice president. In these meetings we asked that person whether he knew out of his own knowledge what people in the executive suite levels and the pipeline were Jewish. Some persons did have that knowledge. Some said they didn't know and wanted to have suggestions.

One of the methods that we used were names. Another method we used was whether the persons of whom we were speaking observed certain holidays or whether someone had attended certain wedding functions or funeral functions. When we're talking about the executive

levels, companies are usually not that large at the executive level that executives don't know the social patterns or the religious patterns of people. There was that kind of interviewing. I would like to indicate that there was only one person from our staff who did all the interviewing in order to conduct this survey.

VICE CHAIRMAN HORN. Are you aware of the studies that were done earlier in the 1950s by the Anti-Defamation League on this question?

MR. FRIEDMAN. Those in part precipitated our study.

VICE CHAIRMAN HORN. Yesterday I put that series of studies and articles about them in the record, and I also left space for the one by the Social Security Adminstration. I take it the Commission can receive a copy of the study done by the Social Security Administration?

MR. FRIEDMAN. May I give a qualified answer on this one? I mentioned earlier the dilemma of the Freedom of Information Act. I realize that we are in one way possibly providing the Civil Service Commission without possibly disclosing it to the public—

VICE CHAIRMAN HORN. Civil Rights Commission.

MR. FRIEDMAN. I beg your pardon.

VICE CHAIRMAN HORN. Some days we feel like civil servants, but it's still the Civil Rights Commission.

MR. FRIEDMAN. I don't know whether it was Freudian or what. [Laughter.]

VICE CHAIRMAN HORN. May I say that the Chairman is an ex-chairman of the Civil Service Commission and occasionally makes the same error.

MR. FRIEDMAN. I do want to emphasize that we have had Freedom of Information Act requests for this information. Some companies, when notified of the requests, did not resist our disclosing the information. Some companies have taken us to court. It is not a matter of my personal feelings or views on it.

I pointed out to you I think it's a matter of real urgency to the effectiveness of the government to have the Civil Rights Commission look into the dilemma of the Freedom of Information Act and the reverse FOIA cases, and in that regard if we can provide it, we're able to do so, sir.

VICE CHAIRMAN HORN. Well, may I say if there are difficulties there, it seems to me that staff could work out with the Social Security Administration a generalized version. We're not interested in isolating and fingering, especially on decade-old data, any particular firm. What we're interested in is, is there a problem in actuality in the perceptions concerning that problem? So, I think staff can sit down with you and work that out.

MR. FRIEDMAN. We will provide that to you to the extent that we can. I can say out of my own personal observations that there have been marked increases, as I described to you earlier. This just is not an optimal state.

VICE CHAIRMAN HORN. Well, I'm going to get to that in a minute with you and Mr. Robie. But I wondered, to your knowledge, is that the most recent statistical study, regardless of how through it might have been, that has been done on this issue? Are you aware of any other studies?

MR. FRIEDMAN. In the insurance industry, no.

VICE CHAIRMAN HORN. All right. Now, Mr. Robie, I was just curious, based on your long experience with the industry and your knowledge of the industry, in response to the question, do you have any generalizations to make as to whether changes have occurred in this area in terms of seeming religious discrimination that was pinpointed in the fifties and pinpointed as late as 1968 to 1970 by the Social Security Administration?

MR. ROBIE. Commissioner, the one generalization I would make—I recall the studies in the, I think, late fifties—is that they involved one serious misinterpretation. The Anti-Defamation League studies were as I recall, published in the *New York Times.* They implied—and perhaps even directly stated—that lawyers and actuaries were not executives and, therefore, any Jewish people that were represented in the legal and actuarial staffs should be excepted.

Actually that's very misleading. Probably the best way, statistically, to get to the top of an insurance company is to be a lawyer or an actuary. It's like saying in General Motors you should except the engineers. Therefore, I would suggest that in looking at that data, which is a little cloudy in my mind now, that the excepting of these professional people on the assumption that they're not executives should be looked at very carefully. That's one generalization.

Beyond that, as to what difference there has been over the years, I simply do not feel qualified to judge. This is a very sensitive thing. I can state quite clearly what the situation has been at The Equitable. We have worked very closely with the Anti-Defamation League and the American Jewish Committee on this question. I simply do not know what the situation is in other companies or in the industry generally.

In our own company, we have had significant representation from, for example, the Jewish group and the Catholic group in our top executive management. I'm not sure you're interested in a single company, but we have had and continue to have such representation.

VICE CHAIRMAN HORN. Well, you're a leader in the field, and I would think what is happening in your company might hopefully

happen in some others in the next decade. But you feel, I take it, that some progress has been made with regard to these areas that have been pinpointed?

MR. ROBIE. Well, in my 25 years of experience with The Equitable, this simply has not been a problem for us. In our top seven, counting our chairman, president, vice chairman, and four senior executive officers, two of the seven are now Jewish. That's not a new thing. Our recently retired chairman of the board is Jewish background. So, at least in The Equitable, I do not think this has been a problem or a concern. I don't know the degree to which it may have been in other companies.

VICE CHAIRMAN HORN. Let me ask a question in a different area that concerns me in, really, all industries. We know there are many talented and skilled women that often make many a business and corporation go—the executive secretary to the chief executive in this or that division or company and so forth. My university has held special short institutes and other types of programs to try and give credentialing to these women and upgrade them in terms of management skills.

One of the problems I've seen over the years is that such knowledge and techniques and education and training have not been available to many women who have the interest of the company at heart, who have talents that for one reason or another never receive the formal credentialing early in their life. They might have been raising children or because of economic situation they might have gone directly into industry, and they're sort of pigeonholed at a level that is invaluable, but isn't really giving them upward mobility.

What I wonder is, what efforts are made by the insurance industry, either singly or collectively, to look at this group of women that are not just in and outers for a year or two until they have a child, but are sort of making a career of working for the firm? What efforts are made to upgrade them and bring them into management as junior executives, middle management, and so forth? Is anything happening?

MR. ROBIE. If you're directing that to me, sir, a lot is happening in that area. It's a complicated problem. One of the major things that's happening in that area is providing opportunities for seminars especially designed for the kind of women and the kind of positions you're talking about. In our company and in our industry about two-thirds of the employees are women, so we have a huge supply of women there, and many of them are extremely talented and, as you say, career oriented.

We're really trying to do two things, and I think this is general in the industry. First of all, we're trying to expose these women to the attitudes and the ways of thinking that enable them to aspire to these

positions if they wish to, yet not to say they're no good if they don't. But we're trying to make it clear to them that these opportunities are available and to start a way of thinking that will move them in an upwardly mobile direction. We have employed consultants, as other companies have, to put on these kinds of seminars.

Secondly, and perhaps equally important, we have tried to change the skills and improve the skills of managers in career coaching and career development discussions with these people. I have, for example, myself, in 25 years, had seven secretaries, and I'm proud that six of those secretaries except for one, who unfortunately died after having achieved a fairly high-level position, are still with the company, none of them in secretarial jobs.

It seems to me it is very important for us to teach managers to help their secretaries to aspire to other kinds of jobs and to do the same thing they would do for, let's say, a high potential administrative assistant; the idea of the protege has been around for years and years, people for whom it was just automatic that they would be pushed up and helped along, if they were able. We should do the same thing for secretaries or top-notch clerks. Now, that's a matter of changing the attitudes of white male managers largely, and they are changing. It involves coaching on both sides, coaching the women and coaching the managers. I think quite a lot is going on in that area.

VICE CHAIRMAN HORN. Do Equitable and other firms in the industry give tuition reimbursement for employees such as secretaries who want to go and pursue a career in business?

MR. ROBIE. Oh, yes. We have over 1,000 people who are on tuition refund, and one of the things we emphasize in the special development sessions for women is to make sure that women realize the availability of these courses and realize the career counseling that is available. I can think of one case of an unusually bright person whom we fully sponsored at an M.B.A. course at Columbia, even though she didn't have an undergraduate degree, and she did extremely well.

Most of the insurance companies have quite generous tutition refund programs. But these must be supplemented by coaching the people to get into the right course; even, for example, having courses such as "Do You Want to Go to College?" Many people don't know how to start thinking about it. So we have some seminars in which we tell them what it's about and that it is possible to start even after you haven't been to school for 10 or 15 years. You don't have to do it to be considered an effective employee. It's all right not to. But if you want to, this is what it's about, and we even give them a chance to take one course and see how it went, to get over these invisible barriers.

VICE CHAIRMAN HORN. Thank you very much.

COMMISSIONER SALTZMAN. Chairman Flemming.

CHAIRMAN FLEMMING. On the pattern and practice proceedings, as I recall your presentation, you indicated that there are about 10 in process at the present time involving the insurance industry. Is that a correct recollection?

MR. BUSSELL. At least that many. In a short time I was able to identify that many.

CHAIRMAN FLEMMING. Have any of them been carried through to a conclusion up to the present time?

MR. BUSSELL. I think one has reached settlement. I'm not familiar with the details, but a settlement was reached in one of them at least.

CHAIRMAN FLEMMING. That is, it was not necessary to proceed through the courts, but the EEOC was able to work out a settlement in this particular instance?

MR. BUSSELL. Only after the case was filed.

CHAIRMAN FLEMMING. After the case was filed?

MR. BUSSELL. Right. Confessed judgment in this case amounting to about $1.5 million, plus a lot of activity.

CHAIRMAN FLEMMING. Do you recall a particular pattern or practice that was at issue and that has been resolved by the settlement?

MR. BUSSELL. There were at least two in this consent decree. One was promotion of women from within as opposed to a practice which had been almost never to promote the women from within, but rather to go out and find a male outside. The other dealt with the sales force on one point I mentioned a little earlier, of essentially recruiting white males differently from women and minority males for the sales force.

CHAIRMAN FLEMMING. Did this involve more than one company—this particular proceeding?

MR. BUSSELL. I don't think it involved more than one company. I think it involved more than one establishment of a company.

CHAIRMAN FLEMMING. Right.

Mr. Robie, I was very much interested in your description of your affirmative action program. I appreciate the fact that time didn't permit you to complete your presentation of the program. I look forward to reading it in your completed document. Taking the year 1977—first of all, is the affirmative action program on the basis of a calendar year?

MR. ROBIE. Yes, sir. It is.

CHAIRMAN FLEMMING. Well, then, taking the year 1977, was it possible for you in 1977 to reach the goals that had been established for that particular year?

MR. ROBIE. In general, yes, we did. There were a few goals that we missed a little bit on, but I would say 80 percent of our goals we hit; about 20 percent of our goals we didn't hit.

CHAIRMAN FLEMMING. What areas did you find the most difficult?

MR. ROBIE. The most difficult is the Hispanic area. For us, that's an area where it's been difficult for us to establish good recruiting sources for talented people. Finding talented, high potential people interested in coming to our business on a career basis in the Hispanic community has been difficult for us. We are working very hard on it.

CHAIRMAN FLEMMING. Just taking that area as an illustration, I assume that that's been taken into consideration in setting your 1978 goals and developing your action program for 1978?

MR. ROBIE. Yes, it has.

CHAIRMAN FLEMMING. What new steps are being taken or will be taken in 1978 in order to deal with the Hispanic situation?

MR. ROBIE. Just to give you a couple of specifics, we have a number of accountant-type jobs in our business and we are hoping to forge a closer relationship with an organization—I can't remember the exact name of it—but there is an association of Spanish-speaking accountants. We feel that by working more closely with them we ought to be able to find some more people who could qualify for our accounting-type jobs. One of our problems there is we're not a big CPA-type employer, and most of the talented accountants tend to become CPAs, which is a professional qualification level of some status. So that's one thing we're doing.

We're also working with groups like Aspira in New York, a large, well-respected organization. We're working with our own employees. As it happens, our equal employment officer is Hispanic and therefore has contacts. He's fairly newly appointed to the job, and he has contacts that we hope to utilize.

There's no one particular overwhelming problem. It's just a matter of hitting all of these buttons and trying to make the ones that seem to be most responsive work for us.

CHAIRMAN FLEMMING. One other thing. You did identify as one of the problems the fact that there was some disparity in terms of college education—

MR. ROBIE. Yes.

CHAIRMAN FLEMMING. —as between members of minority groups and whites. Commissioner Freeman commented on that. I assume from your response to Commissioner Horn's question that your inservice program takes that into consideration, as well as taking into consideration some of the special problems confronting women in this area.

MR. ROBIE. Yes. I'm not sure precisely the thrust of your question. At the moment we are in a situation where our manpower needs are not as large as they used to be for entry-level college graudates. That gives us a little bit of a problem at the entry level in getting the

numbers we would like for future upward mobility. Obviously, if you have deficiencies at the upper levels, you have to feed in from the bottom and train people through. So while we are doing the best we can in recruiting, particularly minorities, but because we have this huge supply of women in the pipeline already, the problem is great for getting more minorities in there.

We actually decided to help meet the kinds of goals that we're anxious to meet by hiring some minorities directly into middle- and upper-level jobs. We can't wait to hire them in at the bottom and bring them up through training programs. We have an effort right now, for example, in which a certain number of our senior officers are seeking through various means to find proteges in the minority community at middle levels that they can bring in and put in tailormade special programs. We don't really call this a training program because it seems patronizing to these experienced people to bring them into a "training program." But we bring them into the organization, get them quickly oriented into a particular environment, and then hope that within, let's say, 5 years, they can make our officer level. So we're doing both of those things.

CHAIRMAN FLEMMING. Thank you very much.

Mr. Friedman, you identified the fact that you and your associates were very much interested in establishing jurisdiction, really, for brokers, and you indicated that you had been pressing on this and that it had reached an impasse. Where does it stand? I assume you'd been pressing with the Department of Labor. How high up in the Department of Labor did it get and what is its present status and what are the prospects of the impasse being resolved?

MR. FRIEDMAN. When I state efforts made, I include the Labor Department as well as the Insurance Compliance Staff.

CHAIRMAN FLEMMING. Where is the Labor Department work in that? With whom are they working?

MR. FRIEDMAN. All right. The Labor Department Solicitor's Office rendered an opinion that brokers as a result of their performing brokerage services on behalf of a government contractor that is purchasing insurance thereby makes the broker subject to the Executive order based on the commissions derived from their serving in that intermediate capacity.

CHAIRMAN FLEMMING. Right. That's the ruling that you were seeking?

MR. FRIEDMAN. We presented those findings to them, and they ruled that way, yes.

CHAIRMAN FLEMMING. I see.

VICE CHAIRMAN HORN. Is there a dollar amount on that, a minimum cutoff?

MR. FRIEDMAN. It's rather nebulous in that area as to what they mean. In the Executive order and the regulation there's a $10,000 figure for determining coverage by the Executive order and a $50,000 figure for determining whether an affirmative action program is required. The $10,000 figure can be cumulated as a result of recent changes in the regulation last year.

With regard to affirmative action programs—that gives me an opportunity to make another recommendation—there is no provision for the cumulation. If a company were to have separate contracts, none of which added up $50,000, you couldn't require an affirmative action program.

With reference to the brokerage situation, we have one large brokerage company—probably the largest in the United States, if not the world—which has taken a position of agreeing to disagree and permitting us to review them with the proviso that they still deny that they're covered. There's another broker that we've asserted jusrisdiction over based on our establishing that they served as a broker for some large government contractors, where they are denying that as a matter of law that is correct. They admit that they are brokering for these large government contractors.

CHAIRMAN FLEMMING. But as far as the executive branch is concerned, ruling has been made by the Solicitor of the Department of Labor that they are covered, and you're proceeding on the basis of that ruling?

MR. FRIEDMAN. Yes, sir.

CHAIRMAN FLEMMING. Now, some in the private sector either have challenged or indicate that they may challenge it in court, but as far as the executive branch is concerned, its position is clear at the moment?

MR. FRIEDMAN. Yes. Each of those matters has been referred to the Labor Department as a result of the stance taken by each of the companies.

CHAIRMAN FLEMMING. That is, you mean, each individual case that you're pursuing?

MR. FRIEDMAN. Yes. Basically, we've sought to review these companies, and I've explained the position of each.

CHAIRMAN FLEMMING. As far as you're concerned at the moment, there isn't any lack of clarity as far as the position of the Department of Labor is concerned?

MR. FRIEDMAN. Yes, with the qualification that the quantification of how you figure the $10,000 isn't clear.

CHAIRMAN FLEMMING. Okay. I recognize that.

MR. FRIEDMAN. There is one broker that is not resisting, another large one.

CHAIRMAN FLEMMING. Just one other question. As you think back in terms of your activities, what is the most significant enforcement action that you've taken growing out of your activities? I'm not asking you to identify the company or companies, but in terms of the nature of the action, what is the most significant enforcement action you've taken as a result of your activity?

MR. FRIEDMAN. I think the most significant enforcement action that we've taken is our development of a program to have companies establish their goals following their organization structures through what we call spheres of control. In that way we have been able to generate issues up to the very top of the company and also able to identify significant jobs that occur in very small installations of companies that otherwise couldn't be reached.

CHAIRMAN FLEMMING. What I have in mind, is, let's assume you've got a company where you've made it clear that you feel that they should have an affirmative action program which they haven't had, but they don't respond. Then what do you do when they do not respond either in terms of not putting in any affirmative action or putting one in which you regard as very ineffective and just simply a token type of program? What steps do you then take?

MR. FRIEDMAN. In the main and with rare exception, companies have developed affirmative action programs. The problems have gone to adequacy. In certain instances we have moved to show causes where there has been resistance. In most instances we have been able to get the companies to comply through negotiation.

I think the most published settlement that we've had is the conciliation agreement with Prudential, whereby we got set goals for sales positions which, on the basis of our experience, had been too low. We got commitments, we believe, to have goals set without reference to what was known as the minority-operable market. It is our position that persons should be qualified and be able to fill jobs without reference to their race or sex situation.

CHAIRMAN FLEMMING. Suppose you hadn't been able to get that agreement, what would have been your next step?

MR. FRIEDMAN. Our next step is to issue a show-cause order to the company.

CHAIRMAN FLEMMING. How many show-cause orders have you issued to the insurance industry, let's say, over a period of the last 5 years? If that figure doesn't come to mind readily, if you would supply it for the record.

MR. FRIEDMAN. It's all right. It's not a large number. I would say about five.

CHAIRMAN FLEMMING. About five over a period of 5 years?

MR. FRIEDMAN. Yes.

CHAIRMAN FLEMMING. What has been the outcome of those show-cause orders?

MR. FRIEDMAN. We've resolved all but those that are existing right now that were issued within the past 6 months. There are show-cause orders now in issue with regard to two companies that are at this point unresolved, that are in negotiation. There is another company where, while a show-cause order has not been formally issued, the impasse is such and the negotiations are such that it's tantamount to a show-cause order.

CHAIRMAN FLEMMING. All right. Suppose a show-cause order has been issued. You're not able to reach an understanding. What's the next step?

MR. FRIEDMAN. The Labor Department then moves to have a proceeding before an administrative law judge who will make a decision on the merits.

CHAIRMAN FLEMMING. How many have gone before an administrative law judge?

MR. FRIEDMAN. None of the cases that we have have reached an administrative law judge. They've been resolved before then, with the exception of the ones that I've described now.

CHAIRMAN FLEMMING. When they've been resolved, you have been satisfied from a qualitative point of view with the nature of the affirmative action program and with the way in which an affirmative action program is being implemented?

MR. FRIEDMAN. Satisfied in the sense that it was a product of conciliation and not some optimal aim that we're having. These are conciliations and, in the conciliations, they tend to narrow down to what are considered the issues of utmost importance rather than each and every issue.

CHAIRMAN FLEMMING. So far you've been satisfied enough so that there's never been a reference to an administrative law judge with the proceedings that would follow that?

MR. FRIEDMAN. I think it may be stated that there are some companies that for reasons best known to themselves have terminated contracts and whether there's a causal relationship between EEO pressures and their terminating a contract is a matter of some discussion. There have been some companies that we were reviewing that just dropped the contracts when we got into that kind of issue.

CHAIRMAN FLEMMING. Well, this is a matter we might want to pursue further in connection with our study.

I'd just like to express my appreciation to Dr. Fletcher and his wife for their paper, which has obviously been extremely helpful in launching a very interesting discussion.

COMMISSIONER SALTZMAN. I only have one question. Could you indicate, Mr. Friedman, whether your office or the Social Security Administration has launched or is presently launching any studies that impinge on the areas under consideration by the Commission during this consultation?

MR. FRIEDMAN. No. The answer is no.

COMMISSIONER SALTZMAN. I had thought I saw in yesterday's paper, in fact, the study being launched by the Social Security Administration relative to insurance companies.

MR. FRIEDMAN. May I say this? I considered your question from the responsibility that I have with regard to employment. The Social Security Administration's concerns with reference to the insurance field, I believe the answer would be yes if you're talking about social insurance or insurance. But with reference to employment by contractors, my answer is no.

COMMISSIONER SALTZMAN. I see. Are you aware of any other areas where studies are presently being undertaken?

MR. FRIEDMAN. While my background is in legislation, I really don't feel at this point qualified to speak to it. I do notice that there are a number of people who will be addressing you who can speak to that in an authoritative way.

COMMISSIONER SALTZMAN. Thank you. On behalf of the Commission, the Commissioners and the project staff, I would like to thank you all. I think your presentations have been clear and precise, and we're extremely grateful for your presence here. Thank you, gentlemen.

State Regulation of the Insurance Industry

COMMISSIONER SALTZMAN. I'm going to ask that the presentor and the discussants in our second panel come forward, please: Linda Lamel, Thomas C. Jones, Richard J. Keintz, Gayle Lewis-Carter, and Eleanor Lewis.

May I introduce Linda Lamel. Ms. Lamel is the New York Deputy Superintendent of Insurance. She's the first women appointed to that position in the history of the New York State Insurance Department. She supervises the activities of the property bureau, examinations bureau, and is the senior hearing officer for the department. Superintendent Lewis recently designated her to supervise the department's affirmative action program.

Ms. Lamel has taught social studies at Farmingdale High School and during her tenure represented teachers at contract negotiations and national conventions. She received her *juris doctor* degree from

Brooklyn Law School in 1976 and is a member of the New York and Federal District Bars. In 1972 she was awarded a National Science Fellowship in demography and population trends. She has attended and also has degrees from Queens College and New York University. She has been active in community affairs and women's civil rights.

Thomas C. Jones, who is Insurance Commissioner of Michigan, the first discussant, was appointed commissioner of insurance in 1975 and his term extends to 1979. Prior to his appointment, Commissioner Jones served for 3 years in the Michigan Department of Commerce as assistant to the director and subsequently as a deputy director. He is an active member of the National Association of Insurance Commissioners. He received his bachelor and master's degrees from the University of Michigan.

Substituting for Harold E. Wilde, Commissioner of Insurance from Wisconsin, is Richard J. Keintz, Deputy Commissioner of Insurance from Wisconsin. His education includes degrees from the University of Wisconsin where he received his Ph.D. in risk management and insurance. His dissertation subject was "Analysis of the Impact of Real Estate Investment Trusts Owned by Life Insurance Companies." He also attended the University of Minnesota and has been Deputy Commissioner of Insurance for the State of Wisconsin since May 1977, has taught and been assistant professor of business administration at the School of Business Administration of the University of North Carolina. He has a number of awards and distinctions, most recently Phi Kappa Phi honorary fraternity. He has membership and professional designations in a number of organizations. He has published and most recently in the *Journal of Risk Management* (1975) an article "Accounting For Future Losses; The Risk Management Problem." There are a number of other articles in scholarly journals having to do with insurance.

Substituting for William J. Sheppard, the Commissioner of the State Insurance Department of Pennsylvania, is Gayle Lewis-Carter. I don't have any biographical data on Ms. Carter. She is special assistant to the insurance commissioner. I apologize for not being able to present any data, since the substitution was just made.

Eleanor Lewis is our next discussant. Dr. Lewis at the present time is Assistant Commissioner of Insurance with the State of New Jersey. She has been a lecturer at the New School for Social Research in New York, where she taught a course on public interest research. She was a researcher for a period of time under Governor-Elect Brendan T. Byrne of New Jersey and researched the operation of the New Jersey Department of Health. She's held a number of other positions. She will receive her *juris doctor* in June 1978 from Seton Hall Law School. Her Ph.D. is in psychology and education from the University of Michigan

in Ann Arbor. She has also attended Harvard University and Sarah Lawrence College. She was a member of the Carter campaign task force on insurance, chaired by National Committeewoman Ann Martindale.

Ms. Lamel, we are ready for your presentation.

May I just note, we will proceed in accordance with the time schedule, as indicated earlier, 15 minutes for the presentor and 10 minutes each for the discussants. Thank you.

STATEMENT OF LINDA LAMEL, DEPUTY SUPERINTENDENT OF INSURANCE, STATE OF NEW YORK

Ms. LAMEL. Thank you, Mr. Commissioner. It'll be difficult to do in 15 minutes, but I'll try. I hope, too, that there will be an opportunity for questions from the audience at the end of the presentation because the question of State regulation is fairly complex and I think relatively new to a lot of people who've dealt with the question of insurance in other capacities. Before the industry comes in this afternoon to present their case, I hope you will take the opportunity to understand as well as possible the position of State insurance involvements in regard to the problems that have already been spelled out for you.

I congratulate, on behalf of myself and my superintendent, the Commission for undertaking a study of the problem of insurance discrimination. It needs close scrutiny since it was last looked at intensively in 1975, and we are pleased that that is happening.

I am also impressed at your obvious power, since you merely meet for 3 days and a Supreme Court decision comes down on an insurance matter which is overwhelmingly favorable to women. Not having read the decision, but only having heard the precis in the Manhart case, it looks as if what many of us who have been concerned about discrimination have worried about—that is, classifications by sex—may have had its death knell heralded under the Civil Rights Act by the Manhart decision. But we'll wait and see how that works.

State authority over regulation of insurance really dates back to 1945 and the passage of the McCarran-Ferguson Act, the most often quoted piece of Federal legislation in regard to the State authority, which established for all time, or until the legislation is changed, that States will regulate insurance companies and insurance activities.

Essentially, the legislation overturns the *South-East Underwriters Association* Supreme Court decision which seemed to indicate that the Federal Government might exercise control over insurance as an aspect of interstate commerce. But the McCarran-Ferguson Act reserved the regulation to the States provided the States would, in fact, act in such a way as to regulate effectively and not require Federal intervention.

The essential premises of the McCarran-Ferguson Act are: (1) that the insurance business is essentially a business of contracts and contract law is generally determined by the site or location of the contract, where it's signed, where it's carried out; and (2) the issue of the stability and solvency of insurance companies falls heavily as a burden upon the State in which the insurance company has its domicile. So, on both those legal premises, it was appropriate for the insurance business—although contracts in insurance businesses operate between States and operate, indeed, nationally—to be regulated by a State-by-State basis.

The States responded to McCarran-Ferguson requirements that they undertake effective regulation by passing a number of statutes and setting up bigger and better insurance departments, most of which are not relevant to the problem of discrimination and so I limit the mention of the State action after McCarran-Ferguson to those activities which specifically impact on the problem of discrimination.

One, the unfair trade practices act. This exists in some form in all 50 States and essentially prevents those activities most frequently associated with discrimination, such as false advertisement, false financial statements, and unfair—"unfair" is a very important word—unfair discrimination in life insurance, annuities, and accident and health. Life and health and accident insurance are only mentioned in that context because essentially McCarran-Ferguson, in the controversy over who would regulate insurance, dealt with fire and casualty insurance, life insurance having been dealt its blows at the turn of the 20th century after the Armstrong Commission investigation in 1905 when insurance companies were initially subjected to regulation.

The rates in life, accident, and health were in that initial attack required to be related to the benefits received and that was the requirement on rates. There were also some minimum policy provisions passed by legislation in most States.

Another reaction to McCarran-Ferguson was passage of an NAIC, National Association of Insurance Commissioners, recommendation, a uniform, individual accident and sickness policy provisions law stating minimum provisions in these policies. All States have adopted a minimum provisions policy, most of which have nothing to do with discrimination. They have to do with things like loans, conversion factors, etc.

The NAIC also proposed a model unfair sex discrimination regulation. This was not in 1947 by any stretch of the imagination, but much later. This, too, has been adopted in a number of States, generally as an addition to the unfair trade practices act of the State, but in some instances, as in New York, as a completely separate statement, either by regulation or by statute.

What is an insurance department supposed to do now that it has the power to do it over insurance companies? Two kinds of functions—traditional ones, most of which have very little to do with dealing with the problem of discrimination. The department is supposed to ensure the solvency and the stability of the insurance company that is selling insurance, so that they will be there to pay the losses when they occur. They generally set the form of the annual statement. They sometimes are custodian of life insurance securities, and they examine the books of the companies, again, to ensure stability, proper management, and financial solvency.

Over the course of the almost 40 years since States firmly took control of State regulation in 1947, there have been growing a number of nontraditional functions, and here is where the controversy is and here is where the flexible and broad powers of insurance departments and commissions come into play. I am here borrowing, I hope with his permission, from Commissioner Wilde, who has expressed the functions of insurance departments today as he sees them in a hearing before Senator Metzenbaum, (1) to review and strengthen market forces in the insurance business; (2) to assure the quality of the insurance product being sold; (3) to provide for availability of insurance products; and (4) to assure fairness in the dealings between insurance companies and consumers—by no means part of the traditional functions of an insurance department. Some insurance departments have not yet caught up between having regulatory mechanisms that address the traditional functions and having these nontraditional, newer functions thrust upon them and not yet having the mechanisms by which to deal with them effectively. Of course, dealing with sex and race discrimination would come under this latter area.

A footnote, if I may, about race discrimination: In reviewing the problems of discrimination in the insurance industry in life and in health, racial discrimination is very subtle. It has to do with people being unemployed or underemployed or employed in industries or businesses that do not have health coverage or life insurance policies, but in terms of selling policies, charging rates, providing certain kinds of coverage. Every State prohibits any discrimination or classification based on race. So that does not exist in any overt form, and it's sex discrimination that forms the real problem for insurance commissioners to attack.

Specifically, insurance department powers, and this will suffer from oversimplification, but I do want to touch on all the areas—most of what insurance commissioners do is initiated by rather informal means: complaints, letters, inquiries, day-to-day operations with insurance companies, rather than the formally instituted activities. That gives all

the more opportunity for insurance commissioners to respond to a broad constituency bringing forth their insurance problems.

One of the things that insurance departments do is license. They license companies to operate and sell insurance within their State, and they license brokers and agents who do the selling of the insurance. Both the businesses or corporations and the agents and brokers are subject to any laws existing which prohibit unfair discrimination or discrimination by sex or marital status. An insurance commissioner can revoke an insurance company's license or refuse to renew it if there have been violations of any of these antidiscrimination laws. In New York, the superintendent can refuse to renew a license for the reason that it is in the best interest of the people. That's about as broad as you can get in terms of some authority.

Approval of policy forms and provisions is critical in dealing with the issue of sex discrimination, and it was in dealing with race discrimination as well. If you've gotten the idea so far that I advocate that State insurance departments have the power to deal rather effectively with sex discrimination, it is indeed one of my conclusions as a result of preparing this study. I think Federal initiatives such as the one yesterday or passage of a Federal Equal Rights Amendment would help enormously and are probably indispensable; but as I go through the powers of the insurance departments, my assumption is that insurance departments have the power to deal with the problems of sex discrimination. The unanswered questions are, do they have the knowledge and do they have the desire?

Approval of policy forms and provisions—most States mandate minimum provisions to be included in policies. For example, a minumum provision could be that in a health insurance policy—and this does exist in New York and many other States—you cannot exclude coverage of the complications of pregnancy. If that seems self-evident, it is not. It took some 40 years of battle before exclusions of all pregnancy-related problems were included in insurance policies.

In *Stern v. Massachusetts Idemnity & Life,* a Pennsylvania case, 1973, the State's highest court held that the insurance commissioner, with his power over policy and forms approval, had indisputable authority to enforce the equal protection provisions of the 14th amendment; again, an emphasis of departmental authority to effect the necessary changes.

Under unfair trade practices acts, if a provision either because it is included or excluded is at question, the commissioner can hold a hearing, ask the companies to show cause why they should not be ordered to cease and desist from what they are doing or ordered to do something. He can issue that order and impose a fine if he finds violations of unfair trade practices provisions.

Insurance superintendents and commissioners approve insurance rates. Sometimes it's prior approval; an insurance company cannot implement it unless an insurance commissioner approves it. At other times it's a question of filing subject to the superintendent's disapproval of the rate or the rate classifications. So the commissioners see the rate classifications and have been seeing them for many, many years.

What's needed to make this authority effective, to eliminate discrimination, is for insurance commissioners to perceive of sex as a classification and that as being impermissible and leading to unfairly discriminatory rates. That is not yet the instance in life and in accident and in health. There has been some movement in this direction in auto insurance. North Carolina, I believe, has eliminated sex or age as a basis for classifying auto insurance risks. But there's a long way to go on this.

One thing I found in looking at rate structures is that, while we think the insurance industry is terribly objective and well-informed, as regulators and as consumers, I think we ought to know that that's a myth. That in point of fact the insurance company frequently has very poor data that they use for either their underwriting decisions or for their rate making, and that one of the things insurance commissioners can do is force better data to be used as the basis for rate computation and underwriting decisions.

Insurance commissioners examine insurance companies. They look at all their books, count all their bonds, count all their securities, and check with compliance with all State laws, including antidiscrimination statutes. The examiner's handbook says that you will look at underwriting practices and market conduct to ensure that there's no unfair discrimination. I could find no one in our department, and we have people who have been in the business almost 50 years, who could ever remember a report on examination citing unfair sex or race discrimination as a problem in the company. It is frequently relayed to the company informally and then checked up on later.

One of the things that could happen is that insurance departments could start putting in the record instances of discrimination that they find in insurance companies. That means, for example, that in 1971 or 1972, an examination of Metropolitan Life Insurance Company would have noted that, in treating their own employees to health benefits, the employees who were female did not get benefits that were available to the wives of male employees. The company subsequently voluntarily removed that while a case was pending aganst them on a number of other matters. But that should have been cited in a report on examination and could have been cited, but was not.

The problem, really, is to determine what is the unfair discrimination. Insurance companies can fairly discriminate, and I imagine you'll

hear this afternoon how insurance companies are convinced that excluding any benefits relating to women's reproductive system is, indeed, fair discrimination. I myself have some reservations about that, as do many other people. So, whether or not that becomes unfair discrimination becomes a matter of definition. Here, again, it seems to me, if we had an Equal Rights Amendment saying that sex itself is a suspect classification and anything relating to sex was, I think we could move much more quickly in getting rid of discrimination.

COMMISSIONER SALTZMAN. Sorry to interrupt. I'll let you summarize.

MS. LAMEL. Okay. The only thing I had remaining was some examples of what had happened in New York, particularly in regard to maternity and disability in accident and health and that was only by way of example. My conclusion is that State insurance departments appropriately have authority to deal with issues of race and sex discrimination. What they need is another impetus like that which existed in 1975 to examine the problem and to forcefully eliminate it.

COMMISSIONER SALTZMAN. Thank you. Of course, your entire paper will be included in the record.

MS. LAMEL. Thank you.

COMMISSIONER SALTZMAN. May we begin with Deputy Commissioner Keintz and his response?

DISCUSSION BY RICHARD J. KEINTZ, DEPUTY COMMISSIONER OF INSURANCE, STATE OF WISCONSIN

DR. KEINTZ. Thank you. Discrimination is not a pejorative word in insurance regulation.

COMMISSIONER SALTZMAN. I think you're going to have to get a little closer.

DR. KEINTZ. How's that?

COMMISSIONER SALTZMAN. A lot better.

DR. KEINTZ. Within the insurance industry, discrimination is not necessarily a bad word. There's some good discrimination and bad discrimination or, in other words, fair and unfair discrimination. We heard Ms. Lamel talk about some of the statutory and regulatory enivronment. I would like to talk a little bit about some of the things we've done in Wisconsin to try to improve some of the environment for various races or sexes within the State.

First of all, all insurance departments do examine the insurance companies, those domiciled in each State. As part of our examination report, we include a brief section which talks about affirmative action. In particular, there are several questions which deal with the percentage of minorities and women on the board of directors, the percentage of minorities and women who are officers, the percentage

of minorities and women who are agents or brokers, and other questions such as this. It is a statement of fact within the report, and upon adoption, the report does become a public record. So it's open for everybody to look at.

We are now reviewing examination reports for the last 2 or 3 years. Since Commissioner Wilde came on board, this section has been put in and we're now reviewing this to see what we have within the State of Wisconsin.

Another factor is that upon application for licensure within the State of Wisoncsin, particularly new enterprises, the commissioner has a lot of influence as to the composition of the board of directors. We have had one Blue Shield organization which had to reorganize based on some new statutes which we have. We exerted quite a bit of pressure on the composition of that board. I believe out of 32 board members, 4 are women, and I think 1 or 2 are minorities. In the past it probably would not have been that way.

Another example would be the insurance commissioner's staff itself. I think the commissioner's staff can be an example or a model for the industry within the State. In the last several years, approximately one-half of the professional positions within the commissioner's staff have been women or minorities. Also, there's a possibility to appoint minorities or women to advisory groups—industry advisory groups, agents advisory groups, and so forth. So this is another way in which things can be improved.

Another way of trying to influence the citizens of the State and the industry is through education. We have written a consumer's guide entitled *Insurance Guide for Women,* which is now available to the various people in the State; and it sets forth certain things which women should look for in buying insurance, discloses some of the tactics which may be used or some of the availability problems which they might have or the rating problems, and, therefore, it educates women in this area.

COMMISSIONER SALTZMAN. May we include that in our record at this point as an example of consumer education undertaken by a State agency?

DR. KEINTZ. Certainly. I'll give you a copy of it.

Another area deals in the agents' licensing process and at this point it's hard to determine what the reason is for few minority or women agents. It may be lack of qualifications; it may be the examination which the State gives. There could be several possibilities. Well, in adopting the Educational Testing Service's testing program, which other States have done as well, there's now a better ability to monitor those who pass the test and those who flunk the test. There's an ability to implement other factors within the testing process to make sure that

minorities and women do enter the business, so that it is not the State which is creating a barrier for these people.

Another factor would be nonregulatory in a sense, and this includes the fact that our commissioner is on the State group insurance board. This is a good forum or a good place to, again, be a model for the industry. Last year the group insurance benefits included pregnancy as any other sickness or illness, and, therefore, women will get disability benefits based on pregnancy or complication of pregnancy. So, again, it's a model.

Wisconsin is unique in the fact that we are the only State to have a State life insurance fund. It was formed around the turn of the century after the Armstrong investigations in New York and similar investigations in Wisconsin. The commissioner is in a sense the president of this operation. He's the chief executive officer, and he has the ability to introduce innovations and to be a model for the industry.

Well, up to 1977 the State life fund used a unisex mortality table. However, in 1977 there were some changes made, and there are from 4- to 8-year setbacks for women. It was felt they were justified to do this based on some work by consultants and our actuary; and, therefore, these were put into force.

Another important area would be the residual markets and in this case, perhaps through racial discrimination, as people for various reasons may be in urban areas; and, therefore, they may be locked into residual markets in homeowners' and auto insurance. Once again things can be done. The Insurance Commissioner in Wisconsin has the ability to appoint people to the board of, say, the FAIR Plan or the Auto Residual Market Board. In this case, there is the ability to have minority people appointed to these boards to try to influence them. Also, product design can be influenced to make sure that people in this market do have the ability to get the same products as other people would get.

Lastly, I guess in a true sense this may not be discrimination, but we have innovated with medicare supplement or health insurance policies for the elderly. It might be for some reason that the elderly have some disadvantages, so we've instituted another buyer's guide entitled *Health Insurance Advice for Senior Citizens,* which uses big print, for example. The elderly often have a hard time reading small print. Certain amounts of disclosure have to be applied and certain other controls over the industry to try to clean up that market.

Well, in summary, we have adopted some new techniques to try to do some things in discrimination. We have adopted, for example, the NAIC model on sex discrimination and also some rules to try to eliminate discrimination in homeowners' and automobile insurance. But the problem is that many times these rules might not solve the

problem, and I think in most cases the consumers just don't know what their rights are. Therefore, I think education is very, very important. Many times in regulation it's a hit and miss proposition. Ms. Lamel talked about the regulators reacting to complaints, reacting to letters, rather than taking the initiative to go out and investigate. Unfortunately, that's the case in Wisconsin. We do have to do more. But many times because of staffing problems it's hard to get in there, or because of training problems the people just aren't aware of it. However, we will continue to try to do more.

There are certain things which have to be done. I think we're dealing with an industry which is rather conservative; it's rather hard to move, and we, as regulators, have responsibilities which we must follow to try to get the industry to accept its social responsibility. In particular, and I guess in closing what I have to say is that we have to be aware of what the implications of changes are. It might very well be that we could gain one correction, but it could cause problems in another area.

For example, we supported a bill which would have changed drastically the classification system for automobile insurance. It probably would have benefited males under 25 substantially in our State. However, it might have created practical problems for females in our State. The question is, what's the balancing effect? And we must be aware of this.

I'll stop now. I appreciate the opportunity to appear before you.

COMMISSIONER SALTZMAN. Thank you. We appreciate your being here.

Next will be Dr. Eleanor Lewis, Assistant Commissioner of Insurance, State of New Jersey.

DISCUSSION BY ELEANOR LEWIS, ASSISTANT COMMISSIONER OF INSURANCE, STATE OF NEW JERSEY

DR. LEWIS. Thank you very much. I agree with everything stated by Ms. Lamel today, and I would like to comment on a few areas which I do not believe have been covered in sufficient depth and I think the Commission should know about them.

One of them is the area of coverage for mastectomy. Unfortunately, breast diseases affect more women than men, and they result in more removals of a female breast than a male breast, and because of the obvious psychological significance of the breast to the female in our current society, reconstruction of a breast is very important to many of these women.

The most common insurance reaction to this problem is that the reconstruction will be reimbursed if it occurs at the time of the removal of the breast or sometimes within a very short time span, but

usually it's at the same time as removal. As anyone can realize, if you're removing cancerous tissue, you do not want to put in a foreign body immediately afterwards. But it is on those terms only that reconstruction was covered, and in many places it is still that way. Only in June of 1977 did Massachusetts Blue Cross-Blue Shield agree to pay for reconstruction of a breast done at any time after the surgery. But up until that time it was only done immediately at the time of surgery.

In New Jersey, reconstruction of a breast was never covered regardless of when it occurred until recently, and now it is covered at any time. The decision is made by the doctor and the patient, which is really the way it should be. But what is even more upsetting is that while the various health insurers, the various Blue Cross-Blue Shield plans had this policy, a male who had a testicle removed would be reimbursed for reconstruction at any time. Any human being who had an eye removed and had to have a glass eye implanted, the glass eye could be implanted at any time and it was covered. Yet the reconstruction of a breast, which is primarily a female problem, was only covered at a point which put them at a severe medical disadvantage and very few doctors said, "I will permit reconstruction immediately." That is now beginning to change, but only very, very slowly.

Another area that you should be aware of is the sale of industrial life and health insurance. This insurance is marked by weekly collection of premiums on a person-to-person basis. The agent goes from house to house. The premiums are small—$2, $1.65 a week. The policy coverage is equally small. It might have a disability payment per week of $5, $8.30. The life insurance coverage is usually no more than $2,500 and probably originally was sold as burial insurance.

This insurance is sold primarily in the ghettos to the nonwhite minorities, and what is going on in this area is a shame. I urge you to really get some statistics on this insurance from departments and from companies.

I am now investigating the four leading sellers of this insurance in New Jersey. On the average, they are paying about 25 cents on the dollar in benefits to the consumers of the health insurance policy that they sell. For the industry, the general average that is acceptable is 50 cents on the dollar being returned in benefits to the consumer. Yet the poorest group is getting significantly less.

What we are finding in the life insurance area is that in some of these companies valid claims are not paid. For example, you have a $1,000 policy and you submit a claim. The company sends you a $500 check and tells you if you think you deserve more, you should write them a letter. But since the consumer receiving a letter is generally illiterate,

they don't get too many letters. When I talk to people about doing something with these companies, they say, "Well, if you put these companies out of business, who will sell these people insurance?" I am not quite sure that this insurance is beneficial to these people in any way if you look at the money being paid in over the course of a policy.

The next area I would like to talk to you about is the ambience in which State insurance regulation occurs. The major peer goup for insurance commissioners is other commissioners. The majority of commissioners at any time in this country are people who have come from the insurance industry. They have spent a significant portion of their previous professional life with companies, and in general when these people leave a department, they go back to the industry.

In the *New York Times* in late 1977 or early 1978, there was an article by Francis Cerra, a reporter who documented what had happened to the last several commissioners in New York State and how they followed this pattern.*

The NAIC is the National Association of Insurance Commissioners. It holds two major meetings a year in June and December. The country is divided into approximately six regions, and there are regional meetings that are attended by the departments and the industry.

At the annual meeting of the NAIC generally there are 300 people from the departments, 1,200 to 1,500 people from the industry, 6 members of the press, and approximately 1 to 5 representatives of the Federal Government and consumer groups. At least 50 percent of the cost of these meetings is paid for by industry. There is no way the departments could ever pay for this.

There's one lavish banquet at each annual meeting, paid for by the industry. It's sumptuous. You could eat a year's supply of caviar at those meetings.

The meetings last about 5-1/2 days. I'd say fewer than 20 hours over the total meeting is set aside for the commissioners to meet alone without the industry present. The industry is omnipresent. The same thing occurs at the regional meetings.

In 1977 the New England region, particularly at the instance of Commissioner Stone of Massachusetts—he was the host—decided to have a regional meeting that did not include the industry. We had 50 people there from seven or eight States. We met for 2 days and we worked all the time. But because the industry was not attending, each person attending had to pay a $25 fee to cover the rental of the rooms, the serving of the coffee and danish, etc. That was never done at all

* One died in office.

the other meetings, since the industry pays for that, plus dinners, luncheons, breakfasts, and entertainment.

In Wisconsin, Commissioner Wilde decided to do the same thing in 1977. He was confronted by a midwestern commissioner who said it was against the NAIC bylaws to have meetings without the industry present. It was eventually settled that it was not against the bylaws; it was not illegal and the commissioners could do this, and they did.

But the industry has been quite upset about this because they wield a lot of power, and at the annual meetings, when there is an opportunity for the commissioners to meet and really discuss the problems, the opportunity slips by in large part. There is a slowly growing momentum in the NAIC to stop the industry's omnipresence, but at its rate of current growth it will take 10 to 20 years before they are really controlled at these meetings.

The industry has enormous power, and it is used all the time against the insurance commissioners. It's rare for five commissioners or three commissioners to be able to get together and meet for a day and talk about their common problems. When the industry confronts each commissioner in his home State alone and with his legislature, they state, "The problems in your State are unique to you. It's occurring because you're not doing your job."

For instance, in New Jersey, our commissioner was very upset with the way auto insurance rates hikes were coming in higher and higher. They went to our legislature and told them that it was unique in New Jersey. Well, I went to the library and got out news releases from Texas, California, Wisconsin, Minnesota, and from another 33 states that in the last 6 months had had the same problem.

But the commissioners don't have the time and the departments are generally severely understaffed, severely underbudgeted, and severely overworked. They have large numbers of obligations which they have to do by statute, and many of the insurance statutes have deemer clauses in them.

For instance, in the approval of health insurance policies and rates, which is very important and which Linda discussed here, there is a 30-day deemer clause in the New Jersey statute and in every other statute because all the statutes were written by the industry back in the forties. They went from State to State getting their laws passed. If we don't act within 30 days on a health insurance policy, it is deemed approved. We have about three people working on this, and they must get at least 200 policies a month to review. They can't do it right, so they go through it quickly. Where something looks horrible, they immediately send a letter to stop the tolling of the deemer clause, and then they have time to work. But the three people just can't do it, and since all

our people come to us through civil service and budgets approved by the legislature, you don't have a lot of staff.

COMMISSIONER SALTZMAN. Could you summarize, please?

DR. LEWIS. Yes. I would like to summarize by saying that the constant in State regulation is the insurance companies. Commissioners come and go, but the companies are there. They are the constant and, unfortunately, the companies are primarily white men; they are middle-aged, and I do not think they have kept up with the times. When I look at the things that have been done to women, when I look at the things that are done to minorities, as a psychologist, I have to say it is not all rational. There is something else going on, and I think a lot of it is based upon the personalities of the executives of the insurance industry.

COMMISSIONER SALTZMAN. Do you have a paper that is written out?

DR. LEWIS. No.

COMMISSIONER SALTZMAN. These were off the cuff?

DR. LEWIS. Right. But I could get you whatever facts you want.

COMMISSIONER SALTZMAN. Fine. Would you be able to flesh out whatever you feel has not yet been stated because of lack of time and get it to us, please, as part of the record?

DR. LEWIS. Sure.

COMMISSIONER SALTZMAN. I'm not exactly sure how I should introduce Ms. Lewis-Carter because I don't have any biographical data.

MS. LEWIS-CARTER. Yes. It's Lewis-Carter; that's right.

COMMISSIONER SALTZMAN. Fine.

DISCUSSION BY GAYLE LEWIS-CARTER, SPECIAL ASSISTANT TO THE INSURANCE COMMISSIONER OF PENNSYLVANIA

MS. LEWIS-CARTER. I'm special assistant to William J. Sheppard, Insurance Commissioner of Pennsylvania. Commissioner Sheppard is very sorry that he could not be here. He had some very pressing business this morning at the Governor's office, and he wished that I come in his stead and speak with you today.

I have been with Commissioner Sheppard for over 3-1/2 years. First I was an assistant attorney general with the justice department and I worked in the insurance area. Then recently in the last 6 months I joined the commissioner's staff as his counsel and special assistant.

We're very proud in Pennsylvania. We started the ball rolling on sex discrimination with the first task force in 1973. We've been very busy since. First we had to pinpoint the sex discrimination problems that

existed, and we did this with our task force report that was finalized in 1974.

Commissioner Sheppard also, for the NAIC, chaired the task force on sex discrimination. So he was coordinating the efforts on a national level as well as statewide.

Having limited time here today, I don't wish to go through our report. I've provided 75 copies to the Commission, so I think that's more than adequate. Those of you in the audience who wish some copies, they are available.

First we documented problems that we found in the area of sex discrimination. A big problem we found was maternity coverage. What did we do in this area? Well, we did a lot of things based on the recommendations of the task force. All insurance policies which discriminated on the basis of sex were declared invalid and illegal in Pennsylvania by the insurance commissioner. We published appeals to the women in Pennsylvania through consumer services of the department that women should come into the department and make all types of complaints, since we believed that insurance departments have an obligation to use their own policyholder services and complaint bureaus as effectively as possible.

Our complaint bureau deals with about 30,000 complaints a year, and this number is growing every year. The dollar figure that we recovered for citizens in Pennsylvania for improper insurance claims practices involving insurance settlements and misrepresentations on policies and illegal restrictions last year, I think, was a million and a half dollars. Unfortunately, we have another problem in Pennsylvania. The monies that the department recovers and the fees that the department takes in for its work and licensing all go to the general treasury.

Our department employs 250 people. We regulate a very large industry in Pennsylvania with 250 people and a very small budget. All the money that we collect goes into the treasury, and it's not reallocated to our department. But that's a private peeve that we have.

Back to the commissioner's response to sex discrimination in the Pennsylvania marketplace.

We notified all women employees in group medical care plans about their rights to equal maternity coverage under equal employment opportunity laws. The department published a notice to group insurance carriers spelling out the fringe benefit requirements of the U.S. Equal Employment Opportunity Commission. The department requested the Pennsylvania attorney general to issue an official opinion on the legality of treating maternity coverage separately from other medical care and disability insurance coverage. This was in 1974. To date the attorney general of Pennsylvania has not answered us.

We decided on an alternative avenue, obviously, and went to the area of regulation. How did we try to regulate maternity coverage? We did it through the Unfair Practices Act. Not only did we do it through the Unfair Practices Act, but also we have in Pennsylvania an ERA, which is very strong and an important vehicle, and we're certainly supporting that passage in all other States.

The other area that we have stressed in Pennsylvania the last 3 to 5 years has been consumer education. We were the first ones to publish miniguides on health insurance and problems with women's health problems, and we have over 41 publications in Pennsylvania that discuss various insurance problems—what to do, how to save money. I'm sure most of you have heard about them. *The Rip-Offs in the Insurance Industry* —they always have very racy titles, but they're interesting pamphlets. If you would like those, please contact the insurance department and we will send them to you.

I was very glad to hear Dr. Lewis mention the problem with industrial insurance. We call it in Pennsylvania "debit insurance." We have been fighting this battle for many years. We pushed for the enactment of the Minimum Standards Act in which, among other aspects, we required disclosure in all individual accident and sickness insurance policies. We also wrote a regulation mandating disclosure on all life insurance policies prior to sale. At the last minute what happened in the legislation is that the debit people came in, and they lobbied for this and that and, somehow or another, the legislation was passed and they were exempted from certain sections of the act. The exemptions from legislation prevent poor people from knowing what kind of product they were getting, the rate of the product, how much it costs, that it could be available in another means and another way. They are exempted from this type of requirement, so I'm very much—and so is Commissioner Sheppard—pushing this battle against debit insurance.

Another avenue we've used in these debit insurance companies is the Unfair Practices Act. Our act in Pennsylvania, though, provides that we must show a "course of conduct." We must show an unfair claims practice that involves a long period of time and is well documented. We have other serious problems when we want to litigate these cases. We can't get the insureds to come in and testify. People of low income do not trust insurance departments. We are the establishment, we are the bureaucracy, and they have little use for us. When the hearing dates are set, we can't get the insureds to come in and testify. Aside from the fact that many times companies settle these claims so quickly. Sometimes even on the spot a check is written out; there's no documentation; they sign a waiver, release, and that's the end of it. Then it's very hard to go back and show an unfair practice.

Another thing we found out in Pennsylvania in the area of discrimination was about 90 percent occurred at the application stage, and the report speaks to this. I don't feel I have the time to go into detail, but we did about eight different things to change the application for insurance to make it a lot fairer.

Regulation isn't the only avenue that we've used. We've also tried to impact very strongly in the area of legislation. I myself have drafted some legislation, and we have worked very strongly to submit our own legislation to the legislature. Of course, what happens in the area of legislation is that you don't recognize your product when it comes home after it's passed and by the time 500 people look at it and change the language and draft it all again. All you may have is the title, if you're lucky. That's happened to us quite frequently. But we do try to impact in legislation.

We passed the Newborn Child Coverage Act. A very interesting thing happened with this piece of legislation. It was initially supposed to cover all newborn babies in Pennsylvania from birth, mandatory coverage for all newborns. But by the time the regulations were adopted it was only for sick or injured children. So, we haven't been completely successful, but we keep trying.

Every time we publish a regulation somebody sues us and, when they do this, it takes us years until the court finally says that our regulation is okay. Under the Unfair Practices Act, it took us 2-1/2 years for the court to decide that the commissioner had the authority to issue regulations in that act, that he had the implicit authority even though it didn't say that he could issue regulations.

So, it is a very, very slow battle. As receptive as we like to feel the industry is, in this particular case it was the industry that took us to court.

COMMISSIONER SALTZMAN. You have about a minute.

MS. LEWIS-CARTER. A couple of additional innovative things that we've tried to do is to impact on legislation in the area of the composition of boards of directors. We are now proposing amendments to the nonprofit hospital plans to change the board of directors to provide a majority of consumers.

The other area that I would just like to mention for one minute is the area of rate making. Something has just happened in Pennsylvania that we're very proud of. We have a recent court decision involving three Blue Cross plans in the State, a decision which says that not only does the insurance commissioner approve or disapprove rates, but he can also look behind the rates to the assumptions that are implicit in the rate-making process. It took us, I think, 3 years to get this decision in Commonwealth court, which is being appealed. But the impact of this case in the area of unisex rating and the apparent interpretation of the

phrase "actuarial soundness" is far reaching. "Actuarial soundness." You can get four actuaries together. They're like four lawyers; they can't agree on anything. The divergence in actuarial opinions impacted on me in the area of malpractice rates in Pennsylvania. One insurance company came in and wanted a 128 percent increase. After 2 years they were finally glad to take a 22 percent increase and their actuaries swore that it was all sound. So, I think we have to consider the power of the insurance commissioner in the rate-making process and his authority to look behind those assumptions because what we're really saying today is that we can hit the blatant kinds of discrimination, we can hit the overt kind of discrimination, but behind it all are those assumptions, those stereotyping, archaic ideas. These are the things that we all need to check our individual consciences and combat. Thank you.

COMMISSIONER SALTZMAN. Thank you, Ms. Lewis-Carter. Now, Commissioner Jones.

DISCUSSION BY THOMAS C. JONES, INSURANCE COMMISSIONER, STATE OF MICHIGAN

MR. JONES. Thank you very much. I have a written paper that I can submit to you, but let me just try and summarize and try not to go over the same things that have been discussed a couple of times for you here today.

I'm not as optimistic as Linda is about the ability of State regulatory vehicles to deal with the problems that you've presented here today and some of the issues that have been raised, but I do think there are some things that the States are doing or trying to do, and I think there are some issues for Federal involvement that I'd like to raise and discuss with you. I'd like to just focus my remarks on those two aspects.

By way of clarification, I'm one of those odd commissioners who isn't from the insurance industry. Some good commissioners are from the industry and some that aren't so good are not from the industry. So I don't know that that stereotyping totally gives you the picture that you ought to have in terms of evaluating State regulation or Federal regulation.

I would like to focus on the role of the States as I think they've been evolving and focus on what I think are some issues for Federal involvement. I think that, as I indicated, that many States are beginning to enact legislation which attempts to balance what I think are the legitimate needs of the industry to distinguish between various levels of risk and the rights of consumers to be certain that the classifications that are used accurately reflect risk.

In Michigan, we now have a strengthened Uniform Trade Practice Act which prohibits refusals to insure or to limit coverage available on the basis of race, sex, or marital status. It also prohibits unfair discrimination based on age, residence, handicap, or occupation. Rates cannot differ according to any of these principles or characteristics except to the extent that they are based on credible loss statistics and sound actuarial principles.

Well, legislation of this type does not eliminate the dilemma completely and does not ban the use of classifications such as sex. It gives the State statutory authority to enforce more stringent adherence to sound actuarial principles. In order to enforce this legislation, our industry standards division has begun reviewing policy forms for evidence of discrimination, and our field examiners have begun a selective review of underwriting manuals and statistics used by the industry. Some of these investigations have turned up evidence of bias.

I must admit, though, that getting the legislation passed was somewhat easier than enforcing it.

Other States have adopted similar programs or similar approaches in dealing with the problems of discrimination in insurance. I think one of the strengths of State-level regulation of the insurance industry is, as the paper points out, that 50 different regulatory systems provide an opportunity for a variety of experimental regulatory programs.

The disadvantage of this system is that fundamental rights are protected in a rather uneven fashion across the country. So long as the system is characterized by widely varying views toward a regulator's responsibility to protect basic rights, it will remain difficult to develop acceptable distinctions between fair and unfair discrimination.

One issue that the paper only identifies very briefly—it doesn't go into it to a great extent but is implicit in the paper—is the issue of Federal regulation. That's an issue to which I would like to speak more directly because I believe that discrimination in life, health, and disability insurance will begin to attract increasing attention at the Federal level.

Other insurance issues, including no-fault automobile insurance and consumer protection in the life insurance industry, are already being examined by Congress and the Federal Trade Commission, respectively. We can expect that many areas where State regulation is thought to be inadequate will attract similar Federal attention. The fact that this conference is sponsored by the U.S. Civil Rights Commission indicates such an interest.

I believe that States can and should act effectively to eliminate unfair discriminatory practices in life, health, and disability insurance. I also believe, however, that the response to this problem by the States has been uneven and in many cases inadequate. If we accept the

proposition that we have a right to buy life, health, and disability insurance and at a price which fairly reflects risk, and that those two issues are fundamental issues, then Federal involvement to ensure uniform minimum standards may be necessary.

This does not mean that legislation is the only possible or even the most desirable Federal response. In a case of current Federal interest in life insurance sales practices, the Federal Trade Commission has undertaken a study of life insurance products and is working closely with the States to develop product guidelines and consumer information tools. The intent is to use the resources of the national government to strengthen the ability of the States to protect consumers in life insurance products.

While Federal legislation to create minimum standards to ensure the availability and fair pricing of life, health, and disability insurance is a regulatory option that must be considered, a more useful Federal role may be to strengthen the ability of the States to deal with the problems of unfair discrimination. This could be at least partially accomplished by funding studies to update and improve actuarial data which are currently being used by many companies and State regulators. Much of the actuarial data now being used to evaluate risk and the assumptions which underlie it are being challenged. To the extent that the problem can be alleviated by more closely tying risk to price and by more fully understanding the factors underlying risk, this kind of Federal involvement can be extremely useful.

It should also be noted, and I think not underestimated, that the threat of Federal legislation to ensure the availability and fair pricing of insurance may be, in fact, as effective as the fact of Federal intervention in motivating the States to develop effective antidiscrimination programs. Continued Federal interest and activity in this area will help to make the threat a credible one.

I might add there's nothing that moves the National Association of Insurance Commissioners and individual commissioners faster than the threat of Federal involvement. That's happened time and time again. That's a very effective tool, and it's relatively inexpensive.

In summary, our objective should be a regulatory system which allows each State to respond independently to its own insurance environment while ensuring that basic rights are effectively protected across the country. While primary responsibility for this type of system would continue to lie with the States, Federal involvement in some form is, in my opinion, extremely desirable.

Thank you very much. I'd be happy to answer any questions.

COMMISSIONER SALTZMAN. Thank you. I'm going to ask Ms. Lamel whether she'd like to make a quick response to the discussants.

MS. LAMEL. If I may, I chose my remarks to be general in order to cover the general area of insurance regulation, and I can't let New York go by without a word about New York since the other States have replied in such detail about their own activities.

New York, and this was the basis that I used for my study because of the limits of time, has been struggling with the problem of sex discrimination for a number of years and has some successes. I'm more excited about what I see as some of the new places where we're going. One is clearly in the direction of creating an impetus for change and providing a consumer inclination. As part of the audience today are three representives of the Governor's office from the women's division and its director, Mary Burke Nicholas, who are contemplating a statewide program to inform women about problems in insurance and hopefully to distribute the information that is available in the department, such as buyer's guides.

I think the combination of an insurance commissioner, wherever he came from, who is nonetheless committed to an activist department and pursuing the interests of the public and a Governor who will lend the auspices of his office to look at the problem and to give it credibility and priority within the State will help to create an environment in which we can not only expedite what we have in the hopper, but can even get more going.

COMMISSIONER SALTZMAN. Thank you. Now, my colleagues shall direct their questions and concerns, and we'll begin on my right with Mr. Nunez, our Acting Staff Director.

MR. NUNEZ. I assume most of you are Governor appointees, and I was wondering whether there were any women who are insurance commissioners and for that matter whether there are any minorities who are insurance commissioners, as far as you know, across the country.

DR. LEWIS. There is one black commissioner from West Virginia currently, and possibly in the Virgin Islands and Puerto Rico there are minority commissioners. Most commissioners are appointed, but many are elected. North Carolina is elected, I know. There are other States where they're elected. Also, frequently insurance departments come under other departments, like in Michigan. There are several departments covered and they have deputies or particular people assigned to different sections of the conglomeration, so it's not always one person directly for insurance with no one else above him except the Governor.

In the last 4-1/2 years that I've been going to NAIC meetings, there have been two women commissioners. One was an acting commissioner in Vermont for 1 year and one was a woman who had obtained the post on a permanent basis—I believe it was Mississippi.

MR. JONES. Mississippi.

DR. LEWIS. She was in office for at least 4 years and maybe much longer. She is no longer in office. But the current West Virginia commissioner, I believe, is the first minority in the mainland United States, maybe aside from Arizona or New Mexico where there may be a Chicano commissioner. But in general, at any time I think you can say at least 48 of the commissioners are white men, maybe 49.

MS. LAMEL. One of the factors that I've noticed—I know it is true in New York and from what I gather in several of the other States as well—is that insurance departments, unlike some other State agencies, tend to be very heavily civil service. In the New York department, for example, we have almost 1,000 people working in the department, 15 of whom are appointees. So all the affirmative action must be done from within civil service ranks.

DR. LEWIS. Then below the commissioner level, I think it's only within the last 4 to 5 years that you have women in high-ranking positions. I'm the highest ranking woman in the history of the New Jersey department, and there's another women who's special assistant to the commissioner. That's the first time in the New Jersey department that there are any nonmales in high positions. Similarly, North Carolina had a deputy commissioner who was a female until recently.

MS. LAMEL. Connecticut.

DR. LEWIS. Connecticut now has a deputy who is a female. Linda's unique in New York. It's slowly occurring. California has a female general counsel.

COMMISSIONER SALTZMAN. Chairman Flemming.

CHAIRMAN FLEMMING. First of all, I'd like to express appreciation for all of the presentations. I think you've opened up some very interesting issues for us to explore. I'm particularly interested in the kind of affirmative approach that you take to the opportunities that exist as far as State regulatory commissions are concerned in this area.

I'm going to focus on just one aspect which I think runs through all of the comments. For example, in connection with Ms. Lamel's paper, the emphasis at one point was that the regulatory commission or the commissioner does have the opportunity to regularly examine insurance companies. You indicate that, as far as New York is concerned, one of the things that you take a look at is compliance with any laws that may be on the books dealing with unfair race and sex discrimination. Do you include in that what they are doing under the Federal Civil Rights Act, under Title VII, for example, the Equal Employment Opportunity Act?

MS. LAMEL. That is subject to review by the examiner, and I queried the examinations bureau about the makeup of the examiners. I

said, "Well, who are the examiners who go into the companies?" because I was curious about this never citing of an affirmative action or a discrimination problem. In fact, the statistics on the makeup of the examiners is very, very broad based in terms of its distribution amongst women and minorities. In their training, however, and in the way in which they are sent in to do examinations, my suspicion is that very few of them either see the affirmative action of the company or its discriminatory activities as a priority. In limited time, they tend to count the bonds before they count the heads of the people in the department.

Secondly, I sense a lack of awareness, a lack of sensitivity as to what constitutes discrimination problems. In the short time I've been in the insurance department, just this past year, and part of what Wisconsin was saying about role model, I have raised questions about, for example, Blue Shield boards of directors. I say, "How is it that there are 36 people and 1 woman?" "Well, it's always been that way. Isn't that okay?"

No one had raised the question before. When we discuss maternity coverage, I frankly become very angry at what the industry tells me about the way I function in society and that maternity is one of those voluntary, flaky things that I do with my life and why should anybody be paying for it as part of an underwriting risk? I become offended and I become angy.

As Eleanor [Lewis] has stated, in terms of the distribution of women and minorities in the insurance regulatory scheme, we have to be there as role models. We have to be there to raise the questions and to begin sensitizing the people who are already there.

So, for example, when I see an examination report—I am the deputy in charge of the examinations bureau—I can ask the examiner, "By the way, have you reviewed their affirmative action policy?" and get a response, and they will do it. I just don't think that the initiative or the sensitivities are necessarily there in all cases. That's what needs to be heightened.

CHAIRMAN FLEMMING. What you're suggesting is that, first of all, there's been a lack of an affirmative action program within the department itself.

MS. LAMEL. Amen.

CHAIRMAN FLEMMING. And consequently, both women and minorities are not adequately represented in the whole process. Now, in connection with the examination or in connection possibly with applications for license and so on, is there a formal request to submit or to identify the specific affirmative action plan that the company is working against?

MS. LAMEL. No. That is requested by our division of human rights, which has done a survey of insurance companies and their affirmative action plans and compliance. It was last done in 1974 and headed by a woman who is now vice president at one of the insurance companies. We've requested the human rights division to update that, since that is within their purview.

When we get the list of directors and incorporators, we can disqualify them if they are either incompetent or untrustworthy and so far those are the two characteristics defined in our statute. We can informally and unofficially say things like, "You're not really going to come in with an all-white, male board when you're going to sell insurance in a ghetto?"

CHAIRMAN FLEMMING. The Human Rights Division of the State of New York has not requested the cooperation and the assistance of the insurance department in the enforcement or the implementation of affirmative action plans. Am I correct?

MS. LAMEL. As a matter of fact, Mr. Chairman, they have sued us. There were three cases in our State, one of which has already been decided, in *Rochester,* in which the division of human rights said that their human rights law, which prohibits any discrimination in employment by sex, supersedes the insurance rate-making power, because our rate making uses sex as a classification for determining data. They claim that the human rights law was broader.

In other words, they used the same logic as in the Brooklyn Union Gas case where there was a conflict between the disability law and the human rights law, and the courts said the human rights law, which is more stringent, applies. They used that logic to attack the insurance department and say that they had final review over our rate making and they could throw sex out if it was used as a classification.

The court of appeals once and probably twice—once in *Rochester;* once in *Allstate* —had said that the insurance department has exclusive jurisdiction over rate making and that supersedes the human rights division who should deal with their area, and in our State their area is affirmative action.

CHAIRMAN FLEMMING. So affirmative action has become turfish, to some extent.

MS. LAMEL. Indeed, it has, yes. We've attempted to work out some interagency cooperation, but it's not yet lively.

CHAIRMAN FLEMMING. Let me just ask this one other question. If one or more of the Federal departments that have responsibility in the affirmative action area should ask for your cooperation or assistance or help, what kind of a response do you think they would get?

MS. LAMEL. I think the EEOC would get our full cooperation.

CHAIRMAN FLEMMING. Now, really, what I'd like to do is just essentially ask the same question to the other panelists on the panel. In other words, relate what you would be saying relevant to your authority or lack of authority relevant to the statement of Title VII of the Civil Rights Act. How do you treat it? How do you deal with it, if at all?

DR. KEINTZ. Well, as I mentioned before, our examiners would comment on the affirmative action program within an insurance company. One of the questions would be, "Is there a formal affirmative action program?" The answer would be "Yes" or "No."

CHAIRMAN FLEMMING. Now, suppose the answer is "No," what do you do?

DR. KEINTZ. Right at this point in time probably nothing. It's a matter of public record, but we haven't done anything with it yet.

CHAIRMAN FLEMMING. Do you feel you've got authority to go beyond just making it a matter of public record?

DR. KEINTZ. Well, quite frankly, I've never thought about it. I suspect we could delve into it more. Most States have rather broad abilities to gather information, and that's reasonable. We could go further, I would imagine, but at this point in time we have not.

As Ms. Lamel mentioned, I think there's a basic lack of awareness, on the part of the examiners, of this problem. Like New York and Pennsylvania, we have about 120 rather large domestic companies and, say, about 200 town mutuals; and we have a staff of about 90 people within our office, or 100, which must also run this life insurance fund, property funds, and other nonregulatory type of things as services for the State.

I have a staff of about 22 or 25 examiners who must look at these companies. I think, traditionally, for the last 100 years the question of solidity or financial well-being of the company has been stressed and not the consumer action or the fairness part. We now have another type of staff called the market conduct staff, which is being used in many States, which looks at questions such as this.

CHAIRMAN FLEMMING. Do you have an affirmative action program for your own department?

DR. KEINTZ. Yes, we do.

CHAIRMAN FLEMMING. Do you think it's working pretty well?

DR. KEINTZ. Yes, especially with the new commissioner, Commissioner Wilde. He's been there approximately 3 years. We go overboard.

CHAIRMAN FLEMMING. Okay.

DR. LEWIS. The examinations that I've read in New Jersey do not comment on the affirmative action aspects of the company they're looking at. I did have a discussion with my commissioner a few years

ago because it was asked whether we should consider that part of our jurisdiction.

I think it was his feeling after looking at the statute that we would be stretching the law to say we had jurisdiction over the company's affirmative action efforts and that there were enough areas in which we had clear-cut jurisdiction and tons of problems and lots of work that we should concentrate our efforts where we would not get into jurisdictional disputes. There is no doubt in New Jersey that our domestic companies would fight our looking at their affirmative action programs, just as they have fought the Federal Government's looking at their affirmative action programs. It is not clear cut in our laws. In fact, it probably is not there. It would be a real stretching of the language.

CHAIRMAN FLEMMING. Okay.

DR. LEWIS. Our positions are filled entirely by civil service, and in New Jersey we have absolute veteran's preference. That means that if you're a veteran, you go to the top of the list as long as you pass the test. So the overwhelming majority of our positions are filled by males.

I am the affirmative action officer in the department. I work with the State civil rights commission in implementing affirmative programs in government, but our success has been negligible because they have not been able to get around the veteran's preference, and more men are veterans than women.

MS. LEWIS-CARTER. In Pennsylvania, I know that the department has a formal affirmative action program and we do have our own affirmative action officer. I think we're more fortunate than some. We have a 1975 attorney general's opinion that Commissioner Sheppard requested, and he specifically wanted to know whether he could refuse to issue or renew licenses or suspend licenses with those companies who would discriminate on the basis of sex, race, and creed. So we have very strong authority that, in fact, says that a company's employment practices cannot violate any laws, either Federal or State, in their practices, and that would be their base requirements for coming into Pennsylvania's licensure.

CHAIRMAN FLEMMING. As for their affirmative action plan, do you take a look at their affirmative action plan?

MS. LEWIS-CARTER. Well, truthfully, this is something I will have to talk with the commissioner about tomorrow, and I make that promise to the panel. I have no knowledge of that and I would say at this point that we've probably been lax in that area.

CHAIRMAN FLEMMING. Well, after you talk to him and get a response, drop us a note so we can make it part of the record.

MS. LEWIS-CARTER. I'll certainly do that.

CHAIRMAN FLEMMING. All right. Mr. Jones.

MR. JONES. With respect to the bureau itself, we do have an affirmative action program and I guess I don't believe any affirmative action program gets as far as you want or you set your goals too low. We think we've made progress, but certainly not enough. In our case I'm the only political appointee in the department. All the rest are civil service, so we must deal with the problems of civil service, which we're all familiar with.

The second issue, with respect to examinations, I don't see where we have—in trying to think through your question—in the statute the ability to deal with the employment practices of business in terms of our regulation of the companies. The approach and the emphasis of financial regulations written in the examination of insurance companies is such that that has never been a priority for the examiners. It's only been recently that we've got the examiners to look at marketing practices as they affect consumers. The emphasis, historically, has been on solvency and that is a major priority. It's only recently that we've gotten into unfair discrimination as it relates to consumers in the sale of the product.

CHAIRMAN FLEMMING. Okay. Thank you very much.

COMMISSIONER SALTZMAN. Vice Chairman Horn.

VICE CHAIRMAN HORN. I was very impressed by the paper and the discussants. I think all of you have given the Commission what we might call reality therapy, since you're down there at the grassroots, and I must say in particular I enjoyed the comments of Eleanor Lewis. I felt that it's too bad they weren't taped and distributed to all high school and college classes in civics and political science, since what you describe at the State level is reality that too often people forget when they pass laws, when they make preachments and issue reports; that what you have described in New Jersey is certainly the history of the evolution of Federal regulatory commissions as well as almost every State regulatory commission where, because some Governor's a demagogue on salaries of State executives and some legislatures know that they have to be beholden to various industries at campaign time for contributions, they are not able to attract the type of people that you obviously are on a continuing basis to do something about some of these problems. In brief, we get what we pay for in government and society.

Now, as I listen to your very succinct description of what goes on at the grassroots, I wonder, from any of you, maybe starting with Eleanor Lewis, what's the solution to build up a constituency for reform? Who cares? Is it simply a matter of lawsuit after lawsuit? Where does one turn in this day and age in the States to make the type of changes that we do see evolving, but to accelerate those changes? We know the industry's there. We know some feminine groups are

here and there and some public interest law groups, but do you see any constituency for reform?

DR. LEWIS. Currently, there is no constituency. The single most common area of complaint is auto insurance. There's no group in New Jersey that really focuses on auto insurance or any other insurance—a consumer group. We're beginning to get the Senior Citizens Federation of New Jersey interested in this. It seems that there has to be some consumer pressure coming on the departments, and currently it doesn't exist.

The press is certainly unreliable. You just can't count on them to drum up the support. In fact, in New Jersey the insurance industry is honored with a New Jersey Insurance Press Institute, because we are such a problem State to them that they have hired full-time public relations people and they hold regular press briefings to put out the other side. So we get an especially heavy dose of pro-industry information going to newspaper reporters in New Jersey.

It's a problem. I don't have any immediate answers as to what the solution is. But there have to be more pressures brought to bear on the State commissions and the commissioner's office from consumers. I got into insurance because I was the director of the New Jersey Public Interest Research Group, a Nader affiliate. I did a study of the Blue Cross board of trustees in New Jersey; and of the 30 people on it, they were all white men except for one woman, who was also black, but she was the wife of a physician and she was considered a public representative. That's how I got on it.

I went to the current insurance commissioner who's now not there and gave him my report. He gave a speech that incorporated my report to the board of trustees, and then they did appoint some more women and they appointed some Spanish speaking for the first time. But I think mine was also the first report that came along and that was in 1972.

Ms. LAMEL. I'd like to second that, if I may. One of the type of hearings that I do is on Blue Cross-Blue Shield premium rates. We give a terrific hearing to which no one comes. We went the route of suggesting to Blue Cross—this is in greater New York where we have over a billion dollars in premiums being collected and spent—that instead of just putting in a public hearing notice, they put in a real live advertisement in the same way they do for selling their insurance, which cost them $30,000. Apparently, as a result of that, three consumers showed up at the hearing. They said that it was their management decision that at $10,000 a head, they simply couldn't afford to continue to try to bring in consumer interest.

Consumers are not showing up where the opportunity to show up does, in fact, arise, even on auto insurance. While most of the

complaints we get are in auto insurance, when we have hearings on subject matter having to do with insurance—rating, for example—the public doesn't show up; the industry does.

There is no organized consumer constituency almost of any kind. The two that we've seen in New York: one, senior citizens, because they pay out of pocket the medicare supplementary insurance. There, by the way, what we do at the State level is pass through the increases that have been proposed by HEW. Very little is really within State regulatory authority to do anything about. We simply put our stamp on it. But when Blue Cross says, "Well, based on what the Federal Government has done, we have to propose this as an increase," that's a problem for us in terms of the public view of insurance regulation because all we do is pass on increases, but we can't do anything about it.

The other constituency that shows up are women. I have a group, for example, in New York interested in mastectomy coverage, and the maternity disability and maternity coverage were chiefly lobbied for by women's groups.

We've been trying to find out why it is that people do not deal with insurance which is so critically important. One seems to be a preoccupation with auto. Two, in areas like life insurance and accident and health, a lot of people don't pay for it. It's employer paid. They don't see the money and that makes it harder to focus on.

I think occasionally, to really second what Commissioner Jones has said, we get lost in other kinds of issues like who's appointed and who's not appointed and who's in office and who isn't in office. The truth of the matter is that we have an appointed public servant; you have a Governor who is responsible for that person and there's a pressure point. Yet other than auto insurance, and in New York, fire insurance—the FAIR plan—there's really no articulate consumer uproar at all. My suspicion is that that has to happen at the grassroots.

Ms. LEWIS-CARTER. I would like to add something here. In Pennsylvania, we have a pretty vocal population, especially those consumers over 65 and, historically, all the public hearings we hold, I think there's been over 100 people attending these hearings and many times they're very angry at us. It was only this year in Pennsylvania that Commissioner Sheppard decided that he would not grant a rate increase under a 65 program like Linda was talking about where the HEW deductible increased. Then, the Blue Cross plans came in and said, "Well, here's our new rate because of this increase in the deductible." What the Commissioner said, and it was totally applauded by all the citizens after holding about eight public hearings that year, that he will not grant this rate increase. He doesn't feel that this deductible is warranted. We went to court with it, and this just

happened last month. The court just said they're upholding the commissioner's authority to decide that this rate increase was not justified and that 65 special contract has to be subsidized like he required because he decided for the department that senior citizens and poor people can least afford to pay for this type of insurance and the cost has been escalating much too high and that employee-employer groups and individuals would have to subsidize senior citizens.

MS. LAMEL. Precisely the same thing happens in New York.

VICE CHAIRMAN HORN. Along the line you make of the commissioner hearing, I wonder, in the four or five States represented here and your knowledge of other States, how many cases does the commissioner actually go out and try to hold grassroots hearings as opposed to sort of an administrative law judge or expert in rates sitting there to take legalistic testimony? I mean, is that offer of a visible presence of the head of the department at the grassroots made in many States?

DR. LEWIS. Well, first of all, we don't have any such expert hearing officers as you state. Our department is very thin. We have one woman attorney who functions as a hearing officer in every area. So we don't have any such coldly detached individual to even send out.

But we've held hearings. The first hearing our commissioner held after he came into office in 1974 was on the composition of the board of directors of New Jersey Blue Cross, which is the third largest Blue Cross plan in the Nation. It insures about 3.5 million people. We had about 20 or 30 members of the public, and we mailed extensively to all sorts of groups and advertised it.

Then we hold our regular hearings all around the State. We try to inform the different groups. You begin to know the list of 50 or 100 groups that you should mail to; the large unions, the large federations. But the turnout is always appallingly low.

VICE CHAIRMAN HORN. Mr. Jones.

MR. JONES. In terms of public hearings, when we hold a public meeting for the purpose of gathering input from the public, not a technical hearing in terms of the rate case itself, an administrative hearing, I always preside and it doesn't matter in terms of the attendance. We have the same kind of attendance that the other States indicated. I think that's widespread across the country. There are no organized consumer groups that have focused much attention on insurance at all.

The only groups we've been able to get interested in Michigan are labor unions, who have the technical expertise and the money to get into insurance, whether it be health or whether it be auto and

homeowners, which more people are interested in just because more people pay out of pocket. So, there's just not a constituency there that we've been able to find or even cultivate.

VICE CHAIRMAN HORN. Let me move to a different subject. My last question—and this is one that's concerned me and we've had a lot of opinions on this in the last day and a half and I suspect we'll have some more this afternoon—just looking at it as a matter of equity and fairness, I have no problem that obviously disabilities arising from delivery-maternity-pregnancy ought to be covered. I do have a problem as to the degree to which maternity should be covered in a typical health insurance policy.

I'd like to ask the question of you State regulators as to what extent can you require as a condition of triggering the particular service that a policy be held for a certain amount of time? For example, we've heard yesterday from, I believe, some representatives of the industry, and we've asked for data on that, that there is a problem of lapsed policies, and I suspect this will be very difficult to get at as to why the policy is lapsed. Is it after the first claim and is it after the first claim from maternity and so forth? I'll let the staff worry about the methodology on it. But I'd just like your feelings on this because I can recall my own situation as a young married that, sure, I'd like to get every dime I could get out of that insurance policy. But as a matter of equity if I've only put $50 into the plan, and 21 years ago the typical delivery might have cost $300, I can't see the insurance industry subsidizing all new marrieds to the tune of $250. I can see them subsidizing on a risk basis the complications that would lead from a delivery. So I'd appreciate your opinions on that.

Ms. LAMEL. Well, two things in New York: In 1976, effective January 1977, the New York State Legislature passed a statute which required—it was chapter 843 of the 1976 laws—that in any group health insurance policy maternity be covered in the same way as any other illness. It could be limited to four inpatient hospital days, but insofar as fee schedules and per diems it was to be treated the same as any other illness. The health insurance industry *en masse* took us to court. Some of their chief spokespersons will be here this afternoon, and I'm sure you're going to hear about it, claiming that the State did not have the authority to mandate an insurance coverage that was otherwise excluded. They have in part a constitutional argument saying that it deprives them of due process, since when they sold the policies they did not expect this risk. They argued before the court of appeals last month. The court of appeals has to decide whether the fact that they can get a rate increase for this increased coverage equalizes the due process problem.

Then there was the question of guaranteed renewable policies, which in part speaks to your second question, Commissioner. There are some policies that are not cancellable at the option of the insurer and are renewable with exactly the same provisions. The contention of the health insurance industry is that these guaranteed renewables, even if the mandatory maternity coverage is constitutional—and two courts so far have held that it is—would not be applicable to the guaranteed renewable policies.

The industry has used a very interesting approach during the course of this litigation. Without request for a stay, they have nonetheless decided that a piece of legislation passed by two houses and signed by the Governor is not effective until the court of appeals or the supreme court—I'm not sure which—says it is, which is a twist in the way lawyers normally deal with this which is very interesting, but enables them to not pay any of the maternity benefits to any of their subscribers that would be required under the statute.

So, we have a statute and, as was indicated, that sometimes isn't enough. Enforcement can also be a problem. This whole issue is now before the court of appeals and we hope we will get a favorable decision on the constitutionality so that we can move ahead with it.*

Insurance companies are permitted, where they offer maternity coverage, to require that the policyholder be insured for 10 months prior to collecting any maternity claims, so that they know that the conception occurred during the time that the coverage was available. And in instances of termination, the insurance companies will carry a special fund for unpaid maternity claims that would have arisen because of conceptions during the time that the policy covered them, but they did not deliver until after the policy had terminated. They keep a reserve for that as part of their other reserves in order to cover those particular instances.

The problem of maternity coverage, and I'm sure you've heard the argument—and it relates not only to maternity, but to all other diseases and ailments having to do with the reproductive system—says that only in the instance of maternity do we have a voluntary use of the body which results in a health need that should not be paid for by insurance. The problem with that is that people who otherwise do voluntary acts to their bodies, such as drink, inject drugs, smoke, fail to eat properly, or otherwise abuse themselves, would have whatever illnesses resulting therefrom be covered under health insurance and that would not be voluntary.

In the instance of disability, prior to the time that maternity was mandated to be covered, a man could get drunk out of his mind, go up

* The case was decided in May 1978, affirming the constitutionality of the law.

on the highest mountain you could find, ski down with one ski and his other foot held up above his head, crash and break every bone in his body, and be covered for disability. A woman, however, who carries forth the burden of propagating the species would be told that was a voluntary act and we will not cover it. For some of us it is very difficult to understand those distinctions. We think they relate to a time and place when women working outside the home was not as important nor as established a fact of life as it is today, and there is a need to change the view of maternity to the way it was, frankly, when my grandmother gave birth, which was that she gave birth and went back to work within a week because she was running a business and keeping herself alive. I don't think anybody questioned the appropriateness of that or the voluntariness of it. It was a fact of life that was accepted. We've now skipped a generation and decided that my generation of childbearing age makes a voluntary decision in regard to maternity and in no way, shape, or form should we have our economic security assured while we fulfill that very important social function. We could make it involuntary, but I don't think that that is a legitimate social purpose to be served.

VICE CHAIRMAN HORN. Well, obviously I would agree as a parent that I'd like to see all those bills paid by somebody else besides me.

Ms. LAMEL. Oh, you'd be paying for them.

VICE CHAIRMAN HORN. Yes. That's correct and that's where I'm leading. It seems to me the case of the male drunk, one foot in the air on a ski, is unusual.

Ms. LAMEL. I pay for that.

VICE CHAIRMAN HORN. You and I will pay for it, but it is an unusual incident. It is not that common a practice.

Ms. LAMEL. Riding a motorcyle?

VICE CHAIRMAN HORN. Maternity is not an uncommon practice.

Ms. LAMEL. Yes.

VICE CHAIRMAN HORN. Now, the question is, somebody's got to pay for it. It isn't free. It's no free lunch. The State isn't paying for it. Obviously, all the policyholders are. It seems to me one response is that the insurance industry, therefore, makes the rates for young people extremely prohibitive, which then precludes a lot of other disabilities or illnesses from being covered. I just wonder what the rationale is. These things sound wonderful, great, we're all for them. But I'm going to pay for it and you're going to pay for it, and it's a question of who pays and at what age.

Ms. LAMEL. Two things. One is that the principle of insurance is that you take a risk and you spread it among a group, however that group is defined. In community rating of insurance, which you have in health insurance to a great extent, the idea is that the young people pay

for the expenses of the old people; the old people are in part paying for some of the expenses of the group in the middle and that, in fact, if those groups were asked to be placed solely on the basis of their experience, which is what you have in some commercial insurers as opposed to not-for-profit insurers, you have health insurance at age 65 which would be very, very expensive because the truth is that the greatest hospital expenditures are for illnesses having to do with cancer and heart disease and those have to do with the illnesses after age 50.

So that if you take the proposition that the risks ought to be spread among the group, that is part, and we are, in essence, buying insurance as against our risk but paying for someone else's. That's why I am now paying a premium that includes male prostate operations; that's why I am now paying a premium that includes the higher incidence of disease that occurs to smokers, although I myself am not a smoker, so that's the concept of spreading the risk.

In terms of dollars and cents, in New York State, the article 9(c), our not-for-profit insurers such as Blue Cross, have complied with the mandatory maternity provision. I wish to offer the fact that the difference in premium between the groups that do not have maternity because they are State or Federal employees and are exempt and the groups that do have the maternity coverage is a difference of $2 a month per contract.

Really, in terms of the impact, sure maternity is more widespread than the guy with the ski accident. Also, because we can compute fertility rates, we can have a pretty good idea of what to expect from a given group over a given period of time. That should make it easier to provide the insurance, not more difficult. It's a question of whether we accept sharing of the cost for providing good health care for mothers and newborns, so that expense is not a factor and it becomes a social and economic priority.

This morning's paper, as a matter of fact, had an article in Washington about the problem of death among mothers and infant mortality. The infant mortality in this country is twice that of Sweden, which is the number one country in terms of lowest death rate. A lot of that has to do with education and having the ability to receive adequate and usual health care without expense being a factor. It's a question of a certain amount of commitment to that as something that we should be doing.

We treat hemophiliacs; we treat sickle cell anemia; we treat Tay-Sachs; we treat lots of diseases which seem to be endemic to some groups more than others. It's just that the impact of maternity is greater.

VICE CHAIRMAN HORN. I'd like the staff at this point in the record to secure a definition of how Sweden determines infant mortality and as to how those statistics are developed in the United States. As I recall, there is a difference there.

I'd like the reaction of any other members of the panel on this question. I can't disagree with your last rationale, and that's what I'm fishing for in terms of social responsibility of the whole group and particularly the preventive health aspect; but I think it becomes a very real question in the framing of private, voluntary insurance. So this is what I would like a discussion on.

DR. KEINTZ. I have a brief comment and I think it concurs with Linda Lamel's comments. I think essentially what we see is that over time society decides somehow, and perhaps it's through legislators or the impetus by regulators, that certain things should be included within insurance contracts. In the health insurance area, I think these types of contracts are such whereby specific perils are not necessarily mentioned as causes of losses. It's traditionally been a pretty broad coverage, and for some reason we have certain ones—one of them being maternity—which have been treated differently.

As time has gone on we've included more and more types, and I think if need be I guess we or the insurance industry could go and say, "Well, for this specific type of loss, the premium should be this much; for cancer, for heart disease, and so forth." Certainly, we could divide the total premium into pieces.

Then I guess we could ask the question, are you willing to pay 35 cents for cancer protection and this type of thing?

I think what's being said is that this is one more possible loss to a family and, therefore, perhaps this should be covered as well. The question, then, is, how much does it cost every person who participates in this sharing arrangement and is that something which society thinks is necessary and affordable by these people?

VICE CHAIRMAN HORN. Any other additions?

DR. LEWIS. I'd like to inform the Commission of some of the great varieties in the responses to maternity. New Jersey Blue Cross that I mentioned before is very large. In 1972, apparently, I think the EEOC issued some regulations that female employees have to have the same benefits as the wives of male employees. So that meant that in giving group insurance you couldn't discriminate between the female employee and the male employee's wife, and they had to take this into effect in insuring large groups with insurance purchased by employers, which is two-thirds of their business.

At that point they decided to start offering maternity coverage to every female they insured because the vice president, who's also in charge of computer operations, said it was just going to become a

computer nightmare to determine who gets maternity and who doesn't. So he said, "The hell with it, we're including it." And the costs did not go up at all in New Jersey and this is for an enormous plan; 3.5 million insureds.

Boston Blue Cross-Blue Shield, which may be somewhere in the top five in size, to this day refuses to give maternity coverage to people who are only buying a single contract. They may be married, divorced, widowed, or single. They can have any marital status, but as long as they're only purchasing a single contract, they will provide no maternity coverage. This has been a great concern in Massachusetts, and they refuse to change. Yet in New Jersey it's sold routinely to everyone. It's part of the contract.

The Health Insurance Association of America, which you'll hear from today, takes great issue with mandatory coverage. We're talking about making maternity a mandatory coverage. There are an increasing number of bills coming through each State legislature every year that mandate certain coverages be included in health insurance contracts. That's what New York did with maternity. In New Jersey they recently did it with alcoholism. Alcoholism is now to be treated as a medical disease, and every insurer has to cover it.

It is much more expensive, I believe, to cover alcoholism for a year in New Jersey than maternity. The birth rate is going down dramatically. Alcoholism takes a lot of care, a lot of days in the hospital to dry the person out, a lot of medical treatment. You have malnutrition problems. You have blood problems. You have all sorts of other problems with alcoholism. Yet alcoholics must be covered, by State law in New Jersey.

The health insurance industry writes articles to this day against mandatory coverages for maternity, but I have yet to see them write one article on alcoholism. I am sure that is a more expensive coverage. We probably have more alcoholics being treated per year than babies being born; that's an interesting statistic to get.

VICE CHAIRMAN HORN. Or we should have.

DR. LEWIS. And our fertility rates are going down dramatically.

MS. LAMEL. If I may add, Mr. Vice Chairman, the question about rates, we have an interesting problem. I don't think it's unique to New York and we don't have the answer. But to give an example of how disproportionate rates can be when you think they're equal, Blue Cross in New York requires that when you buy a contract, you buy it under your true marital status.

Now, the difference in rate between single and family is close to double. Let's say it would be about $20 a month for single and $40 a month for a married person. Well, I am a working woman and I sign up under my true marital status and my employer has to pay $40 a

month for the coverage; but my husband is also employed and also gets Blue Cross and must give his true marital status, so his employer pays $40 a month. Now, the two of us are having paid in for us $80 a month, which is twice what the family coverage would be if only one of us was working. So that Blue Cross, in my view anyway, has this little boondoggle that comes as a result of instances in which there are two people working where they are getting double the premium for family coverage when it can only be used once. I mean, they have coordination-of-benefits clauses. They'll only pay once, but they're getting paid twice.

In attempting to rectify the problem I was told that if people without children were allowed to say, "No, we each want a single contract," rather than a double contract, that the rate for people over 50 would go up some 50 percent because that's where the cost element is. So we have not moved on this yet because we don't yet have an equitable way in which to redistribute this. But we're looking for what we're calling a coordination of premiums in families where there is more than one coverage. We don't have that formula yet, but it seems to me the inequity is already there where families are paying much more than what they're using.

VICE CHAIRMAN HORN. Very helpful. Any other last comments?

MS. LEWIS-CARTER. I would like to say that in Pennsylvania that we are presently pushing for mandating maternity. At the present time we only treat complications. Before we proposed our legislation, we solicited from the Blue Cross plans what they envisioned this would cost. We already mandated newborn coverage and that meant a roll-on on every insurance contract and that came in at about 25 cents per contract. For maternity, they envision it will be 50 cents per month per contract. So I don't think that it's an extraordinary cost.

VICE CHAIRMAN HORN. Mr. Jones.

MR. JONES. Just one final observation. I think the problem you have here is not the question of what you should do or you shouldn't do. The question is if you're going to have private insurance companies selling individual contracts to individual people, if you require maternity and you still allow companies to underwrite or to develop co-pay schemes or deductibles, you're going to wind up at the same place you were before. If you aren't setting forth minimum standards that affect all the provisions of the policy, including deductibles and co-pay, you're going to wind up in the same place you were before.

It's very easy to deal with this problem in groups because the way the purchasing arrangement is done, the bargaining power of the two parties is very nearly equal. We're talking about individual coverage for individuals where you are going to allow a company to

underwrite; you're going to allow a company to design co-pays and deductibles, and you wind up back in the same place that you are today in the way they structure, but it doesn't get at it a different way if it turns out to be a cost that is different between different groups of individuals.

VICE CHAIRMAN HORN. Thank you.

MR. JONES. It is the same problem you have if you say that all auto insurance ought to be the same price regardless of geographic area. If companies believe that the rates are higher in one area, they just won't write in that area. If you don't make them write, you don't achieve anything for the people that you're trying to benefit.

VICE CHAIRMAN HORN. Thank you.

COMMISSIONER SALTZMAN. Commissioner Freeman.

COMMISSIONER FREEMAN. I have just one question to ask each of the representatives of the State regulatory agencies, and that is whether your State has ever imposed sanctions for reasons relating to sex, race, national origin, or religious discrimination against any insurance company?

MS. LAMEL. New York tried in I believe it was 1967. I believe that was the year. The insurance commissioner used the authority given to him under the Unfair Trade Practices Act, which said that you could not discriminate by race, color, creed, or national origin. That's the way it read at that point.

He went against an insurance company, claiming that their failure to write homeowners' and auto insurance in geographic areas which happened to be predominately black constituted discrimination in its effect, although they were not discriminating in terms of the sale of a policy. That was the Royal Globe case. It went to our court of appeals which interpreted the law in the following way. It said that whether or not an insurance company chooses to sell policies in a given area is a matter of business judgment based on the information they have in regard to their losses and their costs, and the fact that it affected a particular racial group more than any other racial group could not be used as a means by which to punish the insurance company; that, in fact, good business judgment was being exercised, not racial discrimination. The insurance commissioner was set back in that decision.

There, as far as I know, has been no subsequent challenge on that basis to the insurance industry on race, color, creed, or national origin. We may have one forthcoming on sex because, in light of the mandatory maternity provision, private insurers have decided that they do not choose to sell to women of childbearing age; and so we may be on the verge of an instance there where we will have to bring action.

DR. KEINTZ. I've only been with the department about 11 months, so that's about all the history I have to give to you. I don't think we've had any formal fines or forfeitures in this area. But certainly when we're aware, through the complaint system or letters of inquiry, about something like this happening, we would contact the company and try to correct the matter.

We had one domestic company which was not insuring people with handicaps and part of their penalty, if you want to call it that, was to put on an advertising campaign about how they would insure these people and things of this nature. Rather than create a state of forfeiture, they did something for society.

One other matter is that our commissioner is the chairman of the red lining task force for the NAIC and one recommended change to the Unfair Trade Practices Model Act is that it would be an unfair trade practice to discriminate based on geographical location of a person. This has not been adopted, but it's in the pipeline right now.

DR. LEWIS. New Jersey has taken no formal action on those grounds involving fines, revocations, or suspensions of licenses. We generally try to negotiate on those issues.

MS. LEWIS-CARTER. I would say the same for Pennsylvania. I know of some matters that were handled informally where it was alleged that the company was refusing to write someone based on sex. We had a case for automobile insurance where it was a single woman living with a man outside of marriage and then her policy got cancelled—these type of situations. In instances the company has come back and written this person. Additionally there have been a few consent orders involving sexual discriminatory language in contracts. Companies, I think, were ordered to rewrite contracts, provide coverage, cease and desist from their practice.

MR. JONES. All our cases have been of the same kind; that is, specific cases which could be resolved by the person getting insurance. It appeared in those cases that you couldn't prove the total set of reasons that the company used or determine what was the predominant reason.

We do have a case underway, which hasn't come to hearing yet, dealing with geographic discrimination. We have the standard in our Unfair Trade Practices Act that geographic discrimination has to meet a higher standard of proof in terms of different treatment by geographic area, rating and others. There is a case in the works on that. But none with respect to race.

COMMISSIONER FREEMAN. Thank you.

COMMISSIONER SALTZMAN. I want to express our real appreciation. I think each one of the Commissioners as well as the staff feels that we

have been greatly enlightened by your participation. Thank you a great deal for being present.

We will reconvene at 1:30 for our afternoon session.

Wednesday Afternoon, April 26, 1978

Discrimination Against Minorities and Women in Pensions and Health, Life, and Disability Insurance: The Insurance Industry Response

CHAIRMAN FLEMMING. We'll open now. The presentor is Mr. Richard V. Minck, who is vice president and chief actuary of the American Council of Life Insurance. He has held this position since 1973. Mr. Minck has also served as assistant actuary with the Prudential Insurance Company, Newark, and as actuary with the Life Insurance Association of America, New York City. He is a fellow of the Society of Actuaries and a member of the American Academy of Actuaries. He appears in *Who's Who in Finance and Industry.* Mr. Minck received his bachelor's degree from Columbia University.

We're very happy to have as one of the discussants Mr. Asa T. Spaulding, a business executive residing in Durham, North Carolina. He is the retired president of the North Carolina Mutual Insurance Company. He's also served as chairman of the board of trustees of Howard University, as a member of the board of directors of the NAACP Legal Defense and Educational Fund, and as a member of the boards of directors of several other firms and associations. Mr. Spaulding holds a master's degree in mathematics and actuarial science from the University of Michigan and has received honorary L.L.D. degrees from Shaw University, North Carolina College, the University of North Carolina, Duke University, and an honorary doctorate in business administration from Morgan State College.

Another discussant is Mr. David Hurd who was made vice president of the Bankers Life, Des Moines, Iowa, in February 1971. He previously had served as second vice president since 1969. Mr. Hurd joined the Bankers Life in January 1954 and was assigned to the Group Department. He was named assistant supervisor, Group Division, in April 1957 and supervisor, Group Division, June 1958. He was elected assistant secretary in October 1960 and group secretary in April 1966. A native of Chicago, he attended Oak Park High School and received his B.A. degree in 1951 from Michigan State University. He is a fellow of the Life Management Institute and has taught chartered life underwriter courses.

The other discussant is Mr. Thomas Gillooly who is the associate general counsel of the Health Insurance Association of America, in charge of the New York legal office of the association. He was assistant attorney general and later insurance commissioner for his native State of West Virginia. Formerly on the legal staff of the American Life Convention in Chicago, he has also been a member of the home office law department of the Prudential Insurance Company of America. He holds his B.A. and L.L.B. degrees from West Virginia University.

Then the final discussant is Mr. Cruz Alderete who is a chartered life underwriter and who is president of the First Americans Financial Services, an Indian and Chicano insurance firm.

We're delighted to have all of you present with us for this final session which carries the heading "Discrimination Against Minorities and Women in Pensions and Health, Life, and Disability Insurance: The Insurance Industry Response."

Mr. Minck, we'd be very happy to hear you at this time. As you probably know, the rules that we've been following have been that the presentor takes about 15 to 20 minutes to summarize his paper. The entire paper, of course, becomes a part of the record of this consultation. Then each discussant is given 10 minutes to respond.

STATEMENT OF RICHARD MINCK, VICE PRESIDENT AND ACTUARY, AMERICAN COUNCIL OF LIFE INSURANCE

MR. MINCK. Mr. Chairman, thank you. I'm not sure what the rules were in the past, but if at any point you'd like to interrupt what I'm saying, please do so.

CHAIRMAN FLEMMING. We'd prefer to let you make your summary uninterrupted for a period of 15 to 20 minutes, and then we'll give the discussants the opportunity and then after that the members of the Commission will undoubtedly have questions that they'll want to raise. Thank you.

MR. MINCK. First of all, I'd like to start with a brief overview of where we stand; that is, where the life and health insurance business stands. Our member companies have changed both their insurance policies and their underwriting practices in order to end differences in the treatment of men and women that they found to be inappropriate. The sales efforts the companies have made have led to substantial increases in the amount of life insurance purchased by women and in the share that women represent of the life insurance market.

The recruiting efforts of the companies have increased the number of women who are life insurance agents. More than half of the employees of insurance companies are women. Many of the companies

have undertaken affirmative action programs for both women and minority employment.

Now, in trying to preserve and improve equity between men and women, both in pricing and in designing policies, the companies have also been pursuing equality, at least with regard to availability of coverage. A part of this effort is the work by the Society of Actuaries to develop separate mortality tables reflecting mortality experience of men and women insured under standard individual life insurance policies.

When the amendments to the standard valuation and nonforfeiture laws, most recently adopted by the NAIC, are enacted by all the States, and at this point about 15 States have enacted them, companies will be able to reflect differences between male and female mortality by using an age setback of up to 6 years for women in nonforfeiture benefits and the appropriate differences in premiums, dividends, or both premiums and dividends.

That's a brief summary of the activity we have seen of the business and of the 520 member companies that belong to us and the Health Insurance Association and who between them write about 90 percent of the business in the country.

In my paper I refer at some length to the Model Unfair Trade Practices Act which was adopted by the NAIC and which has been enacted in virtually all of the States. Now, the provisions of that act require that insurance companies establish fair practices for placing each individual in a premium class that fairly represents the risk he or she brings to the company.

We agree with the requirement in the model act that the various life insurance options, such as guaranteed insurability or waiver of premium, should be available to women just as they are to men. We also support the idea that adequate coverage should be available to women and men, but only to the extent that there is sufficient insurable interest in either case; that is, regardless of whether a man or a woman is involved.

In health insurance we support the idea that coverage for complications of pregnancy should be available to women without regard to marital status. Some 4 years ago our associations established policy on the issue of sex-based discrimination. Both organizations reaffirmed a need for insurers to classify according to the expected risk of loss based on relevant information that includes mortality and morbidity experience by sex. At that time our organizations determined not to oppose legislation or regulation designed to ensure the equal availability of coverage to both men and women and to encourage companies to offer coverage on this basis.

In order to provide protection to millions of people of all ages, both sexes, and with a wide range of physical impairments, insurance companies have had to develop a system of risk classification that provides equitable treatment for individuals representing different degrees of risk. Now, the great movements to secure civil rights during the last three decades have led to the enactment of laws and to the promulgation of regulations that appear to call into question, at least in some cases, the distinctions that insurers draw in underwriting risks. We think this conflict is more apparent than real. We think that the civil rights movement should be concerned only with unfair discrimination.

The differences in treatment of men and women in setting premium rates are designed to reflect differences in expected claim costs. The same procedure is used for the same reasons for individuals of different ages and for individuals with different impairments. We see no overriding social purposes that should prohibit this practice, nor do we believe that existing laws preclude it.

Now, within the context of this consultation and the other papers that have appeared, it seems to us that there are two key areas in which the companies feel it is not in the public interest to change traditional insurance practices, but some of your other witnesses have urged the contrary. One area in dispute is the mandating of normal pregnancy coverage in health insurance policies covering both medical expenses and income loss through disability. The second is the requirement that pension plans adopt so-called unisex mortality tables.

With regard to the first question, there's pending legislation in Congress—that's Senate 995 and there's a corresponding House bill—that would require employers to provide both disability and medical expense coverage for normal pregnancy on the same basis as for an illness. This is quite a different matter from mandating coverage in all insurance policies. The point is that employee benefit plans are often uninsured, and employers or unions pay the benefits directly or through a trust.

If you were to require insurance contracts to pay benefits for normal pregnancies and make no such requirement applicable to uninsured plans, the result would be that employers or unions who are unable or unwilling to pay for normal pregnancy benefits would simply go to an uninsured basis.

At the time of the hearings on Senate 995 or House 6075, which is a similar bill, but with at least one key amendment made, we estimated that either of those bills would mean an additional annual cost of about a billion dollars for medical expense plans other than Blue Cross and about half that for disability income plans. Of the billion dollars for medical expense, close to two-thirds, we estimated, would be spent to

pay benefits to male employees for pregnancies involving their dependents. When the bill was introduced, we urged a number of amendments to keep costs under control.

The impact of a requirement that insurance companies use unisex mortality tables to establish annuity purchase rates for pension plans, to value liabilities for benefits purchased under those plans, and to establish the amount of any optional benefits provided under pension plans as alternatives to the normal benefits has to be evaluated with several facts in mind. First, about two-thirds of the people participating in private pension plans in the United States are covered by plans where benefits are paid directly by a trust and where no insurance company is involved. Second, employers are not required by law to provide optional benefits, except for the joint and survivor options in ERISA; nor indeed are they required by law to have any pension plans at all.

If our companies were obliged to set annuity purchase rates on a unisex basis, they might attempt to use rates that were somewhere between current male rates and current female rates, with some guess as to what the mixture is of male and female risks. If so, then the pension plans which provide benefits mostly to men, because of the makeup of their work force, would find it financially unattractive to purchase annuities rather than to establish a trust and pay the benefits directly themselves. In contrast, pension plans providing benefits mostly to women would find annuities to be a bargain. Now, the process of selection that would result from these two facts would inexorably drive the purchase rates for annuities to the female level.

There is no way to require equal treatment of insured plans and uninsured plans because the costs of uninsured plans are simply the benefits that they pay. They, in turn, directly reflect the mortality of the participants.

The requirement that companies use unisex mortality rates to value their liabilities for annuities already purchased would result in either setting those liabilities or reserves at a level that is too high or dangerously low, unless the rates used happen to be close to those that reflect the actual division of benefits between males and females. If you make them too high and the reserves are overstated, you would disrupt the flow of dividends to pension plans; that is, to the employers and unions setting up pension plans. On the other hand, if you set it too low, you might risk the solvency of the company.

The third area in which you might use unisex mortality rates would be to determine the amount of benefit you paid on any optional basis as an alternative to the normal plan benefit. That would face many plans with either changing from the current approach of making benefits of equal value on an actuarial basis to having the same value for both

sexes. Under the current basis of actuarial equivalents, the costs of the plans are not affected by the benefit chosen by any participant. It's a matter of indifference to the plan which benefit the employee chooses.

If you go instead to a unisex basis, the resulting costs would depend on the extent to which an employer decided to subsidize the benefits for one sex or the other. In some cases it would require subsidy for the males, some for the females and, of course, he might decide just to cut out the options rather than make them more expensive.

Two years ago a task force of actuaries employed by the Department of Labor estimated the average cost to pension plans of changing all pension plan benefits to a unisex basis. This was done, I believe, at the request of the EEOCC, and they used 20 representative plans. They determined an increase of about 3 percent would result. Now, if you apply 3 percent against the annual pension plan costs for that year, that would have been about $2 billion.

The task force in their report also noted that there was considerable variation from plan to plan. If you have a fairly high percentage of women, they felt that the expenses might increase as much as 10 percent.

The validity of using sex as a basis for classification of risks has been recognized by the Federal Government and almost every State. If you were to enact legislation prohibiting variation in benefits to reflect differences in mortality by sex, the premium rates insurance companies charge would have to be increased for whichever sex was currently paying the lower rate. Again, for the selection process that I spoke of a moment ago, what that means is that, in the case of individual annuities, an insurer charging rates lower than its previous female rates would eventually find that they were forced up to the female rates. In group contracts, you'd have a similar result. On the life insurance side, what you would end up doing is bringing your female premium rates up to the male rates, because the female premium rates are currently appreciably lower than male.

The question of what it would cost in the long run to individuals would be difficult to predict in advance precisely. You could do it on a per-individual basis, but what you don't know is how many members of the sex for which you're increasing rates would buy the same amount of coverage that they did before. We have found in the past that where you've had to increase rates it decreased the amount of the product you were able to sell.

Having bearing on this, of course, is the decision the Supreme Court handed down yesterday—at least to some extent—in the Manhart case. If I could digress just a moment, that's kind of a fascinating decision. I spent most of yesterday reading it two or three times trying to guess

what it meant. I think you get a flavor of the difficulty of the problem involved from the discussion of what happened.

Justice Stevens delivered the opinion of the Court in which Stewart, White, and Powell joined in all but part 4. Part 4 was the question of refunding contributions to the women involved, of which Marshall joined. That is, Marshall joined in part 4. In part 4, of which Burger and Blackmun and Rehnquist joined, Blackmun filed an opinion concurring in part and concurring in the judgment. Burger filed an opinion concurring in part and dissenting in part, and Brennan took no part in the consideration or decision of the case. So that you had the eight Justices split at least four ways. There are four separate opinions filed.

The majority opinion starts with the observation that as a class women live longer than men. It goes on for another 14 pages explaining why despite that it is a violation of Title VII of the Civil Rights Act for women to contribute on a different basis than men to get the same benefits. The balance of the brief, part 4, explains why it was not so unreasonable for the Los Angeles Department of Water and Power to use the basis that they did, that there shouldn't be a refund of the contributions. So that in one sense both parties won this case. The women suing the Los Angeles Department of Water and Power won as a matter of principle, and the Los Angeles Department of Water and Power won in that they didn't have to refund any of the excess contributions. Really that was the only matter at issue here because they had changed the basis of their plan some time back.

In the language of the majority opinion, after holding that the practice was barred under Title VII, it went on to say:

> Although we conclude that the Department's practice violated Title VII, we do not suggest the statute was intended to revolutionize the insurance and pension industries. All that is at issue today is a requirement that men and women make unequal contributions through an employer operated pension fund. Nothing in our holding implies that it would be unlawful for an employer to set aside equal retirement contributions for each employee and let each retiree purchase the largest benefit which his or her accumulated contributions could command in the open market, nor does it call into question the insurance industry practice of considering the composition of an employer's work force in determining the probable cost of a retirement or death benefit plan. Finally, we recognize that in a case of this kind it may be necessary to take special care in fashioning appropriate relief.

So I would say that even in the majority opinion there is something for everyone to look at, and there are three additional opinions as well. As one of the earlier speakers said, actuaries are very fond of

interpreting law, but if I may be permitted a modest opinion, I think that the matter has yet to be settled by the Court.

CHAIRMAN FLEMMING. Thank you very much. Mr. Spaulding, we'd be delighted to hear from you at this time.

DISCUSSION BY A.T. SPAULDING, SR., RETIRED PRESIDENT, NORTH CAROLINA MUTUAL LIFE INSURANCE COMPANY

MR. SPAULDING. Mr. Chairman, may I request that I pass at this time? The reason being that the paper that I received was not received in time for me to read it before Sunday, and it was not of the nature that I expected it to be. I understood that my responsibility would be to deal with equal employment opportunities all the way up to the board of directors. For that reason and in view of the fact that matters discussed in the presentor's paper have been dealt with one way or another both yesterday and today, I don't know that I could add very much to that on such short reading.

COMMISSIONER FREEMAN. Mr. Chairman.

CHAIRMAN FLEMMING. Yes, Commissioner Freeman.

COMMISSIONER FREEMAN. I would just like to ask if Mr. Spaulding will speak to the subject which he came prepared to speak.

CHAIRMAN FLEMMING. I was just going to suggest that we'd be delighted to hear that.

MR. SPAULDING. You want me to do that now?

CHAIRMAN FLEMMING. Yes, right now.

MR. SPAULDING. Much has been said about the matter of cost bearing and subsidizing. I think, first, if you look at black insurance companies, they could raise the same question that is being raised on the matter of certain restrictions in contracts. I say that from this standpoint, when the—for want of a better name—white insurance companies decided they wanted to employ blacks, where did they turn to start their recruiting? To the black insurance companies. And yet the black insurance companies were less able to bear that cost burden than they were.

When our company recruited, trained, developed million-dollar producers and it became known in the industry, they were focused on them and some of them left and went to those companies, and we had to start all over again. As a matter of fact, the first million-dollar producer by North Carolina Mutual Life Insurance Company was employed by one of the major companies and became one of the top 10 producers in that particular company.

Second, the matter of discrimination against women—North Carolina Mutual had its first woman officer over 50 years ago. Women have had upward mobility in that company from that time until now.

The first woman financial vice president of North Carolina Mutual started as a secretary to the treasurer. She became assistant to the treasurer, then assistant treasurer, and when he retired, she became treasurer and, shortly thereafter, financial vice president. Her name was known on Wall Street in all the brokerage houses and bond investment firms. I still run into some of these people because she handled all of our investment securities—the buying and selling of securities, bonds, and equities.

In addition to that, I just happened to put in my pocket before leaving Durham the roster of employees of the North Carolina Mutual on the directors, officers, and administrative staff. At the last annual meeting in March three new directors were brought on. One was a woman who is president of a savings and loan association in Chicago. I look at the other officers and I find that 4 out of the 28 major officers are women. We've had two women corporate secretaries. A woman is a corporate secretary now and became that after her predecessor died. We now have four women officers, all the way from associate controller on down, and on the home office administrative staff, 11 out of 25 are women. So we've had that upward mobility.

After I retired as president of North Carolina Mutual, I became very much interested in trying to get women and minorities on boards of directors of the major corporations. In January and February of 1970, I wrote 109 of Fortune's 500 companies, called their attention to the fact that I had observed that they were advertising as equal employment opportunity companies. I said you can make a more convincing case in the public mind if they can see evidences of upward mobility in your company, including on your board of directors, instead of one black as a vice president in charge of special affairs as window dressing when you enter the office and you find a black sitting out there as a receptionist as an indication of the opportunities in your company.

I'll end by just reading a few excerpts from a publication on May 3, 1970, calling attention to this fact and some of the things I included in that letter. I was not arguing to elect blacks or women to their board of directors just for window dressing or just to represent a particular segment, because there were qualified blacks and women who had demonstrated that they could bring an additional input into their board deliberations. Within 3 weeks after I wrote those 109 companies, I had received replies from 69 of them, none of which had blacks or women on their boards, and they thanked me for bringing it to their attention and indicated they would put it on their agenda for future consideration.

As I said, I would like to read from *Chronicle Features* on May 1, 1971, published in San Francisco. My activities had come to their

attention. It is entitled "Lily-white Boards to Go By the Boards." Without reading the whole thing, I'll turn this over to the Commission.

> The most recent survey conducted by a West Coast coalition called Responsible Corporate Action found that of the 1,008 directors of the six or seven largest California companies, not one was a Negro or a Mexican American and only six were women. Most of them were related by marriage to the top executives.
>
> Moves in the last six months show that this picture is changing. Seven of the largest corporations in the land have placed blacks on their boards.

It goes on to mention them. And it said: "One man who deserves a large measure of credit for these moves"—and it names the person. It says: "About a year ago he began writing on his own to major corporations suggesting that they consider Negroes on their board seats." It also asked for women.

Then on March 4, in *Business and Society,* there was an article entitled "Blacks Break the Color Bar in the Board Room."

> Mr. Spaulding, who is now a consultant in Durham, received replies from 69 companies. Eight of these companies said they were leaning very strongly toward doing exactly what Mr. Spaulding suggests. Another 20 informed him that they were positively inclined toward his ideas. The results are now beginning to appear in clusters. It may be that these moves would have been made without his intervention, but there's no question that he's served as a major catalyst in the spate of recent appointments.

Then it names such companies as Chase Manhattan, Columbia Broadcasting Company, Commonwealth Edison, Equitable Life Assurance Society, First National Bank of Washington, First National Bank of the City of New York, General Motors, Atlantic & Pacific, Metropolitan Life Insurance Company, Michigan Consolidated Gas Company, Pan American World Airways, Potomac Electric Power Company, Standard Oil of Ohio, Westinghouse, and so on.

This was within a year. After that I began to think, what is the next step? After these blacks get on these boards of major corporations, not having had any such exposure before, and limited in experience, how are they going to cope with the situation, because how well they perform will determine how accelerated this movement will continue. So we sent letters to these blacks, other minorities, and women to find out if they would be interested in attending a workshop, because shortly thereafter the Bar-Chris decision was handed down by the court holding directors responsible or liable for failing to perform their duties and to discharge their responsibilities as directors.

I knew with these new directors getting into water which might be over their heads that it might be well to get them together after they had had a year's experience on their boards. As a matter of fact, this workshop finally was pulled off on September 23, 1973, at the New York Hilton Hotel. At that time I think there were over 130 of these major corporations that had women and minorities on their boards of directors.

Then in preparing a program for that workshop, there were several items. This [exhibit was presented] is the program that we had at that first one-day session. A topic was "The Role and Problems of the Director, His Legal Obligations and Responsibilities," and refer to the Bar-Chris case. We invited to be the keynote speaker to discuss that subject the Honorable Samuel R. Pierce who was former General Counsel for the Secretary of the Treasury and who's a partner in the law firm of Battle, Fowler, Lipstone, Pierce and Kheel.

The next one was "The Role of the Woman and/or Minority Director," whether it was constituency representation or the broader aspect of governance. We had Dr. William Greenough, chairman of the board of Teachers Annuity, to be the speaker on that, because at that time the press was raising the question as to whether or not blacks were on the board just to represent blacks or women and minorities or to represent the interests of all shareholders. So we felt that they should know what their duties and responsibilities were and what role they wanted to play.

The next was off the record and there was no news coverage or publicity given to it, because we wanted these directors to feel free to share their responsibilities, their problems, and how they coped with them.

CHAIRMAN FLEMMING. You have about a minute.

MR. SPAULDING. I'll end by saying that I have a brochure here. While this sharing of views was off the record, we were able to get certain guidelines given by Judge Pierce as to what directors should know before accepting membership on boards and what the responsibilities were afterwards and then the excerpts from the comments of what some of the people said.

I might say that at the end of that meeting, there was a standing ovation for holding the meeting and also asking that one follow. What followed thereafter is another story and my time is out anyhow.

CHAIRMAN FLEMMING. Thank you very, very much. We'll undoubtedly have some questions.

Mr. Hurd, that is not a mike. If you'll take the one that Mr. Spaulding had.

MR. HURD. Just one more evidence that society is getting beyond me. It looks like a mike.

CHAIRMAN FLEMMING. It's a little complicated.

DISCUSSION BY G. DAVID HURD, VICE PRESIDENT, BANKERS LIFE COMPANY

MR. HURD. Dr. Herbert Denenberg in his opening overview of the insurance industry for this consultation said that insurance is many things, but first and foremost it's a business, and as a business it cannot compel the public to buy. This is perhaps no place more evident than in the pension business, because at the end of 1976 the insurance industry held $88 billion of private pension plan assets, which is about 36 percent of the $250 billion of private plan assets in the U.S. I think this is some evidence that placing pension plan assets with an insurance company is a voluntary act on the part of the public, since almost two-thirds have been placed elsewhere.

My job at Bankers Life is running our pension department, and at bottom that job consists of two fundamentals which have to be met if we're going to stay in business. One is that we have to attract dollars in the door, not drive them back out. Our pension products and services must attract pension fund money, not drive it away. Secondly, the prices for our products and services have to be at a level where they make money rather than lose money, for if we bring money in the door but at prices that consistently lose, that will also remove us from the pension business.

The pension business is a complex business. It's not one thing; it's many things. The insurance industry's pension offerings to the public are not of one product type or not one service. They are many of each. Any particular pension customer is attracted by one or perhaps several of these products or services, but rarely all. For example, some may be mostly interested in the investment services that the insurance company can provide. Others may be interested in purchasing lifetime annuities for retirees. Only a fraction of this $88 billion of pension fund assets insurers manage is backing up lifetime annuities now in the course of payment.

My next comment now is relating solely to the insurance industry, without regard to what the situation might be as to pension plans at large, and that is this: if there were a successful effort to force insurance companies to sell lifetime annuities at a price that does not recognize the sex of the person receiving the annuity, the overall, long-term result is pretty predictable. Lifetime annuities guaranteed for a price by life insurance companies will tend to become less available in the marketplace. Why would that be?

Any price too high for males will repel the purchase of their annuities. One way these are bought is by employer-sponsored pension funds. An employer-sponsored pension fund will choose to pay these

lifetime annuities themselves at the lower, true cost rather than pay the higher one. Other types of plans provide a lump sum distribution at retirement, such as a profitsharing fund where the retired employee can take that account value and get out into the marketplace. An individual male buyer would tend toward self-handling through savings and loan or mutual fund rather than the purchase of a lifetime annuity at too high a price.

Any price too low for females will attract the purchase of their annuities. Attracting dollars at prices inadequate for the product provided is not a success prescription for any business, so annuities remaining in the marketplace on a unisex basis will tend to be priced at the true cost for females.

The end result over a period of time of this activity would be that the present fraction of the insurance companies' share of the pension market that comes from the sale of guaranteed lifetime annuities is going to shrink. If the result of that shrinkage were an improvement in our society, I would favor it. Where the result is simply a decrease in the availability of guaranteed lifetime annuities to the public, I see no reason to seek such a result.

The pension business is competitive. If we thought it was possible to bring more dollars in the door and make money rather than losing it by adopting unisex pricing, we'd reach for it. We don't reach for unisex pricing, because we can't compel a certain mix of male and female buyers for lifetime annuities. So if unisex pricing of lifetime annuities were mandated for the insurance industry, the industry would just have to focus more of its efforts on its investment services and administrative services to pension funds to try to make up for this decreased market in lifetime annuities.

A new marketing effort would also occur. The insurance industry has always offered fixed-period annuities. This is a regular series of monthly payments for a specified number of years. For example, a customer can buy a 10-year fixed-period annuity. Monthly payments in a fixed amount are made for 10 years whether the buyer lives for 5 years or 15 years. The number of payments and the amount of each are spelled out and guaranteed at the time of purchase. Sex is irrelevant because the payments are made whether the buyer lives or dies.

These annuities haven't been very popular for a couple of reasons. If the buyer chooses a short period in order to get large monthly payments, the buyer may outlive the payments and have no income thereafter. If the buyer chooses a long fixed period to cut the chances of outliving it, then the monthly payments are much smaller and there's less to live on. If death occurs earlier than the end of the period, the heirs get some money, but the retired person had a lower

standard of living. These two major problems are the very reason for the popularity of guaranteed lifetime annuities.

In order to try to get back some of the lost market for lifetime annuities if unisex pricing were compelled, insurers will undoubtedly try to recoup through promoting these fixed-period annuities where unisex pricing is both automatic and financially sound. However, because they simply don't fit the need of retired people for lifetime income as a lifetime annuity does, it seems unlikely much in the way of increased sales will be achieved.

In summary, then, mandated unisex pricing would not change the fact that women outlive men. What it will cause is a decrease in the sale of lifetime annuities by insurance companies, since males will tend not to buy at a too high price. It will, therefore, cause the prices of lifetime annuities to rise to the level called for by female mortality, thus not achieving a price reduction for women. Also, it will change insurance company efforts to sell to pension funds more towards the investment and administrative side. Lastly, it will make some shift to increase the portion of pension assets held outside insurance companies by banks, self-administered trusts, savings and loans, mutual funds, and so forth.

Thank you.

CHAIRMAN FLEMMING. Thank you very much.

Mr. Gillooly.

DISCUSSION BY THOMAS J. GILLOOLY, ASSOCIATE GENERAL COUNSEL, HEALTH INSURANCE ASSOCIATION OF AMERICA

MR. GILLOOLY. Thank you very much, Mr. Chairman, members of the Commission. I really have no exception to take to any of the statements that have been made by the preceding distinguished speakers here. Each of them has a national reputation in our business. Mr. Minck, in particular, has stated the affirmative case on the issues before this consultation as far as the life and health industry is concerned.

My background is that I spent 10 years in State government and for over the past 20 years I've been working for the life and health insurance business concentrating on regulatory problems, primarily at the State level and it seems increasingly at the Federal level also from time to time. So, it's from this stance and also from the perspective of the health insurance business that I would like to address a few remarks to you.

At this stage in the program, indeed, there's very little of an original nature that someone in my position can say. So I will talk from that perspective. The health insurance business, some people say, has been

in a crisis, or sometimes it's stated that there is a national crisis in the organization and delivery of health care. Our business has been living in this state, whatever it is, whether it is a crisis or not, particularly for the past 10 years. There have been numerous proposals for national health insurance. I thought Ms. Williams gave a very fine paper, but I was rather amused when she responded to a question and said, I believe, that no one really favors the Federal Government taking over the health insurance business.

Well, this is precisely what has been under consideration and very strongly advocated by certain members of Congress and some members of the public in general in recent years. Indeed, there is some thinking along those lines. However, our experience has been, as people in government, particularly in the Federal Government, have become more aware of our business and its problems and what we are trying to do affirmatively, the prospect for a type of national health insurance that would exclude the private sector has become more remote. Indeed, we think the future lies in a partnership between the private sector and government, each playing its appropriate role. It's in that light that we want to be responsive, and it's in that light that I want to speak to you today.

Now, we do have some problems that I don't think have been stressed too much. Recently, there have been adopted a variety of legislative-mandated benefits, only some of which are based upon alleged unfair discrimination. The lack of uniformity in such legislation has created serious problems for employers doing business on a multistate basis and for their insurers. Such legislation has occurred not only in areas of alleged discrimination such as mandated coverages for maternity, but in a whole variety of other instances, such as mental illness, drug addiction, alcoholism, newborn children. Many of these have been mentioned during this consultation.

There are also conflicting State laws requiring reimbursement for services of various practitioners of the healing arts, including chiropractors, podiatrists, psychologists, social workers, practitioners of orthomolecular and Oriental medicine. Many people in our business, particularly group insurers, are starting to wonder about the viability of the State system of regulation. They're wondering if we aren't meeting ourselves coming back when employers and their employees cannot sit down and really bargain for the types of benefits that they want in a contract without having them unduly affected by sometimes arbitrary and conflicting State laws.

It seems to me from the statements that have been made at this consultation that discrimination because of race and ethnic background is not really an issue as far as the insurance business is

concerned. The sole remaining area of consequence, from the standpoint of health insurance, appears to be sex discrimination.

The insurance business is closely regulated. I don't think anyone could say, after this morning's discussion, that we are dominating the insurance departments in New York, Michigan, New Jersey, and Wisconsin. This is obviously an extremely independent group of individuals, and I might say that this is just the way we want it. We really don't want to dominate our regulators. We want to work with them constructively and productively. I really believe that is the role that the insurance business in general is playing.

I would like to stress that, as important as the issues are that are before this consultation, there are other issues such as the rising cost of health care, which President Carter has targeted as the number one problem, and with which we agree. This pervades almost everything that we do. We would like to be able, as an industry, to satisfy all our critics, even those that speak from a point of view that we think is not sound, but there are only so many pennies in that dollar and, frequently, if they are devoted in a way that is contrary to insurance principles, we know that the basic coverage that is in the best interest of everyone is going to be severely limited. This issue of rising cost of health care is a very difficult one, indeed.

You've had outlined for you very well the events that led to the early 1970s, the events that led to the industry and the regulators addressing themselves to sex discrimination. I don't think we were driven into responding to this at all. I think the leaders in our industry were already well on the way to recognizing that some of these practices and policies that existed in the past were out of date.

I worked with Commissioner Denenberg on this issue. As a matter of fact, Commissioner Denenberg didn't get around to this problem himself until he was made a party defendant in a Federal case dealing with sex discrimination on the basis that his department really hadn't done what it was supposed to do. He then became very interested in the problem and worked with us. I must say he worked in a very constructive way. The recommendations that our task force made to him by and large were adopted—I'm talking about our industry task force—in a regulation, and this became the prototype for the National Association of Insurance Commissioners' regulation and regulations that have been adopted throughout the country. These regulations were fine; we supported them and we thought of many of the principles that are in them.

I'm not here to speak for State regulation of insurance, but I do think you heard one side of the picture this morning. There's a lot of work that goes on in the National Association of Insurance Commissioners. Most of it goes on between the two semiannual meetings. I'm spending

quite a bit of time now working on a problem with respect to discrimination in insurance against the blind. Now, we'll come to the meeting down here in Washington next June, and there will probably be a very quick meeting and there will be some action taken and there will be people at the meeting—some of them among the insurance departments—who will sit there and say, "My goodness, they just brushed that problem off. No consideration was given to it." This really isn't the way it works.

In between these two meetings, an awful lot of work goes on between the commissioners—those who are interested—and the industry. So that's another aspect. And I don't think that it's fair to suggest that serious and cooperative work is not accomplished by the NAIC and the industry.

I like Commissioner Denenberg very much personally. He's very entertaining. He has many insights into our business. However, one of his limitations as a commissioner was that he took this strident attitude toward our industry. I don't believe he succeeded in getting any major piece of legislation through the legislature because he had the same attitude toward the legislators, and it's a real limitation. And I suggest to the members of this Commission that his keynote, to that extent, where he made broad, unsubstantiated charges about our industry, is really not one that will lead to the solution of what I think are complicated and difficult problems. We wouldn't be here for 3 days talking about them if these weren't close questions, difficult issues, and the solutions are hard.

I think the only exception that I would take to the papers that have been presented so far is that they've dealt with issues in absolute terms which really can't be dealt with so simplistically. I believe they're too complicated for that. I do think that all of these issues are being addressed at some level of government, either by Congress, by the State legislatures, by our regulators, and we will find that they are being worked out at some level of government in our society. I think we will find the solution. It will not be easy. Everyone won't be satisfied. But I think that the health insurance business and the insurance industry—the life and health insurance industry in general—is flexible enough and is responsive enough to conform to whatever our society decides through its duly appointed and elected officers.

Thank you very much.

CHAIRMAN FLEMMING. Thank you very much.

Mr. Alderete.

DISCUSSION BY CRUZ C. ALDERETE, PRESIDENT, FIRST AMERICANS FINANCIAL SERVICES

MR. ALDERETE. Thank you very much for allowing me the opportunity of responding to Mr. Minck's presentation entitled "An Industry Response to Discrimination Against Minorities and Women in Pensions, Health, Life, and Disability Insurance."

My name is Cruz Alderete. I'm president of First Americans Financial Services, Incorporated. As the name First Americans may indicate to you, we are an Indian-owned and managed insurance brokerage firm.

The paper written and presented by Mr. Minck is very well-prepared and professionally done. His document indicates that the industry is showing concerns regarding discrimination. The paradox of my own situation is one of trying to understand the validity of consumer and client concerns in the area of discrimination and to determine the validity of the industry's posture toward this dilemma. For example, how do you explain to an Indian tribe that wants an insurance policy written on their tribal members that their premium will be four times higher than what it would be under other circumstances? I can give them the industry answer and the industry reason, but as I said to you, it does present a paradox from my own operation.

Earlier discussions have focused on the practice of discrimination as being one of the following: (1) overt discrimination; (2) disparate treatment; (3) neutral action. In resolving the issues for our own corporate method of operating, we concluded, and we agree with Mr. Minck's observations and the other professionals here present, that overt discrimination was not the real problem with respect to insurance carriers. Insurance companies' risk selection process by its very nature is a process of discrimination.

For example, insurance companies want to select the good risk through its sound underwriting process. As the authors of the article have said, the State laws prohibit discrimination on the basis of race and sex. In order to provide the millions of people of all ages, of both sexes, with a wide range of physical impairments with insurance, insurance companies have had to develop a system of risk classification that provides equitable treatment for individuals representing different degrees of risk. Their posture there is that overt discrimination does not exist. It's based on a sound business basis.

However, in an effort to react to the issues here presented, it occurs to me that the focal conflict is the disparate treatment given minorities and women and the neutral action of carriers and regulators. Mr. Spaulding began a dialogue which I think ought to be drawn out, because disparate treatment can and has been explained subject to each

writer's interpretation. For example, an insurance carrier can tell you why their annuities provide less of a benefit for women. Whereas if you have a woman recipient, she can make a very good case why it shouldn't be. And both parties would be right.

I myself wish to focus on the neutral posture taken by many carriers with respect to discrimination. The paper that Mr. Minck wrote indicated that the American Council of Life Insurance and the Health Insurance Association of America whose 520 members represent 90 percent of the life and health insurance in force—given this fact, I would like to make the following observations in the form of inquiry, and it goes along the dialogue that Mr. Spaulding initiated.

Of those 520 members, how many stock companies are owned by minorities? Of the mutual companies, how many are managed by minorities? How many minorities and women are represented on the boards of any of those carriers? How many of those carriers have women and minority general agents? Do you know of minority and women general agents for the Prudential, Metropolitan, or The Equitable? What plans do these insurance companies have for involving minority ownership of insurance companies? Are there any strategies?

Mr. Spaulding, a businessman, alluded to a very serious problem. Insurance, and I'm a creature of the industry, is a very tough business. So, Mr. Spaulding, because all of a sudden there's an emphasis on black agents, finds himself losing. Instead of having insurance companies perhaps figure out ways that they can complement his company as well as develop other black agents, you wind up eroding what is there. I think that insurance companies should take a slightly different posture, make a capital commitment to work with the Spauldings and the individuals of this stature.

I make these observations on the basis of the traditional approach of marketing insurance. As Mr. Hurd indicated to you, insurance companies do exist to attract dollars and to make money. In marketing insurance, which is done primarily through the agency system in the United States, a married man will sell mostly to other married men. A female will sell mostly to females. A black will sell to blacks; Chicano, to Chicanos; and as an Indian, I've tried to sell to Indians. If minorities and women get into the business of being insurance carriers, disparate or *de facto* discrimination will be met on more realistic grounds. You won't have people writing about it; you will have people dealing with the issues.

The North Carolina Mutual does not have disparate, *de facto,* or neutral discrimination. They work their business.

The position of ACLI and HIAA in opposing overt discrimination and encouraging State antidiscrimination laws is a sound and fair

approach to the problem. The promotion of the Model Unfair Trade Practices Act developed by the National Association of Insurance Commissioners is a proper way of approaching risk selection. My question here is, how many States have adopted the model?

The article presented by Mr. Minck about sex discrimination in health, life, and disability insurance regarding insurance carriers providing the same options for men, adequacy of coverage amounts available to women, the question of whether rates reflect the difference in mortality, the question of whether female medical problems are treated more seriously than is justified, the question of whether sales literature is geared to a white male audience responds to points one and two, options for men and women. It is interesting to me that the National Association of Insurance Commissioners has developed a model stating that there is to be equality between men and women; however, only 12 States have passed that model regulation. That represents 24 percent of the States in this country.

Insurance companies as a business should be viewed as highly regulated instruments of profit which succeed only on the following bases: sound marketing methods which result in premium dollars being generated. The carrier will make a profit based on good risk selection and mortality and morbidity. For example, keep the claims low. Two, sound investments in the premium dollar; three, low operating and acquisition costs. It is in the foregoing context that insurance companies should be permitted to charge a fair rate for their risks. But insurance companies should make an effort to market their service more widely by encouraging minority-owned insurance companies to be created, so that they, too, can engage in the service of underwriting risks for profit and investing the dollars generated through premium collection. This will require a different kind of commitment from insurance carriers. It will require a commitment of capital, technical assistance, and it will represent a true risk to insurance companies.

CHAIRMAN FLEMMING. One minute.

MR. ALDERETE. But should the industry undertake to broaden its base in this way, much of the cause of the conflict that we're facing today will be resolved. The industry can be instrumental in innovating such programs.

My hope was to cover more issues involving strategies by insurance companies to get them involved with citizens of the minority and from the female community, and I tried not to digress from the paper written by Mr. Minck, because the paper was very well done and it gave an excellent accounting of what a concerned industry is genuinely doing toward the problem of discrimination.

Thank you very much.

CHAIRMAN FLEMMING. Thank you very much. We certainly want to have the full text of your paper for inclusion in the record of the consultation.

Mr. Minck, would you like to respond briefly to some of the comments that have been made by the discussants?

MR. MINCK. I'll be very brief, Mr. Chairman. I know the meeting is by now at least 3 days old and everyone, I think, would be grateful for brevity.

Mr. Alderete's points, I think, are well taken. There was one item that I think may be a little confusing. The Unfair Trade Practices Act has been adopted in 50 States. What I referred to in my paper as having been adopted in 12 States was the standard valuation and nonforfeiture laws and actually the latest edition of them. All of the States have such laws. It's just a question of when they've been updated. Since the NAIC adopted the last version, we're going through the States getting them changed. We've had just one legislative session, but they're all there.

I think the points of bringing minorities into either ownership in the business, enterpreneurial roles, or running general agencies is something that I believe a lot of companies have been interested in. I think the problems of starting such businesses are something that Mr. Spaulding may be able to give a lot more background on than I can. I know that there are at least 15 or 20 companies that I'm familiar with that I would describe, I guess, as being run by either minorities or having women in key roles.

I think in the question of general agencies, some of companies Mr. Alderete mentioned have, in fact, in recent years had some general agents who are women. But again, we haven't done a survey of that sort, so I couldn't give you any numbers.

Mr. Gillooly's points were, I think, none that I would take an exception to or attempt to modify. One problem, and I think it ought to be emphasized again, the reason that insurance companies are in existence is to pay claims. They have also in many instances a desire to make money, but if it weren't for paying claims, there would be no reason for insurance companies. In order to survive, I think most insurance companies have long since concluded that they have got to set their prices accurately. If you set your prices too low, you'll find that you sell an awful lot of insurance, but you pay an awful lot of claims. If you lose $100 on each policy, selling 10 million policies doesn't get you anyplace. Correspondingly, if you set your prices too high, you find that you make a very nice profit on each policy, but you don't sell many policies.

It's that sort of consideration that led companies to try and cover the entire market. I don't know of any risk in North America that a

company would not like to insure if they can set an appropriate premium rate. In the case of normal pregnancy coverage, for example, companies have been writing group coverage for years on that basis. The problem has just been whether or not employers and unions buying the coverage have been able to find the money to pay for it. If they can pay for it, we'll be glad to sell it to them.

Mr. Hurd, I think, has commented on the pension side. I have nothing to add there. Mr. Spaulding, I think, has a unique background. I have nothing to add there except applause for his efforts. I think I'd like to stop there.

CHAIRMAN FLEMMING. Thank you very much. You mentioned the fact that you were aware of 15 to 20 companies that were managed by minority groups and included in that possibly were some companies where women were playing a dominant role. Could you provide us for the record a list of those 15 to 20 companies?

MR. MINCK. I'd be happy to try, certainly.

CHAIRMAN FLEMMING. Commissioner Saltzman.

MR. SPAULDING. Mr. Chairman, Mr. Howard of the National Insurance Association is present and can tell you how many companies.

CHAIRMAN FLEMMING. We'd be glad to have him, then, furnish it also for the record.

MR. MINCK. Yes. As a matter of fact, the way I'd furnish it would be to call him.

[Laughter.]

CHAIRMAN FLEMMING. Okay, fine. Just so long as we get it into the record and get them identified.

Commissioner Saltzman.

COMMISSIONER SALTZMAN. At our earlier session, Mr. Minck, there was some reference to what might be called an inferior product sold in the ghettos to minorities. It was termed industrial insurance, funeral insurance. How can the problems addressed by that kind of insurance and advantage taken of the poor, where the poor are paying a higher rate for insurance than others, be addressed by the industry itself? Is that possible?

MR. MINCK. Well, I think that, historically, some of the largest and most reputable companies in the United States started off selling industrial insurance policies for 3 cents or 5 cents a week in the central cities in existence in the last part of the last century and the first part of this century. Many of those same companies are still selling insurance in those areas and still sell most of the insurance, in fact, that is sold in those areas, though now it will be described as ordinary insurance. It tends still to be small policies. People with low incomes normally will buy small policies.

The expenses of providing such coverage are obviously going to be higher than the expenses of selling large policies in suburban areas. Just the cost of operating in New York City is appreciably higher than it is in one of the suburbs in Wisconsin, say. Correspondingly, the mortality costs for the group will reflect the higher mortality that is generally experienced by the poor. The costs of operating the business will reflect the higher lapse rates that exist in these situations.

But nonetheless, I think the policies being sold by the Metropolitan or the Prudential in these areas—and they're, I think, the largest sellers of insurance in these areas—are ones that fairly reflect the differences. They do not charge different rates, for example, in the middle of New York than they do in the middle of New Jersey. If you buy a $5,000 policy anyplace in North America, it costs the same thing. So that there is, to some extent, a subsidization, if you will, or a spreading of those costs throughout the country.

There may be other types of policies sold by other companies that you would find very unattractive, and I think the answer to that is competition. I think in the long run you will find that most of the policies being purchased are being sold by reputable companies and are reasonable buys.

COMMISSIONER SALTZMAN. Also, in the earlier session, there was the suggestion of seeming conflict of interest referred to where insurance companies provide certain benefits to State commissioners of insurance. Is that a condition with which you are familiar?

MR. MINCK. I have never seen anything along that line. I have certainly not been involved in anything of that sort. I guess I have read some things in newspapers that indicate that there may be some activities of that sort, but I do not believe that it's in the mainstream of the insurance business. I think it's probably special situations, local companies and commissioners with which the people involved have some sort of special situation.

COMMISSIONER SALTZMAN. Do you know what proportion of insurance is sold by the banking industry?

MR. MINCK. There are three States in which savings banks have an insurance company—New York, Connecticut, and Massachusetts. The New York Savings Bank Life Insurance Company, as I remember, is the sixth largest seller of life insurance in the State of New York. Connecticut and Massachusetts are not quite as large in their operations. Between them they would add up to, say, a company somewhere in the top 25 perhaps.

COMMISSIONER SALTZMAN. Do you think the problems of rate setting and so forth that seem to be ones we're addressing in this consultation are true of insurance sold by banking companies?

MR. MINCK. I think that, having heard the president of the New York Savings Bank Life Insurance Company testify on a number of occasions, their operation is simply that of an insurance company, with one exception. They do not have agents. I'm sure I've heard him say on a number of occasions that if there were not an insurance operation outside using agents and promoting the sale of insurance, he would not be able to run an operation in New York.

But as far as the question of setting rates, the policies they sell, they are indistinguishable from those sold by any other major life insurance companies.

COMMISSIONER SALTZMAN. Thank you, sir.

CHAIRMAN FLEMMING. Commissioner Freeman.

COMMISSIONER FREEMAN. Mr. Alderete, you referred to the fact that the premium for the Indian tribes is four times that of the usual and that you would not give the industry explanation. I believe that it would be helpful for this record if you will state the explanation that the industry gave you as to why the premium is four times higher than any other.

MR. ALDERETE. To begin with, we were seeking to insure an entire nation of Indians, and the insurance companies had never assessed a risk of this type. So they went to the only source of available information, which was the Bureau of Indian Affairs and the department of Indian health services, and according to the statistics and the information they had on hand, the mortality factors and the morbidity factors were so severe that the insurance company could only make an offer based on a premium that looked four times what I know we could do for other nonsubstandard risks.

COMMISSIONER FREEMAN. Thank you.

Mr. Spaulding, the information concerning minority companies has been previously requested. However, I think that we would not want to miss this opportunity to get some direct information from you for the record, because the statement also was made, I believe Monday evening, that perhaps women and minorities should start their own companies. Will you tell the Commission the experience that North Carolina Mutual has had and also indicate the extent to which in the past, if you know, when minorities attempted to institute their own companies, whether they received any opposition from the existing major, "white" companies?

MR. SPAULDING. No, not to my knowledge.

I'm pretty familiar with the history of North Carolina Mutual from the time of its incorporation, although that was before I was born. But the company was organized in 1898. We were not very long from slavery. It was incorporated in February of 1899. It opened its doors for business April the first of 1899 in one room in a doctor's office.

When the first death claim was presented that first year, they didn't have the money in the treasury with which to pay the beneficiary. But the organizers were determined that they were going to keep faith with that insured and his beneficiary.

So, Dr. Moore and John Merrick, cofounders, and C.C. Spaulding, who was the general manager, but who was stranded on his first trip out— He was a salesman, general manager, and janitor. He was stranded about 40 miles from Durham. There was no discrimination in passenger traffic at that time and in Sanford, North Carolina, he saw a white salesman—they called them drummers in that day—in the waiting room and he was in a dilemma at the ticket office. He needed 25 cents to get to Raleigh, his next stop. He paid this salesman the 25 cents and they rode together on to Raleigh. To show his appreciation or gratitude— I mention that now because all of these things have been a part of the history of North Carolina Mutual. He went to Raleigh and he was ridiculed for trying to start a life insurance company, that an industrious young man like him ought to go and find something where he had a chance.

But the payment of that first claim was the turning point because that was the crisis in the life of that company. The payment of that claim was the beginning of its success.

COMMISSIONER FREEMAN. What is the value of that company now?

MR. SPAULDING. Today, it has over $160 million in assets, over $3 billion in insurance in force, operates in 13 States, has about over 1,100 salesmen in the field and 270 people, I think, in the home offices. That, in a nutshell, is the beginning and present status of North Carolina Mutual.

I might say, though, that it wouldn't be fair to the other companies not to say that North Carolina Mutual has in its group insurance from $5 million to $125 million of General Motors insurance in that. So approximately—I don't recall what the last figures are—over 80 and maybe more of the jobs in the country, some of their business is reinsured by North Carolina Mutual.

Now, back to the other, I have information that the life insurance companies do have 16 women on their boards, to my knowledge, and 32 banks have women on their boards. There are 60 women directors on the insurance companies, banks, and other major corporations as of 1973. That number has increased tremendously since then. There were 76 minorities on 177 companies' boards. The reason for that, there were some on as many boards—I think the lowest was 2 and the maximum was 10. [Indistinguishable] is on the boards of 10 corporations, beginning with American Tel & Tel, General Foods, Chrysler, and right on down. So that is something of the progress that has been

made since 1970 so far as women and minorities on boards of these corporations.

COMMISSIONER FREEMAN. Commissioner Horn.

VICE CHAIRMAN HORN. Mr. Minck and Mr. Gillooly, I think this question might appropriately be directed to you. We heard earlier today testimony that, to cover maternity benefits, the premium difference was really very small when you looked at it from a statewide basis. Another witness said that in the case of New Jersey maternity benefits were included, since it was simply too difficult for the computers not to include them, and basically the costs did not go up. What is your reaction to the actual incremental increase in the cost of health insurance if maternity benefits are universally included? Are there any studies in this area that the insurance industry has made? Either gentleman or both of you.

MR. MINCK. Well, Tom [Gillooly] is looking into the question of studies. I'd like to point out that there is a very substantial difference depending on what sort of insurance you're talking about. If you have a situation such as, say, Blue Cross in a given State adding it to all of its coverage, since the Blue Cross operation normally insures about half of the State, you can pretty much count on about half of the people paying for the cost of the benefit. If you put it onto a group health insurance policy where the employer or the union is putting in any substantial amount of money, you can count on the same participation of the group and you will spread it among all the lives.

Where you run into a problem is if you sell it as an individual health insurance policy to anyone that comes in off the street to buy it. What you're saying, in effect, is if you buy this policy and have a baby in the next 2 years, the policy will pay you $1,600 in benefits. Now, pricing a promise of that sort is fairly difficult. You can be almost certain that everyone who's planning to have a baby in the next 2 years would like to buy one of those policies if the premium is much under $1,600 for the period. It's a straight money-making machine.

The question, I think, has been faced by a few companies who have sold a very limited pregnancy benefit to individuals where, say, the benefit was limited to $300 or $400. That meant that you could build into the premium that you were charging an amount that was small enough so that it wouldn't keep people from buying the policy who wanted to buy the policy for general purposes. I think they found, without exception, they lost money anyway. It's simply because having a baby is something that a lot of people look forward to and plan for and are anxious to do.

VICE CHAIRMAN HORN. Well, Mr. Minck, are there studies by State and the insurance companies in the State or trade associations that show what the combined experience of individual policyholders

amounts to? If we think of individuals being aggregated together and then having some sort of group experience, can we determine what the actual incidence and triggering of those maternity provisions are and whether there is a loss to the companies or they're breaking even or there's a gain or what? Do we have that data?

MR. MINCK. In the case of individual policies, you wouldn't because, as I say, there have only been a few companies that have sold individual policies, and there the benefits have been so limited that I do not think they would be reliable. You have any amount of information on the group side. That is something that has been in existence.

VICE CHAIRMAN HORN. What does that tell us? Are there any statistics we've got that you can make a generalization as to the added cost on the group side of automatically covering maternity and whether it substantially changes the rate structure of those policies made prior to the inclusion of a maternity provision?

MR. GILLOOLY. May I make a comment? I think the testimony on the bill for mandatory maternity by employers, which is before Congress, which was given on behalf of our two associations, has some statistics in it. We'd be glad to make that available.

VICE CHAIRMAN HORN. Would you? I would appreciate having that included at this point in the record. Without objection?

CHAIRMAN FLEMMING. Without objection.

VICE CHAIRMAN HORN. That will be done.

MR. GILLOOLY. Another source is our brief in the case that was referred to this morning by Ms. Lamel testing the constitutionality of the mandatory maternity law in New York State, and we have some statistical information in that.

VICE CHAIRMAN HORN. Yes. I'd welcome the statistical information. I don't want to get into the New York argument on this.

MR. GILLOOLY. Neither do I.

VICE CHAIRMAN HORN. But I'm interested in hard data. Well, would you like to add anything else besides what you're going to furnish?

MR. GILLOOLY. No. I do have the brief here. I could mention a few statements that were made that might be responsive.

VICE CHAIRMAN HORN. Could you generalize from that data?

MR. GILLOOLY. Well, it was simply that there was testimony by an actuary that predicted if the costs were allocated only to women of childbearing age, the mandatory maternity coverage law would roughly double the premiums of young women seeking to purchase individual health insurance. In other words, a 22-year-old woman's annual premium would go from $159 to something in the range of $275 to $371. If the costs were allocated to all policyholders, the already burdensome premiums of an elderly couple for individual health

insurance would increase about 10 percent and that group health insurance premiums would increase in the range of $75 to $100 million. A couple beyond childbearing age would face an increase in the range of $42 to $68.

So it's largely a problem of cost and, as has been said here before, the problem is more critical for individual insurance; it's more critical for small group, say, the delicatessen where everyone is over 60 years of age and the owner wants to have a plan and he wants other benefits perhaps than maternity and, if maternity is included for that small group, it's got to be at the expense of something else.

Now, for the large groups, it's in most of them and it's certainly available if they want it in place of something else. But there's only so many ways you can cut this piece of pie up.

MR. MINCK. Yes, I think, if I may, I'd like to emphasize again that, of this additional cost, most of it would go to pay for the hospital bills incurred by the dependents of male workers. What I think we're talking about is not a question of different treatment between male and female workers, but of different treatment of hospital and medical bills from this one cause.

VICE CHAIRMAN HORN. Yes. Mr. Gillooly, you expressed some concern about the conflicting State laws and I wonder, given the differences in laws between the States, what does national coverage by any insurance firm or policy really mean? Is there such a thing? Do the policies that the individual firms that make up particular types of insurance for particular portions of the insurance industry really reflect the type of mobility we have in our society where people are moving between State lines, they have different needs, different demands on them? How's the insurance industry handling this?

MR. GILLOOLY. Indeed, there is national coverage. It's the large groups covering the major manufacturers, for example, which are written in competition with Blue Cross and self-insurers, who, by the way, are not subjected as a rule to these mandatory benefit requirements.

An increasing problem is the application of the State laws on a multistate basis. We take the position with the commissioners that when a contract is written in *X* State, that even though it covers people in 50 States, that the commissioner in *Y* State should not on an extraterritorial basis, from the standpoint of policy and from the standpoint of law, apply his law of State *Y* to that contract. Some of them do, and they can do it constitutionally. This is the dilemma. A paper is to be given at a forthcoming meeting of the Association of Life Insurance Council entitled "Mandated Benefits: The Achilles' Heel of State Regulation."

I've always felt that this is the one area that could very well drive this business of ours, which has long supported State regulation of insurance, to some form of Federal regulation.

VICE CHAIRMAN HORN. Would you feel that you're better off if you had national guidelines in these areas?

MR. GILLOOLY. This is an issue that I don't believe has been decided, but there are many in our business, I think, who have that view in this limited area that I'm talking about.

MR. MINCK. I think that there are two or three different situations here. If you look at group life insurance or group pensions, you don't have the same sort of problems generally. They occur to some extent, but really what happens is that you get someone in a State legislature that says that acupuncture should be paid for. There isn't any corresponding lunacy, if you'll forgive me among the acupuncturists, in the field of life insurance or annuities. As Tom said, there are a lot of States—I think probably most of them—who will not attempt to, at this point at least, apply these laws extraterritorially.

So that we've had rather a difficult relationship and a difficult period. We intend to and have been bringing the matter to the attention of the commissioners in the NAIC, and I think we are hopeful that a solution can be found either within the existing State regulatory pattern or perhaps, if that fails, following the sort of example of the Federal Government in the pension area under ERISA where there was a certain amount of preemption.

But again, it's a problem that we're struggling with currently and I think, as Tom says, we have not reached any final resolution of the problem.

MR. GILLOOLY. We're still trying. It's more critical in the health area, I believe, than in any other respect.

MR. MINCK. Yes.

VICE CHAIRMAN HORN. When we look in some areas at disability and what do we mean by disability, how does the insurance industry approach a definition of that? Have the companies agreed on a standard definition? Have State commissioners through uniform State laws agreed on a definition? How do we know what disability means?

MR. MINCK. That is a very difficult question, one that has cost a lot of companies hundreds of millions of dollars over the years. I think that there is no uniform answer to it. For one thing, the policies written by life insurance companies and health insurance companies are not of the standard form. That's a casualty insurance concept, and we have never attempted to avail ourselves of immunities of the antitrust laws in order to agree on either the benefits we provide or the rates we charge. It's a matter purely of competition.

I think that the pattern that most companies have followed more or less successfully recently has been to define disability on the inability to perform one's occupation for the first year or two of disability and then define it in terms of the inability to perform the occupation for which one is reasonably suited by experience and education. Now that will lead to somewhat different interpretations by different claim departments, but I think there tends to be a fairly high degree of similarity in the way that is interpreted.

VICE CHAIRMAN HORN. What I'm leading to is that if there is some confusion in the industry by the experts and among the States, I'm looking at it from what does the consumer perceive when the consumer tries to get some understanding as to what degree is he or she covered. I wonder, since you represent an industry group, to what degree should the industry groups or perhaps the State regulators, in your judgment, make comparisons of the policies that are sold in their State or the major policies so the consumer can make an intelligent judgment?

I ask that question partly out of my own experience being president of a university where the State of California has probably mandated that, when a new employee is signed on the payroll, he or she is shown 50 options, probably, for health insurance. The university is prohibited from giving any advice to that person. They have to struggle through trying to figure out which of those 50 options meets any need and there's no consumer guidance. There's no industry comparisons as you would if we were discussing a bill; we'd put all the alternatives out in a matrix. I wonder, is this of concern to the responsible forces in the insurance industry? Is it of concern to State commissioners? It certainly has to be of concern to consumers.

MR. MINCK. The matter is much clearer in the case of life insurance. Usually the circumstances under which you'll pay a claim are fairly well understood before you start, of course.

VICE CHAIRMAN HORN. I'm sorry. I missed that last answer.

MR. MINCK. I say the circumstances under which a claim in life insurance is payable are much easier to describe and clearer to define. Similarly on the annuity side. The problem, I think, is basically this. If you look at, say, the social security law and its definition of disability, it's remained more or less stable for the last 10 or 15 years. In fact, there have been at least three very different philosophies applied during that period, and the resulting number of claims accrued have differed widely during then.

I think that looking at the language of the contract would not be dispositive. I think looking at current claim practices even would not be dispositive, because I think that in many instances if you compare two different companies and they look at what appear to be similar

disabilities, one day one will go one way and the other will go the other, and the next day they'll both go the same way; the third day they may go different ways. So it has to be, to some extent, subjective because you are reviewing an awful lot of medical evidence.

Now, there are some kinds of disabilities that everyone looking at it would clearly conclude that the individual is disabled and everybody would pay the claim. There are other sorts of things that traditionally are difficult to analyze. For example, you have what the individual reports as disabling pain in the lower back and you can't get anything out of X-rays, and you have three or four doctors look at him and some say "Yes" and some say "No." That kind of a claim can go any way and, as far as I know, there's no consistent pattern you can discern.

VICE CHAIRMAN HORN. Do you have any addition, Mr. Gillooly?

MR. GILLOOLY. I really don't, but I feel I would like to try.

VICE CHAIRMAN HORN. Yes, please do.

MR. GILLOOLY. I feel we must certainly have something that would be responsive by the association and, if not, I'm sure that some of our major writers will have. So I'd undertake to find that.

VICE CHAIRMAN HORN. Would you like to file something, then, for the record?

MR. GILLOOLY. Yes, sir.

VICE CHAIRMAN HORN. Without objection, then, it will be included in the record.

CHAIRMAN FLEMMING. It will be included in the record.

VICE CHAIRMAN HORN. Now I'm just about to complete my questioning, but we've had a lot of testimony on the other side here. I think it's only fair that we give you gentlemen some chance to answer these questions. One of them that's of increasing concern in society in terms of the whole consumer movement is the right of the insureds to have access to their records and correct them. Women are particularly vulnerable in this, single women not, perhaps, knowing their rights to the extent that they should. Some States have passed records acts, certainly, with State government and sometimes with certain corporate records. What is the position of the insurance industry on the right of the purchaser to see what is in the file, why perhaps a claim was denied, why perhaps a policy was not issued, whether or not there are medical entries in those files? Is there a position of the industry?

MR. MINCK. I think the answer to that is yes. I did not come with it either in writing or in my mind, so unless Tom knows that, I'd be happy to furnish it to the record.

VICE CHAIRMAN HORN. Please furnish it for the record. Would you have any additions?

MR. GILLOOLY. I have none, but our positions are, I believe, identical.

MR. MINCK. Yes.

MR. GILLOOLY. We do have a detailed position on this.

VICE CHAIRMAN HORN. All right.

MR. MINCK. And I believe it's supportive of the report of the Federal commission that's been studying it, but rather than rely on memory, I'd prefer to give you a written statement.

VICE CHAIRMAN HORN. Now, Mr. Minck, are there instances in the life insurance field where women are not permitted to buy more coverage than their husband? Does that practice exist widely in the industry?

MR. MINCK. I think, again, you go back to the question of insurable interest. There will be cases where women are not permitted to buy more than their husband or cases where men are not permitted to buy more than their wife. What you're insuring is against an economic loss that will occur in the event of premature death. If the wife, for example, is not working, and it's not clear exactly what the extent of the financial loss suffered beyond the loss of homemaking services and so on would be and the husband was insured for $100,000, which was, say, three times his annual salary, then if they came in and applied for $150,000 of coverage on the wife, you would probably have to reject it on the grounds that you could see no economic reason for it. And it may be they know something about the wife's health that you'd like to know and can't find out.

VICE CHAIRMAN HORN. I would appreciate having furnished for the record at this point responses from the industry. You might want to elaborate on this question. This is a particularly nagging question to a lot of individuals as to the degree to which there are discrepancies as to the extent to which coverage can be secured in families where perhaps both are working or where only one is working and, if perhaps the wife is working and the male is only working half time, the male can still get a certain amount of coverage, but the wife who's working can't and so forth. I'd like to see the industry give us some rationale, if any exists, as to why that practice is pursued and are there changes underway within the industry to try to deal with what many women feel is just a discriminatory action.

MR. MINCK. Well, again, I will be happy to file something. I think that there is not an industry-wide practice of the sort you described. I think each individual company sets its underwriting rules. So it would have to be on the basis of checking with certain companies.

VICE CHAIRMAN HORN. Very good. Thank you very much to all the panels.

MR. MINCK. Mr. Horn, will we get a copy of the questions, so that we can have them?

VICE CHAIRMAN HORN. Sure. The staff will send them.

CHAIRMAN FLEMMING. Yes. This panel and all of the other panels that have made presentations have made it possible for the Commission to identify some very basic and some very fundamental issues in the area that has been the subject of the consultation. We have listened to presentations on both sides of these issues. This has now put our staff in a position where they will be able to develop for us a proposed outline for an indepth study dealing with these issues. As a part of this indepth study, we may or may not utilize the authority that we have under law to hold a public hearing or a series of public hearings. When we do hold public hearings, we subpena all witnesses and all witnesses are put under oath. Undoubtedly, those who have presented testimony throughout the 2-1/2 days are persons that we will be in touch with, the staff will be in touch with, as we explore these issues in even greater depth.

We certainly are indebted to the members of this panel, as I have indicated, as we are to the members of all of the other panels.

I'd like to ask Mr. Nunez to identify for everyone here the members of our staff to whom we are deeply indebted for getting in touch with everyone, working out all of the arrangements, and making it possible for this consultation to proceed in a very smooth and a very fruitful and constructive manner. Mr. Nunez.

MR. NUNEZ. I believe we would like to express the appreciation of the Commission to Ms. Sally Knack and the staff of the Office of Program and Policy Review for pulling together this consultation in a 5-week period.

We appreciate the cooperation of the industry representatives, the representatives of the State insurance departments, and the consumer groups for cooperating with us in being able to conduct this consultation on such short notice. I think for all of us it's quite an awesome responsibility to note the extreme complexity of this area, and I think it has been a very good opening round for us as we delve into this area. Thank you very much.

CHAIRMAN FLEMMING. I have a written announcement which I think is probably written by Sal which says, "Please turn in your evaluation form at the box in the foyer of the auditorium." And it's signed, "Safe jouney home." That's the point of view of all of us.

Thank you all very, very much. The consultation is adjourned.

Prepared Papers and Responses

Following are the full texts of the papers prepared for the consultation. Preparation of written responses to the papers was optional.

An Overview Report: Discrimination in the Insurance Marketplace and in the Insurance Business—With Primary Emphasis on Life, Health, Disability, and Pensions

By Herbert S. Denenberg, Former Insurance Commissioner, State of Pennsylvania

A conference to discuss ethnic, racial, and sex discrimination in the insurance marketplace and in the insurance business is bound to have direct, immediate, and beneficial impact. This is so because of the nature of the insurance business and its characteristic response to change, pressure for change, and need for change.

This nature is not readily apparent from an examination of the cold statistics, numbers, and indexes of the business. It is a matter of character and personality, not physical measurements or quantitative test results; it is a qualitative matter, not the height, weight, or red blood count of the business. But this qualitative analysis is central to both the definition of discrimination and the prescriptions for its solution.

Some Characteristics of the Insurance Business

Ultraconservative and Slow to Respond

Both those in and out of the business concede its response to changing conditions and emerging problems is incredibly slow. Those who know the business and those who even love it are content to smile when the question of the insurance industry's speed of response to any kind of problem is broached.

Perhaps this is explained in part by the very nature of the business. Insurance must be certain, and solvency is the first obligation of the insurer. Insurance that is not certain is not insurance at all. Insurance, both in conception and psychology, is the opposite of gambling, and those who run the business are conservative and slow to move, even to a fault. As a result, the industry often finds itself resisting change and ignoring opportunity, even when in its clear best interests.

Its attitude toward the insurance of women is an obvious example. Women represent one of the great growth of prospects for the life insurance industry, combining the enormous need for protection with financial wherewithal and willingness to buy. But women, the emerging majority, were long neglected and openly discriminated

against, in an obvious, outrageous, and unconscionable fashion. This has only recently begun to be reversed in dramatic fashion.

Now, more and more insurance companies are eyeing the women's market with the covetous eye it has long deserved. Yet, the insurance industry response came only after pressure was exerted by women's groups, by government agencies, and by public opinion. The insurance industry had to be pressured into taking a position that could only bring it profit.

Other such examples could be cited at great length and in embarrassing detail to the industry. My favorite involves the insurance industry attitude toward readability of insurance policies.

I know from firsthand negotiations with major segments of the industry that they found the idea of a readable insurance policy abhorrent, revolutionary, and impractical. In the early 1970s, while Insurance Commissioner of Pennsylvania, I told the industry it would have to write policies that were readable. The idea was resisted and initially rejected and opposed by the industry.

In the years since then, the insurance industry has discovered both operational and public relations advantages to having insurance policies which its officers, agents, and the public can understand. Now, at long last, it accepts that grand idea that insurance policies need not be less readable than Einstein's *Theory of Relativity.*

So those who would bring change to the industry should be prepared to be patient and persistent. It is no exaggeration to say that 33 angels accompanied by a brass band and reform straight from the divinity would have a long slow sale with the insurance industry as the recipient. The industry seems to believe firmly that, except in the most unusual circumstances, nothing should be done for the first time.

Conservativeness Permits the Continuation of the Illogical and Inhumane

This ultraconservativeness is perhaps one reason that the insurance industry, in many ways a remarkably enlightened and public-spirited group, has permitted practices and various kinds of discrimination to persist that would be abhorrent to almost any civilized man.

A good example of such a practice is the newborn infant exclusion, which until recently was commonly found in family health insurance policies. This exclusion denied coverage to the newborn infant for medical expenses for a specific period of time, usually 7 to 30 days, immediately after birth.

This is a time when the newborn infant may be in need of medical care and was hardly in a position to assert that right on his own. Yet the existence of this exclusion was commonplace, and it has mainly been eradicated by legislation only in the past several years. The

American Academy of Pediatrics, which led the battle against this especially inexcusable barbarism, now reports that 48 States have now adopted legislation providing health insurance coverage for newborns from the moment of birth in family policies.

Some policies with this exclusion are still in force, and it is not hard to find exclusions and other practices which seem equally indefensible. Some of these inappropriate and even inhumane insurance practices are likely to persist unless there is organized and disciplined pressure applied to change them.

A Responder and Not an Initiator

The insurance industry typically responds to problems rather than initiates changes on its own. This tendency was summarized well by Mr. John C. Maynard, an actuary, during a 1976 panel of the Society of Actuaries on the subject, "Consumer/Consumerist Trends and Their Actuarial Implications."

He said: "The whole subject has so many implications for actuaries that it is hard to know where to stop. I only hope that as time goes on, actuaries will not only react to questions in the consumer field, but they will be initiators."

The same might be said for the main employers of actuaries, the insurance industry. On questions such as those before this conference, the insurance industry is not likely to initiate all the measures that are in order, and unless some other group formulates comprehensive solutions, they are not likely to be forthcoming with reasonable speed.

In some of my preparation for this meeting, it became obvious to me that the insurance industry could not be relied on to provide long-overdue answers to some of the problems of ethnic, racial, and sex discrimination we now face.

This attitude was exemplified by a letter to me dated April 8, 1978, from one of the largest life insurers in the United States. It states: "I can asssure you that this company took appropriate action when the concerns of ethnic, racial and sex discrimination were first expressed years ago. All policies, rates, advertising and promotional material as well as marketing and underwriting practices were reviewed. When there were questions, changes were made to eliminate the potential for such discrimination."

Two points of interest. The company did nothing on its own until outsiders expressed concern. Second, a quick review of the published material of this company indicates it has not yet corrected the obvious problems of sex discrimination.

An Industry Overweighted with the Technical, Complex, and Abstruse

The insurance industry is often not able to initiate responses to the legitimate demands of its policyholders and the larger public. Even its attempts to do so are severely handicapped by its tendency to make the simple complex and the complex hopelessly indecipherable.

Ralph Nader, in testimony before Congress, has explained part of this complexity as an attempt to hide facts from the public. He said: "The industry's contrived complexity, secrecy and public relations have fulfilled a strongly supplementary and camouflage function."

I would be somewhat more sympathetic to the motive of the industry, being convinced that it does not have the mental prowess to so brilliantly befuddle and confuse the situation out of deliberate intent. Much of the industry is hypnotized by its own jargon and retarded by its own gobbledygook.

So serious is its communications problem that it is sometimes even unable to get out its own sales message. One of its problems in selling cash value life insurance is its own inability, and the inability of its agents and brokers, to properly explain the product to the consumer.

As a result, dialogue with the industry is difficult and communication of insurance information to the public is likewise handicapped. Even when it is in the best interests of the insurance industry, it is often unable to get its message home. Consequently, it takes some third parties, consumer groups and government agencies, to initiate meaningful dialogue and to get a message through to the public.

The Organization Man and the Establishment Personified

Digby Baltzell, a University of Pennsylvania sociologist, wrote a book called *The Protestant Establishment* (Vintage, 1963). Mr. Baltzell, who himself started out as an insurance man, is now considered an expert on class and authority. He told me he has always viewed the home offices of the industry as the perfect picture of what he calls "The Protestant Establishment." Needless to say that establishment is also white.

Although that picture may be changing rapidly, anyone who attempts to understand the composition and conduct of this industry would do well to heed Mr. Baltzell's description. Major segments of the industry have historically not been welcome havens for minorities of all sorts—racial and religious—and that historical reality still leaves a significant imprint on statistics and attitudes.

The industry, dominated by organization and establishment types, has not always welcomed those whose race, religion, or ideas differed, and this may further explain its inflexibility in responding to change.

The composition of the industry's agents and brokers has been more heterogeneous than that of the home office. Mr. Baltzell has likened the agents and brokers to a sort of house of representatives of the insurance industry.

Both government statistics and other sources of information suggest that the insurance industry still has a long way to go in hiring minorities of all kinds and in hiring women. Anyone with any familiarity with the business knows that blacks are not often found at important meetings and conventions. And a statistic which I chanced upon suggests women are rarely used in top slots by the industry.

I counted the number of women appearing in *Who's Who in Insurance* for 1978. I could only find about 33 women out of a total of close to 5,000 names. Thus less than 1 percent of the top people in the insurance industry were women, according to that measure from *Who's Who in Insurance.* My hunch is that a similar analysis would also produce about the same type of results for other minorities, to the extent it could be done by names and biographical background.

An Industry that Doesn't Know as Much as You Think It Does

There's a tendency to believe that the insurance industry can produce any kind of statistic requested and that it has an actuarial snapshot of every imaginable number and statistic. Experience shows quite the opposite is sometimes true. Problem after problem involving the insurance industry suggests that it often does not have the facts on which it is freely making its judgments. Two recent examples are the controversies involving products liability and malpractice, but examples are legion from all aspects of the business.

Perhaps one incident will make the point as well as anything. I called the Society of Actuaries to find out how many women and how many blacks were members. The actuaries are, of course, the mathematicians and statisticians of the insurance industry. They are the very symbol of statistical omniscience. Yet, the society was unable to tell me how many women or blacks were among its membership. I was told to ask my question 6 months hence when work on their computer is completed.

Many of the questions this conference is concerned with turn on conclusions that are not always convincingly supported by insurance company statistics. Usually it takes prodding from the outside to make the insurance industry critically revise its statistical base of operations. Some of that revision is already underway in response to pressure from women's groups and others.

What They Don't Know, You Pay For

You've heard the old saying, "What you don't know won't hurt you." Well, what the insurance industry doesn't know, does hurt you. The reason is that insurance companies cover their lack of knowledge of future loss experience with an extra cushion of premium to make sure they come out all right.

A good example of this is the case of coverage of women. Some companies say they haven't sold enough insurance to women to get a reliable book of business and a dependable set of their own actuarial statistics. So they load on extra charges to cover their risk.

So women are subject to a double whammy. First, they are discriminated against in the sale and pricing of life insurance. And then, because they are neglected and unsold, they pay an extra premium to boot. The women of America are financing the life insurance industry's self-imposed ignorance.

An Inherently Discriminatory Business with the Courage of Its Prejudices

The insurance industry must operate by separating policyholders into various risk classifications. The object is to group those with similar loss potential into the same risk classification. Each policyholder is thus required to pay his own way in terms of the loss potential of his classification.

These risk classifications have to be broad enough to be workable and to establish a reasonable premium. This is essential if the losses of the few are to be spread among the entire group that pays premiums.

Risk classifications cannot be too narrow. If they are, they become impractical to administer from an accounting viewpoint, and the narrow classification may lack the experience to be stable over time. Furthermore, there is usually no reliable and workable method to refine classifications to measure the precise potential risk of each policyholder. This means that for better or worse each policyholder becomes a member of a larger class. The necessity of the insurance process requires that he be averaged into a larger group.

So insurance, by definition and by compelling necessity, must do justice on a class basis, not an individual basis. That means it cannot do what some might consider perfect justice, and in the process it can and often does make almost everyone unhappy.

One-half of the insured may want broader classifications to lower their premiums further by averaging them in with those with lower loss potential; the other half may want narrower classifications, to prevent them from being averaged in with those with higher loss potentials.

In this sense, insurance is inherently discriminatory. It is justice and loss spreading by averaging, by grouping, and by class; not by individual determination or merits.

Perhaps this is the explanation of Charles Dickens' antipathy to statistics, which has been described by June Goodfield (*Science,* November 11, 1977) as being based on the belief that they regard humans "solely as numbers in a statistical equation." By necessity, the insurer must regard the policyholder not only as a number, but as a mere average.

On top of justice by averaging, the insurer has almost unbounded discretion in his classification of insureds as acceptable or unacceptable risks. The underwriter decides who is eligible for insurance and at what premiums, in accordance to the approved rate tables and rules of the company. But he has a great deal of discretion in making that decision, and sometimes it's based on whim rather than fact, surmise rather than statistics. Some legislation, especially in recent years, has placed limitations on the underwriting process, but there is still great discretion, often unchecked and uncontrolled.

But some of this risk classification and underwriting discretion is essential to the business of insurance. Insurance is many things, but it is first and foremost a business.

To the extent we want insurers to compete in a free market, much of this classification and underwriting must be allowed. Only government, writing social insurance, such as social security, can largely eliminate risk classifications, underwriting discretion, and premium differentials. It does so aided by the force of compulsion and the taxing power of the State.

Unless we want government to be the sole insurer, we must content ourselves with the basic mode of operation of the insurance business, and attempt to rationalize and justify its operations and its classifications and decisions, rather than to eradicate them altogether. There is a limit as to how much we can control and limit this discretion, and therefore the system will always have ample room for both legitimate and illegitimate discrimination in its acceptance and treatment of policyholders.

Insurers in Fishbowl Subject to Game Warden Called Commissioner

Despite the ability to hide behind technical jargon and gobbledygook, the insurance industry must operate in the open due to regulatory requirements. For example, its policies and its rates are on file with government regulatory agencies, namely, the office of insurance commissioner in each State. It is subject to sweeping reporting and disclosure requirements under the insurance law.

Furthermore, its policies and rates are compiled and published in a series of trade publications that makes for easy monitoring of its activities, including its discrimination against various groups in our society. So, for example, it is quite easy to document what almost all would agree is sex discrimination in the insurance business by simply inspecting its filings with insurance departments.

Even easier, it is quite easy to check the status of discrimination based on sex by consulting various publications of rates, policies, and underwriting rules. For example, you can consult *Who Writes What* for 1978 published by the National Underwriter Company. This is a listing of hard-to-place, substandard, or unusual coverages. There is a section listing occupations on the prohibited list of many life insurance companies.

There you will find domestics sandwiched in between deep sea divers involved in underwater demolition and those persons who in training guard dogs play the villain; that is, the persons whom the dog attacks. In the same list are bomb search police officers, private contractors going to war zones, horse race jockeys, and mosquito researchers.

That example is perhaps richest in flavor, but other examples can be found in profusion in any of these books on the insurance marketplace. *Best's Flitcraft Compend* of 1977 (published by the A.M. Best Co.) lists life rates and underwriting rules for acceptance and rejection of risks. Most companies include a special section on "Women" and such phrases as this abound: "Considered on same basis as men except as follows: Series Select Disability granted to women regularly employed outside of their home or attending school, at same rate as men." This indicates only women are subject to these special rules.

Or you can check the 1977 *Time Saver For Health Insurance* published by the National Underwriter. You will find hospital expense policies which exclude only the following: injuries and expenses resulting from war, riot, military service, illegal occupations, attempts to commit a felony, and pregnancy. Philosphers might be able to explain the organizing principle of those exclusions better than insurance experts.

Insurers must not only operate in the fishbowl of regulation, but they are also subject to the pressure from insurance commissioners. Much of the research documenting sex discrimination in insurance came out of reports prepared by or for insurance departments. The first such completed investigation was issued by the Pennsylvania insurance department as a result of a project initiated in 1973. Other States which have produced valuable reports documenting sex discrimination in insurance include Michigan, North Carolina, and New York. (Other valuable reports came from Commissions on the

Status of Women in Iowa and California and some private groups such as the Women's Equity Action League and Lawyers for Colorado Women.)

A Well-Intentioned Industry Easily Subject to Strong Market Pressures

Despite sample exceptions, as a general rule the insurance industry is an honest and well-intentioned industry. Having observed the insurance industry for many years, and then having the opportunity to observe many other industries as a consumer reporter, the insurance business looks better and better. After reporting on such industries as the food, drug, and cosmetic industry, the chemical industry, the automobile industry, and the utilities—after all that, the insurance industry starts to look like a group of selfless humanitarians by comparison.

Consumer problems with the insurance industry are based more on inefficiency, lack of competition, and inertia than on outright rip-offs or dishonesty. The public is victimized more by the stupidity of the insurance industry than its ethics.

The industry itself is not likely to generate change, but it can be pushed into change and competition by market forces. Consumers, informed about products and prices, can stimulate companies to new levels of competition and market innovation. For example, the "shopper's guides," published by more and more insurance departments and by the media and other consumer groups, have had profound impact on the industry.

Consumer education can probably improve the market and bring about needed change faster than any other single force. As Insurance Commissioner of Pennsylvania, I found that the "shopper's guides" that we pioneered in 1971 had more impact on the companies and the market than much of the more conventional regulatory action. High-cost companies took measures to improve their ranking, while low-cost companies immediately capitalized on the results.

Like the insurance departments of each State, consumer educational efforts are one of the key pressure points in moving the industry toward lower and more equitable prices, better service, and better products. More improvements can probably be brought about by consumer education and more discrimination can probably be eliminated by the dissemination of information than by more conventional regulatory and legal procedures.

The insurance market is remarkably opaque, when it should be transparent. Consumers often don't understand what to look for, how to compare products and premiums, and where to turn to for help. The quality of products and companies and the magnitude of prices and

rates is so diverse that improved information could bring about improvements for virtually all consumers.

A Money-Shovelling Industry that Makes Its Problems Your Problems

The insurance industry is content to shovel money back and forth between policyholders and claimants with little attention to the environment of the insuring process. For example, over the years it did little to improve health care delivery. It was largely content to shovel money back and forth between policyholders and health care providers.

Thus, the insurance industry seems to behave as if it is a pure abstraction from its environment. This often translates into treating policyholder problems as though they were purely that, problems of the policyholders and not of the companies. This attitude often leads the industry to ignore problems too long and to let them be resolved by forces over which they have no control.

This attitude seems apparent in the area of ethnic, race, and sex discrimination. And this trend apparently led one insurance man, David M. Holland of Munich American Reinsurance Company, to comment as follows: "The insurance industry must address itself to charges of inequitable treatment; otherwise the remedies will be determined primarily by the courts, legislators and regulatory authorities."

The Nature and Extent of Insurance Discrimination

On July 12, 1973, I told the Joint Economic Committee of Congress that "the problem of sex discrimination in insurance has been serious, widespread and up to now largely ignored."

At this time, the good news is that the problem of sex discrimination is no longer ignored. The good news is that dramatic progress has been made in fighting sex discrimination in insurance.

But the bad news is that the problem of sex discrimination is still serious and widespread. It is still often blatant, outrageous, inexcusable, and barbaric. Despite dramatic progress, we still have a long way to go.

The problem of racial and ethnic discrimination presents a different picture. There is little of the open and obvious discrimination that can be documented by a casual scanning of reference books on insurance policies and premiums, such as referred to earlier. Unlike the case of sex discrimination, there are no discriminatory rate tables for blacks or Puerto Ricans, there are no policy coverages written exclusively and openly only for whites. But there are the old and persistent problems

of providing equal opportunities to blacks and other minorities in employment. And there is the basic problem of providing blacks and other minorities with the kind of sales attention, communication, and advertising that has always been visited on more advantaged groups.

In the insurance business, the problem of lack of employment opportunity presents special problems which are more significant than in other industries. When a group is on the outside looking in, its special insurance problems and its insurance market opportunities may not be understood. So lack of jobs may also mean lack of sales effort directed to it.

This is of critical importance in insurance because it is a product which is sold, not bought. Without the sales effort, the need for insurance is not likely to be perceived or satisfied. This is especially true of the areas of insurance singled out for this conference—life, disability, health, annuities, and pensions. A basic part of that product is not only the policy, but the sales efforts, the advice, and the service that go with it. So a group that is not adequately employed may be subjected to a double whammy of neglect—ignored or neglected in employment and ignored or neglected in sales effort.

This has a further indirect effect. A group on the outside looking in may also be misunderstood in all other processes of the insurer—underwriting (acceptance and classification of risks), claims, and servicing. These all depend on communications and understanding, and those groups not understood or otherwise neglected are likely to get shortchanged in all aspects of the insurance process.

There are still many different types of discrimination that can be readily found in the insurance marketplace. They are separated for purposes of discussion, but in practice they are overlapping and reinforcing.

Refusal to Make the Product Available Altogether

Many companies still refuse to make essential coverages available to women. For example, it is still commonplace to refuse to sell women disability income insurance that covers pregnancy or its complications. There are some weak arguments for refusing to cover *routine* pregnancy (it is predictable, budgetable, voluntary, etc., arguments which could be made for many other covered items), but it is a gross barbarism to refuse to provide disability coverage for the *complications* of pregnancy.

There is no, absolutely no, justification for failing to provide economic security against the potentially catastrophic economic loss of pregnancy complications. The insurance industry, at least a segment of it, has managed to turn our proverbial reverence for god, motherhood, and country on its head, leaving only god and country

intact, and visiting the most foolish and heartless discrimination on motherhood. And you will find no special exclusion for any of the ailments to which the male reproductive system is heir to.

There are also many companies that do not cover pregnancy expenses under their health (medical-surgical-hospital) expense policies, another insurance quirk that sometimes borders on the insane. Among the exclusions that can be found are those barring payment for pregnancy, childbirth, miscarriage, and abortion; abortion, unless medically necessary to save insured's life; and pregnancy, childbirth, miscarriage, or complications thereof.

One of the Nation's largest insurers covers pregnancy only if it terminates when the wife is over 25 years of age. This is part of its "Tower" series, and what towers is the irrationality of such an exclusion. Still other companies deny life insurance to the wife, unless the husband at least has an equal amount of coverage.

So diverse, so irrational, and so unjustified is the discrimination against women that one can only wonder about the less subtle and more devious forms of unfairness and discrimination which cannot always be easily documented by reference to policy language or numbers in rate tables.

A special form of this refusal to make coverage available occurs in center-city areas. There auto and homeowners' coverage may be virtually unobtainable through the regular market channels. The residents may be forced to go through specially created facilities to make coverage available (assigned risk plans and FAIR plans to provide fire insurance), often at higher cost and less favorable terms. This phenomenon was documented over 10 years ago in the report by the President's National Advisory Panel on Insurance in Riot-Affected Areas, and it is a problem that has persisted since.

Center-city areas are still often an insurance no-man's land. Although all the problems of auto and homeowners' insurance do not carry over to restrict life, health, disability, and pension marketing in the same way, they do have some carryover effect indirectly. Auto and homeowners agents usually sell other kinds of coverage too, but such agents are often not available to center-city populations, especially the low-income and minority groups. And many of the same factors that make center-city areas undesirable for marketing auto and homeowners also make them undesirable for marketing life, health, disability, and annuity (pension) coverage.

Refusal to Make Product Available with Same Provisions

Instead of barring women altogether from certain coverage, the companies may simply restrict its liberality or other terms when the applicant is a woman.

Some companies, for example, still limit the amount of coverage a housewife can buy. This may extend to accidental death and dismemberment coverage, where, for example, one insurer will write $100,000 on preferred risks, $50,000 on standard risks, and only $25,000 on housewives. There appears no similar limit on males who may also be maintaining a home as a "house-husband."

Another major company refuses to issue term life insurance to dependent women. Another major insurer will issue women a waiver on life insurance (a provision eliminating the need for premium payment during disability) only "if definite need exists." No other class of insureds is called on to demonstrate this "definite need." Such need would appear obvious for almost anyone who has life insurance, regardless of sex.

Another company will only issue waiver of premium for females of up to $50,000, but a male may get waiver of premium with life insurance of up to $150,000.

Another practice that was commonplace only a few years ago was to refuse to issue long-term disability to women, while freely granting it to men. This practice has been dramatically reduced in the last few years. But there are still some companies that adhere to this discredited form of sex discrimination.

Charging an Excessive Rate to Women Not Based on Their Actual Experience

The insurance industry has a habit of sometimes making their premiums reflect their prejudices rather than their statistics. A classic example of this was the long-standing belief that senior citizens as a class were bad auto insurance risks. Then when studies were done it was discovered that they were better than average, and now they often get rate reductions on auto insurance. Much of this same mythology still exists in the insurance companies' approach to insuring women.

There is now general agreement that women have often been overcharged for life insurance. Many companies use the 3-year setback, which means a woman is charged the same premium and gets the same policy as a man 3 years her junior. More and more companies have seen fit to increase this adjustment. Teachers Insurance and Annuity Association, for example, now grants women a 5-year setback on most of its insurance plans.

Other companies have recently revised their rates for women downward. One of the largest of companies to do so recently is the New York Life Insurance Company. They report a surprising amount of their new business is coming from women and have tailored a major national advertising campaign to focus on the women's market. Other

companies to recently reduce their rates on women include INA Life and Provident Mutual.

Another company to recently grant lower rates for women is the State-run Wisconsin State Life Insurance Fund for women. Until 1977, it used unisex rates (identical rates for men and women of the same age); but then it adopted a new rate schedule which grants women rate reductions far in excess of any 3-year setback.

At some ages for some types of insurance, the new rates are the equivalent of a setback of over 11 years.

In a letter to me dated April 4, 1978, Richard J. Keintz, Deputy Commissioner of Insurance for Wisconsin, said: "We feel that the three-year rate-back produces premiums too high in relation to those for males (it also provides females surrender value and often dividends that are artificially inflated)."[1]

In a letter to me dated March 30, 1978, Angele Khachadour, Chief Attorney of the California Insurance Department, said: "A couple of years ago, Commissioner Kinder declared that the three-year set back on life insurance does not fairly reflect the actual life expectancy of females."

The 3-year setback involves age discrimination as well as sex discrimination. As a 3-year setback arbitrarily relates female rates to male rates by a fixed 3-year setback relationship at every age, it is bound to be improper at some ages even if it were proper at some other ages.

For that reason, it would be preferable to have companies make their rates depend on tables of female mortality, rather than attempt to find some relationship between male and female mortality, which is not likely to be constant at every age. This approach, of separate male and female premiums, surrender value, and dividends, has been adopted by some companies, including the Wisconsin State Fund, mentioned above.

The same kind of arbitrary and discriminatory rate making exists in the disability field. For example, many companies arbitrarily charge women an extra 50 percent for disability income coverage. Yet, the statistics show that at some ages women have lower disability costs than men, and at all ages the relationship between male and female disability costs is not constant.

In July of 1976, the New York insurance department completed a study entitled "Disability Income Insurance Cost Differentials Between Men and Women," which demonstrated that the relationship between male and female disability income is not constant over the

[1] This and some other correspondence appear in the appendix to this report.

ages 20 to 69, and that female disability is actually less costly than male disability at ages 60 to 69.

The Ohio insurance department and the Wisconsin department, in correspondence to me, indicated that company disability income insurance rates had not always followed the reasonable statistical evidence that was available.

There is also some evidence that health insurance coverage (such as hospital-medical-surgical expense coverage) is often loaded with excessive premium charges for women not based on statistical information. They are almost always charged more for medical expense coverage. Yet Metropolitan Life Insurance Company itself recently reported on the hospitalization of its sales personnel, and found that females had shorter hospital stays than males. This was based on experience from 1965 to 1974.

Yet the authoritative voice of the insurance industry admits that, "Premium rates are generally higher for females over the great range of ages where hospital expenses are covered." That according to the American Academy of Actuaries in a "Report on Academy Task Force on Risk Classification," dated August 1977.

Charging Different Rates to Men and Women Even Though Justified by Experience

Perhaps the most controversial issue in the whole area of sex discrimination is whether women should be charged different rates than men, even though such differentials can be statistically justified.

Women live longer than men. Hence, they should pay less for life insurance and more for annuities and other pension benefits, if rates are to be based on experience. This view has been challenged in many contexts, and it is not yet resolved administratively by insurance departments, judicially or legislatively.

Some advocate abolishing sex-based rates in insurance altogether. Others would await any final decisions until more statistics accumulate and until alternatives are found that would be workable. Still others would permit sex-based differentials when based on sound statistics.

The mortality differences between men and women are not likely to go away. They are in fact substantial, enduring, and widening, not receding or even stabilizing.

The problems raised by unisex rating in life, disability, and health insurance are more difficult than those raised in other lines. In my 1973 testimony before the Joint Economic Committee of Congress, I pointed out that auto insurance has traditionally used different rates for men and women in the younger age categories. Men are charged more because as a class they produce higher losses. The National Safety Council suggests the differences are due not to biological factors but to

"the amount of driving done by members of each sex, and to differences in the time, place, and circumstances of driving."

I said, then, that the factors which really cause the difference in auto losses can probably be sorted out and can then be used to replace sex as classification factors. My 1973 conclusion was that unisex rating in automobile insurance would, therefore, be an attainable goal in the near future. It is a goal that has in fact since been attained in some places. But the mortality and perhaps even the morbidity (illnesses and disability) statistics may be more firmly based on actual sex differences rather than other extraneous factors.

It still may be that society may decide that for insurance purposes sex should be treated as race is now, and any distinctions based on either sex or race would then be unacceptable. But there is even a dispute about how this change should be brought about. Some say it is so fundamental and far reaching a measure as to be appropriate only by legislation. Others say that it should be done administratively and judicially, in view of statutes and the Constitution.

In some kinds of insurance unisex rating has already been attained by statute. Section 294–33, Hawaii Revised Statutes, requires unisex rates for no-fault auto coverage: "No insurer shall base any standard or rating plan, in whole or in part, directly or indirectly, upon race, creed, ethnic extraction, age, sex, length of driving experience, credit bureau rating, or marital status." North Carolina has also abolished age and sex discrimination in auto insurance by statute. Massachusetts has done so by administrative action.

But there seems to be much less sentiment for unisex rating in life, disability, health, and annuities among insurance departments. By and large, they oppose unisex rating and, in any event, would prefer the development of further statistics before any action toward unisex rates.

Unisex rating would create many practical problems in marketing. If rates were the same for life insurance, it would amount to a subsidy paid by women to men. Companies would find it more desirable to write women than men (due to their lower loss expectancy), and would have to manipulate their pricing and marketing to take that loss expectancy into account.

Providing Disparate Benefits to Men and Women

Another kind of discrimination that can be considered separately is the pension plan, for example, which provides higher benefits to male than female workers. This is based on underlying costs and different life expectancies. The same problem can arise if the same pension benefits are provided, but larger contributions are required from women.

Various agencies of the Federal Government have reached different results on the issue of whether men and women must be provided the same benefits at the same costs, and the issue is likely to continue in litigation for some time.

The issue here is whether unisex rating should be required for purposes of employee benefits and charges to employees for those benefits. It involves some of the same issues raised by insurer pricing, but it also involves provisions of the law dealing with equal pay for both sexes.

Neglect in Sales and Advertising

Various studies have documented the neglect of the women's market in sales and advertising of insurance companies. The June 2, 1975, report to the Michigan Commissioner of Insurance, for example, analyzed ads in an insurance trade publication, *Best's Review* (life and health edition), and found that ads tended to feature men, and that the few times women were featured they were "pictured predominantly in traditional roles as back-up wife, secretary or nurse."

I quickly reviewed later editions of the same publication and found that women are now featured in ads more often, and are more often featured in the nontraditional role. However, the ads are still loaded in favor of the male. For example, in the magazines I looked at, whenever rates were quoted, they were male rates, with no reference at all to female rates. And, after all, the rate is the punchline and guts of the ad, and this may all suggest that many of the pictorial changes are superficial, representing little change in attitude.

In this context, one picture is not worth a thousand words. In fact, a female rate or premium might be worth a thousand pictures. Yet both ads featuring rates showed only the male rate, and other life insurance material in the editorial section of the magazine also showed the male rates only.

A check of *Best's Flitcraft Compend* for 1977, which lists the life insurance rates for about 250 of the Nation's leading companies, showed many cases in which insurers did not even bother to list their female rates. Those that don't even bother to publicize female premiums can't be very interested in female policyholders.

Here again, the evidence suggests that companies have thrown the movement for fair treatment of females a few pictures of women in their ads, but when it comes to serious presentation of materials, such as rates and premiums, they are still thinking in terms of men.

There are of course, exceptions, including the impressive female-directed advertising campaign of the New York Life Insurance Company.

So here again, despite improvement, the women find themselves still treated as second-class citizens. However, they fared much better than blacks. In at least the three issues of *Best's* checked (the first three of 1978), only the ads of a single company had a black face. The rest of the magazines were lily white.

Neglecting Minorities and Women on Payrolls and in Boardrooms

All of the studies and evidence I've seen suggest that women and minorities are still vastly underrepresented on payrolls and in boardrooms. The latest Equal Employment Opportunity Commission statistics for 1975, which has nationwide statistics on insurance carriers, found women made up 57.5 percent of the work force, but only 17.3 percent of officials and managers. Blacks made up 9.4 percent of the total work force and 2.8 percent of officials and managers. Black women made up 7.0 percent of the work force and 1.1 percent of officials and managers.

There are also separate tabulations for insurance agents, brokers, and servicing agencies. The representation is even less. Here females make up only 12.7 percent of the work force and blacks, 0.8 percent. Black women make up 0.4 percent of the total.

Other statistics suggest that this representation is even thinner at the very top of the industry. As indicated, my check of *Who's Who In Insurance* found less than 1 percent women represented. A check of *Who's Who Among Professional Insurance Agents* for 1978 found about 2 percent of the listings were women. And a further check of *Who's Who in Risk Management* for 1976 found less than 1 percent were women. (Risk managers are insurance buyers for large corporations, but they frequently come out of the insurance industry and there is a great deal of crossover.)

Women as officers and directors of major insurance carriers are also a rare variety. In 1973, 15 major companies were checked, representing the major divisions of the insurance industry. Men outnumbered women by 592 to 15.

A recent survey by Korn/Ferry International, an executive research firm, found that only 40 percent of the 35 major insurers surveyed had women on the board at all. In other words, 60 percent of the insurers surveyed don't even have token women board members. Only 22.9 percent of insurance companies had what the survey called "ethnic minorities" on their boards.

Attorneys had representation on over 60 percent of all boards, as did bankers and academicians. There are less than 400,000 lawyers in the United States. There are over 107 million women. But lawyers are found on many more insurance company boards than women.

Women and minorities are deprived of payroll and power, and this all has implications as to how well they will be served. This lack of women and minority representation probably accounts in part for the failure of the industry to adequately serve and sell minorities. This deficiency, as suggested earlier, is especially significant when dealing with insurance as a product, as it is one that must be sold, and it is one that must be serviced, underwritten, and delivered with special regard to the needs and circumstances of the customer.

Neglect in Education of Women and Minorities

Top-level work in the insurance field requires a good deal of technical training and expertise. So ongoing education and training for women and minorities is a good way to test the preparation being made for their future utilization and advancement. To test activity in educational work, I checked with several groups most actively involved in training for the industry.

First, I checked with the Life Underwriter Training Council (LUTC). This group provides educational and training activity for the life insurance industry and serves as a clearinghouse for information on life underwriter training and activity. LUTC said that they could not even tell me how many women were participating in their activities by taking courses. To come up with this number would take a tremendous amount of work, I was told. Nor could LUTC give me any information about race.

Then I checked with the American College of Life Underwriters, which grants the designation CLU (Chartered Life Underwriter). Since 1929, 35,816 men have received the CLU designation while only 893 women have. Since 1973, the number of men earning the designation has been fairly constant (between 2,256 and 2,353 each year). During that time, the number of women earning the designation has gone from 50 to 113 per year. Minority statistics were not available.

I was told that the American College has no special drive underway to bring women or minorities into the program. One of its professed aims is to conduct research aimed at manpower development. But the development of womenpower or minorities is apparently not within the purview of its aims.

I also checked with the American Institute for Property and Casualty Underwriters, which grants the CPCU designation (Chartered Property and Casualty Underwriters). This is the equivalent of the CLU on the property-liability side of the business. In 1973, 31 women were awarded the CPCU designation; in 1977, 98 received the designation. This compares, for the same years, to 645 and 1,091 for men, respectively. So progress has been faster on the property-liability

side of the business, where in 1977 about 9 percent of those awarded the CPCU were women, compared to less than 5 percent for the CLU.

The CPCU group even had more impressive statistics in its so-called feeder program for the CPCU, which consists of a lower level group of courses in general insurance principles. In 1973, 26.3 percent of those who completed this course were women; in 1977, that figure was up to 55 percent. This is certainly an impressive piece of progress by any standard.

The CPCUs have a candidate development committee, but have no formal program to seek out women or minorities. They seem to be far more successful in doing so than their CLU counterparts in the life insurance industry.

The CLU people could give me no estimate of black involvement in their programs. The CPCU people said it was "almost negligible."

The Society of Actuaries, as already indicated, the all-knowing, all-computing source of wisdom of the insurance industry, could give me no information about sex or race composition of their membership.

Overall, this brief check suggests that the training and education of women and minorities is not a high priority of the life insurance industry.

Employment Status as a Bar to Adequate Insurance Protection

This is a somewhat different kind of insurance problem, but its consequences are just as serious as the direct discriminatory activity of insurers. More and more, insurance is provided through unions and employers on a group basis. But many simply do not get needed coverage because of the kind of employment they have.

Such fringe benefits as pensions and group life, health, and disability are more likely to be available for those in stable and well-paid employment than those at the margin.

Smaller, marginal employers often do not buy group insurance and pensions for their employees. Even if such coverage is available, the more unstable the employment, the less likely the employee is to have sufficient time in service to become eligible for benefits.

Some employee benefits are not even available until a specified period of service is completed, and pensions benefits do not become fully vested until a fairly lengthy period of service has elapsed.

The classic case is the domestic who is usually cut off from most social insurance programs (such as workmen's compensation) and is not likely to have any other kind of fringe benefits from an employer.

One part of this problem, relating to pensions, was explained in detail by Merton C. Bernstein, professor of law at Ohio State University, in his testimony before the Joint Economic Committee of

Congress, when it held hearings in 1973 on the economic problems of women.

He pointed out that as one moves up the economic ladder, one is more likely to find pension coverage and better pension coverage. Women and minorities, who are often low-wage earners, are either left out of the private pension system altogether or tend to get inadequate benefits. What goes for pensions also goes for many other fringe benefits, including insurance.

And of course, housewives ordinarily get no pensions or other fringe benefits at all.

Various recent studies have supported these conclusions about the pension and fringe benefit problems of women and minorities. A study published in the February 1978 *Social Security Bulletin* concluded: "Women, particularly those employed in the private sector, were less likely than men to have been covered by a pension on their longest job. In general, they were more likely than men to have had those job characteristics associated with low coverage rates and, in addition, they had lower coverage rates when equated with men on individual job characteristics." The general picture, for 1972 benefits, painted by the study was quite pessimistic: "In sum, adequate retirement incomes are heavily dependent on income from employee pension plans particularly among nonmarried persons. Unfortunately, most retired persons do not have access to such income and must rely on their social security benefits alone."

Blacks and other minorities tend to have the same problems as women for many of the same reasons. Even under social security, which has capabilities of coverage far better than the typical group insurance plan, blacks do not fare as well as whites. Blacks tend to get lower benefits, and this is related to lower earnings and fewer years of employment. But the same factors may shut them out altogether from many other fringe benefits.

The Conventional Problem of the Poor Who Pay More

As in all other areas, the poor end up paying more. In insurance, it may be more expensive to market small amounts of coverage to low-income minorities than large blocks of coverage to the affluent.

For that reason, the small policies sold through so-called industrial life insurance may be more than seven times more expensive, dollar for dollar, than the same coverage marketed to the affluent in larger amounts.

This "poor-pay-more" problem is compounded in the insurance market for several other reasons.

The information and sales needs in insurance are higher than with many other kinds of products to be marketed. Because low-income

consumers, especially minorities and women, are neglected by the sales efforts of insurers, they tend to end up uninsured or insured with the wrong policies in the wrong companies.

In all areas, the poor pay more, the disadvantaged pay more, and the minorities pay more. But in insurance, a bad situation is compounded many times. Here the poor pay with a vengeance, with virtually every market imperfection working against them.

Lack of Information as a Cause and Possible Camouflage of Discrimination

There are several different kinds of lack of information that result in insurance discrimination. The most disadvantaged do not have access to information and advice and therefore tend to end up with substandard policies, substandard advice, and substandard companies.

Experts, for example, would probably avoid about 80 percent of the insurance companies in the marketplace. Experts would sharply limit their selection not only of companies but policies to a fairly narrow focus.

But the typical buyer often does not get the basic advice he needs. This problem, serious enough even for many better situated consumers, is especially severe for women and minorities for all of the reasons already described.

There is still another kind of lack of information that can result in discrimination. When an insurer does not have adequate information about insurance for a particular group, it tends to overcharge to provide a cushion against any contingencies. Such insurers will frankly admit that this has been the case with women.

Then too, when there is a lack of information about a particular group, they may simply be avoided. This explains, in part, some of the problems of women and minorities in buying insurance.

And there is still another kind of lack of information that may result in the initiation or perpetuation of discrimination in insurance.

To the extent that insurers really do not know what markets they are reaching and which ones they are not, they are not likely to be able to change their marketing strategy to remedy the situation.

There is certainly a lack of information available about how well the industry serves certain racial and ethnic groups, and adequate information has not always been available even about the women's market.

There are some restrictions on what kind of statistics insurers can keep based on prohibitions against racial and ethnic discrimination. But this should not prevent other attempts to obtain needed marketing information.

Insurers will concede that there is ethnic and racial discrimination. For example, the American Academy of Actuaries in its August 1977 publication entitled, "Report on the Academy Task Force on Risk Classification," states: "Companies with predominately white markets have tended to avoid nonwhite markets." Yet, it would be impossible to precisely measure this kind of discrimination. It is commonplace but as yet unmeasured.

The Products of the Life Insurance Industry

The life insurance industry writes a portfolio that includes life, health (medical expense), disability insurance, and annuities and other pension products.

The contracts have long been viewed as necessities, and the lack of fair access to them makes it impossible for the typical consumer to achieve a reasonable measure of economic security. Government programs by themselves are inadequate, so the uninsured or underinsured court economic disaster.

The life insurance industry stands between the consumer and the poorhouse. The life insurance industry must perform, or the widow and orphans will be left unprotected. The life insurance industry must perform, or the consumer will not have access to the medical care he needs.

In a security-conscious society, the life insurance industry offers one of the critically important necessities for that security.

Life Insurance

The key product of the life insurance industry is life insurance. Life insurance is actually insurance against death and provides a specified payment to a specified beneficiary upon the death of the insured policyholder. Some suggest life insurance should be called death insurance.

Life insurance may provide protection and nothing else. That kind of protection is term insurance.

Life insurance may provide a mixture of protection along with an investment (what is called the cash value of the life insurance policy). The most common kind of insurance-investment policy is so-called straight life, which provides protection not limited by a specified time period and also provides that premiums are to be paid for the whole of life.

Then there is endowment, which is the richest mixture of insurance and investment. An endowment policy provides that the face amount of the policy will be paid at a specified time (say, endowment at age 65).

There are all kinds of combinations of insurance and investment, with increasing and decreasing amounts (for example, decreasing term); various periods during which premiums must be paid (for example, 20-pay life); various combinations of kinds of insurance (for example, straight life with the addition of a term rider); and various combinations of insureds to be covered (for example, a family policy that covers the entire family, not just one policyholder).

Then there are various additions to the policy, many of which are subject to discrimination discussed before and after in this report.

The waiver-of-premium provision provides that premiums need not be paid and will in effect be paid by the company during periods of disability of the insured.

The double indemnity rider provides for double payment in the event of accidental death.

The guaranteed insurability option gives the right of the insured to buy additional amounts of coverage at specified future intervals, without the need to prove insurability.

There is also a so-called payor benefit or agreement. This is usually written on juvenile insurance, where the child is insured, and the parent wants to assure premium payments in the event of his own death or disability. In the event of such death or disability, under the payor benefit, the insurance company has to pay the premiums instead of the parent.

There are also disability income riders, which are agreements to pay the insured a specified amount of cash monthly in the event of his total disability. Disability is considered a separate kind of insurance and is here written as an addition to a life insurance policy.

Health Insurance

Health insurance is a kind of protection used to pay the expenses of medical care of all kinds—medical bills, surgical bills, hospital bills, dental bills. (Sometimes the term is used also to include disability income insurance; but here we use the other more limited meaning.)

Among the common types of health insurance are hospital expense coverage, surgical expense coverage, regular medical expense coverage, and major medical expense coverage. The latter is a kind of insurance used to finance major expenses of illness so it may be written with a large deductible, paying all or a specified percentage of covered expenses over that deductible.

Other terms are also used to describe more specialized health insurance policies—dental expense insurance, dread disease insurance, cancer insurance, etc.

There are endless variations on these policies, with varied provisions for premium payments, with varied provisions relating to cancellations and nonrenewal and other features.

There are various exclusions in health insurance policies of special significance for women. Pregnancy is a common exclusion. Care for newborn infants may be excluded for a specified period, such as 14 days. There may be special exclusions relating to abortion, miscarriage, routine pregnancy, or pregnancy and its complications.

Pregnancy benefits may not be granted at all, or they may be extended only in limited fashion; or they may not be granted to single women, and they may not be granted to dependents of the insured (such as a minor child who might become pregnant).

Disability Income Insurance

Disability income insurance provides cash payments in the event of total or partial disability. Such coverage may be long term (say, paying benefits until age 65) or short term (perhaps paying benefits only for 13 weeks or 1 or 2 years).

The better coverage is noncancellable and guaranteed renewable, which means the premiums cannot change and the coverage cannot be increased until the insured reaches 65.

There are various exclusions in the policy, some of which have obvious significance for women. Disability due to pregnancy is often excluded.

Sometimes the definition of disability is such as to exclude housewives. For example, the policy may define disability in relation to earned income before and after disability with no provision for someone who works but is not paid a wage.

Pension and Annuity Products

An annuity typically provides for a specified periodic payment for life. It is the common method of providing pension and other retirement benefits. Annuities may be purchased in all forms. They may provide monthly, quarterly, semiannual, or yearly payments for life.

Annuities may provide payments to only one person or more than one person. For example, the joint and survivor annuity provides payment during the lifetime of two persons (such as a husband and wife, so when one dies the other continues to receive payments).

There are also fixed-dollar and variable annuities. The fixed-dollar annuity is a specified unchanging amount, say, $100 a month. The variable annuity has a payment that changes, in accordance with the investment experience of a special fund held by the insurance company.

Most life insurance policies contain settlement options, one of which is the provision of an annuity to a beneficiary.

The Insurance Industry

The insurance industry is one of our largest and most important parts of the financial sector. In 1975 it collected $110 billion in premiums and controlled $385 billion in assets. In 1976 those figures were up to $130 billion and $434 billion, respectively.

But its impact far outruns the magnitude of those figures. Its operations and loss payments influence many other vital institutions. For example, health insurance payments are of critical importance to the way hospitals and other health delivery institutions plan and grow. Auto insurance influences how the legal system operates and has enormous impact on the way it evolves.

But the insurance industry does more than make loss payments. It is an important device for individual savings and investments. In 1976 the life insurance industry acquired $176 billion in assets, much of this representing savings of policyholders in the form of cash value in life insurance policies. In 1977 that figure was $197 billion.

The insurance industry is also an important source of capital and investment for the American economy, by virtue of its purchases of government securities, corporate securities, mortgages, real estate, and other financial instruments.

The industry is made up of about 4,700 companies and provides about 1,675,000 jobs.

It has historically been divided into two segments. One is a group of companies writing life, health, disability, and annuity (pension) insurance. This is usually referred to as the life and health insurance side of the business. The other side, so-called property and liability companies, writes such lines as auto, homeowners, workers' compensation, and marine insurance.

This separation between the two segments of the business came about due to historical and regulatory accident. Some of the separation still persists. For example, a property and liability company ordinarily cannot write life insurance.

But in a functional, rather than a regulatory sense, the industry has come together. There are multiple-line companies and groups of companies which together write all lines of insurance. For example, a life company may own a property and liability company.

And more and more, the sales force of one kind of insurer sells the products of others. For example, in recent years some of the major life insurance companies have acquired property and liability insurance companies, and their agents now sell all major types of insurance.

Nevertheless, the two segments of the business are still largely separate in corporate structure, in regulatory treatment, and in many phases of operation. The main emphasis of this report is on the life, health, disability, annuity side of the business, but it should be noted there is one segment of the business that overlaps the usual distinctions between the two sides of the business. Both sides of the business can write health and disability insurance, but the bulk of it is written by the life and health insurance side of the business. For most purposes, however, health and disability can be considered almost an exclusive product of the life and health insurance business.

Often insurance-type products are provided directly by employers, unions, or other groups. This is sometimes described as self-insurance. Sometimes the insurance industry helps in the administration only of such plans but does not participate as a risk bearer. Other institutions may be involved in the administration of such plans, such as banks.

At the end of 1976, about 17 million Americans were covered by pension plans in which the life insurance industry was involved. Over twice as many were involved in self-insured private plans.

But whether the plan is insured or self-insured, it often involves many of the same issues discussed in this paper under the rubric of insurance discrimination. The same problems involved in insurance are involved in any employee benefit program regardless of insurer participation.

Legal Structure

Over 90 percent of the life and health insurance companies are stock companies, owned and controlled by their stockholders. These companies control only about one-third of the assets of the industry.

The other two-thirds are controlled by so-called mutual companies, which make up fewer than 10 percent of all life and health insurance companies. The mutual company is controlled by its policyholders, in theory. In practice, the mutual is controlled by a self-perpetuating management.

One of the unsolved problems of insurance regulation is how to make mutual companies directly accountable to control by policyholders. If that problem could be solved, it might be an important technique for assuring fairer treatment to all policyholders.

There is one other major factor in the market that does not fit into the usual categories discussed above. That is the Blue Cross and Blue Shield organization. These are separate entities, about 143 different plans, operating throughout the United States. Some are controlled by doctors, others by policyholders, and they have diverse organizations. For example, in Pennsylvania, there is a single Blue Shield plan, providing medical and surgical benefits, which is controlled by

doctors. There are also five Blue Cross plans operating in Pennsylvania, largely controlled by policyholders, but in different ways, through different structures.

In addition, there are the so-called HMOs (health maintenance organizations), which are designed to provide comprehensive health insurance protection. They may be sponsored by employers, labor unions, consumer groups, insurance companies, and are subject to various kinds of governance and control.

There is one incidental characteristic of the legal form of organization of special interest to the issues addressed in this report. Mutual companies typically write participating policies which pay dividends (as opposed to stock companies which write nonparticipating or so-called guaranteed cost policies).

The participating policy involves an overcharge, with refunds based on the mortality, interest, and expense experience of the company. Some life insurance companies have made special dividend allowances for women, due to their unusually low mortality rates. But whether these dividends have been adequate is a largely unexplored issue.

Competition, Concentration, and Entry

The life insurance industry has been subjected to growing criticism for failing to competitively market its products, especially its life insurance products sold to individuals (rather than groups). These products have not been subject to vigorous price competition, because of the confusion in determining the true cost of a policy, which requires the consideration not only of premiums, but also of dividends and cash values.

Some view the industry's efforts as competition by confusion and coverup and see the haze beyond premiums and price structure. This matter is now subject to an investigation by the Federal Trade Commission and has been investigated by Congress over the years.

There is also little competition in the area of individual health insurance contracts. Many companies concede they are simply not interested in the business. The American Academy of Actuaries' "Report on the Academy Task Force on Risk Classification," dated August 1977, states: "Many private insurance carriers have, however, ceased to write individual medical expense insurance coverage because of their inability to keep up with increasing medical costs within the current economic and regulatory environment."

The marketing of disability income insurance and annuities (pensions) hasn't been visited with these just-described problems peculiar to health and life insurance, but there is some reason to believe that competition there too is not as vigorous as it might be.

One indirect index of that competition is the amount of concentration in the business—how many companies control a major block of the assets or premiums being written. The higher the level of concentration, the less the competition, according to the usual presumptions.

The U.S. Justice Department recently had occasion to look at the level of concentration in the life and health insurance industry in the course of preparing a document called: "The Pricing and Marketing of Insurance: A Report of the Department of Justice to the Task Group on Antitrust Immunities," dated January 1977.

That report states: "The life insurance industry is much more concentrated than the property-liability industry, with approximately seven companies accounting for 50 percent of total assets. However, the entry of new companies into the field, even though usually limited in both product and geographic market, has been 'slowly eroding the high degree of concentration found in the industry'."

The Department of Justice cited 1969 figures in reaching its conclusion, although later figures do seem to support its conclusion, if its assumptions are accepted.

However, a closer look at life and health insurance industry figures indicates that concentration is much higher than appears from the broadest aggregate of figures apparently considered by the Department of Justice.

What determines competition is not so much what percentage of the market each company has on a national basis, but what percentage each company has of the market for a particular product in a particular area.

When this is done, an entirely different picture emerges. For example, *Best's Executive Data Service,* which reports on market shares, shows that in Pennsylvania only three companies control over half the market for group annuities and for certain kinds of health insurance. Even on a national basis, when a single product is considered, as few as three companies may have about half the market.

And when less competitive States than Pennsylvania are considered, the concentration figures are even more ominous. When group annuities are considered, in four different States, a single company has over 60 percent of the market. In three other States, a single company has over 50 percent of the market. And in 16 additional States, a single company has between 30 and 50 percent of the market.

This all suggests that the degree of concentration in the life and health insurance industry has been consistently understated, and the amount of competition may have been overstated.

The degree of competition can also depend on the entry into the business and the ease of entry. In many States, life insurance is a

remarkably easy business to enter. For example, last year companies were still being formed in Arizona with as little as $25,000 in capital and $12,500 in surplus.

In 1977, 92 new life and health companies were formed and 60 were retired. Almost all of the new companies came in with rather modest capital and surplus, and many are related to existing companies.

Hence, despite relative ease of entry, there are still substantial barriers for any company to have any real impact on the competitive balance. It must have massive capital and surplus and a sales force able to produce.

This ease of entry, however, could be of great significance when attempts are made to set up women- or minority-controlled insurers.

Marketing Systems of Insurers

Insurance sales can be made by mail, and some companies have been successful with such methods. However, the great bulk of life and health insurance is sold by agents of various kinds, again reflecting the fundamental fact that insurance must be sold; it is not bought.

Agents may be tied to a single company and are then called captive agents. Others may represent many companies and are sometimes referred to as independent agents.

There is also what is called a broker, who usually represents the policyholder rather than the company, and takes business to many different companies.

In the life insurance business, most companies organize their agents according to one of two systems. The branch-office system involves the direct management control of field offices, which operate under a manager who recruits and controls the agents on behalf of the company.

The other system, called the general-agency system, involves a contract with a general agent, who is assigned a specific territory, and who then proceeds to develop that territory on his own, with the recruitment of agents.

There are various combinations of the two systems, with the trend being for companies to exert more and more control over the field force of agents, and a trend toward a branch-office type of system.

But another aspect of the marketing approach involves the kind of insurance being sold. There is *individual* insurance as opposed to *group* insurance.

Group insurance can be thought of as coverage on a wholesale basis, with the agent selling, for example, an entire group of employees through a contract with a single employer. Group coverage may also be sold to unions, professional associations, fraternal organizations, and other types of groups.

Sometimes the employer pays for the entire cost of the group policy. Sometimes each employee pays part of the premium.

Group insurance is usually underwritten and rated on a group basis. That is, a rate is set for the entire group, not on an individual basis, and the entire group is accepted or rejected depending on the general situation of the group, regardless of the insurability of some individual members.

Group insurance is often experience rated, with the group premium being determined from time to time with due regard to the actual loss experience of the group.

There are two marketing methods involved in the sale of individual life insurance. One is referred to as the debit system of marketing, which involves the collection of premiums at the home of the policyholder. This system is associated with industrial life insurance, a kind of coverage sold in small amounts, usually about $500, with premiums payable on a weekly or monthly basis.

Larger policies are now also being sold more often on the debit basis, and health insurance in small amounts, called industrial health, is also sold on that basis.

The term used to define all life insurance—other than group or industrial—is ordinary life insurance. It is another kind of individual coverage (larger in amount than industrial) and is sold in the conventional way.

About 90 percent of all health and disability insurance is sold on a group basis.

About 50 percent of life insurance is now sold on a group basis. Relatively little is sold on the debit basis, with industrial life insurance making up less than 2 percent of the total.

Life Insurance Investments

Life insurance, which involves the provision of protection and savings as well (cash value in life insurance and other money earmarked for future payment under annuities and other policies), produces huge sums for investments each year.

Among the investments made by life insurance companies during 1977, according to estimated figures released by the American Council of Life Insurance, are $31 billion into government securities; $146 billion into corporate securities, including stocks and bonds; $13 billion into mortgages; $2 billion into real estate; and $5 billion into policy loans, for a total of $197 billion.

At the end of 1977, the industry held $23 billion in government securities, $172 billion in corporate securities, $96 billion in mortgages, $11 billion in real estate, $28 billion in policy loans, and about $20

billion in cash and other assets. That is for a total of $350 billion dollars.

The property and liability business also made substantial investments in the American economy, but on a smaller scale than the life insurance business.

The Regulation of the Insurance Industry

The insurance industry is subject to comprehensive regulation at the State level. Most States have an insurance commissioner, heading a State insurance department, assigned the responsibility of regulating the companies under detailed provisions of the State insurance laws.

Commissioners have power over the companies and their agents and brokers in all phases of operations. From birth to death, the companies are regulated. They must be admitted to do business in the State, and they are liquidated or dissolved only under the commissioner's supervision.

The commissioner has jurisdiction over such diverse matters as investment, sales and underwriting practices, policy forms, premiums, and the like.

Some State insurance departments are larger, better staffed, and more influential than others. Among the traditional leaders in insurance regulation are New York, California, Pennsylvania, and Wisconsin.

The regulatory action of some of these larger departments has a carryover effect nationally. For example, when these larger States take action against certain policies because they discriminate against women, this is likely to have an effect across the land. Even though policy forms are approved by each State, many companies attempt to maintain uniformity nationwide. So when one State forces a change, it may go nationwide.

The insurance commissioner has great power over the companies based not only on specific legal authority, but also based on the moral suasion he typically commands over them. An early commentator described the insurance commissioner as a combination judge, jury, and hangman over the industry. That may be an overstatement, but the commissioner does have great authority to bring about change in the insurance industry.

The commissioner's authority over the industry is not total, however, and many use their authority in an ultraconservative manner. For example, some of the commissioners that responded to my survey to gather information for this report indicated that they do not have authority over life insurance rates, including the question of the fairness of the 3-year setback for women. For example, W.W. Fritz, insurance commissioner of Oregon, in a letter to me dated April 4,

1978, stated: "The 3-year setback on life insurance is moot with us inasmuch as the Division has no authority over life insurance."

John H. Allen, staff attorney for the Department of Insurance of the State of Tennessee, also said his department has no "rate-making authority" over life insurance rates.

However, even in such cases, a commissioner who senses unfairness in the insurance process can seek voluntary change by the companies, and can use publicity and proposed legislation to attempt to correct the problem.

The Federal Government, by virtue of the McCarran Act, has left insurance regulation to the States, except for certain areas in which indirect or backup regulation exists.

The Federal antitrust laws apply to the insurance business only "to the extent that such business is not regulated by State law."

The tax laws, securities laws, labor laws, civil rights laws, and other general Federal laws are also applicable to the insurance industry. For example, the Equal Employment Opportunity Commission has had great impact on the insurance industry.

Furthermore, the performance of State regulation has been under the surveillance of Congress, and its hearings and reports have had a profound impact on State regulation.

There are also some voluntary organizations that have a great deal of influence on State regulation. One of the most important is the National Association of Insurance Commissioners, which sponsors meetings and develops legislative and regulatory proposals often acted on by the States.

For example, the NAIC developed a model regulation to eliminate unfair sex discrimination. As of December 1977, 10 States had adopted the regulation and others had adopted parts of it. The purpose of the statute, as described by its own language, is "to eliminate the act of denying benefits or coverage on the basis of sex or marital status in the terms and conditions of insurance contracts and in the underwriting criteria of insurance carriers."

Questions and Issues to Be Resolved

This section will review some of the actions and proposals to bring an end to ethnic, racial, and sex discrimination in the insurance business and in the insurance marketplace.

Some have already been implied or suggested in the previous discussion, but will be restated, refined, and elaborated on here.

Consumer Education

One of the most efficient ways to bring about change is through consumer education on the existence and methods of avoidance of discrimination in the marketplace.

Many of the abuses that exist would soon become untenable if consumers were better informed on alternatives in the marketplace. When consumers are aware of which kinds of discrimination exist and what companies avoid such practices, the industry would be forced to readjust its marketing plans.

Insurance departments could publish "shopper's guides" for women, minorities, and any other group likely to experience unfair discrimination in the marketplace.

As Insurance Commissioner of Pennsylvania, in 1974 I published "A Mini Guide to Women's Insurance Rights" which is a first approximation of the kind of information women ought to have. The Insurance Department of Wisconsin has also since published an "Insurance Guide for Women," which might be used as a model. The appendix to this report also includes a guide, prepared for another purpose, but suggestive of the kind of information women ought to have available.

Similar guides might be prepared for other minorities or anyone else with special insurance problems. One of the important features of any such guide would be a list of channels for complaints about discrimination and how to proceed in asserting such complaints.

Other government agencies and private groups might also prepare such guides. They are undoubtedly one of the most efficient and economical ways to bring about change in the insurance marketplace and to eliminate discriminatory insurance practices.

As another form of consumer education, women and minorities should be advised that lobbying with State insurance departments on administrative action designed to eliminate sex discrimination in insurance might pay handsome rewards.

On the issues involved in this report, insurance departments have been responsive, and insurance commissioners generally seem to be interested in ending many of the forms of sex and ethnic discrimination that persist.

Improved Publications Presenting Options Available to Women

Surprisingly enough, the most widely used reference book for life insurance rates, *Best's Flitcraft Compend* (1977), does not even list women's rates for all companies. After all of the pious talk about eliminating discriminatory practices, many major insurers do not even have the good sense to present their life insurance rates for women, thus ignoring the greatest untapped life insurance market.

These companies could be easily embarrassed into ending such counterproductive and foolhardy omissions. At the same time, pressure should be brought to bear on the publisher of the volume, A. M. Best Company of Oldwick, New Jersey, to require or at least request companies to include female as well as male rates.

Other editorial material and advertising presented in insurance publications often omit the female rate, another omission that could probably be easily brought to an end.

Women can hardly obtain access to the insurance market when commonly used sources of company and premium information are largely directed only to men.

Special Complaint Gathering and Resolving Programs

Insurance departments can be proficient at gathering and resolving consumer complaints on insurance discrimination or any other matter.

At one point, while I was insurance commissioner, the Pennsylvania department established a special center-city circuit rider program to gather insurance complaints from center-city residents. At one point, a special effort was also made to gather women's complaints.

These programs are useful in order to discover patterns of abuse, formulate remedial action, and resolve grievances.

Most of the responses to my survey of insurance departments indicated they were not carrying out special programs along these lines, but they almost all said their regular complaint capabilities were open to all comers.

Whether or not the insurance departments want to formulate special programs, some of the groups affected by certain forms of insurance discrimination might take special measures to inform members of affected groups of the complaint capabilities of their State insurance departments.

Making Insurers More Accountable for Underwriting Decisions

When people are rejected for insurance, they ought to know the reasons. When a company rejects someone, they ought to be able to justify their decision. It will probably do the decisionmaking processes of the insurers some good to force them to explain what they are doing, instead of letting them operate by the proverbial seat of the pants.

The recent (July 12, 1977) report of the Privacy Protection Study Commission, entitled *Personal Privacy in an Information Society,* contains a series of proposals to force insurers to be accountable for their underwriting decisions and to explain them on request.

The recommendations relating to insurance are set out in chapter 5 of the report. For example, one of these recommendations would require the insurer to disclose the details of any adverse information on which its refusal to insure is based. In other words, the insurer would be forced to explain any turndown.

This would make the possibility of unfair discrimination more remote by requiring accountability.

The recommendations of the Privacy Commission might be implemented by amending the Federal Fair Credit Reporting Act, or by amendments to the State law. Virginia has already led the way by legislative adoption of sections 13, 14, and 15 of the Commission's privacy recommendations. Other States should follow that lead.

Special Education Programs

One key to opening the way for women and minorities in the insurance industry is through special educational programs. From the programs I reviewed, it seems apparent that some new approaches are in order, some existing programs should be accelerated, and some institutions should be pushed harder to encourage the entry of minorities and women into the business.

A New Program. One new program announced this year is being carried out under the Center for Insurance Education at the School of Business and Public Administration of Howard University. It is headed up by Dr. James J. Chastain.

Under the program, 30 incoming black freshmen will come into the school where they will major in a newly established insurance program. During the course of their studies, the group will serve internships with insurance companies, they will be prepared for various professional insurance exams, they will maintain contact with the business by attending local and national meetings of insurance associations and professional groups, they will attend special workshops, and at the same time will receive a basic education in business administration.

The document proposing this new program indicates that of the 60,000 black high school juniors who took the Scholastic Aptitude Test in 1976, only 5 percent considered a business career, and the percentage thinking about insurance was apparently nil.

The program will cost about $500,000 a year and is scheduled to start this fall. It has every indication of producing the kind of training needed for the insurance industry and will produce the kind of graduates being sought by the industry.

An Old Program. The Society of Actuaries' attempts to recruit black students are apparent failures. Actuarial science requires a unique

combination of someone proficient in practical and theoretical mathematics and knowledgeable about the insurance business.

So it may be that this program would be the equivalent of a medical school attempting to recruit candidates to become brain surgeons before any general practitioners are produced. This noble effort seems to have been misdirected at unrealistic goals, when resources might have been better spent at more generalized training and career objectives.

Some Other Old Programs. An existing program with marked success in bringing women in is the feeder program for the CPCU designation, sponsored by the American Institute for Property and Liability Underwriters. It has gone from a 26.3 percentage participation of women in 1973 to 55 percent last year. That is the kind of success story that should be studied and applied elsewhere.

In contrast, the programs of the American College (CLU) were unimpressive in results. Here is one of the many pressure points where an educational group could probably be persuaded to launch a more extensive educational and training program for women and minorities.

The CPCU program of the American Institute has been more impressive in recruiting women than its counterpart in life insurance, the American College. But none of the programs, based on the evidence I could gather, seems to be achieving significant results in bringing in blacks or other minorities.

Minority- and Women-Power on Boards

Women and minorities have been virtually unrepresented on insurance company boards. To change this, and to change the discriminatory policies of insurers, an attempt should be made to obtain broader representation on these boards.

Some insurers (for example, Blue Cross of Philadelphia) actually conduct elections for the board, during which it is feasible to come forth with a special slate. The process is usually more difficult on large national insurers, which operate as mutuals.

But organized efforts to bring about changes on boards are likely to pay off, as are attempts to make the election process more responsive to the will of policyholders.

Minority- and Women-Controlled Insurance Companies

Both the advantaged and disadvantaged have learned that when the insurance industry offers neglect, the alternative way may be to own and control your own insurance company.

This insight most recently came to the medical profession in the midst of the recent malpractice insurance crisis. Many doctors felt that the insurance industry was neither able nor willing to solve their

malpractice insurance problems. So doctors set up their own companies that would pursue these problems more aggressively.

The same lesson has not been lost on women and minorities, and consideration should be given to encouraging and setting up such companies.

According to U.S. Bureau of the Census figures, in 1972 there were 71 black-owned insurance companies with paid employees, 21 women-owned companies with paid employees, 4 Hispanic-owned companies with paid employees, and 3 other minority-owned companies with paid employees.

There are no 1969 figures available for women-owned companies, but since then black-owned companies have increased by six; Hispanic-owned by two; and other minority-owned by three.

These same census figures show that women and minorities have made little penetration in the insurance agency, brokerage, and service side of the business. In 1972, considering only those firms with paid employees, there were only 629 women-owned agencies, 259 black-owned agencies, 165 Hispanic-owned agencies, and 145 other minority-owned agencies.

The agency business poses virtually no legal or financial barriers to entry. There are few capital requirements, and the licensing exams are generally not considered to be exceptionally difficult.

The Special Issue of Dividends on Participating Policies

Dividends are subject to little scrutiny by regulators or anyone else. But in view of the long history of overcharge of women for life insurance, there should be high priority assigned to the review of dividend structures to see if women are getting adequate consideration.

This surveillance of dividends might come in many forms, including pressure on the insurance commissioner to act and pressure on the companies to disclose their dividend policies.

National Health Insurance as One Solution to Discrimination in Insurance

A solution sometimes offered for ending sex discrimination in health insurance is a comprehensive national health insurance program.

There is no reason to believe that a government program would be free of sex discrimination. The February 1978 "Report of the HEW Task Force on the Treatment of Women Under Social Security" documents far-reaching sex discrimination in the social security system.

There is also no reason to believe that the U.S. Department of Health, Education, and Welfare (HEW) or anyone else in the Federal

establishment is capable of formulating a national health insurance program that would work.

These same people that would formulate national health insurance have never been able to straighten medicare or medicaid out. If they goof up on a small scale, their performance is not likely to improve when they go to a larger scale operation.

What is almost comical is to find HEW working on a grand national health insurance plan, at the very time it is unable to deal even with existing Federal programs, and at the very same time HEW publicly proclaims it misspent from $6.3 billion to $7.4 billion in fiscal 1977. The HEW Secretary admits $4 billion was spent unnecessarily on health care programs in fiscal 1977.

If that department can waste $4 billion in programs only covering a small fraction of the population, can you imagine how much they would be able to waste on a comprehensive national program? An architect who cannot build a 1-story bungalow should not set out to build a 60-story skyscraper.

Federal Insurance Regulation as a Solution

It has been suggested that a Federal takeover of insurance regulation might result in fairer treatment of women and minorities in the insurance process.

There is no evidence that Federal regulation is an improvement over State regulation. Based on the performance of such agencies as the Interstate Commerce Commission, the U.S. Consumer Product Safety Commission, the Food and Drug Administration, and a host of others, there is much evidence to suggest that Federal insurance regulation would be a step backward, simply removing regulation further from the public.

If Federal steps are to be taken, they could be in the form of legislative enacted guidelines, which would be binding on insurers, but which would not transfer regulatory activity or responsibility to the Federal Government.

Ongoing Legislative, Administrative, and Judicial Action for Change

The proposed Equal Rights Amendment to the Constitution provides that "Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex." Some States have already passed amendments to their State constitutions.

The implications of this law for insurance discrimination are not clear. Some have argued it would only eliminate rates and classifications based on sex if they are not reasonably needed for some

legitimate purpose. To date such constitutional changes have not affected the use of sex in insurance classifications. Other forms of sex discrimination (e.g., refusal to sell women long-term disability coverage) are now probably adequately treated under existing laws.

A great variety of legislation has been adopted to address the problem of sex discrimination. Oregon has adopted a series of statutes, requiring the same maternity benefits for an unmarried woman as is granted a married woman, including the wives of insured persons choosing family coverage; and requiring mandatory pregnancy benefits in group disability or similar fringe benefit programs.

New York, in 1975, passed a law prohibiting discrimination in the issuance of policies based on sex, thus, requiring, for example, that long-term disability insurance be made available to women too.

Effective January 1, 1977, New York mandated maternity care coverage in all medical expense policies (group and individual) for all women (single or married). The constitutionality of the law is now being challenged in the courts and the effect of the law has been stayed.

In 1977, the California insurance department proposed legislation to require that certain kinds of life insurance policies give greater recognition to the increased life expectancy of female insureds.

A great deal of other legislation is being considered at the State level. In addition, there is a proposal before Congress to amend Title VII of the Civil Rights Act to prohibit pregnancy exclusions in employee benefit programs. A U.S. Supreme Court case, *Geduldig v. Aiello* (1974), held that exclusion of coverage for disability that accompanies normal pregnancy and childbirth does not violate the equal protection clause of the 14th amendment to the U.S. Constitution. That case arose under the California Unemployment Compensation Disability Program. In *Gilbert v. General Electric,* the U.S. Supreme Court held such exclusion does not violate Title VII of the Civil Rights Act.

There has also been a good deal of administrative action. As already indicated, many States have adopted all or part of the NAIC model act on sex discrimination. Many State insurance departments have taken other administrative action under the insurance laws. And the EEOC and other Federal agencies have also been extremely active on these matters.

In addition, there is a good deal of pending litigation. There is the issue raised in *Manhart v. City of Los Angeles,* testing whether the city could provide a retirement plan more advantageous to males than females. The U.S. Circuit Court of Appeals held that the pension plan of the City of Los Angeles (Department of Water and Power) violated Title VII of the Civil Rights Act by providing a more advantageous

plan to men. The issue has not yet been resolved by the U.S. Supreme Court.

There are many other cases now before the courts. Such groups as Equal Rights Advocates, Inc., represented by Mary C. Dunlap, and others have brought a variety of cases, challenging sex discrimination in insurance and employee benefits.

Other Related Kinds of Discrimination

During the course of the investigation for this report, there was much to suggest that unfair discrimination of other types can be found where ethnic, racial, and sex discrimination persist.

Other kinds of insurance discrimination that should be investigated include those distinctions based on age, mental health, and religion. Many of the same irrationalities and imperfections of the market that permit one kind of discrimination often permit other and equally serious kinds of discrimination.

Appendix

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SOME MEMOS USED TO GATHER INFORMATION

MEMO 3/22/78

FROM: Herb Denenberg
127 Ridgewood Road
Radnor, Pa. 19087

TO: All Insurance Commissioners

SUBJECT: Discrimination in Insurance

1. I have to prepare a report for the U.S. Commission on Civil Rights on the subject of sex, race and ethnic discrimination in the insurance business and in the insurance marketplace. The primary focus is on the pricing, provisions, availability and marketing of life, disability, medical expense, annuity and pension products, and the employment situation within the industry.

2. I would like your views for quotation, as well as a history of steps taken by your department to investigate, monitor and act on such discrimination or allegations of discrimination. I would also appreciate your responses to some specific questions, set forth below, and the names of anyone in your department I might contact for a phone call or personal meeting.

3. I would appreciate receiving your prompt response, as my deadline for submission of the paper is April 10, 1978. I would also welcome your suggestions on this subject, and copies of any reports, regulations, legislative proposals or enactments which your department has produced or reacted to. Here are some of the issues which have been raised:

Disability Income:

4. What steps have been or should be taken to deal with such issues as: The total exclusion of pregnancy from disability income policies; the inability of some women to buy long-term disability coverage; the inability of home-makers to buy disability income; questions about the rate structure of disability (some suggest women 60 and over should have lower premiums, but do not necessarily get them)....Do you see any continuing problem relating to sex discrimination in disability coverage?

Life:

5. Some critics claim that the three-year set-back on life insurance does not give the female policyholder an adequate discount. Has your department taken any position on this question? Do women have equal access to disability income written on life contracts? Have the companies tended to ignore or neglect the potential female customer? Is the underwriting of life insurance unduly restrictive in allowing home-makers to buy adequate amounts of coverage?

Medical Expense:

6. There has been criticism of policies excluding pregnancy for single-females; there is the question of whether group coverage of a wife should extend in the same fashion to the husband, as is the case of the converse situation (when the husband's group coverage extends to the wife); there is the question of whether all policies should provide pregnancy coverage and the risk should be spread across all policyholders.....

Pensions and Annuities

7. Do you see any problems of sex discrimination in the writing of annuities, or other pension products? What of related disability coverages that may be included in a pension program?

Unisex Rating

8. Has your Department come to any conclusion on the propriety or practicality of unisex rating? Should sex-based rates go the way of race-based rates or is there a legitimate and necessary distinction?

Racial and Ethnic Discrimination

9. Do you find any ethnic or racial discrimination in the sale of any of these products (life,health,etc.). For example, does the higher mortality and morbidity of blacks have any influence on the underwriting process? Is there a problem of an inadequate agency system to serve center-city areas?

Employment

10. Are you aware of any problems of sex,racial or ethnic discrimination in the hiring of personnel or the appointment of agents by the insurance industry? Is this a matter within your jurisdiction if there should be a problem?

Special Complaint Programs

11. Have you instituted any special complaint handling programs for center city areas? Have you prepared any special guides or brochures for any particular group that might have special problems.

3/22/78

MEMORANDUM

TO: Life and Health Insurance Companies

FROM: Herbert S. Denenberg
127 Ridgewood Road
Radnor, Penna. 19087

SUBJECT: Discrimination in Insurance (Ethnic,Racial and Sex Discrimination); Life,Disability,Medical Expense, Annuities and Pension Products....

1. I would greatly appreciate your help in my preparation of a paper on insurance discrimination for the U.S.Commission on Civil Rights. As I have an April 10 deadline, I would appreciate a prompt response.

2. The paper involves discrimination in the marketplace as well as employment discrimination. Here are some of the details I would like you to supply if at all possible.

3. On a positive note, I'm interested in the changes you've implemented in recent years in regard to allegations of sex discrimination, including new policies, rates, advertising material, etc. For example, I've noticed some companies are now issuing special disability policies for wifes who do not work; others have rewritten life policies; etc. I would also appreciate any action you've taken on the employment front.

4. I would also appreciate receiving copies of any policies, underwriting manuals, endorsements and riders, advertising brochures, and other materials indicating the status of your current marketing areas in these lines of coverage for both group and individual, and any other changes you are planning.

5. I would also appreciate any statements, testimony, etc., and summaries of the current law vis-a-vis discrimination (for example, compiled on an insurance department by department basis) that you can make available.

6. Finally I would appreciate any observations you might have on the question of ethnic and racial discrimination. For example, whether a lack of property-liability agents in center city areas has an adverse effect on the marketing of life and health; whether higher mortality for blacks affects underwriting, etc.

7. I am contacting trade associations as well, but I am also interested in any responses which I can obtain on a company by company basis. Again, thanks.

3/22/78

To: Organizations with Special Concern for Discrimination
Against Racial, Ethnic and Low-Income Minorities.

From: Herb Denenberg
127 Ridgewood Road
Radnor, Pennsylvania 19087

Subject: Discrimination in Insurance

I am preparing a paper for the U.S. Civil Rights Commission on ethnic, racial and sex discrimination in insurance.

This will focus on life, health, disability, medical expense, pension and annuity sales, marketing and pricing and the employment situation within the industry, too.

In this connection, I would appreciate your views on this subject, perhaps along with any reports, testimony or any other documents you may have already prepared on the subject.

Thank you for your attention to this matter. My deadline is April 10,1978 so I would appreciate your earliest possible response.

3/22/78

TO: Insurance Agents and Brokers

FROM: Herb Denenberg
127 Ridgewood Rd.
Radnor, Penna.19087

Subject: Sex,Racial and Ethnic Discrimination in Insurance

1. I am preparing a meeting for a conference called by the U.S. Commission on Civil Rights to discuss the question of sex, racial and ethnic discrimination in the insurance marketplace and in the employment practices of the insurance industry. The conference will focus on life,health,disability, medical expense, annuities and other pension products.

2. I would appreciate your views on problem areas, if any, that should be considered. Specifically, I would be interested in your views on the availability of disability income for women, for domestics, for home-makers,etc.; the adequacy of the set-back for premiums for life insurance on women; the adequacy and rating of pregnancy coverage in medical expense policies; etc.

3. Any help you can give me on this matter will be greatly appreciated. As my deadline is April 10,1977 I would appreciate as early a response as possible. Thanks again.

3/23/78

MEMO

TO: AGENTS' ASSOCIATIONS

FROM: HERB DENENBERG
127 Ridgewood Rd.
Radnor, Penna.19087

SUBJECT: Discrimination in Insurance

1. I'm preparing a report for the U.S.Commission on Civil Rights on the question of sex, racial and ethnic discrimination in insurance. In that connection, I would appreciate your viewpoint on the subject, together with any statements or testimony you may have already prepared for other purposes.

2. The specific focus of the report is employment in the insurance business, and discrimination in the marketing, pricing and underwriting of life,medical expense, disability income, annuities, and other pension products.

3. Among the questions to be raised: Inability of housewives (not otherwise employed) to obtain disability income; inability of women to get disability coverage for pregnancy; inadequate discounts for women buying life insurance (i.e.is the 3-year set-back enough); exclusions of pregnancy and its complications in many health insurance policies, etc....

4.Although the emphasis is on life-health, there is still a question of whether inadequate agency forces in center city areas for auto and homeowners adversely affects other lines as well.

5.There is also some concern that higher mortality and morbidity among some low-income groups may mean some discriminatory underwriting on the life and health side of the business.

6.The questions raised are far broader than the issues outlined above but I would appreciate any help you can give me on this matter.

Any help you can give me on this matter will be greatly appreciated. As my deadline is April 10, 1978 I would appreciate as early a reponse as possible. Thanks again.

CHARLES H. PAYNE
Commissioner of Insurance

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Chief Examiner
JAMES R. CARLISLE
State Fire Marshal
ROY L. THORNELL

March 28, 1978

Mr. Herbert S. Denenberg
127 Ridgewood Road
Radnor, Pennsylvania 19087

Dear Mr. Denenberg:

This will acknowledge receipt of your letter of March 22 requesting certain information from the Alabama Insurance Department.

Alabama has the same problem as most other insurance departments in that it is charged with the responsibility in many areas of insurance regulation. It must set priorities due to the lack of adequate budget and properly trained and available employee positions. This Department does not have a division or anyone assigned to investigate discrimination as such. However, each person in the Department takes the position that all policyholders should be treated equally and insists that companies do so.

We have no statistics or any organized plan at this time regarding the areas in which you requested comment. I will, however, attempt to make some general statement covering our position as a Department.

Disability Income - In this geographical area women have been separated from men in determining rates on disability policies and benefits granted thereunder. Generally, disability income policy benefits and rates are determined by the employment status of the individual which includes probability of accident or disability; duration of disability and probability of returning to gainful employment. Generally, women have not competed in the same areas of employment in this locality as they have in more populated states and those women not gainfully employed or employed part-time do not have disability coverage available to them in all instances. The rate structure for male and female is determined by experience based on premium on benefits paid.

Life - This Department has taken no position on the three (3) year set-back on life insurance. As to disability income written in conjunction with life contracts, statements in the above paragraph apply. I am not aware that women or homeowners are neglected in this jurisdiction.

Medical Expense - Rates on all benefits should be determined by those persons receiving the benefits and also be based on the frequency of claims and total amount of claims for any benefit. It is unrealistic to believe that all benefits should be paid for by all policyholders. A single male should not be responsible for maternity benefits and be assessed certain overall rates when it is impossible for him to ever receive such benefit. Risks spread across all policyholders is not an efficient way to determine rates.

Pension & Annuities - At the present time I see no discrimination in writing annuities. Women's rates are higher because upon retirement they usually live much longer than their male counterparts and again it would be unrealistic for the male to be forced to pay part of the female's retirement through a level rate program.

Unisex Rating - This Department has no policy established regarding this subject.

Racial and Ethnic Discrimination - Certainly higher mortality and morbidity causes certain groups to be underwritten very closely. Again, the person receiving the benefit must pay for the benefit on a class basis for rating purposes. For instance, field construction workers are all grouped together because of high risk factor; however, certain minorities are underwritten differently when they are subject to particular disabilities. General health standards, preventive medicine, adequate medical facilities are but a few items that are considered in determining rates and underwriting procedures for any applicant.

Employment - In the State it is necessary that public contact personnel be selected that will produce the highest application rate. Industry representatives have told this Department that certain employees are selected which appeal to certain ethnic areas. Blacks do not sell well in white communities. White salesmen do not necessarily have that problem in black communities. Women do not sell well in heavy industry areas. I believe this problem is not within the jurisdiction of this Department.

Special Complaint Programs - No special complaint programs have been instituted for center cities as such. Due to our limited budget we do not advertise for complaints. We get more than we can adequately process now with our limited staff. Our Department is located within the center city and we do get referrals from consumer organizations; however, most of our complaints originate in rural and small town areas.

Sincerely yours,

C. H. PAYNE
COMMISSIONER OF INSURANCE

BY: Charles E. Crawford
Charles E. Crawford
Deputy Commissioner

CEC:bb

STATE OF CALIFORNIA EDMUND G. BROWN JR., Governor

DEPARTMENT OF INSURANCE
100 VAN NESS AVENUE
SAN FRANCISCO, CALIFORNIA 94102

March 30, 1978

Mr. Herbert S. Denenberg
127 Ridgewood Road
Radnor, PA 19087

Re: Discrimination in Insurance

Dear Mr. Denenberg:

Commissioner Kinderhas requested that I reply to your inquiry of March 22, 1978, for comments regarding sex, race, and ethnic discrimination in the life and disability insurance market in California. I trust you will appreciate the fact that, within the time frame you have given us, only a very general response is possible.

Pursuant to hearings held in August of 1975, this Department promulgated regulations, effective January 1, 1976, prohibiting discrimination in the availability of all forms of insurance based upon sex, marital status, or sexual orientation. A copy of those regulations, set forth in Ruling No. 204 (Title 10, California Administrative Code Section 2560 et seq.), is enclosed. Also, California Insurance Code Section 10140 prohibits availability and rate discrimination in life or disability insurance based upon race, color, religion, national origin, or ancestry. (The CaliforniaInsurance Code has no overall antidiscrimination section applicable to all lines of insurance.) Except for the cited Code Section, this Department has very limited authority over the premium rates charged for life and disability insurance.

We have the following comments in response to the specific issues raised in your letter. Paragraph numbers below correspond with those of your letter.

4. Disability Income:

(a) Considerable public support was shown at the hearings on our sex discrimination regulations for mandatory coverage of pregnancy. However, we did not feel that it was appropriate for an administrative agency to require such coverage in disability income or medical expense policies because of the effect on the premiums which would have to be charged for such policies and also because of the senti-

ment, expressed by many women who did not intend to bear children, that they did not want to pay premiums for women who would bear children. We still believe this to be a matter more appropriately left for legislative consideration.

(b) Ruling No. 204 requires that all forms of disability insurance be equally available to women and men. Since its promulgation, we have received no complaint indicating unavailability of long-term disability coverage for women.

(c) There was considerable interest in the subject of "homemakers" disability income insurance in our hearings on Ruling No. 204. A few insurers testified that they had offered such coverages, either in separate policies or as riders to disability income policies issued to wage earners, but that there had been very little market response to such offerings. We recognize that there are substantial problems in determining the appropriate amount of coverage which should be provided and also in determining when an insured under such coverages is really disabled. That coverage is clearly available if one bothers to shop for it. Quite possibly, insurers are not aggressively seeking that business.

(d) Because of our limited jurisdiction over disability insurance rate levels, we cannot intelligently comment on the rate structure of disability income insurance for the older woman. Our impression, however, is that few insurers are interested in issuing disability insurance to anyone over age 60.

(e) Since the promulgation of Ruling No. 204, most sex discrimination complaints received by this Department have related to rating and availability problems in automobile insurance based upon marital status. Even there, the complaints have been few in number.

5. Life Insurance

(a) A couple of years ago, Commissioner Kinder declared that the three-year set-back on life insurance does not fairly reflect the actual life expectancy of females. Although California law neither requires such a set-back nor limits it to three years, it currently restricts to three years the maximum set-back which can be used for the purposes of nonforfeiture provisions in life insurance policies. Most insurers have interpreted this requirement as limiting the set-back to three years.

(b) In 1977 this Department introduced legislation to require that certain types of life insurance policies give greater recognition to the increased life expectancy of female insureds. This legislation has been amended frequently; and we do not know whether the latest version of Assembly Bill No. 335, last amended March 9, 1978, will be the version finally adopted by the Legislature, although we are hopeful that it will be. A copy of that bill is enclosed.

(c) Ruling No. 204 prohibits sex-linked restrictions on the availability of disability income riders attached to life contracts.

(d) Prior to the recent interest in sex discrimination practices as they relate to life insurance, there was a tendency for life insurers to neglect the female market. We have recently observed that several insurers are advertising the availability of life insurance to female wage earners and even to homemakers. However, the nature of our surveillance of day-to-day insurance marketing practices does not enable us to develop an informed opinion as to whether most insurers are still "neglecting" the female market. We have received very few complaints in this area.

(e) Underwriting practices for life insurance are subject to little regulation by this Department; we cannot comment on whether "adequate" amounts of life insurance coverage are available to homemakers. We are not sure what your understanding is of that term, particularly in light of the cost factor which more often than not determines the amount of coverage purchased.

6. Medical Expense Insurance:

(a) Ruling No. 204 requires that pregnancy coverage be made available as an option to single females under individual policies. However, because of the antiselection problems inherent in pregnancy coverage, the premiums for optional pregnancy coverage which may be added (and dropped) at any time are prohibitive. This Department has permitted insurers to require that such coverage may be elected only when an individual policy is initially issued or the marital status of the insured changes. In group insurance, we have permitted companies to condition pregnancy coverage on whether an insured female has coverage on her dependents. However, we would disapprove a policy conditioning pregnancy coverage on a female insured's being "married". Of course, in many cases, this is a distinction without a difference. In any event, we feel that mandating pregnancy coverage for single females under group insurance policies is a legislative question because it hinges primarily upon employers' reluctance to pay for such coverage rather than insurers' reluctance to provide it. In passing, it would seem that employers should be more willing to provide such coverage to single female employees than to married female employees, since the former would be more likely to return to work following birth since, presumably, they have no other form of support.

(b) Ruling No. 204 requires that pregnancy coverage must be made available to female employees on the same basis as it is made available to male employees; i.e., if a male employee with dependents' coverage is provided pregnancy benefits, then a female employee with dependents' coverage must also be provided pregnancy coverage.

(c) See our previous comments on the expense considerations involved in pregnancy coverage. The undersigned sees no merit in the proposition that the cost of bearing children be spread among all policyholders.

7. Pensions and Annuities:

This Department has very limited jurisdiction over pensions and annuities, but the problems appear to us to be analogous to those existing with life insurance coverages. Assembly Bill No. 335 (mentioned above) also applies to annuities. At our hearings on Ruling No. 204, some unhappiness was expressed concerning the practice of some insurers of charging higher-than-male rates for annuities issued to females while, at the same time, charging females the same rate as males for life insurance. The proposed legislation would prohibit this practice.

8. Unisex Rating:

This Department does not support the concept of unisex rating, as there appears to be substantial statistical support for sex-linked rating differential in life and disability insurance. The June, 1976, study by the New York Insurance Department amply supports our views in this matter.

9. Racial and Ethnic Discrimination:

(a) California, of course, has at least three large groups of highly identifiable minorities: Chicano, Asian, and Black. As previously noted, rating discrimination based upon racial and ethnic considerations has been clearly prohibited in life and disability insurance since the mid-1960s. This Department's life actuary has indicated that it has been accepted in the actuarial profession for some time that, when mortality and morbidity statistics for Blacks are broken down on the basis of socio-economic class, such statistics now closely approximate those for Caucasians.

(b) We have the impression that, perhaps because of the limited capital required to become an insurance agent, the number of minority insurance agents is growing rapidly. However, we have received a couple of complaints from minority agents in center-city areas that they have difficulty in getting appointments from major insurers because of volume and loss-ratio problems. These complaints related to fire and casualty business.

10. Employment in the Industry:

This Department has received several complaints alleging sex discrimination in the insurance industry, although some of these appear to have arisen from disagreements between employees and their supervisors. We have no direct jurisdiction over the hiring practices of insurers, although we have looked into some of these complaints to determine whether a company's personnel practices might influence its underwriting decisions. In any event, California has a Fair Employment Practices Commission whose jurisdiction extends to all employers in the State, and we refer discrimination-in-employment questions to that agency. Last month, the Commission launched an investigation of the hiring and promoting practices of some 300 insurance companies and brokerage firms.

11. The two principal offices of the Department of Insurance happen to be located close to the two major "center-city" areas in California (San Francisco-Oakland and Central Los Angeles), and our Department maintains "walk-in" facilities at both offices for handling insurance complaints of all sorts. However, at this time no special complaint-handling programs or special materials have been designed for center-city residents.

Very truly yours,

WESLEY J. KINDER
Insurance Commissioner

By 

ANGELE KHACHADOUR
Chief Counsel

AK:hcr
Enc.

AMENDED IN SENATE MARCH 9, 1978

AMENDED IN SENATE MARCH 6, 1978

AMENDED IN SENATE FEBRUARY 9, 1978

AMENDED IN ASSEMBLY APRIL 13, 1977

AMENDED IN ASSEMBLY MARCH 21, 1977

CALIFORNIA LEGISLATURE—1977–78 REGULAR SESSION

ASSEMBLY BILL No. 335

Introduced by Assemblyman McAlister

January 27, 1977

An act to amend Section 790.03 of the Insurance Code, relating to insurance rates.

LEGISLATIVE COUNSEL'S DIGEST

AB 335, as amended, McAlister. Insurance rates and values.

Existing law includes among specified unfair methods of competition and unfair and deceptive acts or practices in the business of insurance, the making or permitting of any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for life insurance or life annuity, or in dividends or benefits.

This bill would provide that such provision be interpreted, for any contract of ordinary life insurance or individual life annuity applied for and issued on or after January 1, 1981, to require differentials based upon the sex of the individual insured or annuitant in the rates or dividends or benefits, or any combination thereof. However, for any contract of ordinary life insurance ~~with a face value greater than $5,000~~ or individual life annuity applied for and issued on or after January 1, 1981, but before the compliance date, as specified, in lieu of

such differentials based on data segregated by sex, rates or dividends or benefits, or any combination thereof, for ordinary life insurance or individual life annuity on a female life may be calculated according to an age not less than three years nor more than six years younger than the actual age of the female insured or female annuitant, in the case of a contract of ordinary life insurance with a face value greater than $5,000 or a contract of individual life annuity; and according to an age not more than six years younger than the actual age of the female insured, in the case of a contract of ordinary life insurance with a face value of $5,000 or less.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 790.03 of the Insurance Code is amended to read:

790.03. The following are hereby defined as unfair methods of competition and unfair and deceptive acts or practices in the business of insurance.

(a) Making, issuing, circulating, or causing to be made, issued or circulated, any estimate, illustration, circular or statement misrepresenting the terms of any policy issued or to be issued or the benefits or advantages promised thereby or the dividends or share of the surplus to be received thereon, or making any false or misleading statement as to the dividends or share of surplus previously paid on similar policies, or making any misleading representation or any misrepresentation as to the financial condition of any insurer, or as to the legal reserve system upon which any life insurer operates, or using any name or title of any policy or class of policies misrepresenting the true nature thereof, or making any misrepresentation to any policyholder insured in any company for the purpose of inducing or tending to induce such policyholder to lapse, forfeit, or surrender his insurance.

(b) Making or disseminating or causing to be made or disseminated before the public in this state, in any

newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatsoever, any statement containing any assertion, representation or statement with respect to the business of insurance or with respect to any person in the conduct of his insurance business, which is untrue, deceptive or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue, deceptive or misleading.

(c) Entering into any agreement to commit, or by any concerted action committing, any act of boycott, coercion or intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in, the business of insurance.

(d) Filing with any supervisory or other public official, or making, publishing, disseminating, circulating or delivering to any person, or placing before the public, or causing directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public any false statement of financial condition of an insurer with intent to deceive.

(e) Making any false entry in any book, report or statement of any insurer with intent to deceive any agent or examiner lawfully appointed to examine into its condition or into any of its affairs, or any public official to whom such insurer is required by law to report, or who has authority by law to examine into its condition or into any of its affairs, or, with like intent, willfully omitting to make a true entry of any material fact pertaining to the business of such insurer in any book, report or statement of such insurer.

(f) Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract.

This subdivision shall be interpreted, for any contract of ordinary life insurance or individual life annuity

require differentials based upon the sex of the individual insured or annuitant in the rates or dividends or benefits, or any combination thereof. This requirement is satisfied if such differentials are substantially supported by valid pertinent data segregated by sex.

However, for any contract of ordinary life insurance ~~with a face value greater than five thousand dollars ($5,000)~~ or individual life annuity applied for and issued on or after January 1, 1981, but before the compliance date, in lieu of such differentials based on data segregated by sex, rates or dividends or benefits, or any combination thereof, for ordinary life insurance or individual life annuity on a female life may be calculated as follows: (a) according to an age not less than three years nor more than six years younger than the actual age of the female insured or female annuitant, in the case of a contract of ordinary life insurance with a face value greater than five thousand dollars ($5,000) or a contract of individual life annuity; and (b) according to an age not more than six years younger than the actual age of the female insured, in the case of a contract of ordinary life insurance with a face value of five thousand dollars ($5,000) or less. "Compliance date" as used in this paragraph shall mean the date or dates established as the operative date or dates by future amendments to this code directing and authorizing life insurers to use a mortality table containing mortality data segregated by sex for the calculation of adjusted premiums and present values for nonforfeiture benefits and valuation reserves as specified in Section 10163.5 and 10489.2 or successor section.

(g) Making or disseminating, or causing to be made or disseminated, before the public in this state, in any newspaper or other publication, or any other advertising device, or by public outcry or proclamation, or in any other manner or means whatever, whether directly or by implication, any statement that a named insurer, or named insurers, are members of the California Insurance Guarantee Association, or insured against insolvency as defined in Section 119.5. This subdivision shall not be interpreted to prohibit any activity of the California

Insurance Guarantee Association or the commissioner authorized, directly or by implication, by Article 14.2 (commencing with Section 1063) of this chapter.

(h) Knowingly committing or performing with such frequency as to indicate a general business practice any of the following unfair claims settlement practices:

(1) Misrepresenting to claimants pertinent facts or insurance policy provisions relating to any coverages at issue.

(2) Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies.

(3) Failing to adopt and implement reasonable standards for the prompt investigation and processing of claims arising under insurance policies.

(4) Failing to affirm or deny coverage of claims within a reasonable time after proof of loss requirements have been completed and submitted by the insured.

(5) Not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear.

(6) Compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by such insureds, when such insureds have made claims for amounts reasonably similar to the amounts ultimately recovered.

(7) Attempting to settle a claim by an insured for less than the amount to which a reasonable man would have believed he was entitled by reference to written or printed advertising material accompanying or made part of an application.

(8) Attempting to settle claims on the basis of an application which was altered without notice to, or knowledge or consent of, the insured, his representative, agent, or broker.

(9) Failing, after payment of a claim, to inform insureds or beneficiaries, upon request by them, of the coverage under which payment has been made.

(10) Making known to insureds or claimants a practice

of the insurer of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration.

(11) Delaying the investigation or payment of claims by requiring an insured, claimant, or the physician of either, to submit a preliminary claim report, and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information.

(12) Failing to settle claims promptly, where liability has become apparent, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage.

(13) Failing to provide promptly a reasonable explanation of the basis relied on in the insurance policy, in relation to the facts or applicable law, for the denial of a claim or for the offer of a compromise settlement.

(14) Directly advising a claimant not to obtain the services of an attorney.

(15) Misleading a claimant as to the applicable statute of limitations.

STATE OF COLORADO
RICHARD D. LAMM
GOVERNOR

J. RICHARD BARNES, C. L. U.
COMMISSIONER

ROBERT L. BROWN
DEPUTY COMMISSIONER

DIVISION OF INSURANCE
DEPARTMENT OF REGULATORY AGENCIES
106 STATE OFFICE BUILDING • 201 E. COLFAX AVE.
DENVER, COLORADO 80203

April 6, 1978

Herbert S. Denenberg
127 Ridgewood Road
Radnor, Pennsylvania 19087

Dear Herb:

Your lengthy questionnaire relating to the item you are preparing for the U. S. Civil Rights Commission cannot be answered in detail due to our limitations of staff and time.

Colorado has passed some laws in the past year to preclude discrimination against anyone in the area of insurance purely because of sex. It provides that discrimination may be exercised by companies only if it supported by actuarial justification.

Disability Income. The above comment would relate to that.

Life. It's my personal observation that there should be at least a three year set-back on life insurance and probably a five year set-back. The female market in Colorado is a big market and it's not being neglected.

Medical Expense. Most all group insurance in Colorado, assuming the employer agrees, today does have maternity coverage not only for the employed wife where she is the primary insured under a group plan, but also for unmarried employees and unmarried dependents of employees.

Pensions and Annuities. We see no discrimination.

Unisex Rating. We do not believe that unisex rating is fair, but rather that it is unfairly discriminatory.

Racial and Ethnic Discrimination. We do not find evidence of such.

Employment. This has been adequately handled by the Colorado Civil Rights Commission which has full authority under the law.

Special Complaint Programs. Because of budgeting problems we do not have any facility outside of our principal office. However, the principal office which is located in the capitol complex, is on the edge of the inner-city area and thus, readily available to people who might be classified as residents of the inner-city.

Sincerely,

J. RICHARD BARNES, C.L.U.
Commissioner of Insurance

JRB:bl

Bill Gunter
STATE TREASURER
INSURANCE COMMISSIONER
FIRE MARSHAL

Office of Treasurer
Insurance Commissioner
STATE OF FLORIDA
TALLAHASSEE 32304

March 29, 1978

Mr. Herbert S. Denenberg
127 Ridgewood Road
Radnor, Pennsylvania 19087

Dear Mr. Denenberg:

Thank you for your recent letter concerning unfair discrimination in insurance.

This is a subject which has the continuing attention of the Fla. Department of Insurance. As a result, the Department has adopted Rule 4-43.01, relating to unfair discrimination based on sex or marital status, a copy of which is enclosed.

Further, I am also enclosing copies of two petitions for rule making proceedings which are pending matters before the Department at this time. You will notice these petitions relate to automobile insurance and allege that certain matters constitute unfair discrimination. As stated, these are pending matters and the Department has initiated rule making proceedings regarding them.

Please send me a copy of the report you submit to the U. S. Commission on Civil Rights if you can and do not hesitate to contact me if I can be of further assistance.

Sincerely,

Bill Gunter
Bill Gunter
State Treasurer and
Insurance Commissioner

BG/Lm

Enclosures

GEORGE R. ARIYOSHI
GOVERNOR

WAYNE MINAMI
DIRECTOR
INSURANCE COMMISSIONER

STATE OF HAWAII
INSURANCE DIVISION
DEPARTMENT OF REGULATORY AGENCIES
P. O. Box 3614
HONOLULU, HAWAII 96811

March 28, 1978

Mr. Herbert S. Denenberg
127 Ridgewood Road
Radnor, Pennsylvania 19087

Dear Mr. Denenberg:

Re: Discrimination in Insurance

This is in reply to your letter of March 22, 1978.

As far as we know, we have not had any complaints in recent years regarding sex, race and ethnic discrimination in the insurance business and in the insurance marketplace. Prior to the passage of our No-Fault Insurance Law in 1973, we used to have complaints that unfairly disciminatory practices were being used by insurers in the issuance and rating of automobile insurance policies. We have not had any problem in this regard since the passage of our No-Fault Insurance Law, because Section 294-33, Hawaii Revised Statutes, requires as follows:

> "Discriminatory practices prohibited. No insurer shall base any standard or rating plan, in whole or in part, directly or indirectly, upon race, creed, ethnic extraction, age, sex, length of driving experience, credit bureau rating, or marital status."

Our answers to your specific questions are as follows:

Disability Income

At present, we do not see any problem relating to sex discrimination in disability coverage.

In Hawaii, employers are required to provide their regular workers, temporary disability insurance. There is no sex discrimination. Section 392-21, HRS, requires as follows:

> "Establishment of temporary disability benefits. (a) Any individual in current employment who suffers disability resulting from accident, sickness, pregnancy, or termination of pregnancy (underscoring added), except accident or disease connected with or resulting from employment as defined in section 386-3 or any other applicable workers' compensation law, shall be entitled to receive temporary disability benefits in the amount and manner provided in this chapter."

Life

We have not taken any position regarding the three-year set-back on life insurance. Insurers appear to be providing women with access to disability income written on life contracts; insurers have not tended to ignore or neglect the potential female customers; underwriting of life insurance has not been unduly restrictive in allowing homemakers to buy adequate amounts of coverage.

Under our group life insurance provisions, spouses can be insured in amounts of insurance equivalent to the amount of coverage on the insured individual. Section 431-594, HRS, provides as follows:

> "Spouses and dependents of insured individuals. (a) Any other provision herein to the contrary notwithstanding insurance under any group life insurance policy issued to groups provided in sections 431-572 (employee groups), 431-574 (labor union groups) . . . may be extended to insure the spouse and dependent of the insured individual or such groups in amounts of insurance equivalent to the amount of coverage of the insured individual, provided that in the case of a dependent other than a spouse of the insured individual the amount of insurance for the dependent shall not be in excess of fifty per cent of the coverage of the insured individual or $2,000 whichever is lower, . . ."

Medical Expense

Our Prepaid Health Care Act requires employers to provide prepaid health insurance plans for their regular employees. Section 393-7, HRS, reads in part as follows:

> "Required health care benefits. . . . (c) . . . a prepaid health care plan qualifying under this chapter shall include at least the following benefit types: . . . (5) Maternity benefits, at least if the employee has been covered by the prepaid health care plan for nine consecutive months prior to the delivery. . . ."

Preganancy for single-females must be covered pursuant to the foregoing provisions.

As far as we know, group medical expense policies are being extended to cover dependents, including the insured individual's eligible spouse and eligible children.

Pensions and Annuities

To date, we have not seen any problems of sex discrimination in the writing of annuities, other pension products, or related disability coverages that may be included in a pension program.

Unisex Rating

We have not come to any conclusion on the propriety or practicality of unisex rating. We have not made any study on this subject. Our offhand opinion is that there is a legitimate and necessary distinction.

Racial and Ethnic Discrimination

As far as we know, we do not find any ethnic or racial discrimination in the sale of these products.

Employment

We are not aware of any problems of sex, racial or ethnic discrimination in the hiring of personnel or the appointment of agents by the insurance industry. If there should be a problem, this matter may be within our jurisdiction. It would probably also be within the jurisdiction of the Department of Labor and Industrial Relations.

Special Complaint Programs

We have not instituted any special complaint handling programs for center city areas. We have not prepared any special guides or brochures for any particular group that might have special problems. These programs and guides have not been necessary, as we have not had any complaints in recent years regarding sex, race and ethnic discrimination in the insurance business.

Please feel free to write us if you need additional information.

Yours truly,

Clifford J. Miyoi
Chief Deputy Insurance Commissioner

RM

JOHN V. EVANS
GOVERNOR

MONROE C. GOLLAHER
DIRECTOR

STATE OF IDAHO
DEPARTMENT OF INSURANCE
700 W. STATE STREET
BOISE, IDAHO 83720

April 25, 1978

Mr. Herb Danberg
127 Ridgewood Road
Radnor, Pennsylvania 19087

Re: Your Questionnaire on Discrimination in Insurance and Your Letter of 3-22-78

Dear Herb:

I sincerely apologize for not being able to respond to your questionnaire dated March 22, 1978. As you know, we only have 21 employees in the Idaho Department and at this time of the year we literally are swamped with the Legislature, the budget, and the influx of annual statements relative to the premium tax collection. Also, I am involved in several lawsuits and have recently held several hearings, and I just was not able to find the time to analyze our laws as you requested.

As far as alleged discrimination against women is concerned in the life and disability field, I am aware that women are charged less for life insurance and more for disability insurance simply on actuarial tables and actual experience. Since the Idaho Code prohibits unfair discrimination, we have not felt that such discrimination was unfair. As a matter of fact, I can only see a host of problems arising out of any attempt to impose unisex rating because in the case of life insurance women would be charged too much and in the case of disability and annuities they would not be charged enough. We would then be faced with the problems of adverse selection and we would have to rearrange our laws relative to the right of insurance companies to underwrite in their risk selection process. Therefore, I am opposed to such artificial imposed rating methods.

Since Idaho has no ghettos and all of the races live in harmony and are spread evenly throughout our population, we have no problems of racial discrimination and it has been my experience that minorities and women are eagerly sought after to fill federally mandated racial quotas. Therefore, we really do not have any of these problems in Idaho that I am aware of.

Again, I am sorry I could not get to your correspondence before this time.

Very truly yours,

Monroe

Monroe C. Gollaher
Director

MCG:ca

STATE OF INDIANA

INDIANAPOLIS 46204

THE DEPARTMENT OF INSURANCE
509 STATE OFFICE BUILDING

April 25, 1978

Mr. Herbert S. Denenberg
127 Ridgewood Road
Radnor, Pennsylvania 19087

Dear Mr. Denenberg:

Your letter to Commissioner Hudson has been duly noted and we regret the late date we are answering you. However, we have reviewed your questions with our staff personnel and are prepared to answer them at this time. Also, we are enclosing a number of pamphlets that this Department uses as "hand outs" to various consumer groups.

4. We will permit an exclusion of "normal pregnancy" but require "complications of pregnancy" be covered on the same basis as any other covered illness.

One type of exclusion which in the past was only applicable to female insureds provided for a percent reduction in benefits if the insured was not gainfully employed away from the home at the time of claim. We now will permit this type of reduction only if it does not refer to a female insured.

5. Our Department sees five year setbacks for female lives too, but permits three year setbacks. For the few companies offering disability income on life contracts in our state, female coverage is available.

6. Same as paragraph 4 above but no requirements specifically for single females.

7. We have found no sex discrimination in writing annuities or pensions. We have found no discrimination in disability in pensions or annuities.

8. Unisex Rating. Neither proper nor practical, at least not until the day (unlikely to ever come) when actual experience rates become the same for men and women, or nearly so. Attempts to use rates based on averages or aggregates of males and females would lead directly toward unavailability of benefits due to unwillingness (economic impracticability) of insurers to accept a group unless they knew the mix would include a high enough proportion of the less costly sex so the benefits can be covered by the premiums (and investment) income. Discrimination based on real, natural, discernable differences is fair and necessary. Man-made laws which seek to contravene natural economic laws cause more problems than they solve. (In the male vs. female distinction, the French say "Vive la difference". This is not just an emotional outburst but a recognition of the glories of Nature.)

9. The #9 paragraph should be looked at by someone with underwriting practices. While we have not done an empirical study, I feel certain that there are marketing problems in the center-city. This has been highlighted by recruiting difficulties of the debit companies.

10. Again we are dealing in an area where we have no hard figures. We by law have no question on race on our applications and as a result cannot evaluate hiring patterns. My subjective evaluation is that there has been a trend to hire more minorities and women as agents in the last couple of years. I suspect these programs are not always meeting with enthusiasm in the field.

I do not know what if anything our office could do if it were shown that a company was being blatantly discriminatory in its agency appointments. There is nothing in our agency code in this area.

11. No special complaint handling program for center-city areas, in fact a majority of our walk-in complainants are inner city residents. They receive personal service in our office. We have prepared brochures of several types. Auto is being revised currently. Also medicare special memo and newspaper columns in our 55 newspapers to help explain insurance and help consumers.

Sincerely,

Irvin L. Clampitt
Chief Deputy Commissioner

ILC/ddw
attachments

BLAIR LEE III
ACTING GOVERNOR

STATE OF MARYLAND

EDWARD J. BIRRANE JR.
INSURANCE COMMISSIONER

DEPARTMENT OF LICENSING AND REGULATION
INSURANCE DIVISION
ONE SOUTH CALVERT STREET BALTIMORE, MARYLAND 21202
301/383-5666

WILLIAM A. URIE
SECRETARY

April 5, 1978

Mr. Herbert S. Denenberg
127 Ridgewood Road
Radnor, Pennsylvania 19087

Dear Mr. Denenberg:

This is in response to your memorandum of March 22, 1978 regarding discrimination in insurance matters.

With respect to disability coverage, we require insurers to make available to female applicants all of the forms which they sell to male applicants. We do not require uniform rates where it can be demonstrated that the claims cost on the policies issued to females is higher than that on the policies issued to males.

At the present time, most companies are issuing life insurance with a three-year setback for female lives. Our statutes permit the Commissioner discretion as to this matter. When new female mortality tables which are currently being developed become available, we expect to incorporate those tables in our requirements.

With respect to pregnancy benefits and medical expense policies, we call your attention to Sections 354F, 354G, 354H, 470H, 470-I, 477-I and 477J of Article 48A of the Maryland Insurance Code, copies of which are enclosed.

The cost of annuity policies issued to female lives is higher than similar contracts issued to male lives because of the expected longer lifetime of female annuitants.

We are studying the matter of unisex rating but have not come to any conclusion on this matter.

Our Code does not permit any discrimination or rate differential based on racial or ethnic origins.

We are not aware of any discrimination in hiring practices of insurers in this State. This matter would come under the jurisdiction of the Human Relations Commission, and its Division of Equal Opportunity, the address of which is 1100 North Eutaw Street, Baltimore, Maryland 21201. We have, in the past, had special programs to encourage black persons to qualify themselves for entering into the insurance business.

We have a large section of this Division devoted to receiving and investigating complaints which serves all residents of the State.

We trust the above is the information you require.

Yours very truly,

Edward J. Birrane, Jr.
Insurance Commissioner

Ernest A. Goodman

By: Ernest A. Goodman
Deputy Commissioner

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members, or (2) all covered employees or members and all covered dependents of employees or members, respectively.

(Added 1975, ch. 683.)

§ 354H. Same—Individuals

Every nonprofit health service plan which provides maternity benefits in any policy form customarily issued on an individual or a family basis shall offer the benefits to individuals regardless of marital status.

(Added 1975, ch. 683.)

§ 354F. Provision of benefits for costs of hospitalization for childbirth

Every nonprofit health insurer who issues or delivers a health insurance policy to any person in this State under which any hospitalization benefits are provided for normal pregnancy shall provide those benefits for the cost of hospitalization for childbirth to the same extent as the hospitalization benefit provided in the policy for any covered illness. This provision may not be construed, however, to require any insurer to provide benefits for pregnancy or childbirth in any policy.

(Added 1975, ch. 682.)

§ 354G. Maternity benefits offered regardless of marital status —Group health policies

Every group health insurance policy delivered or issued for delivery in this State by a nonprofit health service plan under which maternity benefits are provided for pregnancy and childbirth of employees or members, or of covered dependents of employees or members, whether the benefits are in the form of disability benefits or of benefits for medical and surgical care or for hospitalization, shall provide identical benefits, regardless of marital status to: (1) all covered employees or

hospitalization benefits are provided for normal pregnancy shall provide those benefits for the cost of hospitalization for childbirth to the same extent as the hospitalization benefit provided in the policy for any covered illness. This provision may not be construed, however, to require any insurer to provide benefits for pregnancy or childbirth in any policy.

(Added 1975, ch. 682.)

§ 470I. Maternity benefits offered regardless of marital status

Every insurer which provides maternity benefits in any policy form customarily issued on an individual or family basis shall offer the benefits to individuals regardless of marital status.

(Added 1975, ch. 683.)

§ 470H. Provision of benefits for costs of hospitalization for childbirth

Every insurer who issues or delivers an individual health insurance policy to any person in this State under which any

§ 477I. Provision of benefits for costs of hospitalization for childbirth

Every insurer who issues or delivers a group or blanket health insurance policy under which any hospitalization benefits are provided for normal pregnancy shall provide those benefits for the cost of hospitalization for childbirth to the same extent as the hospitalization benefit provided in the policy for any covered illness. This provision may not be construed, however, to require any insurer to provide benefits for pregnancy or childbirth in any policy.

(Added 1975, ch. 682.)

§ 477J. Maternity benefits offered regardless of marital status

Every group or blanket health insurance policy delivered or issued for delivery in this State under which maternity benefits are provided for pregnancy and childbirth of employees or members, or of covered dependents of employees or members, whether the benefits are in the form of disability benefits or of benefits for medical and surgical care or for hospitalization, shall provide identical benefits, regardless of marital status to: (1) all covered employees or members, or (2) all covered employees or members and all covered dependents of employees or members, respectively.

(Added 1975, ch. 683.)

§ 477P. Benefits for disability caused by pregnancy or childbirth

Every insurer which proposes to issue a group or blanket health insurance policy which provides any benefits for temporary disability shall offer the prospective group policyholder the option of providing benefits for temporary disability caused or contributed to by pregnancy or childbirth. These benefits shall be provided to the same extent and on the same terms as benefits applied to any other covered disability except that benefits for disabilities caused by a normal pregnancy or normal childbirth may be limited to six weeks or more. This section applies to all policies which are issued or delivered within this State or which are issued or delivered to any entity which is incorporated or has a main office located in this State or which cover any persons who reside or work within this State.

(Added 1977, ch. 908.)

THOMAS C. JONES
COMMISSIONER OF INSURANCE
INSURANCE BUREAU

STATE OF MICHIGAN
WILLIAM G. MILLIKEN, Governor
DEPARTMENT OF COMMERCE
1048 PIERPONT, P.O. BOX 30220, LANSING, MICHIGAN 48909
KEITH MOLIN, Director

March 30, 1978

Mr. Herb Denenberg
127 Ridgewood Road
Radnor, Pennslyvania 19087

Dear Mr. Denenberg:

This letter is in response to your recent request regarding discrimination in life and health insurance. In an attempt to provide meaningful information to you within the tight time constraint, I will focus on the major issues addressed by the Michigan Insurance Bureau in recent years. This is not intended to be a comprehensive list of all steps taken by the Bureau or all areas where discrimination or alleged discrimination has become aware to the Bureau.

Uniform Trade Practices

After concerted effort by the Bureau, the legislature passed the Uniform Trade Practices Act (P.A. 273 of 1976), of which a copy is attached. The act, which went into effect on April 1, 1976, made the following improvements over the previous statute.

a. It spells out clear standards for company performance in the definition of unfair trade practices, including such areas as misrepresentations, false financial statements, false statements on an application for insurance, and course of conduct indications.

b. It creates standards for claim handling which provides incentives for prompt payment of claims.

c. It provides standards for maintenance of classification systems and underwriting policies.

d. It establishes an enforcement mechanism to allow the Bureau to better meet its consumer protection responsibilities.

Rules relating to this act have been drafted and a public hearing was conducted last November 30. The Bureau staff has been analyzing comments received at the hearing, and is in the process of preparing rules to be submitted to the legislature.

The statute retains the definitions of discrimination in sections 2019 and 2020, but adds a new section, 2027, which prohibits underwriting based on race, color, creed, marital status, sex, or national origin; and restricts underwriting based on residence, age, handicap, occupation,

or location of risk. Further, the statute restricts the charging of a different rate for the same coverage based on sex, marital status, age, residence, location of risk, handicap, or occupation.

Although the Bureau is limited somewhat while waiting for rules, the Bureau has begun to enforce the statute in such areas as policy provisions, availability, and refusal to renew with respect to sex, marital status, handicap, and occupation.

Sex Discrimination in Insurance

In 1974, then Commissioner Demlow established the Women's Task Force to investigate, identify, and make recommendations regarding sex discrimination in insurance. A copy of that report, Women's Task Force Report to the Michigan Commissioner of Insurance on Sex Discrimination in Insurance is enclosed. This report identified areas where insurance company procedures and practices need to be changed, and the Bureau is working to implement changes within the scope of authority.

Special Complaint Programs

In addition to the Consumer Assistance, Marketing Practices, and Investigation divisions within the Bureau, there are two special programs to assist Michigan residents. The Bureau maintains a consumer assistance office in Detroit. Last year the Detroit office received 10,721 inquiries through this office. The second special program is two consumer assistance toll free lines which can be used by anyone in the state. This program was initiated in the fall of 1976 and has subsequently been expanded. The telephone service has been publicized by such means as television, radio, and newspaper announcements, and information will soon be included as part of the driver license renewal mailings.

As I mentioned earlier this is not intended to be a comprehensive list of all areas of Bureau involvement. The rate approval, forms review, and market conduct examination functions constantly deal with issues raised in your letter. I hope that this material will be of assistance in preparing your paper, and we look forward to seeing a completed copy.

Sincerely,

Thomas C. Jones
Commissioner of Insurance

Enclosures

Act No. 273
Public Acts of 1976
Approved by Governor
October 14,1976

STATE OF MICHIGAN
78TH LEGISLATURE
REGULAR SESSION OF 1976

Introduced by Reps. Angel and Hayward
Rep. Geralds named co-sponsor

ENROLLED HOUSE BILL No. 4623

AN ACT to amend sections 1501, 2001, 2003, 2005, 2009, 2014, 2023, 2028, 2029, 2030, 2038, 2039 and 2040 of Act No. 218 of the Public Acts of 1956, entitled as amended "An act to revise, consolidate and classify the laws relating to the insurance and surety business; to regulate the incorporation or formation of domestic insurance and surety companies and associations and the admission of foreign and alien companies and associations; to provide their rights, powers and immunities and to prescribe the conditions on which companies and associations organized, existing, or authorized under this act may exercise their powers; to provide the rights, powers and immunities and to prescribe the conditions on which other persons, firms, corporations and associatinns engaged in an insurance or surety business may exercise their powers; to provide for the imposition of a privilege fee on domestic insurance companies and associations and the state accident fund; to provide for the imposition of a tax on the business of foreign and alien companies and associations; to provide for the imposition of a tax on the business or surplus line agents; to modify tort liability arising out of certain accidents; to require security for losses arising out of certain accidents; to provide for the departmental supervision and regulation of the insurance and surety business within this state; and to provide penalties for the violation of this act," being sections 500.1501, 500.2001, 500.2003, 500.2005, 500.2009, 500.2014, 500.2023, 500.2028, 500.2029, 500.2030, 500.2038, 500.2039 and 500.2040 of the Compiled Laws of 1970; to add sections 2006, 2018, 2026 and 2027; and to repeal certain acts and parts of acts.

The People of the State of Michigan enact:

Section 1. Sections 1501, 2001, 2003, 2005, 2009, 2014, 2023, 2028, 2029, 2030, 2038, 2039 and 2040 of Act No. 218 of the Public Acts of 1956, being sections 500.1501, 500.2001, 500.2003, 500.2005, 500.2009, 500.2014, 500.2023, 500.2028, 500.2029, 500.2030, 500.2038, 500.2039 and 500.2040 of the Compiled Laws of 1970, are amended and sections 2006, 2018, 2026 and 2027 are added to read as follows:

(191)

Sec. 1501. This chapter shall not apply with respect to:

(a) An insurance company authorized to do business in the state or a subsidiary of an authorized insurer admitted in this state or a corporation under substantially the same management or control as an admitted authorized insurer or group of insurers, which subsidiary, managed or controlled company is engaged in the business of financing insurance premiums on policies issued only by its parent insurer or affiliated group of insurers, subject to section 1508 (3).

(b) A bank, industrial bank, trust company, safe and collateral deposit company, small loan company, credit union, building and loan association, finance company, or cooperative savings association authorized to do business in the state.

(c) The inclusion of a charge for insurance in connection with an installment sale of a motor vehicle made in accordance with Act No. 27 of the Public Acts of the Extra Session of 1950, as amended, being sections 492.101 to 492.139 of the Michigan Compiled Laws.

(d) The financing of insurance premiums in accordance with Act No. 328 of the Public Acts of 1968, as amended, being sections 438.31 to 438.33 of the Michigan Compiled Laws, relating to legal interest rate.

(e) Any insurance agent or agency, or any wholly owned premium finance company of an insurance agent or agency, financing only insurance premiums on business produced by the agent or agency.

Sec. 2001. Sections 2001 to 2050 shall be known and may be cited as "the uniform trade practices act".

Sec. 2003. (1) A person shall not engage in a trade practice which is defined in this uniform trade practices act or is determined pursuant to this act to be, an unfair method of competition or an unfair or deceptive act or practice in the business of insurance.

(2) "Person" means a person defined in section 114 and includes an agent, solicitor, counselor, or adjuster, but excludes the property and casualty guaranty association.

(3) "Insurance policy" or "insurance contract" means a contract of insurance, indemnity, suretyship, or annuity issued or proposed or intended for issuance by a person engaged in the business of insurance.

Sec. 2005. An unfair method of competition and an unfair or deceptive act or practice in the business of insurance means the making, issuing, circulating, or causing to be made, issued, or circulated, an estimate, illustration, circular, statement, sales presentation, or comparison which by omission of a material fact or incorrect statement of a material fact:

(a) Misrepresents the terms, benefits, advantages, or conditions of an insurance policy.

(b) Misrepresents the dividends or share of the surplus to be received on an insurance policy.

(c) Makes a false or misleading statement as to the dividends or share of surplus previously paid on an insurance policy.

(d) Makes a misleading statement or misrepresentation as to the financial condition of a person engaged in the business of insurance, or as to the legal reserve system upon which a life insurer operates.

(e) Uses a name or title of an insurance policy or class of insurance policies misrepresenting the true nature of that insurance policy or class of insurance policies. A policy approved by the commissioner shall be conclusively presumed not to misrepresent the true nature of that policy.

(f) Makes a misrepresentation for the purpose of inducing or tending to induce the lapse, forfeiture, exchange, conversion, or surrender of an insurance policy.

(g) Makes a misrepresentation for the purpose of effecting a pledge or assignment of or a loan against an insurance policy.

(h) Misrepresents an insurance policy as being a security. This subdivision shall not apply to an insurance policy which must be registered as a security pursuant to the law of this state or of the United States.

Sec. 2006. (1) A person must pay on a timely basis to its insured, an individual or entity directly entitled to benefits under its insured's contract of insurance, or a third party tort claimant the benefits provided under the terms of its policy, or, in the alternative, the person must pay to its insured, an individual or entity directly entitled to benefits under its insured's contract of insurance, or a third party tort claimant 12% interest, as provided in subsection (4), on claims not paid on a timely basis. Failure to pay claims on a timely basis or to pay interest on claims as provided in subsection (4) is an unfair trade practice unless the claim is reasonably in dispute.

(2) A person shall not be found to have committed an unfair trade practice under this section if the person is found liable for a claim pursuant to a judgment rendered by a court of law, and the person pays to its insured, individual or entity directly entitled to benefits under its insured's contract of insurance, or third party tort claimant interest as provided in subsection (4).

(3) An insurer shall specify in writing the materials which constitute a satisfactory proof of loss not later than 30 days after receipt of a claim unless the claim is settled within the 30 days. If proof of loss is not supplied as to the entire claim, the amount supported by proof of loss shall be deemed to be paid on a timely basis if paid within 60 days after receipt of proof of loss by the insurer. Any part of the remainder of the claim that is later supported by proof of loss shall be deemed to be paid on a timely basis if paid within 60 days after receipt of the proof of loss by the insurer. Where the proof of loss provided by the claimant contains facts which clearly indicate the need for additional medical information by the insurer in order to determine its liability under a policy of life insurance, the claim shall be deemed to be paid on a timely basis if paid within 60 days after receipt of necessary medical information by the insurer. Payment of a claim shall not be untimely during any period in which the insurer is unable to pay the claim when there is no recipient who is legally able to give a valid release for the payment, or where the insurer is unable to determine who is entitled to receive the payment, if the insurer has promptly notified the claimant of that inability and has offered in good faith to promptly pay the claim upon determination of who is entitled to receive the payment.

(4) When benefits are not paid on a timely basis the benefits paid shall bear simple interest from a date 60 days after satisfactory proof of loss was received by the insurer at the rate of 12% per annum, if the claimant is the insured or an individual or entity directly entitled to benefits under the insured's contract of insurance. Where the claimant is a third party tort claimant, then the benefits paid shall bear interest from a date 60 days after satisfactory proof of loss was received by the insurer at the rate of 12% per annum if the liability of the insurer for the claim is not reasonably in dispute and the insurer has refused payment in bad faith, such bad faith having been determined by a court of law. The interest shall be paid in addition to and at the time of payment of the loss. If the loss exceeds the limits of insurance coverage available, interest shall be payable based upon the limits of insurance coverage rather than the amount of the loss. If payment is offered by the insurer but is rejected by the claimant, and the claimant does not subsequently recover an amount in excess of the amount offered, interest shall not be due. Interest paid pursuant to this section shall be offset by any award of interest that is payable by the insurer pursuant to the award.

(5) Where a person contracts to provide benefits and reinsures all or a portion of the risk, the person contracting to provide benefits shall be liable for interest due to an insured, an individual or entity directly entitled to benefits under its insured's contract of insurance, or a third party tort claimant under this section where a reinsurer fails to pay benefits on a timely basis.

(6) In the event of any specific inconsistency between this section and the provisions of Act No. 294 of the Public Acts of 1972, as amended, being sections 500.3101 to 500.3177 of the Compiled Laws of 1970 or of the provisions of Act No. 317 of the Public Acts of 1969, as amended, being sections 418.101 to 418.941 of the Compiled Laws of 1970, the provisions of this section shall not apply.

Sec. 2009. Unfair methods of competition and unfair or deceptive acts or practices in the business of insurance include the making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting, or encouraging the making, publishing, disseminating, or circulating of an oral or written statement or a pamphlet, circular, article, or literature which is false, or maliciously critical of, or derogatory to the financial condition of a person engaged in the business of insurance, and which is calculated to injure a person engaged in the business of insurance.

Sec. 2014. Unfair methods of competition and unfair or deceptive acts or practices in the business of insurance include:

(a) Filing with a supervisory or other public official, or making, publishing, disseminating, circulating, or delivering to a person, or placing before the public, or causing directly or indirectly, to be made, published, disseminated, circulated, or delivered to a person, or placed before the public, a false material statement of financial condition of a person engaged in the business of insurance.

(b) Making a false entry of a material fact in a book, report, or statement of a person engaged in the business of insurance or omitting to make a true entry of a material fact pertaining to the business of the person in a book, report, or statement of the person.

Sec. 2018. An unfair method of competition and an unfair or deceptive act or practice in the business of insurance include making false or fraudulent statements or representations on or relative to an application for an insurance policy for the purpose of obtaining a fee, commission, money, or other benefit from an insurer, agent, broker, or individual.

Sec. 2023. It is an unfair method of competition and an unfair or deceptive act or practice in the business of insurance for an insurer, unless required by law or statutory administrative rule or unless provided for by contract, to automatically write insurance on a debtor who has contracted credit based on the principle that the insurance is applicable unless specifically rejected by the debtor, unless the premium or such other identifiable charge as may be applicable is paid in full by the creditor.

Sec. 2026. (1) Unfair methods of competition and unfair or deceptive acts or practices in the business of insurance, other than isolated incidents, are a course of conduct indicating a persistent tendency to engage in that type of conduct and include:

(a) Misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue.

(b) Failing to acknowledge promptly or to act reasonably and promptly upon communications with respect to claims arising under insurance policies.

(c) Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies.

(d) Refusing to pay claims without conducting a reasonable investigation based upon the available information.

(e) Failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed.

(f) Failing to attempt in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear.

(g) Compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts due the insureds.

(h) Attempting to settle a claim for less than the amount to which a reasonable person would believe the claimant was entitled, by reference to written or printed advertising material accompanying or made part of an application.

(i) Attempting to settle claims on the basis of an application which was altered without notice to, or knowledge or consent of, the insured.

(j) Making a claims payment to a policyholder or beneficiary omitting the coverage under which each payment is being made.

(k) Making known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration.

(l) Delaying the investigation or payment of claims by requiring an insured, claimant, or the physician of either to submit a preliminary claim report and then requiring subsequent submission of formal proof of loss forms, seeking solely the duplication of a verification.

(m) Failing to promptly settle claims where liability has become reasonably clear under 1 portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy.

(n) Failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement.

(2) The failure of a person to maintain a complete record of all the complaints of its insureds which it has received since the date of the last examination is an unfair method of competition and unfair or deceptive act or practice in the business of insurance. This record shall indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition thereof, and the time it took to process each complaint. For purposes of this subsection, "complaint" means a written communication primarily expressing an allegation of acts which would constitute violation of this chapter. If a complaint relating to an insurer is received by an agent of the insurer, the agent shall promptly forward the complaint to the insurer unless the agent resolves the complaint to the satisfaction of the insured within a reasonable time. An insurer shall not be deemed to have engaged in an unfair method of competition or an unfair or deceptive act or practice in the business of insurance in violation of this chapter because of the failure of an agent who is not also an employee to forward a written complaint as required by this subsection.

Sec. 2027. Unfair methods of competition and unfair or deceptive acts or practices in the business of insurance include:

(a) Refusing to insure, or refusing to continue to insure, or limiting the amount of coverage available to an individual or risk because of any of the following:

(i) Race, color, creed, marital status, sex, or national origin, except that marital status may be used to classify individuals or risks for the purpose of insuring family units.

(ii) The residence, age, handicap, or lawful occupation of the individual or the location of the risk, unless there is a reasonable relationship between the residence, age, handicap, or lawful occupation of the individual or the location of the risk and the extent of the risk or the coverage issued or to be issued, but subject to subparagraph (iii). This section shall not prohibit an insurer from specializing in or limiting its transactions of insurance to certain occupational groups, types, or risks as approved by the commissioner of insurance. The commissioner shall approve the specialization for an insurer licensed to do business in this state and whose articles of incorporation contained a provision on July 1, 1970, requiring that specialization.

(iii) For property insurance, the location of the risk, unless there is a statistically significant relationship between the location of the risk and a risk of loss due to fire within the area in which the insured property is located. As used in this subparagraph, "area" means a single zip code number under the zoning improvement plan of the United States postal service.

(b) Refusing to insure or refusing to continue to insure an individual or risk solely because the insured or applicant was previously denied insurance coverage by an insurer.

(c) Charging a different rate for the same coverage based on sex, marital status, age, residence, location of risk, handicap, or lawful occupation of the risk unless the rate differential is based on sound actuarial principles, a reasonable classification system, and is related to the actual and credible loss statistics or reasonably anticipated experience in the case of new coverages. This subdivision shall not apply if the rate has previously been approved by the commissioner.

Sec. 2028. Upon probable cause, the commissioner shall have power to examine and investigate into the affairs of a person engaged in the business of insurance in this state to determine whether the person has been or is engaged in any unfair method of competition or in any unfair or deceptive act or practice prohibited by sections 2001 to 2050.

Sec. 2029. When the commissioner has probable cause to believe that a person engaged in the business of insurance has been engaged or is engaging in this state in an unfair method of competition, or an unfair or deceptive act or practice in the conduct of his business, as prohibited by sections 2001 to 2050, and that a hearing by the commissioner in respect thereto would be in the interest of the public, he shall first give notice in writing, pursuant to Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws, to the person involved, setting forth the general nature of the complaint against him and the proceedings contemplated pursuant to sections 2001 to 2050. Before the issuance of a notice of hearing, the staff of the bureau of insurance responsible for the matters which would be at issue in the hearing shall give the person an opportunity to confer and discuss the possible complaint and proceedings in person with the commissioner or his representative and the matter may be disposed of summarily upon agreement of the parties.

Sec. 2030. (1) At the time and place fixed for the hearing referred to in section 2029, the person shall have an opportunity to be heard, to be represented by counsel and to show cause why an order should not be made by the commissioner requiring the person to cease and desist from the acts, methods, or practices complained of. Upon showing by any person that he has an interest likely to be affected adversely, the commissioner shall permit that person to intervene, appear and be heard at the hearing by counsel or in person.

(2) The burden of proof at the hearing shall be upon the agency or upon an intervenor who intervened in opposition to the person who is the subject of the proceeding.

(3) The commissioner or his designate shall preside over the hearing, except that an independent hearing officer shall be designated by the commissioner if requested by the person who is the subject of the proceedings. The independent hearing officer shall be selected by the commissioner from a list of individuals submitted by the American arbitration association qualified to conduct hearings on behalf of the commissioner. A list of the individuals shall be maintained by the commissioner and shall be compiled pursuant to rules promulgated by the commissioner. The rules shall set forth the qualifications, criteria, and procedures to be utilized in the compilation of the list of independent hearing officers. The person subject to the proceedings may exercise 1 peremptory dismissal of the hearing officer selected, if exercised within 20 days after notification.

Sec. 2038. (1) If, after opportunity for a hearing held pursuant to Act No. 306 of the Public Acts of 1969, as amended, the commissioner determines that the person complained of has engaged in methods of competition or unfair or deceptive acts or practices prohibited by sections 2001 to 2050, the commissioner shall reduce his findings and decision to writing and shall issue and cause to be served upon the person charged with the violation a copy of the findings and an order requiring the person to cease and desist from engaging in that method of competition, act, or practice and the commissioner may order any of the following:

(a) Payment of a monetary penalty of not more than $500.00 for each violation but not to exceed an aggregate penalty of $5,000.00, unless the person knew or reasonably should have known he was in violation of this chapter, in which case the penalty shall not be more than $2,500.00 for each violation and shall not exceed an aggregate penalty of $25,000.00 for all violations committed in a 6-month period.

(b) Suspension or revocation of the person's license or certificate of authority if the person knowingly and persistently violated a provision of this chapter.

(c) Refund of any overcharges.

(2) The filing of a petition for review does not stay enforcement of action pursuant to this section, but the commissioner may grant, or the appropriate court may order, a stay upon appropriate terms.

(3) Until the expiration of the time allowed under section 244 for filing a petition for review if a petition has not been duly filed within that time or, if a petition for review has been filed within that time, then until the transcript of the record in the proceeding has been filed in the circuit court, as hereinafter provided, the commissioner, upon notice and in a manner as he shall deem proper, may modify or set aside in whole or in part an order issued by him under this section.

(4) After the expiration of the time allowed for filing a petition for review, if a petition has not been duly filed within that time, the commissioner may at any time, by order, after notice and opportunity for hearing, reopen and alter, modify, or set aside, in whole or in part, an order issued by him under this section, when in his opinion conditions of fact or of law have so changed as to require that action or if the public interest shall so require.

Sec. 2039. An order issued by the commissioner pursuant to this chapter shall become final:

(a) Upon the expiration of the time allowed for filing a petition for review if a petition has not been duly filed within that time, except that the commissioner may thereafter modify or set aside his order to the extent provided in section 2038(2).

(b) Upon the final decision of the court if the court directs that the order of the commissioner be affirmed or the petition for review dismissed.

Sec. 2040. (1) A person who violates a cease and desist order of the commissioner under this chapter while the order is in effect, after notice and an opportunity for a hearing and upon order of the commissioner, may be subject to any of the following:

(a) A monetary penalty of not more than $10,000.00 for each violation.

(b) Suspension or revocation of the person's license or certificate of authority.

(2) The filing of a petition for review does not stay enforcement pursuant to this section, but the commissioner may grant, or the appropriate court may order, a stay upon appropriate terms.

(3) A cease and desist order issued by the commissioner pursuant to section 2043 shall not contain fines or other penalties applicable to acts or omissions occurring prior to the date of the cease and desist order.

Section 2. Sections 2015 and 2022 of Act No. 218 of the Public Acts of 1956, being sections 500.2015 and 500.2022 of the Compiled Laws of 1970, are repealed.

Section 3. This amendatory act shall not take effect until April 1, 1977.

This act is ordered to take immediate effect.

Clerk of the House of Representatives.

Secretary of the Senate.

Approved.....

.....

Governor.

State of Missouri — Joseph P. Teasdale, Governor

Department of Consumer Affairs, Regulation and Licensing — [redacted]

Division of Insurance
P. O. Box 690
Jefferson City, Missouri 65101
Telephone 314/751-4126

J. B. Buxton, Director

April 13, 1978

Mr. Herbert S. Denenberg
127 Ridgewood Road
Radnor, Pennsylvania 19087

Dear Mr. Denenberg:

This is in reply to your letter of March 22, 1978, requesting information by this department for your use in preparing a paper on discrimination (sex, race and ethnic) in the insurance field.

We completed an extensive study last year on sex discrimination and, while we have not had any specific studies on racial or ethnic discrimination in insurance, every Commissioner is mindful, or should be mindful, of discrimination in these areas. It is my personal view that discrimination, or rather, properly stated, unfair discrimination, is a dirty word (or words). To this end, you may find interesting the anti-discrimination Bulletin with attached Geographic Discrimination Affidavit and accompanying Press Release which were sent out to implement our redlining legislation in Missouri.

I shall answer on a separate sheet the information which you have requested at a later date after I have had the opportunity to present this information to a staff meeting sometime this week so that they may advise me for a further response.

Very truly yours,

JERRY B. BUXTON
Director of Insurance

JBB/mlc

Enclosures

State of Missouri — Joseph P. Teasdale, Governor

Department of Consumer Affairs, Regulation and Licensing — James L. Sullivan, Director

Division of Insurance — **J. B. Buxton, Director**
P. O. Box 690
Jefferson City, Missouri 65101
Telephone 314/751-4126

BULLETIN

TO: All Companies Licensed to Write Homeowners Insurance or Residential Fire and Extended Coverage in Missouri

FROM: Jerry B. Buxton, Director

SUBJECT: Redlining - Homeowners

DATE: January 30, 1978

Please be advised that all companies writing homeowners insurance or any form of residential fire and extended coverages are herewith required to file the accompanying Geographic Discrimination Affidavit, pledging not to unfairly discriminate against any person or persons in the State of Missouri who may be in need of any form of homeowners or residential fire insurance coverage. You will note that the Affidavit requires a pledge on the part of your company to exert your best efforts to secure agents and maintain an agency force throughout the State of Missouri, and to maintain files indicating your sincere efforts to provide coverage and agents to be of service to all citizens of the State of Missouri.

Discrimination takes many forms, whether it be refusal to write in certain areas (redlining by overt discrimination) or a failure to provide an available agency force (covert discrimination). Your charter to do business in the State of Missouri was granted with the thought that you wish to provide services to all of the insuring public of the State and this Affidavit confirms that implied understanding and promise to the citizens of Missouri.

Henceforth, this Affidavit will be required of all companies seeking admission to do business in the State and made a condition of licensing. It has been my expericnce that the modern well-run insurance company does not knowingly discriminate against any citizen. The enclosed Affidavit must accompany your Annual Statement and confirms our understanding that most insurers already extend the basic tenets of fair play to everyone.

JBB:cac

Enclosure

GEOGRAPHIC DISCRIMINATION AFFIDAVIT

That whereas, the _____

_____,

a corporation organized under the laws of _____

and thereby authorized to transact the business of _____

_____ insurance, desires to transact such business in the State of Missouri, pursuant to the laws thereof; and whereby agrees to fairly conduct its business and insure the residential property of the citizens of Missouri, regardless of geographic location within the boundaries of the State of Missouri.

That the _____

_____

insurance corporation will exert its best efforts to secure agents and will maintain such an agency force through the State of Missouri, and will maintain files indicating their efforts to provide coverage and agents to be of service to all citizens of the State of Missouri.

IN WITNESS WHEREOF, the said company hath caused these presents to be subscribed by its President and its corporate seal to be hereto affixed, attested by its Secretary, at the City of _____, in the State of _____, on the _____ day of _____, 19___.

_____
President

_____
Secretary

PUBLIC RELEASE

MISSOURI DIVISION OF INSURANCE

DEPARTMENT OF CONSUMER AFFAIRS, REGULATION AND LICENSING

J. D. BUXTON, DIRECTOR
515 E. HIGH STREET
JEFFERSON CITY, MO 65101
TELEPHONE 314/751-4126

FOR IMMEDIATE RELEASE:

November 30, 1978

State Insurance Director Jerry B. Buxton today issued a bulletin requiring all companies writing homeowners or residential fire insurance in Missouri to pledge not to unfairly discriminate against any person wishing to obtain these forms of insurance coverage.

The bulletin, accompanied by a Geographical Discrimination Affidavit which all insurance companies must file as a condition for doing business in Missouri, emphasizes the Division's ongoing efforts toward eliminating insurance "red-lining," Buxton said.

Redlining is the practice of discrimination in the sale, coverage, and rate of insurance coverage based solely on a person's residence. The Division of Insurance has reported that insurance redlining has caused significant problems in St. Louis, Kansas City, Springfield, Joplin, and portions of Southeast Missouri

"Discrimination takes many forms, whether it be a refusal to write insurance in certain areas, such as the inner city, or a failure to provide an adequate number of agencies to serve the needs of all citizens," Buxton said.

Buxton said that the Affidavit requires that insurance companies pledge that they will exert their best efforts to provide homeowners or residential fire insurance coverage to every Missourian who needs it.

The Division of Insurance will monitor the insurance companies' response to the bulletin as well as actively enforce the State's recently enacted anti-redlining law. The "Homeowners Insurance Cancellation Law," signed into law by Governor Joseph P. Teasdale last August, prohibits the discrimination in the sale, [illegible] and rate of insurance coverage based on a person's place of residence.

State of Missouri — Joseph P. Teasdale, Governor

Department of Consumer Affairs, Regulation and Licensing — James L. Sullivan, Director

Division of Insurance — J. B. Buxton, Director
P. O. Box 690
Jefferson City, Missouri 65101
Telephone 314/751-4126

April 21, 1978

Mr. Herbert S. Denenberg
127 Ridgewood Road
Radnor, Pennsylvania 19087

Dear Mr. Denenberg:

Director Buxton has asked that I correspond with you on your studies of discrimination in insurance.

You mention generic concern over sex and race used in classification plans, but all your more specific questions concern life and accident and health coverages. Are the latter your only interest?

Commissioner Stone of Massachusetts has taken a strong stance on the use of sex in auto-rating and other states appear to be following his lead. Geographic discrimination (also unfair) is prevalent in property coverages. Due to your emphasis upon Accident and Health coverages, I am asking Mr. Tom Taylor of that section of our department to develop specific responses to your questions.

You may contact me again in the interim.

Sincerely,

W. Bradford Connor
Statistician

WBC/mlc

STATE OF NEW YORK
INSURANCE DEPARTMENT
TWO WORLD TRADE CENTER
NEW YORK 10047

MORTON GREENSPAN
DEPUTY SUPERINTENDENT
AND GENERAL COUNSEL

March 30, 1978

Mr. Herbert S. Denenberg
127 Ridgewood Road
Radnor, Penna 19087

RE: Discrimination in Insurance

Dear Mr. Denenberg:

This is in response to your letter to Superintendent Lewis requesting information concerning the status of insurance discrimination issues within New York State. The following is a brief summary that may be useful to you for overview purposes. As you may know, we are in the process of preparing a detailed paper on the same topic which will contain our "views for quotation" and suggestions, and which will be made available to you upon its completion. Copies of regulations, legislation and reports, etc. mentioned in this summary are attached. If further information is needed, you may contact me at 212-488-4114, or Deputy Superintendent Linda Lamel at 212-488-4122.

DISABILITY INCOME

Insurance Department Regulation No. 62 (11 NYCRR 52.16 (c)(3), Minimum Standards for the Form, Content and Sale of Health Insurance, permits insurance carriers to exclude coverage for pregnancy related disabilities, including complications of pregnancy in disability income policies. Although pregnancy related disabilities have generally been excluded from coverage, approximately one half of the carriers voluntarily provide coverage for complications of pregnancy.

Effective August 3, 1977, the Disability Benefits Law (Sections 201 & 205) was amended to provide female employees up to eight weeks of statutory disability benefits due to pregnancy. The impetus for this amendment was a New York Court of Appeals decision, The Brooklyn Union Gas Company vs. New York State Human Rights Appeal Board, 41 NY 2d 84, 390 NYS 2d 884, 359 NE 2d 393, which held that under the New York State Human Rights Law employers must provide wage maintenance to pregnant women in the same way they would to workers disabled by a nonoccupational illness or injury, even though the Disability Benefits Law permitted disability due to pregnancy to be excluded. As a result of the amendment to the Disability Benefits Law, this coverage is now provided under policies insuring employer's liability under the Disability Benefits Law.

Insurance Law Section 40-e, effective September 1, 1975 and Regulation No. 75, effective June 1, 1975 prohibits discrimination in the issuance of policies based on sex. Pursuant to Section 40-e and Regulation No. 75, long term disability coverage, as well as all other coverages, is now equally available to both women and men.

Disability income policies define disability in terms of engagement in an occupation for remuneration or profit, or in terms of loss of earned income. Homemakers do not fall with this traditional definition and cannot, at present, purchase disability income insurance.

In June of 1976 the Insurance Department completed and published a study on the "Disability Income Insurance Cost Differential between Men & Women". The conclusions resulting from this study were used as a basis for the Sixth Amendment to Regulation 62, Gross Premium Differentials Based on Sex.

LIFE INSURANCE

As stated above, pursuant to Insurance Law Section 40-e and Regulation No. 75, disability income coverage written on life insurance, as well as all other coverages, must be equally accessible to both men and women.

An insured's status as a homemaker has no effect on limiting the amount of life insurance coverage available except for the general rule of prudence that a person should not be worth more dead than alive.

MEDICAL EXPENSE

Effective January 1, 1977, Sections 162-a, 164-a and 253(1-a) were added to the Insurance Law. These sections mandate that maternity care coverage be provided under all medical expense policies, whether an individual or group policy and whether a single or married insured. The constitutionally of this law has been challenged and we are awaiting a decision from the New York Court of Appeals. Until then, the effect of the law has been stayed.

In the Department's Circular Letter No. 23, (1976) the Department issued guidelines for arriving at gross premium to be charged for maternity benefits. Permitted methods range from detailed classifications based on sex and age, used primarily by commercial carriers, to a community rated system, as used by Blue Cross.

Abortions are not a mandated coverage, however several carriers do provide such coverage voluntarily.

The question of whether "group coverage of a wife should extend in the same fashion to the husband" appears to refer to the coordination of benefits provision found in many health insurance policies. This provision is used to determine which policy, husband's or wife's, is primary as far as children or dependents are concerned and has no relevance to coverage or primacy between spouses.

UNISEX RATING

Although permitted by this Department under certain conditions, unisex rates have not been adopted by more than a handful of carriers.

RACIAL & ETHNIC DISCRIMINATION

Insurance Law Section 40-10, prohibits discrimination due to race, color, creed or national origin, not only in the sale and availability of all insurance coverages, but also in determining premiums and rates charged for such coverages. Therefore no consideration is given to any differences in mortality or morbidity between blacks and whites.

EMPLOYMENT

The hiring of personnel and the appointment of agents is not a matter within the jurisdiction of the Insurance Department.

SPECIAL COMPLAINTS

The Consumer Services Bureau, is a bureau within the New York State Insurance Department, that handles consumer complaints. The Bureau maintains an office in Albany and New York City. The Department has to date published consumer brochures dealing with Automobile Insurance, Homeowners Insurance and Life Insurance.

Very truly yours,

Mona Brachfeld

Mona Brachfeld
Office of General Counsel

MB:ck
attachment:

ROBERT W. STRAUB
GOVERNOR

Department of Commerce
INSURANCE DIVISION
COMMERCE BUILDING, SALEM, OREGON 97310 PHONE (503) 378-4271

April 4, 1978

Mr. Herbert S. Denenberg
127 Ridgewood Road
Radnor, Pennsylvania 19087

Re: Discrimination in Insurance

Dear Mr. Denenberg:

The Oregon Insurance Division views itself as an anti-discrimination activist. The Oregon Division was among the early regulators to adopt regulations on Unfair Discrimination Based on Sex or Marital Status. OAR 836-80-050 et seq (adopted Nov. 1974). Copy enclosed. Yesterday, we proposed the enclosed industry-wide market availability regulation which prohibits unfair underwriting discrimination on age, race, creed, national origin, ancestry, sex, and six other suspected classifications of invidious unfair discrimination. Oregon has enacted a cluster of insurance and other related laws on sex, race or ethnic discrimination. Copies of such are enclosed (in reverse chronological order):

1. 1977 Oregon Law Chapter 331 section 1 (ORS 746.015) was the enabling authority for the proposed market availability rule.

2. 1977 Oregon Law Chapter 330 regarding mandatory pregnancy benefits for employees.

3. 1973 Oregon Law Chapter 521 (ORS 743.037) on nondiscriminatory health insurance coverage for women.

4. 1971 Oregon Law Chapter 523 (ORS 743.800 et seq) providing essential services benefits to homemakers injured in automobile accidents.

The laws cited above have been and are being utilized by our Investigation and Public Service Sections in responding to discrimination complaints.

Our responses to the specific issues you raise are as follows:

Disability Income

The enactment of ORS 743.037 expressly mandating the maternity insurance benefits of married women to unmarried women when coupled with the relevant pregnancy benefit labor law, ORS 656.030, and the recent market availability amendment to ORS 746.015 alleviates the total exclusion of pregnancy benefits from disability income policies. The latter statutory amendment and our IC-61 sex rule enable women to buy long term disability coverage. Such laws also enable homemakers to buy disability income coverage. In addition, ORS 743.800(4) provides homemakers with a form of disability income coverage. The Division has no great difficulty with rate structure discrimination on disability income inasmuch as it is our view that there is fair discrimination when such is demonstrably evidenced by actuarial data. Your concerns of women over 60 are not a problem in this state. Disability income is normally available to only age 55 for males and females alike. Early retirement has not posed coverage problems for us. We have experienced no complaints from either sex respects availability of such coverage.

Life

The three-year set back on life insurance is moot with us inasmuch as the Division has no authority over life insurance rates. Women do have access to disability income written in conjunction with life insurance. We have informed such insurers transacting in this state that while they do not have to publish the rates for such coverage, they must make such information available upon request from a female. Previously, perhaps, life insurers have neglected potential female customers. This is being corrected, however, in this state where companies are employing more female agents. Such agents appear to be doing a better job of empathizing with and fulfilling the insurance needs of women. The underwriting of life insurance for homemakers in this state is not unduly restrictive. Homemakers, as with any person with limited or non-existent income production or assets, normally do not have market availability problems. Further, if they do the tandum counter issue of underinsuring must also be considered.

Medical Expense

ORS 743.037 provides for the first concerns you express under this section. The Division has interpreted such statute as mandating maternity benefits available to all under group or individual health policies. If such additional coverage is elected, however, there may be additional premiums. There is one exception and that is the tailor-made group policies for extremely large employers who are funding the entire program. Such negotiated group insurance is not filed with this Division. Respects your last question of this section on pregnancy coverage, Oregon has not taken a position respects whether the risk should be spread to all policyholders. We merely require that there be equal treatment.

Pensions and Annuities

We feel that there is no discrimination in the writing of annuities in this state. To the extent that related disability coverage may be included in pension programs such coverages must be available to all, but may reflect different income levels as they relate to employment longevity.

Unisex Rating

Our position on unisex rating may be inferred from our IC-61 regulation. We are opposed to such in that we feel that the fair discrimination may be allowed on demonstrable actuarial justification. Further, our 1977 Legislative Assembly rejected a bill proposing such rating.

Racial and Ethnic Discrimination

We find no difficulties such as you propose in this section other than to comment: perhaps one center-city area in this state may lack adequate agency services which merely reflects that businesses will not gravitate to areas which lack interest in the product being solicited.

Employment

The Division has no jurisdiction over employment discrimination practices and has no knowledge of same.

Special Complaint Programs

Oregon has not instituted such programs for center-city areas. Noting the lack of interest and the prohibitive costs in those states that have attempted to disseminate special guides or brochures to special interest groups, Oregon has not provided such special programs. However, our Public Service Unit serves all citizens of this state. In furtherance of reaching all citizens of this state, this Division has affected a toll free telephone system for the voicing of complaints and advertises to all commUnities of a locale whenever its Public Service unit is making a circuit ride in this state.

Sincerely,

W.W. Fritz
kk

W. W. Fritz
Insurance Commissioner

WWF:kk
enclosures

COMMONWEALTH OF PUERTO RICO
OFFICE OF THE COMMISSIONER OF INSURANCE
P. O. BOX 3508 — OLD SAN JUAN STA. — "S"
SAN JUAN, PUERTO RICO 00904

In reply please refer to L-262

June 23, 1978

Mr. Herbert S. Denenberg
127 Ridgewood Road
Radnor, Penna. 19087

Dear Mr. Denenberg:

Reference is made to your letter of March 22, 1978 regarding discrimination in insurance.

Said communication was referred to our Actuarial Life Division for study. That Division understands that Puerto Rico is not suffering any sexual, racial or ethnic discrimination practices in the suscription of life insurance, as contemplated by the questions you formulated.

Cordially yours,

Rolando Cruz, Esq.
Commissioner of Insurance

PLEASE READ YOUR POLICY. CONSULT THIS OFFICE WHENEVER IN DOUBT.

STATE OF SOUTH CAROLINA
DEPARTMENT OF INSURANCE
2711 Middleburg Drive
Columbia, South Carolina 29204
Mailing Address:
P. O. Box 4067, Columbia, S. C. 29240
Telephone: (803) 758-3256

JOHN W. LINDSAY
Chief Insurance Commissioner

INSURANCE COMMISSION
Gayle O. Averyt
Edward Kronsberg
Claude E. McCain
James C. Self
E. Fort Wolfe

March 24, 1978

Mr. Herbert S. Denenberg
127 Ridgewood Road
Radnor, Pennsylvania 19087

Re: In reply, please refer to #110

Dear Professor Denenberg:

Commissioner Lindsay read with interest your letter and questionaire of March 22, 1978. He asked that I discuss the items with members of the staff who are knowledgeable in the various fields and prepare a reply, which is constituted by this letter.

I would first like to note that South Carolina is a small state, not a wealthy state, and one which is not as advanced, insurance-wise, as other states may be as to "sophistication" of insurance policies, insurance types, and insurance purchases. We are but a small insurance market.

We will attempt to answer your questions, as they apply to South Carolina, in the order in which they are presented, starting with question number four.

Disability Income

a. We do not believe that pregnancy should be excluded from disability income policies. Coverage for this "disability" should be available at a proper price, but it is our belief that it should not be mandated to be included in all disability income policies. We feel that, with disability income policies on an individual basis, there are many women, in this advanced time of birth control, who do not intend to become pregnant and take the necessary steps not to become so "disabled" and, therefore, should not pay a premium for something that will not benefit them.

b. We do not believe there is a general inability of "some women" to buy long-term disability coverage in South Carolina. We have not heard complaints and we certainly know of no specific instances. We have noted that the entire atmosphere of disability income protection for women seems to have changed for the better in South Carolina in the last ten years.

c. We have noted that there may be a problem for the "homemaker" to obtain disability insurance because of the outmoded thoughts of some insurers that the homemaker's role is not an insurable role. We have made giant inroads in this area, though, for instance, in the basic economic loss coverage of our so-called no fault law (an add-on benefit which is compulsory), the insurer is required to insure against the loss of services and pay for replacement services performed by the homemaker who may be injured.

d. We do not beleive that women should have lower premiums (especially those over 60) for their disability income insurance. We feel that the same factors which demand a lower premium for women's life insurance demand a higher premium for women's disability income insurance.

e. We see no continuing problem in South Carolina relating to sex discrimination in disability coverage.

LIFE INSURANCE

a. Three year set-back. We feel that actuarial studies now published indicate that the three-year set-back does not give the female policyholder an adequate life insurance discount. Studies indicate this should be six years and legislation is now being prepared for introduction in South Carolina (but probably won't be adopted this year) calling for a six (6) year set-back or differential.

b. We believe that females have equal access to disability income written on life contracts in South Carolina. We have no indication that it is otherwise.

c. We believe that many companies which formerly ignored or neglected the potential female customer are making active media presentations to obtain female customers. We have one large domestic life insurer here in South Carolina which has recently completed an active campaign aimed directly at females.

d. We do not believe that restrictive underwriting prevents homemakers from purchasing adequate amounts of coverage in South Carolina. We have heard no complaints.

MEDICAL EXPENSE

a. We believe that group policies should include, by mandate, coverage for pregnancy expenses for all females, either married or single. We believe the cost in group policies should be "spread". However, we believe that in individual policies the choice should be made by the purchaser.

b. We believe there should be no discrimination between "group" policies and that a wife's group policy should cover the husband. We hope that in the near future all group policies will have such provisions.

c. Concerning pregnancy coverages, we refer you to (a) above.

PENSIONS AND ANNUITIES

a. We have seen no sex discrimination in the writing of annuities or other pension products.

b. We have noted that most pension programs do not include related disability coverages.

UNISEX RATING

a. We are not knowledgeable regarding this subject.

b. We do not believe that sex-based rates should be discarded, and, in fact, we feel that there are legitimate and necessary distinctions (life, disability), and that differentials should be allowed and, possibly, mandated and promoted by the regulatory arm.

RACIAL AND ETHNIC DISCRIMINATION

a. We do not find any "ethnic" or "racial" discrimination per se regarding the sale of life, health, etc. However, there is exercised by most insurers of this coverage, except in group coverages, a socio-economic program of underwriting.

b. We believe that the "higher mortality and morbidity" of blacks does have an influence on the underwriting process. We are not aware of the existence of a "black" rate and a "white" rate. We are aware, though, of such differentials as "standard" and "preferred" but we are also aware that the utilization is not entirely based on whether the insured is black or white.

c. There is no problem of "inadequate agency system to serve center-city areas" since we do not have, in South Carolina, what you would term a "center-city area".

EMPLOYMENT

a. We are not aware of any sex, race or ethnic discrimination in the hiring of personnel or appointment of agents in the insurance industry in South Carolina--at least no more so than might be present in any other industry in the country.

b. If a problem in this area were to arise, we would refer it to another agency of State Government, the Human Affairs Commission or the Department of Labor.

SPECIAL COMPLAINT PROGRAMS

a. We have no "center-city" problems. The Insurance Department, for instance, is located near the "center city" of Columbia. We receive some walk-in business.

b. No, we have not prepared special guides or brochures for "center-city" problems.

Professor, we hope this reply is both timely and in the vein of what you were seeking. If you have any questions, please call me. My telephone number is 803/758-2271.

Sincerely,

JOSEPH P. BARNETT
Special Assistant to the
Chief Insurance Commissioner

JPB:sc

STATE OF TENNESSEE

THE DEPARTMENT OF INSURANCE

114 State Office Bldg.
Nashville 37219

Ray Blanton
Governor

Millard V. Oakley
Commissioner

Roy F. Bess, Jr.
Assistant Commissioner

David H. McDole
Assistant Commissioner

April 5, 1978

Mr. Herbert S. Deneberg
127 Ridgewood Road
Radnor, Pennsylvania 19087

Dear Mr. Deneberg:

We acknowledge your memorandum dated March 22, 1978.

In answer to paragraphs 4, 6 and 7; this Department has promulgated Rule 0780-1-34. In answer to 5 and 8; we do not have rate-making authority in those areas. The answer to 9 and 10 and 11 is no.

Yours very truly,

John H. Allen

John H. Allen
Staff Attorney

JHA/cm

State of Wisconsin \ OFFICE OF THE COMMISSIONER OF INSURANCE

HAROLD R. WILDE
COMMISSIONER

123 WEST WASHINGTON AVENUE
MADISON, WISCONSIN 53703

(608) 266-3585

Martin J. Schreiber
Governor

April 4, 1978

Mr. Herbert S. Denenberg
127 Ridgewood Road
Radnor, PA 19087

Dear Mr. Denenberg:

In response to your recent questionnaire concerning discrimination, I have these comments (which are numbered to correspond with your question numbers):

4. Disability Income
   (a) pregnancy exclusion - see Wisconsin Insurance Rule Ins 6.55 (attached). (Also Group Insurance Board of Wisconsin, chaired by Commissioner Wilde, has taken action to require that pregnancy be treated exactly like all other disabilities, under the state's income continuation program.)
   (b) Inability of "some women" to obtain long-term disability income policies:
   Ins 6.55 requires equal availability by sex so long as all other underwriting criteria are met.
   (c) Home-makers: few insurers offer such policies Basic problems here are:
   (1) what is income loss to be insured against,
   (2) definitions of "disability" and evidence it is continuing.
   (Note: We think that the origins of this "discrimination" are more in the nature of the job than in sex discrimination per se. We would add that not all home-makers are of the same sex.)
   (d) Rates - since 1959, data in the Reports in the Transactions of the Society of Actuaries have shown that the ratio of female to male costs forms a bell-shaped curve and falls below 1 at ages 55-60 (a 1976 study by the N.Y. Dept. confirmed this). The rating practice in the past of many companies was either to: (1) have equal rates for males and females or (2) have female rates be a flat percentage (say 150%) of

male regardless of age. Since December 1975, all new individual disability income form filings in Wisconsin which follow (2) have been disapproved on the ground that such a rate structure is unfairly discriminatory by sex AND age (in the aggregate, female costs may be 150% of male). Method (1) - "unisex" rates - by this argument could also be questioned, but this office has allowed it on grounds that a company has the right to ignore sex as a risk factor.

5. Life
   (a) 3 year set-back:
      (i) Ins. Dept. has no authority over life rates
      (ii) We feel that the 3 year rate-back produces premiums too high in relation to those for males (it also provides female surrender values and often dividends that are artificially inflated.)
      (iii) The recent change in the Wisconsin valuation non-forfeiture laws to a 6 year setback for female reserves and cash values which we pushed for, is allowing some companies to lower female premiums on future contracts, which could not do so previously.
      (iv) Some companies do find ways to avoid this method with totally separate male and female premiums, surrender values, dividends, and terminal dividends. The Wisconsin Commissioner's Office runs one such company — a unique mutual known as "The State Life Fund." Since its founding in 1911, The State Life Fund has had unisex rates. Commissioner Wilde felt this was unfair to the Fund's women policy-holders, so in 1977 he instituted differential rates. (A copy of The Life Fund brochure, with examples of the significant differentials involved, is attached.)
   (b) Disability rider on life contracts - Ins 6.55 may be invoked for availability.
   (c) Neglect of female market - some companies have neglected females. Others (such as New York Life) have stepped up advertising to females. Basically, insurers CANNOT AFFORD to ignore females as they are now a major segment of the permanent work force in the U.S.
   (d) Underwriting of "Homemakers"
      - Financial underwriting is the key.
      - How much economic loss is involved on death of homemaker? There is a need for a standard yard-stick (e.g., salary or other income) to

apply, such as groups like NOW have been working on. We are concerned that women may be oversold on expensive whole life products, in the name of equality, at a time when they would be better served with alternative insurance and investment opportunities.

6. Medical Expense
   (a) Pregnancy exclusion on single females - I think this is limited to group. A rather old provision that will probably die out.
   (b) Extension of group coverage of employee wife to husband We are not aware of any problems in this area.
   (c) Spread pregnancy over all policyholders - for individual contracts, this might constitute unfair discrimination by sex. The question is whether the experience of males and females justify unisex rates. For group contracts, we think that such a mandate would not be inappropriate, consistent with other coverages provided in the policy.

7. Pensions and Annuities
   We are not aware of any major problems with these products, i.e. we have not received any complaints.

8. Unisex
   A distinction by sex for individual contracts in medical and disability coverages may be necessary, both for reasons of equity and solvency. Sex is a MAJOR risk factor concerning these coverages, and there are reasonable arguments demonstrating causality. RACE, on the other hand, is NOT a major factor after all other underwriting criteria are met (the Civil Rights Act of 1964 prohibits companies from assembling data by race for conclusive proof or disproof of this statement). Were sex to be viewed (like race) as a "suspect" class (something which we favor in property casualty) the world would not come to an end, but there would be a great deal of market confusion and inequity.

9. Racial and Ethnic Discrimination?
   In general, evidences of racial discrimination would appear to be primarily in homeowners and auto insurance, particularly in the absence of minority independent agents. Numbers of minority agents on the life and health side are much higher than property - casualty side, where we periodically get complaints about "redlining." I am not aware of complaints relating to A & H and life.

10. Employment
We have initiated a number of efforts in the past couple years to increase minority employment in the insurance industry, and improved responsibilities of women and minorities at higher levels in companies. All company exam reports now include some questions on affirmative action. We have revised our agent licensing procedures to insure that we provide no unfair barriers to entrance of minorities and women into the agent ranks (e.g., set up a special apprentice program). We have placed women and minorities in important positions (e.g., board of Wisconsin's Fair Plan); and greatly improved the Department's affirmative action record, so that we have no Achille's heel as we confront the record of the industry (e.g., half of the professional positions filled in the last year have gone to women).

11. Special Complaint Programs
We have established a special Milwaukee number which rings in our Madison office. We have prepared the attached booklets, relating to the particular problems of women and the elderly (for example "Health Insurance Advice for Senior Citizens" and "Insurance Guide for Women").

If you have any additional questions, please call me (608-266-0081).

Sincerely,

Richard J. Keintz

Richard J. Keintz
Deputy Commissioner of Insurance

RJK:mh

Enclosure

N A I C
EST. 1871

EXECUTIVE SECRETARY'S OFFICE
NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS
633 W. WISCONSIN AVENUE SUITE 1015 MILWAUKEE, WISCONSIN 53203 414-271-4464

RICHARD A. HEMMINGS
COUNSEL

March 31, 1978

Mr. Herb Denenberg
127 Ridgewood Road
Radnor, Pennsylvania 19087

Dear Mr. Denenberg:

Jon Hanson referred your letter of March 22, 1978 to me for reply. Enclosed is a copy of the NAIC's sex discrimination regulation along with the report of the task force which developed it. The NAIC is continuing its study of insurance sex discrimination in at least two forums: (1) the accident and health insurance subcommittee which has a sex discrimination task force, and (2) the privacy task force which is reviewing the 1977 Federal Privacy Protection Study Commissioner report for the purpose of developing recommendations for NAIC action.

For general overview, the Federal Privacy Commission report is informative. An article also appeared on this subject in Best's Review, (L & H Ed. August, 1976), which detailed then pending state initiatives.

If you have further questions, we would be pleased to provide whatever assistance we can. We would, of course, appreciate a copy of your paper when released.

Sincerely,

Richard A. Hemmings
Counsel

RAH:lam

Enc.

MODEL REGULATION TO ELIMINATE UNFAIR SEX DISCRIMINATION

To date, ten states; Arizona, Arkansas, Iowa, Nebraska, Nevada, Pennsylvania, North Carolina, Tennessee, Texas and Wisconsin, have adopted the NAIC Model Regulation to Eliminate Unfair Sex Discrimination, although North Carolina has eliminated Sections 1, 2, and 3. Five states; California, Illinois, Kansas, New York, and Oregon have adopted related regulations, which are either adaptations of the NAIC model, or independent administrative actions. Massachusetts, New York and Washington, have laws dealing with sex discrimination; while North Dakota has a law in the area pertaining only to automobile insurance.

It should be noted that some states handle questions related to sex discrimination by referring to applicable sections of their unfair trade practices acts (see p. 900-1 to 900-9, Section 4). However, we have not included citations for those sections which are very general in nature. A tabulation of the state positions follows.

State	Adopted NAIC Model Yes	Adopted NAIC Model No	Other Legislative or Administrative Action
Alabama		X	None to date
Alaska		X	None to date
Arizona	Department of Insurance Rule 124-14-209, effective June 13, 1977		
Arkansas	Insurance Department, Rules and Regulations, No. 19, effective January 1, 1976		
California		X	Title 10, California Administrative Code, Chapter 5, Subchapter 3, Article 15, effective 1976
Colorado		X	None to date
Connecticut		X	None to date
Delaware		X	None to date
D.C.		X	None to date
Florida		X	None to date
Georgia		X	None to date
Hawaii		X	None to date
Idaho		X	None to date
Illinois		X	Insurance Department Regulations; Rule 26.04, effective July 1, 1976
Indiana		X	None to date
Iowa	Administrative Code, Sections 510 - 15.50 (507B) through 510 - 15.54 (507B), effective April 13, 1976		
Kansas		X	Administrative Regulations (K. A.R.), Section 70-1-31, effective 1977)
Kentucky		X	None to date
Louisiana		X	None to date
Maine		X	None to date
Maryland		X	None to date
Massachusetts		X	Mass. Gen. Laws, Chapter 175, Section 24A, effective July 31, 1974
Michigan		X	None to date
Minnesota		X	None to date
Missouri		X	None to date
Montana		X	None to date
Nebraska	Insurance Department Rule 28, effective July 27, 1977		
Nevada	Insurance Department Regulation M7, effective January 1, 1977		

State	Adopted NAIC Model Yes	Adopted NAIC Model No	Other Legislative or Administrative Action
New Hampshire		X	None to date
New Jersey		X	None to date
New Mexico		X	None to date
New York		X	Insurance Code, Chapter 564, Section 40-e, and Departmental Regulation No. 62 (11 NYCRR 217), both effective 1965
North Carolina	11 NCAC 4.0107, effective May 5, 1975		
North Dakota		X	(automobile insurance only) Title 26, Section 26-02-36(3), effective 1975
Ohio		X	None to date
Oklahoma		X	None to date
Oregon		X	Oregon Administrative Rules, Sections 836-80-050 through 836-80-055, effective 1975
Pennsylvania	31 Pennsylvania Code, Chapter 145, effective October 26, 1977		
Rhode Island		X	None to date
South Carolina		X	None to date
South Dakota		X	None to date
Tennessee	Department of Insurance, Rule 0780-1-34, effective May 16, 1976		
Texas	State Board of Insurance, Rules 059.21.21.101-059.21.21.109, effective January 1, 1978		
Utah		X	None to date
Vermont		X	None to date
Virginia		X	None to date
Washington		X	Title 48, Chapter 48.30 Section 48.30.300, effective June, 1976
West Virginia		X	None to date
Wisconsin	Administrative Code, Section Ins 6.55, effective June 1, 1976		
Wyoming		X	None to date
Puerto Rico*		X	None to date
Virgin Islands*		X	None to date

*Research not yet verified.

A MINI GUIDE TO WOMEN'S INSURANCE RIGHTS

PENNSYLVANIA INSURANCE DEPARTMENT
Harrisburg, Pennsylvania 17120

HERBERT S. DENENBERG
Insurance Commissioner

MILTON J. SHAPP
Governor

MARCH 1974

FOREWORD TO
WOMEN'S INSURANCE RIGHTS

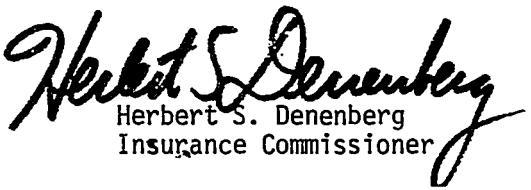
One major goal of the Pennsylvania Insurance Department has been to eliminate unfair treatment of women by the insurance industry. The Pennsylvania Insurance Department was the first in the country to recognize that many standard industry practices toward women policyholders and prospective policyholders were unfairly discriminatory.

In June 1973, I set up a Task Force on Women's Insurance Problems and gave it the full support of the Insurance Department to analyze women's complaints and industry practices for evidence of discrimination. The initial report of the Task Force, which I released in January, detailed a long list of discrimination in benefits, availability, and coverage which women have faced in their attempts to purchase full insurance coverage for themselves and their families.

The Pennsylvania Insurance Department is proceeding to implement the initial recommendations of the Women's Task Force. It is also time to tell women more about what rights they should expect and demand in their dealings with the insurance industry as policyholders and purchasers, as employees, and as involved citizens.

This "Mini Guide to Women's Insurance Rights" should help women in their dealings with the insurance industry at all levels. It should also serve as a companion to other Shoppers Guides published by the Insurance Department, by alerting women to their special needs in the various areas of insurance which the full length guides explain.

Special thanks are due to the Task Force and its Departmental Liason, Marie R. Keeney.



Herbert S. Denenberg
Insurance Commissioner

WOMEN'S INSURANCE BILL OF RIGHTS

Here are ten basic requirements for fairness toward women in insurance, and some tips on what to look out for to be sure you are getting what you are entitled to.

1. WOMEN HAVE THE RIGHT TO FAIR ACCESS TO ALL TYPES OF INSURANCE.

Old stereotypes about a woman's place have been used to deny women the opportunity to purchase insurance to protect them in all the roles and responsibilities they now have. If you need disability income protection insurance because your family depends on your income for all or part of its support, you have a right to the opportunity to purchase it. Until companies fully comply with the Pennsylvania Insurance Department's efforts to end this type of discrimination, you may have to shop around quite a bit before finding a company that will make full disability insurance benefits available to you. But keep trying. Some companies have recently extended all the benefits in a "man's" policy to women, so it's worth the effort to find non-discriminatory coverage.

Check your health and life insurance coverages as well, to be sure that you have all the options generally available to men purchasing similar insurance, and that you have adequate amounts of coverage. And bear in mind that insurance underwriting practices in the past indicated a lot of suspicion or ignorance about the women's market. This led some companies to apply more stringent standards to the female "risk" than the male "risk." Sometimes this affects a woman's ability to purchase automobile insurance after a divorce, for example, or a single woman who wants homeowners insurance. If you are denied insurance and you think the reason was because of your sex, complain to the Pennsylvania Insurance Department. Pennsylvania's Equal Rights Amendment protects women from discrimination based on sex.

2. WOMEN HAVE THE RIGHT TO PREMIUMS THAT FAIRLY REFLECT RISKS AND NOT PREJUDICE, AND THAT ARE NOT BASED ON SEX.

Ask what the rates would be for comparable insurance on a man. If your rates seem unreasonably high, shop around. Although most companies have different loss experience for men and women in health insurance, for example, the rate differences vary from one policy to the next. "Unisex" rating is feasible in all lines of insurance, but most companies don't want to face the disruption of their market such a change would cause. In March 1974, the Pennsylvania Insurance Department took the position that companies cannot charge women more than men for the same insurance. But this decision will take concurrence by the Attorney General before it can be enforced - and then it will take some time to implement.

Take advantage of the rate break for women in some types of insurance, such as life insurance and automobile insurance, while you can, to offset the higher rates you may have to pay for health and disability insurance.

Also remember that since employer contributions to group health and disability insurance absorb the sex differences in rates, women can get a better buy for their insurance dollar through employee group plans.

3. WOMEN HAVE THE RIGHT TO EQUAL EMPLOYMENT OPPORTUNITIES IN THE INSURANCE INDUSTRY AND ITS REGULATORY AGENCIES, AND TO A FAIR SHARE OF SCHOLARSHIPS AND FINANCIAL ASSISTANCE FOR THE STUDY OF INSURANCE.

There's a lot of evidence that insurance companies have thought of women as only qualified for clerical work in their business. Some companies have found themselves in the middle of employment discrimination suits for this kind of thinking.

Today companies claim to have equal employment opportunity policies. Many of them have written affirmative action plans for implementing their commitment toward equal hiring, promotion, and training opportunities for women in their industry. This means the field should be wide open to women interested in insurance careers, and to those women already in the business who in the past found their opportunities for advancement blocked by "Men Only" signs.

If you're interested in an insurance career, talk to the companies. If you don't get anywhere and you think it's because of your sex, talk to the Pennsylvania Human Relations Commission.

4. WOMEN HAVE THE RIGHT TO FAIR AND NON-SEXIST TREATMENT BY AGENTS, BROKERS, CLAIMS REPRESENTATIVES AND ALL OTHERS WHO DEAL DIRECTLY WITH POLICYHOLDERS.

It's your money. The agent or broker who is not aware of the changing needs and responsibilities of women, yours in particular, and who won't work with you to give you the very best insurance coverage at the lowest possible cost shouldn't have your business. You can't afford to be underinsured because of some agent's misconceptions about a woman's needs. You don't want to be stuck with inadequate policies sold by companies that haven't yet revised their offerings to eliminate unfair reductions and limitations on women's coverage. Find an agent or broker, male or female, who is willing to help you get the coverage you need.

5. WOMEN HAVE THE RIGHT TO REPRESENTATION ON THE DECISION-MAKING BOARDS OF COMMERCIAL INSURANCE COMPANIES, BLUE CROSS PLANS AND OTHER NON-PROFIT INSURERS.

We have found that most of the top companies have few women, if any, among their boards of directors and top officers. Women policyholders, stockholders, and

consumers should demand that companies revise their boards to include women in policy-making positions. Change will occur much more quickly where women have a voice in determining policy for insurance companies and can review the insurance and employment practices of the companies they direct.

6. WOMEN HAVE THE RIGHT TO BUY INSURANCE OR QUALIFY FOR COVERAGE REGARDLESS OF MARITAL STATUS.

The Task Force found that single women are often denied maternity coverage, that married women may find resistance when they try to purchase insurance on their own houses and other possessions, that divorced women are viewed with suspicion when it comes to automobile insurance, and that the amount of life insurance the husband carries may affect the amount a wife can purchase. If you meet any of these problems or similar ones because you are or are not married, complain to the Pennsylvania Insurance Department. The trouble may be your agent, your company's underwriting practices, or a combination of things, but it spells sex discrimination and it is illegal.

7. WOMEN HAVE THE RIGHT TO ACCURATE AND BALANCED INSURANCE ADVERTISING THAT RECOGNIZES THE NEEDS AND IMPORTANCE OF THE WOMEN'S INSURANCE MARKET.

Too often, women have been portrayed as uninvolved in insurance decisions for the family, and companies have overlooked the need to direct their advertising to the women's market. Even worse, some insurance advertising has perpetuated the worst stereotypes in depicting women. Let the companies know that you believe their attitudes about women which are reflected in their advertising may also be reflected in policy provisions and service to women policyholders.

8. WOMEN HAVE THE RIGHT TO ADEQUATE HEALTH INSURANCE COVERAGE FOR ALL NEEDS, INCLUDING COMPREHENSIVE MATERNITY BENEFITS FOR ALL CONDITIONS OF PREGNANCY REGARDLESS OF AGE OR MARITAL STATUS.

The Pennsylvania Insurance Department Task Force on Women's Insurance Problems found the major complaints from women concern pregnancy-related health insurance coverage. It found that some group insurance denies maternity coverage to women workers or dependents and that most individual health insurance denies such coverage to single women.

Employed women should know that it is illegal employment discrimination for an employer to provide maternity coverage as a fringe benefit to the wives of male employees but not to female employees. The Pennsylvania Insurance Department has officially notified insurance companies about this illegal practice and told them to revise their policy provisions to conform to Federal antidiscrimination guidelines.

Women should expect full coverage for all pregnancy services. They should not be satisfied with an insurance policy that singles out maternity and pregnancy for special limitations or for extra premiums.

9. WOMEN HAVE THE RIGHT TO DISABILITY INSURANCE WHICH FAIRLY MEASURES THE ECONOMIC VALUE OF CHILDCARE AND HOMEMAKING.

Sickness or accident which strikes the homemaker causes an unexpected financial need to replace the homemaking and childcare services. Yet companies have been slow to offer this type of coverage. It is now being offered by a few companies, either as a separate policy or as a rider on a disability income policy. If you think you want this type of insurance protection, shop around and make your desires known. Several

insurance companies told the Task Force that they weren't aware of any kinds of insurance protection that women wanted but were unable to purchase.

10. WOMEN HAVE THE RIGHT TO PRIVACY IN THE CLAIMS PROCESS, IN THE UNDERWRITING PROCESS AND IN OTHER ASPECTS OF INSURANCE INDUSTRY OPERATIONS.

One complaint to the Task Force brought this problem home: a teacher was afraid to make a claim for childbirth expenses due her because she was unmarried and afraid she would be fired. Companies must maintain a claims procedure that protects the privacy of the individual. This is especially important where the group policyholder, such as an employer, administers the claims procedure. If failure to protect a person's privacy results in discrimination against the individual, the Insurance Department wants to hear about it. Contact one of the complaint specialists on duty in any of the four offices of the Pennsylvania Insurance Department located as follows:

Pennsylvania Insurance Department
408 Finance Building
Harrisburg, Pennsylvania 17120
Phone: (717 787-2317)

Pennsylvania Insurance Department
Philadelphia State Office Building
1400 West Spring Garden Street
Philadelphia, Pennsylvania 19130
Phone: (215 238-7122)

Pennsylvania Insurance Department
Pittsburgh State Office Building
300 Liberty Avenue
Pittsburgh, Pennsylvania 15222
Phone: (412 565-5020)

Pennsylvania Insurance Department
916 Commerce Building
Twelfth and State Streets
P. O. Box 6142
Erie, Pennsylvania 16501
Phone: (814 454-2818)

THE PENNSYLVANIA INSURANCE DEPARTMENT'S

BILL OF RIGHTS SERIES

1. Insurance Bill of Rights for Women
2. Citizens Bill of Rights on Nuclear Power
3. Policyholders' Bill of Rights
4. Citizens Bill of Hospital Rights

by HERBERT S. DENENBERG
Pennsylvania Insurance Commissioner

PENNSYLVANIA INSURANCE DEPARTMENT
Harrisburg, Pennsylvania 17120

HERBERT S. DENENBERG
Insurance Commissioner

MILTON J. SHAPP
Governor

March 1974

FOREWORD TO

THE PENNSYLVANIA INSURANCE DEPARTMENT'S

BILL OF RIGHTS SERIES

For the last three years we have been fighting to make sure the public gets what it is entitled to in health care and insurance protection.

We have won some battles and lost some battles. But it is clear what we are aiming for.

On several occasions, it has been useful to state our views on what the public is entitled to. We have done this in various ways but one of the most effective is through the statement of a bill of rights. In this publication, we have put together four of these.

The first is a general statement of what every citizen is entitled to from the insurance industry.

The second, prepared in connection with our hearings on nuclear insurability and safety, relates to what insurance the public should be able to expect from the nuclear establishment.

The third relates to the citizens rights from hospitals. An expanded version of this guide has been published separately by the Department.

The final bill of rights appreared in Congressional testimony on sex discrimination in insurance. This form of discrimination has been widespread, serious and up to now, largely ignored. So it was important to put a women's perspective on a statement of insurance rights.

We have a long way to go in assuring adequate insurance protection for all of our citizens. But this Bill of Rights series should help keep our goals in perspective and should help assure that we attain them as soon as possible.

Herbert S. Denenberg
Pennsylvania Insurance Commissioner

POLICYHOLDERS' BILL OF RIGHTS

1. Policyholders should have the right to competitive pricing practices and marketing methods that enable them to determine the best value among comparable policies.

2. Policyholders should have fair access to obtain the insurance coverage they need and want.

3. Policyholders should have the right to obtain comprehensive, non-gimmick coverage with a minimum of exclusions.

4. Policyholders should have the right to insurance advertising and other selling approaches that provide accurate and balanced information on the benefits and limitations of a policy.

5. Policyholders should have a right to an insurance company that is financially stable, and efficiently and honestly managed.

6. Policyholders should have the right to be serviced by a competent, honest insurance agent or broker.

7. Policyholders should have the right to fair, efficient and courteous claims service.

8. Policyholders have a right to privacy in the claims process, the underwriting process and in other aspects of insurance industry operations.

9. Policyholders should have the right to insurance policies that they can read and understand.

10. Policyholders should have the right to an insurance company that provides an economic delivery of coverage and that tries to prevent losses, not merely pay for them.

11. Policyholders should have the right to government regulation that serves policyholders first, instead of insurance companies and that tries to bring all of these other rights about.

12. Policyholders should have the right to insurance laws that are written by the legislature for the people--and not for the legislature by the insurance industry.

A CITIZEN'S BILL OF RIGHTS

ON NUCLEAR POWER

1. The public is entitled to full and candid information about the dangers and benefits of nuclear power in language they can understand, not just obscure technical jargon and Madison Avenue propaganda.

2. The nuclear establishment, including the AEC, utility companies, nuclear manufacturers and the insurance industry, has the obligation to disclose all information about the dangers of nuclear power.

3. The nuclear establishment has the obligation to make all relevant information readily available nationwide and not simply to store it in document rooms in Washington. Because of the unprecedented danger, failure to make readily available all information should be subject to severe criminal penalties.

4. The public is entitled to participate fully in all nuclear power decisions at all levels and at the earliest possible time. The public should not have these decisions rammed down their throats.

5. The public is entitled to have nuclear power plant decisions made on the local as well as the state and federal levels of government with meaningful input by citizens who will be directly affected. All decisions should not be made by federal officials.

6. The public is entitled to government regulation of the atomic energy industry designed to protect the citizen rather than to promote and protect the interests of the nuclear establishment. The health and safety of the public should come ahead of the corporate health and safety of the nuclear establishment.

7. The public is entitled to full protection for all damages caused by nuclear accidents. The financial risk of any accident should fall on the nuclear establishment, not on the public.

8. The public is entitled to a legal system that will guarantee compensation for the special types of injuries caused by nuclear radiation, such as genetic damage and delayed diseases, that may not be compensable under present law.

9. The public is entitled to an insurance industry that actively promotes safety and the public interest rather than one that serves as a mere adjunct to the nuclear establishment.

10. The public is entitled to full legislative monitoring of the risks and benefits of nuclear power. Responsibility should not be abdicated to a Congressional Joint Committee on Atomic Energy that has a vested interest in nuclear power and has traditionally been part of the nuclear establishment.

11. The public is entitled to a nuclear policy that protects present and future generations against unreasonable dangers. Future generations should not be given the oppressive burden of the storage of the present generation's nuclear waste.

12. The public is entitled to an energy policy that in no way compromises national security. The public should not be subjected to nuclear Trojan Horses susceptible to sabatoge and attack by conventional weapons.

13. The public is entitled to a comprehensive national energy policy with full environmental protection to assure a safe and sufficient supply of power rather than the present circus of hazards and inadequacies.

14. Until the previously mentioned rights are assured, the public is entitled to a moratorium on the further expansion and operation of the nuclear establishment.

INSURANCE BILL OF RIGHTS

FOR WOMEN

1. The right to fair access to all types of insurance.

2. The right to premiums that fairly reflect risks and not prejudice and that are not based on sex.

3. The right to equal employment opportunities in the insurance industry and its regulatory agencies, and to a fair share of scholarships and financial assistance for the study of insurance.

4. The right to fair and non-sexist treatment by agents, brokers, claims representatives and all others who deal directly with policyholders.

5. The right to representation on the decision-making boards of commercial insurance companies, Blue Cross plans and other nonprofit insurers.

6. The right to buy insurance or qualify for coverage regardless of marital status.

7. The right to accurate and balanced insurance advertising that recognizes the needs and importance of the women's insurance market.

8. The right to adequate health insurance coverage for all needs, including comprehensive maternity benefits for all conditions of pregnancy regardless of age or marital status.

9. The right to disability insurance which fairly measures the economic value of childcare and homemaking.

10. The right to privacy in the claims process, in the underwriting process and in other aspects of insurance industry operations.

CITIZENS BILL OF

HOSPITAL RIGHTS

1. The public has a right to good quality care and high professional standards that are continuously monitored and reviewed.

2. The public has a right to economical care and to hospital management that operates efficiently and eliminates waste, such as unnecessary services and duplicative and unsafe facilities.

3. The public has a right to have its voice heard in the management, control and planning of hospitals, and in the case of community hospitals it should be assured of a board of directors that represents a broad cross-section of the community.

4. The patient has a right to full information on his diagnosis, treatment, and prognosis in terms he can understand.

5. The patient has a right to personal dignity at all times.

6. The patient has the right to control his body and life.

7. The patient has a right to redress of grievances in a reasonably efficient and timely fashion.

8. The public has a right to full information about the finances and activities of the hospital.

9. The patient and public has the right to full disclosure of any hospital relationships that pose an immediate or potential conflict of interest.

10. The patient has a right to full information about his stay, including information about his bill and access to his hospital records.

11. The patient has a right to continuity of care.

12. The public has a right to expect a hospital to behave as a consumer advocate rather than as a business headquarters for doctors and hospital officials.

METROPOLITAN FEDERAL SAVINGS
AND LOAN ASSOCIATION OF EASTERN PENNSYLVANIA

HERB DENENBERG'S "IN YOUR CORNER"—A CONSUMER REPORT HEARD DAILY ON WCAU-AM RADIO, 1210 ON YOUR DIAL.

4/24/78

"A SHOPPER'S GUIDE TO INSURANCE - FOR WOMEN"

By Herb Denenberg

If we told you that bakeries weren't interested in selling women bread, you'd be outraged, and you'd probably also wonder about the stupidity and standards of the baker.

And what if we told you bakeries were adding unjustified charges to the price of bread sold to women. Or perhaps selling them substandard bread, and saving the first-class loaves for male customers only.

That account of the bread market is all fiction. But we can tell the same kind of story about the insurance market and it would be all fact.

Discrimination against women in the insurance marketplace is serious, widespread, unjustified and unconscionable. And in many ways, insurance discrimination is as serious as would be discrimination in the marketing of any other necessity.

Women need insurance just as men do and for precisely the same reasons. Yet they cannot always buy it on equal terms and sometimes they may be turned down altogether by some companies.

Insurance is a universal necessity. It's often required by law and always required by prudence and sound financial planning.

Without insurance we would all be exposed to financial losses that could wipe out our savings, destroy our life style, and defeat all of our most cherished plans.

Insurance is essential if we are to be able to pay our medical bills. Without insurance we would not have access to first-rate medical care. You know how difficult it is to get good medical care when you can pay for it. Try getting decent care when you're forced to rely on charity or welfare.

Try buying a home or a car without insurance on your purchase to protect the bank or mortgage company. Insurance is often essential to obtain credit whether you're a homeowner or businessman, whether you're a tycoon or plain consumer.

"IN YOUR CORNER" IS BROUGHT TO YOU EACH WEEK BY METROPOLITAN FEDERAL SAVINGS & LOAN.

And don't drive without insurance. If you do, that makes you a criminal in most states. It may also make you a bankrupt and a pauper in a hurry, too.

And don't get disabled without insurance. Chances are, with inflation, you can barely make ends meet. Try paying your bills when you're disabled, with extra medical bills, other expenses of all sorts, and with no paycheck.

There's one thing worse than disability. That's disability without disability income insurance.

Finally, it's not even healthy to die without insurance. Your dependents may be deprived of income, of opportunities for education, and of a decent standard of living.

So men and women alike need insurance, but here are some basic pointers to help women get by the special obstacles in the way of fair insurance treatment.

> Life Insurance: You may need life insurance if you've got dependents. If you bring in a wage, you may want to buy life insurance protection to cover that income that might be lost by death.

If you're a homemaker, but not a wage earner, you may still need life insurance. Let's say you have two small children. If you should die, it might easily cost $10,000 to $20,000 a year to get someone to take your place as a nursemaid, waitress, cook, launderess, housekeeper, chauffeur, etc.

When you go to buy that life insurance, you're likely to overpay if you don't shop extra hard.

Over the years, women have often been overcharged for life insurance, according to insurance company statistics. Many companies use what is called a three-year set-back for women's rates. That means they charge a woman the premium that a man would pay who is three years younger.

So a 35 year old woman would pay the premium charged 32 year old men.

More and more insurance commissioners and experts agree .at in many cases that is not a sufficient discount in view of the greater life expectancy of women.

So be especially wary of companies that use a three-year set-back system. But the acid test is to do some hard shopping for a good low cost company. Here's how to do that. There's a special index number that can be used to compare the same kind of policies issued by different companies.

Ask each agent to give you the interest-adjusted surrender cost index for each policy you're thinking about. The lower that index number the better the deal.

There's one special feature that should go with almost every life insurance policy. It is called the waiver of premium rider, which will excuse you from premium payment if you become totally disabled. Other provisions you may want to consider are the guaranteed insurability option and the disability income rider and, of course, the double indemnity provision if you're interested in extra accidental death coverage.

> Disability Income Insurance: Some of the most vicious insurance discrimination has occurred in the market for disability income insurance.

That kind of coverage pays you a monthly cash benefit if you become disabled.

Few companies will sell disability income protection to homemakers who are otherwise unemployed. But some will.

Many more companies are now making the same disability income policies available to employed women that have always been available to men. The premiums for coverage for women are substantially higher than men. Insurance industry statistics do show that women produce more disability losses than men do at most ages.

A 35 year old woman, for example, who wants a good long-term disability policy that will pay $1000 a month until age 65 may have to pay $400 to $600 a year.

An employed woman should be able to get good coverage.

Here's what to look for. Make sure the policy is noncancellable and guaranteed renewable. That means the policy can't be cancelled and must be renewed every year without premium increases until age 65.

You can also select an elimination period to suit your needs. The elimination period is the deductible of disability coverage. That is, it's the initial period of a disability during which insurance payments are not made. It may be as short as a week or as long as a year. The longer the elimination period the smaller the premium.

Another key feature to look at is the definition of disability. For example, some disability policies for homemakers require the homemaker be unable to perform all the duties of her occupation. You want to avoid definitions of disability requiring that you be confined to your home or to a medical facility.

And there's one dangerous exclusion to look out for. You should try to avoid policies that exclude all disability due to the complications of pregnancy. You may be able to budget on your own for the usual disability of pregnancy, but its complications could be economically catastrophic if uninsured.

> Medical Expense Insurance: Perhaps the most serious problem facing women in the purchase of medical expense insurance has been the exclusion of maternity benefits.

Often pregnancy benefits are excluded altogether. Sometimes routine pregnancy is excluded but the complications of pregnancy are covered.

Sometimes pregnancy is covered, but by unrealistic and inadequate face amounts.

There have also been some special problems in obtaining pregnancy coverage for unmarried women and for dependent females (minor children).

If you buy a policy with maternity coverage, take special note of any waiting periods. Some policies provide absolutely no coverage whatsoever for any pregnancy expense incurred within 9 or 10 months after the policy is in force. That means a miscarriage or a premature delivery might not be covered even if conception took place long after the policy went into force.

More equitable policies cover any expenses of pregnancy provided that conception took place after the effective date of the policy.

Make sure your medical expense coverage gives you the maternity coverage you need and are willing to pay for.

Another especially dangerous provision to look out for is the newborn infant exclusion. That excludes newborn infants from coverage for a specified period after birth, such as 14 or 30 days.

In most states this exclusion has been outlawed, but it may still be included in policies that were issued before the prohibition became effective.

> Auto and Homeowners Insurance: Women have faced the most serious sex discrimination problems in buying life, disability income, and medical expense coverage. But there have also been some special problems in buying auto and homeowners insurance.

Some single and divorced women have been the special objects of discrimination, and companies sometimes inflict insurance penalties for behavior that has no relation to loss potential.

With certain exceptions, women have had equal access to auto and homeowners insurance. In fact, young women usually get lower auto insurance rates than young men, and women age 30 to 64 get lower rates than other adults. Homeowners rates are totally free of sex-based premiums. And in both auto and homeowners insurance the coverage is the same for both sexes.

Other Rules For Buying Insurance And Complaining About Unfair Treatment

This "Guide" has emphasized some of the special problems women can encounter in buying insurance. In addition, they have to follow the other rules of sound insurance buying, including careful selection of agents and companies.

If special insurance problems are encountered, anyone can seek help from their state insurance departments. If sex discrimination is involved, there is also a large number of women's organizations, government agencies and civil rights organizations that may be able to help. For example, in Pennsylvania the Commission for Women (717-787-8128) and the Pennsylvania Human Relations Commission (717-787-4410) have been active in fighting sex discrimination in insurance.

See volume II, exhibit no. 8, for the "Insurance Guide for Women," State of Wisconsin, Office of the Commissioner of Insurance.

Discrimination in Insurance: Legislation and Litigation

By Lois G. Williams, Acting Counsel for Appellate Litigation, Fair Labor Standards Division, Office of the Solicitor, U.S. Department of Labor*

Discrimination is a neutral term meaning the act of differentiating or distinguishing. In insurance, the term has a positive connotation, it being the art of the industry to draw fine distinctions. In law, the term has a negative connotation, it being illegal to discriminate *against* certain persons or groups. This paper deals with the collision between these two connotations, in those areas in which the discrimination practiced by insurers illegally disadvantages certain persons or groups.

Discrimination against persons by insurers can take many forms. Coverage may be denied altogether, or it may be priced out of the reach of some persons. Some underwriting practices are viewed as arbitrary and subjective, and the statistical data on which they are based attacked as having no causal relationship to possible losses. When practices of this sort are viewed by enough persons as unjust or unfair, they will also become illegal.[1]

The principal focus of this paper is Federal antidiscrimination law. Significant as this body of law is, it works indirectly on the insurance industry. Direct regulation of insurance is still left, for the most part, to the States.

In 1945, in response to a Supreme Court decision declaring that insurance is interstate commerce subject to Federal regulation,[2] Congress passed the McCarran-Ferguson Insurance Regulation Act.[3] The act provided that the "business of insurance" is subject to State regulation, and shall be exempt from Federal antitrust law to the extent that a State has regulated it.[4] An act of Congress may not be construed to "invalidate, impair, or supersede" a State law unless it specifically relates to the business of insurance.[5]

The "business of insurance" has been narrowly construed to refer to the relationship between insurer and insured, to questions regarding

* The views expressed here do not necessarily represent those of the Department of Labor.

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[1] Some are already illegal under State law. In addition, the consumer's interest in fair treatment in insurance has recently been expressed in hearings on the subject before the Senate Subcommittee on Citizens' and Shareholders' Rights and Remedies, Jan. 17, 1978.

[2] United States v. South Eastern Underwriters Ass'n, 322 U.S. 533 (1944).

[3] 15 U.S.C. §§1011–1015 (1945).

[4] 15 U.S.C. §1012.

[5] 15 U.S.C. §1012(b).

interpretation and enforcement of policies, and to other activities of insurers closely related to their reliability as insurers.[6] The act has been invoked by insurance companies principally to resist Federal securities or antitrust regulation.[7] However, any Federal law may regulate the business of insurance if it does so overtly. For example, the Employee Retirement Income Security Act of 1974 (ERISA)[8] explicitly preempts State laws as they relate to employee benefit plans (section 514(a)). Congress can regulate any aspect of insurance it wishes simply by stating the intention to do so and thus avoid any possible question of a McCarran Act exemption. Also, the act does not bar Federal legislation unless it invalidates, impairs, or supersedes a State law which specifically regulates the business of insurance.[9] Therefore, unless a State *insurance* regulation explicitly permits a practice which a Federal law (*not* an insurance regulation) prohibits, the McCarran Act does not operate.

Finally, the act is a statutory, not a constitutional provision. Therefore, a State insurance practice which violates the Constitution, such as a racially discriminatory practice sanctioned by State law, may always be attacked on constitutional grounds.[10]

The McCarran Act exists because of possible conflict between State and Federal law. If the Federal statute can be construed in such a manner as to obviate any conflict with State law, the insurance company is not exempt from Federal regulation.[11] But in the area of discrimination, Congress has not yet taken aim at insurers directly. Nor have present Federal civil rights laws been used by litigants to attack insurers. However, no reason appears why, for example, the venerable remedy against race discrimination in contracts, 42 U.S.C. §1981, could not be so used. Any State law which might conflict by condoning discriminatory contracts would surely be unconstitutional.

The State laws which regulate insurance contain a variety of prohibitions against discrimination. Such a patchwork exists that no comprehensive review of these laws may be undertaken here, but a few observations will serve as background for the discussion of Federal law. Generally, there is a lack of uniform standards by which

[6] SEC v. National Securities, Inc., 393 U.S. 453, 460 (1969).

[7] See, *e.g.*, SEC v. National Securities, Inc., 393 U.S. 453; American Hospital and Life Ins. Co. v. FTC, 243 F.2d 719 (C.A. 5, 1957), aff'd, 357 U.S. 566; Meicler v. Aetna Cas. & Sur. Co., 506 F.2d 732 (C.A. 5, 1975).

[8] 29 U.S.C. 1001 *et seq.*

[9] Hart v. Orion Insurance Co., 453 F.2d 1358 (C.A. 10, 1971).

[10] See Stern v. Massachusetts Indemnity and Life Ins., 365 F.Supp. 433 (D. Mass., 1973). In litigation under the equal protection clause of the 14th amendment, racial minorities have received a higher degree of constitutional protection than have other groups. Passage of the Equal Rights Amendment might well allow more potent direct attack by litigants on the insurance companies for sex discrimination.

[11] "Federal Regulation of Insurance Companies: the Disappearing McCarran Act Exemption," 1973 *Duke L.J.* 1340, 1344. See, *e.g.*, United States v. Sylvanus, 192 F.2d 96 (C.A. 7, 1951), cert. denied, 342 U.S. 943.

rates are set. Most States have laws that direct themselves toward maintaining rates that are not "excessive, inadequate, or unfairly discriminatory." Some States have tried to define these terms, but, as one commentator notes, "even when defined, such elusive concepts as adequacy, excessiveness, and unfair discrimination are difficult to put into practical effect."[12]

The standard provision prohibits "unfair discrimination" in insurance. However, a great many States define "unfair" in traditional insurance terms as a discrimination between individuals of the same class and life expectancy or degree of risk.[13] Hence, this prohibition would not in itself reach the practices discussed in this paper of classifying risks according to sex. Neither would it reach race-based classifications. However, most States have separately prohibited assessment of different life or health insurance rates on the basis of race.[14] Some States prohibit sex discrimination in insurance, primarily to assure that no one will be prevented from buying insurance on the basis of sex or marital status; some also prohibit sex discrimination in rates.[15] And some of these only prohibit sex classification which is not justified by actuarial statistics,[16] a prohibition which does not affect the use. of sex-based mortality tables discussed here. With this brief background, we turn to the Federal discrimination law.

Federal Law and Discrimination in Insurance Practices

The premier Federal employment discrimination law is Title VII of the 1964 Civil Rights Act.[17] That law makes it illegal to discriminate against an individual in "compensation, terms, conditions, or privileges of employment" because of race, color, religion, sex, or national origin.[18] It thus prohibits any refusal to hire, promote, or, in general, grant equal treatment to members of the enumerated classes. In addition, however, it broadly forbids employers to "limit, segregate, or classify" their employees on any of the enumerated bases "in any way which would deprive or tend to deprive any individual of employment

[12] "McCarran-Ferguson Act," 29 *Vanderbilt L.Rev.* 1271, 1293–94 (1976).

[13] See, *e.g.*, Virginia Code §38.1–52 (1952); Texas Code, Ch. 21, Art. 21 (1957); Oklahoma Code, Title 36 §1204(7); New Jersey Code, Title 17B:30–12(c) and (d) (1971).

[14] James, *The Metropolitan Life: a Study in Business Growth*, 338–39 (1947). See, *e.g.*, Pennsylvania Code, Title 40 §1171.5(iii); Illinois Code, Ch. 73 §1031(3) (1975); Maryland Code, Art. 48A §234A (1971); Connecticut Code, Ch. 676, §38–149, §38–151, §38–152 (1955); Massachusetts Code, Title 175 §122 (1954); Michigan Stat. Ann. 24.12027 (1977); Minnesota Stat. Ann. §70A.05(2) (1975); Wisconsin Stat. Ann. §625.12 (Supp. 1977).

[15] See, *e.g.*, Illinois Code, Ch. 73 §1031(3) (1975); Pennsylvania, Title 40 §1171.5(iii) (1974).

[16] See, *e.g.*, Maryland Code, Art. 48A §226(c)(2), §234(b) (1975); Washington Code, Title 48:30.280 (1975–1976); Colorado Code, 10:3:1104 (1973 Am.); Michigan Stat. Ann. 24.12027 (1977).

[17] 42 U.S.C. §2000e (1970).

[18] 42 U.S.C. §2000e(a)(1).

opportunities or otherwise adversely affect his status as an employee."[19]

With Title VII as the principal weapon, major attacks have been launched against two insurance practices which adversely affect women in employment. The first attacks were in the area of disability coverage for pregnancy, where assaults by litigation have been unsuccessful, and the assailants have repaired to Congress for new legislative weaponry. More recent attacks have been in the area of pensions, where battles are still being fought at numerous levels, with no decisive result as yet.

Pregnancy Disability

In the case of *Geduldig v. Aiello,* [20] the Supreme Court addressed a disability insurance program which California provided its State employees. The plan covered virtually all disabilities but those arising from pregnancy. The plan was attacked as denying women their right under the 14th amendment to the equal protection of the laws. The Court held that discrimination on the basis of pregnancy was not a discrimination based on gender as such. In the celebrated footnote 20, Justice Stewart found it "clear upon the most cursory analysis" that the challenged program "divides potential recipients into two groups—pregnant women and nonpregnant persons."[21]

Finding no gender-based distinction, the Court went on to inquire as to the effect of the plan. It found that there were no risks from which members of one sex are protected while members of the other sex are not.[22] It expressed the usual deference to the State legislative process, which in the Court's view had simply resulted in the choice (assertedly for economic reasons) not to insure against every risk.[23]

The unsuccessful challenge in *Geduldig* was constitutional, based solely on the 14th amendment. Subsequent challenges to similar disability plans were statutory, based on the arguably stricter standards of Title VII. Six courts of appeals held that *Geduldig* did not control in the Title VII context, and that the pregnancy exclusion violated Title VII.[24] These courts gave weight to the EEOC's guidelines which

[19] 42 U.S.C. §2000e(a)(2).
[20] 417 U.S. 484.
[21] *Id.* at 496, n. 20.
[22] *Id.* at 496–97.
[23] *Id.* at 492–97.
[24] See Communications Workers of America v. A.T.&T.Co., 513 F.2d 1024, 1030 (C.A. 2, 1975), vacated and remanded, 97 S.Ct. 724 (1977) (mem.); Wetzel v. Liberty Mutual Ins. Co., 511 F.2d 199, 206 (C.A. 3, 1975), vacated on jurisdictional grounds, 424 U.S. 737 (1976); Gilbert v. General Electric Co., 519 F.2d 661, 664 (C.A. 4, 1975), rev'd, 429 U.S. 125 (1976); Tyler v. Vickery, 517 F.2d 1089, 1097–99 (C.A. 5, 1975); Satty v. Nashville Gas Co., 522 F.2d 850, 854 (C.A. 6, 1975), aff'd in part, vacated in part, and remanded, 46 U.S.L.W. 4026 (Dec. 6, 1977); Hutchison v. Lake Oswego School Dist., 519 F.2d 961, 965 (C.A. 9, 1975), vacated and remanded, 97 S.Ct. 725 (1977) (mem.).

required, among other things, that pregnancy disability be treated like other temporary disabilities.[25]

But in the first of these post- *Geduldig* cases to reach the Supreme Court, *General Electric Co. v. Gilbert,* [26] the Court held, as it had in *Geduldig,* that pregnancy disability is not sex based. In *Gilbert,* the plaintiffs challenged under Title VII GE's self-insured disability plan. The plan paid sickness and accident benefits at 60 percent of the normal weekly earnings for up to 26 weeks of total disability. It covered all disabilities save one: pregnancy. Not only did it specifically exclude all disabilities resulting from normal and abnormal pregnancy, it also excluded any disability that occurred during pregnancy leave, even if unrelated to the pregnancy.[27]

The lower courts had held this exclusion to violate Title VII's ban on discrimination in compensation.[28] The district court found (1) that although pregnancy may be (but is not always) voluntary and is not a disease, the plan covered many other conditions that were both voluntary and nondiseases; (2) that normal pregnancy is disabling for some 6 to 8 weeks; (3) that 10 percent of pregnancies are complicated by otherwise disabling diseases. The court drew no actuarial conclusions, but it acknowledged that pregnancy coverage would increase GE's cost by a large but undetermined amount.[29]

The Supreme Court reversed, holding that the plan did not violate Title VII. In doing so it drew heavily on its earlier decision in *Geduldig* to the effect that discrimination against pregnancy is not discrimination against women. The Court found no pretext for discrimination against women, since pregnancy, although confined to women, is "significantly different" from the typical covered disease or disability.[30] It did not even find a discriminatory *effect* on women, since the risks that *were* covered were equally covered for all employees and there was thus a "parity of benefits" from a "facially even-handed *inclusion* of risks."[31]

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[25] The relevant portion of the EEOC guidelines provides:

> (b) Disabilities caused or contributed to by pregnancy, miscarriage, abortion, childbirth, and recovery therefrom are, for all job-related purposes, temporary disabilities and should be treated as such under any health or temporary disability insurance or sick leave plan available in connection with employment. Written and unwritten employment policies and practices involving matters such as the commencement and duration of leave, the availability of extensions, the accrual of seniority and other benefits and privileges, reinstatement, and payment under any health or temporary disability insurance or sick leave plan, formal or informal, shall be applied to disability due to pregnancy or childbirth on the same terms and conditions as they are applied to other temporary disabilities.

[26] 429 U.S. 125 (1976).

[27] *Id.* at 129, n. 4.

[28] 375 F.Supp. 367 (E.D. Va., 1974); 519 F.2d 661 (C.A. 4, 1975).

[29] 375 F.Supp. at 377.

[30] 429 U.S. at 136. The Court ignored the fact that any condition, whether disease or not, whether voluntary or not, which could disable a man was covered.

[31] *Id.* at 139.

In reaching its conclusion on the interpretation of Title VII, the Court refused to follow the EEOC guideline relied on by the lower courts. Such a guideline is entitled to "consideration in determining the legislative intent," but this one "does not fare well" because it was not contemporaneous with the statute (having been published some 8 years after the law was passed), and because it is inconsistent with an earlier agency position as expressed in opinion letters.[32] Moreover, the Court declared its preference for an interpretation of the Equal Pay Act, issued by the Department of Labor's Wage and Hour Administrator,[33] which the Court took to be in opposition to the EEOC guideline. This interpretation and its relevance to Title VII will be explored more fully in the discussion of pension practices (below). Suffice it to say here that its relevance to the pregnancy context is far from clear,[34] and that its citation was quite unnecessary to the decision in *Gilbert.* Nevertheless, Justice Rehnquist reached out to indicate that the Wage-Hour interpretation supports "what seems to us to be the 'plain meaning' of the language used by Congress when it enacted §703(a)(1) [of the Civil Rights Act]."[35]

In a subsequent case, *Nashville Gas Co. v. Satty,* [36] the Court applied the same reasoning to an employer's practice of refusing to award earned sick leave pay for pregnancy absences. The Court finally drew the line, however, at the employer's practice of wiping out any accumulated seniority for female employees returning to work after childbirth. That practice, said the Court, had the effect of depriving a woman of employment opportunities and adversely affecting her employee status. Hence, in a case where women were specially burdened in employment because of their "different role in the scheme of things," Title VII was violated.[37]

All of this prompted Justice Stevens, who had dissented in *Gilbert,* to conclude that the general problem in these cases was to decide when an employer's policy which specially burdens pregnancy absenteeism is a *prima facie* violation of Title VII, and he wryly observed:

> The answer "always," which I had thought quite plainly correct, is foreclosed by the Court's holding in *Gilbert.* The answer

[32] *Id.* at 142–43. The case which sets forth the standards which the Court purportedly followed in assessing the weight of the guideline was Skidmore v. Swift & Co., 323 U.S. 134, 140 (1944). However, in *Gilbert* the Court considered only the historical consistency of the EEOC's position, and its consistency with other agencies, and did not weigh the other factors enunciated in *Swift:* "the thoroughness evident in its consideration, the validity of its reasoning. . .and all those factors which give it power to persuade" (ibid.).

[33] 29 C.F.R. §800.116(d).

[34] Another part of the same interpretative bulletin explicitly states that "payments related to maternity" are not "wages" within the meaning of the Equal Pay Act, 29 C.F.R. §800.110.

[35] *Id.* at 145.

[36] 46 U.S.L.W. 4026 (Dec. 6, 1976).

[37] *Id.* at 4028.

> "never" would seem to be dictated by the Court's view that a discrimination against pregnancy is "not a gender-based discrimination at all." The Court has, however, made it clear that the correct answer is "sometimes."[38]

The task as viewed by Justice Stevens has become one of determining at what point a plan which is "facially neutral" (even though it frankly and unambiguously discriminates against pregnancy) has a "discriminatory effect." He suggests that, with pregnancy, the question is whether the employer's policy "adversely affects a woman beyond the term of her pregnancy leave."[39]

As a result of these cases, and anomalous as it may seem to those who think that the capacity to become pregnant is a (and perhaps the) salient distinction between men and women, the Federal law of the land now is that discrimination on the basis of pregnancy is not sex discrimination. New legislation will be needed if such discrimination by employers in disability insurance is to be made illegal. In fact, legislation to amend Title VII to that effect is now pending in Congress.[40] The bill should at least withstand any charge that coverage of pregnancy would constitute so-called "reverse discrimination" against men, since the Court has effectively "remov[ed] pregnancy disability from the realm of sex discrimination."[41]

Also, since State courts are the final arbiters of State law, it is still open to State courts to interpret their own laws and constitutions differently from the Supreme Court. At least one State court has done so in the area of pregnancy disability. The highest court of New York, the court of appeals, has reaffirmed since *Gilbert* earlier holdings to the effect that an employment policy which singles out pregnancy and childbirth for treatment different from that given other physical or medical impairment or disability is illegal under the State human rights law.[42] Although the statute is "substantially identical" to the pertinent provisions of Title VII, the court declined to follow *Gilbert*, noting

[38] *Id.* at 4031. Stevens, J., concurring.

[39] Ibid.

[40] The Senate bill, S. 995, was passed on Sept. 16, 1977. The House bill, H.R. 6075, has been reported out of committee and action is expected shortly (April 1978). The bill would amend Title VII by adding a new subsection to §701:

> (k) The terms "because of sex" or "on the basis of sex" include, bnt are not limited to, because of or on the basis of pregnancy, childbirth or related medical conditions; and women affected by pregnancy, childbirth or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work, and nothing in section 703 (h) of this Title shall be interpreted to permit otherwise.

[41] "Recent Developments, Civil Rights," 45 *Fordham L.Rev.* 1202, 1221 (1977). Indeed, the Court said in *Geduldig* that "lawmakers are constitutionally free to include or exclude pregnancy" in disability programs. 417 U.S. at 497, n. 20.

[42] Brooklyn Union Gas v. N.Y. State Human Rights Appeal Board, 41 N.Y. 2d 84, 359 N.E. 2d 393, 395 (1976).

that the Supreme Court's determination, "while instructive, is not binding."[43]

In all these disability cases, the framing of the question has suggested the answer. As Justice Brennan noted in his dissent in *Gilbert,* resolution of the question turns on the "conceptual framework" chosen to describe the features of the challenged program.[44] On the one hand, the Court has surveyed the disabilities *included,* and seen that benefits are granted evenhandedly to both sexes. On the other hand, the lower courts (and the dissenters) have looked to the *exclusions* and have seen that pregnancy, which affects only women, and affects them significantly, is the only exclusion, while male-specific risks (such as prostatectomies, vasectomies, and circumcisions) and many "voluntary" disabilities (such as sports injuries and cosmetic surgery) are included.[45] Given its point of view, the Supreme Court could refer to the "under-inclusiveness" of the plan rather than to the exclusivity seen by others. As we shall see, the point of view chosen is extremely important in the next area to be considered as well.

Pensions

The second battleground is in the area of pension practices. Here, too, both the 14th amendment and Title VII have been used to attack practices by which persons are disadvantaged because of their sex.

Women, on the average, live longer than men. While their longevity makes women excellent life insurance risks, it makes them poor pension risks. The resulting insurance problem has been much discussed: should a woman not pay more for a pension benefit equal to a man's because the sex group to which she belongs will outlive his? The basic insurance principle so often cited is that "every insured person should contribute his fair share toward the risk involved—that only applicants who are exposed to comparable degrees of risk should be placed in the same premium class."[46] "Equity in insurance," it is said, "requires [imposing] equal costs for equal risks,"[47] and, by implication, unequal costs for unequal risks.

As with the pregnancy disability question, the framing of the question dictates the answer. Actuaries are fond of asking, for example, how can we ignore the "inexorable facts of life, death and arithmetic"[48] by requiring legal equality where there is no "factual" equality? But the question of equality depends entirely on how risks

[43] *Id.,* n. 1.
[44] General Electric Co. v. Gilbert, 429 U.S. at 147.
[45] 429 U.S. at 151, Brennan, J., dissenting.
[46] Shephard, Pearce, and Webster, *Selection of Risks,* The Society of Actuaries, 1957, p. 1.
[47] Lautzenheiser, "Sex and the Single Table: Equal Monthly Retirement Income for the Sexes," 2 *Employee Benefits Journal* 8, 9 (Fall 1976).
[48] Brief for the Society of Actuaries and the American Academy of Actuaries as Amicus Curiae, p. 6, City of Los Angeles v. Manhart, Supreme Court Docket No. 76-1810, filed Nov. 17, 1977.

are classified. Division of the insured group on the basis of sex makes it appear "fair" to apportion the cost on that basis. Yet it is the very classification by sex, when there are many other reliable predictors of life expectancy, that presents the legal question.

We might debate forever what is fair, equitable, or socially just. And perhaps as much as actuaries resent lawyers and judges telling them their actuarial business, so are lawyers troubled by the "legal" pronouncements of actuaries.[49] What is mathematically "fair" or "equitable" does not necessarily determine what is legal, or even what is socially just. The problem at hand is to analyze the legal questions involved in sex-based distinctions in pensions. Actuarial considerations are important to, but do not govern, the legal issues.

Title VII prohibits discrimination against an individual in compensation, terms, conditions, or privileges of employment, on the basis of, among other classifications, sex. It also prohibits classifying employees by sex in any way which would deprive or tend to deprive an individual of employment opportunities or otherwise adversely affect his status as an employee. Title VII, administered by the EEOC, is the broadest Federal law aimed at prohibiting sex discrimination in employment.

Another, earlier Federal law specifically prohibits sex discrimination in wages, obviously also prohibited by Title VII. This law, the Equal Pay Act of 1963, is administered by the Department of Labor's Wage and Hour Division and provides that an employer may not discriminate on the basis of sex by paying any of its employees at a rate less than it pays employees of the opposite sex for "equal work."[50]

When Title VII was passed, 1 year after the Equal Pay Act, a provision was inserted which recited that a wage differentiation between the sexes would not be unlawful under Title VII "if such

[49] *E.g.*, Lautzenheiser: "Thus under the present system, while monthly benefits may not be equal, total benefits are equal just as contributions are equal, and therefore both the Equal Pay Act and Title VII are now currently satisfied." 2 *Employee Benefits Journal* at 39; King: "But civil rights legislation also recognizes and permits bona fide relevant classifications." "Men, Women, and Life Annuities," *J. Risk & Insurance*, 3 (1976).

[50] 29 U.S.C. §206(d)(1) provides:

> No employer having employees subject to any provisions of this section shall discriminate, within any establishment in which such employees are employed, between employees on the basis of sex by paying wages to employees of the opposite sex in such establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where such payment is made pursuant to (i) a seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex: Provided, That an employer who is paying a wage rate differential in violation of this subsection shall not in order to comply with the provisions of this subsection, reduce the wage rate of any employee.

In addition, Executive Order 11246, administered by the Labor Department's Office of Federal Contract Compliance, prohibits sex discrimination in broad Title VII terms by Federal contractors (3 C.F.R. §168 (1965), as amended by Executive Order No. 11375, 3 C.F.R. §320 (1967 Comp.)). Also Title IX of the Education Amendments of 1972, administered by the Department of Health, Education, and Welfare, bans sex discrimination in educational institutions receiving Federal funds.

differentiation is authorized by the provisions of [the Equal Pay Act]."[51] This amendment, known as the Bennett amendment, thus incorporates into Title VII the specific defenses to an equal pay violation. Under the Equal Pay Act, which applies only in the context of equal work being performed by men and women, the employer is not liable if he can prove that a wage differential between male and female employees is based on any factor other than sex.[52] We have argued elsewhere that this is consistent with Title VII.[53] Thus, when a plaintiff proves a *prima facie* case of sex-based differences in compensation, the employer must prove either that it is caused by a factor other than sex (Equal Pay Act) or that it is the result of "business necessity" (Title VII).

The Bennett amendment clearly requires that the two statutes be interpreted consistently. In construing either act, courts must look to the jurisprudence under the other act in order to maintain the required consistent interpretation. Special care must be taken where these statutes overlap that the narrower not unduly restrict the broader. Indeed, in one of the early landmark Equal Pay Act decisions, the court warned that "the Equal Pay Act may not be construed in a manner which by virtue of §703(h) [the Bennett amendment] would undermine the Civil Rights Act" (*Shultz v. Wheaton Glass Co.,* 421 F.2d 259, 266 (C.A. 3), cert. denied, 398 U.S. 905 (1970)). In the area of pension plans, this is precisely the threat.

It must be remembered that these Federal civil rights laws deal with employment relationships. They reach into the private sector, of course, but only into the relationship between employer and employee. They do not regulate the "business of insurance," nor can they be used to attack the private individual purchases of insurance outside the employment context. Nevertheless, it is in group insurance (usually employee group insurance) where the problem of sex classification is most pronounced,[54] so these laws can have widespread impact.

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[51] The amendment reads in full:

> It shall not be an unlawful employment practice under this subchapter for any employer to differentiate upon the basis of sex in determining the amount of the wages or compensation paid or to be paid to employees of such employer if such differentiation is authorized by the provisions of section 206(d) of Title 29 [the Equal Pay Act.] [42 U.S.C. §2000e-2(h).]

[52] A wage differential based on (1) a seniority system, (2) a merit system, (3) a system which measures earnings by quantity or quality of production, and (4) any other factor other than sex, does not violate the Equal Pay Act. 29 U.S.C. §206(d)(1).

[53] Bernstein and Williams, "Title VII and the Problem of Sex Classifications in Pension Programs," 74 *Columbia L.Rev.* 1203, 1217–18 (1974).

[54] When the individual purchases insurance, a great many factors affecting longevity are likely to be considered. For example, medical examinations are usually required, family medical histories taken, and hazardous hobbies or habits taken into account. In group plans, typically only age and sex are considered.

The controversy in the pension area centers on the pervasive use of sex-based mortality tables to determine rates and benefits.[55] The employer's dollar cannot buy the same pension benefits for a female employee as for a male of the same age. He may contribute more for the female (or require her to contribute more) to purchase equal monthly retirement benefits. Or, he may contribute equal amounts for male and female employees, which purchase higher periodic benefits for the men. We have argued elsewhere that the use of sex-based mortality tables in the employment context, which necessitates unequal treatment either in contributions or benefits, violates Title VII.[56]

This view of the law has found some support in court decisions, although the Supreme Court has not yet spoken. As a preliminary matter, it has not been questioned that fringe benefits such as pension plans are within the "compensation, terms, conditions, or privileges of employment" covered by Title VII, and therefore must be free from sex discrimination. *Chastang v. Flynn & Emrich Co.,* 541 F.2d 1040, 1042 (C.A. 4, 1976); *Rosen v. Public Service Electric & Gas Co.,* 477 F.2d 90 (C.A. 3, 1973); *Bartmess v. Drewrys U.S.A., Inc.,* 444 F.2d 1186 (C.A. 7), cert. denied, 404 U.S. 939 (1971).

In the use of sex-based mortality tables, we are dealing with explicit gender classifications. The actuarial lines are drawn precisely on the basis of sex. Unlike the pregnancy disability cases, where it could be argued, and indeed was held, that the line was drawn on a basis other than sex, here no such argument can be made. The employer cannot be said to have drawn its line on the basis of "life expectancy," first, because group life expectancy exists only after groups are defined, and second, because grouping by sex and age alone, as is commonly done, ignores *all* other factors known to affect life expectancy. The result is that individuals with different life expectancies are grouped together and many with the same expectancy (were individual traits considered) grouped separately. As the Ninth Circuit Court of Appeals has noted in distinguishing the pension problem from pregnancy disability, "[t]o say that the difference is not based on sex is to play with words." *Manhart v. City of Los Angeles,* 553 F.2d 581, 593 (C.A. 9, 1976).

The Manhart case is the first of these pension cases to reach the Supreme Court, where it has been argued and is awaiting decision (Docket No. 76–1810).[57] The case involves a retirement plan for the city's department of water and power employees, in which participation is mandatory. The plan pays equal periodic benefits to retired men

[55] See generally Ruben and Elliott, "Sex Discrimination and Sex-Based Mortality Tables," 53 *Boston L.Rev.* 624 (1973).

[56] Bernstein and Williams, 74 *Columbia L. Rev.* 1203 (1974).

[57] The day after this paper was presented, the Supreme Court handed down its decision in Manhart v. City of Los Angeles. See discussion in the postscript to this paper.

and women, but its use of sex-based mortality tables requires a higher contribution on behalf of women than men, during their employment. The plan is somewhat unusual in that the women employees themselves are required to make a 15 percent higher contribution to the plan out of their paychecks than are the men (with all employee contributions matched by employer contributions). Thus, every woman experiences differential pension treatment every payday of her career.

The Ninth Circuit held this practice to violate Title VII. All judges and parties agreed that the "overriding purpose" of Title VII is to require employers to treat each employee as an individual, without regard to "abstract generalizations" about the nature of the group to which the employee belongs (*Manhart* at 585; *Griggs v. Duke Power Co.,* 401 U.S. 424, 436 (1971)). The court reviewed the cases in which sex stereotypes had been uniformly rejected by courts as a basis for employment decisions (*id.* at 586). While it noted that many of these stereotypes were based in myth (e.g., women cannot work long hours, or cannot work effectively and keep an adequate home life), the majority noted that stereotypic decisionmaking is illegal whether based in myth or on fact (e.g., women generally cannot lift as heavy weights as men, women tend to be shorter and lighter, and the like)[58] and that each employee must be treated as an individual in every instance. Of course, if the job requires lifting great weight, the employer may discriminate on the basis of ability to lift the weight, and even if most women are excluded from his employ, the reason is a factor other than sex and the exclusion is not illegal.

The employer in *Manhart* argued that because it is statistically true that women live longer than men, and because it cannot be determined *which* women will not live out their life expectancy, the employer was justified in requiring greater contributions of all women. The Ninth Circuit dealt with this argument in traditional Title VII terms. Title VII case law establishes that any sex-based discrimination is illegal unless the employer can show a "business necessity" which justifies the practice. This means more than mere *convenience;* "discrimination based on sex is valid only when the *essence* of the business operation is undermined." (*Diaz v. Pan American World Airways, Inc.,* 442 F.2d 385, 388 (C.A. 5, 1971); *Weeks v. Southern Bell Telephone & Telegraph Co.,* 408 F.2d 228, 232 (C.A. 5, 1969); *Manhart* at 587.) Under this test, the Ninth Circuit held that the pension practice in *Manhart* was not justified. It held that neither the business function of providing water and power to the city, nor the pension function of providing a stable and secure benefit program, *required* the practice in issue. Although

[58] See Bernstein and Williams, 74 *Columbia L. Rev.* at 1215–16.

sex-based actuarial distinctions may be helpful in pension planning, said the court, "it cannot be said that providing a financially sound pension plan requires an actuarial classification based wholly on sex" (*Manhart* at 587). Therefore, the employer's practice violated the law.

Another defense raised and treated by the court, involves the effect of the Equal Pay Act and the interrelationship between that law and Title VII through the Bennett amendment. This has been a matter of controversy recurring in the pension cases, the contention being that the challenged practice would not violate the Equal Pay Act and thus, by virtue of the Bennett amendment, does not violate Title VII.

On the face of it, as the Ninth Circuit noted in *Manhart,* an actuarial distinction based on sex is *not* based on "any other factor other than sex" (*Manhart* at 588). It should not therefore be a defense under the Equal Pay Act any more than under Title VII. A troublesome trend in these cases is the attempt by employers to use the Equal Pay Act as though it were a defense to a Title VII violation, instead of the same kind of protective statute, with merely narrower scope, that it was meant to be. Both statutes have, after all, the same goal of eradicating sex discrimination.

Defendants who would pit the two statutes against one another often cite a colloquy between Senators Humphrey and Randolph on the Senate floor. Having neither a "factor other than sex" nor a "business necessity" defense, these employers and insurers have attempted to fashion a defense out of this brief colloquy on the Bennett amendment even though it occurred *after* the Bennett amendment was enacted, and it sheds little light on the problem at hand. In this exchange, the Senators agreed that where longstanding differences in treatment like those in the "social security system" (they explicitly mentioned only widow's benefits being paid automatically while a widower must prove dependency, and female dependents receiving additional benefits while male dependents receive none) exist in industry as well, they may remain standing by virtue of the Bennett amendment. 110 Cong. Rec. 13663–64 (June 12, 1964). Whatever beliefs this colloquy reflects, the two civil rights acts in concert were intended to strike down "longstanding differences in treatment" unless based on a factor other than sex. For example, the Supreme Court has recently (since *Gilbert*) struck down one of the practices cited by the Senators as unaffected: that of requiring a widower (but not a widow) to show dependency in order to receive social security benefits. *Califano v. Goldfarb,* 430 U.S. 199 (1977). The other specific example cited by the Senators, different compulsory retirement ages for men and women, has been held to violate Title VII. *Bartmess v. Drewrys USA, Inc.,* 444 F.2d 1186 (C.A. 7), cert. denied, 404 U.S. 939. In addition, courts have also disapproved longstanding differences of

treatment in which men have received smaller benefits than women who retire early. *Chastang v. Flynn & Emrich Co.,* 541 F.2d 1040, 1042–43 (C.A. 4, 1976); *Rosen v. Public Service Electric & Gas Co.,* 477 F.2d 90 (C.A. 3, 1973); *Fitzpatrick v. Bitzer,* 390 F.Supp. 278, 285–88 (D. Conn., 1974), rev'd on other grounds, 427 U.S. 445 (1976).

Also, it must be noted that this exchange between Senators does not mention or purport to deal with actuarial distinctions based on sex, but only with examples of differential treatment which arguably benefits women. Such "beneficent" differences, which can be viewed as compensating for past inequities, have occasionally been upheld. See, *e.g., Kahn v. Shevin,* 416 U.S. 351 (1974). That rationale is not available here, where the treatment generally penalizes women.[59]

Those who wish to use the Bennett amendment to defeat Title VII claims attempt to draw on interpretations of the respective enforcement agencies as well. Not only are the enumerated defenses under the Equal Pay Act incorporated into Title VII, the argument goes, but so are all administrative interpretations of the act. This, of course, reads far more into the Bennett amendment than its terms suggest. No one agency interpretation automatically takes precedence over the other. In the traditional manner of review of agency action, the courts should look to the underlying purposes of the statutes, the thoroughness with which the interpretation was considered, and the validity and persuasiveness of the reasoning, as well as the consistency with which the agency has interpreted the statute. *Skidmore v. Swift & Co.,* 323 U.S. 134, 140 (1944). (Justice Rehnquist seized upon an inconsistency in rejecting the EEOC guideline in *Gilbert,* but ignored all the other factors outlined by the *Skidmore* Court.) With all of the factors in mind, we turn to the agency interpretations.

The EEOC and the Labor Department have not taken an altogether consistent view of the problem of sex discrimination in pensions.[60] It must be emphasized that in the *Manhart* case, where women were required to pay higher contributions out of their wages than men, the EEOC and the Labor Department agree that both Title VII and the Equal Pay Act are violated. Both agencies filed briefs as *amici curiae* in the court of appeals, arguing that the plan was illegal, and the Solicitor General of the United States filed an *amicus curiae* brief in the Supreme Court to the same effect.

In other situations, however, the Wage and Hour Division's historical interpretation of the Equal Pay Act has been that if the employer contributions to employee benefit plans are equal for men

[59] Whether that rationale actually motivated the colloquy is anyone's guess; the only examples the Senators used were of the beneficent type. However, Justice Rehnquist did not mention this distinction when he cited the colloquy with favor in *Gilbert* (429 U.S. at 144).

[60] See discussion in Bernstein and Williams, *supra,* 74 *Columbia L. Rev.* at 1208–10.

and women, "no wage differential prohibited by the equal pay provisions will result from such payments," even though resulting benefits are unequal.[61] The same interpretative bulletin states, however, that unequal employer contributions will not be "considered to indicate" that the payments violate the Equal Pay Act if the resulting benefits are equal.[62] Thus, an employer may make either equal contributions or pay equal benefits and not violate the Equal Pay Act. The EEOC, however, promulgated in 1972 guidelines which prohibit differentiation in benefits based on sex,[63] and which reject any defense that the "cost of such benefits is greater with respect to one sex than the other."[64] In some situations, then, the "equal benefits" rule conflicts with the "either-or" rule.

While the interpretations of the two agencies are at least potentially inconsistent, reading the entire interpretative bulletin of the Wage and Hour Administrator leaves doubt as to the reach and authority of the "either-or" rule regarding fringe benefits. First, §800.113, issued at the same time, declares that:

> [s]tudy is still being given to some categories of payments made in connection with employment subject to the Act, to determine whether and to what extent such payments are remuneration for employment that must be counted as part of wages for equal pay purposes. These categories of payments include. . .contributions irrevocably made by an employer to a trustee or third person pursuant to a bona fide plan for providing old-age, retirement, life, accident, or health insurance or similar benefits for employment.[65]

Thus, it is not clear whether "wages" include contributions made to a retirement plan. Wages are normally viewed, from the employee's perspective, as the remuneration he or she receives. It should make no conceptual difference that part of the wage package is deferred.[66] Retirement benefits have been held to be "wages. . .or other conditions of employment" under the National Labor Relations Act. *Inland Steel Co. v. NLRB,* 170 F.2d 247 (C.A. 7, 1948), cert. denied, 336 U.S. 960 (1949). Conceptually, if benefits are wages, they must be equal under the Equal Pay Act. If contributions are wages, *they* must be equal. It is difficult to perceive the statutory warrant for allowing either one, but not both, to be unequal.

Further, another section of the interpretative bulletin provides that a wage differential based on "claimed differences between the average

[61] 29 C.F.R. §800.116(d).
[62] Ibid.
After this paper was presented, the Labor Department issued a proposed revision of 29 C.F.R. §800.116(d), conforming to the EEOC interpretation. See postscript to this paper.
[63] 29 C.F.R. §1604.9(f).
[64] 29 C.F.R. §1604.9(e).
[65] 29 C.F.R. §800.113.
[66] See 53 *Boston U.L.Rev.* at 644.

cost" of employing women as compared with men "does not qualify as a differential based on any 'factor other than sex,' and would result in a violation of the equal pay provisions, if the equal pay standard otherwise applies."[67] In language especially apropos of the issue at hand, the bulletin continues:

> To group employees solely on the basis of sex for purposes of comparison of costs necessarily rests on the assumption that the sex factor alone may justify the wage differential—an assumption plainly contrary to the terms and purposes of the Equal Pay Act. Wage differentials so based would serve only to perpetuate and promote the very discrimination at which the Act is directed, because in any grouping by sex of the employees to which the cost data relates, the group cost experience is necessarily assessed against an individual of one sex without regard to whether it costs an employer more or less to employ such individual than a particular individual of the opposite sex under similar working conditions in jobs requiring equal skill, effort, and responsibility.[68]

This interpretation is amply supported by the legislative history which demonstrates that Congress twice rejected bills which would have justified wage differentials "attributable to ascertainable and specific added costs resulting from employment of the opposite sex."[69] The act's sponsors indicated that if costs were ever to be a factor in wage differences, they must be clearly established for each employee and must take into account any offsetting factors, such as higher productivity of one sex.[70] During these floor debates, specific reference was made to pension and welfare plans, with supposed high maternity costs in health benefits and "longer lifespan of women in pension benefits":

> Evidence was presented to indicate that while there may be alleged costs, these were more than compensated for by the higher productivity of women against men performing the same work and that the overall result for the employer was a lesser production cost than would result from the hiring of only men. Furthermore, questions can legitimately be raised as to the accuracy of defining such costs or pension and welfare benefits as related to sex.[71]

The Wage and Hour interpretations, originally issued in 1965, have never been updated to reflect experience and judicial interpretation. The EEOC guidelines, on the other hand, were amended in 1968 and 1972 after experience with the Civil Rights Act. The Department of

[67] 29 C.F.R. §800.151.
[68] Ibid.
[69] H.R. 1936, 99th Cong.; 109 Cong. Rec. 9217.
[70] Rep. Goodell, 109 Cong. Rec. 9206–08; Rep. Thomsen, 109 Cong. Rec. 9207.
[71] 109 Cong. Rec. 8915.

Labor recognized the problem and held hearings on the equal benefits rule in 1974. Changes were proposed but were not effected because then President Ford ordered the Equal Employment Opportunity Coordinating Council to consider the problem. The Council submitted a report to the President on April 15, 1976, recommending clarifying legislation, but the President took no action.

Since the issue of possible conflict between the EEOC and the Labor Department treatments of pension benefits has not been resolved, the Department has reopened its consideration of 29 C.F.R. §800.116(d).[72] Its continuing authority is thus very much in doubt.

Two district courts have dealt with pension plans in which, unlike the plan in *Manhart,* the conflict between agency interpretations is clearly presented. They have resolved the question in opposite ways, and both have been appealed. The district court of Maine held in *EEOC v. Colby College* [73] that a plan which requires equal contributions but, owing to the use of sex-based mortality tables, pays higher periodic benefits to male retirees, does not violate Title VII. The court held that the Bennett amendment requires that the Equal Pay Act and the interpretations thereunder take precedence over Title VII and its conflicting interpretations. It regarded Justice Rehnquist's favorable citation of the Wage and Hour interpretation in *Gilbert* as part of the Supreme Court's holding, although the Court did not discuss the application of that interpretative bulletin to the facts in *Gilbert.*

The district court of Oregon reviewed a similar plan and came to the opposite conclusion. In *Henderson v. State of Oregon,* [74] the court held that the use of sex-based mortality tables violates Title VII. It relied heavily on the district court decision in *Manhart,* and did not have the benefit of Justice Rehnquist's thinking in *Gilbert.* Nevertheless, the court did note the discrepancy between the EEOC and the Wage-Hour interpretations, indicating that Wage-Hour was reexamining its view (405 F.Supp. at 1276). The court went on to say what is demonstrably true: "Administrative interpretations are entitled to deference by the courts, but they are not binding." (Ibid.) Should the Supreme Court take either of these cases, it may wish to cultivate the seeds it planted in *Gilbert,* and could do so, even if the Wage-Hour interpretation has been changed to conform to EEOC's. It would merely have to use another rationale than "conflicting agency interpretations." The Court would then have to deal with the

[72] Brief for the United States and the Equal Employment Opportunity Commission as *amicus curiae,* City of Los Angeles v. Manhart, Supreme Court Docket No. 76-1810 (December 1977), p. 42, n. 33.
[73] 15 F.E.P. Cases 1363 (Oct. 27, 1977). The case has been appealed to the First Circuit, No. 78–1010, but on motion of appellants, briefing has been deferred until after the Supreme Court renders its decision in *Manhart.*
[74] 405 F.Supp. 1271 (1975). Appeal is pending in the Ninth Circuit, No. 76–1706, and briefing was completed in August 1976.

underlying problem of sex-based classifications, which it could avoid in *Manhart*.

The *Colby College* court merely cited the agency ruling without analysis, but the *Henderson* court did grapple with the issue of sex-based classifications. At least one other court, the Supreme Court of Indiana, has also dealt with the basic issue in a decision upon which *Gilbert* has no effect, since it was decided under the State constitution.[75] The Indiana State Teachers' Retirement Fund was attacked under the Federal and State constitutions and under Title VII. The court held that the use of sex-segregated life expectancy tables violated both constitutions in that it has no real and substantial relationship to the purposes of the plan. The lower court had held that the sex-based classification was without rational basis because: (1) sex is only one of innumerable factors affecting life expectancy, and the rest are ignored; (2) group statistics ignore individual traits of females; (3) the 82.9 percent of females who have the same death year as males will receive less money each month than their counterparts; and (4) men can live more comfortably in retirement than women (360 N.E. 2d at 176). The Indiana courts have thus come to grips with the basic classification issue and have avoided problems inherent in choosing either the equal benefits or the either-or rule.

It is the author's view that neither the either-or rule nor the equal benefits rule is in itself a completely satisfactory interpretation of the law applicable to pensions. Title VII in the broadest terms prohibits all classifications based on sex which adversely affect employee status. Classification under sex-based mortality tables without question adversely affects females who for their entire life, no matter how short or long, receive a smaller periodic benefit than males. Such classifications also adversely affect women even if the benefits are equal, since the employer contributions must be greater for women, and it is therefore more expensive to employ and promote them. This disincentive to hiring women would "deprive or tend to deprive" them of employment opportunities merely because they are women, in violation of the express language of the statute,[76] and also, of the spirit of the Wage and Hour interpretation of 29 C.F.R. §800.151.

We have been speaking of the common, single-life annuity option, wherein women are penalized because of their sex. However, under a joint and survivor option, men are similarly penalized by having to take a reduced benefit to account for the predicted long life of their spouses.[77] In these days of allegations of "reverse discrimination," by

[75] Reilly v. Robertson, 360 N.E. 2d 171 (Sup. Ct. Ind., 1977).
[76] 42 U.S.C. 2000e–(a)(2). See Recinella, "Mortality Tables and the Sex-Stereotype Doctrine: Inherent Discrimination in Pension Annuities," 51 *Notre Dame Lawyer* 323, 326 (December 1975).
[77] Bernstein and Williams, 74 *Columbia L.Rev.* at 1223.

which I take it is meant discrimination against a group not accustomed to bearing it, a classification system which inevitably penalizes one sex or the other must be peculiarly suspect under the law.

Ironically, this reverse discrimination argument has been urged by employers, insurers, and actuaries in support of present practices. They argue that prohibiting the use of sex-based mortality tables would require men to "subsidize" women, a form of "reverse discrimination."[78] We have argued on the contrary, that it would simply remove the advantage that men currently enjoy because of their sex.[79] In meeting the subsidy argument, the Indiana supreme court noted that "subsidization of one annuitant or another is constantly going on," that being the purpose of insurance.[80] Furthermore, said the court:

> the subsidization factor is demonstrable for the most part in group actuarial terms only, and the difference in treatment of the individual male under unisex and sex-segregated tables is practically immeasurable.[81]

Again, the question dictates the answer. Subsidy can only occur after we have been divided into groups. It is common sense that if we think in terms of classes for pension purposes, blacks subsidize whites, smokers subsidize nonsmokers, those with a personal or family history of heart disease or cancer subsidize those without such history. All of these factors and others are significantly predictive of life expectancy.[82] Yet only age and sex are typically considered.[83] No one has adequately explained why *only* women must pay their "fair" share.

If women are to be charged extra for their longevity, then under the Wage and Hour interpretation, *all* cost factors must be taken into account.[84] This would require consideration by sex of other factors which offset costs, most importantly, turnover rates, forfeitures, and salary changes. For example, the contributions of women which do not vest because of their higher rate of withdrawal from the work force must be credited to the female group if that group is to be penalized for its longevity.[85]

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[78] See Lautzenheiser, 2 *Employee Benefits J.* at 41.
[79] Bernstein and Williams, 74 *Columbia L.Rev.* at 1222.
[80] Reilly v. Robertson, 360 N.E.2d at 177.
[81] Ibid.
[82] Fellers and Jackson, "Non-Insured Pension Mortality, the UP-1984 Table," 25 *Proceedings, Conference of Actuaries in Public Practice* 456, 459 (1976); Bailey, Hutchison, and Narber, "The Regulatory Challenge to Life Insurance Classification," 25 *Drake L. Rev. Ins. Ann.* 779, 823 (1976).
[83] Martin, "Gender Discrimination in Pension Plans," 43 *J. Risk and Ins.* 203, 207 (June 1976).
[84] 29 C.F.R. §800.151.
[85] Fellers and Jackson, "UP-1984 Table" at 459, 483; Koludrubetz and Landay, "Coverage and Vesting of Full-Time Employees Under Private Retirement Plans," *Social Security Bulletin* 20, 27 (November 1973); Koludrubetz, "Private Retirement Benefits and Relationship to Earnings: Survey of New Beneficiaries," *Social Security Bulletin* 16 (May 1973); see also Bernstein and Williams, 74 *Columbia L.Rev.* at 1228.

Discussions of "fairness"[86] usually involve an observation made by both the Indiana supreme court and the Oregon court. If death ages of men and women are matched, the overwhelming majority of deaths in each group will coincide. Out of a random 1,000 women and 1,000 men, some 840 of one group will die at precisely the same age as 840 out of the other group. The remainder are men who will die earlier than all others and women who will die later. Yet under current practices, all women suffer the financial detriment of that longevity and all men reap the benefit.[87]

But, complains the actuary, such a technique is "erroneous," since "[e]xactly the same overlap analysis could be applied to the matter of taking age into account in the determination of life insurance and annuity values. . . . Does this mean that we should use 'uni-age' life tables—or, in other words, no life tables at all?"[88] As the "horribles" have been paraded, it has been said that the drive to abolish sex-based classifications will result in abolishing all classifications. After all, "it's easy to see that *all* classifications may be faulted" in the same way.[89]

The answer is easy. Some classifications are forbidden by law and others are not. Race and sex classifications may not be used, but age classifications (and any others not explicitly forbidden by law) may be. Although there is an age discrimination law structured in terms parallel to those of Title VII,[90] it contains an explicit exception for actions taken under a bona fide retirement plan.[91] The statute and its legislative history make it clear that retirement plans would have been reached without the exception,[92] but that the exception was necessary so as not to discourage the hiring of older workers. Another dimension of "fairness" may be noted: all persons who work the normal number of years enjoy the advantage of youth and suffer the detriment of age. Thus, all can expect actuarial adjustment as they age. But under current practices, women will always suffer by comparison with men, no matter what their age.

In concluding this analysis of what lines may legally be drawn for pension purposes, it is appropriate to mention the category of race. It is not disputed that whites, as a group, live longer than blacks. As a legal

[86] "Fairness" also requires considering the fact that some employers use sex-based tables where it will benefit the male (pension) and do not use them where it would disadvantage him (life insurance). Bergmann and Gray, "Equality in Retirement Benefits," 8 *Civil Rights Digest* 25, 26 (Fall 1975); 53 *Boston U. L. Rev.* at 634, 642.

[87] Reilly v. Robertson, 360 N.E.2d at 176 (82.9 percent overlap); Henderson v. State of Oregon, 405 F.Supp. at 1275 (84 percent overlap); Bergmann and Gray, 8 *Civil Rights Digest* 25 (84 percent overlap); Martin, 43 *J. Risk Ins.* at 208–09 (82.9 percent overlap); Bernstein and Williams, 74 *Columbia L. Rev.* at 1221–22.

[88] Myers, "Pension Benefits and Sex," 9 *Civil Rights Digest* 45, 46 (Winter 1977).

[89] Sher, "Equal Employment Benefits: Challenge to the Risk Classification System," *Best's Rev.* 10, 69 (July 1975); Lautzenheiser, "Sex and the Single Table" at 13; King, *J. Risk and Ins.* at 3–4.

[90] Age Discrimination in Employment Act of 1967, 29 U.S.C. §621 *et seq.*

[91] 29 U.S.C. §623(f)(2).

[92] 113 Cong. Rec. 3125–55 (1967). See Bernstein and Williams, 74 *Columbia L.Rev.* at 1218–19.

matter, there is no Bennett amendment or Equal Pay Act to cloud the issue, so Title VII unequivocally prohibits race-based classification. Moreover, as noted earlier, States have generally prohibited racial classifications by insurers. But as a *policy* matter, no argument made about sex-based classifications would not apply with equal force to race. Both are easily and conveniently ascertained; both are statistically significant.[93] There are those who suggest that the racial difference in mortality may be caused by environmental factors, and others who suggest the same about sex.[94] And in any event, actuaries, it is said, are concerned about the *facts* of mortality experience, not the causes.[95]

I do not suggest that if race-based distinctions were drawn, then sex-based distinctions would be acceptable. Both are, in my view, illegal. I merely suggest that, in contrast with sex, race distinctions are widely viewed as unfair and against public policy. At least actuaries no longer claim a right to use them. The fact is that race-based classifications are no longer used, and there is no evidence that the actuarial art has suffered. There is no evidence that abandoning sex-based classifications would have a different result.

Thus, in sum, the law prohibits employers from using sex-based mortality tables to fix either contributions to or benefits under pension plans. I acknowledge some basic assumptions made here. First, I assume that it is actuarially *possible* to merge the experience of males and females and still adequately fund equal benefits. I have seen no credible argument to the contrary. Second, any legal problems which might arise under ERISA from allowing unequal contributions to men and women would be avoided if employers were not allowed to use sex-based mortality tables at all. The legal theory proposed here is the only way to achieve both equal contributions *and* equal benefits. Finally, I acknowledge that there will be greater pension costs involved. Estimates have varied, but if men's pensions are not to be reduced, costs will certainly rise. While I do not wish to minimize this factor, I suggest that such an argument is not normally a defense to a Title VII violation. Reforms such as those embodied in the Equal Pay Act, in Title VII, and in ERISA *do* cost money.

Postscript

After this paper was delivered, the Supreme Court handed down its decision in *Manhart v. City of Los Angeles,* 46 U.S.L.W. 4347 (April 25, 1978), holding that the city's pension plan, which required greater contributions of female than male employees, violates Title VII. The

[93] Bailey, Hutchison, and Narber, 25 *Drake L. Rev. Ins. Ann.* at 793, n. 54; Dingman, *Risk Appraisal* 119 (1957).
[94] Halperin, "Should Pension Benefits Depend on the Sex of the Recipient?" 62 *AAUP Bull.* 43, 46 (Spring 1976).
[95] 53 *Boston U. L. Rev.* at 624, n. 2.

Court was not faced with the question of the legality of unequal periodic benefits based on sex, but its analysis is instructive for the whole range of issues treated in this paper.

First, the Court held that classifying employees by sex and treating individuals according to class stereotypes violates Title VII. The Court saw no reason in the act or its legislative history to except insurance practices from the usual application of employment discrimination law. *Id.* at 4349. Further, the Court clearly rejected the argument that "fairness" to the male class justifies the practice, since the statute requires fairness to *individuals,* rather than to classes. *Ibid.* A basic flaw in the argument that it would be unfair to require men to "subsidize" women, said the Court, is that "when insurance risks are grouped, the better risks always subsidize the poorer risks." *Ibid.*

Having held the requirement of unequal employee contributions to be sex discrimination, the Court easily distinguished its holding in *General Electric Co. v. Gilbert, supra,* that pregnancy-based distinctions are not sex discrimination. *Id.* at 4350–51. Here, the discrimination was explicitly sex based. Because it was facially discriminatory, there was no need to consider discriminatory effect; but the Court did reject "business necessity" as a possible defense. *Id.* at 4351, n. 30.

In the same vein, the Court disposed of the Bennett amendment-Equal Pay argument. Defendant had argued that the distinctions were based on longevity and not on sex. But the Court agreed with the Ninth Circuit that actuarial distinctions based on sex cannot, by definition, be based on a factor *other* than sex. *Id.* at 4350.

Defendant had made use of two arguments discussed in this paper: (1) that the Wage-Hour "either-or" interpretation (29 C.F.R. §800.116(d)) operated, by virtue of the Bennett amendment, to justify the city's practice; and (2) that the Humphrey-Randolph colloquy on the Senate floor demonstrated that Congress did not intend to interfere in common insurance practices. The Court did not linger long over either argument.

Regarding the colloquy, the Court noted that whatever Senator Humphrey may have meant, his words cannot determine the interpretation of the Equal Pay Act, passed a year earlier. Moreover, his isolated comments cannot overcome the "effect of the plain language of the statute itself." *Id.* at 4350.

As to the either-or rule, the Court remarked on the inconsistency it posed with the Wage-Hour interpretation in 29 C.F.R. § 800.151. That rule states that a wage differential based on the average costs of employing men and women is not based on a factor other than sex. The Court quoted with favor the Administrator's reasons for the rule to the effect that a grouping by sex penalizes the individual. It concluded that, to the extent the two Wage-Hour interpretations

conflict, "we find that the reasoning of §800.151 has more 'power to persuade' than the *ipse dixit* of §800.116." *Id.* at 4350, n. 26.

The Labor Department, which had reopened consideration of this problem, has now issued proposed revisions of 29 C.F.R. §800.116(d). The proposal recites that employee benefits are wages within the meaning of the Equal Pay Act, and that a differential based on the cost of providing benefits to each sex group is not a "factor other than sex."[96] —Fed. Reg.—Aug. 25, 1978.

The *Manhart* Court did not merely hold that requiring greater contibutions of female employees violates Title VII. The bulk of analysis is also applicable to the future cases concerning unequal benefits. In particular, its view of the classification system as discriminatory, unjustified by any factor other than sex, and different in kind from the non-gender-based distinction in *Gilbert,* applies equally to the benefits question to be decided in *EEOC v. Colby College* in the First Circuit and *Henderson v. State of Oregon* in the Ninth Circuit. Moreover, it has now explicitly rejected most of the arguments made by defendants in those cases, particularly the "longevity as a factor other than sex" defense, and the Wage-Hour toleration of either equal benefits or equal contributions. It also indicated skepticism that costs could be a defense under Title VII or the Equal Pay Act. *Id.* at 4351, n. 32. Finally, it held that, although it need not decide whether retirement benefits or contributions are "wages" within the meaning of the Equal Pay Act, *both* are "compensation" under Title VII. *Id.* at 4350, n. 23. It seems inevitably to follow that both must be equal which, as shown above, requires the use of undifferentiated actuarial tables. The Court also seems to approve the use of such tables in its discussion of remedy, where it indicated an award might have been upheld had the lower court ordered a refund of the difference between the extra payments made by women and the amounts they would have paid "under an actuarially sound and nondiscriminatory plan," using an "undifferentiated actuarial table." *Id.* at 4352, n. 36.

Although the Court, regrettably, refused to order back pay because of the cost and disruptive effects, it served clear notice as to its expectation for the future: "There is no reason to believe that the

[96] The proposed text of §800.116(d) reads as follows:

(d) *Employee benefits.* Employee benefits are "wages" within the meaning of the act. A differential in benefits based upon differences between the cost to the employer of providing benefits to women as a group and the cost of providing benefits to men as a group does not qualify as a differential based on a factor other than sex within the meaning of section 6(d)(1)(iv) of the act. Such a differential therefore violates the equal pay requirements of the act. Similarly, the act is violated if employees of one sex are required to make greater contributions from their wages than are employees of the opposite sex in order to receive equal benefits. *Los Angeles Dept. of Water & Power v. Manhart,* 46 U.S.L.W. 4347 (April 25, 1978). See also sec. 800.151 of this chapter.

threat of a backpay award is needed to cause other administrators to amend their practice to conform to this decision." *Id.* at 4352. Obviously, administrators who have not already begun to make the appropriate changes are acting at their peril.

The Treatment of Women under Social Security

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I. Introduction

Two of the most important facets of American society during the past 40 years have been the changing roles of women and men and an increasing variety of family structures. These outcomes have been the result of many factors interacting with each other: life expectancies have increased, fertility rates have fallen, divorce rates have risen, and women have strengthened their commitment to the labor force. Consequently, the traditional view of the family is no longer valid. Women do not marry and remain at home for the rest of their lives caring for their husbands and children. Rather, participation in the labor force commonly continues after marriage. A high proportion of women remain in the labor force while rearing young children. Many marriages end in divorce, thus increasing the number of children being reared by a single parent, usually the mother. And, despite their increasing labor market experience, the wage rates of women remain at only 60 percent of those of men.[1] These factors all contribute to our asking how well many of our social programs are functioning. For example, with respect to the social security system, the issues focus primarily on the relative treatment of one-earner couples versus both two-earner couples and single individuals and the adequacy of protection for divorced homemakers. Although the system still differentiates on the basis of gender in some specific provisions,[2] relatively few individuals are affected and the provisions are likely to be changed soon. Generally, these provisions provide benefits to women under more liberal conditions than to men. The more serious issues regarding the treatment of women arise because of differences in the labor market behavior of men and various groups of women. And, because so many people are affected, it is more difficult to reach consensus on appropriate policy responses.

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[1] Several factors contribute to the lower wages of women, including their disproportionate representation in low-paid occupations and continuing cases of lower pay for equal work.

[2] For a discussion of these provisions see *The Report of the HEW Task Force on the Treatment of Women Under Social Security*, February 1978, appendix A, pp. 75–76.

This paper will focus only on the treatment of women under the retirement and aged survivors' portions of the social security system. The next section details the demographic and social changes mentioned above. The third section describes the current social security system and the ways in which it is inadequate to meet the needs arising from changing labor market behavior of women and current family structures. The fourth section examines alternative proposals for modifying the system. Section V introduces a method to analyze the proposals and describes the data. The sixth section summarizes the results of our analysis. We conclude with a discussion of issues that need further consideration.

II. Demographic and Social Changes

In some respects, the average life cycle of women has not changed much since 1900. For example, the average age at first marriage has ranged only from a high of 21.4 in the 1900s and 1930s to a low of 20.0 in the 1950s. Age at first birth (for married women) has ranged from 23.5 in the 1930s to 21.4 in the 1950s. And, age at the marriage of the eldest child has ranged from 55.4 in the 1900s to 52.3 in the 1970s.[3]

On the other hand, life expectancy has increased significantly: almost 10 years (from 68.5 to 78.1) between 1930 and 1974 for white women who lived to age 20. For black women alive at age 20 the increase has been even greater: 16 years (from 57.2 to 73.5). However, the increases for men who live to age 20 have been considerably less: for whites, 5 years (from 66.0 to 71.0) and for blacks, 10 years (from 56.0 to 65.7). As a result, women can now expect to live many more years after all their children have married (and many children will have left home before marrying), and they can expect to be widowed for a longer period of time.[4]

A more dramatic change in the life cycle for women has occurred in childbearing. In the 1930s and the 1940s, a significantly higher proportion of women continued to bear children during their thirties and forties; whereas, now, childbearing is more commonly completed by their early thirties. If we compare live births per 1,000 women between 1930 and 1974, we find little change for women between 20 and 24 (124.9 versus 119.0) or for women between 25 and 29 (117.3 versus 113.3). However, for women between 30 and 34 the number drops (from 87.7 to 54.4). This drop is even sharper for older women:

[3] Paul C. Glick, "Updating the Life Cycle of the Family." Paper presented at the Annual Meeting of the Population Association of America, Montreal, Apr. 30, 1976.

[4] U.S. Bureau of the Census, *Statistical Abstract of the United States, 1950,* 71st ed., 1950, nos. 89-90; *Statistical Abstract of the United States, 1976,* 97th ed., 1976, no. 87. Races other than white or black are included with black.

between 35 and 39, from 56.1 to 20.2; between 40 and 44, from 21.8 to 4.8; and between 45 and 49, from 2.4 to 0.3.[5] This observation is closely tied to the decline in the proportion of women who have large families: in 1965, 27.1 per 1,000 women aged 15–44 who had already borne at least three children gave birth again; by 1975 the rate had fallen to 7.8 per 1,000.[6] We see that, on average, women now have many more years during which all their children are in school or have left home. This factor has contributed to the increasing flow of women returning to the labor force. Further, more and more women are either leaving the labor force for only a short period or not at all when their children are young.

The increasing labor force participation rates of women are also related to rising divorce rates. First, divorced women are more likely to work to provide for themselves and their children. Second, women who are more economically independent may be more likely to terminate an unhappy marriage. For example, the number of divorces relative to the number of marriage was 0.17 in 1930, compared with 0.48 in 1975.[7] It took 45 years, from 1920 to 1965, for the divorce rate to double, but it doubled again in the 10 years between 1965 and 1975.[8] Even more startling, estimates of the proportion of marriages now being formed that will eventually end in divorce range from 30 to 40 percent.[9] Although many divorced women remarry, the proportion of families headed by women has increased from 4.2 percent in 1930 to 9.5 percent in 1975. Furthermore, in 1930 most female heads of families were older and likely to have been widowed; whereas in 1975 female heads were evenly distributed across all age groups over 25.[10]

What has happened to women's labor force participation rates, and what are forecasts for the future? In 1948, 35 percent of the women between ages 20 and 64 were in the labor force,[11] compared with 56 percent in 1977.[12] By 1990, this percentage is expected to increase to 64

[5] *Statistical Abstract of the U.S., 1950,* no. 70; *Statistical Abstract of the U.S., 1976,* no. 71. Figures refer to live births per 1,000 women in each age group.

[6] U.S. Department of Health, Education, and Welfare, *Monthly Vital Statistics Report* (HRA) 77, 1120, vol. 25, Dec. 30, 1976, figure 3.

[7] *Statistical Abstract of the U.S., 1976,* no. 68. Figures represent the proportion of couples divorced to couples married within the year.

[8] *Statistical Abstract of the U.S., 1976,* no. 68. Divorce rate refers to divorces per 1,000 married couples. The rate rose from 1.1 in 1965 to 2.1 in 1975.

[9] Population Reference Bureau, *Population Education Newsletter,* vol. 7, no. 1, January 1978.

[10] Population data from U.S. Bureau of Labor Statistics, "New Labor Force Projections to 1990," Special Labor Force Report 197, appendix, and U.S. Bureau of the Census, *Historical Statistics of the United States, Colonial Times to 1957,* 1960, A22–23; household data from *Historical Statistics of the United States,* A230–241, and *Statistical Abstract of the United States, 1976,* no. 59. Data for 1930 refer to women 14 years of age and older while data for 1975 refer to women 18 years of age and older.

[11] *Historical Statistics of the United States,* D13–25.

[12] U.S. Bureau of Labor Statistics, *Marital and Family Characteristics of the Labor Force, 1977,* table 2.

to 67 percent.[13] Among married women whose husbands are present in the home, the participation rate increased from 22 percent in 1948[14] to 45 percent in 1976,[15] and it is estimated to be between 60 and 66 percent by 1990.[16] Similarly, in 1948, only 9 percent of women[17] all of whose children were less than 6 years old were in the labor force. In 1976, 40 percent of such mothers were in the labor force,[18] and by 1990 as many as 54 to 56 percent will participate.[19]

These dramatic changes have all occurred since the social security system was originally designed in the mid-1930s. It is not surprising, therefore, that the system was intended to protect traditional families in which the husband was employed and the wife remained at home to care for dependent children. In the next section we will describe the current system and examine its effects on those who do not fit the traditional life-cycle stereotype; that is, we will look at two-earner couples, divorced homemakers, and single individuals.

III. Provisions and Effects of the Current System[20]

When the social security system was first designed, only individual workers were to receive retirement benefits. Within a few years, before any benefits were actually paid, it became clear that retired workers living with dependent spouses would have much lower standards of living than those who were single. Consequently, the system was expanded to include dependent's benefits. As a result, when workers retire, their benefits are calculated based on their earnings averaged over past years.[21] In addition, aged spouses of retired workers are entitled to dependents' benefits equal to 50 percent of their spouses' benefits. Aged spouses who are also entitled to benefits as workers in their own right receive the larger of the two possibilities. When workers die, their aged spouses are eligible for survivors' benefits equal to the amount of the deceased workers' benefits, or to their own benefits as workers, whichever are higher. The same benefits are provided to divorced spouses of workers provided the marriage lasted at least 20 years before dissolution. (Benefits paid to current spouses are not reduced because of benefits

[13] Ralph E. Smith, preliminary estimates. Final estimates will be included in "Determinants of Future Growth of the Female Labor Force," a report to the U.S. Department of Labor.
[14] U.S. Department of Labor, *Employment and Training Report of the President, 1977,* table B–1.
[15] U.S. Department of Labor, Women's Bureau, "Working Mothers and Their Children," 1977, table 6.
[16] Ralph E. Smith, preliminary estimates.
[17] *Employment and Training Report of the President, 1977,* table B–4.
[18] "Working Mothers and Their Children," table 6.
[19] Ralph E. Smith, preliminary estimates.
[20] Only the retirement and aged survivors portions of the system will be considered.
[21] Over the highest 19 years for 1978, increasing to 35 years for 1994 and thereafter. Starting in 1979, earnings will be wage indexed before averaging.

paid to divorced spouses.) Starting in 1979, the duration-of-marriage requirement will be reduced from 20 to 10 years.[22]

Why are these provisions under criticism? First, there has been a dramatic increase in the number of two-earner couples relative to the number of one-earner couples. Since the design of the original system presumed that women were economically dependent upon their husbands, these two-earner couples receive smaller benefits relative to the social security taxes they pay than do one-earner couples. Social security taxes paid by spouses with irregular participation in the labor force often result in little increase in benefits. Some find that the benefits to which they are entitled as retired workers are actually less than the benefits to which they are entitled as dependents. For these people, prior social security tax payments result in no difference in retirement benefits compared with what they would have received had they remained at home and paid no social security taxes whatsoever. This lack of equal treatment for families with the same total lifetime income and the same number of members at retirement is being questioned. Even if one believes that families are the correct units to consider, and even if the benefits received at retirement are the same for two families that differ only in terms of labor force participation of the wives, the problem remains. The family with two earners is likely to have paid considerably more social security taxes than the family with only one earner. Furthermore, the survivor of the two-earner couple is likely to receive *lower* benefits than the survivor of the one-earner couple.

The HEW Task Force on the Treatment of Women under Social Security included some illustrative cases in their report.[23] Consider the simple situation of individuals of the same age married to the same spouses throughout adulthood. The couples have the same average combined earnings covered by social security when they reach retirement age. However, they differ in the proportion of earnings credited to the husband and to the wife. Specifically, assume that their average combined earnings are $12,000 a year.[24] The one-earner couple in which the wife never worked would receive a total benefit of $7,640 at retirement, a worker's benefit of $5,093 plus a dependent's benefit of $2,547. At the other extreme, a two-earner couple, both of whom had the same average earnings, would receive a total benefit of $6,346, two worker's benefits of $3,173 each. In this case, the one-

[22] Social security benefits are financed by a tax on earned income. The tax is assessed at a fixed percentage (in 1978, 10.1 percent combined employer-employee rate) of earnings up to a maximum amount (in 1978, $17,700).

[23] *Report of the HEW Task Force on the Treatment of Women Under Social Security,* pp. 16–17.

[24] The examples are based on the 1979 benefit formula. The amounts are basic benefits for individuals reaching age 62 in 1979, without actuarial reductions for early retirement. "Average earnings" refers to average annual wage-indexed earnings which are used to calculate benefits.

earner couple's retirement benefit is 20 percent higher than the two-earner couple's benefit. A single individual with the same earnings as one member of the two-earner couple ($6,000 a year) would receive benefits equal to half those of the two-earner couple and 42 percent of the one-earner couple's benefits. If we consider the benefits received by the surviving spouses of these two couples, in the one-earner case the survivor receives $5,093 (the worker's benefit); whereas in the two-earner case the survivor receives only $3,173. That is, the survivor of the one-earner couple receives a benefit that is 61 percent higher than the benefit received by the survivor of the two-earner couple or by the single individual. These benefit amounts are summarized in table 1.[25]

These differences are viewed as inequitable by many people. They see two couples who have contributed, in total, exactly the same amount of taxes to the social security system, but who receive benefits that are quite different. These critics do not necessarily question all differences in benefits relative to tax payments; often they support the progressivity of the system. That is, they often believe that lower benefits relative to tax payments for higher income couples and individuals are a desirable feature. However, they also believe that similar couples—for example, those who are the same age and have paid the same social security taxes on the same amounts of earnings—should receive similar retirement and survivors' benefits in old age.

In addition, many critics argue that the one-earner couple with the same income (and hence the same social security tax payments) actually has a *higher* standard of living than the two-earner couple. These two couples differ in their total hours spent in paid employment. The one-earner couple has, by definition, a full-time homemaker who contributes to the well-being of the family during the time that the second earner in the two-earner couple is employed. The two-earner couple is likely to have less time available for leisure because homemaking tasks must still be done. The "family" of the two-earner couple is also likely to "consume" less homemaking because of the lack of available time. Finally, there are additional costs, such as transportation, associated with being employed. Because of less leisure, less homemaking, and less money income available after employment expenses,[26] the two-earner couple is actually "poorer" than the one-earner couple with the same money income. Thus, for two-earner couples to receive *lower* benefits in return for the same

[25] All tables appear in the appendix.

[26] Employment expenses should not be taken to include costs, for example, for child care or house cleaning, that are already included in the comparison of homemaking consumed by one-earner versus two-earner couples.

social security taxes appears to many as contradictory to the general goal of a progressive system.

A second major problem for the social security system has been the coverage of divorced homemakers.[27] Retirement benefits (as dependents) are now provided only for homemaking spouses married to workers when they retire and to a few divorced women. Only those aged divorced women who have been married for 20 years or more and who have not remarried are entitled to dependents' benefits upon the retirement of their ex-husbands.[28] These benefits equal the amounts they would have received had they remained married and are available whether or not their ex-husbands have remarried. However, few marriages that end in divorce have lasted for 20 or more years—less than 8 percent in 1976. As a result, many divorced women in the United States do not have a pension claim based upon their ex-husbands' earnings records.

In response, this eligibility condition was modified in December 1977. Starting in 1979, if the marriage lasted at least 10 years, the divorced wife will be eligible for a dependent's or survivor's benefit based on her ex-husband's earnings, provided she has not remarried. However, the amounts of the retirement benefits (still 50 percent of the ex-husbands' pensions) will often be inadequate to meet even current poverty levels. In addition, no distinction will be made between homemakers whose marriages lasted most of their lives and those who divorced at a younger age. This will be a problem because divorced homemakers' abilities to generate adequate social security pensions in their own right as workers are dramatically different: the system bases pensions on earnings averaged over an extended period, and homemakers divorced late in life are only able to work in paid employment for a limited number of years. Furthermore, while a divorced homemaker who (re-)enters the labor force may be entitled to benefits as a worker that will be small because of her years out of the labor force, and to benefits as a divorced wife (because of her years as a homemaker), there will be no provision for combining them; she will receive only the higher of the two. After the death of the ex-husband, however, a divorced wife's economic position will improve, since the benefits to which she will be entitled will double because she will receive a survivor's benefit equal to her ex-husband's benefit.

[27] The provisions affecting divorced individuals currently apply only to women and are being litigated. However, even if these provisions were not related to gender, few men would gain from them, since few men have benefits in their own right that are less than half the benefits of their divorced wives. Those that do usually worked primarily in employment not covered by the social security system: for local, State, and Federal governments.

[28] If the divorced woman's own benefit as a worker exceeds her entitlement as a divorced wife, she receives her worker's benefit.

Since women contribute to the family's economic stature by their work at home and often enable their husbands to earn more than if they were unmarried, vesting all social security pension claims in the employee is viewed by many as unfair. These groups believe that protection for divorced women should be expanded. Feminists argue that increased protection should occur through changing sex roles: men and women should share more equally in both work at home and work in the marketplace. Those who are more concerned about maintaining and strengthening the traditional family often argue that protection for divorced women should come through individually vested claims to retirement pensions. However, they contend that such claims should be financed in part through contributions for social security benefits for homemakers. They argue that it is important not to force women into the labor market when they prefer to remain at home with their children and that the gains to society when mothers remain at home more than repay the costs of providing them free claims to social security benefits.

Although there is considerable consensus about the undesirable aspects of the current provisions of the social security system, far less agreement exists regarding the most appropriate policy response. Some propose relatively minor modifications such as reducing the percentage of the worker's benefit awarded to a dependent spouse or providing a fixed level of benefits to each dependent, regardless of the level of the worker's benefits. Others suggest providing earnings records for homemakers, with or without the payment of corresponding social security taxes. Finally, some groups believe that earnings records of married couples should be shared equally, regardless of the amount each spouse earned. In the next section we discuss various policy options in more detail.

IV. Policy Alternatives

As noted above, the underlying difficulties with the social security system are not the remaining gender-specific provisions (which are likely to be revised soon), but rather the interdependencies between its benefit structure and differences in the labor market behavior of men and women. The lower benefits that women typically receive result from the fact that their labor force participation patterns and their earnings differ from those of men. Women, on average, both drop out of the labor force in order to rear children and also earn less when they are employed. Since the system averages earnings over a long period of time, irregular participation and low earnings result in low benefits. One possible response to these differences is to incorporate dependents' and survivors' benefits. However, this alternative was more appropriate in past years, although even then many individuals did not

fit into the traditional family model. It is much less appropriate today for several reasons: There has been a dramatic increase in the employment of wives. The rise of feminist consciousness has led many people to argue that women should not be viewed primarily as the dependents of men, but rather should be seen as individuals in their own right, with their own independent claims to retirement income. And, as divorce rates have risen and multiple marriages have become more common, vesting pension rights with the individual is seen as one obvious solution to shifting family relationships.

However, returning to a system of benefits for workers only (with no provisions for the dependents or survivors of workers) is not widely supported, since many dependents (primarily women) would not be adequately protected. Instead, two major types of proposals have been put forth: (1) share social security credits equally between spouses during their years of marriage; or (2) award homemaker credits to individuals who remain at home. Both of these types of proposals would create claims to social security benefits for individuals and would eliminate such derived claims as dependents' and survivors' benefits. We will describe several versions of earnings sharing and then turn to homemaker credits. In addition, we will discuss some modifications to the current system that would retain derived claims to benefits.

Under earnings sharing, social security earnings records could be created in several ways. In establishing an earnings record for a married individual, the total earnings of the couple could be shared equally each year the couple is married, or their earnings records could be shared only in the event of a divorce, in which case the records might be altered only for the years in which the couple had been married. Alternatively, if earnings were shared each year, the total earnings credited to a married couple need not equal their actual total taxable earnings. One proposal, introduced in the House of Representatives by Donald Fraser and Martha Keys, would create earnings records for each spouse of a couple where both participate in the labor force equal to half of their total taxable earnings. For couples in which there is only one primary earner, however, a record would be created for each spouse equal to 75 percent of the earnings of the primary worker. That is, the combined records of one-earner couples would be increased by 50 percent. Since the benefit formula is progressive, benefits would be increased by more than 50 percent, thus expanding the subsidization of one-earner couples by two-earner couples and single individuals beyond its current level.

Benefits could also be calculated in several alternative ways. If earnings had been shared in the years before entitlement, individuals could receive benefits based only on their own shared records. Or, the

benefits for each partner in a married couple could be calculated in this way and then each could receive half of the total family benefit. Benefits for survivors could be based only on their own records, or they could receive half of the benefits that the couples had been receiving when both were alive, or they could receive more than half (perhaps two-thirds) of the family benefits. Alternatively, spouses of deceased workers could inherit earnings records and combine them with their own, up to the maximum amount of earnings covered by social security.

Those who favor earnings sharing argue that it would establish individual claims to retirement benefits and therefore would protect homemakers whose marriages end in divorce. The penalties that are currently incurred primarily by women who eventually divorce but who remained at home for many years would be shared by the couple making the decision that one spouse not be employed. That is, divorced women would be penalized less under an earnings-sharing option (and their ex-husbands more) than under the current system in which all pension rights are vested in the wage earner. The proponents of this option argue that marriage is an equal partnership and that earnings sharing would extend this partnership to equality in retirement claims.

Homemaker-credit plans vary along more different dimensions than do earnings-sharing proposals. First, they differ in terms of financing. Credits could be given to individual women, or perhaps men as well, who remain at home without any social security taxes being assessed. Or, each couple who opts to have one adult remain at home could be required to pay taxes for social security benefits on the employed spouse's earned income up to a larger taxable maximum than applies to an individual with the same income, but whose spouse also participates in the labor force. Alternatively, individuals could be given a choice about the amount of credits they receive, and hence about the amount of social security taxes they pay.

Second, eligibility conditions could be set in a multitude of ways. For example, eligible individuals might include adults who remain at home with children who are less than a certain age, perhaps 3 or 7 or 16. There might be a maximum number of years during which the credits would be awarded. Or, all homemakers might receive them, whether or not there were any young children in the household. Alternatively, credits might be provided for a certain number of years per child, no matter how the spacing of children affected the youngest child's age in each year.

Third, proposals vary in terms of the kind of homemaker credits that would be given. Earnings could be credited as though the homemaker were in the labor force. If this option were chosen, these credits could

be provided only to nonemployed homemakers meeting the eligibility conditions, or alternatively eligible employed individuals could be excused from paying social security taxes on earnings below the amount of credits, or credits could be added to the actual earnings of eligible individuals who are employed.

Fourth, the amount of credits could be specified in several ways. They could equal full-time earnings at the minimum wage, or they could equal the average earnings in the economy that year, or they could depend on the number of children for whom care was being provided.

Finally, the number of years over which earnings are averaged could be reduced. Each of these possibilities has different implications. For example, reducing the number of years over which earnings are averaged in effect gives higher homemaker credits to homemakers whose earnings are relatively high when they are in the labor force than to those who earn less.[29] Finally, homemaker credits could be combined with earnings sharing, where the total of earnings and credits was shared equally by married couples.

Those who favor homemaker credits do so largely because of their concern for children. They believe that it is better for children to be cared for by their parents than to grow up in day-care centers or in family day-care situations. They fear that in many cases the care provided for children whose mothers work is of low quality. In addition, there may be social externalities to be gained from parental care for children. Certainly, the public school system provides a precedent for social subsidization of the care of children that might logically be extended to preschoolers whose parents prefer to remain at home with them.

On the other hand, the provision of homemaker credits without corresponding taxes is likely to be expensive. Those who oppose free credits argue that retirement protection should be available for men or women who remain at home with their children, but that this protection should be paid for by the couple making that decision.[30] That is, couples where both work (with or without children) and employed single individuals should not have to pay additional taxes to subsidize those who remain at home. To support this argument, two-earner couples often point out that the goods and services produced by

[29] Note also that if the number of years over which earnings are averaged is reduced, individuals with the same lifetime earnings, but with a greater year-to-year variation, will receive a higher benefit than those with a more constant earnings stream. If one wishes to replace a lifetime standard of living, a longer averaging period is preferable. On the other hand, if one wishes to replace the standard of living in the years shortly before retirement, basing benefits on earnings averaged over the last 5 or 10 years is appropriate.

[30] The determination of "who pays" is easier in a system such as the current one where benefits are financed by a particular source of revenue, the payroll tax. If general tax revenues are used in the future, subsidization of one group by another will be more difficult to determine.

the person who remains at home or the increased leisure consumed by the one-earner couple is neither counted in income nor taxed. As a result, one-earner families actually have a higher standard of living than two-earner families with the same total money income.

In addition, supporters of earnings sharing point out that, even with the increased cost from earnings sharing due to the progressivity of the benefit formula, such an option might be less expensive than most homemaker-credit plans. Even if survivors' benefits were provided at two-thirds of the total family benefit (rather than on an individual basis), the cost might not exceed that of the current system.

Furthermore, earnings-sharing plans would provide more protection for homemakers whose husbands' earnings exceeded $10,000 a year than a homemaker-credit plan that provided credits of $5,000 per year. Yet, such a homemaker-credit plan would be one of the most generous (and hence most expensive) of those proposed.

Most of the less drastic modifications to the current system retain derived claims for dependents, but change the way in which they would be calculated. Earnings records would be accumulated as under the current system: each worker would receive credit for wages earned in covered employment up to the maximum taxable amount. Dependents' benefits might equal the same amount for all eligible dependents in a particular year regardless of the benefit levels of their spouses. This amount might be related to the average workers' benefit in the preceding year (for example, it might equal one-third of the average benefit), or it might be set at a specific level and then increased in the future at the same rate as prices or as wages. Alternatively, dependents' benefits might remain tied to the level of their spouses' benefits, but the percentage might be reduced from half to, for example, one-third.

Survivors' benefits could be tied to the level of benefits the couple had been receiving. If survivors received two-thirds of the couples' benefits, there would be no change in the amount provided for one-earner couples compared with the current system. Benefits for two-earner couples would be increased whenever the lesser earning spouses' benefits as workers exceeded their entitlements as dependents. If survivors received half of the couple's benefits, most widows and widowers would find their benefits reduced compared with the current system. Only two-earner couples with the same average earnings would receive the same benefits as now. However, if survivors' benefits were set higher than 50 percent of couples' benefits, it would be possible for some survivors to receive benefits larger than those paid to single workers who had always earned the taxable maximum. To avoid this possibility, survivors' benefits might be

subject to a ceiling equal to the maximum possible benefit for single individuals.

Finally, individuals could receive only the benefits to which they are directly entitled as workers, with no provisions for dependents' or survivors' benefits. This option would equalize the treatment of workers regardless of martial status, but would not be consistent with society's encouragement of parents remaining outside the labor force for some part of their lives.

Proponents of modifications such as these argue that they would be relatively easy to administer, since implementing them would require almost no changes in the operation of the current system. They point out that both earnings-sharing and homemaker-credit options require additional information, either about marital status and the social security numbers of spouses (in the case of sharing) or about the conditions of eligibility such as ages of youngest children (in the case of credits). Supporters also believe that minor changes could be enacted into law relatively easily. Opponents, on the other hand, argue that these changes would not effectively deal with current difficulties. In some cases, problems would exacerbated. For example, while decreasing the amounts of dependents' benefits improves the treatment of two-earner couples and single individuals vis-a-vis one-earner couples, divorced homemakers would receive even lower benefits than under the current system. Furthermore, rather than acknowledging the contribution of homemakers and providing them with their own independent claims to benefits, the concept of dependency would be retained.

In order to assess these alternative policy options, we need to gather information about several different aspects of each. How much would they cost? Who would gain from each and who would lose? How would benefits relative to tax payments vary across groups? How would annual benefit levels be affected? In the next section we will describe briefly the analysis we have undertaken. This will be followed by a summary of our results.

V. Analysis of Selected Policy Alternatives

Our analysis of alternative policy options has focused on three major questions:

(1) Are resources redistributed between people with differing levels of lifetime standards of living?

(2) Are individuals in similar circumstances treated similarly?

(3) Given a limited budget for social security expenditures, are benefits adequate for everyone? If not, who receives insufficient protection?

In order to answer these questions, we must define lifetime standard of living, similar circumstances, and adequacy. We will start with a discussion of these concepts and then turn to the outcome measures we have used. A description of the policy alternatives examined in detail will follow, and we will conclude this section with a description of the data base.

Assumptions

Two possible measures of "standard of living" are money income or a combination of money income and a measure of leisure and of goods produced outside the marketplace. We believe the latter concept is preferable, since individuals with the same money income differ substantially in terms of the time they have available for leisure and home production. This difference is perhaps most noticeable when comparing one-earner couples with two-earner couples with the same total money income. Nevertheless, we use both measures of standard of living in our analysis. Since the results do not differ significantly under the two definitions, we present only those based on the standard-of-living definition that includes both money income and time available for leisure and home production.[31]

In order to construct a lifetime measure of standard of living, we must handle changing family relationships over time. We do so by focusing on individuals, not on families. Although individuals spend much of their lives in family units, these family units change in composition, as indicated by rising separation, divorce, and remarriage rates. Since the same family units do not continue to exist for the entire lifetimes of individuals, we could not examine a social policy that has an impact on individuals over their entire adult lives by focusing on families. However, family income affects the standard of living of individuals within the family. We have assumed that marriage is a partnership and that married couples share the same standard of living. Hence, we define a married person's income to be half the income of the couple. A homemaker whose husband earns $30,000 annually is not considered poor, even though her own earnings may be zero. She and her husband are each viewed to have a money income of $15,000, and her husband is assumed to share equally in her contribution to the family as a homemaker.

We have defined a lifetime measure of standard of living by the present value (at age 65) of the stream of our standard-of-living measure in the years prior to retirement.[32] The individuals in our sample were then divided into five standard-of-living categories so

[31] In our analysis, we will value the time available for leisure and home production by the minimum wage.

[32] We assume that all individuals retire at the same age. Individuals who die prior to retirement are omitted from much of the analysis.

that we could examine the effects of different options on groups of people who vary along this dimension. In a similar fashion, we have assumed that in any year a married couple shares equally any social security tax burden and any social security benefits, both of which alter money income. However, it is important to note that, in simulating each social security option, taxes and benefits were computed separately for each person under the provisions of that option. Subsequently, the shared values were computed for married couples for use in the analysis.

Our definition of lifetime standard of living includes implicit judgments about the meaning of "similar circumstances." Since we are focusing on individuals, we imply that a married couple with a combined annual standard of living of $20,000 is "similar" to a single individual with an annual standard of living of $10,000. Also, we are assuming that highly variable streams and more constant streams of standard of living are the same if their present values are the same. Similarly, differences in the distribution between money income and the contribution of homemakers' time to our measure of standard of living are ignored.

Each person may have a different value judgment about adequacy. In our analysis, we compare social security benefits with official poverty levels for aged single individuals and married couples. However, other standards could easily be applied to the data. Finally, we examine the effects of alternative policy options on individuals with similar measures of lifetime standards of living who differ in terms of lifetime labor force participation or marital status at retirement.

Outcome Measures

In presenting our results, we use two outcome measures to summarize the impacts alternative policy options have on groups of people in our sample. One is the *relative return* in terms of benefits received in retirement compared with social security taxes paid while working. In particular, we use the ratio of the present value (at age 65) of the stream of social security benefits to the present value (at age 65) of the stream of social security taxes. The value of this measure for any particular individual is determined primarily by that individual's age at death, or more precisely, by the number of years (if any) that benefits were received and by the number of years (if any) that taxes were paid. However, since we are comparing the effects of different policy options on groups comprised of the same individuals, or on groups with similar expected lifetimes, we are able to abstract from the effect that age at death has on this measure. By considering group averages,

we are able to estimate the effect a particular option has on an average member of that group.

Our second measure is the annual *level of benefits.* It enables us to examine the adequacy of benefit levels in terms of the standard of living beneficiaries would have if social security pensions were their only source of retirement income. Neither measure is sufficient by itself to describe the impacts of alternative social security schemes: the latter provides no information about past contributions and the former provides no information about levels of benefits, both of which are important in any examination of similarity of treatment and adequacy.

Policy Alternatives

For our base option, we could have adopted the provisions of the system as it existed in early 1977. However, the incorporation of future wage and price increases in benefit calculations was likely to be changed by the end of the year. Although we could not know the exact changes that the Congress would enact, a leading possibility was the proposal for wage-indexed benefits submitted by the executive branch in 1976. We chose to adopt it as our base option, and it closely resembles the provisions enacted in December 1977 that will take effect in 1979. The major difference is that the benefit formula we use is slightly more generous than the one actually adopted.[33]

At the time of retirement, past taxable earnings and "break-points" in the benefit formula are indexed by changes in the average wage level, whereas future benefits (after retirement) are indexed by changes in the price level. The base option leaves the current eligibility conditions largely unchanged. Benefits are based on individual earnings records, except that married people receive the larger of their own benefits or half their spouses' benefits, and surviving retired spouses receive the larger of their own or their spouses' benefits. The other policy options we examine replace these dependents' allowances and survivors' benefits with the provisions described below, but retain the features of wage-indexed earnings, wage-indexed benefit formula,

[33] We assume that, in 1978, an individual's PIA (primary insurance amount, the benefit level paid if retirement does not occur before age 65) will be calculated as shown below, where AIME is the individual's average indexed monthly earnings. The benefit formula actually enacted for 1979 is shown for comparison, using AIME* and PIA*.

AIME	PIA
less than $175	91% of AIME
$175 – $1050	$159 plus 33% of (AIME – 175)
$1051 or more	$448 plus 17% of (AIME – 1050)
AIME*	**PIA***
less than $180	90% of AIME
$180 – $1085	$162 plus 32% of (AIME* – 180)
$1086 or more	$452 plus 15% of (AIME* – 1085)

and price-indexed benefits so that they may be compared directly with the base option.

Two options that include an earnings-sharing feature are examined in detail. One (denoted ES) requires that married couples share equally the total of their social security earnings records in each year. The maximum amount of earnings covered by the social security system is the same for each wage earner, regardless of marital status or spouse's earnings. Benefits are computed for each individual based only on the individual's shared earnings record.[34] The other option (denoted ES/HC) combines earnings sharing for two-earner couples with a shared credit for one-earner couples. Earnings records are created for two-earner couples by sharing their total earnings equally, whereas each spouse of a predominantly one-earner couple is credited with 75 percent of the primary worker's taxable earnings. This option retains the tax provisions and the individually based benefits of the pure earnings-sharing one.

Two homemaker-credit plans are examined as well. Both are financed by social security taxes paid by workers (that is, without social security taxes being collected from the recipients of the credits). In addition, in both cases individuals receive benefits based on their own records; that is, there are no dependents' or survivors' benefits. Under the first homemaker-credit option (denoted HC–A), nonemployed individuals receive the credits free, while employed individuals pay social security taxes only on those earnings that exceed the amount of the credits. The credits equal full-time earnings at the minimum wage level. Families with at least one child less than 7 years old are eligible. If there are two parents, the one who is employed fewer hours receives the credits. A maximum of 10 years of credits is allowed for any individual. The second homemaker-credit option (denoted HC–B) awards the same amount of credits to any woman between the ages of 25 and 66 who is employed less than 520 hours (65 days) during the year. The credits are in addition to any earnings record she may have

[34] We have also looked at an option that differs only in the definition of the maximum amount of earnings covered by the social security system: for married couples, it is twice the level that applies to single individuals. This option is important for the following reason. When the taxable maximum for couples is twice that for single individuals, couples with the same total earnings are treated the same way regardless of the relative earnings of each spouse. However, when the taxable maximum is applied to individuals regardless of the labor force participation of their spouses (as is assumed in option ES, and as is currently the case), discrepancies remain. For example, under ES in 1977 a one-earner couple with earnings of $25,000 would pay taxes on $16,500 and each would have an earnings record of $8,250; whereas, a two-earner couple, each of whom earned $12,500, would pay taxes on the entire $25,000 and each would have an earnings record of $12,500. Discrepancies such as this remain whenever the total family earnings exceed the taxable maximum, but since Congress appears unlikely to change this provision, we have retained it for the ES option. Note, however, that even under the ES option, differences in treatment between one-earner and two-earner couples with the same total taxable earnings are ended for couples with total family earnings below the taxable maximum.

(based on less than 520 hours of employment). The five options are summarized in table 2.

Data

As noted above, in order to examine the effects of these policy alternatives, we need information about individuals over their entire lifetimes. We need to consider who pays taxes, how much they pay, and for how long, as well as who receives benefits, at what level, and for how long. Hence, we must use longitudinal, rather than cross-sectional, data. Fortunately, a longitudinal data file was created by the Urban Institute for the Department of Health, Education, and Welfare especially for the purpose of analyzing and evaluating United States social security programs. The file is based on the Urban Institute's Dynamic Simulation of Income Model known as DYNASIM.[35] This model incorporates current demographic and economic trends and forecasts their implications for a representative sample of the U.S. population. Each component of the DYNASIM model is based on the observed behavior of members of the American population. Because many forms of actual human behavior (for example, marriages, divorces, births, deaths, education, and labor force participation) are incorporated into DYNASIM, it is better able than other approaches to capture the complex changes and interactions of various factors that are likely to take place in the future.

The particular file[36] we are using was created by taking an initial sample of individuals from the 1960 census and then using DYNASIM to generate the major economic and demographic events in their lives on an annual basis until the year 2000. From this larger population, a cohort of men and women who were 25, 26, or 27 years old in 1960 and who will reach age 64 in the years 1998, 1999, or 2000 was created. The final data file consists not only of these cohort individuals, but also of their spouses and former spouses, a total of over 10,000 individuals. For each person there are annual data on labor force participation, work and unemployment experience, earnings, disability, marriages, divorces, births of children, and deaths of family members. Static information such as sex, race, highest education level completed, and year of birth are also available. In addition, information about earnings has been appended for the years 1951 to 1960,[37] so there is a complete earnings record for the period 1951 to 2000.

[35] See Guy Orcutt, Steven Caldwell, and Richard Wertheimer II, *Policy Exploration Through Microanalytic Simulation,* The Urban Institute, Washington, D.C., 1976.

[36] Gary Hendricks, Russell Holden, and Jon Johnson, "A File of Simulated Family and Earnings Histories Through the Year 2000: Contents and Documentation," Working Paper 985-3, The Urban Institute, revised April 1977.

[37] This imputation was done by the research staff in the Office of the Assistant Secretary for Policy and Evaluation, Department of Health, Education, and Welfare.

What has this data base enabled us to learn about our alternative policy options? In the next section, we will consider four different features: total cost, redistribution between people with different levels of lifetime standards of living, equal treatment of individuals with similar lifetime standards of living, and adequacy of benefit levels.

VI. Effects of Selected Policy Alternatives

Any policy decision about alternative social security systems must take into account their total costs; that is, the total benefits paid relative to the total taxes collected. These values[38] and their ratio are shown in table 3. The total amounts of benefits that would be paid under the base option and the combination earnings-sharing and homemaker-credit option are approximately the same and considerably higher than the amounts that would be paid under the other three options: the pure earnings-sharing option and the two homemaker-credit plans. The base system is relatively expensive because of the provision of survivors' benefits, primarily to widows; no survivors' benefits are provided under the four other proposals. Hence, some form of survivors' benefits could be included in the earnings-sharing (ES) or homemaker-credit options (but not in ES/HC) without exceeding the cost of the current system.

For policy purposes, it is necessary to compare options that would have the same financial implications for society as a whole. For this reason, we scaled the benefit amounts under each option so that their total costs (compared with the taxes that would be collected) would be the same. That is, we reduced the benefits of the two most expensive options (and increased the benefits of the three less expensive options) so that the total cost of social security benefits (relative to taxes) under all five schemes would be the same. All the results summarized below are based on these scaled benefit amounts.

The five alternative options exhibit approximately the same degree of progressivity; that is, relative returns decline as lifetime standard of living increases in a similar fashion under each option.[39] (See table 4.) The differences are so small that they are unlikely to influence policy decisions. This finding is important in itself, since it indicates that the

[38] For each option, the value of the benefits received is significantly less than the value of the total taxes paid. This result is due to three factors: (1) Members of this cohort will have paid social security taxes for their entire working lives, a much longer period than those who are retiring now. (2) The taxable maximums applicable for this cohort will be much larger than those applicable to earlier cohorts. (3) The present values of benefits and taxes have been computed using a (real) discount rate of 6 percent. Opinions about the most appropriate value range from 0 to 10 percent. It is unlikely that the relative effects of the policy options would be changed by varying the choice of discount rate. However, if a smaller value had been chosen, the discounted benefit stream would have increased, the tax stream decreased, and the ratio increased.

[39] The results discussed in this paper are based on the measure of standard of living that includes both money income and the value of time available for leisure or home production. However, if we use only money income, our conclusions are not affected.

progressivity of the benefit formula is sufficient to counter the regressivity of the payroll tax under several different methods of creating earnings records.

Let us turn now to the effects of these policy alternatives on individuals with the same lifetime standard of living,[40] but who vary in terms of lifetime labor force participation[41] and marital status at retirement. For women, the ratio of benefits received relative to taxes paid declines as lifetime participation in the labor force increases. That is, women who work during most of adulthood receive fewer benefits relative to taxes paid than those who are employed less. Although this effect exists to some extent under all the options analyzed,[42] it is greatest under both the base option and under the combination scheme (ES/HC) that provides homemaker credits to those in predominantly one-earner couples. When homemaker credits are provided each year to those employed less than quarter-time (HC–B), the effect is lessened. It is least pronounced under both the limited homemaker-credit plan (HC–A) and the earnings-sharing option (ES), although the limited homemaker-credit plan provides lower benefit levels than does earnings sharing.[43]

In terms of ending the differential treatment of women who have the same lifetime standard of living but who vary by number of years in paid employment, the earnings-sharing option (ES) is most effective. The combination proposal (ES/HC) is least effective. Compared with the base option, the ES/HC option actually increases the extent of the differential treatment of women who work 31 years or more compared with those who work 10 years or less. This result holds for women in all five standard-of-living categories.

Almost all men are in the highest two labor force participation categories. For men in the four highest standard-of-living categories, rates of return also decline slightly as labor force participation increases. Men in the lowest standard-of-living category have higher returns when they participate more. For men, the relative returns of benefits received to taxes paid do not vary greatly from option to option. However, there is a consistent pattern in the lowest three standard-of-living categories: returns are lower under the ES and

[40] In order to disentangle the effects of early death from those of labor force participation and marital status, this part of our analysis includes only those individuals who were alive after age 65. Individual outcomes still depend upon age at death; the group averages are measures of the expected outcome for a member of the group under consideration who lives until retirement.

[41] Lifetime labor force participation is defined as the number of years in which the individual was employed at least quarter-time (520 hours or more).

[42] Representative results are presented in table 5 which shows the effects of labor force participation on the relative returns of women in the middle standard-of-living category. Tables for other standard-of-living categories are available from the author on request.

[43] Note that although the ratio of benefits received to taxes paid declines as women participate more in the labor force, the actual level of their benefits tends to increase with labor force participation.

ES/HC options than under the base and homemaker-credit options (HC–A and HC–B).

Now let us examine the effects of marital dissolution on our alternative policy options. Married women consistently receive the highest rates of return compared with widowed, divorced, or never-married women. For women in the top four of the five standard-of-living categories who are divorced when they reach retirement age, earnings sharing (ES) and the combination proposal (ES/HC) both provide greater protection than do the homemaker-credit options. For the lowest of these four standard-of-living categories, the base option provides approximately the same level of benefits as the earnings-sharing or the combination proposal, but for the three higher categories, the base option provides a lower level of benefits. Only divorced women in the very lowest standard-of-living category gain more from the homemaker-credit options, although these plans provide benefits that are, in turn, less than those under the base option. Thus, divorced women with the lowest lifetime standards of living gain (in a relative sense) the most from the base option. The great majority of divorced women, however, would find their positions improved under the earnings-sharing (ES) or the combination (ES/HC) proposal.

Under all options, and in all but the lowest standard-of-living category, never-married men receive lower returns than men married at retirement, who, in turn, do worse than men divorced at retirement. Men widowed at retirement receive the highest returns of benefits relative to taxes. In the lowest standard-of-living category, married men receive higher returns than divorced men. Again, there is a consistent pattern of lower returns under the earnings-sharing option (ES) and under the combination earnings-sharing and homemaker-credit option (ES/HC). This pattern holds for men married, divorced, and widowed at retirement in the lowest three standard-of-living categories and for men divorced or widowed at retirement in the highest two standard-of-living categories.

In considering adequacy of benefit levels, we examined annual benefits separately for married couples and for those living alone in retirement.[44] (Annual benefit levels for women are presented in table 7.)

For women who are alone in retirement, high (and similar) benefit levels are associated with the base option, earnings sharing, and the combination earnings-sharing and homemaker-credit option. Only the benefits for women in the lowest standard-of-living category, especially those who have never worked, do not follow this pattern.

[44] This category includes never-married, divorced, and widowed individuals.

These women receive higher annual benefits under the base option and under the unlimited homemaker-credit plan (HC–B). Higher benefits under the base option result from dependents' and survivors' benefits. Under the homemaker-credit plans, they result from the fact that the amount of credit (full-time minimum wage) is large relative to the earnings record that would be established under the earnings-sharing option since their husbands (if any) are also relatively poor. In addition, although the sample size is small, benefit levels of $1,400–1,800 per year suggest the need for supplemental assistance for this group. In all other cases, benefit levels exceed current official poverty lines and are often twice as high or more.

Women's benefit levels increase as lifetime labor force participation increases for all standard-of-living categories under all options except the base option. In that case, women who have never worked do as well as women who worked in paid employment for 21 to 30 years.

For men who are alone in retirement, benefits increase as lifetime labor force participation increases. For all but those in the highest standard-of-living category, there is a consistent pattern of slightly lower benefits under the earnings-sharing (ES) and combination (ES/HC) options compared with the base and the homemaker-credit (HC–A and HC–B) options.

Now, let us consider those who are married at retirement. It should be noted that husbands and wives will not necessarily be in the same standard-of-living category, although they are likely to be if they have been married to each other during most of their adult lives. Otherwise, wives are likely to be in lower categories than their husbands because of the lower earnings of women compared with men. Also, note than even when couples' total benefits are similar under alternative options, the proportion paid to each spouse may vary.

For women who are married during retirement, those in the lowest standard-of-living categories with the least labor force participation do best under homemaker-credit options. However, as standard of living rises and as the wife's lifetime labor force participation increases, earnings sharing provides relatively higher benefits than do the homemaker-credit options. In addition, the benefit levels are higher for women married at retirement than those who are unmarried, except under the base option. This result is due to a combination of two factors: (1) the lack of survivors' benefits under any but the base option, and (2) the scaling of benefits so that the total costs of all schemes are comparable. Compared with the base option, the other four plans provide married couples with higher benefits when both are alive, but provide survivors with lower benefits.

If earnings sharing improves the position of divorced women and of two-earner couples compared with the base system, whose benefits

would be reduced? The answer is that benefits for divorced men and for survivors would be less under the earnings-sharing option than under the base option. Under the pure earnings-sharing plan examined above, survivors often receive only half of the couples' benefits or, in some cases, even less. However, if survivors' benefits were incorporated into earnings sharing (for example, by providing survivors with benefits equal to two-thirds of the couples' total benefits), the time path of benefits for married couples (including after the death of one spouse) would be improved. This improvement would be achieved by reducing benefits being paid to married couples when both were alive (to approximately their level under the base option) and by increasing the benefits paid to survivors. Preliminary results of subsequent research suggest that a modified earnings-sharing plan with survivors' benefits equal to two-thirds of the couples' total benefits would accomplish this objective. Furthermore, the cost of this modified earnings-sharing option would be approximately the same as that of the base option. One-earner couples would receive slightly reduced benefits, and divorced men, especially those married for many years to homemaking wives, would find their benefits reduced more. However, the benefits of two-earner couples would be improved, as would those of divorced women.

VII. Summary and Conclusions

What are our most important findings from the policymaker's point of view? First, all the options we examined are equally progressive. Individuals in higher standard-of-living categories receive lower benefits relative to their social security tax payments than do those in lower standard-of-living categories.

Second, under all the options, women who have worked longer in paid employment receive fewer benefits relative to the taxes they have paid than do women who have been employed less. This effect is greatest under the base option (a wage-indexed system that is similar to the one scheduled to take effect in 1979) and under the combination earnings-sharing and homemaker-credit plan (ES/HC). The effect is least under pure earnings sharing (ES); that is, earnings sharing is most effective in reducing the differential treatment of one-earner couples vis-a-vis two-earner couples and single individuals. Note that under the earnings-sharing plan with total costs kept constant, some reduction in relative returns for men (compared with the base option) accompanies the increased returns for women who were employed for many years.

Third, we find that the lack of protection for divorced women under the current system is remedied for most standard-of-living categories by both the ES option and the ES/HC option. The problem remains

only for those women in the lowest standard-of-living category. In such cases, some supplemental assistance may be in order. Since the ES/HC option increases the differential treatment of women with varying degrees of labor force participation, only earnings sharing moves toward solving both this problem and the problem of protecting divorced women.

Fourth, the increased protection for divorced women under the earnings-sharing plan is at the expense of survivors and of men who are not married at retirement. The family benefits of couples who remain married are actually increased under ES compared with the base option. A modified earnings-sharing option could maintain couples' retirement benefits at their level under the base option, and provide survivors' benefits at two-thirds of the couples' benefits, while not increasing total costs above those of the current system. Such a modified earnings-sharing plan would provide a more desirable stream of benefits for a retired couple and the surviving spouse. Approximately the same standard of living could be achieved for the survivor as had been available for the couple.

Finally, the benefit levels provided by the progressive benefit formula appear reasonable for all but women in the lowest standard-of-living category who have not been employed much and who are not married when they reach retirement age. Supplementary assistance appears appropriate in these cases. These results are summarized in table 8.

We have used simulated longitudinal data to analyze the effects of alternative social security schemes. By considering a cohort of men and women of approximately the same age, as well as their spouses and former spouses, we have been able to examine what would have happened to them had any particular social security system been in effect throughout their lifetimes. That is, we have examined the effects that each proposed system would have upon becoming fully mature. In our opinion, this type of information is particularly important for choosing among policy alternatives. This choice should be based on the long-run effects of different policies, and our analysis suggests that earnings sharing would be a superior approach to homemaker credits. However, we have not addressed the transition from one system to another. Many legislators and policy analysts are concerned about the relative costs of instituting particular modifications in the first years of a phase-in period. Although differences in administrative costs cannot be considered using our data base and techniques, the effects on individuals retiring during a phase-in period of 20 years are being examined in subsequent research.

In order to develop a comprehensive proposal based on the earnings-sharing approach, further study is needed. Our present work

has focused on the provision of retirement and survivors' benefits by the social security system. However, the system provides benefits under other circumstances as well. For example, benefits are currently provided to disabled workers and to young survivors caring for dependent children. Under an earnings-sharing option, there is a question of whether these benefits should be calculated on the shared records or on actual earnings records. Choosing the former would provide protection for families in the event of the disability or death of a homemaker and would increase the protection available when secondary workers are disabled or die. However, benefits in the event of the disability or death of the primary earner would be reduced. The question of how to calculate disability and young survivors' benefits can only be answered if one determines the goals of the social security system. If the replacement of money income takes precedence, disability and young survivors' benefits should be based on actual records. If the replacement of the value of services is as important as the replacement of money income, shared earnings records should be used.

A related issue concerns the retirement income of one-earner couples in which the primary earner is several years older than the dependent spouse. If benefits are based on shared earnings records, such a couple would receive much lower benefits than under the current system in the years before the younger spouse reached retirement age. The adequacy of their benefits would be in question. This outcome might be avoided by sharing earnings records only when married couples divorce, when one spouse dies, or when both spouses have reached retirement age. Whether such a system, or an alternative one, would resolve this problem needs investigation.

A number of other important questions come to mind. How would married, but legally separated, couples be treated? Should couples be allowed to choose whether or not to continue sharing records when separated? If so, would each spouse be responsible for reporting the information to the Social Security Administration? How would desertion of one spouse by the other be handled?

Finally, there are administrative questions that must be resolved. Would Internal Revenue Service records be sufficient to determine the social security numbers of spouses? How would this information be acquired for couples who were not required to file income tax returns? How would social security numbers be assigned to married people who did not have them? Issues such as these should be addressed before legislative recommendations are formulated. Further research on the consequences of various alternatives could contribute to more informed public policy decisionmaking.

Appendix

TABLE 1

Representative Benefits Under the Current System

	Retirement	Survivor
One-earner couple [1]	$7,640	$5,093
Two-earner couple [2]	$6,346	$3,173
Single individual [3]	$3,173	N.A.

[1] The one-earner couple includes one spouse with average indexed annual earnings equal to $12,000 and one with no earnings.
[2] The two-earner couple consists of two individuals, each of whom has average indexed annual earnings of $6,000.
[3] The single individual has average indexed annual earnings of $6,000.

TABLE 2

Summary of Social Security Policy Alternatives

Base option:	Administrative proposal to wage-index earnings, price-index benefits, and retain dependents' and survivors' benefits.
Earnings sharing (ES):	Married couples share equally the total of their earnings records. Employees are subject to the taxable maximum regardless of marital status or labor force participation of their spouses.
Earnings sharing-homemaker credit (ES/HC):	Earnings records for married individuals equal the largest of 75% of either spouse's taxable earnings or half the couple's total taxable earnings.
Homemaker credit (HC–A):	Lesser working spouse (or single parent) with a child less than seven may receive credits equal to full-time minimum wage earnings for up to 10 years with no tax payments assessed.
Homemaker credit (HC–B):	As HC–A, except that all women between the ages of 25 and 66 who are employed less than quarter-time are eligible.

TABLE 3

Total Present Value of Benefits and of Taxes and Their Ratio[1]

Options	Total present value of shared benefits	Total present value of shared taxes	Ratio
Base	218,908.1	509,632.7	.429541
ES	195,611.6	509.632.7	.383829
ES/HC	217,417.6	509,632.7	.426616
HC–A	193,184.3	490,347.6	.393974
HC–B	204,870.6	506,230.8	.404700

[1] All values are in terms of dollars with 1976 purchasing power.

TABLE 4

Relative Returns by Lifetime Standard of Living

Lifetime standard of living [1]	Options					Sample size
	Base	*ES*	*ES/HC*	*HC–A*	*HC–B*	
Very low	.27	.24	.24	.25	.27	5360
Low	.59	.56	.58	.55	.58	4223
Medium	.56	.54	.56	.52	.53	4570
High	.48	.49	.50	.48	.48	4790
Very high	.43	.45	.45	.44	.44	5597

[1] Cohort members who die early in life (and hence receive no benefits) are disproportionately likely to have low lifetime earnings. Thus, the ratio of benefits to taxes for the lowest lifetime standard-of-living group is not representative of the values for poor individuals who live to retirement. The other categories also contain some individuals who die before retirement, but in much smaller numbers: very low, 3841; low, 786; medium, 594; high, 546; and very high, 645.

TABLE 5

Relative Returns of Benefits to Taxes and Lifetime Labor Force Participation: Women in the Middle Lifetime Standard-of-Living Category

Lifetime labor force participation[1]	Options					Sample size
	Base	*ES*	*ES/HC*	*HC-A*	*HC-B*	
Never	.83	.68	.78	.58	.71	16
1–10 years	.89	.82	.92	.69	.83	518
11–20 years	.87	.82	.87	.70	.78	523
21–30 years	.68	.66	.67	.60	.60	698
31–40 years	.66	.67	.64	.65	.60	650
41+ years	.50	.54	.50	.53	.49	145

[1] Lifetime labor force participation is defined as the number of years in which the individual was employed 520 hours or more.

TABLE 6

Relative Returns of Benefits to Taxes and Marital Status at Retirement: Women in the Middle Lifetime Standard-of-Living Category

Marital status at retirement	Options					Sample size
	Base	*ES*	*ES/HC*	*HC-A*	*HC-B*	
Never-married	.56	.62	.56	.61	.60	108
Married	.79	.78	.82	.75	.77	1273
Divorced	.57	.65	.67	.53	.57	195
Widowed	.75	.66	.69	.54	.59	974

TABLE 7

Annual Benefit Levels for Women

Marital status at retirement, lifetime standard of living	Base	Options ES	ES/HC	HC-A	HC-B	Sample size
Women living alone [1]						
Very low	4166	3828	3724	3448	3879	829
Low	4713	4679	4717	3827	4256	1382
Middle	5607	5488	5546	4385	4745	1277
High	6002	6094	6077	4922	5182	1050
Very high	6424	6959	6598	6157	6200	1008
Married women						
Very low	3994	4488	4617	4625	4844	378
Low	4202	4957	5200	4956	5205	1010
Middle	4849	5659	5855	5514	5692	1248
High	5256	6178	6253	5952	6042	1206
Very high	5697	6653	6574	6395	6442	1154

[1] Alone includes divorced, widowed, and never-married individuals.

TABLE 8

Effects of Alternative Policy Options

Options	Progressivity	Differential treatment of one-earner versus two-earner couples	Protection for divorced women
Base option [1]	Yes	Large	Least
Homemaker credit (maximum 10 years)	Yes	Small	Some
Homemaker credit (no maximum years)	Yes	Medium	Some
Earnings sharing (taxable maximum applies to individuals)	Yes	Small	Most
Homemaker-credit and earnings-sharing combination	Yes	Large	Most

[1] The Administration's 1976 proposal for decoupling using wage-indexed earnings records in benefit calculations.

An Evaluation of "The Treatment of Women under Social Security" by Nancy Gordon and Some Social Security Issues Pertinent to Blacks

By Frank G. Davis, Graduate Professor, Howard University

The basic thrust of Gordon's paper is as follows:

(1) There is a portion of women whose marital status is such that, at any given time, they are either housewives outside the labor market or who because of change in marital status are belated entrants to the labor market.

(2) These social characteristics such as divorce, early completion of child rearing, and late labor market entry are becoming more pronounced.

(3) Therefore, (a) primary social security benefits should be extended to all of these women, whatever happened to have been their marital status or their economic status; and (b) the amount of primary benefits versus taxes paid should be equitable with respect to standard-of-living categories achieved prior to retirement.

I have no quarrel with the demographic and social facts in connection with women; but insofar as Gordon is referring to women outside the labor market (housewives), she has missed the problem of social insurance. The problem of social insurance is basically that of spreading the risk of economic insecurity in the labor market among all persons subject to the risk during their time of labor market participation. When the risk occurs, one (man or woman) is entitled to a replacement of his income at least above the poverty level.

The theory here is that the economic system generates both inequality and poverty as a residual of economic processes during the preretirement life of wage earners. That is, one of the risks imposed by a private enterprise economy is insecurity in old age. So the basic problem is the effect of market behavior upon old age insecurity, and specifically how the social security program meets this problem of old age insecurity through its tax and benefit system.

If we believe that the ultimate significance of old age insurance is the alleviation of old age poverty, then the problem becomes the relationship between labor market behavior and poverty, on the one hand, and old age insurance and poverty, on the other hand. The $64 question is, to what extent is old age insurance a substitute when the individual is withdrawn from the market on account of age?

I find that in the third section of the paper Gordon mentions the changing labor market behavior of women by pointing out a rise in the labor market participation rate of women. But she is not talking about the behavior of economic forces in the labor market and how these economic forces in the labor market generate economic insecurity for women. Rather, her approach is not what the labor market does to women, but how women behave with respect to the labor market. That is, their employment may be irregular, they may or may not be able to go to work until their children have completed school or left home, or women may become divorced and have to go work to provide for themselves and children. In other words, the problem that Mrs. Gordon is concerned with is the relation of women to the labor market in terms of changes in the traditional life cycle of women.

While Mrs. Gordon's approach to the problem is interesting and pertinent to the behavior of women, the problem she poses is really a problem on the supply side, which really says that the supply of women seeking employment in the labor force has risen and that family problems of one kind or another precipitate irregularity in the supply; and in many cases, for some women, the supply is affected by the age of the children. But the basic problem of old age insecurity arises from the employer demand side in terms of:

(1) wage rates;
(2) earnings;
(3) occupational mobility;
(4) employment and unemployment;
(5) impact of productivity changes through technology upon employment; and
(6) shift in the industrial composition of the labor supply.

For example, in my studies on blacks, I have observed the following:

(1) that black workers are reallocated out of high-wage employment at the rate of −1.15 percent annually and moved into low-wage employment at the rate of +2.23 percent annually;

(2) that the ratio of black/U.S. aggregate real wages is declining over time at a rate of −2.98 annually; that this change in the ratio of black/U.S. aggregate income is explained by the changes in manufacturing productivity. That is, a 1 percent increase in productivity is associated with a −1.05 percent decrease in the ratio of black/U.S. real wages.

(3) the ratio of black per capita real income to U.S. per capita real income as a function of time is declining at a rate of −4.04 per unit of time.

So the basic problem of blacks in terms of the demand side for labor is declining real income over time relative to that of the U.S. average. This is due to fundamental shifts in the industrial composition of the

labor force. That is, the proportion of the labor force engaged in high-paying and high-productivity jobs in manufacturing is falling, and the proportion of labor engaged in low-productivity, low-wage, service-producing industries is rising. The incidence of this shift falls heaviest upon black unskilled workers. So the next question is, how do these economic and institutional changes affect the old age security of women and blacks?

Since there is no indication in Mrs. Gordon's paper of changes in the market demand for women due to the operation of the economic forces in the marketplace, I shall now discuss further how the social security of the black community is affected by its declining personal income relative to U.S. The question boils down to a determination of: What is the impact of the insurance feature of the Social Security Act upon the relatively declining per capita real income of the black community? Does the social cost of social insurance generate a positive or negative change in the per capita real income in the black community? That is, does the ultimate cost to the black community in terms of shifted payroll taxes to the employment of black community labor and/or higher price to low-wage workers really yield a net benefit to the community over time? In answer to this question, my study shows that for every $1 increase in real per capita income of blacks, there is an increase of 6 cents in benefits, but a 12 cents increase in taxes. And for every dollar paid out in taxes the black community gets back 54 cents.

Now we come to a consideration of remedies and policies. Mrs. Gordon's analysis of alternatives and policies is very good, but she is still dealing at the level of demographic and social change with respect to women. For example, among her conclusions, she makes a comparison of benefits relative to tax payments for women in the highest standard-of-living category and divorced women in the lowest standard-of-living categories. But we have no information on percentage of women in either category and, to that extent, we do not know the scope of the problem. Furthermore, we have no information on the absolute difference in earnings and benefits between women in these two categories. Also, we are at a loss as to the extent of poverty among women in the lowest standard-of-living categories. Since we do not have requisite economic information, we have no way of knowing the impact of benefits payments upon the alleviation of poverty among any of these women. Therefore, in terms of the magnitude of old age insecurity of women, we have no information on the extent to which benefits to women are inadequate with respect to the poverty level. In the case of blacks, we know that the proportion of blacks below the low-income level receiving only social security will not come anywhere near exceeding the proportion of blacks below the low-

income level receiving public assistance. In our view, it appears that the present Social Security Act is not structured to keep the bulk of black beneficiaries out of poverty. For example, in 1970, 48 percent of black families (excluding unrelated individuals) below the low-income level received public assistance income, while only 24 percent of black families below the income level in 1970 received social security income.[1] This means that after almost 40 years of social security, most black workers below the low-income level in 1970 must look forward to public assistance income or, now, supplemental security income, rather than income from primary social security benefits.

Also, there are certain diseconomies of the Social Security Act with respect to the replacement in connection with the loss of earnings. It is true that the higher the income, the lower the replacement rate; but the difference in replacement rate between the low-earnings model and, say, all private industry in relation to earnings is not sufficient to eliminate big differences in benefits due to higher earnings. It is observed that replacement rates of 45 percent of the low-earnings model will yield $141.10 for a 65-year-old man retiring 1/1/72 as compared with a construction worker who will receive $216.10 or 53.1 percent more with a replacement rate of only 20 percent. The replacement rate of 32 percent for all private industry would yield monthly benefits of $210.40 or 50.2 percent more than the low-earnings model. When we observe retirees in various circumstances, we find that the highest benefit actuarially for the low-earnings model will go to the married man age 65 retiring 1/1/72, with spouse age 65. In this case, the replacement rate will be 68 percent and the monthly benefit will be $214.65, to be compared with the monthly benefit of $315 or 49.1 percent more for all private industries history with a replacement rate of only 35 percent.

The problem here is that the rising difference between black and white median income is generating a rising difference in black and total U.S. monthly benefits. If we take 1955 as equals 100 percent, the difference between black and white family income rose to 227.8 percent by 1972 in current dollars, while the difference between black and total U.S. average monthly benefits rose to 276.1 percent. In other words, over the 17-year period, the difference between black and white median income increased two and one-fourth times while the difference between total U.S. average and black benefits increased over two and three-fourths times.

The impact of the low taxable earnings upon benefits is indicated by the fact that over a 16-year period (1957–72) almost three-fourths of black workers in current payment status had monthly benefits of less

[1] U.S. Department of Labor, *Social and Economic Status of the Black Population in the U.S.* (Washington, D.C.: U.S. Government Printing Office, 1971), p. 47.

than $83. All of the black monthly benefits were less than $131, while all of the U.S. average monthly benefits were less than $163. Almost three-fourths of the black monthly benefits were less than $99, while over 46 percent of U.S. average monthly benefits were above $99 and over a fourth were above $131 per month, and the mean monthly benefit of U.S. average of $91.72.

If the problem of old age poverty in this country is to be alleviated, the risk of old age insecurity should be spread among all factors of production, including government, as well as land, labor, and capital. All income of the participating factors would share the risk through a graduated tax, according to income. Furthermore, the funds emanating from the social insurance system could be invested, just as any private system invests parts of its reserve in profitable enterprises. Such investment would not only cut down on the cost of maintaining this system, but could be used in community development projects as a means of raising the income of lower income groups.

The economic implication of the experience of poor blacks under the present Social Security Act is that we must view a social security program as a social instrument designed to do the following:

(1) Equitably spread the social overhead risk of personal income insecurity among the factors of production such as a joint overhead cost of doing business;

(2) assess the cost of each factor or subdivision thereof in accordance with the average income of the factors; and

(3) secure the personal income of the labor force in accordance with the combined average earnings of all workers. In other words, the benefit formula would be tied to the average earnings of labor as a whole instead of the low or high earnings of the individual worker.

Using the average earnings of all industry capitalizes upon the risk of economic insecurity to which the workers in all industries are subjected. Furthermore, this formula would permit workers who worked all their lives in low-wage, low-productivity industries finally upon retirement to share in the overall rises of productivity in industry as a whole. This concept of productivity sharing would not be feasible under the (ES) earnings-sharing plan of Mrs. Gordon, unless the one-earner, two-earner couples, and single individuals were in the higher standard-of-living categories. Furthermore, earnings sharing would permit spreading the risks to spouses who were not participants in the labor market.

In conclusion, Mrs. Gordon's paper does not provide us with any indication of the magnitude of economic insecurity among women being generated by the market system. It is, however, clear from her paper that there are individual cases of inequity between couples with the same income, and that the lowest standard-of-living categories,

consisting primarly of lone single women, would probably need supplementary public assistance under her ES plan.

However, in the case of blacks, we may say that both the social security tax structure and the benefit formulae are not only not geared to prevent poverty in the black community, but actually to perpetuate poverty in the sense that the social security tax structure reduces the per capita real income in the black community, without offsetting this tax cost with average benefits above the poverty level.

Comments

By Lucy Mallan, Office of Retirement and Survivors Studies,
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Dr. Gordon's paper is a valuable addition to the debate on the treatment of women under social security. It is a sensitive discussion and, though clear, keeps away from oversimplification.

An important aspect of this paper is that proposals are compared holding costs constant, so that distributions of benefits can be compared. By holding costs constant, the treatment of women can be discussed within the current context of concern about financing of social security.

She asks: How are women treated under social security? Divorced women? Married women who work? Married women who do not work outside the home? Single women? Rich? Poor? Women do not form one group; many interests must be considered.

Dr. Gordon documents some of the changes in the family roles of women. These changes have produced a very *mixed* picture. Some women work all their lives; some work most of their lives; most work at some point. Divorce is rising, separation too, but most adult women are married at any one time. About three-quarters of women aged 30–64 are married. Over 65, the majority of women are widows. Most women still earn less than their husbands, when they are working. (At the median, 25 percent of the income of two-earner families is provided by wives.)

We do not have a world where most women are clearly workers or clearly nonworkers over their adult lifetime.

What is the effect of all this on social security? It is wrong to say the system was set up with the idea that all women are dependents. The system was set up to protect women workers *or* women dependents; what was not envisioned was a situation where roles alternated over the same lifetime. Women have serial roles, mother, worker, etc., but overlapping benefits, where the system classifies them as worker or dependent.

Dr. Gordon has pointed up some disturbing consequences of this. Congress is worried. Women's groups are worried. HEW is worried too. A task force to study this particular issue has completed its report, and a new study, mandated by the social security legislation of 1977, is underway and will build on this first study. It should be emphasized here that the few instances of outright discrimination in the law are on their way out. The recent Supreme Court decision that widows and widowers, wives and husbands, must be treated the same went a long

way toward removing these vestigial remnants, though to be sure, a few remain. For example, the recent legislation has what amounts to a grandmother clause so that women retiring in the next 5 years are not subject to a pension offset. Nevertheless, Dr. Gordon's emphasis is, as it should be, on differential treatment which arises from women's different work roles.

Two issues in the treatment of women under the present program are selected by Dr. Gordon: treatment of two-earner versus one-earner couples and protection of divorced women. Others could be mentioned, for example, treatment of single people versus the one-earner couple, unequal benefits to survivors of couples depending on whether the income was earned by one spouse or both, and the general problem of gaps in protection for homemakers, including disability protection. These are elaborated on in the HEW task force report.

In evaluating new proposals, however, it is not enough to have in mind criteria for treatment of women which are neglected under the present program. Aspects of the present program which are handled well cannot be assumed to be automatically recognized in new proposals; explicit provision must be made. The most important example is the treatment of survivors. This has had an enormous effect on poverty in old age and on poverty of women. Almost one-third of unmarried women over 65 rely on social security for over 91 percent of their income; almost two-thirds rely on it for over half of their income. Note that the present plan gives higher average benefits to women living alone than to married women; all other plans are more favorable to married women. Most of the nonmarried women in that age range, of course, are widowed.

Dr. Gordon presents us with proposals which all have in common establishment of individual records for women, including married women, whether or not they are actually earning at all times. All the proposals, therefore, speak to some of the major problems which have been complained of, in particular those to do with gaps in women's earnings records. Some speak better than others to problems of equal treatment of different groups.

Agreement on what is fair to women is not easy to come by. Should contributions made to the system be the measure? The system itself is predicated on earnings replacement, which does not always give the same result as return on contributions. Should families be the unit on which fairness is judged, or individuals?

Unresolved criteria of fairness are evident in unresolved issues about proposals. For example:

Homemaker proposal A, the limited homemaker proposal with a 10-year maximum on benefits, does fill in some of the zero years which working mothers, who drop out of the labor force for a comparatively

short time to raise children, would otherwise have to average in with their lifetime earnings. It is not surprising that Dr. Gordon finds this plan does not give more benefits the less the participation as much as other proposals do. On the contrary, this plan is essentially a fill-in plan, most beneficial to those with a fairly heavy lifetime participation pattern. If a woman has stayed at home most of her life, particularly if she divorces and does not remarry, a plan which gives her minimum wage credits for a maximum of 10 years will not be especially helpful.

Homemaker proposal B, on the other hand, gives unlimited years of credits to those who work less than one-quarter time. This plan will, of course, favor one-earner couples. It will be more helpful to divorced and widowed women than Homemaker A, provided that they have had high earnings when they were working.

Both of these proposals reduce protection for aged survivors. This is the reason why Plan A is relatively inexpensive. Moreover, as Dr. Gordon herself says, both of these plans give "free" credits; that is, they are financed out of payroll or income taxes, not directly by beneficiaries. This sort of plan has very different implications from homemaker credits financed by the homemaker. First, different treatment between single people (including single women) and couples eligible for homemaker credits is heightened. Second, people who manage a home, but work outside the home for more than the amount of credits, might object to financing credits for those who work less (especially under Plan B), and very bizarre results might follow in terms of income redistribution. Basing Plan B on the amount of employment, rather than the amount of homemaking a person does, raises problems in any context, but when the credits are financed by the rest of society, particular difficulties appear. Domestic workers, for example, may end up financing credits for their bosses.

On the other hand, homemaker plans which involve taxes collected from the homemakers themselves also raise other issues. If the taxes are voluntary (along with the credits), those who will need protection most in old age may not see themselves able to afford the taxes while young. If compulsory, the reverse situation may occur; couples may find themselves hit with extra taxes exactly when they are in the worst financial bind, when young women quit work to have babies and income falls.

Earnings-sharing plans also generate new issues. With most earnings-sharing plans, including the two Dr. Gordon presents, the larger earnings record can no longer be used to generate disability or survivor benefits. This means that if income to the family is cut off by either of these two events—disability or death to the high wage earner—replacement is at a lower level than under present law. The obverse of this situation is also a problem. Replacement may be said to

be too high if the nonearner becomes disabled and the earner's income continues, along with a benefit based on half the family's earnings record.

Moreover, if the high earner retires before the low earner for a few years, the replacement will be at a low level. If the low earner retires before the high earner, "replacement" will be quite high; that is, the family will have the major part of its customary earnings plus a benefit based on half the family combined record.

These situations persist for the straight earnings-splitting plan as well as the combination plan. As Dr. Gordon points out, the combination plan also makes difference of treatment between one- and two-earner couples greater than under the present system.

Both of the plans, however, will give equal credits to husband and wife in the event of divorce. Under straight earnings splitting, benefits to couples where one earner provides all or most of the income will be the same, on retirement, as those to couples where the earnings are split more evenly between the partners.

The kind of increased understanding brought about by the systematic treatment of proposals in Dr. Gordon's paper is very important to policymakers as they work with proposals to deal with some of the problems we have discussed. I am glad to have had the opportunity to comment on this paper.

Comments on two of the points made by other members of the panel:

On Ms. Burris' proposal to do away with widow and spouse benefits in a generation: This would not appear to be helpful to women. To the extent marriage is a partnership, survivors share in the fruits under the present system and, many believe, should continue to do so. It does not appear that we are heading toward a system where women's labor market participation and earnings approach men's, and to act as if we were would, I believe, have very destructive effects. Social Security actuaries predict a 65 percent participation rate by 1990—a high rate, but by no means universal. Women's benefit levels are not expected to rise greatly relative to men's—partly because their earnings have shown great stability relative to men's. Finally, the policy of restricting the choice a couple may make as to whether it is permissible for one member to stay home and take care of young children would, I believe, be most undesirable.

On Dr. Davis' point that the excess in the OASI trust fund should be invested in the black and poor communities: Whatever may have been true about the fund in the past, the existence of an "excess" is questionable today. As is well known, in order to provide for payment of promised benefits in the future, Congress has just raised payroll

taxes to a new high level. Investment such as Dr. Davis suggests would not, I believe, be feasible in these circumstances.

Private Pension Coverage and Benefits for Women and Minorities

By Gayle B. Thompson and Martha Remy Yohalem, Office of Research and Statistics, Social Security Administration, Washington, D.C.

Introduction

Pension income is an important component of retirement income. Data from the Social Security Administration's Retirement History Study (RHS) show that among recently retired persons, those receiving employee pensions—either private or government employee pensions—tend to have higher preretirement incomes than those not receiving such pensions (Fox, 1976). In addition to being better off financially prior to retirement, persons receiving pension benefits receive a higher proportion of their preretirement incomes during retirement. Among nonmarried women retiring between 1968 and 1972, for example, those receiving both social security and employee pension benefits had a median preretirement income of $6,310, as compared to an income of $2,970 for those relying on social security benefits alone. The median ratio of 1972 to 1968 income (in current dollars) for these women was 81 percent for those receiving both types of benefits, as compared to 69 percent for those receiving only social security benefits (table 1).

Notwithstanding the importance of employee pension income in maintaining preretirement standards of living, most retired persons do not receive such income and must rely solely on social security benefits, possibly augmented by small amounts of interest on personal savings accounts. Retired women and black workers are considerably less likely to be receiving income from employee pensions, particularly from private pensions.

This paper draws together available research findings describing the pension characteristics of women and of black and other minority workers as they compare to men and white workers. Most of the data are from studies conducted by the Social Security Administration prior to the effective dates of the Employee Retirement Income Security Act of 1974 (ERISA) and therefore may not reflect the most current status of retired workers. The liberalization of the participation and vesting provisions of private pension plans mandated by ERISA may affect the proportion of workers covered by private pensions and the proportion of covered workers with vested rights. The nature and magnitude of that change, however, is unknown at this time. Because

TABLE 1

Median Total Money Income in 1968 and Median Ratio of 1972 Income to 1968 Income (in Current and Constant Dollars) among Persons Aged 61–66 in 1972 and Were Employed in 1968 But Not in 1972, by Pension Status and Marital Status

	Married men and their spouses		Nonmarried women	
	Social security only	Social security and employee pension	Social security only	Social security and employee pension
Median 1968 income	$6,950	$9,790	$2,970	$6,310
Median ratio of 1972 income to 1968 income:				
Current dollars	67	77	69	81
Constant dollars	54	61	57	66

Source: Alan Fox, "Work Status and Income Change, 1968–72: Retirement History Study Preview," *Social Security Bulletin,* December 1976, table 5.

this paper reports pre-ERISA data, it provides a background against which to measure the effectiveness of that legislation in narrowing the gap between men and women and between whites and racial minorities.

The paper reviews (1) the extent to which women and blacks were employed in jobs covered by private pension plans; (2) the degree to which they received private pension income in retirement; and (3) the size of private pension benefits, both alone and combined with social security OASDI benefits. It also identifies some of the reasons for the comparative disadvantage of women and minority groups.

It should be emphasized that the data reviewed in this paper pertain to individuals rather than to pension plans or firms. Therefore, no direct conclusion can be drawn about the effect of specific pension plan characteristics on reported patterns of coverage, receipt, and size of pension benefits.

Pension Coverage

Although coverage under an employee pension plan is the initial step toward receiving plan benefits at retirement, less than half of the labor force is covered under retirement plans. Historic coverage estimates derived from a combination of household survey and aggregate labor force data indicate that, notwithstanding steady increases since the 1950s in the proportion of the employed labor force covered under private pension plans, less than 47 percent of all workers employed in private industry were covered in 1975 (Skolnik, 1976; Yohalem, 1977).

Sharp differences in pension coverage rates exist between men and women and between racial groups. Data from the 1972 Pension Study show that, among full-time private wage and salary workers aged 16 and older who were employed in April 1972, men were more likely than women and whites more likely than racial minorities to have been covered by a pension on their current job (table 2; also see Kolodrubetz and Landay, 1973). Coverage rates were highest for white male workers (53 percent) and lowest for minority female workers (32 percent). Although both sex and race were related to pension coverage, sex was the more important of the two predictors. As table 3 shows, the difference in coverage rates between men and women within each racial group was more pronounced than that between whites and racial minorities within each sex group.

Substantial numbers of the workers covered by private pensions on their current job in 1972 did not have a vested right to their benefits. Among white men, the most advantaged of the groups being examined here, only 35 percent of the full-time workers covered by a private pension on their April 1972 job reported vested rights to that pension.

TABLE 2

Pension Coverage Status and Vested Status among Full-time Private Wage and Salary Workers Aged 16 and Older Covered by a Private Retirement Plan on Their Present Job, April 1972: Percentage of All Workers Covered and Percentage of Covered Workers with Vested Rights, by Race and Sex

	Percent of all workers covered by a private pension	Percent of covered workers with vested rights
Total	47	32
White	48	32
All other races	39	24
Men	52	34
White	53	35
All other races	43	25
Women	36	26
White	36	26
All other races	32	24

Source: Walter W. Kolodrubetz and Donald M. Landay, "Coverage and Vesting of Full-Time Employees Under Private Retirement Plans," *Social Security Bulletin*, November 1973.

TABLE 3

Percentage of Full-time Private Wage and Salary Workers Covered by a Pension on Their Current Job, April 1972, by Sex and Race

	Men	Women	Difference between sexes
Whites	53	36	17
All other races	43	32	11
Difference between racial groups	10	4	6

Source: Walter W. Kolodrubetz and Donald M. Landay, "Coverage and Vesting of Full-time Employees under Private Retirement Plans," *Social Security Bulletin*, November 1973.

Approximately 25 percent of the covered workers in the other three sex/racial groups reported vested rights.

Data from the Social Security Administration's Survey of Newly Entitled Beneficiaries (SNEB) show that coverage rates among newly retired workers follow the same sex and racial patterns as observed for

TABLE 4

Pension Coverage Status on the Longest Job Among Private Wage and Salary Workers aged 62 and Older Awarded Social Security Retired-Worker Benefits, July 1968-December 1969: Percentage Covered by Race and Sex

	Base number (in thousands)	Percent covered
Total	1,063	39
White	960	41
All other races	103	21
Men	601	52
White	545	54
All other races	56	33
Women	462	23
White	415	25
All other races	47	9

Source: Walter W. Kolodrubetz, "Characteristics of Workers with Pension Coverage on Longest Job," in *Reaching Retirement Age: Findings from a Survey of Newly Entitled Workers 1968–70*, U.S. Department of Health, Education, and Welfare, Social Security Administration, Office of Research and Statistics, Research Report No. 47, table 11.9.

all currently employed full-time workers; men have higher coverage rates than women and whites have higher coverage rates than racial minorities. Moreover, sex is more strongly associated with coverage than is race although both factors have an impact. Among private wage and salary workers newly entitled to social security retired-worker benefits between July 1968 and December 1969, 54 percent of the white men, 33 percent of the minority men, 25 percent of the white women, and 9 percent of the minority women had been covered by a private pension on their longest job (Kolodrubetz, 1976; table 4).

The reader may note that for women and black men the coverage rates for newly retired workers were substantially lower than those for full-time, currently employed workers. These differences between SNEB and the 1972 Pension Study data reflect the fact that the studies examined different groups of people and different jobs. The 1972 study examined current coverage among full-time, employed persons. SNEB, on the other hand, examined coverage on the longest job among persons who had worked enough to establish eligibility for social security retired-worker benefits. Some SNEB respondents, particularly women, left their longest job several years prior to retirement at a time when private pension coverage was less prevalent. Among private wage and salary workers, 19 percent of the women, compared to 12 percent of the men, left their longest job 15 or more

years prior to the time they claimed social security benefits and were included in the SNEB survey.

Differences in private pension coverage for men and women partly result from differences in job characteristics. Industry, occupation, job recency, and tenure explain some of the variation in coverage on the longest job (table 5; also see Kolodrubetz, 1976; Thompson, 1978). RHS data show that, in general, nonmarried women were more likely than men to have had those job characteristics associated with low coverage rates. They were more likely than men to have been employed in service industries, to have been service workers, to have had short tenure on that job, and to have left their longest job many years prior to 1969 when coverage under private pension plans was less extensive. Moreover, coverage rates within each category of each job factor were generally lower for nonmarried women than for men. Among those employed in manufacturing, for example, 63 percent of the men but only 31 percent of the nonmarried women were covered by a pension.

Data from SNEB indicate that black workers are more likely than white workers to possess some of the job characteristics associated with low rates of pension coverage. As table 6 illustrates, blacks newly entitled to retired-worker benefits were more likely than whites to have been employed for less than 20 years on their longest job and more likely to have been employed as service workers on that job.

Receipt of Pension Benefits

National survey data show that a minority of Americans receive private pension income (table 7). Women and blacks are particularly disadvantaged in this regard. Information derived by the Social Security Administration from the March 1976 Current Population Survey of the Bureau of the Census indicates that, although the highest rate of receipt is among white married couples, no more than 30 percent of the married OASDI beneficiary couples aged 65 and older received private pension benefits in 1975. Among nonmarried persons in that age group, the rates of receipt are notably lower, particularly for women. Moreover, within each marital group proportionately fewer blacks receive retirement benefits than similarly situated whites. Among nonmarried persons, for example, 24 percent of the white men and 13 percent of the white women received private pension benefits, compared to 11 percent of the black men and 4 percent of the black women.

Unquestionably, pension benefit receipt for all persons is preconditioned by an attachment to the labor force and by coverage under an employee retirement plan during one's working years. But as Social Security Administration survey data from RHS show, neither factor is

TABLE 5

Pension Coverage on Longest Job for Private Wage and Salary Workers: Multiple Classification Analysis, by Job Characteristics and Sex

Characteristic	Private wage and salary workers: All men — Percent covered	All men — Percent of cases	Unmarried women — Percent covered	Unmarried women — Percent of cases
Grand mean sample	49		21	
Sample size	4,228		1,761	
R^2	0.317		0.342	
Industry:				
Agriculture	4	4.4	[1]	1.2
Mining	48	3.7	[1]	.1
Construction	33	8.6	[1]	.5
Manufacturing	63	46.3	31	30.8
Transportation, communications, and public utilities	51	12.3	52	3.6
Wholesale and retail trade	29	14.3	15	21.7
Finance, insurance, and real estate	54	3.7	46	6.1
Service:				
Professional and related	58	2.6	20	12.5
Other	23	4.3	3	23.3
	$Eta^2 = .116$	$Beta^2 = .050$	$Eta^2 = .116$	$Beta^2 = .035$

TABLE 5 (continued)

Pension Coverage on Longest Job for Private Wage and Salary Workers: Multiple Classification Analysis, by Job Characteristics and Sex

Characteristic	Private wage and salary workers: All men — Percent covered	All men — Percent of cases	Unmarried women — Percent covered	Unmarried women — Percent of cases
Occupation:				
Professional and technical	73	6.5	38	5.7
Managers and officials	49	13.1	32	4.3
Clerical	63	5.5	38	23.2
Sales	39	4.4	10	7.4
Craftsmen and foremen	52	27.5	[1]	1.3
Operatives	50	27.3	24	25.4
Service	38	4.4	5	30.7
Laborers	35	7.6	[1]	.9
Farm, all types	2	3.7	[1]	1.0
	$Eta^2 = .063$	$Beta^2 = .008$	$Eta^2 = .110$	$Beta^2 = .014$
Annual earnings rate:				
Less than $2,000	11	2.5	1	21.1
2,000–3,999	15	7.5	17	24.6
4,000–5,999	42	14.0	51	14.5
6,000–7,499	67	15.4	64	5.5
7,500–9,999	76	16.4	[1]	2.3
10,000 or more	73	15.4	[1]	1.1
Not ascertained	26	29.0	11	31.1
	$Eta^2 = .220$	$Beta^2 = .075$	$Eta^2 = .263$	$Beta^2 = .081$

TABLE 5 (continued)

Pension Coverage on Longest Job for Private Wage and Salary Workers: Multiple Classification Analysis, by Job Characteristics and Sex

Characteristic	Private wage and salary workers: All men — Percent covered	All men — Percent of cases	Unmarried women — Percent covered	Unmarried women — Percent of cases
Recency (year left job):				
Still working	66	47.8	36	35.2
1966–69	48	13.1	22	14.5
1962–65	42	9.4	21	10.7
1955–61	32	12.5	11	13.2
1954 or earlier	16	16.7	6	25.0
	$Eta^2 = .146$	$Beta^2 = .031$	$Eta^2 = .096$	$Beta^2 = .026$
Job tenure (in years):				
5 or less	18	7.9	3	27.7
6–10	23	11.1	12	19.8
11–15	37	14.8	22	15.3
16–20	45	15.4	32	12.1
21 or more	65	49.5	47	22.3
	$Eta^2 = .126$	$Beta^2 = .020$	$Eta^2 = .170$	$Beta^2 = .033$
Extent of employment[2]:				
Full time	49	95.0	24	84.3
Part time	20	1.6	5	13.1
	$Eta^2 = .008$	$Beta^2 = .001$	$Eta^2 = .024$	$Beta^2 = .001$

[1] Not computed; base fewer than 50.
[2] The small number not reporting on this characteristic was included in the analyses but not shown here.
Source: Gayle B. Thompson, "Pension Coverage and Benefits, 1972: Findings from the Retirement History Study," *Social Security Bulletin*, February 1976.

TABLE 6

Percentage with Less Than 20 years of Tenure on the Longest Job and Percentage Employed as Service Workers on that Job, by Race and Sex: Persons Awarded Retired-Worker Benefits, July 1968-June 1970

	Men	Women
Percent with less than 20 years of tenure on longest job:		
White	36	67
Black	47	71
Percent employed as service workers:		
White	10	21
Black	24	70

Source: Derived from Leonard Rubin, "Economic Status of Black Newly Entitled Workers," in *Reaching Retirement Age: Findings from a Survey of New Entitled Workers 1968–70*, U.S. Department of Health, Education, and Welfare, Social Security Administration, Office of Research and Statistics, Research Report No. 47, tables 15.11 and 15.13.

sufficient to assure the receipt of benefits during retirement. Seventy-two percent of the men and 55 percent of the nonmarried women aged 61–66 who had been covered under private pension plans on their longest job and were completely retired in 1972 received private pension benefits in that year. That is to say, a significant number of workers, particularly women workers, covered under private retirement plans on their longest job received no pension benefits on retirement.

For persons covered by retirement plans, an analysis of RHS data pertaining to completely retired men show that recency of the longest job and tenure on that job are important determinants of retirement benefit receipt (table 8). Significantly, these data also show that nonmarried women tend to have shorter job tenure than men and to have left their longest jobs at an earlier date than men (table 9). Fifty-six percent of the men compared to 46 percent of the nonmarried women who were completely retired by 1972 and who had been covered under private pension plans on their longest job were still working on that job in 1969. Eighteen percent of the nonmarried women were employed for 10 years or less on their longest jobs, compared to 7 percent of the men.

The importance of tenure and recency to benefit receipt is closely associated with the conditions for vesting under private pension plans prior to the enactment of ERISA in 1974. The data linking recency of

TABLE 7

Receipt of Private Pension in 1975 by All Aged Units and OASDI Beneficiary Units Aged 65 and Older: Percentage Receiving by Race and Marital Status

	All units aged 65 and older		OASDI beneficiary units aged 65 and older	
	Base number (in thousands)	Percent receiving	Base number (in thousands)	Percent receiving
All units				
Total[1]	16,986	19	14,943	20
White	15,265	20	13,550	21
Black	1,529	7	1,239	9
Married couples				
Total[1]	6,814	27	6,084	29
White	6,317	28	5,651	30
Black	434	14	376	16
Nonmarried men				
Total[1]	2,099	20	1,794	22
White	1,732	22	1,508	24
Black	319	8	248	11
All nonmarried women[2]				
Total[1]	8,073	11	7,065	12
White	7,216	12	6,390	13
Black	775	3	615	4

TABLE 7 (continued)

Receipt of Private Pension in 1975 by All Aged Units and OASDI Beneficiary Units Aged 65 and Older: Percentage Receiving by Race and Marital Status

	All units aged 65 and older		OASDI beneficiary units aged 65 and older	
	Base number (in thousands)	Percent receiving	Base number (in thousands)	Percent receiving
Widowed women				
Total[1]	6,729	10	—*	—*
White	—*	—*	—*	—*
Black	—*	—*	—*	—*
Never married women				
Total[1]	756	25	—*	—*
White	—*	—*	—*	—*
Black	—*	—*	—*	—*
Divorced, separated women				
Total[1]	506	11	—*	—*
White	—*	—*	—*	—*
Black	—*	—*	—*	—*

[1] Includes races other than white or black.
[2] Includes a few women who were married, spouse absent.
* Not tabulated.
Source: Derived by the Social Security Administration from the March 1976 Current Population Survey of the Bureau of the Census.

TABLE 8

Receipt of Private or Union Pension,[1] 1972, by Male Private Wage and Salary Workers Aged 61–66 with Pension Coverage on Longest Job and Who Were Nonearners: Multiple Classification Analysis, by Job Characteristics

Characteristic	Percent receiving	Percent of cases
Grand mean (percent receiving)	72	
Standard error (in percent)	1.6	
Sample size[1]	777	
R^2	0.157	
Industry:		
Agriculture	[2]	0.1
Mining	[2]	5.1
Construction	[2]	5.9
Manufacturing	75	61.9
Transportation, communication, and public utilities	72	14.3
Wholesale and retail trade	[2]	6.3
Finance, insurance, and real estate	[2]	3.6
Service:		
Professions and related	[2]	1.0
Other	[2]	1.7
	$Eta^2 = .015$[3]	$Beta^2 = .014$
Occupation:		
Professional and technical	81	8.2
Managers and officials	66	11.6
Clerical	82	6.4
Sales	[2]	2.8
Craftsmen and foremen	76	29.5
Operatives	71	32.4
Service	[2]	3.3
Laborers	[2]	5.7
Farm, all types	[2]	0
	$Eta^2 = .027$	$Beta^2 = .018$
Annual earnings rate:		
Less than $2,000	[2]	0.6
2,000–3,999	[2]	2.8
4,000–5,999	68	12.4
6,000–7,499	81	21.2
7,500–9,999	80	27.7
10,000 or more	80	21.9
Not ascertained	41	13.4
	$Eta^2 = .119$	$Beta^2 = .043$

TABLE 8 (continued)

Receipt of Private or Union Pension,[1] 1972, by Male Private Wage and Salary Workers Aged 61–66 with Pension Coverage on Longest Job and Who Were Nonearners: Multiple Classification Analysis, by Job Characteristics

Characteristic	Percent receiving	Percent of cases
Recency (year left job):[4]		
Still working in 1969	80	56.0
1966–69	75	21.0
1962–65	66	9.9
1955–61	42	6.8
1954 or earlier	[2]	6.0
	Eta[2] = .118	Beta[2] = .070
Job tenure (in years):[4]		
5 years or less	[2]	3.3
6–10	[2]	3.6
11–15	59	9.4
16–20	70	13.0
21 or more	77	70.1
	Eta[2] = .052	Beta[2] = .004
Extent of employment:[4]		
Full time	72	95.4
Part time	[2]	.1
	Eta[2] = .002[3]	Beta[2] = .005
Age in 1972:		
61–62	68	20.6
63–64	70	33.2
65–66	74	46.2
	Eta[2] = .003[3]	Beta[2] = .002

[1] Excludes those for whom receipt of pension was not ascertained.
[2] Not computed; base fewer than 50.
[3] Not significant at 0.05.
[4] The small number not reporting on this characteristic were included in the analyses but not shown here.
Source: Gayle B. Thompson, "Pension Coverage and Benefits, 1972: Findings from the Retirement History Study," *Social Security Bulletin*, February 1978, table 7.

TABLE 9

Recency of the Longest Job and Tenure on the Longest Job Among Private Wage and Salary Workers Who Were Covered by a Private Pension and Were Nonearners in 1972: Percentage Distribution by Sex

	All men	Unmarried women
Sample number	777	164
Recency of job:		
Total percent	100	100
Still working in 1969	56	46
1966–69	21	24
1962–65	10	15
1955–61	7	8
1954 or earlier	6	7
Job tenure (in years):		
Total percent	100	100
5 years or less	3	8
6–10	4	10
11–15	9	12
16–20	13	17
21 or more	71	53

Source: Gayle B. Thompson, "Pension Coverage and Benefits, 1972: Findings from the Retirement History Study," *Social Security Bulletin*, February 1978, table 7, and unpublished data.

employment to benefit receipt strongly suggest that the lack of vesting provisions in many plans prior to ERISA resulted in the loss of retirement benefits. The data on tenure also suggest a loss of benefits due to stringent provisions requiring many years of service for the receipt of benefits. Other possible factors contributing to the loss of pension benefits, of course, are the bankruptcy of business firms or their pension plans and the withdrawal of employee contributions from contributory plans.

Income from Private Pensions

Findings of the RHS show that completely retired, nonmarried women received substantially smaller private pension benefit amounts in 1972 than did male pension recipients (table 10). The median pension income for these women was $1,200, compared to $2,230 for men. Although the addition of social security benefits to pension income somewhat improved the income status of nonmarried women, women's combined benefit amounts remained substantially below

TABLE 10

Income from Private Pensions and from Private Pension and OASDI Benefits, 1972, by Private Wage and Salary Workers with Pension Coverage on Longest Job and Who Were Nonearners: Percentage Distribution, by Sex

	Income from private pension		Income from private pension and OASDI benefits	
	All men	Unmarried women	All men	Unmarried women
Total number in sample[1]	558	90	558	90
Total percent	100	100	100	100
Less than $500	5	12	[2]	1
500–999	11	29	[2]	0
1,000–1,499	12	19	1	0
1,500–1,999	16	13	1	7
2,000–2,499	11	10	3	19
2,500–2,999	10	6	7	12
3,000–3,999	13	4	26	32
4,000–4,999	8	4	22	19
5,000–5,999	5	1	17	6
6,000–7,499	4	0	14	3
7,500–9,999	2	0	7	0
10,000 or more	2	1	3	1
Median income[3]	$2,230	$1,200	$4,560	$3,340
95-percent confidence interval of median[3]	2,040—2,410	1,000—1,470	4,360—4,730	3,060—3,620

[1] Excludes those for whom income was not ascertained.
[2] Less than 0.5 percent.
[3] Computed from 15-interval distribution, rounded to nearest $10.
Source: Gayle B. Thompson, "Pension Coverage and Benefits, 1972: Findings from the Retirement History Study," *Social Security Bulletin*, February 1978, table 8.

TABLE 11

Annual Rate of Private Pension Income and Private Pension Earnings Replacement Rate from the Longest Job: Persons Receiving Private Pensions Who Were Awarded Social Security Retired-Worker Benefits, July 1969–June 1970

	Men			Women		
	Total	White	All other races	Total	White	All other races
Annual rate of private pension income from longest job:						
Number reporting amount (in thousands)	102	98	4	32	30	1
Median amount	$2,080	$2,130	$1,230	$970	$980	[1]
Private pension earnings-replacement ratio from longest job:						
Number reporting pension and earnings amount (in thousands)	97	93	4	29	28	1
Total percent	100	100	100	100	100	[1]
Under 10	12	11	22	20	20	[1]
10–19	25	25	32	32	32	[1]
20–29	24	24	19	22	22	[1]
30–39	19	20	9	14	14	[1]
40 or more	30	20	17	12	12	[1]
Median ratio	25	26	19	19	20	[1]

[1] Not computed; base contains fewer than 50 sample cases.
Source: Walter W. Kolodrubetz, "Earnings Replacement from Private Pensions," *Reaching Retirement Age: Findings from a Survey of Newly Entitled Workers 1968–1970*, U.S. Department of Health, Education, and Welfare, Social Security Administration, Office of Research and Statistics, Research Report No. 47, tables 12.17 and 12.18.

those for men. Seventy percent of the nonmarried women in the RHS sample, for example, received between $1,500 and $4,000 in combined social security and private pension benefits, whereas 63 percent of the men received combined benefits amounting to $4,000 or more.

In addition to assessments of the absolute levels of pension benefits, another factor frequently used in judging the relative adequacy of pension income is the proportion of preretirement earnings replaced by pension benefits. An analysis of the earnings replacement rates computed from SNEB survey data illustrates, again, that women are in a relatively poorer position than men (table 11). The median replacement ratio from private pension benefits for women who were awarded social security retired-worker benefits from July 1969 through June 1970 was 19 percent, compared to a median replacement ratio of 25 percent for similarly situated men. The median amount of private pension benefits received by black men in the SNEB sample was lower than that of white men, but somewhat higher than the amount received by white women. The median replacement ratio for these black men was also lower than that for white men, but about the same as for white women.

Pension plans covering slightly more than half of the private wage and salary workers base benefits on some combination of earnings and years of service (Greenough and King, 1976). The remaining plans generally base benefits on length of service alone or provide a flat benefit to all who fulfill specified service requirements. Since women and blacks tend to have shorter job tenure and lower earnings than white men, it is not surprising that their private pension benefits are lower than those of the white men (Thompson, 1978; Rubin, 1976).

Summary

The data reported in this paper have shown that, while a minority of all American workers are protected under private pension plans, women and black workers are particularly disadvantaged in this area of employment-related benefits. They are less likely than white men to be covered under private pension plans, those who are covered are less likely to receive pension benefits during retirement, and those who receive benefits receive lower benefit amounts. Women workers of all races are more disadvantaged than black male workers. The differences between sex and racial groups stem in part from differences in job characteristics.

Technical Note

The following is a brief discussion of the studies referred to in the text:

Retirement History Study (RHS): The Retirement History Study conducted by the Social Security Administration is a national sample panel study aimed at examining the retirement process in the United States over time (Irelan et al., 1976). It is designed to collect information in a broad range of areas from the same persons at several points in time, both before and after retirement. In 1969, the first year in which data were collected, the respondents were 58 to 63 years of age and predominantly preretirees. The same respondents are being reinterviewed every 2 years for at least 10 years, at the end of which time they will be 68 to 73 years old and mainly retirees.

The target population includes men of all marital-status categories and women who at the time of sample selection had no husband in the household. Married women in the specified age range were excluded because they were found in early pretests to have no independent retirement plans. Institutionalized persons were also excluded from the original sample. In 1969 interviews were completed with 11,153 persons; 10,169 were completed in 1971; 9,423 in 1973; and 8,693 in 1975. (These figures for 1971 and subsequent years include surviving spouses of original sample members, but exclude persons who were institutionalized during any survey interview period.)

Survey of Newly Entitled Beneficiaries (SNEB): The Survey of Newly Entitled Beneficiaries, conducted by the Social Security Administration, was a study of all persons initially awarded social security retired-worker benefits during each month from July 1968 through June 1970. The size of the SNEB sample was set at about 3,200 cases a month, or 1 out of 27 persons awarded retired-worker benefits each month. The sample of initial awardees consisted largely of people aged 62 through 65.

Noninsured individuals awarded old-age benefits as dependents (wives, husbands, widows, widowers, or parents of insured workers) were excluded from the survey. Also excluded were disability beneficiaries whose benefits are automatically converted to retired-worker benefits at age 65. Transitionally insured workers aged 72 and over were included, but special age-72 awards were not.

1972 Pension Study: The 1972 Pension Study, made under a contract with the Departments of Treasury, Labor, and Health, Education, and Welfare, was a national survey of pension coverage of full-time workers aged 16 and over in the U.S. civilian labor force. Data collection was conducted by the Bureau of the Census and included half the sample of households in the April 1972 Current Population Survey (CPS). The estimates of pension coverage were limited to persons aged 16 and over, working 35 hours or more during the survey week at a job in private industry or with a full-time job but not at work full-time during that week because of vacation, illness, etc. The

estimates exclude (1) persons belonging to private retirement plans who, during the survey week, were employed part time, unemployed, or out of the labor force, and (2) persons with vested rights to a private pension who were not covered by a plan in the job which they were working during the survey week.

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Sex Discrimination in Insurance

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I. Introduction

Insurance is a form of protection against financial losses due to theft, accident, illness, disability, and loss of life. In exchange for periodic payments, called premiums, consumers purchase a guarantee of predetermined benefits payable upon such occurrences. An insurance company combines all the premiums into a common pool which is tapped when policyholders are reimbursed for their losses. This method of spreading the losses ensures that no one person will sustain extraordinary financial hardship.

Insurance companies try to maximize their own profits by containing the costs of the benefits they offer and by predicting the financial risks of policyholders. To predict such risks, policyholders are divided into classifications representing different risk potentials. The broadest types of classifications are the most preferable in the insurance industry because they reduce financial risks by minimizing the impact of individual deviations. At the same time, broad classifications are imprecise. Individuals who do not possess the characteristics attributed to the group may be penalized solely on the basis of membership in the group.

The use of sex classification in insurance has been rationalized, in part, on the basis of actuarial statistics which reflect morbidity and mortality patterns; and, in part, on the basis of stereotypes of women as a homogeneous group of nonworkers dependent on their husbands' wages and employment benefits. The statistical patterns are rapidly changing and the sex stereotypes are outmoded, bringing to question the very basis of sex-based classification. Yet, the insurance industry continues to use sex-based classification with discriminatory effects on women in all aspects of insurance, especially in availability and scope of benefits, and in premium rates. Many types of benefits available to men are not offered to women; and, even when benefits are equally available, women often pay higher premiums. Since so much of the insurance available to women is inadequate and/or expensive, the purpose of buying insurance is negated; it simply does not offer economic security to female policyholders and their families. The negative impact of inadequate and costly insurance on women was

articulated by former Pennsylvania Insurance Commissioner Herbert Denenberg in his testimony before Congress in 1973:

> Denial of access to insurance at fair rates affects the economic status of all women. It touches employment discrimination, opportunities to hold a job, ability to maintain a family in the face of personal catastrophe, and economic security. Other economic disadvantages of women can be magnified by discriminatory, inadequate, or prohibitively costly insurance.[1]

It is the intent of this paper to describe the particular kinds of discriminatory practices which women face in insurance, to review the results of past efforts designed to eradicate such practices, and to recommend avenues for further action. The next chapter discusses the definitions of discrimination. The third chapter delineates the specific practices affecting women in three lines of insurance: disability, health, and life. Past activities initiated by legislative, judicial, and State regulatory bodies are discussed in the fourth chapter. The fifth and final chapter is devoted to recommendations for further action through improvement of insurance regulations, consumer activities, alternative health insurance mechanisms, and the Equal Rights Amendment.

II. What Constitutes Sex Discrimination in Insurance

Title VII of the Civil Rights Act of 1964 prohibits discrimination in employment practices, including the provision of fringe benefits such as insurance. Judicial interpretations of Title VII provide a legal framework by which discriminatory practices can be grouped into three categories: (1) overt discrimination; (2) disparate treatment; and (3) differential consequences of a neutral practice.[2]

Overt sex discrimination in insurance results from practices that deny women certain types of insurance policies or options which are available to men. A specific example of overt sex discrimination is the unavailability of disability insurance to women who work at home, while such insurance is available to men with identical jobs and risk factors. Another example of overt sex discrimination is the practice of offering men increased insurance coverage on special occasions such as marriage or birth of a child, while women often do not have this option.

Disparate treatment refers to the use of a different set of rules for each sex. For example, in disability insurance, women are subject to

[1] Herbert Denenberg, in "The Economic Problems of Women," Hearings before the Joint Economic Committee, 93rd Cong., 1st sess., July 12, 1973.

[2] Michigan Department of Commerce, "Women's Task Force Report to the Michigan Commission of Insurance on Sex Discrimination in Insurance," June 2, 1975, p. 1. (Hereafter referred to as Michigan Report.)

disparate treatment when they are denied coverage for reasons which are not applied to men. In their dissenting opinion in *General Electric v. Gilbert,* Justices Brennan and Marshall argued that women are treated disparately when disability insurance excludes pregnancy because it is deemed a "voluntary" condition, while the same insurance covers so-called "voluntary" male conditions such as vasectomies and prostatectomies.[3] Disparate treatment also occurs when the rules are the same for both sexes, but in reality are applied unequally. For some insurance companies, illegitimacy of children constitutes a reason for refusing life insurance to both men and women. In practice, however, only women are queried about the legal status of their children and are often denied life insurance on the basis of the industry's moral judgment.[4]

The third type of discrimination is probably the most subtle and insidious, for it results from practices which, on the surface, seem neutral but nevertheless have more adverse consequences for women than for men. The practice of excluding pregnancy conditions from disability and health insurance offered to all employees can be viewed as a neutral practice. Yet this practice has a more deleterious effect on women because they assume the costs of childbearing, the benefits of which are shared equally by men. In her testimony before the House of Representatives, Barbara Shack of the New York Civil Liberties Union argued:

> The insurance world mirrors the societal view that when a woman becomes pregnant, she makes a choice for which she is solely responsible and for which she alone should suffer the disabilities. Conversely, I suggest that because women serve the biological function of continuing the species, society should share the disabilities and costs instead of penalizing her for her necessary physiological role.[5]

The industry's own official stance is that "the object [of insurance] is to spread the risk in such a way that the unit price of the benefit is adequate to provide the required benefit without subsidization of one group of participants by another. . ."[6] Under current practices of excluding or limiting pregnancy coverage in health and disability insurance, women are subsidizing the costs of reproduction in our society.

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[3] General Electric Co. v. Gilbert, 45 U.S.L.W. 4038 (1976).

[4] Michigan Report, pp. 32–33.

[5] Barbara Shack, in "The Economic Problems of Women," Hearings before the Joint Economic Committee, 93rd Cong. 1st sess.

[6] Thomas J. Gillooly, "The Developing Issue of Sex Discrimination—An Overview" (paper presented to the Association of Life Insurance Counsel, May 6, 1974), p. 286.

III. Discriminatory Practices Affecting Women in Insurance

In 1973, the Joint Economic Committee of Congress held hearings on the economic problems of women, including sex-based practices in the insurance industry. Although these hearings produced data which upheld some of the differences claimed by the insurance industry's actuarial tables, they also identified areas where outdated statistics, gathered and analyzed in the 1950s, were inappropriately applied, given the changing employment and morbidity trends in the 1970s.[7] Most important, these hearings uncovered many sex-based practices which were deemed discriminatory in the light of the Civil Rights Act of 1964.

Beginning in 1974, several States conducted studies of insurance practices which affect women. As expected, each of these studies concurred with the others because insurance companies are similar in their practices and all of the large companies cross State lines. In addition, the studies confirmed the findings of the congressional hearings, identifying gaps in availability and scope of insurance offered to women, pointing at sex differentials in premium rates which have not been fully justified by current statistics, and specifying prevalent insurance practices which are discriminatory toward women. Based primarily on the results of these studies, the following is a detailed discussion of the discriminatory practices which women face in three major lines of insurance: disability, health, and life.

Disability Insurance

Disability insurance protects an individual from loss of income due to inability to work. Disability benefits provide disabled policyholders with a monthly payment which is expressed as a fixed amount or as a percentage of monthly income prior to disability. Most insurance companies set a maximum limit to the amount of disability an individual may buy. Insurance policyholders are divided by occupational class, based on varying degrees of hazard associated with their jobs. The more hazardous the job, the lower the maximum benefits available and the higher the rates. Within each job classification, rates also vary by age and sex. In general, rates are higher among women and older people within each of the occupational classes.

Basic Concepts. Disability coverage is subject to three time variables: waiting period, benefit period, and basic period. Waiting period is defined as the number of days the insured must be disabled before benefits are payable. Waiting periods can vary between 1 and 365 days. Length of waiting time is chosen by the insurance buyer as

[7] "The Economic Status of Women," Hearings before the Joint Economic Committee, 93rd Cong., 1st sess., July 12, 1973.

part of the benefits—the shorter the waiting time, the more expensive the insurance package.

The benefit period is the length of time for which benefits are paid to the disabled person. This period may extend for 1 year or until the insured is 65 years old. The basic period is that subset of the benefit period in which the insured is deemed totally disabled; i.e., totally unable to perform any duties connected with his or her own occupation. Basic periods vary from 1 to 10 years. After the basic period has expired, the disabled individual must show that he or she is unable to perform the duties of any job, even if it is unrelated to the original occupation. For example, if, by the end of the basic period, a surgeon's burned fingers have not healed sufficiently to perform surgery, she must prove that she is unable to perform the duties of other occupations—such as salesperson, busdriver, or telephone operator—in order to receive disability payments for the rest of the benefit period.

Many insurance companies operate under the assumption that women do not need disability insurance because they are temporary and reluctant members of the work force who work only for extra "pin" money.[8] This is not an accurate view of working women. Women make up a substantial portion of the work force and most of them depend on their own wages. More than 42 percent of all working women in 1975 were either single, divorced, widowed, or separated, and another 26 percent shared financial responsibilities with husbands whose annual income was less than $10,000.[9] (In 1975, the Bureau of Labor Statistics estimated $9,838 to be a low standard of living for a family of four.[10]) Thus, contrary to the outdated notion that working women are cared for by well-earning husbands, most of the working women in this country depend heavily on their own income. Loss of earnings for these women would be economically crippling. Yet, when women seek protection in disability insurance, they find that certain types of insurance plans are totally unavailable or severely restricted, and that the disability insurance policies which are offered them are generally more expensive than identical policies for men.

Availability. One of the most serious problems facing working women is the prevalent insurance practice of eliminating pregnancy and related complications from disability coverage. Women do not receive adequate protection for loss of income due to pregnancy, childbirth, miscarriage, abortions, and any complications which may arise thereof. On those rare occasions when pregnancy coverage is

[8] California Commission on the Status of Women, "Women and Insurance" (February 1975), p. 20. (Hereafter referred to as California Report.)
[9] Women's Bureau, U.S. Department of Labor, "Why Women Work," July 1976.
[10] Ibid.

available, it is usually subject to additional premium costs and to a time limitation which falls short of the benefit period applicable to other disabilities covered by the same policy.[11]

Insurers maintain that the separate treatment of pregnancy in disability benefit programs is justified because pregnancy is a voluntary condition and because the cost of providing coverage for pregnancy-related conditions would be prohibitively expensive. This rationale has several flaws. First, not all pregnancies are planned;[12] certainly, related complications are not. Second, disability insurance is not always limited to unplanned events, since it often covers disability due to vasectomies, circumcision, attempted suicide, and elective cosmetic surgery.[13] Third, there is evidence suggesting that disability coverage for pregnancy and childbearing does not have significant impact on the total cost of disability programs.[14] Finally, insurance companies do not recognize that there is a man involved in every pregnancy, as well as a woman; and that while women bear the physical responsibility of pregnancy, they should not exclusively be burdened with the financial responsibility. Supreme Court Justice Brennan points out the negative impact on women which results from this financial responsibility:

> . . .[P]regnancy exclusions built into disability programs both financially burden women workers and act to break down the continuity of the employment relationship, thereby exacerbating women's comparatively transient role in the labor force. . . . A realistic understanding of conditions found in today's labor environment warrants taking pregnancy into account in fashioning disability policies.[15]

Women with jobs such as domestic aides or waitresses have difficulty obtaining any kind of disability insurance, while men in the same jobs do not.[16] Part-time workers of both sexes face problems in obtaining disability insurance.[17] Since many more women than men are part-time workers, they are most seriously affected by this gap in availability.

Disability insurance for homemakers is almost universally unavailable. Although homemakers do not lose income when they are

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[11] Insurance Commissioner's Advisory Task Force on Women's Insurance Problems, "Final Report and Recommendations" (Pennsylvania Insurance Department, June 1974), p. 20. (Hereafter referred to as Pennsylvania Report.)

[12] Victor Cohen, "Survey Finds 2 Births in 5 Unplanned," *Washington Post,* Feb. 11, 1977, p. All.

[13] 45 U.S.L.W. 4038 (1976).

[14] Carol Greenwald, "Maternity Leave Policy," *New England Economic Review,* January/February 1973.

[15] 45 U.S.L.W. 4040 (1976).

[16] Michigan Report, p. 23.

[17] Iowa Commission on the Status of Women, "A Study of Insurance. Practices that Affect Women," 1975, p. 41. (Hereafter referred to as Iowa Report.)

disabled, they do suffer the risk of expenses of housekeeping and/or child care. Yet, homemakers meet impenetrable resistance when attempting to purchase disability insurance. When such insurance is available to them, it is subject to severe restrictions. Maximum benefits often fall short of the cost of homemaking and child-care services.[18] Some policies are restricted to a benefit period during hospitalization only, and others are sold only as riders on the husband's disability policy.[19]

Scope of Benefits. It is not uncommon to find that, despite higher premiums paid by women, the benefits they receive are much lower. Waiting periods are often longer for women than for men.[20] Monthly benefits are subject to lower maximum levels, and benefit periods are shorter for women. Of the 13 insurance companies reporting in Iowa on their respective disability policies, 5 reported sex differences in one or both of these areas.[21] One company reported that the maximum monthly benefit allowed to males was $3,000 in 1974, while at the same time females were allowed a maximum of only $1,500. Another company reported a $2,000 to $1,000 ratio between men and women. A Michigan study found that, for all four occupational classes reported by insurance companies, there were wide disparities in the length of basic periods.[22] In the two classes of the least hazardous occupations, the basic period for males was 10 years, in comparison to 2 years for females. In the third class, men were offered a 5-year basic period, and women were again limited to a 2-year basic period. In the class of the most hazardous occupations, men's basic period was 2 years, while no disability insurance whatsoever was available to women. Thus, regardless of their occupations, women were offered a basic period equal in length to the basic period offered to men in the most hazardous occupations, or no coverage at all.

Policy restrictions and limitations not imposed on men further reduce availability of disability insurance for women. For example, accident disability insurance which is usually available to men for life is offered to women only until the age of 65.[23] Many policies carry a provision which reduces benefits to women who, at the time of disability, are not employed away from home on a full-time basis. No such condition is applied to men.[24] Thus, when a female who usually works full time must temporarily reduce her workload or do her work

[18] Pennsylvania Report, p. 21.
[19] Ibid.
[20] Iowa Report, p. 37.
[21] Ibid.
[22] Michigan Report, p. 23.
[23] Colorado Commission on the Status of Women, "Sex Discrimination in Health and Disability Insurance" (February 1975), p. 8. (Hereafter referred to as Colorado Report.)
[24] Michigan Report, p. 23.

at home because of family obligations, she runs the risk of decreased disability benefits.

Rates. Premium rates are a source of much sex discrimination in all types of insurance, including disability insurance. In 10 out of 13 companies surveyed in Pennsylvania, premium rates were consistently higher for women than for men who carried identical or better coverage.[25] A New York study reported that women were charged as much as 150 percent higher rates than men in the same job classifications.[26] Companies surveyed in Colorado reported that premium costs for women ranged from 45 percent to 115 percent greater than for men in white-collar and professional job classifications.[27] Two companies in Colorado admitted that, for the purpose of rating, they group professional women in the same classification as saleswomen and female office workers, while male professionals were classified separately in a higher job category which carried lower rates.[28] No rationale was offered for this practice.

Health Insurance

Health insurance is a means of protection against health care costs due to illness, injury, or other conditions requiring medical attention. Women rely on health care services more than men. In 1975, women made 48 percent more physician visits than men[29] and were admitted to hospitals 41 percent more often.[30] Part of this differential is due to women's unique reproductive role. Approximately 13 percent of women's physician visits and 36 percent of hospital admissions are due to gynecological or obstetrical reasons. Thus, about one-third of the sex differential in physician visits and nearly nine-tenths of the difference in hospital discharges are due to conditions related to women's reproductive function. Yet, these conditions are subject to the most serious gaps in availability and scope of health insurance and to the most prohibitively expensive premium rates.

Basic Concepts. Basic health insurance includes hospital expense plans and surgical expense plans. Hospital expense plans cover expenses incurred in a hospital, including room-and-board charges; emergency room, laboratory, and X-ray services; and prescribed drugs (physician fees are not included). Surgical expense insurance plans cover the use of an operating room or surgical procedures performed

[25] Pennsylvania Report, p. 31.
[26] Task Force on Critical Problems, New York State Senate, "Insurance and Women" (New York, October 1974), p. 23. (Hereafter referred to as New York Report.)
[27] Colorado Report, p. 8.
[28] Ibid.
[29] National Center for Health Statistics, *The National Ambulatory Medical Care Survey: 1973 Summary,* Vital and Health Statistics Series 13, no. 21, p. 11.
[30] National Center for Health Statistics, *Utilization of Short-Stay Hospitals: Annual Summary for the United States, 1974,* Vital and Health Statistics, Series 13, no. 26, p. 3.

in a doctor's office and also surgeon fees. Basic health insurance plans can be supplemented by regular medical insurance plans and major medical insurance plans. Regular medical plans cover physician services unrelated to surgery. The regular medical plans and both types of basic health insurance plans are subject to a maximum amount of benefits. Major medical plans are designed to cover expenses which exceed this maximum. All four types of plans are subject to cost-sharing mechanisms in the form of deductibles, copayments, and coinsurance. A deductible is an expense which the policyholder must meet before insurance coverage takes effect. It may be expressed as a fixed dollar amount or as a value of specified services, such as three hospital days or two physician visits. A copayment is a flat amount per unit of covered services which the policyholder must pay in sharing costs with the insurance company. A copayment charge may be $10 per day or $5 per physician visit. Coinsurance differs from copayment only in that it is expressed as a percentage of cost, rather than as a flat amount.

Coverage for Maternity Costs. Although maternity coverage is central to women's insurance needs, many women in this country cannot obtain insurance protection for conditions related to pregnancy and childbirth. Small firms averaging 25 employees, or less, often do not offer maternity benefits because of high premiums charged by insurance companies.[31] Three out of the six private insurance companies responding to a 1974 Pennsylvania survey admitted that they sold a large portion of their group insurance plans without maternity coverage whatsoever, and all six excluded dependent daughters from such coverage.[32] These companies justified the exclusion of maternity coverage on the premise that pregnancies are planned and budgetable conditions that require no insurance protection. A study conducted in 1975 by the Health Insurance Institute showed that 56.4 percent of all new health insurance group policies did not include maternity.[33] Even major medical policies which are intended to supplement basic hospital and physician costs offer women little relief.[34]

When maternity coverage is available in group policies, it is almost always restricted to dependent coverage. A single woman, or a married woman who wishes to buy insurance separately while her family is covered by her husband's policy, cannot get maternity benefits without buying a family policy, which is designed for an average family of four and therefore costs considerably more than a

[31] Pennsylvania Report, p. 31.
[32] Ibid.
[33] Health Insurance Institute, *Source Book of Health Insurance Data, 1976–1977* (New York: Health Insurance Institute).
[34] Pennsylvania Report, p. 11.

one-person policy. As a result, many women cannot afford adequate maternity coverage. Some insurance companies refuse maternity coverage to single women under any type of policy, presumably for moral reasons.[35]

Maternity coverage often carries more limitations and restrictions than benefits. It may be subject to an initial waiting period of as long as 10 months during which no benefits can be claimed.[36] The insurance industry uses this particular restriction to discourage "adverse" selection of women who would purchase maternity coverage for a planned and imminent pregnancy. However, insurance companies rarely lift the waiting period for such unplanned occurrences as premature birth, miscarriage, or other complications of pregnancy.[37]

Maternity benefits are often established without regard for true expenses of normal pregnancy and delivery. In Michigan, a 1975 survey showed that commercial health insurance plans covered only 38 to 44 percent of maternity costs.[38] The Pennsylvania study reported that in 1974 some companies were still using 1958 hospital rates to set the maximum limit for maternity coverage.[39] Whereas major medical policies usually supplement basic hospital insurance by covering costs in excess of the maximum limit, maternity coverage rarely enjoys that type of protection.

Services required by newborn infants are sometimes excluded from maternity coverage, either altogether or for a period which may range from 7 to 15 days.[40] This exclusion may result in out-of-pocket expenses for nursery services in cases of healthy infants, and numerous other services in cases with health complications.

Coverage for Prenatal and Postpartem Care. Another limitation of health insurance plans, whether they cover maternity or not, is their emphasis on hospital-based, acute care for mothers and children. Very few health insurance plans cover prenatal and postpartem services, which are the basis of preventive health care for mothers and infants. Early prenatal care with frequent subsequent visits can reduce infant mortality by one-third.[41] Prenatal and postpartem care require anywhere from 10 to 20 visits for normal pregnancy and delivery, all of which add to health care expenses not covered by health insurance.

Coverage for Family Planning and Gynecological Services. Unwanted pregnancies are among the major causes of the high rate of infant and

[35] Michigan Report, p. 9.
[36] Ibid., p. 54.
[37] Ibid.
[38] Michigan Report, p. 10.
[39] Pennsylvania Report, p. 9.
[40] Ibid., p. 15.
[41] Michigan Report, p. 11.

maternal mortality in our country, which trails 10 other nations in these important health status indicators.[42] Furthermore, an unwanted or ill-timed pregnancy can have a deleterious effect on a woman's employment stability and economic independence. Thus, it is important that women avail themselves of family planning services which include counseling, contraceptive drugs and devices, sterilization, and abortion. Insurance policies rarely cover these essential services. Occasionally sterilization and abortion services are covered, but only when they are justified on the basis of medical necessity. Contraceptive drugs and devices are almost never covered by health insurance, although other drugs and devices are. In 1975, a Blue Shield plan in Michigan offered coverage for prescription drugs, "except contraceptives for whatever purpose prescribed." Even a medical necessity would not override the absolute tone of this exclusion.[43]

Although some States have banished the practice of excluding from health insurance coverage all conditions related to female reproductive organs, this exclusion is still allowed in some States. It is still common to find riders[44] which exclude all preexisting gynecological disorders. Such riders do not exclude preexisting prostatic disorders peculiar to men.[45]

Underwriting Practices. Whether her husband has his own insurance or not, a married woman should be allowed to buy coverage for him, just as any male is allowed to buy insurance for his wife. However, some insurance companies refuse to cover the husband of a female employee under a family policy unless she can prove that he is financially dependent on her for reasons of physical or mental disability.[46] Other reasons such as unemployment, or simply a preference for the wife's insurance plan, are not permissible. Obviously this rule is discriminatory against women, by even the most conservative definition of discrimination, since men never have to prove any disability conditions in order to insure their wives.

Another insurance underwriting practice which may limit a woman's health insurance coverage severely is the practice which allows a husband's insurance policy to override a wife's policy, when benefits are claimed for their children. Under this rule, a family may be forced to use the father's health insurance policy, regardless of how much more extensive the mother's may be.

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[42] George Washington University Medical Center, "Adolescent Fertility—Risks and Consequences," Population Reports, Series J, no. 10, July 1976.
[43] Michigan Report, p. 14.
[44] A rider is a stipulation of an insurance policy which defines exceptions in the form of additions to, or exclusions of, the basic policy.
[45] California Report, p. 15.
[46] Michigan Report, p. 15.

Rates. An Iowa study found that female policyholders pay considerably more for health insurance than male policyholders.[47] When women bought maternity coverage, they paid almost twice as much as men with the same policies excluding maternity benefits. Without maternity coverage, the Iowa study showed that women pay as much as 50 percent more than men for identical policies. Another study found that premiums for a single-parent family headed by a male are the same as the rate for a two-parent family which by definition includes an extra adult.[48]

Life Insurance

Life insurance protects against financial losses which result from death. Although most women face no difficulty in obtaining basic life insurance coverage, they have limited access to many life insurance options. When these options are offered, the premium rates are unjustifiably higher for women than for men. Basic life insurance is generally less expensive for women, but current mortality tables justify an even greater advantage.

Basic Concepts. Life insurance policies come in two basic forms: term insurance and permanent insurance, each of which has its own variations. Term insurance provides coverage during a specified time period. It may carry an option for renewal without proof of good health, or for continuation of benefits at a reduced level after the specified term has expired. Permanent life insurance policies require that premiums be paid within a specified period of time, but benefits are paid whenever death occurs. These policies allow for conversion into cash before the insured's death or for borrowing at lower interest rates. Permanent policies have three variations: whole life, endowment, and annuity coverage. Whole life coverage provides benefits only in the event of death. Endowment insurance provides for payment of cash at the end of a specified term, regardless of whether the insured has died. Should the insured die before the end of the term, the beneficiaries receive the total value of the policy. Annuity insurance provides a monthly benefit after a specified number of years, or a total lump sum should death occur before the policy term expires.

Basic life insurance is generally accompanied by various options including: guaranteed insurability, option dates for increased coverage, waiver of premium, disability income protection, and payor benefit. Guaranteed insurability allows for an increase in the amount of life insurance without proof of good health. Option dates are special occasions, such as marriage or birth of a child, upon which the insured may increase coverage without proof of insurability. The waiver-of-

[47] Iowa Report, p. 47.
[48] California Report, p. 17.

premium option provides for continuation of a policy without premium payments in case of total disability. Basic life insurance can also carry a disability income protection rider which guarantees a monthly income benefit to replace a loss of income due to inability to work. The payor benefit option, usually attached to children's policies, waives unpaid life insurance premiums when the insured dies or is disabled before the child can assume payments.

Availability. Based on the outdated notion that women's earnings are not crucial to the family, the insurance industry, until recently, did not believe that women needed much life insurance coverage. Therefore, life insurance policies marketed to women have been limited in scope and availability. Many options which are available to men are still not available to women. For example, guaranteed purchase options to buy additional coverage without evidence of insurability are not available equally to men and women. Men may increase their coverage on option dates such as marriage or birth of a child, while women often do not have the option to buy additional coverage for their families on those or any other dates.[49]

The waiver-of-premium option, commonly available to men in all risk classifications, is restricted to women in low-risk classifications.[50] When women in high-risk classifications are granted this option, they must pay higher rates than men in the same group. To qualify for a waiver-of-premium option, women must prove that they are employed away from home, a condition which is not placed upon men.[51] Another condition placed unfairly upon women seeking a waiver-of-premium option is an age ceiling. Some companies deny this option to males over 55 and females over 50. Others set the age limit at 60 for males and 55 for females.[52] There seems to be an age differential of about 5 years in favor of men, in spite of the proven fact that women live longer.

Disability income protection as an option of life insurance is ordinarily available to men in all but the highest risk classification. Some insurance companies, however, do not offer this option to women in the lowest risk classification.[53] As for the payor benefit option, it is readily available to men regardless of risk classification, while women must prove themselves as good risks to obtain this option.[54]

Underwriting Practices. In addition to denying women these life insurance options, the basis of underwriting practices restricts policies

[49] Michigan Report, p. 28; Iowa Report, p. 19.
[50] Michigan Report, p. 29.
[51] Ibid.
[52] Ibid.
[53] Michigan Report, p. 29; Iowa Report, p. 20.
[54] Michigan Report, p. 29.

available to married women. Insurance companies commonly limit the amount of coverage available to a married woman not to exceed the amount of coverage held by her husband.[55] The reverse is rarely true, even when a woman is the principal wage earner in the family. Thus, women with a high income and a low-risk classification may be subject to a maximum coverage set for a husband who earns much less and who may be categorized in a high-risk classification. Regardless of her own credentials for life insurance, a married woman's insurability and rates are assessed on the basis of her husband's credentials. The industry's rationale for this practice is that the husband is the primary supporter of the family and therefore most of the life insurance protection should be on his life.[56] However, as discussed previously, many families are dependent on the woman's income. Moreover, a family should be protected to the extent possible and desirable. If a woman is more insurable than her husband, the family would clearly benefit from the insurance coverage she would obtain on her own credentials.

Another group of women severely handicapped by life insurance underwriting practices includes mothers of illegitimate children. It is not uncommon for companies to deny life insurance policies to these women, while men are seldom questioned about their part in illegitimate births. The attitude of insurance companies seems to be that women with illegitimate children and the children themselves are immoral and therefore represent an insurance risk.[57] Clearly, this attitude is purely subjective and has yet to be supported with actuarial data or other evidence appropriate to underwriting considerations.

Rates. Ordinarily, life insurance premiums for basic coverage (excluding options) are lower for women than for men in the same risk classification. Premiums are usually based on a 3-year "setback" which means that a woman pays the same rate as a man 3 years her junior. However, mortality data show that, on the average, women live 6 to 9 years longer than men in every age group.[58]

In a 1975 study conducted in Michigan, life insurance companies were asked about the reason for using the 3-year setback. The two most common responses were that a 3-year setback is the maximum according to State law and that 3 years is the limit established in the "1955–1960 Basic Tables," which are used prevalently throughout the insurance industry.[59] Such a State law does exist in many States. In Iowa, insurance companies are instructed that "for any category or ordinary insurance issued on female risks, adjusted premiums and

[55] Iowa Report, p. 21.
[56] Ibid.
[57] Michigan Report, p. 32.
[58] *1976 Statistical Abstracts, United States* (1976).
[59] Michigan Report, pp. 34–35.

present values may be calculated according to an age not more than 3 years younger than the actual age of the insured."[60] This kind of law, combined with the use of outdated mortality tables developed in the 1950s, deprives women of a setback of 6 to 9 years. Thus, even where women could benefit from a sex-based rating structure, their advantage is curbed by insurance laws and practices.

IV. Recent Activities Directed at Challenging Discriminatory Practices

Federal Legislation

Direct Federal regulation of the insurance industry is prohibited by the McCarran-Ferguson Act of 1945, which declared that the "continued regulation and taxation by the several states of the business of insurance is in the public interest."[61] The act's most important provision is that, "No act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance. . ."[62] Since 1945, the McCarran-Ferguson Act has had only minor revisions, and no efforts of repeal have been made. However, a number of efforts on the Federal level have been made to eliminate sex discrimination in insurance, through regulations pertaining to employment practices, legislation dealing with sex discrimination in general, and more recently, through legislative amendments to the Civil Rights Act of 1964.

The 1964 Civil Rights Act. Title VII of the Civil Rights Act and subsequent guidelines have been the most definitive manifestations of congressional intent to eliminate sex discrimination. Title VII of the 1964 Civil Rights Act prohibits employers from discriminating on the basis of sex (in addition to race, religion, or national origin) with respect to compensation, conditions, or privileges of employment. The Equal Employment Opportunity Commission (EEOC) was established by Congress in 1965 to enforce the provisions of Title VII. Initially, its guidelines about sex discrimination were very broadly defined and only gradually did they address specific problems affecting women. For example, in 1969, the Commission stated that it found no reason to require an employer to provide fringe benefits for pregnancy equal to benefits for other conditions because pregnancy is unique to females and could not be considered an unanticipated condition or an illness.[63]

In a definitive revision of EEOC guidelines in 1972, the Commission made it unlawful for an employer to discriminate between the sexes in

[60] Iowa Code, Title XX, §508.37(5) (1973), as quoted in Iowa Study, p. 16.
[61] Public Laws, CHS 20-24, Mar. 9, 13, 1945, p. 33.
[62] Ibid., p. 34.
[63] Ann Christian, "A Study on the Status of Women in Insurance and Comments on Proposed Regulations" (prepared for Rep. Sara Weddington, State Representative, Texas, 1976).

fringe benefits offered to employees. The revised guidelines require that benefits be made available to husbands and families of female workers if they are offered to wives and families of male workers, and more significantly, that all benefits offered to wives of male workers must be offered to female workers, regardless of marital status.[64] Thus, if maternity or abortion coverage is available to wives of male employees, it must also be available to single and married female employees.

Also in 1972, in its first formal statement on pregnancy-related employment practices, the Commission issued guidelines which specify that disabilities caused by pregnancy and childbirth should receive the same treatment as other temporary disabilities under insurance and sick leave plans:

> Disabilities caused or contributed to by pregnancy, miscarriage, abortion, childbirth, and recovery therefrom are, for all job-related purposes, temporary disabilities and should be treated as such under any health or temporary disability insurance or sick leave plan available in connection with employment. Written and unwritten employment policies and practices. . .shall be applied to disability due to pregnancy and childbirth on the same terms and conditions as they are applied to other temporary disabilities.[65]

Although the EEOC guidelines on pregnancy and disability were effective in protecting women against certain discriminatory employment practices, they were recently struck down by the Supreme Court decision in *General Electric v. Gilbert.* As will be discussed more fully in the next section, the Court ruled that excluding pregnancy from disability does not necessarily constitute sex discrimination. Nevertheless, these and other EEOC guidelines should not be overlooked because they document a Federal commitment to abolishing sex-based discrimination in employment practices.

Executive Order 11246. Executive Order 11246, issued in 1965, is responsible for another set of Federal regulations which have had an impact on insurance coverage for female employees. This order specified the terms under which the Federal Government awards contracts or subcontracts. In 1967 the order was amended so that Federal contractors were prohibited from considering sex as a condition of employment.[66]

In June of 1970, the Office of Federal Contract Compliance Programs (OFCCP) issued guidelines to carry out the intent of the

[64] Ibid., p. 16.
[65] Title 29, C.F.R. §1604.10(b).
[66] U.S. Equal Employment Opportunity Commission, *Job Discrimination? Laws and Rules You Should Know,* pp. 88–89.

Executive order. Applying Equal Pay Act standards to sex discrimination, OFCCP ruled that employers must provide equal benefits to men and women in employment contributions, welfare programs, insurance premiums, and other similar fringe benefits. The OFCCP addressed the issue of maternity leave by declaring that a contractor's maternity leave policy must provide, at a minimum, a reasonable period of time away from work for childbearing, reinstatement to the original job or one of like status and pay, and continuation of service credits.[67]

Recent Bills Introduced in Congress. Since 1973 several bills have been introduced in Congress prohibiting sex discrimination in coverage and availability of insurance. Congresspersons Abzug, Koch, Patterson, Moakley, Green, Holtzman, Sullivan, and Holt each introduced bills which specified gender as the basis for the prohibited discrimination. Congresswoman Abzug added marital status to her bill, recognizing that it has been a crucial factor in sex discrimination against women. However, neither she nor any of the other Congresspersons addressed the problem of sex discrimination in insurance rates.

None of these bills received the attention they deserved on Capitol Hill, presumably because they were overshadowed by two major bills in other areas affecting the economic status of women. The Pension Law of 1974 and the Equal Credit Opportunity Act of 1975 have been the focus of much of women's lobbying energies. The pension bill guarantees that a widow will receive survivor's benefits if her husband was receiving pension payments at the time of death, unless he had specified otherwise. The credit bill is also relevant to women's insurance problems, in that it prohibits creditors from denying credit on the basis of sex.

The 95th Congress, currently in session, is focusing on the specific issue of disability coverage for pregnancy-related conditions. Public attention to the question was created by the Supreme Court decision in *General Electric v. Gilbert* (that excluding pregnancy from disability insurance does not constitute sex discrimination). Congress has responded with Senate Bill 995, introduced in March of 1977 by Senator Williams (D.–N.J.). The bill amends Title VII of the Civil Rights Act to prohibit sex discrimination on the basis of pregnancy. The amendment mandates that women affected by pregnancy or pregnancy-related conditions would be "treated the same for all employment-related purposes, including receipt of benefits under fringe programs, as other persons not so affected but similar in their ability or inability to work."[68] This proposed legislation is concerned

[67] U.S. Department of Labor, Employment Standards Administration, Office of Federal Contract Compliance Programs, "Policy Directive," Feb. 11, 1977, p. 3.
[68] U.S. Congress, S.B. 995, March 1977.

primarily with guaranteeing the economic security of the family dependent on the wages of the female worker, whether she is the head of the household or whether she shares financial responsibility with another person. The bill recognizes the changed role of women in the work force and in the family. Since this bill has a broad base of support, ranging from women's groups to the major labor unions, its chance for passage in Congress is promising.

In March of 1977, Congressman Hawkins (D.–Calif.) introduced a similar bill in the House of Representatives. The specific intent of this bill is to overturn the Supreme Court's decision in *General Electric v. Gilbert* and to support the Williams' bill in the Senate.

Another piece of legislation which has potential impact on women's insurance problems is the proposed Equal Rights Amendment (ERA). If ratified by the necessary 38 States, the ERA can be used as a tool for eradicating sex-based classification. The promise and limitations which ERA holds for women in insurance are discussed more fully in the next section, as one of the avenues for further action.

Judicial Review

The courts have discussed three specific issues relating to sex discrimination in insurance: sex as a suspect classification, pregnancy coverage in disability insurance, and financial responsibility of childbearing.

Suspect Classification. Legal interpretations of "suspect classifications" are based on Title VII of the Civil Rights Act of 1964. In the 1960s and early 1970s, the courts reviewed numerous cases which pronounced race a suspect classification. Under this definition, the use of race as a basis of classification is automatically subject to close scrutiny by the law, and the burden of proving the absence of discrimination is placed upon those who use any race classification. Sex classification, on the other hand, has not been deemed as "suspect" and is therefore not scrutinized for possible discriminatory effects unless the victim of such classification brings it to the attention of the courts. For their part, the courts, even when ruling in favor of the victims of sex discrimination, have stopped short of labeling sex as a suspect classification.

The decision which came closest to labeling sex as suspect was *Frontiero v. Richardson,* where a plurality of the Supreme Court argued that "classifications based upon sex, like classifications based on race, alienage, and national origin, are inherently suspect and must therefore be subjected to close judicial scrutiny."[69] The Court went on to say that:

[69] Frontiero v. Richardson, 411 U.S. 682 (1972).

> Since sex, like race and national origin, is an immutable characteristic determined solely by the accident of birth, the imposition of special disabilities upon the members of a particular sex because of their sex would seem to violate "the basic concept of our system that legal burdens should bear some relationship to individual responsibility. . ." And what differentiates sex from such nonsuspect statuses as intelligence or physical disability, and aligns it with the recognized suspect criteria, is that the sex characteristic frequently bears no relation to ability to perform or to contribute to society. As a result, statutory distinctions between the sexes often have the effect of invidiously relegating the entire class of females to inferior legal status without regard to the actual capabilities of the individual members.[70]

The potential impact of this decision was mitigated by the concurring opinion of Justices Powell, Burger, and Blackmun, who insisted that it is not necessary to characterize sex as a suspect classification, and that the Court should refrain from setting that precedent until the States make their stance on the ratification of the Equal Rights Amendment.

Pregnancy Coverage in Disability Insurance. The most recurrent theme addressed by the courts relates to the question of whether excluding pregnancy from disability insurance constitutes sex discrimination. The lower courts have adhered to EEOC guidelines, but the Supreme Court ignored those guidelines and reversed the lower court decisions.

In *Wetzel v. Liberty Mutual Insurance Company,* the Third Circuit Court of Appeals stated that disabilities caused or contributed to by pregnancy are temporary disabilities and are to be treated as such under disability insurance.[71] The court agreed with the EEOC guidelines that higher costs for benefits for one sex shall not be a defense under Title VII to a charge of sex discrimination in benefits.

A Federal district court in Virginia followed in a similar vein 3 months later with its decision in *Gilbert v. General Electric Co.:*

> There is no rational distinction to be drawn between pregnancy related disabilities and a disability arising from any other cause. The defendant does not exclude from coverage any disability because it was voluntarily incurred other than disabilities arising from childbirth or other pregnancy related conditions. That this is sex discrimination is self-evident.[72]

In two major cases reviewed by the Supreme Court on the issue of disability coverage for pregnancy, the direction of the lower courts was reversed. In *Geduldig v. Aiello* and *General Electric Co. v. Gilbert,*

[70] 411 U.S. 682 (1972).
[71] Wetzel v. Liberty Mutual Insurance Co., 511 F.2d 199 (1975).
[72] Gilbert v. General Electric Co., 375 F. Supp. 367 (1974).

the Court maintained that, as a condition unique to women, pregnancy and any related disability may be excluded from employment compensation plans covering other physical disabilities without constituting discrimination on the basis of sex. The plaintiffs in *Geduldig* brought the case under the equal protection clause of the 14th amendment by charging that the pregnancy exemption of the State's disability insurance program denied women full protection from disability-related expenses and loss of income, while it provided full protection to men.[73] Plaintiffs in *General Electric* [74] filed under Title VII of the Civil Rights Act, which prohibits discrimination on the basis of sex in employment compensation, terms, conditions, and privileges.[75] In *General Electric,* plaintiffs charged that the company disability insurance plan, considered part of the company's employment compensation, deprived women of full insurance coverage by excluding pregnancy disability coverage, while offering full coverage to men.

In both cases, the Supreme Court ruled that the pregnancy exclusion did not constitute sex discrimination on its face. The Court defined the issue, instead, as one of "underinclusiveness,"[76] in that the programs insure certain disabilities and exclude others. The Court found no evidence that the selectiveness of insurance risks works to discriminate against any definable group or class:

> There is no risk from which men are protected and women are not. Likewise, there is no risk from which women are protected and men are not.[77]

> The Plan, in effect (and for all that appears), is nothing more than an insurance package, which covers some risks, but excludes others. . . As there is no proof that the package is in fact worth more to men than to women, it is impossible to find any gender based discriminatory effect in this scheme simply because women disabled as a result of pregnancy do not receive benefits; that is to say, gender-based discrimination does not result simply because an employer's disability benefits plan is less than all inclusive.[78]

A comprehensive insurance plan which is less comprehensive for one group of individuals than for another denies equal protection to that group. In stating that there is no risk from which men are protected and women are not,[79] the Supreme Court ignores the

[73] Aiello v. Hansen, 359 F. Supp. 792 (1973); Geduldig v. Aiello, 94 S.Ct. 2494 (1974).
[74] The Supreme Court case is usually referred to as *General Electric* and the lower court case as *Gilbert.*
[75] 375 F. Supp. 368 (1974).
[76] Geduldig v. Aiello, 94 S. Ct. 2492 (1974); 45 U.S.L.W. 4031 (1976).
[77] 94 S.Ct. 2492 (1974).
[78] 45 U.S.L.W. 4035 (1976).
[79] 94 S.Ct. 2492 (1974).

purpose for which the disability insurance coverage was intended. The insurance plans in both cases covered disabilities due to voluntary risks, and also disabilities unique to men, such as prostatectomies, vasectomies, and circumcisions. In his dissent in *General Electric,* Justice Brennan points to the flaw in the Supreme Court's rationale:

> In fostering the impression that it is faced with a mere underinclusive assignment of risks in a gender-neutral fashion—that is, all other disabilities are insured irrespective of gender—the Court's analysis proves to be simplistic and misleading. For although all mutually contractible risks are covered irrespective of gender. . .the plan also insures risks such as prostatectomies, vasectomies, and circumcisions that are specific to the reproductive system of men and for which there exist no female counterparts covered by the plan. [P]regnancy affords the only disability, sex-specific or otherwise, that is excluded from coverage.[80]

Aside from the "underinclusiveness" rationale, the Court argued that pregnancy is not comparable to other disabilities, since it is a voluntary condition rather than a disease.[81] The fallacy of this argument is discussed by the dissenting Justice Brennan:

> The characterization of pregnancy as "voluntary" is not a persuasive factor, for as the Court of Appeals correctly noted, "other than childbirth disability [General Electric] has never construed its plan as eliminating all so called 'voluntary' disabilities," including sport injuries, attempted suicides, venereal disease, disabilities incurred in the commission of a crime or during a fight, and elective cosmetic surgery. . . .Similarly, the label "disease" rather than "disability" cannot be deemed determinative since General Electric's pregnancy disqualification also excludes the 10 percent of pregnancies that end in debilitating miscarriages,. . .and cases where women recovering from childbirth are stricken by severe diseases related to pregnancy.[82]

Financial Responsibility of Childbearing. Equal rights and equal protection under the law guarantee that all rights will be protected equally among individuals. The Third Circuit Court of Appeals commented in *Gilbert v. General Electric Company:*

> "Women. . .must be permitted to be women," and this means a right to be "women" without being burdened by any discrimination in employment benefits, whether in wages or in fringe benefits, on account of characteristics peculiar to their sex.[83]

[80] 45 U.S.L.W. 4038 (1976).
[81] 45 U.S.L.W. 4034 (1976).
[82] 45 U.S.L.W. 4038 (1976).
[83] Gilbert v. General Electric Co., 519 F. 2d 661 (1975), quoting Note, 1968 *Duke Law Journal* 671, 721–22.

The insurers in *Geduldig* and *General Electric* maintained that the exclusion of pregnancy from coverage prevented women from receiving additional benefits which are not available to men.[84] This view, that the benefits and responsibility of pregnancy are limited to the individual mother, is a very narrow understanding of the relationship between childbearing and social welfare. The district court opinion in *Gilbert* expressed the wider view that childbearing, as the necessary means of procreation, is an essential part of human existence. If additional costs are generated by women as a result of pregnancy and childbirth, the court reasoned that these costs should be shared by the whole society which benefits from the birth of chidren.

> If it be viewed as a greater economic benefit to women, then this is a simple recognition of the women's biologically more burdensome place in the scheme of human existence. An industrial policy which does not account for this fails in providing such sexual equality as is within its power to produce. If Title VII intends to sexually equalize employment opportunity, there must be this one exception to the cost differential defense.[85]

The Supreme Court decisions in *Geduldig* and *General Electric* have effectively closed the Federal courts as an avenue for challenging the exclusion of pregnancy from disability coverage. However, the State courts have the ultimate authority over State laws and are not bound by the Supreme Court decisions on Title VII. Shortly after *General Electric,* the New York Court of Appeals ruled that a disability plan which does not cover pregnancy-related conditions violates New York's human rights laws.[86] Prior to *General Electric,* several other State courts (in Wisconsin, Iowa, and Massachusetts) required pregnancy coverage in disability programs under their respective fair employment practices acts. These requirements were not affected by the General Electric decision.

State Insurance Regulations

A number of States have conducted investigations of women and insurance, either through the auspices of insurance commissioners' offices or the State women's commissions. These investigations resulted in a series of recommendations to improve women's rights in obtaining insurance. In some States, the proposals of the investigating group resulted in significant changes in insurance regulations. The

[84] 359 F. Supp. 800 (1973).
[85] 375 F. Supp. 383 (1974).
[86] Patricia Beyea, et al., "Notes from the Women's Rights Project" (ACLU Foundation, New York: February 1977).

following pages summarize some of the more illuminating recommendations made in the States.

In 1974, Pennsylvania conducted the first of the State studies on sex discrimination in insurance. This study resulted in a comprehensive set of recommendations for executive action by the Pennsylvania insurance department division of policyholders service, and for rate regulation by the bureau of rate and policy regulation.[87] Based on these recommendations, the Pennsylvania insurance commission invalidated all insurance policies which discriminate on the basis of sex. The regulations issued by the commissioner were addressed in Pennsylvania Senate Bill 561 which prohibited all types of discrimination in the advertising, underwriting, and sale of insurance. The bill deemed unlawful a company's refusal to write any particular coverage on the basis of sex, marital status, family size, or occupation. Rate differentiations based on sex are still permitted, but insurance companies are now required to prove that the rate differentials are justified on the basis of claims experience. This senate bill was enacted and became the Unfair Insurance Act of 1974 which bans discrimination in coverage, benefits, and availability. However, it does not address the issue of sex discrimination in insurance rates.[88]

In New Jersey, James J. Sheeran, the commissioner of insurance, proposed in 1975 that: "No person engaged in the business of insurance shall refuse to issue any policy of insurance or shall decline to renew such policy because of the sex and/or marital status of the applicant or policyholder."[89] This ruling is designed to eliminate discrimination in availability by requiring all insurers to make available to both men and women any coverage that was previously available to only one sex. Later clarifications of this ruling specified that group plans which offer maternity benefits to the spouses of male employees must also offer such benefits to female employees. Group plans must also make dependent coverage equally available to both sexes.

The New Jersey insurance commission has challenged several other discriminatory practices. The problem of the male insured's policy taking precedence over the female's in coverage of dependents is addressed by a ruling that the primary coverage would be that of the parent who has financial responsibility for the child. Equal access to maternity coverage is mandated by a requirement that it be offered to single, divorced, separated, and widowed women on the same terms as it is offered to married women. Finally, life and health insurers in New

[87] Pennsylvania Report, pp. 39–47.
[88] Ibid., p. 41.
[89] State of New Jersey, Department of Insurance, Official News Release, June 8, 1975.

Jersey are forbidden to treat complications of pregnancy more restrictively than any other sickness or illness.[90]

In New York, a task force on sex discrimination in insurance completed a report in 1974. The task force made three basic recommendations to the department of insurance: (1) amend the insurance law to prohibit discrimination by sex and marital status in policy offerings, benefit provisions, cancellation, nonrenewal, and refusal to issue policies; (2) require the insurance department to examine and certify data upon which actuarial tables and rating classifications are developed; and (3) create an affirmative action unit to review policy offerings and underwriting guidelines to eliminate bias.[91] The insurance law was amended to outlaw discrimination as suggested in the first recommendation; the other two recommendations were not implemented. At the present time, the New York insurance department is investigating the possibility of requiring that maternity care cover abortions.

It was mandated in New York that health insurance policies cover maternity conditions as they would any other illness (there is a 4-day hospital limit and State government workers are excluded). The Health Insurance Association and 22 insurance companies have brought suit against the State to overturn that requirement. The companies claim that group policies can absorb the increased cost of such coverage, but that policyholders of individual plans will have to pay a high price. Presently, individual policies covering maternity costs sometimes require deductibles as high as $1,000 or $1,500. This prohibitively expensive deductible may cause all women except those planning a pregnancy to drop their health coverage, thus creating a "self-selection" process which drives costs of insurance even higher.

The State of Michigan has adopted an Unfair Trade Practices Act, effective in April 1977, which contains a clause prohibiting unfair or deceptive practices in insurance. This clause specifically prohibits the refusal "to insure or continue to insure an individual or risk solely because of. . .race, color, creed, marital status, sex or national origin."[92]

In California, a number of insurance bills have passed the legislature. Disability and health insurance policies which offer maternity coverage are prohibited from limiting complications of pregnancy they cover. Health care services plans, group policies, and self-profit hospitals are prohibited from providing fewer benefits to employees than they provide to spouses of employees. Health insurance

[90] James J. Sheeran, commissioner of insurance, letter written to the Presidents of all Companies Writing Property and Liability and Life and Health Insurance in the State of New Jersey, Mar. 26, 1976.

[91] New York Report, p. 1.

[92] Michigan Report, p. 52.

companies are required to provide conversion rights of terminated employees to spouses who are no longer legal dependents. State-required disability insurance must cover normal pregnancy for a period of 3 weeks before and 3 weeks after the birth of a child.

More action to combat sex discrimination in insurance is being considered in California. In the current legislature, two bills were introduced. The first provides for workman's compensation for household employees, and the other requires the insurance commissioner to evaluate the validity of sex differentials in insurance.

During the 1975 general session of its general assembly, Colorado passed a series of acts which prohibit various sex-based insurance practices. Pregnancy complications in Colorado must now be treated like any other illness, and maternity coverage must be offered to single and married women in group or individual policies. Classification cannot be based on sex or marital status unless justified actuarially, and insurance companies must offer conversion privileges to spouses.

In North Carolina, after receiving a report from the task force on women and insurance, the insurance commissioner proposed and held a series of hearings on regulation of sex discrimination. At the hearings, the insurance industry, with the support of the task force, proposed more specific regulations based on the National Association of Insurance Commissioners' (NAIC) model regulations.

The NAIC model regulations, which have been used in many States considering insurance reform,[93] are designed "to eliminate the act of denying benefits or coverage on the basis of sex or marital status" in the terms and conditions of insurance carriers.[94] The regulations address the problem of sex discrimination in availability and scope of insurance coverage. However, they do not address the important issues of adequate maternity coverage under health and disability insurance, nor do they address the sex discrimination inherent in the use of sex-based classifications in insurance. The NAIC believes that availability of coverage and rate determinations are separate issues and that availability should be addressed first because "any attempt to tamper with the pricing mechanism of the insurance business must be approached with great care."[95]

V. Avenues for Further Action

Past efforts to eradicate sex discrimination in insurance have realized some progress and have also suffered serious setbacks. There are still a number of promising avenues women can pursue to bring about significant changes in availabliity, scope, and rates of insurance.

[93] Among these States are Arkansas, Idaho, Iowa, Nevada, Ohio, Tennessee, Wisconsin, and Texas.
[94] National Association of Insurance Commissioners, *Proceedings*, vol. 1, 1976, p. 503.
[95] Ibid., preamble.

Women can work for improved State regulations. They can also encourage insurance companies to improve insurance coverage and rates by registering complaints, serving on company boards, and initiating court action. To improve their health insurance coverage, women can take advantage of alternative insurance schemes currently available and also press for specific provisions in a future national health insurance program. Finally, the ERA can be a useful tool in abolishing the sex-based classifications which have fostered discrimination in insurance. These and other recommendations are discussed more fully in the following pages.

Improving Insurance Regulations

Although advances have already been made in insurance regulations in many States, none has gone the full distance of meeting all of women's insurance needs. On the basis of trends already established in some States, the following suggestions are made for improving current State insurance regulations. To ensure equality in availability and scope of all insurance, it is recommended that insurance commissioners require that:

- Insurance policies may not limit the amount of coverage an insured person may purchase based on the sex or marital status of that person.
- Policy options, as well as basic coverage, are equally available to men and women, regardless of marital status.
- Companies guarantee conversion options in case of divorce, separation, or death on all insurance sold on a family or husband-wife basis.
- The insurance policy of the person financially responsible for a dependent child is primary over the insurance of the other parent.
- Dependent coverage is available to families (including husbands) of female employees if such coverage is available to wives and children of male employees.
- Insurance agents may not sell any policy on the life of an insured's spouse without first contacing that spouse and witnessing the spouse's signature on the application.
- Insurance agents must notify all spouses when they are dropped as beneficiaries from life insurance policies.
- Insurance companies may not drop or alter the dependent coverage of an insured's health policy without first notifying the dependent of the change.

In order to improve the availability and scope of disability insurance offered to women, State insurance commissioners should require that:

- Disability plans may not include more restrictive benefit periods and more restrictive definitions of disability for women than men in the same job classification.
- Disability plans offer women the same monthly benefits as men in the same job classification.
- Females are offered disability coverage on the same basis as males when employed at home, on a part-time basis, or by relatives.
- Disability coverage includes conditions related to pregnancy on the same basis as other conditions which prevent a person from working.

Health insurance plans can be improved for women by regulations requiring that:

- All health insurance policies cover pregnancy and related complications, without special riders or rates.
- Maternity benefits are available to both married and unmarried women, including female dependents.
- Newborn infants are covered by the family or individual health policy immediately upon birth.
- Health insurance policies may not include any provisions which restrict, reduce, modify, or exclude benefits relating to coverage of the genital organs of one sex.

The problem of unfair rate differentials between men and women can be rectified by requiring that:

- Insurance companies submit substantial loss experience, sales, claims, and complaint data by sex and marital status so that systematic rate approval procedures can be established.
- Rate approval is monitored on a regular basis, preferably with the participation of a consumer division within the insurance department.
- The use of sex-based classification in establishing rates is prohibited.

Alternative Consumer Activities

As individuals or as members of organized groups, women can use alternative mechanisms to challenge discriminatory practices in insurance. In their respective States, women can lobby for the creation of a special consumer division within the State insurance department. This division should contain a fair representation of women, particularly female actuaries, economists, statisticians, accountants, and lawyers. Such a group would increase the responsiveness of the department to insurance complaints and would serve as a lobbying force for improving insurance services to consumers.

When possible, women should attempt to serve on insurance company boards, in order to have a direct impact on insurance

company policies and underwriting. Female employees can press their employers for more adequate insurance, either through union negotiations (when applicable) or through other organized efforts with fellow employees.

Women who personally experience discrimination in obtaining insurance should consider filing complaints with organized groups dealing with problems related to insurance, consumers, or women. It is important to keep informed of what insurance companies are legally permitted to do in a particular State. As discussed earlier, individual agents may create problems for women even if the insurance company itself has no specific policy vis-a-vis women. It is also possible for an agent to be uninformed about a new interpretation of an existing regulation or the issuance of a new one. Filing complaints may bring an adjustment to a particular problem. Equally important is the impact that complaints have in educating legislators, insurance commissioners, and insurance companies.

A complaint letter should be addressed to the insurance company responsible for the discriminative act. Copies should be sent to one or more organized groups which can offer support. The insurance commissioner's office is a very good place to start with an inquiry or a complaint. A local or State consumer organization should be informed of unfair insurance practices. Equally important are the State commissions on women because they deal specifically with women's issues.

If legal grounds exist for challenging sex discrimination in insurance, at least two options are available. The first is the Public Interest Research (PIRG), which is modeled closely after the Ralph Nader group in Washington, D.C. Its members are university and law students who work with professional research staff to challenge both the government and business to be more responsive to public needs. The second resource for legal advice is the American Civil Liberties Union.

Health Maintenance Organizations

A health maintenance organization (HMO) is an organized system of health care delivery which provides comprehensive health services to an enrolled population, in return for a prepaid monthly or annual fee. With prepaid revenues and a fixed budget, an HMO's financial incentive is to contain costs. This financial incentive, coupled with a philosophy of preventive care, encourages HMOs to keep enrollees as healthy as possible by emphasizing regular physical examinations and early detection of disease. To qualify for Federal funds, HMOs must fulfill a list of requirements among which is the provision of unlimited basic services and regular preventive care.

Once an HMO has been approved by the Federal Government, the law requires that all employers of 25 people or more, within a 25-mile radius of the HMO facilities, must offer the HMO plan as an alternative to the more traditional health insurance plans. On behalf of employees who wish to join an HMO, employers must pay, at a minimum, an amount equivalent to premiums paid to an insurance company for employees using an ordinary health insurance plan. If HMO prepaid fees exceed these premiums, the employee must make up the difference. Generally, HMO fees are higher than ordinary health insurance premiums. Individuals can enroll in HMOs during an "open enrollment" period which is required of all federally-approved HMOs.

Although an HMO may require some extra out-of-pocket payments for health insurance, it is an option which women should consider. No other type of health insurance plan guarantees women such comprehensive and preventive health care services with minimum fragmentation. In order to take advantage of HMOs, women can do one of two things. First, they can inquire as to whether a qualified HMO exists in the community, by writing or calling Group Health Association of America in Washington, D.C., an umbrella organization of prepaid health plans. If no HMO is available to interested women, it is possible to participate in the development of an HMO through involvement in health planning agencies located in every region and State in the country.

National Health Insurance

A national health insurance (NHI) program is no longer a mere possibility in this country. It is now clear that some form of NHI will be initiated by the 95th Congress. Since 1973 at least 17 NHI proposals have been introduced in Congress, and even the most liberal and comprehensive fail to address all of women's health insurance needs. It is essential that women become aware of NHI issues which affect them and voice their demands during the imminent NHI debates in Congress. The issues which are particularly important to women are related to: eligibility requirements, covered benefits, and provider qualifications.

Eligibility requirements, by definition, determine who will be allowed to participate in an NHI program. Upon review of the past and current NHI proposals, it is instructive to distinguish between two principal eligibility definitions. The first is linked to family membership and employment status, and the second requires merely residency in the United States. Based on the first definition, the principal wage earner in the family would be enrolled in NHI, and his or her family would be eligible as dependents. Thus, a married woman who does not

earn more than her husband would be insured under his name. Should her marital status change, she may well find herself without health insurance until she is reinstated in her own name. The eligibility definition linked to family and employment would prevent many women from claiming their own health insurance and would only serve to reinforce women's economic dependence on men.

Under the alternative eligibility definition requiring only U.S. residency, every individual would be enrolled under his or her own name without regard to sex, marital status, income, employment status, or age. Since this definition leaves no room for sex discrimination, it is the one women should press for.

For women, as well as for all others, it is crucial to emphasize the preventive aspect of health services. So, aside from hospital and emergency room coverage for acute and chronic disorders, women should seek coverage for annual complete physical examination, including X-rays and laboratory tests. Health care expenses for normal and complicated childbirth and for newborn infants should also be covered. Covered preventive services should include family planning visits, contraceptive drugs and devices, abortion, prenatal and postpartem care, well-baby care, and annual gynecological screening tests, including breast exams and pap smears.

Physicians, hospitals, and group practices are traditional health care providers who can easily gain certification in any health insurance program. However, women also rely on other less traditional types of providers, including women's health centers, family planning clinics, and abortion clinics. These facilities face difficulties in qualifying for medicaid, medicare, and private insurance reimbursement unless they affiliate with hospitals and are closely supervised by physicians. These requirements come from the medical model tradition which places the physician at the top of the pyramid of health professionals and encourages the hospital's control of community health services. Yet, for many of the services used by women, physicians and hospitals are not the most appropriate providers. Many maternity-related services can be well provided by nurses, nurse-practitioners, nurse-midwives, family planning counselors, nutritionists, and trained health educators. Women's health care needs would be better served should they succeed in gaining NHI certification and financial reimbursement for these providers.

The Equal Rights Amendment

The Equal Rights Amendment (ERA) reads, in part, that "equality of the rights under the law shall not be denied or abridged by the

United States or by any state on account of sex."[96] Until the ERA is ratified by the necessary number of States and thereafter interpreted by the usual process of constitutional adjudication, one can only speculate on its potential impact on sex discrimination practices in insurance. Nevertheless, while working on ERA's ratification, women can research particular issues and formulate strategies which would supply information for legislative debate and provide direction for judicial interpretation.

To begin with, three questions must be asked. First, will the insurance industry, a private business, be touched by the ERA which is intended for Federal and State actions only? Second, how does the principle of equality apply to insurance practices? Finally, what does legislative history teach us about the limitation of this principle?

This issue of State action versus private action was addressed in *Stern v. Massachusetts Indemnity and Life Insurance,* where a Federal district court ruled that a State commissioner's approval of insurance policy forms and premium rates constitutes State action and therefore requires participation in the discriminatory provisions contained in the 14th amendment.[97] Since the ERA does not differ from the 14th amendment in its focus on Federal and State actions, this case may be used as a precedent to judicial arguments on the appropriateness of the ERA's application to the insurance industry.

Congressional hearings and analyses of ERA observers provide the basis for interpretation of the principle of equity underlying the amendment. A House minority report strikes down the use of sex groupings based on common, but not universal, charactersistics found in either gender:

> The existence of a characteristic found more often in one sex than the other does not justify legal treatment of all members of that sex different from all members of the other sex. . . The law may operate by grouping individuals in terms of existing characteristics of functions, but not through a vast overclassification by sex.[98]

The Senate Judiciary Committee was more specific and brief: "the basic principle on which the Amendment rests may be stated shortly: sex should not be a factor in determining the legal rights of men or women."[99]

In one of the most extensive analyses written on the ERA, the *Yale Law Journal* translates the equality principle into an unequivocal ban against sex-based groupings and insists that, under the ERA, sex is not

[96] H.R.J. Res. 208, 92d Cong. 1st sess. (1971); S.J.Res. 8, 92d Cong., 1st sess. (1971).
[97] Stern v. Massachusetts Indemnity and Life Insurance, 365 S. F. Supp. 433 (1973).
[98] S. Rep. No. 92-689, 92d Cong., 2d sess., 11-12 (1972).
[99] S. Rep. No. 92-689, 92d Cong., 2nd sess., 9 (1972).

a permissible factor in any classification used in Federal or State activity:

> The issue under the Equal Rights Amendment cannot be different but equal, reasonable or unreasonable classification; suspect classification, fundamental interest, or the demands of administrative expediency. Equality of rights means that sex is not a factor.[100]

Regardless of how absolutely the ban is defined, both the literature and the legislative hearings concede to one exception: gender categories may be allowed when they are based on physical characteristics unique to one sex:

> [The ERA]. . .does not require that women must be treated in all respects the same as men. Equality does not mean sameness. As result, the original resolution would not prohibit reasonable classification based on characteristics that are unique to one sex.[101]

After the ERA was ratified in Pennsylvania, this "uniqueness" clause was applied directly by the State's insurance department when it instructed insurance companies that premium rate differences between males and females would be allowed only with proof "that the statistical variations used in support of discriminatory rates or benefits are directly related to inherent physiological differences between the sexes, or that the discrimination by sex can be supported by other compelling rationale."[102]

Although women may benefit from the equality principle, application of the physical uniqueness clause raises serious questions. For instance, would this clause strengthen the industry's position on excluding pregnancy-related conditions from disability and health insurance coverage? Women should take the initiative to guarantee that ERA is passed and that it will be used to eradicate the inequities which women have faced in the past. Clearly, some precedents already exist to encourage women in this effort. The ERA holds much promise for women in insurance because of its potential to inhibit the use of the sex-based classification. However, its impact would be undermined unless women initiate clear directions for eradicating sex discrimination in the insurance industry.

In sum, the ERA has the potential of carrying the issue of sex-based classification over and beyond the threshold anticipated by the Supreme Court in *Frontiero v. Richardson* (the case which discussed

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[100] Barbara Brown, et al., "The Equal Rights Amendment: A Constitutional Basis for Equal Rights for Women," *Yale University Journal*, vol. 80 (1971), p. 877.

[101] S. Rep. No. 92-689, 92nd Cong., 2d sess. (1972), 11-12.

[102] Richard W. Simpson, director, Bureau of Regulation of Rates and Policies, Pennsylvania Insurance Department, letter to Health Insurance Association of America Member Companies, Feb. 20, 1973, cited by Gillooly.

sex as a suspect classification). Sex would not only be labeled a suspect classification, it would be banished from actuarial tables, unless it can be specifically linked to unique physical sex differences which contribute to higher risks in insurance.

VI. Conclusions

Sex discrimination continues to prevail in the insurance industry in spite of previous challenges from the courts and from State regulatory agencies. Women themselves can counter this discrimination to a limited extent, but much remains to be done by the Federal Government and State governments. All the legal issues should be carefully studied in order to develop means by which these discriminatory practices are prohibited.

Comments

By E. Paul Barnhart, Consulting Actuary, St. Louis, Missouri

The paper "Sex Discrimination in Insurance," by Naomi Naierman and Ruth Brannon, is to be commended for identifying and analyzing a variety of practices within the voluntary insurance industry—a few of them still prevalent, most of them rapidly disappearing and largely of the past—which can be viewed as "discriminatory" on the basis of sex. Some of the problems and practices dealt with in the paper are important ones, deserving first to be recognized, next to be understood and analyzed from the standpoint of whether unfair discrimination is in fact the result, and, if so, lastly to be addressed in relation to possible correction of any such unfairness.

It is in this light that I am compelled to offer some critical comments on the paper, because it contains extensive inaccuracies and makes significant omissions, which simply must be put into focus if we are to address this entire subject in a balanced, fair, and objective manner.

I. The "Facts" Presented in the Paper Are Out of Date

First of all, the "facts" presented in the paper, as evidence of discrimination, are seriously out of date, by at least a decade. I wondered as I read it whether it had not been written sometime around 1965.

For example, the paper describes as "prevalent" the practice of eliminating complications related to pregnancy from disability coverage. A decade ago this would have been true enough. Today, however, several major States, including California, New York, Pennsylvania, and others, *prohibit* the exclusion of complications related to pregnancy. This has a powerful effect on what is actually done in other States that lack such a prohibition because, once several major States either prohibit or require some particular provision, insurance companies operating multistate or nationally tend to follow such rules everywhere, rather than sell policies with provisions that vary State by State, a situation that can greatly complicate their advertising, sales literature, rate structures, and administration of policy claims. Other companies operating in only a few States must then compete with such "liberalized" products, and also must anticipate the likely spread of such rules to one or more of *their* States, and therefore tend to follow suit. While *instances* of exclusion of complications still exist, the practice is increasingly uncommon. It is hardly accurate, therefore, to characterize this as "prevalent."

Again, the paper asserts that "many policies carry a provision which reduces benefits to women who, at the time of disability, are not employed away from home on a full-time basis." There are very few such policies being sold today. This provision is rapidly becoming as rare as the dodo bird, fast becoming an item for collectors of quaint old specimen insurance contracts. During the last 5 years, I have assisted more than 15 different insurance companies, several of them large and nationally operating, in the development of new disability insurance products. Not a single one of these recent disability plans still retains this obsolete provision.

Similarly inaccurate, out-of-date statements in the paper are these:

- "After the basic [benefit] period has expired, the disabled individual must show that he or she is unable to perform the duties of *any job, even if it is unrelated to the original occupation.* " (My brackets and emphasis.) This restriction is *rarely used anywhere today* and, again, is prohibited outright in many States. Yet the authors appear to be presenting it as a standard restriction in customary use. The fact is that today the usual, "prevalent" requirement following the basic period is that the disabled person be unable to engage in any occupation which is "reasonable" for that person's education, training, experience and (often) even her level of income. The assertion by the authors that a surgeon, as of the end of the basic period, would have to prove that she could not even perform as a salesperson or telephone operator would be an exceedingly unlikely circumstance, and I challenge them to *document* even one single instance of this, involving any disability policy issued within the past 15 years. Even if they could unearth one such unlikely case, it could only mean that the insured did no shopping at all for a decent contract, for most available policies would have contained the usual, more liberal provision. Disability income insurance is very highly competitive, I assure you, and very liberal provisions *abound.*
- The paper asserts that women (but presumably not men) find that "certain types of [disability] insurance plans are totally unavailable or severely restricted." This *seldom* occurs today.
- "Accident disability insurance which is usually available to men for life is offered to women only until the age of 65." All such distinctions as this, as to availability of coverage, are today close to disappearing altogether.

The paper goes on and on this way, citing obsolete practices out of the past as though they are the prevailing state of affairs in 1978.

Why can I assert with such confidence that the paper presents a totally out-of-date, and therefore seriously inaccurate and distorted, picture of the availability of coverage **today?**

Simply because, in a rapidly growing number of States, including the major population States I have cited, regulations in effect today **prohibit** an insurance company from: (1) offering disability plans to men that are not also availale to women in the same occupational class; (2) observing underwriting rules that permit higher income amounts to be issued to men than to women in the same class; or (3) including any provision in a disability policy that restricts coverage purely on the basis of the sex of the policyholder. In these States, which as I have said strongly influence what multistate insurers do in every State, the only distinction now generally permitted is rate classification based on sex. Many of these regulations, to be sure, are quite recent, but I presume we are here today to discuss what is happening **today,** not what may have been happening 5, 10, or 15 years ago.

The authors apparently presume rate differences by sex also to be unfairly discriminatory. It would **actually** be unfairly discriminatory, sometimes against the other, depending on age and type of insurance, if rate classification based on sex were to be *prohibited.* I will return to this very central and basic issue later.

II. The Paper Fails Correctly to Define Disability and Health Insurance as Insurance Against Loss Due to Injury or Sickness

The authors state that "Disability insurance protects an individual from loss of income due to inability to work." That is an incomplete and incorrect statement. A correct definition would have added ". . .inability to work *because of injury or sickness.* " The authors' omission of these key words is significant because the paper makes much of the fact that few disability policies cover *normal* pregnancy, which by no reasonable stretch of logic can be deemed "injury" or "sickness"— *unless* resulting complications arise. As I've already mentioned, fewer and fewer contracts today exclude *complications* related to pregnancy, but most very definitely exclude normal pregnancy.

Disability insurance is a subdivision of health insurance generally, and the National Association of Insurance Commissioners defines "health insurance" as insurance against *loss resulting from injury or sickness.* That is the *category* of insurance against loss we are talking about here. We are **not** talking about insurance designed to cover loss of time due to unemployment, for example, nor are we talking about some kind of "insurance" normally intended to cover expense or loss of time arising on account of conditions **not** resulting from injury or sickness, including normal pregnancy, purely voluntary, elective surgery such as sterilization or cosmetic surgery, or such things as well-baby care or routine annual physical exams.

Most disability insurers quite definitely intend in general to limit the coverage sold to **men** or **women** to loss of time resulting from injury or sickness, contrary to the authors' inference that it is commonplace to cover *male* elective procedures such as vasectomies and facelifts. Normal pregnancy is not excluded on the excuse that it is a "voluntary condition," as contended by the authors; but because, along with many other conditions, it simply is not injury or sickness. One area where many disability insurers have expanded coverage beyond pure injury and sickness insurance, in the process of marketplace competition, has been to extend *limited* coverage to loss of time due to donation of an organ, such as a kidney, for transplantation to another person.

Even though the voluntary, private health insurance industry is moving rapidly toward virtually universal coverage of "complications" related to pregnancy, difficult problems remain. "Complications" are not easy to define and it is not easy, once "complications" are no longer limited or excluded, to draw the lines between "normal" and "abnormal." Some companies have tried to list *specifically* what complications will be covered, such as, for example, eclampsia, postpartem hemmorrhage, and ectopia. This remains unsatisfactory, however, because other very serious complications also arise, which deserve to be covered as well. If there are justifiable social and economic reasons for spreading the costs of maternity and childbearing more broadly across the population, and there may well be such reasons, I suggest that voluntary, private injury and sickness insurance is not the proper medium to shoulder the burden of the additional cost and underwriting difficulties associated with this. This is not really an *insurable* "loss"; it is *extraneous* to insurance intended to cover loss resulting from injury and sickness. Some separate, perhaps governmental, vehicle should probably be devised to subsidize maternity and childbearing costs if it is clearly demonstrated that substantial numbers of women need financial assistance or subsidy in this basic area.

It *is* possible successfully to cover normal pregnancy, within limits, under *group* health and disability insurance plans, but attempts to do so under individually underwritten health insurance present extremely difficult problems. I'll return to this point.

III. The Paper Fails to Recognize that It Is Discussing a Voluntary U.S. Insurance System and Completely Fails, Further, to Distinguish Between Group and Individually Underwritten Policies

Why is it so vital to recognize that the American health insurance system is essentially a **voluntary** system?

First, from the point of view of the **buyer** —the public. **Buyers** of insurance have the free right to buy or not to buy and, further, the

right to **select** among various plans, with various prices and provisions, which compete against each other in the marketplace. Buyers in general will tend to select those plans that best meet **their** own peculiar needs, and at what they deem the fairest price for **them.** Buyers also will obviously tend to buy what **they** can afford and may pass up "Cadillac" plans that provide nice, broad coverage, to be sure, but which simply cost too much. Finally, within a given plan, buyers like to have **options, alternatives,** and will select among these in their own best interests, weighing alternate coverages and values against their relative cost.

Consequently, when government, through laws, court actions, and regulations, overlays this voluntary system with one layer after another of mandatory coverage, minimum benefits, prohibited exclusions, underwriting and classification restrictions, etc., etc., it erodes and ultimately destroys the buyer's right to choose what meets his or her own peculiar needs and, along with that, the buyer's ability to buy what he or she can afford or to choose the plan that has the fairest price for that individual (or voluntary group of individuals). Intending to act in the "public interest," government thus often artificially creates results wholly contrary to the public interest, driving up costs, destroying or minimizing the possibility of choice, and, in general, undermining every real benefit of free and open market competition.

Now, from the point of view of the **seller** —the insurance industry. Since, under a voluntary sytem, buyers can elect whether to buy or not to buy and will obviously tend to decide based on their perceptions of their own best interests and what they can afford, insurance companies are obliged to do two things: they must (1) design a variety of plans and provisions at various prices to appeal to the broadest possible spectrum of the buying public; and (2) they must *underwrite* ; that is, they must select and evaluate applicants for insurance in relation to their most probable or potential **risk.** Otherwise, buyers, free to select and to buy or not to buy, will inevitably take advantage of the best "bargains" in terms of their *own* risk and best interests, a process known in insurance parlance as "antiselection." Insurers are forced to "select"—that is, to underwrite and classify—because buyers will otherwise successfully "antiselect," and the insurers will lose money and eventually simply go bankrupt. It has happened many times.

The whole "name of the game" in voluntary insurance is **risk.** Everything that has to do with voluntary insurance is in some way related to the concept of "risk." The insurance company, or "underwriter," must access and measure the **risk** it proposes to insure and, with reasonable equity, *classify* and *price* each particular risk in relation to the insurance provisions and the scope of coverage involved.

This necessarily means that the insurer, in any voluntary system such as that which exists in the United States, *must* evaluate those factors which have a direct, known bearing on the extent of the risk and the resulting expected cost. In life, health, and disability insurance, there is simply no question but that sex, age, occupational category, medical history, and a number of other key factors have a very substantial and direct, measurable bearing on the extent of the risk and the cost of that risk. One might prefer that some *different* assortment of characteristics should be used to measure the risk more fairly or equitably, but I think a heavy burden of demonstration certainly falls on anyone seriously advocating a different assortment of risk-classification parameters than those in common use.

Imagine what would happen in a voluntary life and health insurance system if such major basic factors affecting risk as sex and age were prohibited from use in risk classification. Older persons would buy both; the price would favor them. The young would tend to drop out. Such valuable life insurance plans as decreasing term mortgage and income protection plans, so important to young families buying a home and becoming established, would probably disappear or become unaffordable to the young breadwinners who need them most.

Under pension and retirement plans, optional choices such as cash settlements, cash refund annuities, and life annuities would have to be withdrawn. Men, with shorter life expectancy, would tend to select the cash options. Women, with longer life expectancy, would tend to select life annuities. In health insurance, each sex would tend to choose whatever choice or option was more favorable. Costs would rise; options and choices would disappear.

There is simply no way to preserve a reasonable range of choices and options, as well as prices fair in relation to the risk involved, except to preserve the right of insurers to classify risks, and this includes sex, age, occupational class, medical history, and some other factors.

In considering sex and age, one must further recognize that these parameters must be taken into account in *combination* with each other. Age and sex are not independent characteristics. Thus, in life insurance, men represent substantially *greater* risks than do women at all ages, but the *degree* of difference varies sharply with age. Women at age 35 experience about the same death rates as men do at age 18, a whopping 17 years younger. At age 50, women experience about the same death rates as men do at age 45, only 5 years younger. For women age 70 the equivalent age gap has widened again, the death rate corresponding about to that of men age 63, 7 years younger. At age 85, women experience about the same mortality as men aged 82, only 3 years younger, although the difference remains substantial because yearly death rates increase so rapidly at these high ages.

I have attached an exhibit to this discussion showing the *relative* level of female mortality and morbidity as compared to male, at various age intervals, under life insurance and under two representative health insurance coverages: a disability plan and a hospital daily indemnity plan.

Under life insurance (at the bottom of the chart), observe that for nonmedically examined policies, issued mostly in smaller amounts or else to younger applicants, the overall ratio of female to male mortality has remained very close to 60 percent all through the last 20 years. This is a **very** substantial difference that simply cannot be explained away by those who claim that sex is not really a valid statistical classification parameter in life insurance. The statistics also refuse those who claim that the difference in mortality between the sexes is disappearing as the roles and lifestyles of men and women merge closer together. Women enjoyed a slightly greater advantage over men in nonmedical life insurance during the 1970–75 period (57.9 percent of male) than they did during the 1955–60 period (59.3 percent of male).

Under medically examined life insurance, mortality by sex does show a trend; the ratio of female to male mortality rising from 55.8 percent for the 1955–60 period to 65.0 percent for the 1970–75 period. This may be due to the fact that mortality rates increase under increased *amounts* of life insurance, and the *average* amount of medically examined life insurance bought by women has been *increasing* in relation to the average amounts bought by men.

In the health insurance statistics, there are three key facts to note in the relative female to male "morbidity" ratios (ratios of female to male average claim costs):

1. The pattern, under *either* disability or hospitalization insurance, is quite different by age than is true under life insurance. Under age 30, female costs are moderately higher than male. The ratio hits a "peak" in the thirties, in some cases approaching or even exceeding 200 percent of male, then declines until above age 55 or so female costs become **lower** than male costs.

2. The pattern for disability insurance is essentially similar to that for hospitalization, except that it tends to "peak" *high* in the thirties and to fall *lower* above age 60. A similar pattern of "peaking and falling" by advancing age exists for **all** health insurance (except accident only), including such coverages as major hospital and medical and basic surgical-medical insurance. The disability ratios shown are for the **same** occupational classification and refute those who claim that disparate costs by sex under disability insurance are the result of restrictive female underwriting practices by insurers or the result of outside social or economic influences. Hospital insurance has long

covered women on a mass scale, with coverage essentially equal to that of men; and the fact that its pattern is closely similar to that under disability insurance places a formidable burden of proof on those who claim that the disability cost ratios are not truly and directly a result of the sex of those insured.

The chart also shows the "volume ratio"; that is, the number of female claims as compared to male. This is considerably higher than many people might have thought: 24 percent way back in the 1960–63 period and around 45 percent in the 1972–73 period. Accordingly, the female statistics are statistically quite credible.

3. Finally, these female to male health insurance ratios show that there is little, if any, clearly discernable *trend* by year of experience. The patterns and general overall levels of the ratios have remained relatively stable from 1960 through 1973.

What all of this shows is that sex, just as much as age and, in fact, in **combination** with age, is quite clearly a major factor in measuring the **risk** involved both in life and in health insurance; and the ability of insurers effectively to underwrite and to price the risks they are asked to accept would be seriously, perhaps even fatally, **crippled** if they were denied the right to recognize both sex and age in risk classification. The result of such a prohibition would harm *buyers* of life and health insurance as well as the *sellers* because costs would rise and options would have to be withdrawn, to the ultimate detriment of everybody.

Factors such as sex and age have such a significant and direct bearing on the cost of the life and health insurance risk that, if government were to prohibit the insurance industry from recognizing these basic factors in underwriting and pricing the risk, it would be comparable to announcing to the auto insurance industry that it is still expected to provide the public with smooth-running, powered cars, but that engines and pneumatic tires are henceforth prohibited. Such an edict would, of course, be preposterous nonsense. It is really also preposterous nonsense to prohibit the insurance industry, the **risk** industry, from employing tools basic and essential to the measurement and pricing of risk. No act of government can do away with the actuarial **facts** of risk and cost. They will still be there and have to be dealt with rationally and sensibly.

Another fact to be learned from the statistics according to sex is that rate classification by sex does **not**, on balance, necessarily lead to higher costs generally for women, as the authors of the paper seem to be claiming. It depends on the "mix" of coverages and age in any given case. Life insurance *invariably* costs less for women—and I *agree* with the authors that women do not always get the full price advantage they deserve, in terms of favorable female mortality. The

trend in the future, however, is for them to gain a greater price advantage; and in any case, so far as life insurance is concerned, women would *clearly* be the losers under any mandatory "unisex" classification scheme. Under pensions and life annuities, without cash options, the reverse is obviously true. It costs more to insure women because as a class they obviously have substantially greater life expectancy than men.

Under all health insurance, cost by sex depends on age. Below around age 55, costs are higher for women. Above 55, costs tend to become lower for women. Here again, women have not received the advantage they deserve as to more favorable costs above age 55. Too many *disability* plans, in particular, are priced with rates for women remaining higher than, or at least no lower than, corresponding rates for men up to the highest "issue" age—usually about age 60. In all disability plans for which I do the rating, rates for women at the higher issue ages become lower than those for men, as they should, but not all insurers fairly recognize the favorable morbidity differential women experience about age 55. This is becoming recognized with increasing fairness, however, as time passes.

If I may now cite a *personal* example, my own total life and health insurance program would cost less were I a woman of the same classification as to age, occupational class, etc. The simple reason is that I carry a very substantial amount of life insurance, and this would cost enough less were I a female, even under existing rating practices, to more than offset *increased* cost in my health insurance protection. It just ain't necessarily so that women pay more. It depends on the "mix" in each case.

Group vs. Individual Insurance

Let me now turn to the question of whether the voluntary insurance involved is group or individual.

The problem of buyer choice and "antiselection," and the vital need of insurers to be able to underwrite and to classify risks, is much more crucial to individual insurance than to group insurance. The reason is that *individual* participation in a group plan is often not optional, and there are often limited, if any, alternative options. In particular, if the employer pays 100 percent of the cost of an employee and dependent benefit plan, no individual selection exists. If the employers contribute *part* of the cost, a limited degree, in effect, of individual selection occurs.

This means that, for some groups, it is not necessary to classify by age and sex. The cost is merely a function of the *actual* age-sex mix of the total group, and individuals do not choose to buy or not to buy. The U.S. social security system is an example of a gigantic group plan.

Participation is mandatory (for most of us), and it is not necessary, consequently, to rate by age, sex, occupation, or any other such parameter. The rates are a function of taxable wage only and the eventual benefits a function of average covered wages over a period of time, related to age only in terms of age of *eligibility* for benefits.

The greatly reduced, or eliminated, effect of individual selection in group insurance also means that it can more successfully cover relatively "uninsurable" items such as normal pregnancy.

Attempts to cover normal pregnancy in individually underwritten insurance lead to grave problems of "antiselection." Buyers who aren't interested in "pregnancy insurance" don't want to pay for it. Buyers who are interested tend to select *severely* against the insurer. For example, companies that issue hospital-surgical policies including even limited "maternity benefits" find that young couples planning to "utilize" the maternity benefits will buy in substantial numbers, and once pregnancy terminates and the maternity claim is paid, they will simply lapse the policy. If pregnancy were covered as though it were a sickness, leading to benefits of, say, $1,000 or more, as compared to a "limited" $200 or $300 maternity benefit, this antiselect buying and subsequent lapsing would become very costly to the insurer, and it would have to try to subsidize these high costs by charging more to other policyholders not interested in paying for the maternity coverage. Such a situation would impair the company's ability to compete in a free marketplace and would lead to considerable inequity as to who is having to pay for what.

The authors of the paper should have given much greater recognition, in their presentation, of the problems of risk and selection in individual insurance as compared to group insurance.

IV. Fair and Unfair Discrimination

The paper completely fails to address the absolutely basic issue of when "discrimination" may be fair and justifiable, and when it may be unfair or unjustified. The authors seem to presume that any sex-based differentiation in underwriting, in available plans and options, or even in premium rates themselves, is, *ipso facto,* unfair and improper. Presumably "discrimination" is "unfair" when it is inequitable, arbitrary, or prejudiced, not based on objective, relevant, valid facts and principles, which are in turn applied without bias and with equitable treatment.

The authors never face up to the question of what is *really* "fair" or what is "equitable." We are simply asked to accept as axiomatic that any differential of any kind, based on sex, is wrong. They do advance one argument for this view: that sex is an "accident of birth," beyond the control of the person. What, then, about age? That would seem to

be *completely* beyond the control of an individual. And how many people really have any *effective* control over their occupational class, medical history, or other risk parameters?

The point is that voluntary insurance, if it is to work at all, ***must***, as I have emphasized, have the ability to practice a reasonable and equitable degree of risk classification, and both sex and age are far too critical to evaluation of the "risk" for it to make any kind of sense, actuarial, economic, social, or otherwise, to prohibit either one of these in risk-classification systems.

Certainly, the classification, and resulting underwriting and rating actions of insurers, must be fair and objective in relation to known actuarial trends and statistics; and the authors are correct when they assert that this goal has not always been attained and is not presently always being maintained. Women frequently deserve better underwriting and rating treatment than they get, and this shortcoming of insurers should be eliminated. Progress is steadily being made in that direction.

In conclusion, the authors have brought out certain practices which seem, indeed, to involve *unfair* discrimination based solely on sex and about which more needs to be done, but it is unfortunate that so much out-of-date information, inaccuracy, and omission and failure by the authors to face certain very basic questions have seriously impaired the value and reliability of what they have to say.

Society of Actuaries Annual Reports

Ratios of Female to Male Claim Costs for Various Insurance Benefits (Individual Policies)
(Comparison by Experience Years Reported)

I. Disability loss-of-time insurance: 7-day waiting period, 1st year of benefit period (occupational class I)

Attained ages	1960–63 Claim volume ratio	1960–63 Cost ratio	1964–65 Claim volume ratio	1964–65 Cost ratio	1966–67 Claim volume ratio	1966–67 Cost ratio	1968–69 Claim volume ratio	1968–69 Cost ratio	1970–71 Claim volume ratio	1970–71 Cost ratio	1972–73 Claim volume ratio	1972–73 Cost ratio
Under 30		97%		178%	32%	135%	45%	140%	49%	117%	63%	103%
30–39		194		203	22	195	28	159	36	193	47	183
40–49	24%	147	24%	177	27	176	37	162	29	153	48	152
50–59		109		111	23	120	31	123	27	112	37	102
60–69		102		100	5	90	6	75	6	73	20	75

II. Hospitalization: 0 waiting period, 90-day maximum benefit period (all reported underwritten experience)

	1962–63	1964–65	1966–67	1968–70	1971–72
25–29	171%	164%	153%	151%	155%
30–34	183	188	172	165	165
35–39	177	163	172	168	160
40–44	166	170	159	157	157
45–49	144	140	142	138	132
50–54	117	116	112	112	111
55–59	95	94	98	94	92
60–64	88	86	89	82	83

Society of Actuaries Annual Reports

Ratios of Female to Male Claim Costs for Various Insurance Benefits (Individual Policies)
(Comparison by Experience Years Reported)
(continued)

III. Life insurance: Death rates under medically examined and non-medically examined business (1st 15 policy years combined)

	1955–60		1960–65		1965–70		1970–75	
Issue ages	Med.	Non-M.	Med.	Non-M.	Med.	Non-M.	Med.	Non-M.
25–29	61.9%	74.3%	96.8%	76.3%	88.4%	76.2%	112.8%	71.8%
30–34	72.9	69.5	82.3	74.8	96.3	70.8	84.6	72.4
35–39	60.4	65.2	68.2	68.8	71.9	67.2	86.1	73.9
40–44	58.4	54.6	61.2	57.5	62.3	54.7	71.7	64.3
45–49	54.1	54.3	53.8	54.9	54.7	46.3	59.9	61.8
50 and over	52.0	47.5	49.0	37.4	51.0	59.1	58.0	42.1
All ages	55.8%	59.3%	56.6%	63.0%	58.7%	59.4%	65.0%	57.9%

Discrimination Against Farmworkers in the Insurance Industry

By E.P. Vecchio, Project Director, Health and Education, and Oscar Cerda, Health Field Coordinator, National Association of Farmworker Organizations

NAFO is a national coalition/body of community-based, farmworker-governed organizations with affiliates in all of the United States, as well as Puerto Rico.

In reacting to the paper prepared by Naomi Naierman and Ruth Brannon, we shall do so as it involves and parallels those issues facing farmworker women, farmworkers, and the Spanish speaking in general. For I think that if those gathered here can sympathize, empathize, or support the contention and reality of discrimination in insurance for women, then we can also agree that farmworkers are victims, rather than beneficiaries, in this industry.

We preface our remarks with some basic characteristics and statistics on farmworkers:

(1) There are an estimated 6 million farmworkers in this country. The average family size is 3.4 to 4.5 people.

(2) In 1975 the Bureau of Labor Statistics estimated $9,838 to be a low standard of living. However, the average farmworker family median income is at or below $3,000 per year. Even more dismal are statistics for Hispanic women.

The educational attainment of Hispanics 14 years old and over is 9.0 years, as compared to 12.3 years for white males and females. Less than 3 percent of Hispanics within the ages of 25–34 have completed 4 or more years of college. The annual income for 48 percent of Chicanos is estimated at $2,000 per year; 36.6 percent earned between $2,000 and $4,999; 13.8 percent between $5,000 and $9,000; and only 1.1 percent earned over $10,000 per annum. Approximately 13 percent of Hispanic women support households on their own.

But the economic aspect of farmworkers is only one of the indicators of their status in society. The problems are further compounded by the diversity of cultures and languages within the farmworker community. Approximately 90 percent of the farmworker population is of Hispanic origin (i.e., Puerto Rican, Filipino, Mexican American, and Mexican). The remaining 10 percent is composed of blacks, Arabics, Asians, and whites, with blacks being the largest percentage.

Naturally, the migrant patterns of the farmworker are an issue of great concern and further complicate the matter in terms of discrimination.

As a working force, an estimated 20 percent of the American farmworkers is comprised of females. So the problem is compounded further by the following reasons for women:

(a) Low economic base;
(b) An ethnic situation of language and discriminatory barriers;
(c) High fertility factor;
(d) Low educational levels; and
(e) A migrant pattern that prevents the establishment of political, social, or residency base.

We would like to outline some of the barriers/obstacles faced by farmworkers that limit, if not prevent, their *access* to insurance. These, in our opinion, constitute *de facto* discrimination.

As a buyer of insurance the farmworker is limited by a variety of factors which we will discuss in further detail. However, we must impress upon you the fact that insurance and farmworkers are strangers to each other in every manner imaginable. Based upon preliminary data gathered by NAFO via its research study on developing a national health insurance plan, we have identified only *two* plans in the country which address the needs of farmworkers. A cursory view of the coverage provided may reflect the status of the art of insurance coverage carried by farmworkers. The two plans are the Robert F. Kennedy Farm Workers Medical Plan, provided by the United Farm Workers-AFL–CIO, and the Puerto Rican Agricultural Workers Insurance Plan. The UFW plan provides three options, the eligibility of which depends on the number of hours worked in the previous specified time period. The plan outlined here is the high option. The low and medium options provide similar benefits, except that the medium option has a $2,000 limit for major medical and the low option provides no benefits in this category at all. The two plans are structured differently, so an exact comparison is not possible, but table 1 is a general comparison.

Given some of the facts about farmworkers and the women within this segment of the population, our reactions will be all-inclusive because certainly the women are the unwitting victims of this situation.

As the document "Sex Discrimination in Insurance" states in its introduction, "Companies try to maximize their own profits by containing costs of the benefits they offer and by predicting the financial risks of policyholders." With respect to farmworkers, this lends itself to many problems of discrimination.

Insurers operate to make a profit by:

TABLE 1

	UFW	Puerto Rican
Life insurance	$ 2000	$ 2000
AD & D	N/A	4000
Disability income	N/A	31 per wk.
Hospitalization	800	5575
Surgery	500	400
Maternity	700	N/A
Ambulance	50	25
Doctors' visits	Included in major medical	Max. 100 per yr.
Medicine	60 per yr.	N/A
Emergency room	50 per yr.	22
Dental treatment (emergency only)	50 per yr.	N/A
X-ray and laboratory	200 per yr.	N/A
Major medical	80% of excess costs above basic benefits to $10,000	N/A

(a) Election of risks; i.e., containing what *claims* will cost;

(b) Operating expenses; i.e., what it costs to acquire and administer premium dollars and claim payments.

(c) Investment of premium dollars; i.e., putting dollars collected to work.

By their very method of operating, insurance companies will discriminate against farmworkers or anybody they may want to. For example, an insurance company may not choose to underwrite a class of risk because the acquisition cost may be too high; the posibility of claim payment (risk is high) may be too imminent.

Today's farmworker, because of his economic state, does not represent a "quality" prospect to the insurance industry. The cost of writing the size of policy he could afford is not worth the marketing effort of the insurer.

The high mobility of the farmworker also contributes to the insurers' avoidance of farmworkers as policyholders. Any carrier would need to retain a basic number of itinerant agents to "service" the population—a costly prospect with little or no economic return, thus making it less attractive for carriers to market to this population. For an insurance company to want to design a *marketing* effort for "spread of risk" to include farmworkers would immediately cause

severe underwriter concerns about the acceptability of risk, which is based on the insurable basis of:

(1) Financial need for coverage;
(2) Health and physical risk; and
(3) Moral risk.

Farmworkers present too many unknowns to the underwriter, so an actuarial study would have to be performed to gather and evaluate mortality and morbidity data, thus adding to the cost and to the waning interest of the insurer to get into this market.

The issue of language becomes a barrier also in providing coverage for farmworkers. Current language in insurance plans is admittedly confusing and difficult to appreciate, even for the average English speaker. This problem is compounded even further for farmworkers with low reading levels. The variety of languages also presents a problem—Spanish, French, pig Latin. In this regard, even the most simple of instructions on how to file a claim would present a maze of barriers for the average farmworker.

Our observations of the authors' views on stereotyping of women as homogeneous, nonworkers, dependent on their husbands' wages and employment benefits, points out prevailing attitudes of stereotyping tendencies. Example: Migrant farmworkers are foreigners who are dirty, immoral, live like trash, unreliable, ignorant, uneducated, drink too much, unhealthy, and die young.

It would be logical to conclude that if women in general experience high-risk classification and discrimination in the selection process of insurance because of the stereotyping, then certainly the plight of the farmworker and the farmworker family as a whole is the same. But it is reasonable to assume that the situation is much *worse* for this class of people.

At NAFO we conducted a very informal survey of 15 insurance companies. As basic criteria, we sought to identify those larger carriers that specialized/focused on group health plans. Our staff contacted these various insurance companies to determine whether:

(1) They had actuarial data on farmworkers; and
(2) They provided group health benefits to this population.

Needless to say, all of the insurance companies responded negatively on both questions.

Another fact which surfaced indirectly out of our inquiry was that farmwork/agricultural labor is not an occupation as defined by the *Dictionary of Occupational Titles* published and compiled by the Department of Labor. This is responsible in part for the lack of "hard" statistical data on farmworkers. Yet, generally farmwork is regarded as a "high-risk" occupation or industry when correlating exposure to pesticides, pests, unsanitary living conditions, and the like to risk

factors. Yet again, *no* data exists to support this. On the contrary, any attempts at furthering this hypothesis have been quashed by the agricultural industry or by Federal agencies.

More often than not, we find regulatory agencies and the industry in an unconscious, incestuous relationship of attempting to provide protection, but in practice becoming one of the obstacles to access to insurance coverage, as well as access to those agencies which are there to serve and protect the consumer.

Discrimination practices can be grouped into several categories:

(1) Overt discrimination;
(2) Disparate treatment; and
(3) Differential consequences of a neutral practice.

Farmworkers begin with the third practice of the *consequences* of a *neutral practice* and work their way downward as far as any economic considerations are concerned. That is to say that insurers and other financial institutions ignore or avoid involvement with this class of people. Should the farmworker seek out the services of an insurance company, they then are confronted with the *disparate treatment;* i.e., poor service, high costs, and discouraging acts of complicating the premium payment, claims administration, etc. *Overt discrimination* comes with the rejection or refusal to cover the risk of the farmworker. This is practiced by employers, insurers, and various governmental organizations. Examples are most frequently found in the area of health insurance, group and employer coverages. To react to the high incidence of discrimination to which women are subjected as far as the exclusion of pregnancy conditions from the disability and health insurance offered employees, this can be viewed as a *neutral practice* —very insidious and subtle, but to match this form of discrimination in the farmworker community, where the occurrence of births is not only higher, but in a community which relies heavily on a family income (both husband and wife) to sustain life. Imagine the danger to which the woman, child, and family are faced by an expectant mother working the fields as long as possible and returning to work too soon after the birth, all because there *was not enough money to pay for maternity expenses.* The family had no insurance, and none was offered by the employer or offered by any insurance companies.

This neutral practice of discrimination is worse than subtle—it is harmful, insidious, and a problem that cries for a solution, tantamount to halting the practice of genocide.

The practices of discrimination in the following forms of insurance with respect to the farmworker community are made more severe by the lack of penetration by insurers.

Disability insurance is often available only to people in the professional and white-collar area of employment with insurance companies offering coverage only to males earning over a certain amount. The blue-collar classes, particularly farmworkers, are not offered coverage because the carriers claim the risk is too high and the present social benefits are what "those" people should use.

Naturally, the *availability* of the coverage suffers, because it is never offered. If a farmworker should request such coverage, the agent or the company may merely tell the person inquiring that they do not handle that coverage.

The more desirable features of disability income are elusive benefits for farmworkers. The farmworker not only has no consumer information, no willing seller, nor a willing insurer for this risk—he has no way of ever working his way out of this situation.

The farmworker can, under the present circumstances, never get to the point where he can pick and choose benefits within the policy. Nor can he get to a point where he can do *rate* comparisons between companies—for there is no company offering a service or a policy which relates to this abused industry.

Perhaps the biggest void in insurance coverages for farmworkers is in the area of health insurance, but it is safe to assume that the greatest needs are:

(1) At birth,
(2) During sickness or injury, and
(3) At death.

The farmworker community has been forced to meet these needs without adequate assistance from the institutions chartered to provide the risk-sharing techniques. So, upon the occurrence of any of the above incidents, the farmworker family is thrown deeper into the economic hole and buries itself further into the migrant worker stream.

Medicaid coverage (which is one of few coverages available to farmworkers) forms only a small part of the Federal Government's activities in providing access to basic insurance, and the complexity and chaos within this program further dilute attempts at providing benefits to farmworkers. Other experiments at providing group health benefits to farmworkers, either through hospitalization programs or basic health insurance have proved costly. NAFO has made a preliminary assessment and analysis of the programs currently in operation and has found that:

(1) They are costly—by any standard/definition;
(2) They serve only a limited population;
(3) The scope of services provided is limited as compared to cost; and
(4) The carrier assumes no risk whatsoever.

Certainly, we can concur that economic status is a barrier to insurance, especially when the industry is premised on capital-producing plans with few or no "prudent" applications. However, if there is no shift, or at best, a change of attitude, the economics of the insurance industry will never "access" its product to the farmworker. Even when we look to self-insurance as an alternative for farmworkers, there are the limitations in the geographic areas covered and the limited benefits at an affordable cost.

The National Association of Farmworker Organizations is engaged in a health insurance project to research the present state of health insurance programs for migrant farmworkers, as well as to design a *model plan* which is both feasible and financially practical for the farmworker community. The research, though incomplete, is beginning to show some very significant instances of discrimination and abuse.

It can be assumed from the initial surveys that the farmworker currently carries not even the most basic of health care benefits. We are finding that the farmworker considers it a major breakthrough to have the employer carry workmen's compensation to reimburse for accidents that may happen to the farmworkers on the job. Few farmworkers realize that the law *requires* the employer to carry this coverage as a condition of doing business, and that such coverages are really a protection for the *employer* against any suit for negligence that an employee may bring against the employer.

Some interesting developments, which are soon to set precedents, are the cases of pesticide poisoning which are attributed to a condition caused by work-related factors. One would think that the case for worker's compensation would be obvious, but there is so much controversy and litigation preventing coverage that the farmworker with limited resources for legal assistance will once again become the victim of discriminatory practices and will end up with no compensation for economic loss and harm done to his or her health.

Life insurance policies are generally available to the farmworker, but the type of coverage sold is the *industrial* or *debit* type of insurance plan. These plans lend themselves to a high-premium, low-benefit variety because they are sold on a weekly or monthly agent-collection system. The premium is loaded because of the costs related to premium collection and the market that is served. The policies are expensive and have a high incidence of lapse because of the migrant patterns of farmworkers. Conceptually, there is nothing wrong with this type of marketing and this premium structure—except that companies do offer some preferred policies to applicants.

Term insurance is almost never written for farmworker families, for they feel a sense of thrift in buying the cash value form of insurance,

and the debit agent seems to favor this higher premium plan. Rarely do the policies have riders or options which can provide additional benefits to the insurance purchaser. The debit or industrial insurance policy is written because of the underwriting ease for placing the case. The policy has such a limited death benefit that strict underwriting would not be necessary and costly to the carrier. Insurance companies rely on the 2-year incontestability period of the policy as a method of paying for any claims prior to the 2-year period.

There is no insurance carrier known today that is marketing insurance to farmworkers as a class.

Conclusions and Recommendations

We concur in principle and, in fact, embrace and support the findings presented in the paper on sex discrimination in insurance. Further, we agree that future efforts must seek legislative and judicial remedies to the present state of the art. But more important, there needs to be comprehensive strategy focusing on ameliorating the abuses within the industry. The dialogue at this forum is only a preliminary task of many that lie ahead. Insurance companies must be urged to engage in dialogue with consumers, the regulatory bodies, and Congress and agree on a consensus of strategy.

With respect to insurance regulators, we would recommend the establishment and expansion of a minority affairs commission, which would have oversight authority on issues related to minorities, women, and farmworkers. We would also recommend an office of consumer advocacy within the present system which monitors the insurance regulators, to assure equal protection under the law. Further, we would recommend that the regulators emphasize "plain language" in insurance contracts.

Insurance companies should establish outreach efforts and programs for minorities which would include issues of employment as well as consumer education. Additionally, we would urge the insurance companies to commit capital to begin to serve these markets which have gone neglected. It is our belief that minorities, farmworkers, and women be given careful consideration as classes in themselves.

We thank you for your time and attention and hope that we will be able to work together to solve the many problems we have discussed.

Risk Classification and Actuarial Tables as They Affect Insurance Pricing for Women and Minorities

By Robert J. Randall, Vice President and Actuary, The Equitable Life Assurance Society of the United States*

Introduction

In this paper, I shall describe the actuarial and risk classification processes for life, health, pension, and disability coverages as generally employed by private insurance companies in the United States. These processes determine the prices (premium rates) charged to the public. Then I shall discuss aspects of these processes that especially pertain to women or minorities. An historical account of such special practices in the last few decades is included. There are some comments on pertinent laws, and government regulation and supervision. Finally, I shall attempt to evaluate the capacity of the insurance pricing system to deal equitably with women and minorities in the light of the ever-changing social and economic environment.

There are about 1,700 life insurance companies in the United States offering all or some of the various types of life, health, and disability insurance coverages. In addition, health and disability coverages are also offered by casualty insurance companies, and health coverages are available from Blue Cross-Blue Shield plans and other medical-hospital plans. Because of time limitations, of necessity my observations are based largely (but not entirely) on the practices of my employer, The Equitable Life Assurance Society of the United States. The Equitable is the third largest life insurance company in the United States. Its evolving practices with respect to women and minorities probably represent the trend present in most of the insurance industry, although my impression is that The Equitable is among the leaders in areas such as affirmative action in employing and promoting women and minorities, and in plans to sell its insurance products to these markets. I have not had the time or facilities to study in any depth practices of other companies.

Types of Insurance

Life insurance policies have the primary purpose of providing benefits to be paid in the event of the death of the insured person(s).

* This paper presents my own viewpoints and in no way purports to represent the views of The Equitable. The Equitable was kind enough to provide me time to prepare the paper and to make staff and records available.

Health insurance policies provide for cash benefits or hospital and medical expense reimbursements (in some cases, direct provision of medical services) in the event of illness of the insured person. Disability policies provide for monthly income benefits in the event of the disability (as defined in the policy) of the insured person. Annuity (or pension) contracts provide retirement income for the lifetime of the annuitant.

An important distinction applying to all these types of policies and contracts is that between individual insurance and group insurance. Individual insurance is sold to individuals and families. Group insurance is typically sold to employers to cover all or stated classes of their employees. Credit insurance is insurance sold to lending institutions to cover balances on personal loans and has been sold both as individual and group insurance. Industrial insurance is a special type of individual insurance, characterized by the fact that it is sold in small amounts generally to low-income, blue-collar workers and generally through the so-called "debit" system of marketing based on weekly or monthly door-to-door collection of premiums by agents. The more usual type of individual insurance, ordinary insurance, is sold for larger amounts and premiums are billed for and collected by mail.

Another important distinction is between participating and nonparticipating insurance. Participating policies are generally sold by mutual companies, companies owned by their policyholders. The earnings of mutual companies are returned annually to the participating policyholders in the form of dividends, which serve to reduce the cost of insurance. Nonparticipating policies are sold by stock insurance companies, companies owned by the stockholders, and such policies do not receive dividends. The cost over the lifetime of a participating policy is made up of the premiums reduced by the dividends, whereas the cost of a nonparticipating policy depends only on the premium, generally established at the inception. The basic underlying concepts are similar, but there are obviously differences in details between price setting for participating and nonparticipating insurance.

Actuarial Tables—Basic Description

At this point it seems well to interject some brief, nontechnical descriptions of what an actuarial table really is, how it is constructed, and how it may be used. I'll confine this for the most part to mortality tables—i.e., tables showing death rates—although the general ideas, appropriately modified, apply to other types of tables, such as morbidity tables used for health insurance purposes. A mortality table is a set of death rates usually classified by sex and age and often classified in other pertinent ways. It is usually derived from the actual

mortality experience during some period of years among some particular insured or population group.

As an example, the most recent mortality tables (actually a set of tables) representing individual ordinary insurance mortality experience are the 1965–70 Select and Ultimate Basic Tables. They were derived from experience under ordinary life insurance policies of 19 major companies during the years 1965–70. The death rates shown are by age at issue for the "select" period, taken as the first 15 policy years, and by attained age at death thereafter. There are separate sets of tables for each sex and for both sexes combined.

The first step in constructing a table is gathering the pertinent data, usually in a form suitable for computer manipulation. The basic formula is:

Crude annual death rate for age X_C = Deaths at age X_C/Lives exposed to risk at age X_C

where X_C is used to denote not only age, but also the other pertinent classification criteria, such as sex and policy duration. This seems simple enough, but extreme care must be taken in tabulating the deaths and exposures in a consistent fashion. For example, a policy surrendered in the middle of a policy year would only contribute one-half year "exposure" in that year. Crude death rates usually show random fluctuations which can reasonably be removed by a smoothing process known as graduation. The resulting rates represent the actual level of mortality experienced during the period studied. The table may be intended for a purpose which requires some margin for safety, to guard against unexpected adverse fluctuations, and careful study must be given to the size and form of the margin. If the table is to be used to predict future mortality, some provision for anticipated improvement in mortality must be added.

An important distinction is between "statutory" tables and "experience" tables. Statutory tables are tables prescribed by the regulatory authorities, generally as the basis for calculating the reserves for future benefits which must be shown on the liability page of the annual financial statement reported to State insurance departments. "Experience" tables are used for purposes of rate making and studying and projecting claim experience. Not only do statutory tables generally contain larger margins, but as a rule they are not updated as frequently. The current statutory table for ordinary life insurance is the 1958 Commissioners Standard Ordinary Table.

The techniques used in constructing mortality tables are described in detail in a book published by the Society of Actuaries, *Measurement of Mortality,* by Harry Gershensen. The actuarial techniques employed in

using a table to calculate rates, reserves, and other values associated with insurance policies are described in another Society of Actuaries publication, *Life Contingencies,* by C.W. Jordan.

The work of constructing a full-blown table is considerable. In the case of a table intended for statutory purposes, the process of amending the laws of all the States may stretch over several years. These considerations and others have served to continue some actuarial tables in use for considerable periods, often much longer than originally contemplated. The famous American Experience Table of Mortality was the principal statutory table for about 50 years. In periods of rapidly changing mortality levels, there is more pressure to change tables more rapidly. However, it should be stressed that statutory tables do not determine the cost of insurance, and the insurers can adjust their prices as frequently as they wish to changing conditions. The intercompany studies of the Society of Actuaries are always more up to date than the statutory tables, and any particular company can take account of trends in its own experience more recent than, or otherwise differing from, intercompany studies.

The Pricing Process—General

The various procedures, techniques, statistics, etc., that determine the price of the policy finally delivered to the consumer vary in many ways between the types of insurance coverage described above. I shall first describe the overall concepts as they affect all types and then discuss some principal types in detail. Overall, the process includes these elements:

1. Collection and analysis of the underlying cost data as to claim frequencies, expense rates (including selling costs), policy persistency, and investment returns. The attention in this paper will be focused primarily on claim-frequency data—this is the key data which is or has been used to determine and justify rate variations by sex and race. Claim-frequency data here includes death rates for life insurance and annuity purposes, claim frequencies and duration for disability insurance, and claim frequencies and costs per claim for various forms of health insurance.

The most important sources are the records of insured lives. The rates charged must be appropriate for the individuals insured by the insurance companies, and experience has shown that their experience differs appreciably from that of other groups and from that of the population as a whole. Data from other sources, such as United States census reports, and retirement and insurance plans of national, State, and local governments, may be used to supplement insured data. In cases where entirely new forms of coverage are being developed, no insured data, of course, will exist and inferences must be drawn from

all available "outside" data. For example, when insurance companies began to issue major medical insurance in the early 1950s, one of the principal sources of data was a special study of the medical and hospital expenses of its own employees designed and carried out by the Prudential Insurance Company as a basis for rates for this new form of health insurance. In the mid-1950s, when my former employer (Teachers Insurance and Annuity Association) decided to begin to issue group long-term disability insurance, one of the few available studies used was one based on the disability experience of the New York teachers' retirement system.

The most important studies of claim experience on insured lives are those carried out periodically by the Society of Actuaries. There are annual studies on ordinary life insurance mortality experience and group weekly indemnity (short-term disability) morbidity experience. Less frequent reports are made on claims experience under other types of coverages.

The chief product of these studies for a particular coverage is typically an experience table or set of tables representing in as comprehensive form as feasible the underlying claim rates actually experienced during the most recent calendar year period. For example, the last set of experience tables produced for ordinary life insurance was the 1965–70 Select and Ultimate Basic Tables, already mentioned. However, a new table is not produced in each study—instead, experience ratios may be calculated showing the trend in claim rates since the most recent table. The 1955–60 Basic Tables preceeded the 1965–70 Basic Tables.

Table 1 lists current through 1976 of the last study for each type of coverage; in each case I've indicated if the study presents separate results by race or sex.

Individual companies generally study their own experience in as much detail as possible. The larger companies may produce their own tables generally comparable to the SOA intercompany tables, while smaller companies may simply compute their overall mortality ratio as a percentage of intercompany experience. In either case, much reliance is placed on the intercompany experience.

2. Analysis of claim studies and other pertinent cost data so as to produce the premium rates and the other values, such as cash surrender values and dividends, which determine the ultimate cost to the buyer. This is a complex process which involves not only mastery of actuarial techniques, but also skill and judgment in predicting future experience from the past, in balancing the conflicting goals of safety and competitiveness, and in maintaining equity between different classes. The basic condition to be satisfied is this: premiums plus investment earnings must be sufficient to cover policy benefits,

TABLE 1

Society of Actuaries Intercompany Experience Studies

Coverage	Experience-period most recent study	Reported in	Separate results by Sex	Separate results by Race
Ordinary life insurance	1974–75	1976	Yes	No
Industrial life insurance [a]	1950–55	1957	Yes	Yes
Group life insurance	1970–74	1975	Yes	No
Individual annuities	1963–67	1969	Yes	No
Group annuities	1969–71	1975	Yes	No
Individual disability income	1972–73	1975	Yes	No
Individual major medical	1968–70	1972	Yes	No
Individual hospital & surgical	1968–70	1972	Yes	No
Group short-term disability	1973–75	1976	Yes	No
Group long-term disability	1970–74	1976	Yes	No
Group hospital & surgical	1964–68	1969	No [b]	No
Group major medical	1964–68	1969	No [b]	No

a. Metropolitan Life experience only.
b. Separate results shown for "employees" and "dependents."

administrative and selling expenses, taxes, and margins for contingencies and profit. Although the actuary is responsible for most of this process, he consults extensively with other specialists, both in choosing the experience assumptions entering into his analysis and in judging the acceptability of the end product, the premium rates to be charged. For example, the investment officers will be consulted regarding assumptions as to probable trends in investment earnings; the sales officers will be consulted regarding the competitiveness of the final product.

3. Risk classification, a process also referred to as underwriting, refers to the evaluation of facts obtained on an applicant for insurance so as to place the applicant in the proper rate class. One possible decision is to refuse to insure. Factors to be considered are all those that are felt to be pertinent to probable claim experience. The aim is to place the applicant, as accurately as feasible, in the same risk classification as other applicants with equal claim expectations. In the case of ordinary life insurance, beyond the basic factors of sex and age, consideration is given to physical condition, medical history, family history pertaining to longevity, history of violent or criminal behavior, use of alcohol and drugs, occupation, avocations, etc.

It should be emphasized that underwriting is not a cut-and-dried process, but involves considerable skill and judgment. An insurance company generally develops a manual of underwriting rules or guidelines as to how to evaluate various factors. However, rarely does a particular applicant fit neatly into the manual's guidelines. Beyond that, the relative weight given to different conditions affecting risk is constantly shifting as, for example, new medical treatments for various diseases are developed and brought into general use. Underwriting and rate setting are reciprocal processes. On the one hand, the experience used in setting rates by class of insured is derived from experience on insured lives classified by the underwriting standards of the past. On the other hand, current underwriting strives to classify new applicants so that future experience stays within the bounds assumed in setting the rates.

I'd like here to describe two aspects of ordinary life underwriting, the numerical rating system and substandard insurance. These aspects in their details are peculiar to ordinary life insurance, but the general concepts carry through to other types of insurance coverage.

The home office underwriter who is charged with evaluating an application for ordinary life insurance is furnished with information from a number of sources. These may include the application and the agent's report, signed by the applicant and the agent, which give answers to several questions bearing on the insurability of the applicant (purpose of insurance, income and net worth, health status,

TABLE 2

Class	Mortality Range
Standard	– 130
B	135– 145
C	150– 195
D	200– 245
E	250– 295
F	300– 395
G	400– 495
H	500– 745
J	750–1000

etc.), a medical examination, and a credit report. The underwriter assesses all this information, including, when considered necessary, additional pertinent facts revealed by attending physician's reports or special medical tests. The medical rating assigned to the typical standard risk is 100 percent, based on the assumption of normal good health. Using his company's underwriting manual, the underwriter then assigns percentage credits and debits based on assessment of the physical impairments and other factors affecting insurability or revealed by the records on hand. The final result is a percentage rating for the applicant. A rating of, say, 200 percent means that the applicant belongs to a class of persons who may be expected to experience death rates approximately twice those experienced by persons of the same age and sex who are rated standard.

Once the rating of an applicant has been determined, he is automatically assigned to a premium class covering a fairly broad range of percentage ratings. In The Equitable, our rating classes are as shown in table 2.

The numerical rating system in its original form was devised many years ago by Dr. Arthur Hunter of the New York Life Insurance Company, an actuary who was also a physician. Many years ago, general practice was to accept an applicant as standard or decline to insure him. The use of substandard ratings makes it possible to accept poorer risks at appropriate premium charges. The history over the years has been one of increases in the maximum substandard rating accepted, along with a general lowering in the ratings assigned for various impairments and hazards. The result has been to make life insurance available to an ever-increasing portion of the public.

To put substandard insurance policies in perspective, The Equitable in 1976 declined outright only 1 percent of the policies applied for, and issued as substandard 4 percent of the policies issued and paid for.

4. *Product design* and *marketing* have an indirect effect on insurance pricing in that they can be planned in such a way as to avoid certain markets or to attract others. Some insurance companies sell much larger policies on the average than many other companies, and this is at least partly due to directing their sales effort towards the well-to-do. Avoiding a section of the public or a geographical area is in a sense one technique of setting prices for that section.

Mortality by Race and Sex

At this point, it seems useful to present an overview of variation in mortality by race and sex.

There is no doubt that mortality rates in the United States have been generally substantially higher for blacks than for whites. In the past, this statistical evidence has been construed by insurers to mean that blacks were inherently subject to higher mortality. In recent years, there has been an apparently growing consensus that the differences are largely if not entirely due to the more adverse socioeconomic and environmental conditions experienced by most blacks and that substantially equal mortality by race could be expected for persons living under equivalent conditions. This is my opinion. The principal evidence for this has been the decrease over the years in the differences in overall death rates by race. A more direct approach to this question would be to study mortality by race within groups living under comparable socioeconomic and environmental conditions. I know of only two studies which attempt this. The first was a series of special reports published in 1961–63 by HEW, *Vital Statistics–Special Reports,* vol. 53, nos. 1–5. The principal author was Lillian Guralnick. This gave mortality results from the 1950 census classified by race and occupational groupings. The results were somewhat inconclusive. The differences by race in the population as a whole carried through at least partly into the several occupational levels studied. On the other hand, it was probably true that socioeconomic conditions were more adverse for blacks than for whites even within the same occupations. The second is a book, *Differential Mortality in the United States* by Kitagawa and Hauser, which covers the comparable 1960 census data and additional data from the city of Chicago—the results seem similarly inconclusive. (I should note that the primary interest of both studies was mortality variation by occupational, educational, and income level, not by race.)

The principal overall studies by race are U.S. census mortality studies, conducted decennially for many years, and studies of industrial

TABLE 3

Sex	Age	Census Period 1929–31	1969–71
Males	0	11.57	6.96
	20	10.07	5.85
	65	0.90	0.15
Females	0	13.16	6.44
	20	11.30	5.39
	65	0.57	0.94

life insurance mortality reported from time to time in the Transactions of the Society of Actuaries. I know of no studies of ordinary group life insurance mortality by race. The census studies show changes in the excess in years of white life expectancy over nonwhite life expectancy. In 1930 white males at birth had a life expectancy 11.57 years greater than that of nonwhite males; by 1970 this difference had decreased to 6.96 years (see table 3).

In earlier censuses, blacks composed more than 93 percent of the nonwhite category; in the most recent years this percentage has dropped to 89 percent. Other groups included in the nonwhite category are American Indians and persons of Japanese and Chinese descent. According to Kitagawa and Hauser, Japanese have the lowest overall mortality, followed by Chinese, whites, Indians, and blacks.

I must comment, somewhat parenthetically, that the traditional practice in U.S. censuses of studying mortality by race and sex seems in itself to have overtones of racism and sexism, especially since no such separate studies are made based on other major criteria such as national origin and religion.

To sum up, I will restate my opinion that the observed mortality differences by race are largely due to socioeconomic factors.

As with race, there is no doubt that there are substantial mortality differences in the United States by sex. Death rates for males are significantly higher. These differences, in percentage form, seem to be increasing with time. The consensus of current opinion seems to be that the differences are largely if not entirely due to inherent biological differences between the sexes. So far as I can judge, this conclusion seems at present to be based mostly on statistical inference, although there is a growing body of research into the biological aspects of aging and death which promises to throw more light on this subject. The

statistical evidence, however, seems to be overwhelming. The 1973 mortality reports of the Society of Actuaries contain an excellent summary of this data, which I am quoting in full below. (See appendix A.)

Ordinary Life Insurance

I now turn to a discussion of the treatment of race and sex in the insurance pricing process, by type of coverage. I begin with ordinary life insurance.

So far as race goes, I believe there has been an evolution over the years, from adverse treatment to fair and reasonable treatment. This adverse treatment was accomplished mainly through the underwriting and marketing processes, not through differential premium rates. Companies discouraged their agents from selling to blacks or, in some cases, prohibited such sales entirely. When an application was received, a substandard rating was automatically given solely for race, in addition to any debits charged because of the normal evaluation of the risk. At The Equitable, many years ago, the practice was to pay reduced commissions on policies sold to blacks, 5 percent instead of the normal 50 percent first-year commission. This practice apparently was discontinued 40 or more years ago. At least partly due to stiffening in 1935 of the New York State law against racial distinctions in insurance rates and commissions, the practice evolved to acceptance of application of blacks on equal terms, but with no strong marketing effort. In more recent years, The Equitable has begun an aggressive campaign to enlarge its sales of insurance to the black market. The main part of that has been its affirmative action plan to increase the number of black agents, district managers, and agency managers in its employ. The plan began in 1967; table 4 shows the changes since 1973. Beyond that, a committee of officers is now planning a program of new sales approaches designed to reach women and minority markets.

My impression is that The Equitable's evolution may be generally typical of many other life insurance companies. As stated before, I suspect Equitable is a leader in this area. I am attaching excerpts from the histories of two major life insurance companies and from two annual reports of the New York Superintendent of Insurance which illustrate the attitudes of the past. Also attached is Circular Letter 64–5 of the New York insurance department, evidence of an evolution in attitude. (See appendix B.)

I doubt if there exists a clear and available written record that will give in any detail the history of this evolution in attitude and practice on an industry-wide basis. Instead, it would have to be obtained from old records tucked away in archives and storage vaults and, probably to a larger extent, from the memories of old employees now retired or

TABLE 4

Black agents and managers

	1973		1977	
	No.	% of total	No.	% of total
Agency managers	6	3.5	10	5.7
Associate agency managers	5	7.5	0	0
District managers	66	7.9	92	9.2
District assistants	74	13.1	67	10.9
Agents	42	8.3	591	9.2
Total	571	8.5	760	9.2

near retirement. From the viewpoint of the insurers and their officials, these past practices no doubt appeared fully justified by the statistical evidence on racial mortality available to them, and changes over the years were a recognition of changing conditions, in particular the advancing of many blacks into middle-class status.

So far as sex goes, there has been a different type of evolution. There have been two different aspects of the evolution, related and proceeding side by side. First has been a change from a widespread practice of making no distinction in rates by sex to an equally widespread practice of recognizing the lower mortality results on women by lower rates for that sex. The second aspect has been a change from a practice, varied among insurers, of restrictions on the types and amounts of ordinary life coverages available to women towards a vitually "sex-blind" practice of making all plans and benefits and amounts equally available to both sexes.

The pricing change for women, in The Equitable as in many other companies, was closely related to another change in pricing practice and philosophy that occurred in the 1950s. This change was to vary the rate charged per $1,000 of insurance according to the size of policy, larger policies being charged a lower rate per $1,000. In other words, a size discount was introduced. Prior to that, it was assumed that the antidiscrimination statutes of the State laws required the same rate per $1,000 for the same age, plan, and rating regardless of size. The growing importance of the expense factor and increasing competition for larger sales led to increased pressures for size discounts. Companies first responded to this by issuing so-called "specials," plans issued with a then relatively large minimum amount, such as $10,000, with lower rates per $1,000 unit than the most nearly

comparable plan issued for smaller amounts. Considerable debate and discussion ensued in the insurance press and with State regulations as to whether these "specials" were within the spirit and letter of the law. Finally, in 1955, the New York insurance department issued a ruling to the effect that rate distinctions by size, properly reflecting expense and other cost differentials, were legal. This concept was endorsed within a very few years by the National Association of Insurance Commissioners and other States.

The rationale for ignoring sex mortality differentials in rates was that the average size of policy issued to women was much smaller than for men, and hence any mortality advantage was offset by a roughly equal expense disadvantage per unit. With the introduction of premium rates graded by size, this argument largely disappeared. The Equitable first recognized sex distinctions in 1957, but only on our "special" adjustable whole life plan, issued for a minimum amount of $10,000. In 1959 we introduced rate distinctions by size for all plans of insurance, and rate distinctions by sex for policies issued for $10,000 or more for all plans. In 1971, rate distinctions by sex were carried through to policies less than $10,000.

Under Equitable's approach, a policy issued to a female applicant contains the same set of guaranteed cash values and nonforfeiture benefits as a comparable policy issued to a male of the same age and rating and on the same plan. The difference in mortality is reflected in the different premium. Many other companies use the uniform age setback approach, whereby female applicants receive policies with the same rate *and* cash values as those issued to males 3 years younger. Equitable believes its approach allows a more precise recognition of the mortality differential, whose effects do vary by plan of insurance.

With respect to restrictions on plans and amounts of coverages issued to women, the distinctions made in the past at Equitable have generally applied to dependent women—i.e., housewives—on the concept of a lack of insurance need. Term policies (and other plans with a predominant term element) were not available to dependent women through the 1950s; this restriction has since been removed. In 1957, Equitable began issuing family policies, a type of policy providing in one unit coverage for an entire family. This plan provided, per unit, for $5,000 whole life insurance on the husband, $3,000 decreasing term insurance on the wife, and $1,000 on each dependent child under 25. Currently, this plan is no longer being sold and comparable benefits are available through riders providing coverage on the dependent spouse and/or children of a primary insured of either sex. In prior years, the disability premium waiver provision, providing for waiver of any premiums due while the insured is disabled, was limited or not available to dependent females. Under

TABLE 5

Women agents and Managers

	1973		1977	
	No.	% of total	No.	% of total
Agency managers	0	0	0	0
Associate agency managers	1	1.5	2	5.1
District managers	5	6.0	11	1.1
District assistants	3	0.5	27	4.4
Agents	166	3.3	535	8.3
Total	175	2.6	575	7.0

present rules, the amount issued is limited for persons of either sex with little or no earned income.

As with blacks, Equitable's marketing posture towards women has changed from a more or less passive attitude towards women to an aggressive campaign to increase sales to women. The principal effect to date has been to recruit women in increased numbers as sales agents and managers, as evidenced by the data in table 5. Beyond that, we are now developing marketing plans designed especially to cultivate the female market.

Individual Health and Disability Insurance

Equitable issues two broad types of individual health insurance, major medical insurance and disability income insurance. In general terms, the only area of substantial distinctions has been sex distinctions for disability income insurance. These have been of two types, rate distinctions recognizing the generally higher claim costs experienced in policies issued to women, and underwriting limitations on the types and amounts of policies issued to women. Such practices, by Equitable and insurers generally, have in the last few years been discussed and studied at considerable length by State regulatory authorities and legislators, and these studies have resulted in a series of regulations and laws restricting and limiting sex distinctions by insurers for disability income coverage.

The most significant study, at least from Equitable's standpoint, was the one conducted by the New York State insurance department. The department conducted an investigation and a public hearing which led to the promulgation of an Opinion and Report and Regulation 75 on January 28, 1975. Subsequently the department made an intensive study of claim experience which it reported June 1976 in a booklet

titled *Disability Income Insurance Cost Differentials Bewteen Men and Women.* I am attaching hereto Regulation 75 and the accompanying Opinion and Report, and also the "Introduction" and "Conclusion" from the booklet. (See appendix C.) The result was to rule out all underwriting distinctions by sex but to permit rate distinctions, based on the department's conclusion that there were demonstrably valid and significant differences in claim experience.

Prior to Regulation 75, Equitable did make underwriting distinctions in that amount limits were lower for women applicants and certain plans were not avaible to women. These distinctions have been discontinued. Rate distinctions will continue to be made largely based on the data analyzed in the New York insurance department study.

No racial distinctions have been made by Equitable in its individual health coverages. With respect to major medical insurance, the only distinction related to sex has been the exclusion of normal maternity benefits for coverage. Complications arising from pregnancy have been covered. In 1977, the New York insurance law was amended to require coverage of normal maternity, and policies issued currently conform to that requirement.

Individual Annuities

No racial distinctions have been made in Equitable's individual annuity contracts. Sex distinctions in rates have always been made, reflecting the considerably longer longevity experienced by women, as discussed above. It should be stressed that a large proportion of individual annuities sold are purchased from individual funds, not through employer or group arrangements. Thus the rate differentials by sex are directly passed on to the individual annuitant.

Industrial Life Insurance

The Equitable has never issued industrial life insurance. My comments are based largely on conversations with actuaries[1] of the two life insurance companies which led in this field for many years, the Metropolitan and the Prudential, and are largely historical. The Prudential pioneered the sale of industrial life insurance in the United States in 1875, followed shortly by the Metropolitan and the John Hancock. At one point the three companies between them held about 90 percent of the industrial insurance in force in the United States.

There is a history of racial rate distinctions in industrial insurance, evolving over the years and undoubtedly influenced both by improving mortality results and legal requirements. Initially, no rate distinctions were made. Then, for many years, lower benefits or higher

[1] John Cook, actuary, Metropolitan Life Insurance Company, and Paul Sarnoff, vice president and associate actuary, Prudential Insurance Company.

rates were applied to policies issued to blacks. Several techniques were used. One was to provide a death benefit on policies issued to blacks two-thirds of that provided on comparable policies issued to whites; another to classify all blacks automatically as substandard, subject to higher premiums, and almost all whites as standard. These distinctions were abandoned in 1948 and 1950 by the Metropolitan and Prudential for new issues. Both companies also then began programs for equalizing benefits for existing policies. Both companies discontinued sale of new industrial policies in the 1960s, largely because this market has been largely preempted by family plan policies, group insurance, and social security death benefits. However, a considerable number of smaller companies continue to issue industrial life insurance, mostly in the South and Western region of the country. Most of these companies are members of the *Life Insurers Conference,* whose headquarters are in Richmond, Virginia.

No sex distinctions were made in industrial life insurance except perhaps at one period to limit coverage on a wife to 50 percent of that on her husband.

The importance of industrial life insurance is evidenced by the fact that the number of persons covered exceeded the number covered under ordinary life insurance from 1900 through 1961. At the end of 1976, 67 million persons were covered by industrial life insurance, as compared to 137 million by ordinary. Because of smaller sized policies, the amount of industrial life insurance in force at the end of 1977 was about 12 percent of the amount of ordinary life insurance in force.

Group Life and Health Insurance

There are fundamental differences in pricing and underwriting techniques for group insurance, as contrasted to individual life insurance. For individual life insurance, an applicant is classified at time of issue and the premium rate for that individual is fixed for the lifetime of the policy. (There are some exceptions to this rule.) The underwriting process determines if the applicant is an acceptable risk and assigns him a standard or substandard rating; the rate schedule furnishes the applicable rate based on sex, age, plan, and rating. For group insurance, the insured group is classified at time of issue on the basis of the overall acceptability of the group but the rate fixed then is subject to adjustment annually based on the emerging experience of the group. The underwriting process is directed mainly to determining if the group in question (usually all, or stated classes of, the employees of a business concern) is an acceptable group, from legal and practical standpoints. The rates charged to a new group are based on the "manual rate" schedules of each insurer, and it is therefore these manual rate schedules that determine any distinctions made by sex.

Here, as in ordinary coverages, the rate distinctions are based upon claim-experience studies. I am attaching an internal memorandum prepared last year by Assistant Actuary Jerry Carnegie of Equitable, which gives an excellent summary of our practices and the supporting statistics. (See appendix D.)

Group Pensions

Female group annuitants have substantially greater longevity than male group annuitants, generally comparable to the differences that exist for individual annuitants, and these differences are reflected in the rates charged by insurer. However, there are other aspects peculiar to the group aspects of group pensions. First, the benefits payable to individuals are determined by the employer's pension plan, and, if the plan so provides, equal periodic benefits (as related to service and salary) can be paid to annuitants of both sexes with the extra cost for female annuitants being absorbed by the employer. Second, over the long run, the actual mortality experience is passed on to the contract holder through experience rating and dividends, and hence the rates charged initially do not determine the actual final cost.

This concludes the discussion of pricing by type of coverage.

Risk Classification Report—American Academy of Actuaries

In 1977 the American Academy of Actuaries appointed a task force on risk classification "to examine the growing number of legislative, administrative and judicial restrictions by Federal and State governments on the ability to classify various types of insurance and pension benefits (e.g., classification by age, sex, impairment, etc.)." The task force report was released to members of the six principal actuarial societies in the United States and Canada accompanied by a letter signed by the presidents of those organizations. The report expressed strong concern over increasing government intervention. The introductory section stated, for example, that "Many instances are cited where laws have been enacted and judicial decisions reached that challenge the very concept of the classification process." I am attaching a copy of this report (see appendix E).

I agree with the report's conclusion that the classification process is being overly restricted by government in many instances. However, I must report that I have also disagreed strongly with some portions of this report, notably the paragraphs on race, which seem clearly to imply that laws prohibiting racial distinctions are unwise. I have attached copies of my correspondence with the American Academy on the report. (See appendix F.)

Adverse Consequences of Mandated Unisex Rates

I have been asked to assess the consequences of using "alternative criteria that have been proposed." The most prominent is the proposal to use unisex rates in charging for insurance and pension benefits. I'll confine my comments to pension benefits.

The consequences obviously will depend on the form in which requirements for unisex tables are imposed. Obviously, though some consequences appear quite clear, others are of necessity speculative and certainly there may be some that no one has yet foreseen. My comments are based on the assumption that mortality differentials between the sexes will continue to exist.

1. If unisex requirements are made retroactive, then insurers will have to commence paying increased benefits to some existing female annuitants to bring them in line with the returns paid to male annuitants. It was not possible to estimate with any accuracy the effect of this on The Equitable's financial position; a very rough guess indicates that surplus might be reduced by about 10 percent to 20 percent.

The remaining comments assume nonretroactivity.

2. If unisex requirements for future benefits are confined to requirements on employers to furnish equal periodic benefits by sex, the effects would differ between defined benefit retirement plans, which already generally meet that requirement, and defined contribution retirement plans, which typically credit each employee's pension account with a percentage of his or her salary. For such plans, the employer would have to introduce an additional employee contribution at retirement to bring the retirement benefit to the required level.

3. If unisex requirements are extended to the rates charged by insurance companies, I believe the main problem would come from antiselection by male purchasers of individual annuities. The insurer would have to estimate the probable sex distribution of individual annuity sales, but in any event the resulting average rates would, relative to true cost, represent an overcharge for males and a bargain for females, somewhere in the neighborhood of 7 percent. The result might well be a withdrawal of males from the market, especially if alternative annuity arrangements priced by sex were available. This would be true, for example, if purchases from foreign insurers not subject to unisex requirements were conveniently available. The end result would be a loss of males from the annuity market and "unisex" rates driven back to the original level of female rates.

There would also be many problems of administrative detail. For example, to know its true financial condition, an insurer would need to keep account of annuities sold and in force by sex and calculate its reserve liabilities separately by sex. If it was also required to perform

the same calculations on a unisex basis, a double system of financial accounting would thereby be imposed.

4. A fourth consequence anticipated by insurers is that one mandated rate practice, incidentally one believed to be financially unsound and statistically unsubstantiated, would open the door to more such mandates, whose nature and effect cannot now be foreseen.

At this point, it seems well to discuss the so-called "overlap theory." This is a concept advanced by some proponents of the unisex approach which holds that a substantial proportion (calculated by some as 80 percent) of female annuitants age 65 have the same life expectancy as males age 65, and hence it is unfair to charge not only the 80 percent but any females higher rates based solely on sex. The counterarguments point out that the additional cost for female longevity is substantial and must be assessed somewhere, and that the present approach assesses it as fairly as possible. I would like to stress the latter part of the counterargument. There is no feasible way of preselecting at 65 women into groups with longer or shorter life expectancies than the average. On the basis of present knowledge, all females in good health at age 65 have an expectation of life exceeding that of all males age 65. Thus, I conclude that the overlap theory has no validity unless and until our knowledge of the aging process advances to the state where we can confidently separate members of both sexes at the same age into subgroups with varying life expectancies.

Summary

I believe the classification processes as I have described them, and as they indeed do exist, represent a flexible evolving system which has become increasingly responsive to the changing needs and conditions of the American public. At the same time, it has enabled the insurance industry to survive and grow on a sound and secure financial basis.

From the standpoint of government limits and regulations, the question would seem to be how to accomplish proper goals of public policy without damaging through undue restrictions the risk-classification process as it now exists.

Appendix A

Excerpt from the 1973 Mortality Reports of the Society of Actuaries, pp. 225-27

V. Mortality Differentials By Sex

As a result of recent requests for information on mortality differentials by sex, the Committee on Ordinary Insurance and Annuities of the Society of Actuaries has prepared this summary of the relevant mortality experience for the general population, for insured lives, and for life annuitants.

General Population

At birth female life expectancy generally exceeds that of males in practically every country of the world, covering a wide diversity of cultures.[1] In the United States general population, female life expectancy has exceeded that of males at virtually all ages at least since 1900, and the differential in life expectancy has widened [see table A].

For the United States in 1971, female life table mortality rates by age vary between 30 and 85 percent of the corresponding male rates (see table 1). At attained ages 0–5, the female rates average about 80 percent of the male rates, grading to roughly 35 percent at ages 20–25, 50–60 percent at ages 30–75, and 80 percent at ages 80–85. A female advantage in mortality is also evident in perinatal mortality experience (i.e., experience relating stillbirths and early infant deaths to live births). In 1958–59 perinatal mortality among females was 82 percent of that among males.[2]

The sex differential in mortality is apparent in the experience by cause of death as well as by age. Female mortality rates are less than the comparable male rates for most causes of death. Female death rates are considerably below the rates for accidents, homicides, suicides, and heart disease, with notable variations in the experience by age and racial origin.[3] These findings, especially with regard to mortality from heart disease, strongly suggest that sex differentials in mortality are due to biological as well as environmental factors and that the relative importance of the biological component varies by age and social circumstances.

[1] *Demographic Yearbook, 1971* (United Nations, 1972), pp. 746–65, table 34.
[2] "Reduction in Perinatal Mortality," *Metropolitan Life Statistical Bulletin,* XLIII (May, 1962), 6–8.
[3] "Sex Differentials in Mortality Widening," *Metropolitan Life Statistical Bulletin,* LII (December, 1971), 3–6.

TABLE A

Life Expectancy (Years by Sex)*

Age	Year of table	Males (M)	Females (F)	Difference [(F)—(M)]
0	1900–1902	47.9	50.7	2.8
	1939–41	61.6	65.9	4.3
	1949–51	65.5	71.0	5.5
	1959–61	66.8	73.2	6.4
	1971	67.4	74.8	7.4
1	1900–1902	54.4	56.1	1.7
	1971	67.9	75.1	7.2
21	1900–1902	41.3	42.9	1.6
	1971	48.9	55.7	6.8
65	1900–1902	11.5	12.2	0.7
	1971	13.2	16.9	3.7

* *Vital Statistics of the United States, 1971* (U.S. Department of Health, Education, and Welfare, Public Health Service, National Center for Health Statistics), Vol. II, sec. 5, p. 11; and *United States Life Tables* for the years shown prior to 1971 (U.S. Department of Commerce, Bureau of the Census, Government Printing Office).

Insured Lives

The mortality differential by sex under standard ordinary life insurance policies follows essentially the same pattern as that in the general population. Female mortality is lower than male mortality at all ages, averaging about 60 percent of male mortality rates based on amount for both medically examined and nonmedical issues in the select period (first 15 policy years) and for all issues combined in the ultimate period (policy years 16 and over) (see tables 9, 10, and 12 of the annual study in *TSA, 1973 Reports).* Individual company results vary from the overall results for all contributing companies.

Life Annuitants

Female mortality under insured life annuities is likewise lower than comparable male mortality, and female survivorship is correspondingly greater. In the study of the 1967–71 intercompany experience under individual immediate annuities which appears in *TSA, 1973 Reports,* female mortality rates based on amounts of annual income average about 55 percent of the corresponding male rates during the first 10 contract years and about 80 percent of the male rates during contract years 11 and over (see table 2). As in the case of insured lives, individual company results vary from the overall results for all contributing companies.

TABLE 1

Ratio of Female to Male Mortality Rates
(United States, 1971)

Age interval	Life table death rate during interval*		Ratio of female to male rate
	Males	*Females*	
0–1	.0213	.0166	78%
1–5	.0035	.0029	83
5–10	.0024	.0017	71
10–15	.0025	.0015	60
15–20	.0079	.0031	39
20–25	.0109	.0037	34
25–30	.0100	.0043	43
30–35	.0112	.0059	53
35–40	.0155	.0089	57
40–45	.0232	.0137	59
45–50	.0358	.0202	56
50–55	.0561	.0298	53
55–60	.0861	.0428	50
60–65	.1307	.0646	49
65–70	.1827	.0958	52
70–75	.2637	.1540	58
75–80	.3585	.2313	65
80–85	.4434	.3450	78

* From *Vital Statistics of the United States, 1971* (U.S. Department of Health, Education, and Welfare, Public Health Service, National Center for Health Statistics), Vol. II, sec. 5, p.7.

TABLE 2

Mortality Rates by Sex on Individual Immediate Annuities

(Intercompany Issues of 1931–70; Experience between 1967 and 1971 Anniversaries; Nonrefund and Refund Annuities Combined)

Contract years	Attained ages	Actual deaths no. of contracts		Death rate per 1,000 on amounts of annual income		Ratio of female to male rate
		Males	*Females*	*Males*	*Females*	
1–10	To 49	8	17	19.95	5.47	27%
	50–59	60	83	18.55	8.29	45
	60–69	681	539	23.87	11.08	46
	70–79	1,562	1,574	51.71	24.03	46
	80–89	1,262	1,568	95.43	59.27	62
	90 and over	203	238	166.23	154.96	93
	All	3,776	4,019	51.53	27.95	54%
11 and over	To 49	2	9	3.44	6.91	201%
	50–59	26	34	9.57	8.35	87
	60–69	219	218	28.46	13.30	47
	70–79	1,236	2,081	59.03	38.07	64
	80–89	2,748	7,868	129.11	96.28	75
	90 and over	1,340	6,037	206.00	201.72	98
	All	5,571	16,247	99.21	80.07	81%

Source: Prepublished data used in the study of "Mortality under Individual Immediate Annuities between 1967 and 1971 Anniversaries," *ISA, 1973 Reports.*

Appendix B

Excerpt from *Northwestern Mutual Life: A Century of Trusteeship*, by Williamson and Smalley, published 1957.

From time to time Northwestern insured the lives of Negroes. In 1885 the problem of getting a full medical history on Negro applicants raised the question as to the advisability of continuing this practice. Kimball made it clear, however, that "we have no prejudice against insuring colored men growing out of the mere fact of color." In 1902 after research by the actuarial and medical staffs showed a substantially higher death rate among nonwhites than whites, Northwestern refused to accept further applications from the former groups, although later in its history the Company reversed this decision.

Excerpt from *The Metropolitan Life—A Study in Business Growth*, by Marquis James, published 1947.

It is time to bring to date the subject of life insurance for Negroes.

Colored people became a factor in insurance in the 1870s. A few years out of slavery, all but the most poorly paid occupations were closed to them. Their living conditions reflected this. Only the industrial companies, with their facilities for issuing small policies with frequent premiums, were in a position to serve them. At first Prudential issued policies on colored lives at the same rates as white. The Metropolitan did likewise when it entered the industrial field. By 1881, however, the fact that Negro lives were subject to a much greater mortality than white had become apparent. Metropolitan stopped writing insurance on colored lives entirely at the beginning of that year. In April, the Prudential began to charge higher premium rates for colored lives to cover the higher mortality, and the Metropolitan resumed writing them on a similar basis in November.

This action, dictated entirely by actuarial findings, was misconstrued as racial discrimination. Massachusetts passed a law forbidding the charging of higher premium rates for colored than for white. After unavailing protests the companies discontinued soliciting Negro risks in that State. When several other States followed suit with similar laws, Prudential went further and stopped doing business with Negroes everywhere.

Except in States with laws of the type mentioned, Metropolitan continued writing Negroes, but at higher rates than on whites. Careful selection was deemed necessary, however, with a full medical examination in every case. Under such conditions, Actuary J. M. Craig decided that beginning in 1804 the higher rates could be dropped, and Negroes accepted at the same premium as whites. At the same time,

solicitation of business in the States with anti-color-discrimination laws was resumed.

This was the way of it until 1907, when new industrial rate tables were adopted. Mortality studies then showed that the colored death rates were running substantially in excess of the white. It was clearly improper to continue writing both on the same premium rates. That would have been discrimination against the whites. So, under the eye of Mr. Fiske, the company proceeded as follows. A set of plans of insurance was prepared, on a basis providing for extra mortality, with cash values computed on the special tables and dividends based on the actual mortality experience. These plans, along with a line of plans for persons of standard mortality, were open to all applicants, white or colored. When a colored person was issued a standard policy, the extra mortality was provided for by allowing no issue commission to the agent.

The foregoing applied to the industrial branch. In the ordinary department no problem arose until later. Most Negroes were not in the market for the substantial amounts of insurance offered by the ordinary department. Those who did apply gravitated to the intermediate branch for $500 policies. In the 1920s it was noticed that the proportion of Negro lives in this branch had grown to a point where the overall mortality of the group was being raised significantly. This, then, brought up the very problem the industrial had had to face years before. The same general approach as in industrial was tried in 1930, but discontinued at the beginning of '35. At that time a simpler overall rule was adopted under which the excess mortality was offset by paying only partial commissions on policies issued to Negroes.

In May 1935 the New York State anti-color-discrimination law was stiffened to forbid any distinction because of race in the amount of commissions paid for writing the policy. Thereupon Metropolitan discontinued soliciting colored risks for any kind of life insurance in New York State.

To sum up, there is no more discrimination against colored people than against workers in hazardous employments. Time and again it has been demonstrated that the mortality of colored lives is sizably greater than that of whites. Where possible Metropolitan has tried to write insurance on colored lives, but at rates commensurate with mortality experience.

Excerpt from 1936 Annual Report of the Superintendent of Insurance, State of New York—"Bills That Became Law In 1935"

In effect May 6, 1935

An act to amend the Insurance Law, in relation to discrimination against colored persons

Amends section 90, which prohibits discrimination against colored persons by life insurance corporations, by providing that no such corporation doing business in this State shall reject any application for a policy of life insurance issued and sold by it, or refuse to issue such policy after proper application therefor or pay any lower rate of commission to its agents for writing such a policy, solely by reason of such applicant being wholly or partially of African descent. The measure did not have the approval of the Department for the reason that it attempts to interfere with the selection of risks of a company and will require a company to accept Negroes at standard rates notwithstanding that all available statistical data, including United States Census, indicates a marked difference between the longevity of colored and white people even when the better risks are selected in each class.

Excerpt from 1943 Annual Report of the Superintendent of Insurance, State of New York

Problems In Harlem

The Atlantic Charter has made us realize that we owe an obligation of fairness not only to people of other countries but to minority groups in our own. Harlem is the largest and most prosperous colored city in the world and yet there are many problems which are difficult of solution. Colored people do not have equal opportunity in procuring work. In housing, insurance and many other matters they do not receive the consideration which they should.

When the new Motor Vehicle Law went into effect many Negroes found it difficult to secure insurance. One able attorney who is an Assemblyman was inadvertently refused a policy. This was not because of prejudice against colored people but because the companies believed that the risk was greater and they did not wish to assume too large a burden in the colored communities. As soon as the matter was brought to our attention we wrote the companies that there must be no discrimination, called meetings of company officials, and a committee of company representatives was appointed to cooperate with the Department. This discrimination was soon removed and complaints of this nature dropped off to almost nothing. The companies had no desire to be unfair. They simply did not realize the gravity of the situation or their obligations.

There is a more serious and a more permanent problem in Harlem and the other colored neighborhoods of the state. Negroes as a rule earn less than white people and are compelled to buy life insurance and

accident and health protection on the installment basis. This insurance costs more than when it is bought in normal ways. Most of the larger and more responsible companies do not bother to seek colored business. The people in Harlem and other colored communities are served largely by organizations which operate on the fraternal or assessment plan and write life insurance combined with accident and health insurance mainly on colored lives. One of these companies is entirely controlled by Negroes. All of the officers and agents are colored. The other companies are not controlled by Negroes but some of them have colored agents. Because of weekly collections and the expense of operation the cost to policyholders is very high. It would be impossible to form companies of this type under our present laws but there is nothing that we can do about those already in existence excepting to watch them and try to make them better. In California where there was a somewhat similar situation the Insurance Commissioner arbitrarily took over companies of this type and merged them into a new life insurance company. He was sustained by the courts. It is doubtful if any such action would be sustained here or if the Department should attempt it.

On the other hand, it is very clear that something should be done to procure lower insurance cost and better protection for the colored population. Savings bank life insurance has been of help as many colored people have secured protection there. But savings bank life insurance cannot help those with low incomes who can only buy insurance in small amounts and on the weekly plan.

In order to try to find some solution, or at least some program that will be helpful, a little more than a year ago I appointed a committee to study the problem. Elmer A. Carter, who is a member of the Unemployment Insurance Appeals Board, was appointed chairman and the committee consisted of leading Negro citizens, members of the Department, and representatives from some of the larger life insurance companies. A number of meetings have been held but as yet no final plan has been decided upon.

Our actuary, together with actuaries of some of the companies, made a study of Negro mortality to determine whether or not the statement commonly made that the experience on Negro lives indicates a substantially higher average death rate is a true one. Some of this experience was secured from companies whose management and policyholders are Negro. The figures from all of the sources substantiate that the mortality is higher than for similar classes of white people. An analysis of claims according to cause of death shows definitely that Negro policyholders are more susceptible to a number of diseases.

The Department and the committee have had under consideration a number of possible steps to help. One of the possibilities is the formation of a new company which will specialize largely in insurance on Negro lives. It was thought that possibly one of the foundations might be interested to help finance a venture of this kind. The management should be composed of eminent colored people and also white people who have the confidence of the community and have shown an interest in matters affecting the Negro race. The formation of a new life company is one of the most difficult projects imaginable but the Metroplitan Life Insurance Company made an offer which would give substantial help. It is willing to turn over to the new company the management and collection of the insurance which it holds in Harlem, which would give the new company an immediate income of substantial proportions and would also enable the staff to secure experience, oversight and training.

It has also been suggested that the four fraternal and assessment companies which now serve the colored people be amalgamated so that there will be less expense and so that better service will be given at lower cost. This would be highly desirable if it could be effected. The difficulty is that it would mean the elimination of a number of officers as well as agents. These personnel problems are always difficult when mergers are effected. It is, however, one of the possibilities which should receive very serious consideration.

Another obvious problem is the law of the State which at present provides that there can be no discrimination between white and colored people in fixing premiums for insurance. Section 209 has several very rigorous provisions which are intended to protect Negroes against unfair discrimination but, as a matter of practice, this law has made it more difficult for colored people to secure the best type of insurance. It is doubtful if the legislature will take any action to modify this law unless the Negro community decides that it is advisable for its own interest that it be done.

In view of the fact that the mortality is definitely higher, the larger insurance companies do not seek colored business. If our companies were permitted to make a reasonable differential based upon the experience, it is possible that Negroes would receive greater benefits than they now do under the present law. At any rate, this question should receive very serious consideration on the part of all those who are sincerely interested in advancing the welfare of our Negro citizens.

FACSIMILE

Circular Letter 64-5, New York Insurance Department

State of New York
Insurance Department
123 William Street
New York 30
February 14, 1964

Henry Root Stern, Jr.
Superintendent of Insurance

TO ALL AUTHORIZED INSURERS:

The laws of New York State clearly enunciate a firm and fixed public policy against ethnic and religious discrimination. Section 40(10) of the Insurance Law implements this public policy by barring discrimination based on race, color, creed or national origin in the writing or rating of insurance policies or in any other manner whatever.

The Department has been gratified by the cooperation it has received from licensed insurers in the enforcement of this law and the public policy it represents.

The Department's attention, however, has been directed to certain forms and reports furnished to some licensed insurers in which there may be set forth information as to the race or nationality of an insurance applicant, policyholder or claimant, or of the occupants of insured premises, etc. Such forms, which are of the kind not required to be submitted to the Insurance Department for approval prior to use, include agents' confidential reports, medical reports, adjusters' reports and inspection or credit reports.

The inclusion of inquiries or information as to race, color, creed or national origin in any form used by a licensed insurer, or the making of such inquiries on its behalf, clearly suggest possible or likely violation of both Section 40(10) and the firmly established policy of New York State. Accordingly, such practices shall be discontinued. Nor should such insurers accept reports from an independent inspection or credit agency or other sources which contain such inquiries or information.

I am confident that you will continue to cooperate with this Department in effectuating the wholesome purposes of New York's public policy against discrimination. lease acknowledge the receipt of this letter.

Very truly yours,
[signed]
Superintendent of Insurance

Circular Letter 64–5

Appendix C

FACSIMILE

State of New York
Insurance Department
2 World Trade Center
New York 10047

Benjamin R. Schenck
Superintendent of Insurance

NEW YORK STATE INSURANCE DEPARTMENT
OPINION AND REPORT PURSUANT TO SECTION 278 OF THE INSURANCE LAW

In the Matter of Alleged Violations of Article IX-D of the Insurance Law by All Insurers Domiciled or Licensed to do Business in This State

On November 18, 1974 every insurer domiciled or licensed to do business in the State of New York was ordered to show cause why the Superintendent of Insurance should not: (1) prepare a report pursuant to Section 278 of the Insurance Law concluding that any refusal to issue, cancel or decline to renew a policy of insurance because of the sex of the applicant or policyholder constitutes an unfair trade practice; and (2) promulgate a regulation prohibiting such practices.[1] The public hearing required by Section 278 of the Insurance Law[2] was held in New York on December 16, 1974. At the hearing, Department witnesses testifying in support of the proposed regulation gave various examples of underwriting and marketing distinctions based on sex. (E.g., T.R. 7–23, 23–28, 29–42, 42–46.) In addition, the New York State Consumer Protection Board appeared in support of the proposed report and regulation (T.R. 75–83). Industry representatives, including various trade associations, also testified and submitted written statements.[3] While no one opposed the proposed report and regulation, clarification was requested by several witnesses, including the Consumer Protection Board, regarding the scope and effective date of the prohibition and the procedural steps for its implementation.

[1] The show cause citation was served upon each insurer by registered mail as required by Section 22 of the New York Insurance Law.

[2] All future section references are to the New York Insurance Law unless otherwise noted.

[3] E.g., Mr. Thomas Gillooly testified on behalf of the Health Insurance Association of America, the American Life Insurance Association and the Association of New York State Life Insurance Companies. (T.R. 64–71.)

DECISION

The hearing record clearly demonstrates that insurance companies have engaged in underwriting practices that make numerous distinctions based on the sex of the applicant or policyholder. Examples of the more common distinctions that were found to exist are as follows:

—offering insurance policies with waiting periods to females while at the same time offering policies to males that either contain shorter waiting periods or no waiting period;

—offering males higher benefit levels than are offered to females;

—offering policies to males with a definition of disability that is more favorable than the disability definition set forth in the policies that are offered to females;

—offering coverage to males in certain occupations while denying coverage or offering more limited coverage to females in the same occupation categories;

—offering coverage to males gainfully employed at home while denying or offering reduced coverage to females similarly employed;

—affording males a more favorable issue age than is offered to female applicants;

—requiring female applicants to submit to a medical examination while not requiring males to submit to such an examination;

—denying females many of the insurance options that are available to males; and

—denying females waiver of premium provisions that are available to males or offering such provisions to females only for policy limits that are lower than those available to males.

More often than not, such underwriting distinctions emanate from unjustified subjective views of the role of women in our society. In addition, underwriting rules are not rules in the traditional sense. Instead, they are rough guidelines, which at best may be applied in a very haphazard and arbitrary fashion by insurance company underwriting and sales personnel.

Because these "guidelines" based on sex are not derived from objective data and are subject to uneven and discriminatory application, all underwriting distinctions based on sex are hereby found to constitute an unfair trade practice under Article IX-D of the Insurance Law. In addition, the attached regulations will be promulgated in order to place all insurers on notice that future use of such "guidelines" will result in appropriate disciplinary proceedings.

Under the regulations no underwriting distinction based on sex will be permitted. Instead, all insurers will be required to make available to females[4] any coverages that it makes available to males.[5] Only rate differentials will be permitted and then only when supported by objective and valid statistical data. This approach permits equitable classifications when such classifications are based on objective data as opposed to subjective attitudes. At the same time, it outlaws all distinctions in the area where the creation of classifications can be the most arbitrary and invidious—that is in the myriad of insurance acceptance or rejection decisions where prejudice, stereotyped attitudes and uneven enforcement are most likely to exist.

Questions have arisen as to whether the prohibition will be prospective or retroactive in its application and the effective date of the prohibition. For a number of reasons—both legal[6] and practical[7]—the prohibition will be applied prospectively. With respect to an

[4] This does not mean that insurers cannot sell coverages that provide different but actuarially equivalent benefit levels for males and females when a customer requires such coverage to avoid employment discrimination problems.

[5] The proposed regulation does not mandate maternity benefits. While this issue is related to sex discrimination, it is essentially a different one: Do minimum health insurance requirements require the inclusion of maternity benefit insurance in basic health insurance contracts? Like the question of whether insurance coverage should be mandated for psychiatric care or alcoholism, a decision to mandate maternity benefits requires a balancing of the cost of providing such coverage and the importance and value of the social policy objective that the mandated coverage would realize. It also requires a determination of who should bear the cost of such insurance. For example, should experience-rated policyholders be exempt from mandated minimum coverage requirements? Or should all policyholders, irrespective of the nature of their contract, be required to have such coverage? Or should the cost of this care be shouldered by the entire community through the tax base? Such questions should be answered in proceedings specifically designed for this purpose, i.e., proceedings regarding proposed amendments to the Insurance Department's Regulation No. 62—the Department's regulation that sets forth minimum health insurance coverage requirements.

[6] The present proceeding was undertaken pursuant to Section 278 of Article IX-D of the Insurance Law. Section 278 of Article IX-D expressly provides that any practice not expressly defined as an unfair trade practice under the Insurance Law cannot be viewed as an unfair trade practice *until* the Department makes such a determination *after* a hearing and files a report setting forth such findings with the Attorney General. In addition, the section permits remedial action only if the practice continues after the filing of the report. Furthermore, retroactive application would require impairment of existing contracts. While this can be accomplished pursuant to a valid exercise of the police power, the legislature has authorized use of the police power only in the manner set forth in Article IX-D.

[7] Prospective application will prevent the sale of discriminatory policy forms to the extent they exist. It also assures availability of non-discriminatory coverage by prohibiting discriminatory underwriting practices. This will enable most of those adversely affected to obtain the more expansive coverage if they wish to do so. It has been suggested that some individuals may not be able to obtain upgraded coverage now because they are ill or uninsurable and, therefore, these individuals should be treated as if they had purchased upgraded coverage at the time they were insurable. While there is some merit to this argument, it must be balanced against other considerations. Even if the Department had the legal power to compel the issuance of new policies and this is doubtful, it would be extremely difficult to determine who would be entitled to such relief. For example, how could one be sure that an individual would have obtained the more generous coverage in the past had it been available—particularly when the broadened coverage would cost more? This question becomes even more difficult to answer when an individual asserts that coverage was denied in the past for discriminatory reasons or when it is asserted that coverage was not even applied for because the applicant knew or suspected that discriminatory underwriting practices would preclude its availability. These difficulties, coupled with the fact that the now prohibited underwriting practices were not previously illegal, supports the conclusion that a prospective application of the Department's prohibition will effectively and fairly effectuate Department policy.

effective date, insurance company representatives requested that they be afforded sufficient time to: (i) inform underwriting and sales personnel of the Department's prohibition; (ii) obtain Department approval for rates for females for all coverages the insurer sells; and (iii) distribute approved rates to marketing personnel. This request has merit. An orderly implementation can be realized by June 1, 1975. To facilitate this end, the Department's Health Insurance Bureau has made special arrangements for the orderly and prompt processing of rate filings.

It should be emphasized that this report and approved regulation represent a first step in the elimination of sex discrimination. A question still remains regarding the propriety of different rates for males and females for various types of insurance. This is particularly so for health and disability insurance. Accordingly, the Department is now in the process of an in-depth review of available statistical data and the development of up-dated data from private and government sources with respect to accident and health insurance. This study should be completed by the end of this year. In the interim, the Department will continue to use existing statistics in its evaluation of health and disability rate filings for females. However, rates approved on this basis will be limited to a one-year period so that these rates can be reevaluated once the Department's study is completed.

CONCLUSION

Based on review of the entire record, any refusal to issue any policy of insurance or the cancellation or refusal to renew such policy because of the sex of the applicant or policyholder after June 1, 1975 constitutes an unfair trade practice under Article IX–D of the Insurance Law. Accordingly, this opinion will be filed with the Attorney General of the State of New York and the attached regulation is promulgated to take effect on June 1, 1975.

Dated: January 27, 1975, New York, New York
/s/ JOHN G. DAY
Deputy Superintendent
Dated: January 28, 1975, New York, New York
Approved by:
/s/ BENJAMIN R. SCHENCK
Superintendent of Insurance

FACSIMILE

INSURANCE DEPARTMENT OF THE STATE OF NEW YORK
11 NYCRR 217
(REGULATION No. 75)

UNDERWRITING PRACTICES DISCRIMINATING AGAINST FEMALES

I, BENJAMIN R. SCHENCK, Superintendent of Insurance of the State of New York, pursuant to authority granted by Sections 10, 21 and 272 of the Insurance Law of the State of New York, do hereby promulgate the following Part 217 of Title 11 of the Official Compilation of Codes, Rules, and Regulations (Regulation No. 75), to take effect after filing with the Secretary of State, on June 1, 1975, to read as follows:

Section 217.1 *Prohibition.* No association, corporation, firm, fund, individual, group, order, organization, society, or trust subject to the supervision of the Superintendent of Insurance shall refuse to issue any policy of insurance, or shall cancel or decline to renew such policy because of the sex of the applicant or policyholder.

§217.2 *Violation.* A contravention of Section 217.1 shall be deemed an unfair act or practice in the conduct of the business of insurance in this State, in violation of Section 272 of the Insurance Law.

I, BENJAMIN R. SCHENCK, Superintendent of Insurance of the State of New York, do hereby certify that the foregoing regulation is the Regulation 75 promulgated by me on the 28th day of January 1975.

BENJAMIN R. SCHENCK
Superintendent of Insurance

Dated: New York, N.Y.

Excerpt from ***Disability Income Insurance Cost Differentials Between Men and Women,*** **New York State Insurance Department, June 1976**

INTRODUCTION

Traditionally insurance companies have charged higher premium rates to women than to men for medical and hospital coverage and for disability income insurance. In addition to premium rate differentials, insurance companies have applied, in the past, more restrictive underwriting requirements for female applicants for insurance than for male applicants, particularly for disability income insurance. Underwriting restrictions applicable to women have included refusal to issue coverage in certain occupations, limitations on the amount of coverage and offering more limited types of insurance plans.

These restrictions prevented many women from obtaining the disability income coverage they desired and clearly represented unfair discrimination by insurers on the basis of sex. Discriminatory treatment of women with regard to the availability of disability income insurance prompted legal action in early 1974 by some women directly affected by such discrimination. A lawsuit was filed against the Superintendent of Insurance, requesting certain declaratory and injunctive relief to eliminating alleged sex discrimination in both the underwriting and rating of disability income insurance.

While this lawsuit was pending, in November 1974 the Insurance Department cited all insurers licensed to do business in New York to appear at a public hearing to show cause why the Superintendent should not:

1. make a written report concluding that any underwriting practice based on sex constitutes an unfair act or practice in the conduct of the business of insurance in the state, and
2. adopt and promulgate a regulation which would prohibit such sex discrimination.

Following the public hearing, the Insurance Department issued an *Opinion and Decision* and promulgated Regulation No. 75 on January 28, 1975. The *Opinion and Decision* concluded that unfair underwriting practices existed. The Regulation prohibited all insurers, effective June 1, 1975, from refusing to issue any policy, declining to renew or cancelling a policy because of the sex of the applicant or policyholder. In effect, no insurer licensed to do business in this State could thereafter offer or renew a policy to men that they did not offer or renew to women.

During the Legislative Session last year, Section 40–e was added to the New York Insurance Law as follows:

§40–e. Discrimination because of sex or marital status.

No association, corporation, firm, fund, individual, group, order, organization, society or trust shall refuse to issue any policy of insurance, or shall cancel or decline to renew such policy because of the sex or marital status of the applicant or policyholder.

Section 10–e, which became effective September 1, 1975, had the effect of expanding the Regulation so that in addition to the prohibition of sex discrimination, there is a prohibition of discrimination on the basis of marital status.

It should be noted that the Department Regulation and Section 40–e did not relate to the issue of premium rates to be charged for men and women for various types of insurance. In the *Opinion and Decision,* issued with Regulation 75, the Department committed itself to an in-depth review of available statistical data in an effort to determine if valid actuarial data existed to support different rates for men and women, and if not, to compile up-dated data with respect to accident and health claim cost experience.

Credible statistical data already existed in hospital and medical insurance coverage. However, for individual disability income insurance, the available experience data on insured lives by sex was limited and often inconclusive. The scarcity of claims experience data on disability income insurance coverage for women can in part be attributed to the past reluctance or refusal of insurers to sell this type of coverage to women. In addition, a compilation of experience data from all of the major writers of disability income insurance coverage in New York State had never been attempted and thus a considerable volume of credible experience, while available in company records, had never been combined and analyzed. Studies based on limited samples had appeared in actuarial journals.

It was also apparent that an up-dated study was essential because of the changing life style of women in the recent decades. More women have been pursuing professional and other careers on a permanent basis and an increasing number of women have become the sole or principal family wage earners, underscoring their need for adequate loss of income protection. As a consequence, their insurance needs are becoming more comparable to those of men.

In May 1975, the Insurance Department issued a call for the available disability income experience from 26 leading companies licensed to write this coverage in New York State. The objectives of the Department's study are:

1. To determine if sex is a factor in the cost of disability income insurance.

2. If sex is a factor, to determine to what extent this one characteristic affects the cost of disability income insurance as between otherwise similar risks.
3. If sex is a factor, to determine if there are significant variations in the female to male costs because of age, occupation, cause of disability (accident or sickness), benefit structure (elimination period and maximum benefit period), and type of renewable guarantee (guaranteed renewal to age 60 or 65 or renewable at option of the insurance company).
4. To determine if the influence of the sex factor on the cost of disability income insurance has changed during a recent six-year period (1968–1973).
5. To compare cost patterns by sex as determined by this study of individually underwritten disability income insurance with patterns exhibited by other related health statistics.

Excerpt from *Disability Income Insurance Cost Differentials Between Men and Women,* **New York State Insurance Department, June 1976**

CONCLUSIONS

1. Sex is a major factor affecting the cost of disability income insurance.
2. For accident and sickness benefits, female claim costs are consistently higher than male costs up to age 60 after which they fall below male costs. The highest relative differential in claim costs appears in the age group 30–39.
3. For accident-only benefits, female claim costs are generally less than male claim costs below age 30 and show ratios which increase with advancing age. Thus, cause of disability affects claim-cost ratios.
4. Where reliable homogeneous occupational data are available, differences between occupations reflect differences in degree of hazard and therefore affect costs.
5. Where male and female workers are properly grouped in the same occupation class, claim-cost differentials are attributable to sex and age and not to occupation.
6. Benefit structure features such as elimination periods and maximum benefit periods or type of renewal guarantee provision (such as guaranteed renewable or optionally renewable by the company), while they affect claim costs overall, are not significant factors affecting relative female to male costs.
7. There is no evidence of significant change in female-male claim cost ratios during the years 1968–1973; *i.e.,* the ratios by sex and by age have remained relatively stable.
8. A review of social security disability benefit experience exhibits a pattern of claim cost ratios not inconsistent with those derived from commercial disability income insurance experience.

Appendix D

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Equitable
Group Insurance Department
Date: September 12, 1977

Subject: Claim Data-Analysis by Sex

This memorandum documents the sources we use to differentiate by sex in our regular group rate structure and supplements Mr. Whimpey's memorandum of August 4 on this subject. We will demonstrate how our sex ratings correspond to the most up to date industry data on the subject as well as, where available, with our own claim experience. We will separately discuss each of the major coverages.

Group Life Insurance

The most recent experience on this subject is published in the 1975 Transactions of the Society of Actuaries, and covered mortality experience during the years 1970–1974. Exhibit I attached is a copy of Table 3 of that study, and shows the different mortality experience by sex. The study finds that, at the working age, female mortality is about 46 percent of male mortality. We used the results of that study to develop the new group life premium scale that is currently used for Equi-Group PLUS and will, in the near future, be implemented as part of an entirely new set of group life underwriting rules. It is interesting to note that the 1971 Scale, the current minimum group life premium scale promulgated by the New York State Insurance Department, gives females only a 40 percent discount, but we have reflected fully the improved female experience in our rates. Exhibit II attached displays the quinquennial rates in our scales, and you will note that at most ages, particularly the young ages, the rates for females are less than half of those for males.

We should point out that the Equitable was one of several large companies who contributed to the Society of Actuaries mortality study, and so by basing our rates on that study, we are in fact using our own experience as an underlying basis for our premium rates.

Accidental Death and Dismemberment Insurance

After many years of charging the same rates for both sexes for this coverage, we recently made significant strides towards equity by introducing sex-specific AD&D rates. The same Society of Actuaries study mentioned above was the source of our data, and we now have female AD&D rates that are only 42 percent of the corresponding male rates. These rates are currently used for Equi-Group PLUS. We hope to implement them for larger cases in the future. From Exhibit I you can see the result of the Society's study, which clearly shows the

very low frequency of accidental deaths (about 2 per 10,000 lives exposed) among females.

Short Term Disability Insurance

The most recent experience on this subject is also a Society of Actuaries study, again covering experience during the years 1970-1974. The Equitable was a contributor to this study also, so in using this study we are again basing our rates on our own experience. Exhibit III attached is a copy of Table 5 of that study, which shows that female experience is worse relative to male experience than the 1947-1949 Tabular. Since our current weekly indemnity rates are based on the 1947-1949 Tabular, this suggests that we are undercharging females relative to males. However, it appears that the extent of this displacement is slight, and does probably not warrant a revision of our rate basis. Our current weekly indemnity rates for females are, on average, 50 percent above those for males.

Long Term Disability Insurance

Once again, the most recent experience on this subject is a Society of Actuaries study, this time covering experience from 1969-1973. The Equitable is a contributing company to this study also. Exhibit IV attached is a copy of Table I of that study, and shows the rates of disablement separately for males and females. This table must be used cautiously, however, because it compares only rates of disablement and not duration of disablement. Table D-1D of that study, attached as Exhibit V, compares the relative value of a disability once it occurs by sex. By combining results of these two tables, we can determine the implied ratio of female to male claim costs for LTD. The resulting ratios begin at about 1.40 for low ages and then drop to about .75 at ages near retirement. Our current LTD rates for females are 50 percent above the male rates, suggesting that a review of that rate basis is in order.

Group Accident and Health Insurance

The most recent experience on this subject is a Society of Actuaries study of Group Hospital and Surgical Expense Insurance, covering experience from 1970-1972. As usual, the Equitable contributes to the study. Tables 1 and 3 of that study compare male and female utilization of hospital and surgical coverages, respectively. Because of their bulk, they are not attached, but instead, I will summarize the results here. For hospitalization there were frequencies of .084 for males and .120 for females, or 43 percent greater frequency among females. The duration of inpatient claims, however, was slightly lower among females than males (7.3 days compared to 7.7 days), so this would suggest that female claim costs are .120 x 7.3/.084 x 7.7 = 1.35 or 35 percent above male costs. Surgical inpatient frequencies (excluding maternity) were found to be .071 for females compared to .041 for

males, while total surgical frequencies were .142 for females compared to .112 for males. This would suggest surgical costs for females would be in the neighborhood of 50 percent above the corresponding male costs, with the exact figure varying according to the relative weight given to inpatient and outpatient claims. In summary, then, the Society of Actuaries study would suggest female hospital and surgical claim costs are about 40 percent above male claim costs. The Equitable's manual health rates for females average 30 percent above male rates, which compares favorably with the Society of Actuaries study.

Dental insurance is relatively new in group insurance, and the Society of Actuaries has not yet compiled a study of experience under this coverage. However, we study our own experience annually and this has proven to be invaluable in maintaining not only the level but also the internal relativities in our manual rate basis. Exhibit VI attached is a copy of Exhibit I of our most recent dental experience study, and at the bottom of that exhibit you can see how our experience varies according to the percentage of females in the group. This exhibit was used to justify a reduction in our female dental load from 50 percent to 35 percent. We will review experience under the 35 percent load later this year to determine if a further adjustment is warranted.

Vision Care is one of the newest coverages offered by the Equitable. Here we have neither Society of Actuaries data nor a sufficient volume of our own experience with which to justify a rate distinction between males and females. By relying on data published in *Vital and Health Statistics,* we decided to charge females 20 percent more than males. The two studies we found suggested loads of 24 percent and 22 percent were appropriate. It is interesting to note that our original vision care rates contained a 33 percent female load, but that was lowered to 20 percent based on the above data. The New York State Insurance Department asked us to justify the female load last year, and were satisfied by our reference to the above sources.

/s/
Jerry Y. Carnegie
Assistant Actuary

EXHIBIT I

Group Life Insurance Mortality Experience

TABLE 3

New-Format Data
All Industries Combined
1970–74 Crude Quinquennial Disability, Accidental Death, and Total Death Rates
(Force of Decrement)

MALE EXPERIENCE ONLY

Central age	Waiver of premium (age 60 and age 65)			Extended death benefit and no disability		Total and permanent disability			Total accidental death
	*Disab.**	*Accid. death*	*Total death*	*Accid. death*	*Total death*	*Disab.*	*Accid. death*	*Total death*	
17	.00004	.00184	.00296	.00176	.00317	.00000	.00124	.00266	.00178
22	.00005	.00091	.00150	.00081	.00139	.00002	.00078	.00113	.00089
27	.00007	.00064	.00116	.00075	.00130	.00008	.00045	.00084	.00063
32	.00014	.00052	.00123	.00078	.00136	.00016	.00029	.00084	.00052
37	.00022	.00044	.00155	.00050	.00163	.00042	.00020	.00136	.00042
42	.00046	.00046	.00257	.00048	.00243	.00085	.00035	.00225	.00045
47	.00089	.00041	.00434	.00057	.00449	.00154	.00041	.00409	.00042
52	.00182	.00046	.00678	.00051	.00733	.00347	.00030	.00658	.00044
57	.00459	.00050	.01130	.00047	.01174	.00914	.00047	.01014	.00050
62	.00420 †	.00055	.01779	.00049	.01948	—	.00049	.01683	.00053
67	—	.00068	.02882	.00053	.02998	—	.00052	.02720	.00064
72	—	.00074	.04577	.00032	.04532	—	.00079	.04671	.00067
77	—	.00094	.07141	.00027	.06594	—	.00108	.06297	.00082
82	—	.00159	.09983	.00098	.09742	—	.00161	.10328	.00144
89	—	.00410	.16792	.00221	.17954	—	.00329	.18771	.00347

* 75 per cent of disability claims on waiver of premium.
† Rate based on exposure for age 65 waiver of premium only.

EXHIBIT I (continued)

FEMALE EXPERIENCE ONLY

Central age	Waiver of premium (age 60 and age 65)			Extended detath benefit and no disability		Total and permanent disability			*Total accl-dental death*
	*Disab.**	*Accid. death*	*Total death*	*Accid. death*	*Total death*	*Disab.*	*Accid. death*	*Total death*	
17	.00001	.00051	.00100	.00094	.00118	.00000	.00028	.00028	.00053
22	.00002	.00023	.00042	.00034	.00058	.00000	.00017	.00020	.00024
27	.00007	.00022	.00051	.00014	.00056	.00006	.00023	.00046	.00022
32	.00008	.00024	.00070	.00031	.00072	.00020	.00015	.00079	.00024
37	.00016	.00020	.00090	.00023	.00142	.00055	.00018	.00067	.00020
42	.00029	.00017	.00157	.00026	.00148	.00094	.00028	.00133	.00019
47	.00046	.00017	.00208	.00005	.00268	.00175	.00028	.00227	.00017
52	.00087	.00020	.00289	.00005	.00352	.00245	.00028	.00306	.00019
57	.00215	.00019	.00476	.00035	.00499	.00664	.00016	.00453	.00020
62	.00270 †	.00025	.00725	.00008	.00833	—	.00033	.00641	.00024
67	—	.00029	.01165	.00074	.01424	—	.00037	.01369	.00036
72	—	.00026	.02241	.00025	.01942	—	.00055	.02407	.00027
77	—	.00085	.03776	.00049	.03736	—	.00000	.03477	.00065
82	—	.00093	.05365	.00115	.07225	—	.00565	.08475	.00168
89	—	.00243	.10706	.00248	.08685	—	.00000	.14085	.00209

Source: *1975 Transactions of the Society of Actuaries*, pp. 200, 201.

EXHIBIT II

Comparison of Equitable's New Group Life Premium Scale with 1971 Scale

	Group Life Premium Scales Monthly Premium Rate per $1,000			
	1971 Scale		New Scale	
Central Age	Male	Female	Male	Female
22	$ 0.24	$ 0.14	$ 0.19	$ 0.06
27	0.26	0.16	0.21	0.10
32	0.28	0.17	0.23	0.13
37	0.36	0.22	0.32	0.18
42	0.53	0.32	0.51	0.28
47	0.81	0.49	0.84	0.43
52	1.26	0.76	1.38	0.65
57	1.97	1.18	2.20	0.96
62	2.96	1.78	3.27	1.40
67	4.48	2.69	4.84	2.12
72	6.84	4.10	7.21	3.37
77	10.00	6.00	10.35	5.37
82	15.07	9.04	15.38	9.03
89	24.79	14.87	25.09	16.81

EXHIBIT III

Group Weekly Indemnity Experience

TABLE 5

Group Weekly Indemnity Experience
Groups with Less Than 1,000 Employees Exposed
1972–74 Policy Years' Experience, by Female Per Cent
Plans with No Maternity Benefit, All Benefit Periods Combined

Female percent	No. experience units	Weekly indemnity exposed (000)	Actual claims (000)	Ratio of actual to 1947–49 weekly indemnity tabular
<11%	4,625	24,648	16,301	102%
11–21%	1,967	10,368	5,900	90
21–31%	1,147	7,126	4,440	94
31–41%	899	5,724	3,874	100
41–51%	679	3,900	2,813	101
51–61%	499	3,158	2,393	105
61–71%	416	2,530	2,223	116
71–81%	330	1,886	1,606	108
81–91%	321	1,877	1,698	113
91–100%	134	608	496	122
Total	11,017	61,825	41,744	100%

Source: *1975 Transactions of the Society of Actuaries*, p. 248.

EXHIBIT IV

Group Long Term Disability Experience

TABLE 1

Group Long-Term Disability Insurance Crude Rates of Disablement per 1,000 Lives Exposed

(Six-Month Elimination Period; Calendar Year of Issue Excluded)

Calendar Years of Experience 1969–73

ALL EXPERIENCE UNITS COMBINED

Attained age	Life years exposed	Number of claims	Rate of disablement per 1,000 lives
		All experience: males, females, and sex unknown	
Under 40	1,580,705	1,429	0.90
40–44	433,898	1,025	2.36
45–49	419,331	1,537	3.67
50–54	352,126	2,217	6.30
55–59	270,175	3,070	11.36
60–64	173,231	2,691	15.53
All ages	3,229,466	11,969	3.71
		Male experience only	
Under 40	804,443	667	0.84
40–44	231,025	512	2.22
45–49	219,927	743	3.38
50–54	183,535	1,200	6.54
55–59	144,274	1,635	11.33
60–64	90,480	1,476	16.31
All ages	1,673,684	6,243	3.73
		Female experience only	
Under 40	328,316	334	1.02
40–44	67,044	254	3.79
45–49	73,647	345	4.68
50–54	64,602	394	6.10
55–59	48,839	432	8.85
60–64	34,784	346	9.95
All ages	617,232	2,105	3.41

Source: *1975 Transactions of the Society of Actuaries*, p. 255.

EXHIBIT V

Group Long Term Disability Experience

TABLE D–1D

Group Long-Term Disability Insurance Illustrative Values, under Plans with a Six-Month Elimination Period, of a Monthly Benefit of $1, Discounted at 3 Percent Interest, Payable to Age 65, with First Payment Due at End of Elimination Period

Age at disablement	Value as of end of elimination period			Value as of end of 12 months of disablement		
	Based on Table D-1 rates of termination*	Based on 1964 CDT	Ratio to 1964 CDT	Based on Table D-1 rates of termination*	Based on 1964 CDT	Ratio to 1964 CDT
	Male only					
25.5	$41.24	$32.62	126%	$56.17	$63.86	88%
35.5	59.61	38.72	154	76.96	73.54	105
45.5	70.22	42.87	164	81.65	73.57	111
55.5	57.92	38.40	151	60.75	55.60	109
62.5	20.17	14.91	135	16.17	15.77	103
	Female only					
25.5	$46.59	$32.62	143%	$61.42	$63.86	96%
35.5	62.22	38.72	161	75.02	73.54	102
45.5	64.06	42.87	149	75.82	73.57	103
55.5	54.98	38.40	143	58.41	55.60	105
62.5	20.09	14.91	135	16.16	15.77	102

* Annuity values are based on the crude, ungraduated male or female termination rates from Table D-1 for the first 4 years and on the 1964 Commissioners Disability Table rates thereafter.
Source: *1975 Transactions of the Society of Actuaries*, p. 280.

EXHIBIT VI

Equitable Experience on Comprehensive Dental Plans

	COMPREHENSIVE PLANS					
	Experience Based on October 1976 rate basis				Experience Based on January 1977 rate basis	
	Policy year ending in 1975		Policy years ending in 1972, 1973, 1974, 1975		Policy year ending in 1975	Policy years ending in 1972, 1973 , 1974, 1975
	No. of groups	*Loss ratio as of 8/1/77*	*No. of group years*	*Loss ratio as of 8/1/77*	*Loss ratio as of 11/1/77*	*Loss ratio as of 11/1/77*
EE vs. DU						
Total	110	68.9%	436	67.7%	66.5%	65.8%
EE	—	72	—	69	67	66
DU	—	67	—	66	66	66
Deductible						
$ 0	6	58%	10	59%	59%	60%
10	—	—	1	64	—	59
25	74	70	301	69	67	66
35	1	76	8	69	76	66
40	1	66	1	69	66	66
45	—	—	2	63	—	65
50	24	71	106	69	67	66
75	1	124	1	124	118	118
100	2	77	4	73	72	68
150	1	50	2	77	46	70

EXHIBIT VI (continued)

Equitable Experience on Comprehensive Dental Plans

	COMPREHENSIVE PLANS					
	Experience Based on October 1976 rate basis				Experience Based on January 1977 rate basis	
	Policy year ending in 1975		Policy years ending in 1972, 1973, 1974, 1975		Policy year ending in 1975	Policy years ending in 1972, 1973 , 1974, 1975
	No. of groups	*Loss ratio as of 8/1/77*	*No. of group years*	*Loss ratio as of 8/1/77*	*Loss ratio as of 11/1/77*	*Loss ratio as of 11/1/77*
Percenage female						
<22%	37	71%	134	69%	69%	67%
21%<31%	20	71	54	70	68	67
31%<41%	8	92	35	77	85	72
41%<51%	11	63	49	63	60	61
51%<61%	17	63	78	63	61	63
61%<71%	14	60	57	62	61	63
71%<81%	3	52	23	71	49	68
81%<91%	—	—	1	15	—	17
91%+	—	—	5	75	—	77

Source: February 22, 1977, Memorandum by Karen Kutka titled "January 1, 1977 Dental Rate Basis."

Appendix E

AMERICAN ACADEMY OF ACTUARIES

Report on Academy Task Force on Risk Classification, August 1977

Table of Contents

Report on Academy Task Force On Risk Classification

The task force was originally formed to examine the possible courses of action open to the academy in response to the unisex situation and, to recommend a course of action to the academy's board of directors. In essence then, the primary purpose of the task force was to operate as a study group, analyze various alternatives, and make recommendations as to further action. Secondarily, the task force was to examine the broader area of risk classification and the increasing efforts to restrict the classification process.

Although the original charge was on the unisex issue, it was readily apparent that the issues and restrictions on classification are spreading to all classes (e.g., race, sex, physically handicapped, age, geographic location, etc.), to all forms of insurance (e.g., life, health, annuities, automobile, etc.), and at all levels and forms of government (e.g., State and Federal—laws, regulations, guidelines, and court cases).

To illustrate the level and areas of restriction of classification already prevailing, attached is a report on the legal framework of risk classification covering (a) State laws and regulations affecting insurers, (b) Federal constraints, and (c) employee benefit plan design. Many instances are cited where laws have been enacted and judicial decisions reached that challenge the very essence of the classification process. Admittedly the existing process is not perfect. Certainly, there is room for improvement with respect to the establishment of relevant classifications based upon adequate and up-to-date experience data—and the elimination of, or valid justification for, those existing classifications established primarily on traditional and simplified bases. On the other hand, classifications based purely on social considerations are only appropriate with respect to "universal" insurance schemes. A sound classification procedure must be equitable (i.e., not unfairly discriminatory) and pragmatic, giving due consideration to the

obtaining and maintenance of relevant experience data and to the open competitive market.

In many instances the legislatures and courts are reaching conclusions contingent almost entirely on social considerations. (Notwithstanding the recent Supreme Court decisions re widower's benefits and the benefit computation period for males.) Their actions represent an attempt to right "prior wrongs" and/or to provide a subsidization to a disadvantaged group. This is one alternative approach and may be highly desirable from a humanitarian viewpoint. However, we are concerned that such courses of action are being pursued without sufficient consideration of the financial and actuarial implications, and ultimate consequences to the public at large.

Beyond the concern with respect to restriction of classifications is an even larger concern; i.e., that of being able to pool or group for insurance purposes at all. Some of the language in recent court decisions could be used to challenge the pooling concept on the basis that averages cannot be applied to individuals. Any insurance classification system requires pooling and involves some degree of subsidization. Actuarial equity implies valid discrimination and appropriate risk classification. A particular group should be subdivided by class for determining the amount or price of benefit so that the expected experience for each person in a class is close to the expected averages for the class as a whole. Hence, equal benefits are paid within each class, while different but equitable benefits are paid to other classes.

Therefore, on the basis of its analysis, the task force makes the following recommendations:

1. That the academy communicate to the membership the level and areas of restriction of classification already prevailing, and that the principles of classification and insurance are being challenged.
2. That the academy establish a task force group to determine the financial and actuarial implications and consequences of restricting the classification process. For practical purposes the study might be limited to the more significant classifications (race, sex, physical/mental impairments, age, geographical location, etc.) and their effect on pensions, life insurance, and automobile insurance. (Illustrations of the consequences of restrictions on classification for life, health, and property/casualty insurance are attached in appendices A through D).
3. That the academy, as a professional body and without assuming either an adversary or an advocacy position, establish a task force to determine the best way to communicate to legislatures, lawyers, jurists, and the public at large the consequences of any effort to limit or prohibit the classification process.

4. That the academy establish a task force to initiate a study (possibly funded by the Actuarial Research Fund) of those classifications now being used, to substantiate or invalidate their credibility.

Respectfully submitted,
Task Force on Risk Classification

1. *State Laws and Regulations on Risk Classification by Insurers*

Until the last few years, risk classification in life and health insurance was governed almost exclusively by the antidiscrimination provisions of the State unfair trade practice acts. These laws were enacted in all States in response to the McCarran-Ferguson Act, which declared that the business of insurance would continue to be regulated by the several States, to the extent not specifically regulated by the U.S. The NAIC model Unfair Trade Practices Act prohibits, among other things:

> Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract, and
>
> Making or permitting any unfair discrimination between insureds of the same class for essentially the same hazard in the amount of premium, policy fees or rates charged for any policy or contract of insurance other than life, or in the benefits payable thereunder, or in any of the terms or conditions of such, or in any other manner whatsoever.

It will be noted that the above wording prohibits misclassifying risks in any line of insurance (including property and casualty lines) in which the insurer is using two or more risk classifications. Accordingly, these laws mandate the use of equity, rather than equality, in risk classification.

In property and casualty insurance, risk classification is governed primarily by the State rate regulatory laws which, among other things, declare that rates shall not be "unfairly discriminatory." However, only about one-third of the State laws include provisions defining, or otherwise describing, what constitutes a rate which is unfairly discriminatory. The following from the Oklahoma law is typical of the language in a half-dozen States:

> Nothing in this section shall be taken to prohibit as unfairly discriminatory the establishment of classifications or modifications of classifications of risks based upon the size, expense, manangement, individual experience, location or dispersion of hazard, or any other reasonable considerations attributable to such risks provided such classifications and modifications apply to all risks under the same or substantially similar circumstances or conditions.

None of these laws provides a clear-cut basis for distinguishing between fair and unfair discrimination; the interpretation and administration of the laws by the various State regulatory authorities has been the determining factor in the past. The classification criteria, classification systems, classes, and class relativity factors that are in use today have been sanctioned by regulatory approval with something less than unanimity—particularly for private passenger automobile insurance.

In the recent civil rights era some States adopted statutes providing specifically that race, and often creed, national origin, and religion, were not to be criteria for determining whether insurance would be available to a given individual. These laws have, for the last two decades or so, affected virtually all insurers operating in a significant number of States.

Even more recently there have appeared a number of State laws which limit or prohibit the classification of risks by specified factors other than race, religion, etc. For example, there are laws prohibiting rating or rejection in life and health insurance on account of:

> sickle cell trait or hemoglobin C trait (North Carolina); sex or marital status (several States; rating not prohibited); blindness (Florida, Maine, Massachusetts); deafness (Massachusetts); disability, "unless the claims experience and actuarial projections and other data establish significant and substantial differences in class rates because of the disability" (Minnesota); sensory, mental, or physical handicap "unless bona fide statistical differences in risk or exposure have been substantiated" (Washington); mental retardation (Massachusetts—must issue $1,500 of life insurance);

Furthermore, the Michigan Unfair Trade Practices Act includes the following provisions applicable both to life and nonlife insurance:

> residence, age, handicap, lawful occupation of the individual or location of the risk (rejection prohibited) "unless there is a reasonable relationship between the [feature] and the extent of the risk"; sex, marital status, age, residence, location of risk, handicap, or lawful occupation (rating prohibited) "unless the rate differential is based on sound actuarial principles, a reasonable classification system, and is related to the actual and credible loss statistics or reasonably anticipated experience in the case of new coverages."

Many bills have been introduced which do not apply to life or health insurance but which would impose restrictions on rating or rejection in private passenger automobile insurance. A number that have been enacted into law include the following:

> race, creed, ethnic extraction, age, sex, length of driving, credit bureau rating, or marital status; " *Commissioner may by regulation*

provide for uniform classification of risks and rating territories for the various (automobile) coverages"; handicapped shall not have rates higher than that assessed a comparable driver without limitation (Hawaii; emphasis added); age discrimination to be replaced with criteria to be more directly related to accident involvement; for example, automobile usage, minimum licensing period, accident involvement and traffic violation convictions (North Carolina).

A number of States have promulgated regulations requiring that life and health insurance be made available without regard to sex or marital status. Some of these regulations are based on State laws specifically requiring such availability, while a few have been promulgated on the authority of the unfair trade practices acts. A few of the State regulations require, with varying degrees of stringency, that premium rate differentials by sex be documented with various mortality or morbidity data by sex.

An added dimension in casualty insurance is the presence in many States of "residual market" plans or rate regulation similarly intended to make insurance affordable to high risks. An example is an "assigned risk" plan for automobile insurance. Such residual market plans or rate regulation involve the subsidization of the high risks by the better risks. Similar approaches are being suggested for health insurance as well, and at least two States (Connecticut and Minnesota) have established State comprehensive health care plans which involve reinsurance pools for high risks with, probably, some subsidization of those risks by the better risks.

The foregoing State enactments, when they compel a classification of a risk in one or more specific cases which differs from the classification that would be made on the basis of sound and equitable underwriting judgment alone, conflict with and, presumably, override the antidiscrimination provisions (requiring equity) of the State unfair trade practices acts, discussed above.

There are also State civil rights laws which prohibit discrimination on the basis of race, sex, and various other factors in employment, in places of public accommodation, and/or in other connections. In the last few years State human rights commissions in a number of States have brought actions against individual insurers charging violation of such laws, or of Federal laws, with respect to sex. The charges include discriminating with respect to availability of coverage and charging different premium rates. Since life and health insurers must already comply with the numerous State regulations requiring equal availability of coverage by sex, the State human rights commission actions may not pose a significant additional problem in the availability area. However, on the matter of premium rate differentials there may be a significant problem if the courts, in adjudicating these actions, do not

permit the basing of premium rates on observed mortality and morbidity differentials by sex. A Maryland human rights commission action goes further and challenges occupational ratings in individual disability income insurance, on the grounds that the less favorably rated occupations are held in disproportionately high numbers by women and blacks, and hence the occupational ratings are discriminatory. The Maryland case is awaiting a hearing, and because of a heavy backlog of cases of other kinds, it may be a considerable while before it moves.

Finally, there is activity on all the above fronts with respect to the coverage of normal maternity in medical expense insurance and disability insurance. These questions are often discussed in the same forum with questions of the equal availability of coverages or fair premium rating.

2. *Federal Constraints on Risk Classification*

On the Federal level there has been a suggestion by the Commission on Civil Rights that there be Federal legislation requiring that insurers not differentiate premium rates by sex in insuring pensions provided under employee benefit plans.

The equal protection clause of the 14th amendment to the U.S. Constitution already poses some constraints. This clause provides that "No State shall . . . deny any person within its jurisdiction the equal protection of laws." A decision as to whether or not a particular case on unfair discrimination comes under this equal protection clause depends upon the degree of specific approval to the policy form and/or premiums, etc., given by the State insurance commissioner. If the case does come under the equal protection clause, then there are various standards by which the insurer's compliance with the clause might be tested. The "strict scrutiny" standard requires that the State prove that the classification involved promotes a compelling interest and, perhaps, that there is no alternative means to achieve the end sought. This strict standard is used in the case of a classification which "impermissibly interferes with the exercise of a fundamental right or operates to the peculiar disadvantage of a suspect class." An example of a fundamental right is the right to vote, and an example of a suspect class is race. Thus far the U.S. Supreme Court, in various decisions, has declined to label sex a suspect classification.

Bailey, Hutchison, and Narber, in their 1976 *Drake Law Review Insurance Law Annual* article,[1] state:

> Equal protection as applicable to risk classification by insurers has developed to this point: while classification by race is subject to

[1] This article, "The Regulatory Challenge to Life Insurance Classification," has been paraphrased and excerpted in numerous places in this portion of the report.

the standard of strictest scrutiny, which casts the burden upon the insurer to demonstrate a compelling interest and lack of reasonable alternatives, classification by gender, age or physical or mental impairment is subject to less strict standards. Classification by age or physical or mental impairment has not been subject to court tests forcing application of any standard stricter than that the classification have a rational basis. Gender classification is most likely subject to the intermediate standard that the classification be fairly and substantially related to some legitimate goal.

The Federal Civil Rights Acts of 1886, 1870, and 1871 have features which, as interpreted by the U.S. Supreme Court in recent years, may have applications to risk classifications. Among these features are: (1) a provision that all persons shall have the same rights to make and enforce contracts and hold and convey property as those enjoyed by white persons; (2) a provision which makes a remedy available for individuals who, under the color of State law, are deprived "of any rights, privileges or immunities secured by the Constitution and laws"; and (3) a provision which provides a remedy for conspiracy to deprive, "either directly or indirectly, any person or class of persons of equal protection of the laws, or equal privileges and immunities under the laws." The interpretation that may be given to these various provisions with regard to insurance is not yet clear. Not all of them are restricted in their application, as is the 14th amendment, to cases involving State action.

The U.S. Department of Justice recommended, in its January 1977 report to the Task Group on Antitrust Immunities, that if insurance companies are given an option to become federally chartered and exempted from State regulation, they be made subject to Federal standards such as those mentioned above.

The proposed equal rights amendment to the United States Constitution provides that "Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex." A number of States have passed equal rights amendments to their constitutions. Bailey, Hutchison, and Narber state, "It is unclear whether the ERA's language strikes down all gender classifications, only those gender classifications which are not rationally related to a legitimate purpose or only those gender classifications which infringe upon a fundamental right." Thus far the various State ERAs do not seem to have had an effect on premium rating by sex.

3. *Risk Classification in Employees Benefit Plan Design*

Much of the recent activity in the sex discrimination area has been with respect to employee benefit plan design. The Federal Equal Pay Act of 1963 requires equal pay for equal work, regardless of sex. Title VII of the 1964 Federal Civil Rights Act, as amended by the Equal

Employment Opportunity Act of 1972, prohibits discrimination by sex in employment, including compensation. A recent decision by the Ninth U.S. Circuit Court of Appeals, in *Manhart v. City of Los Angeles,* held that the pension plan of the City of Los Angeles, Department of Water and Power, insofar as it required larger contributions from female employees than from their male counterparts violated Title VII. A similar opinion had been rendered by a U.S. district court in the case of *Henderson v. the State of Oregon,* and likewise by a State circuit court in *Robertson v. Indiana State Teacher's Retirement Fund Board.*

As of this moment there is a possibility that the *Manhart* case will be appealed to the U.S. Supreme Court in view of the recent U.S. Supreme Court decision in *Gilbert v. General Electric.* In the *Gilbert* case the Supreme Court found that General Electric's employee disability benefit plan did not violate Title VII in excluding pregnancy coverage. However, it should be noted that there is at least one important difference between *Gilbert* and *Manhart.* In *Gilbert* the Supreme Court relied on an earlier Supreme Court case, *Geduldig v. Aiello,* in which it had found that the California employee disability plan did not violate the equal protection clause of the 14th amendment because it, similarly, excluded pregnancy coverage. The Court's reasoning in the *Aiello* case, however, had been that the exclusion of pregnancy coverage did not constitute discrimination by sex, since it differentiated not between men and women, but between pregnant and nonpregnant persons. Accordingly, it does not seem clear that the *Gilbert* decision constitutes a precedent for deciding whether differentiation by sex in pension benefits violates either the 14th amendment or Title VII. (Incidentally, legislation to "overturn" the *Gilbert* decision has been introduced in Congress.)

The Ninth Circuit Court, in deciding the *Manhart* case, seemed to reason that Title VII's intent was, simply, to prohibit employment discrimination by sex just as discrimination by race is prohibited. Most of the *Manhart* opinion deals with this question of the intent behind Title VII. There is, indeed, some question as to whether the intent was to prohibit unequal periodic pension benefits, and the U.S. Equal Employment Opportunity Coordinating Council (an interagency body) recommended in 1976 that Congress pass a new law making clear that pension benefits may not be differentiated by sex. One of the constituent agencies (the EEOC) also felt that all optional forms of retirement benefit should be based on unisex factors. Further, the Commission on Civil Rights suggested that consideration be given to requiring that all insurance benefits be priced (by the insurer) on a unisex basis. The thought here would be that employers should not be discouraged from hiring women because of the greater cost of their insurance benefits.

A 1976 California enactment, too, prohibited different contribution rates or benefits for males and females under the State, county, and city retirement systems.

A final decision that Title VII prohibits sex discrimination in pension benefits would, of course, directly affect risk classification in employee benefit plan design. It might also, however, affect risk classification by insurers. For one thing, the abolition of all pension plan sex differentials, including those in lump-sum payouts and optional annuity settlements such as early retirements and survivor options, might force insurance companies to unisex pricing of some or all insurance products. Second, some of the reasoning which has been advanced in the court cases, if accepted by the courts, might be applied to insurance risk classification, with rather devastating results.

For example, some opponents of sex classification in pension plans advance what has come to be known as the "overlap theory." They say that since some men will outlive some women, it is unfair to make all women accept a lower monthly pension benefit than similarly situated males receive. This argument was presented by a professor of finance in the Indiana case and seems to have impressed the lower court in that case. While the Indiana Supreme Court's affirming decision did not seem to hinge on the overlap theory, there is no telling how much the theory may have influenced the justices' thinking. Meanwhile one of the Indiana justices stated, in a separate (concurring) opinion, that mortality tables based on experience in a number of occupations, instead of among teachers alone, do not constitute a justification for treating male and female teachers differently.

Restriction in employee benefit design has already gone beyond restriction of classification by sex. In 1976 the U.S. Department of Health, Education, and Welfare proposed rules under section 504 of the Rehabilitation Act of 1973, which states that "no otherwise qualified handicapped individual in the United States . . . shall solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal finanacial assistance." The proposed rules specified that a program or activity receiving Federal financial assistance through HEW may not:

> (1) Administer, operate, offer, or participate in a fringe benefit plan which does not provide for equal benefits to handicapped and nonhandicapped persons and equal contributions to the plan by handicapped and nonhandicapped persons unless any difference in benefits or contributions is justified by verifiable actuarial figures and an actual, substantial increase in cost to the recipient; or

(2) Otherwise discriminate on the basis of handicap. (The final rules do not contain language along the lines of the above paragraph (1) but their intent may well be to permit differentiation on a reasonable basis.)

It is generally considered under present Federal and/or State laws that an employer may not on its own initiative, even with the consent of the employee, exclude an employee from its group insurance plan.

Federal law and the laws of many States also currently prohibit discrimination on the basis of age against persons between the ages of 40 and 65. Bona fide retirement plans not designated as a subterfuge to evade the law are exempted from its provisions. However, a Federal appeals court recently ruled that a United Airlines policy requiring workers to retire at 60 violates the age discrimination law. It has also been suggested by some that the age 65 limit be removed, thereby making the age discrimination laws applicable to all over age 40. It has further been suggested that the Age Discrimination Act of 1975, which applies to programs or activities receiving Federal financial assistance, extends the age discrimination laws to all ages. The possible effects of such extensions and the elimination of prior exemptions for retirement plans is unclear but possibly devastating.

Even further, some of the language which has been advanced in the court cases might be applied to all insurance, with even more drastic results.

For example, the *Manhart* case states:

> . . .all the (defendant's sex-segregated) actuarial tables purport to predict is risk spread over a large number of people; the tables do not predict the length of any particular individual's life. . . . Because the Department of Water and Power's practice in question here violates these considerations by applying the general characteristic of female longevity to individual female employees who in reality may or may not outlive individual male employees, the court concludes that plaintiffs have established a case of discrimination. . .

Appendix A

Elements of Risk Classification in Life Insurance

The major underlying consequence of restriction of any classification, for both individual and group life insurance, is cross-subsidization. Subsidization of most nonwhites[1] by whites, males by females, the unhealthy by the healthy, and the old by the young. For those who subsidize others, these subsidies are reflected in higher costs for individual life insurance and contributory group life insurance, and lower pay, in the form of benefit values, for noncontributory group life insurance. For those who are subsidized, the reverse is true.

The consequences of restriction are much more severe in individual life insurance than they are in group life insurance, so it is appropriate to deal with these separately.

Group

Currently, in group life insurance, the composition of the group by sex, age, and indirectly, general physical/mental impairment[2] is determined and an overall rate is calculated. The overall rate per employee then, rather than an individual rate, is paid by the employer or the employee. Race is not now determined as a composition factor of the group because of its social unacceptability, but the proportion of our total population that is nonwhite is so small (10 percent) that the impact has been minimal.

Dependent life coverage too is generally priced assuming similar proportions of ages as the employed group and a sex content the reverse of the dependent group, to determine an overall rate per dependent. There is currently, however, no determination of the impairment status of the dependent group and this group would not have the advantage of necessarily being healthy enough to work, which is inherent in the employee group.

Thus, there are already some inherent subsidies in our current methods. However, it is felt that the administrative costs of eliminating these subsidies would be greater than the additional equity obtained by using individual rates, at least in the long run, for an employee under the current system for his or her lifetime.

[1] "Nonwhite," the classification which is generally shown in statistics, is not a pure, clear classification, since it includes blacks whose mortality is greater than whites, as well as Asians whose mortality is less than whites.

[2] General physical/mental impairment is indirectly determined because the major portion of group insurance is issued on employees who must be "actively at work" and usually only those with no major impairments would be working.

Elimination of the ability to determine the proportions of a group by any of the classes will cause a conservative overall rate to be set. This overall rate will be set high enough to assure the provider of the benefits that an error in judgment in these proportions will not cause a loss for that benefit. In other words, elimination of the ability to classify the group as a whole will generally cause the rates to go up.

These higher, more conservative rates will directly affect the costs of the small employers with noncontributory plans and the employees of small employers with contributory plans, since they will have to pay the higher rate and no individual experience rating will reduce the costs by reflecting the actual composition of the group and the actual costs associated with this composition.

The higher, more conservative rates might initially affect a large employer's decision on how much life insurance benefit to provide, but will not affect the ultimate cost of his plan. Large employers' costs are experience rated, and so, as the actual mortality occurs in the plan, the costs are automatically adjusted to reflect the composition of the group. Since these costs do show through in experience ratings, restriction of classification on these large employer plans will also not eliminate any discrimination in hiring practices which now may exist because of specific higher costs for some classes.

There are other reasons, also, why the impact of restriction of classification is not as great for group life as for individual life. The dollar impact of restriction will generally not be as great, because costs are determined for only 1 year's coverage, and only then to retirement age, rather than for life as it is in individual insurance.

Some of the consequences of restriction of sex as a classification in group life insurance are also partially offset by dependent spouse coverage which is of the opposite sex. This is not a full offset, however, because many employees do not have dependent spouses, many plans do not have dependent spouse coverage, and the amount of dependent spouse coverage is significantly less than the amount of employee coverage.

Still another reason the consequences in group life insurance would not be as drastic is that antiselection in group plans, where the amount is fixed or established by formula, is not as great as in individual life insurance.

Individual

Individual life insurance, however, would suffer drastic consequences if the major classifications were restricted. Since the effects do vary by class they will be discussed separately.

Race

Race as a classification was eliminated because the differences in mortality were felt to be socioeconomic and hence reflecting them was

felt to not be socially acceptable. There is evidence to support the fact that a large portion of the differences in mortality is due to socioeconomic conditions, since the differences in mortality between the races appear to be narrowing as socioeconomic conditions are equalizing. So in time the differences may disappear.

Although the impact of this restriction has not been great, since only a small proportion of the population is nonwhite, it has had some consequences. Companies with predominately white markets have tended to avoid nonwhite markets. A more severe consequence has been the impact on companies which have had a traditionally black market. Inability to have separate rates by race has forced them to have to use their higher mortality black rate or face insolvency. This higher rate is noncompetitive in the white market and hence the growth of these companies has been restricted to only black markets.

Sex

With males and females each constituting one-half of the potential individual life insurance market, the impact of restricting sex as a classification is much more dramatic than was restricting race.

With the differentials in mortality between the sexes being as great as 6 or 7 years of age, as well as the social desirability to have more females covered by life insurance being stronger today, pricing of individual life products, if sex were restricted as a classification, would have to add one more assumption; i.e., the percentage of females being covered to the pricing technique. And the more assumptions that enter the pricing mechanism, the more chance there is for error. Assuming too high a proportion of females could cause a nonpar company to become insolvent and a par company to have to lower dividends.

Since no equitable rate would be available to women in the life insurance marketplace, it could also discourage the purchase of life insurance by women, which would not be for the social good, and some women who had purchased insurance at the unisex rate might drop their life insurance if they realized they were subsidizing men's rates. An even more severe consequence is that, currently, many more lower income women who are the sole support of their families and need life insurance can now afford it because the rates for females are lower. If the higher (for females) unisex rates had to be used, it could once again make individual life insurance too costly for these low-income women.

Physical/Mental Inpairments

If restrictions were made on classification by impairment, the ultimate results would be failure of the private life insurance industry or mandation of life insurance coverage at the same rate, for the same amount, for all.

With no separate rates for impairments the costs for healthy people would increase. The size of increase would be smaller at first, being a function of the percent of the total population that was unhealthy and of how "unhealthy"—i.e., terminal, chronic, acute—they were. But with no restrictions on the amount of coverage and "cheap rates" available to those who are unhealthy, the rates for the entire group would continue to climb as more and more unhealthy bought more and more coverage. This in turn would cause more and more healthy people to lapse coverage, further spiralling the costs. Eventually only the very unhealthy or terminal would remain and the industry would fall. This was tried once before in the original dividing and assessment societies and was proven to be unworkable because costs became as great as benefits.

The only alternative to this would be mandated coverage at mandated rates for mandated amounts (e.g., level or a function of income or age). With everyone having to pay, and paying the same rate, and not having the opportunity to select the amount of life insurance, antiselection could be minimized. Mandation also is best accomplished by one system, i.e., a social governmental system. With mandation, however, the freedom of choice as to plan and amount would no longer exist and an individual's needs would never be specifically filled. Both of these would be the social detriment.

Age

The consequences of restriction of classification by age are essentially the same as restriction of classification by impairments. The ultimate result would be failure of the private life insurance industry with younger persons' rates constantly increasing because of spiralling costs caused by larger and larger purchases by older and older persons, until costs equalled benefits and the system collapsed. And again the only alternative would be mandation of coverage, amounts, and premiums best done by a social, governmental system.

Smokers or Alcohol

Classifications are generally not now made by either of these two characteristics alone. Although some smoker's policies are available, they generally are issued in conjunction with some other preferential determining factor such as blood pressure. The difficulties with these two characteristics are that their statistical documentation is limited, and the characteristics are not determinable, controllable, or stable.

Appendix B

Elements of Risk Classification in Health Insurance

Health insurance benefits provided by private insurance companies or organizations come in many forms. Individual coverage is provided in the form of medical expense, disability income, accidental death and dismemberment, waiver of premium, and other specialty accident or sickness coverages. Common forms of group health insurance include medical expense, weekly income, long term disability, AD&D, and dental coverage along with various specialty or catastrophe coverages.

The use of risk classifications for the calculation of premiums is necessary to maintain proper equity, but these classifications are used in different ways depending upon the type of coverage or type of policyholder being insured.

These various group and individual coverages are generally priced using some or all of the following parameters as variables in the rating process: age, sex, occupation or industry, physical and mental condition, geography, income, availability of other coverage, size of policy.

Differences in the morbidity characteristics of various health insurance classifications have been demonstrated both in individual company and industry studies. It is clear, however, that the relative subjectivity of claim status in the various types of health coverage makes these morbidity characteristics extremely changeable. Health statistics, unlike mortality statistics, in those parts of the world served by providers of private insurance coverage, are greatly affected by social, economic, and governmental influences as well as conditions affecting physical and mental well-being. Because of these influences, the relationships between claim costs in the various classes are continually shifting.

A brief review of some major forms of health insurance coverage follows. The emphasis in these reviews will be placed on rate differentials by sex with only secondary reference made to other characteristics.

1. *Individual Disability Income Insurance*

Premiums generally differ by sex with females being charged a higher premium over the greatest range of ages where coverage is included for both accident and sickness disabilities. Premiums are generally higher for males over the greatest range of ages for accident-only coverage, but this coverage is not as widely distributed as accident and sickness coverage.

Disability income claim statistics generally include measures of the incidence of disability and the duration of disability, which are combined to produce 1-year claim costs and which represent the present value of claims incurred over a 1-year interval such as a year of age. Current statistics illustrate that females generally exhibit lower accident claim costs than men in a similar occupation class at the lower attained ages and higher accident claim costs at the higher attained ages. Conversely, recent statistics show that sickness claim costs for females generally are higher than for males up to about age 55. When accident and sickness claim costs are combined, ratios of female to male claim costs tend to start out above unity, peak between ages 30 and 39 for the most commonly used elimination periods, and then decline to the point where they fall below unity between ages 60 and 65.

It is clear that female morbidity differs from male morbidity in a generally consistent pattern such that sex can be identified as a separate parameter in risk classification. If equal premiums for male and female policyholders were mandated, male policyholders would generally be required to subsidize female policyholders for accident and sickness coverage. Premium calculations would necessarily require assumptions of the percentage of each sex insured. A natural result of this subsidization might be the movement of male insureds from the private insurance sector. Coverage sponsored by government might be required to fill the vacuum. Private insurers, left with a portfolio of noncancellable and guaranteed renewable policies might not be able to maintain the margins required for solvency.

A requirement that unisex rates be provided would seem to be opposed to the intent of existing State regulation. There is currently State regulation directed at the reasonableness of individual health insurance premiums in relation to benefits. Such reasonability is generally imposed by the establishment of minimum experience or anticipated loss ratios. These regulations would seem to be directed against premiums which would overcharge a particular class of policyholders.

If unisex rates could be mandated, legislation or regulation could also be extended to prohibit differences in rates by age, occupation, or even physical condition. Claim costs for accident disabilities generally decline with advancing age while sickness claim costs generally increase. Occupation class definitions very widely throughout the industry. Early occupation schedules reflected an attempt to group occupations by their degree of accident exposure. Many companies marketing individual disability income policies today, however, have developed occupation classes which better reflect experience results in an age in which long benefit periods, definitions of disability,

guaranteed benefits available from other private and public sources, and other factors make motivation of the claimant an equally large consideration.

The ability to classify risks by age, occupation class, and physical impairment is essential to equity and the reasonability of premiums in relation to benefits.

2. *Individual Medical Expense Insurance*

Premium rates are generally higher for females over the great range of ages where hospital expenses are covered.

Hospital expenses form a major portion of claims typically covered in individual medical expense policies. Recent statistics illustrate that, under various deductible, individually underwritten policies, the frequency of hospitalization tends to be greater for females at the young ages and that the ratio of female and male hospitalization rates increases to a peak in middle age before declining and finally becoming less than unity as age approaches 60. Average claim payments on the other hand are generally slightly higher for males than for females at most ages. In combination, frequencies and average claim payments form claim costs which are generally slightly higher for males than for females at most ages. In combination, frequencies and average claim payments form claim costs which are generally higher for females up to the middle fifties and generally lower thereafter. Just as in individual disability income policies, clearly definable differences exist between male and female claims costs. Many private insurance carriers have, however, ceased to write individual medical expense insurance coverage because of their inability to keep up with increasing medical costs within the current economic and regulatory environment. Those companies or organizations which continue to write individual medical expense coverage are providing an extremely valuable benefit.

It is important that providers of individual coverage not be prohibited from using reasonable risk classifications including sex, age, and physical condition in their pricing structures. Such restrictions could result in antiselection which would leave the remaining carriers no alternative but to abandon their efforts to provide this coverage.

3. *Group Weekly Income and Long Term Disability Insurance*

Manual rate calculations generally include a weighting for female content of the group, age distribution, and occupational characteristics. Benefits are usually provided for 13 or 26 weeks but can be written for any reasonable period of time such as 52 or 104 weeks in weekly income plans. In group long term disability manual rate calculations, there are often more precise rate calculation techniques used with respect to age and sex than in short term weekly income policies. There are often a larger number of optional coverage areas available and longer elimination periods are typically used, but

basically the same main parameters are accounted for: age, sex, and occupation.

These plans are often written on an "employer-pay-all" basis or at least with a sizable employer contribution. Male and female employees, if contributing, will be making the same contribution per $100 of monthly indemnity even though the overall cost will usually vary according to the indemnity in force on female employees.

The restriction of the capacity of insurers to include sex as a rating parameter would probably have different effects depending on the size of the group and the type of coverage. Typically, the very small groups, say under 50 or 100 lives, would receive little or no experience rating regardless of the type of coverage afforded. Weekly income coverage, with its short benefit periods, may receive some experience rating above these levels, particularly where it is written in conjunction with group medical coverage. Long term disability coverage, on the other hand, is very frequently completely pooled; only the very large groups would develop enough credible experience to receive any form of experience rating.

The market for pooled disability coverage is likely to be more severely affected by rating classification restrictions. Groups with high female content would tend to be subsidized by groups with low female content. Similarly, groups with high average age would be subsidized if age were removed as a rating parameter. This could cause migration of the low-cost groups from the market, leaving them without coverage or causing them to seek coverage from governmental sources or to self-insure in an attempt to receive more equitable treatment. Self-insurance can be extremely volatile in the case of long term disability coverage and probably is not a practical alternative for all but jumbo groups.

In the larger groups where some experience rating is possible, the effects of rating restrictions would not be as important, since retroactive rate credits can be used to make the cost of coverage more equitable.

4. *Group Medical Insurance*

Manual rate calculations are based on many parameters, including female content of the group, age, salary, and geography.

Usually these plans are written with a large employer contribution. While rating parameters affect the overall group rate, individual employees do not make different contributions regardless of their age or sex. Often the only distinction made is that of dependent's status and, even then, broad classifications such as "with" or "without dependents" may be made for purposes of determining the employee's contribution.

The effects of restriction on rating parameters would probably be felt more in pooled medical coverage than in experience-rated coverage. Usually, groups with more than 50 or 100 lives receive some experience rating where basic medical or comprehensive major medical insurance is present. If age or sex or geographical location were not allowed as a rating parameter, groups with pooled coverage and low female content or low average age or groups located in low-cost areas would probably have to subsidize other groups. This could cause these low-cost groups to leave the market in favor of government coverage or self-insurance.

Appendix C

Sex as a Classification Criterion In Property and Casualty Insurance

Personal Lines vs. Commercial Lines

Property and casualty insurance is divided into personal lines and commercial lines. In the personal lines the insured is an individual, or an individual and spouse, whereas in the commercial lines the insured is generally a corporation, partnership, or an unincorporated association although coverage of the business activities of an individual are included in the commercial lines. Consequently the question of sex as a classification criterion has little or no significance in the commercial lines, such as workers' compensation, commercial automobile, and commercial fire and allied lines. The balance of this section will therefore be restricted to the personal lines: private passenger automobile, homeowners and dwelling fire and allied lines.

Selection vs. Classification

Stanford Research Institute, in its recent comprehensive study of the role of classification in property and casualty insurance, pointed out that the risk assessment process includes the marketing strategies of the insurers and their underwriting restrictions or guidelines as well as the classification process itself. Charges of unfair sex discrimination have arisen on occasion as a result of the companies' marketing and underwriting activities. Proposed legislation and administrative regulations in connection with sex discrimination in property and casualty insurance usually result from alleged unfair discrimination in these areas, rather than from the classification and pricing areas.

Homeowners and Dwelling Fire and Allied Lines

In these lines of insurance there are no classifications that differentiate according to sex; however, there may be instances in which an unmarried female homeowner has difficulty in obtaining coverage. The problem usually reflects concern over whether the house or apartment to be insured is unoccupied a good part of the day. This, of course, is also applicable to a married couple, both of whom work.

Complaints of unfair sex discrimination often may also involve a question of lifestyle, such as problems in obtaining coverage by individuals who are living together without the benefit of matrimony.

Private Passenger Automobile Insurance

In automobile insurance individual drivers are not insured; rather, coverage is provided in connection with automobiles and the drivers

associated with those automobiles. In the great majority of cases the owners of the cars are married, with the result that there is at least one male and one female driver. It matters not in whose name the car is registered; by definition the "named insured" includes the individual in whose name the policy is issued and his, or her, spouse if a resident of the same household. It also matters very little how much the car is driven by the husband and by the wife. (Although some companies may require information about all of the drivers of the car in the household and the extent of the use of the car by each, this is usually of significance only in connection with youthful operators.) As a matter of fact, even when the married couple own two cars, there is no difference in the classification and rating unless one or both are youthful operators. There is, however, a multicar discount applicable to reflect the fact that the total use of the two cars will likely be less than the total use of two cars each in single-car households.

There are two classification distinctions based upon sex in the classification and rating system developed by Insurance Services Office and used by many companies. The first is applicable to only female operators between 30–64. Experience has demonstrated that these insureds have fewer accidents than other adult risks and lower rates are appropriate.

The other distinction involves female operators under age 30. Compared to male operators in this category, their accident experience is substantially lower, with the difference depending upon age, marital status of the male, whether or not the youthful operator is the owner or principal operator, and car usage. On the other hand, classification rates applicable to cars with female operators under age 25, whether or not they are owners or principal operators of the cars, are somewhat higher than for cars with no youthful operators.

Probably because of the favorable rate treatment accorded females when there is a classification difference, there have been few specific allegations of unfair sex discrimination. The question of sex more frequently arises when coupled with age, such as in complaints about the higher rates for youthful operators, both male and female. Of course, there are those who believe that any discrimination based upon sex is unfair, whether it leads to higher or lower premiums.

What then would be the result if a unisex approach were mandated for private passenger automobile insurance? Assuming that the rates for the youthful operator classifications were to be determined based upon the combined experience of youthful males and females, underwriters would likely conclude that they were less than adequate for the youthful males based upon their prior knowledge of the differences in the experience between youthful males and youthful females. This would tend to reduce the availability to male operators,

with the result that many males would have to obtain coverage through the residual market mechanism (assigned-risk plan, joint underwriting association, or reinsurance facility) in the State.

As far as the elimination of the classification for females 30–64 is concerned, such risks would become even more acceptable to underwriters at the higher rates. However, the inclusion of the experience of these cars with that of all the other cars with no youthful operators would have little effect on the adult operator rates. The disruption in the market on this score could therefore be expected to be minimal.

The conclusion is that, in a free, competitive market, restrictions on the use of sex as a classification criterion would likely result in changes in the companies' underwriting standards, which might well create demands for additional restrictions on the companies' right to select, to limit coverage, or to fail to renew.

Appendix D

Geography as a Classification Criterion in Automobile Insurance

Rates for automobile insurance, both commercial and private passenger, have varied geographically for decades. Initially the variation was between States, but later, territorial variations within a State were introduced, and their use has continued to grow until today it is not uncommon to find more than 50 rating territories in a major State such as California or New York. The statistical justification for these variations is generally adequate, since experience is maintained continuously, and the most recent experience is utilized in adjusting rates, typically on an annual basis. In addition, there are generally strong competitive forces operating to keep territorial variations and boundaries from diverging significantly from experience indications.

The casualty of territory in producing different loss costs also seems clear. Major urban areas have greater traffic densities and generally higher costs of repair and medical services. While the average accident may be more severe in nonurban areas, the greater frequency of accidents in urban areas more than counteracts this, and variations in rate between urban and nonurban areas may be greater than 3 to 1 (e.g., in New York and California). Other factors which are less easy to identify are also present, since the experience in comparable urban areas may differ. Factors which are sometimes suggested include court conditions, theft rates, traffic law enforcement, and repair costs.

There have been numerous proposals to alter or restrict the use of territory as a variable in rating private passenger automobile insurance. Historically, these have principally been compaints that the boundaries were drawn incorrectly, but were not attacks on the basic concept of permitting territorial relativities. In at least one major city, Chicago, there is a prohibition against the use of territories within the city, motivated at least in part by concerns that territories had become surrogates for racial classification.

More recently, there have been fundamental attacks on the concept of territorial rates. Some of these attacks have been based on the question of equity between urban and suburban residents, arguing that suburban residents are a major cause of the urban traffic congestion that results in higher accident frequencies and higher rates for the urban territories. Insurers have generally responded that accidents are charged to the at-fault driver's territory, so that those urban accidents *caused* by suburban drivers are not charged to the urban territory, but rather to the suburban territory.

Other fundamental attacks appear to be based, at least in part, on concerns of affordability, arguing that the highest rates are charged on those risks least able to afford them. Proposals to completely outlaw territorial variations in rates have been advanced in several States, but none has yet been enacted.

One obvious consequence of uniform statewide rates would be that residents of lower rated territories would have to pay increased premiums, and the differential would effectively constitute a subsidy of the higher rated territory insureds. (Once this is understood, the political appeal of uniform rates diminishes.) Another consequence would be that companies with disproportionate shares of their business in lower rated territories would be unable to compete in the higher rated territories, and would seek to avoid business there. Those with concentrations of business in the higher rated territories would have rates that would be uncompetitive in the lower risk territories and would be unable to maintain their market share in those territories. Their experience would worsen, necessitating even higher premiums, and ultimately they would end up specializing in the higher risk territories. The end result would effectively be rates that varied by territory, except that the number of competing insurers in each territory would be reduced. Overall, this could result in higher expense levels because of failure to realize the economies of scale that statewide operation permits.

Appendix F

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AMERICAN ACADEMY OF ACTUARIES

1775 K Street, N.W., Suite 215, Washington, D.C. 20006. (202) 223-8196

Edwin F. Boynton, M.A.A.A., PRESIDENT
C/O THE WYATT COMPANY
1629 K STREET, N.W.
WASHINGTON, D.C. 20006
(202) 452-0660

January 12, 1978

Mr. Robert J. Randall, Sr.
Assistant Vice-President and Associate Actuary
Equitable Life Assurance Society
New York, N.Y. 10019

Dear Bob:

I have recently received from Bill Halvorson copies of letters which you wrote to Mike Mahoney, Bob Winters, and Bill Halvorson regarding some of the findings of the Risk Classification Task Force. This is the first I have seen of this material and, in fact, the first time I have become aware of a significant amount of disagreement with some of the conclusions in the Committee Report. Risk Classification unfortunately is not one of my specialties, nor is life insurance marketing and, accordingly, I am not in a very good position to judge either the comments in the Committee report or your somewhat different viewpoint.

In any event, I am sorry that the Academy has not previously responded to any of your concerns. Because of several pressing activities of the Academy this past Fall (resulting in a 10 hour Board meeting in November), no action has been taken yet to implement any of the recommendations in the Committee report.

A number of the comments you make may well be valid, but seem to represent a different viewpoint or interpretation rather than factual disagreement. However, your statements that some of the observations regarding marketing aspects for life insurance for blacks are totally erroneous bothers me considerably and needs to be explored further.

This report was more or less an overview of risk classification problems and the Task Force did come up with recommendations for further study, in particular suggesting the appointment of at least three different task forces. Even before receiving your correspondence, I had put the subject of the Risk Classification Task Force recommendations on the agenda for the next Executive Committee meeting which will take place on February 10th and 11th. The conclusions of the task force obviously suggest that the subject of risk Classification needs further study and exploration, and if this is the case, it appears to me to be an important topic that should be a coordinated effort under the control of a regular committee of the Academy. Accordingly, it is quite possible that the Academy Board will implement at least some of the recommendations of the Task Force by the appointment of a regular committee.

The report of the present task force came forth with a series of specific recommendations. Assuming the Board authorizes a Committee, any charge given to a newly-established Academy committee should be broad enough in scope to allow the Committee discretion to pursue these recommendations as well as other areas that they felt were necessary.

The suggestion has been made that a supplemental statement or some other means be used to bring out the point of view expressed in your letters and correct any misinformation. If this document were to stand as the final word on the subject as a pronouncement of the Academy, then such suggestion should be given serious thought. On the other hand, I view this more as a preliminary and exploratory study which is trying to present a broad perspective of the problem. If the committee is appointed, it would certainly be given copies of your material and would consider how best to correct any misinformation or misimpressions that might have been created by the original report, if such exist. From the standpoint of timing, I can't visualize that any clarifying supplement or statement from the present task force could be prepared in much more timely fashion than a newly-appointed committee would take.

I hope that you would be willing to serve as a member of any new committee authorized by the Board since you obviously have a point of view which was not present in the original Academy Task Force. I appreciate your bringing this perspective to the attention of the Academy.

Sincerely
/s/
E. F. Boynton
cc:
Dale Gustafson-President-Elect, Amer. Academy
Bill Halvorson-President, Society of Actuaries
Steve Kellison-Executive Director, Amer. Academy
Michael Mahoney-Chairman, Risk Class. Task Force
Bob Winters-Past President, American Academy

FACSIMILE

October 6, 1977

Mr. Robert Winters
President, American Academy of Actuaries
Senior Vice President
Prudential Insurance Company
Fort Washington, Pennsylvania 19034

Dear Mr. Winters:

I understand that Mike Mahoney has forwarded to you my letter commenting on the Report of the Academy Task Force on Risk Classification. This report was discussed Wednesday, October 5, at one of the panel sessions of the New York Actuaries' Club annual all-day meeting. The discussion was very spirited and I got the impression that many, certainly not all, present agreed with the spirit of my objections. After the benefit of this discussion and conversation with Mike and two other Task Force members, Dick Stenson and Barbara Lautzenheiser, I'd like to restate my two principal objections.

First, I believe the Report conveys a tone of opposition to all government intrusion, present and future, by law or regulation into the classification process, including the prohibitions against racial distinctions. Mike, Dick, and Barbara assure me that was not the intent. Nevertheless, I still believe some clarifying statement should be made and given the same distribution as the Report.

Second, I believe the paragraphs headed "Race" on pages 17 and 18 are so wrong that they should be clearly and unequivocally disowned in some appropriate manner. The last part of the second paragraph says the black insurance companies have been hurt by the laws prohibiting racial discrimination. As I pointed out at the meeting, Ivan Houston, President of Golden State Mutual, a leading black company, and a member of the Academy, said this paragraph was "weird and ridiculous". The statement that "companies with predominately white markets have tended to avoid non-white markets" is not an accurate statement. Currently, almost the exact opposite is true. I don't question the motives of the authors, but I'm sure many informed people reading this paragraph would.

I hope serious consideration is given to my suggestions.

Sincerely,

Robert J. Randall
Vice President and Actuary

FACSIMILE

August 26, 1977

Mr. Michael A. Mahoney
Senior Vice President
Woodward, Ryan, Sharp & Davis, Inc.
355 Lexington Avenue, 11th Floor
New York, New York 10017

Dear Mike:

Today I received the booklet containing the Report of the Academy Task Force on Risk Classification and frankly I was alarmed and frightened by some aspects. To me there seems to be a hostile tone against all governmental prohibitions of discriminatory insurance practices, including prohibition of racial discriminations. Beyond that, some statements of alleged fact seem to me to be inaccurate or at least misleading. More fundamentally, the report does not seem willing to admit the possibility of proper prohibitions; it does not advance or contribute to an analysis of what constitutes proper and reasonable prohibitions, as opposed to improper and impractical ones. All the emphasis is negative. If I were a legislator concerned about safeguarding the public in a proper and reasonable manner from unfair treatment, I don't think I would be helped by this report. Instead I would view it as an attack on any governmental actions and therefore ignore it.

To give some specifics, the report states "the proportion of our total population that is non-white is so small (10%) that the impact has been minimal". I don't believe 10% is a minimal proportion and beyond that the correct proportion according to U.S. Census reports is 13%. On page 17 a statement refers to evidence supporting the fact that mortality differences by race were due to socio-economic conditions. The implication is that the only such evidence is the narrowing difference in over-all mortality by race over time. Actually U.S. Census studies by race within income class have shown truly minimal differences and such studies have been discussed in the past in SOA Transactions. Why didn't you mention them? I would have expected that you would have proposed more such studies. On the next page the report says that as a consequence of legal prohibitions against racial discrimination, companies with predominately white markets have tended to avoid non-white markets. The Equitable, the New York Life, the Metropolitan, the Prudential, Aetna, John Hancock, etc., are all aggressively pursuing the non-white market. What companies are you talking about? It might have been accurate to say that, in the 1940's when the legislation was first passed, some companies which

had been using racial rate differentials withdrew from the black market, but certainly in recent years and currently the opposite situation exists.

The report goes on to say that companies with traditionally black markets have been restricted to such markets as a consequence of legislation prohibiting racial discrimination. Once again, where did you get such information? The implication is that companies with traditionally black markets want to introduce racial distinctions into their rate structures. I don't believe that.

In discussing sex, the report states that sexual rate differentials have led to more sales to low-income women. I'd be interested in knowing the factual basis—it sounds like a fanciful analysis. In any event, the opposite effect on low-income men would seem just as strong a counter-argument.

I feel that the insurance industry has been guilty in the past of improper discriminatory practices, often based more on the prejudices of the insurers than on any statistical or practical business reasons. Legislation outlawing such practices was desirable and has had good results. It may be that more recently legislation and court decisions have gone too far and are imposing unreasonable restrictions. Accordingly it would seem to me that the first step would be to develop bases for distinguishing between the reasonable and workable, and the unreasonable and impractical. Except for recommendation 4, the Report does not seem to put forward this approach at all. I strongly urge reconsideration, correction of factual errors and misleading statements, and presentation, perhaps as a supplement, of a more constructive approach.

Sincerely,

Vice President and Actuary

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AMERICAN ACADEMY OF ACTUARIES

Canadian Institute of Actuaries

Institut Canadien des Actuaires

Casualty Actuarial Society

Conference of Actuaries in Public Practice

Fraternal Actuarial Association

SOCIETY OF ACTUARIES

August 18, 1977

In recent years there have been a growing number of governmental actions which serve to restrict the ability of insurance companies and employee benefit plans to classify risks by various criteria, such as age, sex, race, physical impairment, geographical area, etc. The governmental initiatives have occurred at both the Federal and state levels and have involved the legislative, executive and judicial branches of government.

In response to these developments the American Academy of Actuaries appointed a Task Force to study the situation and recommend possible courses of action to the Board of Directors of the Academy. A summary of the report of the Task Force appeared in the July 1977 issue of the Academy NEWSLETTER.

The subject of risk classification was extensively discussed at the meeting of the Council of Presidents in June 1977. There was general agreement expressed that the developments in this area were most significant to all actuaries, regardless of various areas of specialization, and that the report was of significant educational value.

Accordingly, the Council decided that the report should be distributed to the memberships of the six organizations represented on the Council. Enclosed is a copy of the final report of the Task Force. The subject of risk classification is one that deserves increased attention by actuaries and it is hoped that this report will serve to focus more attention on this vital topic. We encourage all actuaries to study this report and become familiar with the fundamental issues involved.

/s/: Robert C. Winters, President American Academy of Actuaries; W. James D. Lewis, President, Canadian Institute of Actuaries; George D. Morison, President, Casualty Actuarial Society; Preston C. Bassett, President, Conference of Actuaries in Public Practice; Wilson W. Naggs, President, Fraternal Actuarial Association; Robert T. Jackson, President, Society of Actuaries.

Equity in Insurance: The Two Views

By Nathan Keyfitz, Andelot Professor of Sociology and Demography, Harvard University

Little controversy can arise on the desirability of equity among different classes of policyholders. We all agree that race and sex prejudice are socially undesirable. What is difficult is to know just what equity consists in. To simplify the issues let us forget about interest, as well as individual variation in mortality, taking it that everyone will live the expected number of years for his or her sex. Let us also disregard selling and other expenses represented by office loading.

A man of 60 wishes to buy a life annunity of $1,000 per year. Since his expectation of life is 16.8 years (United States White Males table for 1975), on our assumption of expected values and no interest he will ultimately receive $16,800. A woman seeks an annuity of the same $1,000 per year. On the same assunptions and the same data, but for females, she will on the average collect $21,900 during the succeeding 21.9 years.

What is a fair charge to these two annuitants? What does "treating the sexes equally" mean? One school says that it means charging them the same amount, based on a unisex table, say $19,300. The man would pay $19,300 and get back only $16,800; he would lose $2,500. The woman would pay $19,300 and be ahead about the same amount. The man is paying a part of the cost of the woman's annuity. That may or may not be a desirable arrangement, but it should be recognized as what it is.

Is the example credible? It disregards: (1) interest that the company receives on the premium while it holds and invests it; (2) variation among individuals in mortality; (3) office expenses. To take all of these into account would complicate the arithmetic, and we would need a computer to do the calculations. But the conclusion would come out exactly the same as in the simplified case: on the unisex pricing men would be subsidizing women.

Thus it is not enough to say we favor equity between the sexes. The question is which of two approaches constitutes equity: (1) charging men and women alike the average cost; (2) charging men the cost for men and women the cost for women. To put the matter in an extreme form yet still without losing the essential point, suppose that I lend John $10 and Joe $20, say, until payday. Does equity consist in John and Joe each repaying $15, or in John repaying $10 and Joe repaying $20?

The above argument in terms of annuities can be adapted to apply to insurance. There are again two opposing principles, each of which can be argued to represent equity: charge everyone the same amount, or charge everyone the expected amount that he or she will get back. To charge all the same amount is now to ask those of lower mortality, the women, who will get back less, to subsidize the men, who will get back more.

The question is whether the group that is overpaying is justly required to subsidize the group that is underpaying; in the annuity case, whether men buying annuities ought to subsidize women; in insurance, whether women ought to subsidize men.

At this level of abstraction the volume of business is unaffected, and the insurance company could well be indifferent on the pricing. But the demand for insurance or annuities *is* affected by the prices charged for them. If as in the above example men are required to pay $19,300 for a return of $16,800—that is, to pay $1.15 for each dollar they get back—then some men will decide that there are better ways to invest their money than in an annuity. Women, on the other hand, since they will be paying only $0.87 for each dollar they get back, will tend to buy annuities as a preferred form of investment.

The pricing will thus act back on the selection of policyholders, shifting it towards the favored group, if the unisex table is used. This means that the mix of the sexes in the body of policyholders will shift against the company, which will have to raise the rates above the unisex table (too low for such a selected group) if it is to come out even.

The result of the distortion of rates through the use of the unisex table is thus, in the first instance, to cause one group to subsidize another, in the second to raise the rates because of selection, in the third, and as a consequence of this, to reduce the amount of business done.

Women have been unfairly discriminated against in many respects, of which employment is the most serious, and the discrimination continues. The proportion of women in the higher reaches of business and of the military, to name two sectors of prestige and power, is much short of the one-half that would represent their fair share. Efforts to recruit women into these fields should be unremitting.

The use of unisex tables for annuities is an altogether trivial attempt to make up for such major injustices. The amount of subsidy to women that it would provide is hardly large enough to satisfy anyone who takes the injustices seriously. Should the companies be required to go beyond the unisex table, then, and discriminate even more in favor of women? No, because in the voluntary insurance business the men drawn into the taking out of annuity policies cannot be taxed very

much, even in the most worthy cause. They are free to invest their funds in many other ways. Even without the overcharging that is proposed by the unisex table, they are tempted by bonds, real estate, and other ways of providing for their old age. Any tax in the interest of women, however well meant, would drive a certain proportion out of the annuity market.

But in any case the use of this way of subsidizing women can only benefit them if they are willing to buy annuities. If we insist on this particular kind of compensation to women, they will of course buy more annuities than they otherwise would, perhaps more than they need. Why should we make our help to women take this restricted form? Why compel them to buy annuities beyond what they would buy at cost? A unisex table for annuities is like an automobile priced lower for women buyers than for men. If we want to make up for past injustice to women, we ought not to compel them to buy an extra automobile, or extra annuities, to get the compensation.

Moreover, if unisex tables were to be used for annuities, one supposes that they would also be used for life insurance. In this field women would be subsidizing men. The total amount of insurance subsidy could more than outweigh the benefit that women would obtain from the subsidy in annuities. For women as a whole the hoped-for net gain from unisex tables might turn into a loss.

There is a place for State regulation of the insurance business. Contracts have to be clearly expressed, so that the buyer knows exactly what he is getting. His claim to the reserve on his policy has to be guaranteed by law. The free play of competition does not ensure these desirable features, and the regulation by the State insurance commissioners has maintained high standards of integrity. The result has been not only rapidly increasing sales, but the entry of many new companies and the fact that the largest companies are doing a decreasing proportion of the business. We would be fortunate if similar conditions prevailed in steel or petroleum.

It is this very success of the private insurance business that attracts those who would use it to rectify some of the larger injustices of our society. The difficulty is that it is not the right instrument for their purposes. It is incapable of carrying the load that they would place on it.

To see what such a load could mean, consider going one step further and forbidding age discrimination in the setting of premiums. After all, to be old is disadvantage enough; why should higher insurance rates be added to a man's troubles as he advances from 40 to 50 years of age? Yet we know from history what happens without age discrimination in rates; we know that a company that charged a rate representing average mortality of all ages would soon find that its policyholders

consisted entirely of old men. As its younger policyholders drop out—if they ever enter—it sooner or later goes out of business. This has been proved by hundreds of bankruptcies going all the way back to the 18th century.

To insist on women being charged the same as men is not as heavy a burden as uni-age pricing would be. The insurance industry would survive, but it would be weakened, and this would be a loss to all—women as well as men.

To say that women ought to be charged more than men for a given life annuity and less than men for a given life insurance is not to say that every kind of discrimination is justified. Premium differences have to be based on facts. Men have many prejudices about women, in insurance underwriting as elsewhere. Rates ought not be influenced by mere male notions of female mortality. We need all the data we can get to establish sound rate differentials for smokers versus nonsmokers, for those who are overweight against those who are not, as well as for women against men. More information in a competitive regime would mean rates more precisely adapted to risks, and that is equity in the best sense.

Mr. Randall's paper is a thorough review of the actuarial and underwriting principles of insurance, and I have learned much from it. My comment has taken the form of elaborating its consequences for the pricing of insurance and annuities.

Employment Patterns of Minorities and Women in the Insurance Industry, 1966-75

By F. Marion Fletcher, Professor of Management, Louisiana State University, Baton Rouge, La.; currently Special Assistant to the Director, Office of Civil Rights, Environmental Protection Agency; and Linda Pickthorne Fletcher, Professor of Insurance and Risk, Temple University, Philadelphia, Pa.

Previous research has shown that the insurance industry, except for small minority-controlled companies, has historically not employed appreciable numbers of minority-group members and has employed women primarily to fill clerical job slots.[1] As recently as 1966, table 1 shows, black employment was only 3.3 percent of the industry total. In the most desirable (i.e., white-collar) jobs, black employment was even lower—2.8 percent. Black males were almost nonexistent in white-collar employment. Table 2 shows that the picture was much the same in several non-South SMSAs.[2]

The purpose of this paper is to analyze changes in the employment structure in the industry during the first decade after the Civil Rights Act of 1964 became law. The paper begins by examining the overall employment structure in the industry. Then data for various SMSAs are presented for insurance carriers and for insurance agents and brokers. The third part summarizes employment in the industry at the national level. Finally, the paper assesses the prospects for minorities and women in the years ahead.

The Employment Structure in Insurance

The insurance industry consists of two major components. One is the insurance companies (carriers) that sell one or more lines (life, health, property, etc.) of insurance, are large, and operate in a number of geographic areas. The other, much smaller, component consists of independent agents and brokers that market insurance for large companies. These agents and brokers are small individually as well as in the aggregate and normally are in business in a single metropolitan (or rural) area. An indication of the relative size of the two parts of the industry analyzed in this paper is that total agent and broker employment in 1974 was 47,123, whereas for carriers employment was 845,193.[3]

[1] Linda Pickthorne Fletcher, *The Negro on the Insurance Industry,* Report no. 11, The Racial Policies of American Industry (Philadelphia, Pa: Industrial Research Unit, Wharton School of Finance and Commerce, University of Pennsylvania, 1970).

[2] An SMSA is a city of at least 50,000 population and the surrounding metropolitan area.

[3] See tables 23 and 27, respectively.

TABLE 1

Employment in the Insurance Industry by Race, Sex, and Occupational Category, United States, 1966

Occupational category	All employees			Male			Female		
	Total	Black	Percent black	Total	Black	Percent black	Total	Black	Percent black
Officials & managers	91,044	1,346	1.5	84,324	1,130	1.3	6,720	216	3.2
Professionals	82,995	401	0.5	77,076	327	0.4	5,919	74	1.3
Technicians	34,430	344	1.0	26,182	208	0.8	8,248	136	1.6
Salesworkers	178,621	5,420	3.0	172,904	3,924	2.3	5,717	1,496	26.2
Office & clerical	379,679	13,730	3.6	48,686	2,053	4.2	330,993	11,677	3.5
Total white collar	766,769	21,241	2.8	409,172	7,642	1.9	357,597	13,599	3.8
Craftworkers	3,017	129	4.3	2,678	126	4.7	339	3	0.9
Operatives, laborers, & service workers	17,471	4,415	25.3	10,450	2,954	28.3	7,021	1,461	20.8
Total blue collar	20,488	4,544	22.2	13,128	3,080	23.5	7,360	1,464	19.9
TOTAL	787,257	25,785	3.3	442,300	10,722	2.5	364,957	15,063	4.1

Source: EEOC, *Job Patterns for Minorities and Women in Private Industry, 1966*. Report No. 1 (Washington: EEOC, 1968), Part II.

TABLE 2

Employment in the Insurance Industry by Race and Occupational Category, Selected SMSAs, 1966

SMSA	All employees			White collar			Craftsmen			Blue collar except craftsmen		
	Total	Black	Percent black	Total	Black	Percent black	Total	Black	Percent black	Total	Black	Percent black
Boston, Mass.	24,733	577	2.3	23,868	565	2.4	233	—	—	632	12	1.9
Detroit, Mich.	10,207	473	4.6	10,023	447	4.5	17	—	—	167	26	15.6
Indianapolis, Ind.	8,347	197	2.4	8,122	97	1.2	24	2	1.3	201	98	48.8
Sum of 6 Pa. SMSAs*	4,369	26	0.6	4,321	25	0.6	2	—	—	46	1	2.2
Philadelphia, Pa.	19,394	720	3.7	18,634	473	2.5	78	11	14.1	682	236	34.6
Pittsburgh, Pa.	4,656	143	3.1	4,324	57	1.3	3	—	—	329	86	26.1
St. Louis, Mo.	6,042	212	3.5	5,944	177	3.0	16	3	18.8	82	32	39.0

* Erie, Harrisburg, Lancaster, Reading, Scranton, Wilkes-Barre.
Source: Press releases of and data compiled by EEOC, as reported in Linda Pickthorne Fletcher, *The Negro in the Insurance Industry*, Report No. 11 in The Racial Policies of American Industry series, Wharton School, University of Pennsylvania, Philadelphia, Pa., 1970, p. 47.

The components, nevertheless, have similar occupational structures. Table 3 shows that employment is concentrated in "desirable" and clerical jobs. The desirable jobs are defined as those that are in the official and managerial, professional, technical, and sales jobs categories. Employment in these categories is subtotaled in table 3, which shows that these jobs are increasing as a proportion of total employment. For insurance carriers, the desirable jobs grew from 44.3 to 48.6 percent of total employment from 1970 to 1975. For agents and brokers, desirable jobs grew from 43.3 to 58.4 percent of total employment from 1970 to 1975.

It is important to note that, for the period shown in table 3, sales is the only category of desirable jobs that did not increase in both industry components as a proportion of total jobs. For carriers, sales employment declined from 15.0 percent of the total in 1970 to 12.7 percent in 1975, whereas for agents and brokers, sales employment increased from 5.4 percent of total employment in 1970 to 7.7 percent in 1975.

The other desirable-jobs categories each increased by about 2 percentage points for carriers over the 6-year period. For agents and brokers, the proportion of the nonsales desirable jobs also increased substantially from 1970 to 1975, particularly the officials and managers category and the professionals category, both of which grew by about 5 percentage points.

It is therefore clear that high-pay, high-status jobs are increasing proportionally in the industry and that minorities and women are not prevented from entering these jobs because of an absence of growth in the numbers of available jobs. Moreover, minorities and women must move into these jobs quite rapidly if they are to expand the proportion of these jobs they hold as compared to white males, who have traditionally dominated this part of industry employment.

Clerical employment has not enjoyed the growth of the other white-collar occupations, but still contains about *half* of total industry employment. For carriers, table 3 shows that clerical employment declined from 51.8 to 48.6 percent of total employment from 1970 to 1975. Because of the growth in total employment, however, the carriers provided about 35,000 more clerical jobs in 1975 than in 1970.[4] Clerical employment as a proportion of total employment by agents and brokers did rise from 1970 to 1975 by about 15 percentage points, but its small size and status as a declining industry segment produced an absolute decrease of about 12,000 clerical jobs.[5]

Because clerical employment is so large in both absolute and relative terms, it is essential for minorities and women to attain jobs in this

[4] See the clerical employment totals in tables 25 and 28.
[5] See the clerical employment totals in tables 21 and 24.

TABLE 3

Employment Structure in the Insurance Industry, 1970–75

(Percent)

Occupational categories	Insurance carriers (SIC 63)				Insurance agents & brokers (SIC 64)			
	1970	1972	1974	1975	1970	1972	1974	1975
Officials & managers	11.8	12.4	13.6	13.9	10.7	11.3	11.6	15.7
Professionals	11.5	12.8	12.9	13.6	21.6	19.4	20.4	26.9
Technicals	6.0	6.2	7.6	8.3	5.6	8.4	7.6	8.1
Sales	15.0	14.4	14.3	12.7	5.4	4.8	6.6	7.7
Subtotal	44.3	45.9	48.5	48.6	43.3	44.0	46.2	58.4
Clericals	51.8	50.7	48.6	48.2	54.4	54.2	50.9	56.9
Crafts	0.6	0.6	0.6	0.9	0.4	0.2	0.6	0.7
Operatives	0.6	0.4	0.5	0.5	0.4	0.6	0.7	1.2
Laborers	0.4	0.2	0.2	0.1	0.1	—	—	—
Total blue collar	1.7	1.2	1.2	1.6	0.8	0.8	1.3	2.0
Service workers	2.2	2.2	1.7	1.6	1.4	0.9	1.6	2.5
TOTAL	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

Source: EEOC.

category in substantial numbers if they are to be significant elements in total industry employment.

The unimportance of blue-collar and service-worker categories can be observed from table 3 also. Both combined constitute about 4 percent of industry employment, with white-collar employment accounting for the remaining 96 percent. The significance is that low-level jobs (other than clerical) cannot be depended on to provide much employment for minorities in the insurance industry, whereas such jobs have traditionally accounted for a large proportion of total minority employment in industry generally. That avenue is not open in insurance. Minorities and women will be either white-collar employees or not find substantial employment in the insurance industry.

Minority and Female Employment in Selected SMSAs

As previously noted, minority employment in the insurance industry has been negligible. In 1960, black employment in most major metropolitan areas was 4 percent or less.[6] By 1966, black employment had increased somewhat, but was generally in the range of 2 to 4 percent black employment (see table 2).

Employment by Agents and Brokers. Data for SMSAs are presented in tables 4 through 13. In some respects, minority and female employment has grown considerably. Clerical jobs, traditionally occupied almost exclusively by white females, now have a considerable complement of minority group members, primarily black. The clericals, however, are still largely women's jobs. In the South, black women held (in 1975) 19.8 (Atlanta), 5.4 (Dallas), and 8.6 (Houston) percent of all clerical jobs. In addition, Dallas (2.9 percent) and Houston (2.6 percent) had noticeable concentrations of Hispanic women. The other SMSAs except Chicago and New York approximate Dallas and Houston. Chicago closely resembles Atlanta, and New York has a larger female Hispanic employment (5.2 percent). These percentages are much less than would be expected, given the minority populations of those cities, but they do represent an improvement over the recent past.

It is important to note that minority males (and white males too) are scarce in clerical occupations. As long as the idea that clerical work is women's work holds sway, minority (and nonminority) males will not take advantage of the ample job opportunities in the clerical field.

Those employed in sales are overwhelmingly white. For all SMSAs, the range is 96 to 100 percent white. The only improvement over

[6] *1960 U.S. Census of Population,* vol. II, *Characteristics of the Population,* State volumes, table 77.

TABLE 4

Employment Percentages of Insurance Agents and Brokers (SIC 64), Atlanta, Ga., SMSA 1975, by Race, Sex, and Occupational Category

Occupational category	Total employment	White			Black			Hispanic			Oriental			American Indian		
		Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female
Officials & mgrs.	358	98.0	81.6	16.5	2.0	1.4	0.6	—	—	—	—	—	—	—	—	—
Professionals	359	93.3	78.3	15.0	5.6	4.5	1.1	0.8	0.8	—	0.3	0.3	—	—	—	—
Technicians	109	91.7	47.7	44.0	7.3	—	7.3	0.9	—	0.9	—	—	—	—	—	—
Sales	54	98.1	87.0	11.1	—	—	—	1.9	—	1.9	—	—	—	—	—	—
Clerical	1,390	77.7	7.6	70.1	21.4	1.6	19.8	0.3	—	0.3	0.6	—	0.6	0.1	—	0.1
Total white collar	2,270	84.5	34.2	50.3	14.6	1.9	12.7	0.4	0.1	0.3	0.4	—	0.4	—	—	—
Crafts	56	91.1	83.9	7.1	7.1	7.1	—	1.8	1.8	—	—	—	—	—	—	—
Operatives	44	65.9	45.5	20.5	34.1	29.5	4.5	—	—	—	—	—	—	—	—	—
Laborers	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Svc. workers	10	60.0	60.0	—	40.0	30.0	10.0	—	—	—	—	—	—	—	—	—
Total blue collar	100	80.0	67.0	13.0	19.0	17.0	2.0	1.0	1.0	—	—	—	—	—	—	—
Total all occupations	2,380	84.2	35.7	48.5	14.2	2.6	12.3	0.4	0.2	0.3	0.4	—	0.3	—	—	—

Source: EEOC.

TABLE 5

Employment Percentages of Insurance Agents and Brokers (SIC 64), Boston, Mass., SMSA, 1975, by Race, Sex, and Occupational Category

Occupational category	Total employment	White			Black			Hispanic			Oriental			American Indian		
		Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female
Officials & mgrs.	131	100.0	90.8	9.2	—	—	—	—	—	—	—	—	—	—	—	—
Professionals	232	98.7	76.7	22.0	1.3	0.4	0.9	—	—	—	—	—	—	—	—	—
Technicians	167	95.8	40.1	55.7	1.8	1.8	—	0.6	0.6	—	1.8	0.6	1.2	—	—	—
Sales	54	100.0	87.0	13.0	—	—	—	—	—	—	—	—	—	—	—	—
Clerical	552	94.2	12.5	81.7	5.4	0.7	4.7	0.2	—	0.2	0.2	—	0.2	—	—	—
Total white collar	1,136	96.3	42.3	54.0	3.2	0.7	2.5	0.2	0.1	0.1	0.4	0.1	0.3	—	—	—
Crafts	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Operatives	1	100.0	—	100.0	—	—	—	—	—	—	—	—	—	—	—	—
Laborers	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Svc. workers	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Total blue collar	1	100.0	—	100.0	—	—	—	—	—	—	—	—	—	—	—	—
Total all occupations	1,137	96.3	42.2	54.1	3.2	0.7	2.5	0.2	0.1	0.1	0.4	0.1	0.3	—	—	—

Source: EEOC.

TABLE 6

Employment Percentages of Insurance Agents and Brokers (SIC 64), Chicago, Ill., SMSA, 1975, by Race, Sex, and Occupational Category

Occupational category	Total employment	White			Black			Hispanic			Oriental			American Indian		
		Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female
Officials & mgrs.	625	97.1	84.5	12.6	1.6	1.1	0.5	0.2	0.2	—	1.1	0.3	0.8	—	—	—
Professionals	760	93.2	77.9	15.3	5.4	3.9	1.4	0.7	0.7	—	0.7	0.3	0.4	0.1	0.1	—
Technicians	293	92.2	67.9	24.2	6.1	3.4	2.7	0.7	—	0.7	1.0	0.7	0.3	—	—	—
Sales	248	96.0	81.0	14.9	2.4	0.8	1.6	1.6	0.8	0.8	—	—	—	—	—	—
Clerical	1,500	81.0	7.2	73.8	15.2	2.3	12.9	2.3	0.1	2.1	1.5	0.1	1.4	—	—	—
Total white collar	3,426	88.7	47.5	41.2	8.8	2.4	6.4	1.3	0.3	1.1	1.1	0.2	0.9	—	—	—
Crafts	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Operatives	249	100.0	2.4	97.6	—	—	—	—	—	—	—	—	—	—	—	—
Laborers	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Svc. workers	34	88.2	61.8	26.5	11.8	2.9	8.8	—	—	—	—	—	—	—	—	—
Total blue collar	249	100.0	2.4	97.6	—	—	—	—	—	—	—	—	—	—	—	—
Total all occupations	3,709	89.4	44.6	44.8	8.3	2.3	6.0	1.2	0.3	1.0	1.0	0.2	0.8	—	—	—

Source: EEOC.

TABLE 7

Employment Percentages of Insurance Agents and Brokers (SIC 64), Dallas-Ft. Worth SMSA, 1975, by Race, Sex, and Occupational Category

Occupational category	Total employment	White			Black			Hispanic			Oriental			American Indian		
		Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female
Officials & mgrs.	196	98.5	83.2	15.3	—	—	—	0.5	0.5	—	0.5	0.5	—	0.5	—	0.5
Professionals	307	97.4	72.0	25.4	1.3	0.7	0.7	1.0	1.0	—	0.3	0.3	—	—	—	—
Technicians	34	100.0	82.4	17.6	—	—	—	—	—	—	—	—	—	—	—	—
Sales	51	100.0	94.1	5.9	—	—	—	—	—	—	—	—	—	—	—	—
Clerical	717	90.0	7.3	82.7	5.9	0.4	5.4	3.3	0.4	2.9	—	—	—	0.8	—	0.8
Total white collar	1,305	93.6	39.2	54.4	3.5	0.4	3.1	2.1	0.5	1.6	0.2	0.2	—	0.5	0.1	0.5
Crafts	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Operatives	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Laborers	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Svc. workers	1	—	—	—	100.0	—	100.0	—	—	—	—	—	—	—	—	—
Total blue collar	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Total all occupations	1,306	93.6	39.2	54.4	3.6	0.4	3.2	2.1	0.5	1.6	0.2	0.2	—	0.5	0.1	0.5

Source: EEOC.

TABLE 8

Employment Percentages of Insurance Agents and Brokers (SIC 64), Detroit, Mich., SMSA, 1975, by Race, Sex, and Occupational Category

Occupational category	Total employment	White			Black			Hispanic			Oriental			American Indian		
		Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female
Officials & mgrs.	107	98.1	90.7	7.5	0.9	0.9	—	0.9	0.9	—	—	—	—	—	—	—
Professionals	179	89.4	69.3	20.1	10.1	8.4	1.7	0.6	0.6	—	—	—	—	—	—	—
Technicians	76	98.7	75.0	23.7	—	—	—	1.3	1.3	—	—	—	—	—	—	—
Sales	69	98.6	82.6	15.9	1.4	—	1.4	—	—	—	—	—	—	—	—	—
Clerical	486	89.7	7.6	82.1	8.4	1.6	6.8	1.6	0.2	1.4	0.2	—	0.2	—	—	—
Total white collar	917	92.0	40.6	51.5	6.7	2.6	4.0	1.2	0.4	0.8	0.1	—	0.1	—	—	—
Crafts	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Operatives	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Laborers	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Svc. workers	230	93.5	90.0	3.5	4.3	3.9	0.4	1.3	1.3	—	0.9	0.9	—	—	—	—
Total blue collar	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Total all occupations	1,147	92.3	50.5	41.8	6.2	2.9	3.3	1.2	0.6	0.6	0.3	0.2	0.1	—	—	—

Source: EEOC.

TABLE 9

Employment Percentages of Insurance Agents and Brokers (SIC 64), Hartford, Conn., SMSA, 1975, by Race, Sex, and Occupational Category

Occupational category	Total employment	White			Black			Hispanic			Oriental			American Indian		
		Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female
Officials & mgrs.	44	100.0	93.2	6.8	—	—	—	—	—	—	—	—	—	—	—	—
Professionals	148	99.3	95.3	4.1	0.7	0.7	—	—	—	—	—	—	—	—	—	—
Technicians	27	92.6	77.8	14.3	3.7	—	3.7	3.7	—	3.7	—	—	—	—	—	—
Sales	23	100.0	100.0	—	—	—	—	—	—	—	—	—	—	—	—	—
Clerical	236	89.8	7.5	87.3	7.2	0.8	6.4	3.0	—	3.0	—	—	—	—	—	—
Total white collar	478	94.4	48.5	48.8	4.0	0.6	3.3	1.7	—	1.7	—	—	—	—	—	—
Crafts	31	90.3	45.2	45.2	6.5	3.2	3.2	—	—	—	—	—	—	3.2	—	3.2
Operatives	5	80.0	20.0	60.0	20.0	—	20.0	—	—	—	—	—	—	—	—	—
Laborers	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Svc. workers	11	90.9	90.9	—	—	—	—	9.1	9.1	—	—	—	—	—	—	—
Total blue collar	36	88.9	41.7	47.2	8.3	2.8	5.6	—	—	—	—	—	—	2.8	—	2.8
Total all occupations	525	93.9	49.0	45.0	4.2	0.8	3.4	1.7	0.2	1.5	—	—	—	0.2	—	0.2

Source: EEOC.

TABLE 10

Employment Percentages of Insurance Agents and Brokers (SIC 64), Houston, Tex., SMSA, 1975, by Race, Sex, and Occupational Category

Occupational category	Total employment	White			Black			Hispanic			Oriental			American Indian		
		Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female
Officials & mgrs.	148	99.3	91.9	7.4	—	—	—	0.7	0.7	—	—	—	—	—	—	—
Professionals	316	95.3	79.4	15.8	3.5	3.2	0.3	0.6	0.6	—	—	—	—	0.6	0.6	—
Technicians	126	93.7	57.9	35.7	1.6	1.6	—	4.8	0.8	4.0	—	—	—	—	—	—
Sales	70	97.1	94.3	2.9	1.4	1.4	—	1.4	1.4	—	—	—	—	—	—	—
Clerical	665	86.6	4.2	82.4	10.4	1.8	8.6	2.7	0.2	2.6	—	—	—	0.3	—	0.3
Total white collar	1,325	91.3	41.8	49.5	6.3	1.9	4.4	2.1	0.5	1.7	—	—	—	0.3	0.2	0.1
Crafts	6	50.0	33.3	16.7	33.3	33.3	—	16.7	16.7	—	—	—	—	—	—	—
Operatives	3	33.3	33.3	—	66.7	66.7	—	—	—	—	—	—	—	—	—	—
Laborers	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Svc. workers	27	92.6	48.1	44.4	3.7	—	3.7	3.7	—	3.7	—	—	—	—	—	—
Total blue collar	9	44.4	33.1	11.1	44.1	44.4	—	11.1	—	11.1	—	—	—	—	—	—
Total all occupations	1,361	91.0	41.9	49.2	6.5	2.1	4.3	2.2	0.4	1.8	—	—	—	0.3	0.1	0.1

Source: EEOC.

TABLE 11

Employment Percentages of Insurance Agents and Brokers (SIC 64), Los Angeles-Long Beach SMSA, 1975, by Race, Sex, and Occupational Category

Occupational category	Total employment	White			Black			Hispanic			Oriental			American Indian		
		Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female
Officials & mgrs.	294	91.2	78.9	12.2	2.0	0.7	1.4	3.4	0.7	2.7	2.7	1.7	1.0	0.7	0.3	0.3
Professionals	583	90.6	73.6	17.0	3.6	2.2	1.4	2.4	1.9	0.5	3.4	1.9	1.8	—	—	—
Technicians	181	85.1	42.5	42.5	7.7	2.2	5.5	3.3	1.7	1.7	3.9	1.7	2.2	—	—	—
Sales	162	97.5	90.1	7.4	1.2	0.6	0.6	1.2	1.2	0	—	—	—	—	—	—
Clerical	966	69.0	4.6	64.5	10.9	1.1	9.7	12.5	0.3	12.2	7.6	0.6	6.6	0.3	—	0.3
Total white collar	2,186	81.2	42.5	38.7	6.8	1.4	5.4	7.0	1.0	6.0	4.8	1.1	3.7	0.2	—	0.2
Crafts	5	—	—	—	100.0	100.0	—	—	—	—	—	—	—	—	—	—
Operatives	1	—	—	—	100.0	100.0	—	—	—	—	—	—	—	—	—	—
Laborers	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Svc. workers	61	85.2	50.8	34.4	6.6	6.6	—	3.3	3.3	—	4.9	4.9	—	—	—	—
Total blue collar	6	66.7	66.7	—	16.7	16.7	—	16.7	16.7	—	—	—	—	—	—	—
Total all occupations	2,253	81.3	42.7	38.5	6.8	1.6	5.2	6.9	1.1	5.9	4.8	1.2	3.6	0.2	—	0.2

Source: EEOC.

TABLE 12

Employment Percentages of Insurance Agents and Brokers (SIC 64), New York, N.Y., SMSA, 1975, by Race, Sex, and Occupational Category

Occupational category	Total employment	White			Black			Hispanic			Oriental			American Indian		
		Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female
Officials & mgrs.	1,338	97.6	87.1	10.5	1.1	0.5	0.6	.0.7	0.6	0.1	0.6	0.6	—	—	—	—
Professionals	2,197	92.0	74.5	17.6	4.5	3.1	1.4	2.1	1.6	0.5	1.3	0.8	0.5	—	—	—
Technicians	749	86.5	62.1	24.4	7.7	5.5	2.3	3.1	2.0	1.1	2.4	0.9	1.5	0.3	0.3	—
Sales	324	96.6	94.4	2.2	0.6	0.6	—	1.2	1.2	—	0.9	0.6	0.3	0.6	0.6	—
Clerical	4,599	80.1	14.7	65.4	12.2	2.6	9.6	6.2	1.0	5.2	1.5	0.4	1.1	—	—	—
Total white collar	9,207	86.6	46.2	40.4	8.0	2.6	5.4	4.0	1.2	2.8	1.4	0.6	0.8	0.1	0.1	—
Crafts	1	100.0	100.0	—	—	—	—	—	—	—	—	—	—	—	—	—
Operatives	37	70.3	29.7	40.5	27.0	8.1	18.9	2.7	2.7	—	—	—	—	—	—	—
Laborers	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Svc. workers	41	58.5	51.2	7.3	7.3	4.9	2.4	—	—	—	34.1	34.1	—	—	—	—
Total blue collar	38	71.1	31.6	39.5	26.3	7.9	18.4	2.6	2.6	—	—	—	—	—	—	—
Total all occupations	9,286	86.4	46.1	40.1	8.1	2.6	5.4	4.0	1.2	2.8	1.5	0.7	0.8	0.1	0.1	—

Source: EEOC.

TABLE 13

Employment Percentages of Insurance Agents and Brokers (SIC 64), San Francisco-Oakland SMSA, 1975, by Race, Sex, and Occupational Category

Occupational category	Total employment	White			Black			Hispanic			Oriental			American Indian		
		Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female
Officials & mgrs.	274	93.8	78.8	15.0	1.5	0.7	0.7	1.5	0.7	0.7	3.3	0.4	2.9	—	—	—
Professionals	389	92.0	70.2	21.9	3.1	1.8	1.3	1.5	1.0	0.5	3.3	1.5	1.8	—	—	—
Technicians	124	87.1	54.0	33.1	4.0	1.6	2.4	4.0	3.2	0.8	4.8	3.2	1.6	—	—	—
Sales	137	94.2	84.7	9.5	0.7	—	0.7	1.5	1.5	—	3.6	3.6	—	—	—	—
Clerical	733	70.8	5.5	65.3	8.5	1.8	6.7	7.2	0.7	6.5	12.6	2.3	10.2	1.0	—	1.0
Total white collar	1,657	82.7	43.0	39.8	5.1	1.4	3.6	4.2	1.0	3.2	7.5	2.0	5.6	0.4	—	0.4
Crafts	120	73.2	64.2	9.2	10.0	9.2	0.8	12.5	11.7	0.8	1.7	1.7	—	2.5	2.5	—
Operatives	106	54.7	35.8	18.9	37.7	28.3	9.4	7.5	6.6	0.9	—	—	—	—	—	—
Laborers	3	33.3	33.3	—	33.3	33.3	—	33.3	33.3	—	—	—	—	—	—	—
Svc. workers	26	80.8	42.3	38.5	11.5	7.7	3.8	7.7	3.8	3.8	—	—	—	—	—	—
Total blue collar	229	64.2	50.7	13.5	23.1	18.3	4.8	10.5	9.6	0.9	0.9	0.9	—	1.3	1.3	—
Total all occupations	1,912	80.5	43.9	36.6	7.3	3.6	3.8	5.0	2.1	2.9	6.6	1.8	4.8	0.5	0.2	0.4

Source: EEOC.

historical patterns is that in most SMSAs 10 to 15 percent of the employment is white females. Minority employment—male or female—is so small it is not worth mentioning. The same pattern shows up in the two highest job categories—officials and managers and professionals. All three job categories, then, are still the preserve of white males, with some white female representation.

It is only in the occupational category of technicians that women and minorities are found in any appreciable number. Even there, the record is spotty. Only Atlanta (7.3 percent) and Los Angeles (5.5 percent) have much black female representation. Only Hartford (3.7 percent) and Houston (4.0 percent) have Hispanic female representation of any size. Only New York has noticeable black male employment (5.5 percent), but San Francisco has some Oriental male employment (3.6 percent).[7]

White female employment is quite variable, being over half of total employment in the technical category in Boston; nearly half in Atlanta and Los Angeles; between 20 and 35 percent in Chicago, Detroit, Houston, and New York; and 10 to 18 percent in Dallas, Hartford, and San Francisco. Possibly the agents and brokers define technician employment in different ways, which is the most likely explanation for such large variations among the SMSAs.

Employment by Insurance Companies. Employment for selected SMSAs is shown in tables 14 through 20. These particular SMSAs were chosen so that black employment for 1960 (table 2) could be compared with 1975. In addition, Hartford was added because it is a major center of the insurance industry.

Overall black employment has approximately tripled over the 1966–75 period in the SMSAs—a very substantial improvement. Black employment more than doubled in Boston and Pittsburgh and more than tripled in Detroit, Indianapolis, Philadelphia, and St. Louis. Since all of the SMSAs started from very low percentages, the employment percentages are still far below the black population or work force proportions for all the SMSAs. These data demonstrate that it is possible to increase minority employment rapidly, in the short run at least, if there is an incentive to do so.

Let us now turn to an examination of the major occupational categories to see where the gains occurred, realizing that large gains must have been made in white-collar occupations, since they amount to about 94 percent of total employment.

[7] Throughout this paper very little mention is made of Hispanic, Asian American (Oriental), or American Indian employment. The reason is that, for the most part, employment of these groups is insignificant in the insurance industry or on the order of 1 or 2 percent Hispanic, 0.5 to 1.0 Oriental, and 0.1 to 0.2 percent American Indian.

TABLE 14

Employment Percentages in Insurance Companies (SIC 63), Boston, Mass., SMSA, 1975, by Race, Sex, and Occupational Category

Occupational category	Total employment	White			Black			Hispanic			Oriental			American Indian		
		Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female
Officials & mgrs.	4,253	98.6	81.5	17.1	0.9	0.5	0.4	0.2	0.2	—	0.1	0.1	—	0.1	0.1	—
Professionals	5,103	96.7	65.3	31.4	2.2	1.3	0.9	0.3	0.2	0.1	0.7	0.3	0.4	—	—	—
Technicians	3,985	92.8	30.8	62.0	5.3	1.4	3.9	1.1	0.3	0.8	0.7	0.2	0.5	—	—	—
Sales	1,881	97.2	88.8	8.3	2.0	1.8	0.2	0.5	0.5	—	0.3	0.3	0.1	0.1	0.1	—
Clerical	13,088	87.1	8.1	79.6	9.4	1.0	8.4	1.8	0.2	1.7	1.1	0.1	1.0	0.1	—	0.1
Total white collar	28,310	92.3	38.0	54.3	5.8	1.1	4.7	1.1	0.2	0.9	0.8	0.2	0.6	0.1	—	—
Crafts	209	97.6	94.3	3.3	1.9	1.9	—	0.5	0.5	—	—	—	—	—	—	—
Operatives	107	86.9	86.0	0.9	9.3	9.3	—	3.7	3.7	—	—	—	—	—	—	—
Laborers	156	91.7	44.2	47.4	8.3	1.3	7.1	—	—	—	—	—	—	—	—	—
Svc. workers	550	84.9	40.4	44.5	10.0	6.2	3.8	4.5	2.7	1.8	0.5	0.2	0.4	—	—	—
Total blue collar	472	93.2	75.8	17.4	5.7	3.4	2.3	1.1	1.1	—	—	—	—	—	—	—
Total all occupations	28,310	92.3	38.0	54.3	5.8	1.1	4.7	1.1	0.2	0.9	0.8	0.2	0.6	0.1	—	—

Source: EEOC.

TABLE 15

Employment Percentages in Insurance Companies (SIC 63), Detroit, Mich., SMSA, 1975, by Race, Sex, and Occupational Category

Occupational category	Total employment	White			Black			Hispanic			Oriental			American Indian		
		Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female
Officials & mgrs.	2,283	92.0	73.6	18.4	7.1	3.5	3.6	0.4	0.3	0.1	0.2	0.2	—	0.4	0.3	0.1
Professionals	2,827	90.3	69.7	20.6	8.1	3.9	4.2	0.4	0.2	0.2	1.0	0.9	0.1	0.2	0.1	0.1
Technicians	1,517	83.3	33.4	49.9	15.0	3.6	11.4	0.7	0.3	0.4	0.9	0.5	0.4	0.1	0.1	0.1
Sales	2,664	89.5	82.4	7.1	9.2	8.4	0.8	0.5	0.5	—	0.6	0.6	—	0.2	0.2	—
Clerical	9,200	75.3	5.0	70.3	22.9	1.3	21.6	0.7	0.1	0.6	0.7	0.1	0.6	0.3	—	0.3
Total white collar	18,491	82.4	36.8	45.5	16.1	3.2	12.9	0.6	0.2	0.4	0.7	0.3	0.4	0.3	0.1	0.2
Crafts	131	87.8	16.8	71.0	12.2	1.5	10.7	—	—	—	—	—	—	—	—	—
Operatives	45	95.6	64.4	31.1	4.4	4.4	—	—	—	—	—	—	—	—	—	—
Laborers	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Svc. workers	172	70.9	32.0	39.0	27.3	18.0	9.3	—	—	—	1.7	0.6	1.2	—	—	—
Total blue collar	176	89.8	29.0	60.8	10.2	2.3	8.0	—	—	—	—	—	—	—	—	—
Total all occupations	18,839	82.3	36.7	45.6	16.1	3.3	12.8	0.6	0.2	0.4	0.7	0.3	0.4	0.3	0.1	0.2

Source: EEOC.

TABLE 16

Employment Percentages in Insurance Companies (SIC 63), Hartford, Conn., SMSA, 1975, by Race, Sex, and Occupational Category

Occupational category	Total employment	White			Black			Hispanic			Oriental			American Indian		
		Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female
Officers & mgrs.	5,507	97.9	87.1	10.8	1.4	1.1	0.4	0.4	0.3	0.1	0.3	0.3	—	—	—	—
Professionals	7,941	94.2	63.2	31.1	4.0	2.2	1.8	0.8	0.5	0.2	1.0	0.7	0.3	—	—	—
Technicians	2,720	89.9	44.8	45.1	7.4	4.1	3.3	1.3	0.8	0.5	1.3	0.6	0.7	0.1	0.1	—
Sales	522	94.3	81.8	12.5	4.6	3.6	1.0	1.0	1.0	—	0.2	0.2	—	—	—	—
Clerical	16,937	83.9	9.1	74.7	12.9	1.8	11.1	2.7	0.5	2.2	0.5	0.1	0.4	0.1	—	0.1
Total white collar	33,627	89.3	38.7	50.6	8.3	2.0	6.4	1.7	0.5	1.2	0.6	0.3	0.3	0.1	—	—
Crafts	551	88.2	63.2	25.0	9.8	6.5	3.3	1.6	1.3	0.4	0.4	—	0.4	—	—	—
Operatives	305	83.0	59.3	23.6	14.8	11.8	3.0	2.3	2.3	—	—	—	—	—	—	—
Laborers	181	79.6	31.5	48.1	14.9	11.0	3.9	5.5	4.4	1.1	—	—	—	—	—	—
Svc. workers	465	60.6	28.6	32.0	23.9	10.1	13.8	15.3	3.0	12.3	0.2	0.2	—	—	—	—
Total blue collar	1,037	85.1	56.5	28.6	12.2	8.9	3.3	2.5	2.1	0.4	0.2	—	0.2	—	—	—
Total all occupations	35,129	88.8	39.1	49.7	8.7	2.3	6.4	1.9	0.6	1.3	0.6	0.3	0.3	0.1	—	—

Source: EEOC.

TABLE 17

Employment Percentages in Insurance Companies (SIC 63), Indianapolis, Ind., SMSA, 1975, by Race, Sex, and Occupational Category

Occupational category	Total employment	White			Black			Hispanic			Oriental			American Indian		
		Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female
Officials & mgrs.	1,663	97.2	81.4	15.9	2.1	1.2	0.9	0.1	0.1	—	0.3	0.3	—	0.2	0.2	—
Professionals	1,168	96.0	74.4	21.6	3.2	2.0	1.2	0.3	0.3	—	0.6	0.2	0.4	—	—	—
Technicians	1,111	94.3	58.9	35.5	5.5	1.4	4.1	0.1	0.1	—	0.1	—	0.1	—	—	—
Sales	913	96.2	82.9	13.3	3.7	2.5	1.2	0.1	—	0.1	—	—	—	—	—	—
Clerical	6,021	90.1	4.4	85.7	9.1	0.5	8.6	0.3	0.1	0.2	0.5	0.1	0.4	0.1	—	—
Total white collar	10,876	92.8	35.9	56.9	6.6	1.0	5.5	0.2	0.1	0.1	0.4	0.1	0.3	0.1	—	—
Crafts	27	85.2	85.2	—	14.8	11.1	3.7	—	—	—	—	—	—	—	—	—
Operatives	17	88.2	58.8	29.4	11.8	11.8	—	—	—	—	—	—	—	—	—	—
Laborers	14	85.7	85.7	—	7.1	7.1	—	7.1	7.1	—	—	—	—	—	—	—
Svc. workers	240	58.8	32.1	26.7	40.4	23.3	—	—	—	—	—	—	—	—	—	—
Total blue collar	58	86.2	77.6	8.6	12.1	10.3	1.7	1.7	1.7	—	—	—	—	—	—	—
Total all occupations	11,174	92.0	36.0	56.0	7.3	1.6	5.8	0.2	0.1	0.1	0.4	0.1	0.3	0.1	0.1	—

Source: EEOC.

TABLE 18

Employment Percentages in Insurance Companies (SIC 63), Philadelphia, Pa., SMSA, 1975, by Race, Sex, and Occupational Category

Occupational category	Total employment	White			Black			Hispanic			Oriental			American Indian		
		Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female
Officials & mgrs.	6,436	95.3	79.7	15.6	3.8	1.8	2.1	0.3	0.2	—	0.5	0.5	0.1	—	—	—
Professionals	5,681	95.1	69.2	25.9	4.0	2.0	2.0	0.4	0.2	0.2	0.5	0.3	0.2	—	—	—
Technicians	2,656	92.2	52.9	39.3	6.2	3.1	3.1	0.8	0.6	0.2	0.7	0.5	0.2	0.1	0.1	—
Sales	3,300	90.6	85.4	5.3	8.7	7.5	1.2	0.1	0.1	—	0.5	0.4	0.1	—	—	—
Clerical	17,164	80.5	7.2	73.3	17.8	1.6	16.2	0.7	0.1	0.6	1.0	0.4	0.6	—	—	—
Total white collar	35,237	87.4	41.2	46.2	11.3	2.4	8.9	0.5	0.2	0.4	0.8	0.4	0.4	—	—	—
Crafts	2,786	81.6	7.0	74.6	12.6	1.7	10.9	3.3	0.3	3.0	2.3	0.1	2.2	0.2	—	0.2
Operatives	264	51.9	47.0	4.9	24.6	18.6	6.1	3.4	2.7	0.8	20.1	12.9	7.2	—	—	—
Laborers	57	82.5	54.4	28.1	14.0	7.0	7.0	3.5	3.5	—	—	—	—	—	—	—
Svc. workers	765	57.0	23.8	33.2	42.1	30.7	11.4	0.8	0.8	—	0.1	0.1	—	—	—	—
Total blue collar	3,107	79.1	11.3	67.8	13.7	3.3	10.4	3.3	0.5	2.8	3.7	1.2	2.6	0.2	—	0.2
Total all occupations	39,109	86.1	38.5	47.6	12.1	3.0	9.1	0.8	0.2	0.5	1.0	0.4	0.5	0.1	—	—

Source: EEOC.

TABLE 19

Employment Percentages in Insurance Companies (SIC 63), Pittsburgh, Pa., SMSA, 1975, by Race, Sex, and Occupational Category

Occupational category	Total emoloy-ment	White			Black			Hispanic			Oriental			American Indian		
		Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female
Officials & mgrs.	941	97.7	84.1	13.6	1.9	1.5	0.4	0.1	0.1	—	0.2	0.1	0.1	0.1	0.1	—
Professionals	1,012	94.7	76.7	18.0	5.0	3.3	1.8	—	—	—	0.2	0.1	0.1	0.1	0.1	—
Technicians	373	93.3	55.5	37.8	5.4	2.7	2.7	0.8	0.5	0.3	0.5	—	0.5	—	—	—
Sales	1,659	97.5	94.2	3.3	2.4	2.2	0.2	0.1	0.1	—	—	—	—	—	—	—
Clerical	2,768	90.8	4.2	86.6	8.7	0.6	8.1	0.3	—	0.3	0.2	—	0.2	—	—	—
Total white collar	6,753	94.1	51.1	43.0	5.5	1.6	3.8	0.2	0.1	0.1	0.2	—	0.1	—	—	—
Crafts	2	100.0	100.0	—	—	—	—	—	—	—	—	—	—	—	—	—
Operatives	2	100.0	100.0	—	—	—	—	—	—	—	—	—	—	—	—	—
Laborers	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Svc. workers	371	71.2	42.3	28.8	28.8	22.6	6.2	—	—	—	—	—	—	—	—	—
Total blue collar	4	100.0	100.0	—	—	—	—	—	—	—	—	—	—	—	—	—
Total all occupations	7,128	92.9	50.7	42.2	6.7	2.7	4.0	0.2	0.1	0.1	0.2	—	0.1	—	—	—

Source: EEOC.

TABLE 20

Employment Percentages in Insurance Companies (SIC 63), St. Louis, Mo., SMSA, 1975, by Race, Sex, and Occupational Category

Occupational category	Total employment	White			Black			Hispanic			Oriental			American Indian		
		Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female
Officials & mgrs.	1,242	95.4	76.2	19.2	3.4	1.9	1.4	0.6	0.4	0.2	0.1	—	0.1	0.6	0.6	—
Professionals	1,178	93.0	70.9	22.2	5.3	2.8	2.5	0.7	0.5	0.2	0.9	0.7	0.3	—	—	—
Technicians	815	83.9	32.8	51.2	14.2	2.3	11.9	1.0	0.4	0.6	0.2	0.2	—	0.6	0.2	0.4
Sales	1,548	92.2	88.6	3.7	7.0	6.5	0.5	0.3	0.3	—	0.4	0.4	—	0.1	0.1	—
Clerical	3,708	80.6	3.4	77.2	18.3	0.8	17.5	0.8	0.1	0.7	0.2	0.1	0.2	0.1	—	0.1
Total white collar	8,491	86.9	41.8	45.2	11.9	2.4	9.4	0.6	0.2	0.4	0.3	0.2	0.1	0.2	0.1	0.1
Crafts	31	90.3	51.6	38.7	6.5	—	6.5	3.2	—	3.2	—	—	—	—	—	—
Operatives	20	75.0	45.0	30.0	25.0	25.0	—	—	—	—	—	—	—	—	—	—
Laborers	4	25.0	25.0	—	75.0	75.0	—	—	—	—	—	—	—	—	—	—
Svc. workers	87	54.0	26.4	27.6	46.0	31.0	14.9	—	—	—	—	—	—	—	—	—
Total blue collar	55	80.0	47.3	32.7	18.2	14.5	3.6	1.8	—	1.8	—	—	—	—	—	—
Total all occupations	8,633	86.6	41.7	44.9	12.3	2.8	9.5	0.6	0.2	0.4	0.3	0.2	0.1	0.2	0.1	0.1

Source: EEOC.

An examination of the tables shows that almost all the employment gains for minorities can be traced to a single occupation—clerical—and to one group—black females. The figures range from around 8 percent of total clerical employment in Boston, Indianapolis, and Pittsburgh to 21.6 percent in Detroit. Clerical employment totals for all other minority-group members concerned is 5.1 percent in Hartford and 4.0 percent in Boston, but very small in the other SMSAs.

Employment in the desirable white-collar jobs in insurance companies is similar to that for agents and brokers, well over 90 percent of the jobs being held by whites. There is one difference. White females have achieved a much greater representation in the desirable jobs in insurance companies than in agents' and brokers' businesses. White female employment in the officials and managers category ranges from 10.8 to 19.2 percent, in professionals from 18.0 to 31.4, and in technicans from 35.5 to 62.0 percent. Even though most of these women are in the lower salary brackets in these occupations, one can expect upward progression as they gain experience. Having women in these numbers in these occupations represents a breakthrough of substantial proportions. The breakthrough has not yet come for minority-group members.

The sales personnel, however, are still largely white males. All SMSAs show a white male representation of almost 90 percent, with the remainder being distributed among white females and minority-group members. It should be noted, however, that this is the only white-collar occupation where black males are present in significant numbers in any SMSA for companies or agents and brokers. The SMSAs where black males have begun to penetrate the sales force are Detroit (8.4 percent), Indianapolis (7.5 percent), and St. Louis (6.5 percent). Even so, women and other minority males are greatly underrepresented in the sales force.

In summary, the SMSA data show that black females are making progress in the clerical area, white females in all white-collar occupations in insurance companies, and black males in the sales force in these SMSAs in insurance companies.

Minority and Female Employment in the United States

SMSA and other forms of disaggregated data are valuable because they show variations by geography. This section submerges the regional variations and provides an overall view of female and minority employment patterns in the insurance industry. To help assess these national data, it should be noted that the approximate population proportions for the various minority groups are 11 percent black, 6

percent Hispanic, 2 percent Asian American, and 1 percent American Indian.

National Employment of Insurance Agents and Brokers. Tables 21 through 24 present employment data for 1970, 1972, 1974, and 1975, respectively. First, it is important to point out that the employment data suggest that agent and broker employment is on the decline. Employment fell steadily from 1970 to 1974 and recovered only slightly in 1975. Employment stood at 65,055 in 1970 and had declined to 48,461 in 1975. Such a state is not propitious for the increased employment of minorities and women.

Despite declining employment in this industry, minorities and women just about held their own as a proportion of the total work force. White females increased slightly, from 46.1 percent of industry employment in 1970 to 46.5 percent in 1975. Black employment also gained slightly, rising from 5.9 percent in 1970 to 6.1 percent in 1975. All other minority groups combined also gained marginally, going from 2.9 percent in 1970 to 3.4 percent in 1975. The entire employment decline, then, was limited to white males, declining from 45.1 percent in 1970 to 43.9 percent in 1975.

The employment decline was restricted solely to white-collar occupations and was shared by all white-collar occupations.

In clerical occupations there was essentially no change from 1970 to 1975, except for white males. White women dominated the occupation at 77.5 percent of the total both in 1970 and 1975. Black female representation grew from 7.1 to 8.1 percent. Other minority-group members, including black males, declined from 5.2 to 2.9 percent. The absolute decline in clerical employment was reflected in the decline of white male employment in clerical jobs from 10.2 to 8.2 percent of total employment in the category.

For the official and manager category, the proportion of jobs held by minorities is essentially unchanged from 1970 to 1975, with the proportion being under 2 percent. White women, however, did make some gains, rising from 6.6 to 11.9 percent of total employment in the category.

Among professionals, there were substantial proportional increases for women and all the minority groups, but because of the low base from which the women and minorities started, and because of declining employment in professional jobs, the absolute increases were quite small. Representation of white women more than doubled (7.1 to 17.3 percent), Hispanic representation was up by almost half (0.8 to 1.3 percent), Asian Americans doubled (0.4 to 0.8 percent), and black professionals almost doubled (2.0 to 3.7 percent).

The technician category changes are similar to those noted for professionals, except that black employment stayed about the same

TABLE 21

Employment Percentages of Insurance Agents & Brokers (SIC 64), United States, 1970, by Race, Sex, and Occupational Category

Occupational category	Total employment	White			Black			Hispanic			Oriental			American Indian		
		Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female
Officials & mgrs.	6,945	98.1	91.6	6.6	1.0	0.7	0.3	0.5	0.4	0.1	0.2	0.1	0.1	0.1	0.1	—
Professionals	14,048	96.7	89.6	7.1	2.0	1.6	0.4	0.8	0.7	0.1	0.4	0.3	0.1	0.1	0.1	—
Technicians	3,621	94.1	77.1	17.0	4.2	3.8	0.4	1.0	0.8	0.2	0.6	0.5	0.1	0.1	0.1	—
Sales	3,547	94.9	90.7	4.2	3.8	3.6	0.2	0.6	0.6	—	0.5	0.5	—	0.2	0.2	—
Clerical	35,394	87.7	10.2	77.5	8.1	1.0	7.1	3.0	0.4	2.6	1.0	0.1	0.9	0.2	—	0.2
Total white collar	63,555	91.6	45.0	46.6	5.5	1.4	4.1	2.0	0.5	1.5	0.7	0.2	0.5	0.1	—	0.1
Crafts	242	95.0	67.4	27.7	2.9	2.9	—	2.1	1.6	0.5	—	—	—	—	—	—
Operatives	242	83.5	71.1	12.4	14.0	11.6	2.4	1.7	0.4	1.3	0.4	0.4	—	0.4	0.4	0
Laborers	70	81.4	52.8	28.6	18.6	18.6	—	—	—	—	—	—	—	—	—	—
Svc. workers	946	63.3	37.4	25.9	32.0	18.9	13.1	2.9	1.9	1.0	1.8	1.8	—	—	—	—
Total blue collar	554	88.3	67.1	21.1	9.7	8.7	1.0	1.6	0.9	0.7	0.2	0.2	—	0.2	0.2	—
Total all occupations	65,055	91.2	45.1	46.1	5.9	1.8	4.2	2.0	0.5	1.5	0.8	0.2	0.6	0.1	—	0.1

Source: EEOC.

TABLE 22

Employment Percentages of Insurance Agents and Brokers (SIC 64), United States, 1972, by Race, Sex, and Occupational Category

Occupational category	Total employment	White			Black			Hispanic			Oriental			American Indian		
		Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female
Officials & mgrs.	5,250	98.2	89.9	8.3	0.7	0.4	0.2	0.6	0.5	0.1	0.4	0.3	0.1	0.1	0.1	0.1
Professionals	9,000	95.5	85.7	9.9	2.5	2.1	0.4	1.2	1.0	0.2	0.6	0.4	0.2	0.2	0.2	—
Technicians	3,902	94.1	70.9	23.2	3.4	2.5	0.9	1.4	1.0	0.4	1.0	0.6	0.4	—	—	—
Sales	2,229	97.3	90.0	7.0	1.4	1.1	0.3	1.1	0.7	0.4	0.2	0.1	0.1	—	—	—
Clerical	25,085	87.4	10.2	77.2	7.9	1.1	6.8	3.4	0.4	3.0	1.2	0.2	1.0	0.1	—	0.1
Total white collar	45,226	91.3	43.5	47.9	5.3	1.4	3.9	2.3	0.6	1.7	0.9	0.3	0.6	0.1	0.1	0.1
Crafts	96	91.7	74.0	14.7	8.3	8.3	—	—	—	—	—	—	—	—	—	—
Operatives	287	84.7	63.1	21.6	12.9	9.8	3.1	1.7	1.7	—	0.3	0.3	—	0.3	0.3	—
Laborers	7	14.3	14.3	—	85.7	85.7	—	—	—	—	—	—	—	—	—	—
Svc. workers	414	68.1	42.5	25.6	28.0	15.2	12.8	1.7	1.7	—	2.2	2.2	—	—	—	—
Total blue collar	390	85.1	64.9	20.2	13.1	10.8	2.3	1.3	1.3	—	0.3	0.3	—	0.3	0.3	—
Total all occupations	46,270	91.0	43.7	47.4	5.6	1.6	4.0	2.3	0.6	1.7	0.9	0.3	0.6	0.1	0.1	0.1

Source: EEOC.

TABLE 23.

Employment Percentages of Insurance Agents and Brokers (SIC 64), United States, 1974, by Race, Sex, and Occupational Category

Occupational category	Total employment	White			Black			Hispanic			Oriental			American Indian		
		Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female
Officials & mgrs.	5,481	97.9	87.6	10.4	0.9	0.6	0.3	0.6	0.5	0.1	0.5	0.4	0.1	0.1	0.1	—
Professionals	9,622	94.6	78.5	16.1	2.9	2.3	0.7	1.6	1.3	0.3	0.7	0.4	0.3	0.2	0.2	—
Technicians	3,563	93.0	65.2	27.8	4.0	2.6	1.4	1.6	1.1	0.5	1.3	0.9	0.4	—	—	—
Sales	3.093	97.9	88.6	9.4	0.6	0.2	0.5	1.0	0.8	0.2	0.3	0.2	0.1	0.1	0.1	—
Clerical	24,005	86.2	9.3	76.9	8.9	1.3	7.6	3.3	0.4	2.9	1.4	0.2	1.1	0.2	—	0.2
Total white collar	45,764	90.7	42.9	47.8	5.8	1.5	4.3	2.3	0.7	1.7	1.0	0.3	0.7	0.1	0.1	0.1
Crafts	276	83.0	53.6	29.3	10.5	9.4	1.1	4.7	4.3	0.4	0.7	0.4	0.4	1.1	1.1	—
Operatives	338	68.3	49.7	18.6	25.4	19.5	5.9	5.6	4.4	1.2	0.3	0.3	—	0.3	—	0.3
Laborers	5	20.0	20.0	—	60.0	60.0	—	20.0	20.0	—	—	—	—	—	—	—
Svc. workers	740	85.1	61.8	23.4	10.5	7.7	2.8	1.8	1.5	0.3	2.6	2.4	0.1	—	—	—
Total blue collar	619	74.5	51.2	23.3	19.1	15.3	3.7	5.3	4.5	0.8	0.5	0.3	0.2	0.6	0.5	0.2
Total all occupations	47,123	90.4	43.3	47.1	6.0	1.7	4.3	2.4	0.7	1.6	1.1	0.4	0.7	0.2	0.1	0.1

Source: EEOC.

TABLE 24

Employment Percentages of Insurance Agents and Brokers (SIC 64), United States, 1975, by Race, Sex, and Occupational Category

Occupational category	Total employment	White			Black			Hispanic			Oriental			American Indian		
		Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female
Officials & mgrs.	6,370	97.9	86.0	11.9	0.8	0.5	0.4	0.6	0.4	0.2	0.6	0.3	0.3	0.1	0.1	—
Professionals	10,876	94.1	76.8	17.3	3.7	2.7	1.0	1.3	1.0	0.3	0.8	0.5	0.3	0.1	0.1	—
Technicians	3,292	92.3	50.1	34.2	4.6	2.6	2.0	1.7	0.9	0.8	1.3	0.6	0.8	0.1	0.1	—
Sales	3,100	98.0	90.8	7.2	0.9	0.6	0.3	0.6	0.5	0.2	0.4	0.4	0.1	0.1	0.1	—
Clerical	23,028	85.8	8.2	77.5	9.3	1.3	8.1	3.3	0.3	3.0	1.4	0.2	1.2	0.2	—	0.2
Total white collar	46,666	90.6	43.8	46.8	6.0	1.5	4.4	2.2	0.5	1.6	1.1	0.3	0.8	0.1	0.1	0.1
Crafts	280	83.2	57.9	25.4	7.5	6.8	0.7	6.4	5.7	0.7	0.7	0.7	—	2.1	1.1	1.1
Operatives	507	83.8	21.5	62.3	14.2	10.3	3.9	1.8	1.6	0.2	0.2	0.2	—	—	—	—
Laborers	6	50.0	50.0	—	33.3	33.3	—	16.7	16.7	—	—	—	—	—	—	—
Svc. workers	1,002	87.1	55.6	31.5	9.1	6.0	3.1	1.7	1.2	1.5	2.0	2.0	—	0.1	0.1	—
Total blue collar	793	83.4	34.6	48.8	12.0	9.2	2.8	3.5	3.2	0.4	0.4	0.4	—	0.8	0.4	0.4
Total all occupations	48,461	90.4	43.9	46.5	6.1	1.0	4.4	2.2	0.6	1.6	1.1	0.4	0.7	0.1	0.1	0.1

Source: EEOC.

proportionately and white women gained sharply, raising their proportion of total technician employment from 17.0 to 34.0 percent.

Sales employment presents a slightly different picture. Employment of white males as a proportion of the total employment was essentially unchanged. White women gained about 3 percentage points (4.2 to 7.2) from black males, who lost about 3 percentage points (3.6 to 0.6). Other minority groups declined slightly and represented about 1.1 percent of total sales employment in 1975, as compared to 1.3 percent in 1970.

In summary, there were practically no increases in minority employment. Minorities essentially held their own in a declining employment segment of the industry. White women, however, gained substantially in all white-collar occupations where they are underrepresented.

Insurance Companies. In contrast to the agents and brokers, insurance companies experienced strong growth in employment in the 1966–75 period. Although the 1970 employment of 716,843 (table 25) is below the 787,256 of 1966 (table 1), employment had grown to 843,728 by 1975. For the most part, employment of minorities and women in 1966 was restricted to the clerical occupations, with the bulk of the jobs being filled by white women and less than 4 percent being filled by black women.

More recent data for total insurance company employment in the United States as a whole show that there have been some important structural changes in employment. These data for 1970, 1972, 1974, and 1975 are presented in tables 25 through 28. The 1966 data are shown in table 1.

As stated previously, little purpose is served in analyzing blue-collar and service employment because about 96 percent of all insurance industry employment is in white-collar occupations. Therefore, only the white-collar jobs will be discussed.

The overall employment gains for minorities were substantial between 1966 and 1970. Whereas black employment was only 3.3 percent in 1966, it had risen to 7.6 percent by 1970. That amounts to more than a doubling of black employment. Moreover, the 1970 employment figures in table 25 reveal that some changes had occurred in the distribution of white female and minority employment in the various white-collar employment categories.

In clerical employment, the historical pattern of a near absence of men continued. At the same time, however, the women were more apt to be black (8.8 percent of total clerical employment) or Hispanic (2.6 percent) than in past years. Indeed, white and black women are overrepresented within clerical occupations, given that about 35 percent of the work force is white female and about 5 percent is black

TABLE 25

Employment Percentages in Insurance Companies (SIC 63), United States, 1970, by Race, Sex, and Occupational Category

Occupational category	Total employment	White			Black			Hispanic			Oriental			American Indian		
		Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female
Officials & mgrs.	84,688	97.1	86.9	10.2	1.9	1.4	0.5	0.7	0.5	0.2	0.2	0.1	0.1	0.1	0.1	—
Professionals	82,397	96.8	79.2	17.6	1.7	1.2	0.5	0.8	0.6	0.2	0.7	0.4	0.3	0.1	0.1	—
Technicians	43,158	92.4	56.2	36.2	4.6	2.0	2.6	1.7	0.1	0.7	1.1	0.5	0.6	0.1	0.1	—
Sales	107,364	91.9	88.4	3.5	6.0	5.0	1.0	1.8	1.7	0.1	0.3	0.3	—	0.1	0.1	—
Clerical	371,012	86.0	8.3	77.7	9.8	1.0	8.8	3.0	0.4	2.6	1.1	0.1	1.0	0.1	—	0.1
Total white collar	688,619	90.0	41.9	48.1	7.0	1.8	5.2	2.2	0.7	1.5	0.8	0.2	0.6	0.1	—	0.1
Crafts	4,693	93.2	83.8	9.4	5.4	4.6	0.8	1.3	1.1	0.2	0.1	0.1	—	0.1	0.1	—
Operatives	4,553	78.6	58.7	19.9	16.5	12.5	4.0	4.5	2.7	1.8	0.3	0.3	—	0.1	0.1	—
Laborers	2,965	52.8	28.7	24.1	39.5	18.4	21.1	7.4	4.2	3.2	0.2	0.2	—	0.1	0.1	—
Svc. workers	16,013	66.1	30.1	36.0	27.4	14.5	12.9	5.8	3.6	2.2	0.5	0.3	0.2	0.2	—	0.2
Total blue collar	12,211	77.9	61.0	16.9	17.8	10.9	6.9	4.0	2.4	1.6	0.2	0.2	—	0.1	0.1	—
Total all occupations	716,843	89.2	42.0	47.2	7.6	2.2	5.4	2.3	0.8	1.5	0.8	0.2	0.6	0.1	—	0.1

Source: EEOC.

TABLE 26

Employment Percentages in Insurance Companies (SIC 63), United States, 1972, by Race, Sex, and Occupational Category

Occupational employ-category	Total employ-ment	White			Black			Hispanic			Oriental			American Indian		
		Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female
Officials & mgrs.	95,443	96.7	83.0	13.7	2.2	1.4	0.8	0.8	0.6	0.2	0.3	0.2	0.1	0.1	0.1	—
Professionals	99,079	95.6	75.5	20.1	2.4	1.6	0.8	0.9	0.6	0.3	1.0	0.6	0.4	0.1	0.1	—
Technicians	48,079	89.9	53.4	36.5	5.5	2.0	3.5	1.9	1.0	0.9	1.7	0.7	1.0	0.1	0.1	0.1
Sales	111,476	91.4	87.5	3.9	5.9	4.9	1.0	1.9	1.9	—	0.4	0.4	—	0.1	0.1	—
Clerical	391,847	84.9	7.8	77.1	10.3	1.1	9.2	3.3	0.5	2.8	1.4	0.2	1.2	0.2	—	0.2
Total white collar	745,564	89.2	41.3	47.9	7.2	1.8	5.4	2.4	0.8	1.6	1.1	0.3	0.8	0.1	—	0.1
Crafts	4,838	89.5	65.7	23.8	7.0	5.9	1.1	3.0	2.1	0.9	0.3	0.2	0.1	0.2	0.2	—
Operatives	3,055	76.4	59.1	17.3	14.6	11.1	3.5	8.1	6.3	1.8	0.9	0.6	0.3	—	—	—
Laborers	1,162	43.3	29.1	14.2	21.1	18.8	2.3	34.6	12.1	22.5	0.5	0.2	0.3	0.5	0.3	0.2
Svc. workers	16,878	66.6	32.3	34.3	24.8	13.9	10.9	7.8	4.6	3.2	0.6	0.3	0.3	0.2	0.1	0.1
Total blue collar	9,055	79.1	58.8	20.3	11.4	9.3	2.1	8.8	4.8	4.0	0.5	0.3	0.2	0.2	0.2	—
Total all occupations	771,497	88.6	41.3	47.3	7.7	2.2	5.5	2.6	0.9	1.7	1.0	0.3	0.7	0.1	0.1	0.1

Source: EEOC.

TABLE 27

Employment Percentages in Insurance Companies (SIC 63), United States, 1974, by Race, Sex, and Occupational Category

Occupational category	Total employment	White			Black			Hispanic			Oriental			American Indian		
		Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female
Officials & mgrs.	114,929	96.0	80.6	15.4	2.5	1.6	0.9	0.9	0.7	0.2	0.4	0.3	0.1	0.1	0.1	—
Professionals	109,428	93.8	70.6	23.2	3.7	2.2	1.5	1.2	0.8	0.4	1.1	0.7	0.4	0.1	0.1	—
Technicians	64,434	89.6	47.1	42.5	6.4	2.3	4.1	2.0	1.1	0.9	1.7	0.8	0.9	0.2	0.1	0.1
Sales	121,116	90.0	83.7	6.3	6.5	5.0	1.5	2.7	1.9	0.9	0.6	0.5	0.1	0.2	0.1	—
Clerical	410,487	82.7	6.5	76.2	12.3	1.2	11.1	3.3	0.4	2.9	1.6	0.2	1.3	0.2	—	0.2
Total white collar	820,394	87.6	40.0	47.6	8.4	2.0	6.4	2.5	0.8	1.7	1.2	0.4	0.8	0.2	0.1	0.1
Crafts	5,265	86.4	63.0	23.5	8.2	6.0	2.2	4.6	4.2	0.4	0.5	0.2	0.2	0.3	0.2	0.1
Operatives	3,893	74.6	52.8	21.9	16.7	13.0	3.8	6.0	4.8	1.2	2.1	1.0	1.1	0.5	0.3	0.2
Laborers	1,478	66.4	47.5	18.9	20.4	17.9	2.5	10.4	8.3	2.0	2.6	2.0	0.7	0.2	0.1	0.1
Svc. workers	14,163	63.0	32.4	30.7	28.3	16.0	12.4	7.9	4.6	3.2	0.6	0.4	0.2	0.2	0.1	0.1
Total blue collar	10,636	79.3	57.1	22.2	13.0	10.2	2.8	5.9	5.0	0.9	1.4	0.8	0.6	0.3	0.2	0.1
Total all occupations	845,193	87.1	40.1	47.0	8.8	2.4	6.5	2.6	0.9	1.8	1.2	0.4	0.8	0.2	0.1	0.1

Source: EEOC.

TABLE 28

Employment Percentages in Insurance Companies (SIC 63), United States, 1975, by Race, Sex, and Occupational Category

Occupational category	Total employment	White			Black			Hispanic			Oriental			American Indian		
		Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female
Officials & mgrs.	117,096	95.6	79.8	15.7	2.8	1.7	1.1	1.0	0.7	0.3	0.4	0.3	0.1	0.2	0.1	—
Professionals	115,108	93.3	68.1	25.1	4.1	2.2	1.8	1.3	0.8	0.5	1.3	0.8	0.5	0.1	0.1	—
Technicians	70,243	87.2	41.8	45.4	8.3	2.8	5.5	2.3	1.0	1.3	2.0	0.8	1.1	0.2	0.1	0.1
Sales	107,242	90.1	84.7	5.4	6.9	5.6	1.4	2.1	2.0	0.1	0.7	0.6	0.1	0.1	0.1	—
Clerical	406,366	81.4	5.9	75.5	13.0	1.2	11.6	3.7	0.4	3.3	1.7	0.2	0.4	0.2	—	0.2
Total white collar	816,055	86.8	38.7	48.0	9.1	2.1	6.9	2.7	0.8	1.9	1.3	0.4	0.9	0.2	0.1	0.1
Crafts	7,953	83.5	39.1	44.4	11.8	4.5	7.3	3.4	1.7	1.7	1.1	0.2	0.9	0.2	0.1	0.1
Operatives	4,274	77.6	50.3	27.3	13.6	10.4	3.2	6.5	5.1	1.4	2.1	1.3	0.7	0.3	0.2	0.1
Laborers	1,241	77.0	50.5	26.4	18.7	13.3	5.4	3.9	2.8	1.0	0.5	0.2	0.2	—	—	—
Svc. workers	13,205	62.3	32.3	30.0	29.0	16.1	12.8	8.0	4.6	3.4	0.7	0.4	0.2	0.1	0.1	—
Total blue collar	13,468	81.0	43.7	37.3	13.0	7.2	5.8	4.4	2.9	1.5	1.4	0.6	0.8	0.2	0.1	0.1
Total all occupations	842,728	86.3	38.7	47.6	9.4	2.4	7.0	2.8	0.9	1.9	1.3	0.4	0.9	0.2	0.1	0.1

Source: EEOC.

female. If anything, affirmative action is needed to place more males, of all kinds, in the clerical occupations.

Among sales personnel, women were still largely absent, continuing the male tradition in sales. The minority-group males, however, had begun to show good representation in the sales force. Black male representation had grown to near parity (5.0 percent) and Hispanic males (1.7 percent) were about half-way to representing their number in the labor force.

White women by 1970 had begun to penetrate the desirable white-collar jobs, other than sales. Indeed, the only occupations where white women are substantially underrepresented are in the officials and managers category and the professional category. Even in those categories there had been substantial gains over 1966.

Minority-group member representation in the most desirable white-collar jobs was very poor in 1970. Gains over 1966 were minor, and for some groups there was a decline in representation in the better jobs.

To sum up the changes from 1966 to 1970, black women gained strongly in clerical occupations, black males joined the sales force in sizable numbers, and white women made large gains except in the sales force.

For minorities, the 1970–75 years produced additional employment growth, continuing the trend established in 1970. That growth was not, however, shared equally by all groups. Among blacks, almost all the employment growth proportionately was for black women. They grew from 5.4 to 7.0 percent of total employment. The proportion of black males grew marginally, from 2.2 to 2.4 percent of total industry employment. For Hispanics, gains were marginal for both men (0.8 to 0.9) and women (1.5 to 1.9). Asian Americans, who held 0.8 percent of all jobs in 1970, held 1.3 percent of all jobs in 1975.

In the clerical field, there was little change in the male-female ratio, but men did decline slightly from 8.8 to 7.7 percent of total employment, making clerical jobs even more heavily female. Women held 92.3 percent of all insurance company clerical jobs in 1975. The decline in male employment would have been larger except for the fact that minority males were entering the occupation in small numbers while white males were leaving. In minority representation, the only change of any magnitude was registered by black women, who increased their representation from 8.8 to 11.6 percent of total clerical employment. They thus accounted for the increased female dominance in this category, since white women declined from 77.7 to 75.5 percent of total employment in the occupation.

Except for sales, white women have made remarkable strides in the desirable white-collar occupations. Although there is still underrepre-

sentation in relation to their number in the work force, white women seem to be on their way to achieving parity with white men in the better jobs available in insurance companies. As of 1975, white women held 15.3 percent of official and managerial jobs, 25.1 percent of the professional jobs, and 45.5 percent of the technical jobs. Even in sales, where women have abysmal representation, their share of jobs rose—from 3.5 percent in 1970 to 5.5 percent in 1975.

Minority women did not fare nearly as well as white women from 1970 to 1975. The only desirable occupation with minority female representation worthy of mentioning is the technician category. There black women are sufficiently represented (5.5 percent in 1975), and there have been gains for other minority-group women as well.

The worst showing is for minority males of all kinds. They are not found anywhere except in the sales force. There black and Hispanic males have a respectable representation. In all other occupations they are nearly absent and so are the other minority-group males. Combining all minority males, they (in 1975) represent merely 3.4 percent of white-collar employment.

In summary, the progress of minority and female employment in insurance companies (between 1956 and 1976) has been almost exclusively female, with white females enjoying much more success than any minority female group.

The Future of Minorities and Women in Insurance

The preceding discussion has documented the fact that women, particularly white women, have made sizable strides up the employment ladder in the insurance industry. The aim of this final section is to demonstrate where more opportunities are needed for minorities and women and how long it will take for minorities and women to become adequately represented in the various occupation categories.

The analysis will be limited to insurance companies because that is where the overwhelming proportion of the total insurance labor force is located. What constitutes adequacy of representation is arguable, but for purposes of this paper the term relates to the proportion of minorities and women in the labor force. One might argue with this approach, since no industry employment is likely to exactly mirror the labor force. Nevertheless, it does not seem unreasonable to say that over time a rough approximation will occur as lesser prepared (educationally) women and minorities exit the labor force through retirement and are replaced by their younger counterparts.

Therefore, at this point the work force composition by race and sex needs to be introduced. For 1976, the labor force percentage for each group is as follows:[8] white male, 53.9; white female, 34.6; total white, 88.4; black and other minority male, 6.4; black and other minority female, 5.3; total black and other, 11.7.

If these groups were represented in the insurance industry to the degree that they are represented in the labor force and in the various occupational categories in the same way, the representation of the various groups would be adequate according to the definition given above.

Table 29 represents the average annual percentage increase in each of the white-collar occupations and shows how long it will take for women and minority groups to reach representation in the industry equal to their representation in the labor force, assuming that (1) the recent annual gains will be sustained and (2) representation in the labor force does not change.

For white women, the outlook is quite promising. In 21 years they will have proportional representation in the officials and managers category. In the professional field, they will require only 8 years. They are already overrepresented in the technical and clerical jobs. In the sales area, the insurance companies need to make a great deal more effort to attract and hold white women. Otherwise, it will be 97 years before they are proportionally represented.

Minority males, on the other hand, are overrepresented in the sales jobs. Also, they are only 8 and 10 years away, respectively, from proportional representation in the professional and technical categories. In the official and manager category, however, it will take 36 years (2014 A.D.). Clearly, more efforts are needed to move minority males into the official and managerial category.

In the clerical area, it appears that minority males will almost never (92 years) reach proportional representation. Of course, the same can be said for white males, whose representation *declined* from 1970 to 1975. It, therefore, appears that the time has come for strong affirmative action to induce men to train for and accept clerical jobs, just as strong efforts have been made to move women into traditionally male jobs.

From table 29 it appears that minority women have the dimmest outlook. Although they have already attained more than proportional representation in the clerical and technical occupational categories and are about 8 years from that status in the professional category, they have a very long way to go in sales (37 years) and as officials and managers (37).

[8] U.S. Department of Commerce, Bureau of the Census, *Statistical Abstract of the United States, 1977* (Washington: Government Printing Office, 1977), p. 387. Calculated from labor force data.

TABLE 29

Number of Years to Attain Proportional Representation, by Occupational Category, Race, and Sex

Occupational category	Annual percetage increase [1] 1970–75, and 1975 percent representation						Approximate number of years to attain proportional representation		
	White females		Black and other males		Black and other females				
	1975	*Annual gain/loss*	*1975*	*Annual gain/loss*	*1975*	*Annual gain/loss*	White females	Black and other males	Black and other females
Officials & mgrs.	15.7	0.9	2.8	0.1	1.5	0.1	21	36	38
Professionals	25.1	1.2	3.9	0.3	2.8	0.3	8	8	8
Technicians	45.4	1.5	4.5	0.2	8.0	0.7	—[2]	10	—[2]
Sales	5.4	0.3	8.3	0.2	1.6	0.1	97	—[2]	37
Clerical	75.5	0.2	1.8	0.05	15.5	0.5	—[2]	92	—[2]

[1] This is a simple arithmetic average. A more accurate method would employ the geometric mean.
[2] Indicates overrepresentation.
Source: Calculated from tables 25 and 28.

In summary, much improvement is needed for women in sales and for minority-group members in the officials and managers category.

Although a separate table has not been prepared for agents and brokers, an inspection of the data will show that they have not made any progress at all as compared to insurance companies. This should suggest to Federal (and State) officials responsible for enforcement of equal opportunity where some change of direction in enforcement is needed. Now that major institutions in insurance are working hard to provide upward mobility for women and minorities, attention should be focused on small insurance companies of limited geographic scope and agents and brokers around the country.

The statistical data in this paper compel one to conclude that insurance companies are becoming as successful in ensuring equal opportunity employment as they have long been at insuring lives, homes, and other things of value.

The insurance companies, at least, seem to be aware that EEOC, SSA, and others will be looking closely at their sales force in the future. A recent issue of a widely read industry journal had an article dealing with recruitment and retention of female agents, given turnover rates and the particular representation goal sought for women over varying time periods.[9]

Still a cautionary note must be sounded. These gross occupational data do not by any means reveal everything. It is no doubt true that many of the minority and female jobholders would correctly point out that they are largely placed on the lower rungs of the professional and officials and managers category and that the senior and highest paid jobs are still mostly held by white males. The true commitment to equal opportunity will be revealed if and when women and minorities are frequently found to be members of the "Million Dollar Roundtable," and serving as vice president, executive vice president, senior vice president, and chief executive officer.

Finally, women and minorities need much greater representation on boards of directors. Few data are available, but women at least have made a start in large insurance companies. Still, much more progress is needed. Women accounted for 2.26 percent of the membership of boards of directors in the 31 largest insurance companies in 1976, up from 1.51 percent in 1975.[10]

[9] Archer L. Edgar, "Sales Manpower Planning," *Best's Review,* Life/Health Insurance Edition, February 1978, p. 14ff.

[10] Ellis H. Carson, "Women Directors and Officers of Insurance Companies," *Best's Review,* Life/Health Insurance Edition, December 1977, p. 16ff.

Employment in the Insurance Industry—Response to Paper by F. Marion Fletcher and Linda Pickthorne Fletcher

By Edward A. Robie, Senior Vice President, Human Resources, The Equitable Life Assurance Society of the United States

The Fletchers have reached an essentially valid general conclusion when they state that "insurance companies are becoming as successful in ensuring equal opportunity as they have long been at insuring lives, homes, and other things of value." They are also correct when they indicate that the achievement of complete equality of opportunity requires continued aggressive effort. In this paper I will first comment on some of their specific interpretations of EEO statistical data, and then describe briefly the kinds of affirmative actions that life and health insurance trade associations and my company are undertaking to bring about the improvements that are necessary. For if one thing is clear to anyone committed to the principle of equal opportunity, it is that progress requires determined, continued, and innovative *affirmative action,* rather than merely the elimination of discriminatory practices.

My comments will deal exclusively with life and health insurance company experience because I am simply not knowledgeable about the casualty part of the business or the independent agent and broker segment. Furthermore, despite some experience in industry trade associations, I cannot pretend close familiarity with the affirmative action program of any company except The Equitable.

As the Fletchers point out, one of the advantages of the insurance company segment of the industry (as contrasted with independent agents and brokers) is that it has been expanding. At the same time, due principally to the introduction of computers and the influence of growing government regulation, the proportion of the work force devoted to clerical functions has been declining and the proportion devoted to technical, professional, and managerial jobs has been increasing. Among those influences responsible for this change are computers, which both displace clerks and require technical and professional support, and government regulations, leading to compliance activities that increase jobs above the clerical level.

Given the time limits imposed, I think the Fletchers have done a remarkable job of gathering together and analyzing EEO data. My comments on specific elements of their paper are designed to be constructive, indicating areas for further study and refinement, or

indicating points where their stated conclusions, if quoted out of context, might prove misleading.

In that part of the Fletcher paper dealing with insurance company employment in selected SMSAs, it is unfortunate that they did not include data for *New York,* the SMSA employing by far the largest number of people, or for other large urban concentrations, such as *Chicago, Los Angeles,* San Francisco, and *Atlanta.* In addition, it would have been helpful if black population and work force proportions had been included by SMSA, as well as data on proportions of college graduates within these populations and work forces. This would, I think, begin to give a clue as to the degree to which this work force is currently qualified for what the Fletchers describe as the "desirable" jobs.

The Fletchers have used proportions of minorities and women in the labor force as their measure of adequacy of representation of these groups within the insurance industry. I have no argument with this approach as a way to establish a long-range goal. In fact, in my company we have stated our long-range goal in just these terms. It reads:

> It is the Equitable's long-range objective to employ at all levels and at all locations proportions of minorities and women commensurate with the proportion of qualified people available for our types of work in applicable labor markets. Where the supply of qualified minorities and women for our types of work is significantly less than would enable Equitable to represent them *at all levels* approximately in proportion to their representation in our various labor markets, it is The Equitable's intention to take recruitment and developmental steps designed to increase the number of those qualified to fill our jobs.

One needs a more currently relevant measuring rod than proportion of labor force to evaluate progress over a period of 5 to 10 years. For example, while the male minority proportion in the work force is 6.4 percent, to judge the availability of these people for the more demanding higher level jobs, we need to have some idea of how many of them have the basic qualifications necessary to perform these jobs. While a college degree is not—and should not be—a prerequisite for the better jobs, it is increasingly and justifiably relevant as a broad qualification standard.

Just over 6 percent of the adult black male population had completed college in 1976, compared with almost 20 percent of the white male population. Achieving full parity is, therefore, simply not realistic in the short run and is heavily dependent on improving educational exposure for minority males in the years ahead.

The Fletchers correctly emphasize the relatively slow progress of minority males toward the desirable nonsales jobs, although the fact that significant progress has been made is important and is corroborated by a recent RAND Corporation study that concludes that blacks and whites with comparable educational levels now receive similar wage increases over their work careers. (See appendix.) I do not think the Fletchers' data support the statement that "the worst showing is for minority males of all kinds," and that "they are not found anywhere except in the sales force." In these desirable nonsales jobs there was an increase between 1970 and 1975 of about 5,200 minority male employees. In percentage terms this was an increase of 112 percent, compared with 233 percent for minority women, 104 percent for white women, and 23 percent for white males. Granted that the 1970 base for all of the groups except white males was quite small, the fact remains that there has been a significant "breakthrough" for *all* groups, not just for white women, and that minority males have, relatively speaking, done even better than white women in breaking into this desirable category.

It seems to me also that the Fletcher paper gives too little emphasis to the critical importance of the clear-cut minority breakthrough in sales. In insurance, upward mobility is most readily available for those with sales talent, and performance is, very simply, objectively measured by individual productivity. Furthermore, mobility is not limited to the achievement of the higher income levels that successful agents earn, but also extends to the opportunity to branch into sales management and then to executive positions in the top management structure. All of Equitable's seven divisional agency vice presidents were successful agents and agency managers, and one is currently a minority; among our 176 agency managers, 15 are currently minority. Perhaps one of the reasons for the "overrepresentation" of minorities in the sales force is the fact that this is such an effective entry point for mature, experienced, and talented people who are anxious to reach high income and responsibility levels rapidly.

Finally, a word about boards of directors. Little comparative data over time is offered either by the Denenberg or Fletcher papers. The latter documents a significant increase in women directors in 1 year, but from a very small base. While I did not have time to make any kind of comprehensive survey, I know that the Prudential, the Metropolitan, and The Equitable, the three largest metropolitan New York companies, each have women and minorities represented on their boards. The Equitable has 4 women and 2 blacks, 1 of them a woman, on a board consisting of 31 directors.

Let me again stress that these comments on specific interpretations should not be viewed as a criticism of the overall conclusion of the

paper, including the statement "that much improvement is needed for women in sales and for minority-group members in the officials and managers category." Virtually all of us concerned with affirmative action in the life industry are hard at work on bringing about this improvement. Based on our previous progress, there is no doubt that improvement will continue.

I believe it would be helpful to the Commission to supplement the Fletcher paper with some practical examples of what constitutes affirmative action. I shall refer first to activity reflective of the affirmative posture of the life industry as a whole, expressed through trade association programs, although I do not, as I said earlier, purport to speak for the industry or to be well informed on all that is going on within it to bring about equal opportunity. But I can cite my own company as an example and describe briefly some of our own efforts.

With strong support from the American Council of Life Insurance and the Health Insurance Association of America, this industry has established a Clearinghouse on Corporate Social Responsibility which is professionally staffed and is guided by a strong and highly respected committee of top executives chaired by John Filer, chairman of Aetna Life and Casualty. Equitable's chairman, John T. Fey, also serves on this committee. The clearinghouse has for some time published a broadly circulated monthly magazine titled *Response,* which describes efforts by individual companies to define and carry out positive and innovative programs responsive to social needs; it also publishes an annual social report. Both the magazine and the report put heavy emphasis on all aspects of affirmative action and are a rich source of confirmation that the insurance industry is clearly taking important social initiatives.

Another major trade association, the Life Office Management Association, has for some time put major emphasis on affirmative action. In December of 1975, it issued a special report on the subject for the benefit of over 400 member companies. Currently, it is coordinating a special research project undertaken by over 100 companies to develop an objective and valid selection test battery that would, if successful, be free of bias.

Let me now describe to you the important elements of Equitable's affirmative action program, elements that no doubt are not unique to our company and would be found in various combinations in a number of other insurance companies. I have, incidentally, noted descriptions of many similar efforts by other companies in the magazine *Response* to which I previously alluded.

First, we have recognized that affirmative action clearly starts with strong top management commitment and aggressive followthrough down the line. Our affirmative action policies are clearly stated and

frequently repeated. Goals and timetables are carefully set on both a projected full utilization and a current year's basis with substantial bottom-up participation and demanding top-down review to make sure they are both realistic and challenging. Careful records are kept of progress for review by senior management every 4 months, including the monitoring of promotion rates. Our promotion rates to and among the more desirable jobs have been consistently higher for both women and minorities than for white males during the past few years.

We have undertaken a variety of special training and attitude building approaches. For example, we have separate career development programs for women and for minorities, to help them develop attitudes and skills to take full advantage of career opportunities; meetings of women and minorities with leaders such as Gloria Steinem and Vernon Jordan to emphasize the attainability of high achievement; supervisory meetings and seminars to identify affirmative action problems and concerns, to emphasize management commitment, and to develop coaching and counseling skills; meetings of the senior management of major organizational units and of the top executives of the entire company, spending an entire day discussing nothing but affirmative action; separate Rotating Advisory Panels, calleds RAPs, for women and minorities which meet monthly with the president and senior officers to exchange ideas and identify needs; separate sales force advisory councils representing women, blacks, and Hispanics, which meet periodically with senior sales officers to discuss the special problems and needs of the sales force; an annual equal opportunity dinner, at which minority leaders from The Equitable and from the community join together to honor Equitable people who have made significant contributions to equal opportunity.

Special recruitment is undertaken, with emphasis on job opportunities of key importance in our industry. Mr. Denenberg has, apparently, given up on special programs to recruit high potential minorities into the actuarial profession, taking the position that our attention would be better focused on improvements in basic education, and it is true that so far the programs that have been tried had very limited success. But we do not give up so easily at The Equitable—we are continuing to work on and improve our own actuarial recruitment program while at the same time supporting a new effort at Carnegie-Mellon University based on their experience in recruiting successful minority engineering students. Our own program involves taking five minority students between sophomore and junior year and five between junior and senior year and giving them on-the-job training plus course work to enable them to pass the first two or three exams of the Actuarial Fellowship Program. It is too early to judge the success of this effort, but we are optimistic. At the same time we are not neglecting emphasis

on educational support that ranges all the way from teaching English as a second language, elementary business English skills, and basic mathematical skills to a wide-ranging tuition refund program that can be tailored to virtually every individual educational need.

At Equitable we view our affirmative action program as part of an overall social responsiblity effort—"coming right with people" our president calls it—in our role as an insurer, as an investor, as a corporate citizen, and as an employer. Overseen by a committee of our board of directors and monitored by an internal office of social responsibility, this program involves special attention to consumer interests of women and minority businesses through a Minority Enterprise Small Business Corporation (or MESBIC) subsidiary; maintaining relationships with both women and minority banks; directing a portion of our purchases to minority- and women-owned suppliers; placing a portion of our advertising in media serving women and minorities; and directing a portion of our corporate contributions program to organizations seeking to improve the status of women and minorities. We encourage voluntary activities by our employees, and currently one of our top executives is serving as a trustee of Fisk College and one is teaching at Holyoke. Our president serves as a member of the board of the National Urban League.

I have tried in the few minutes available to me to respond to the Fletchers' paper and also to describe some of the kinds of actions necessary to bring about the results that they document. I hope that I have made clear my belief that, while we still have a good distance to go in achieving equal opportunity, we are determined to move aggressively in that direction through a variety of affirmative actions, and that we are making substantial progress.

THE NEW YORK TIMES, MONDAY, MAY 8, 1978

RAND Study Finds Wage Gap Narrowing Between Blacks and Whites

By ROBERT LINDSEY
Special to The New York Times

LOS ANGELES, May 7—The wage gap between white workers and black workers in the United States has narrowed substantially in recent years, and between black and white women the gap has almost disappeared, the RAND Corporation said in a study made public today.

Black men's average salaries, however, are still three-fourths those of white men. And even if the black men continued to gain ground on whites at the recent rate of improvement, it would be 30 to 40 years before the earnings of black men now entering the labor market caught up to those of white men, the study said.

Increased and improved education has made blacks more competitive in the job market, the study said, and is the principal reason for their improving average income.

Another major factor, it said, is wage rates in the South that have increased in recent years at a faster pace than the national average as the South has become more industrialized.

Over all, the study said, Government-mandated minority hiring programs, so-called affirmative action programs, have been "a relatively minor contributor to rising relative wages of blacks."

However, it said that there were indications that such programs have contributed somewhat to the increasing wage equality of black women.

The study, which was commissioned by the National Science Foundation, reported that in 1955 black women who worked full time earned only 57 percent as much as white women who worked full time.

By 1975, it said, the average wages of black women who worked full time was 98.6 percent that of white women. Preliminary data for 1976 indicate that the trend continued in that year, according to James P. Smith, who conducted the study with Finis R. Welch.

The gap between white and black male workers has also narrowed, but not by nearly so much. In 1955, black men who worked full time earned 63 percent as much as white men who worked full time. By 1975, their pay averaged 77 percent of the pay of whites, the researchers said.

The study is in two parts, one for women, one for men. Mr. Smith said that it was based on census data and on other information collected by the researchers.

Conclusions were reached on the factors responsible for the gains by various population segments by correlating education, experience, age, direct or indirect Government employment and other variables with wages.

Referring to the recent strong gains of black women, Mr. Smith said in an interview, "I have been involved in research in this field for a long time, and it's the most significant wage change I've seen in my life."

The fundamental reason given for the gains of both black men and women is that recently born groups "of blacks and whites are simply becoming more alike in those attributes producing higher wages."

In 1930, the study noted, the typical black male began a work career with 3.7 fewer years of formal schooling than his white counterpart. By 1970, the difference was 1.2 years. For women, the deficit in education was 2.6 years in 1930 and only four-tenths of a year in 1970.

Regarding the economic gains in the South, the researchers said: "There is no question that blacks are at least equal participants with whites in the recent economic resurgence in the South." This conclusion is based on an analysis of wages paid to blacks and to whites in the South.

Largely because they are in a position to benefit most from expanded educational opportunities, young blacks are making substantially more progress in achieving wage equality with whites than older blacks, the study said.

The RAND study is one of a number in recent years to conclude that blacks were making substantial economic headway after the civil rights movement of the 1960's. And like some of the previous studies, this one appears likely to be challenged by some black leaders who contend that such studies have painted an overly rosy picture of black progress.

The study offers several potentially controversial conclusions. It concludes, for example, that based on recent job data there is little evidence to support the long-held contention of some civil rights leaders that "blacks have been relegated to dead-end jobs." Rather, the

researchers say that their analysis indicates blacks and whites with comparable educational levels now receive similar wage increases over their work careers.

The study also asserts that the quality of education received by black children is not as poor over all as some critics have suggested. Data on a reduction in the pupil-teacher ratio in black schools, increased attendance levels and other factors are cited to show improvement, although the researchers concede that the education of some young blacks still has shortcomings.

In another potentially controversial conclusion, the researchers said that in the past much credit for narrowing the wage gap had been given to Government affirmative action programs.

Although they said that there was some evidence that these programs had had an impact, especially on women, "our results suggest that the effect of Government on the aggregate black-white wage ratio is quite small and that the popular notion that these recent changes are being driven by Government pressure has little empirical support."

Referring to what the researchers called the "remarkable" income gains of black women relative to white women, they said that a major factor had been the reduction in the amount of domestic work done by black women in the South.

Half of all employed Southern black women were employed in domestic work in 1960, the report said, but the proportion had dropped to 25 percent in 1970.

State Regulation of the Insurance Industry

By Linda Lamel, Deputy Superintendent, New York State Insurance Department.*

Legal Basis of State Regulation

A survey of the status of State activities to check racial and sexual discrimination in insurance reveals a prototypic example of the best and the worst aspects of State regulation of insurance. State regulation of insurance allows States to respond to the insurance environment within their own boundaries. They can evaluate marketing and underwriting practices in the State and subscribe to legislation or regulation appropriate to the offense, if any. States can experiment with new regulatory schemes and need not follow what a sister State has tried. The disadvantage is that such State-by-State activity becomes unnecessarily repetitive and leaves citizens in some States worse off than those in States who have more vigorously and/or successfully controlled race and sex discrimination in insurance.

The following review of the legal basis of State regulation is not a judgment on the adequacy or advisablity of State versus Federal regulation. It is sufficient to note that a controversy is implicit in a discussion of State regulation in an area of federally-protected rights.

State regulation of insurance did not begin as regulation of insurance per se. As the United States moved into its own national development, the corporate charters issued in Europe disappeared and a United States system for chartering and licensing corporations emerged. New York was the first to enact legislation affecting "monied corporations" which required them to file sworn financial statements with the State comptroller. The requirement served both to advise investors so they could make wise investments and to alert the comptroller to companies with potential insolvency.[1]

As insurance companies grew and became less likely to fail, personal lines of insurance evolved as an important insurance product. The insurer was at an advantage because he wrote the contracts and, more or less, understood what they said. Consumer awareness at the turn of the century revealed the imbalance in bargaining positions between insured and insurer and sought governmental action to even the balance.[2]

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* My sincere thanks to the people in the New York State Insurance Department who know so much and share readily.

[1] John G. Day, *Economic Regulation of Insurance in the United States* (prepared for U.S. Department of Transportation).

[2] Ibid. at 9.

State governments began to set up separate bureaucratic machinery to supervise and regulate insurance companies. The regulatory agency had power over the company's right to do business within the State. By the early 1900s State commissioners were getting financial information about insurance companies.[3] Since the initial powers of State commissioners revolved around obtaining financial data, the imbalanced bargaining position of insurer and insured was not the focus. The underlying rationale was always to preserve stability and solvency of insurance companies. The disadvantages faced by the insurance consumer were addressed by States that began to regulate twisting, misrepresentation, discrimination, and claims settlement practices.[4]

As early as 1865, the insurance industry sought Federal preemption of insurance regulation. The industry chose a course antithetical to that of the other major American industries which fought against Federal expansion of its powers under the commerce clause.[5] The most important court case in these early attempts was *Paul v. Virginia.*[6] Paul was an insurance agent in Virginia who refused to comply with State licensing requirements and was convicted for the violation. The case went to the Supreme Court on the grounds that the insurance business was interstate commerce and, therefore, its regulation was preempted by the Congress. The Supreme Court held the essence of the insurance business was the insurance contract, which was not "articles of commerce" because its execution and effect occurred within one State. They were, therefore, "local transactions."[7] The decision restricted itself to a review of the State's authority to license and tax. It was perceived for many years, however, as a bar for the insurance industry from any Federal antitrust attack.[8] The Supreme Court continued to uphold that insurance business was not interstate commerce.[9]

The change came in 1944 with the Supreme Court decision in *U.S. v. South-East Underwriters Association.* [10] The case arose out of the efforts of the Missouri Attorney General to prosecute the South Eastern

[3] Ibid. at 11.
[4] Ibid. at 13.
[5] E.g., U.S. v. E.C. Knight Co., 156 U.S. 1 (1895) challenged application of Sherman Antitrust Act. Schecther Poultry Corp. v. U.S., 295 U.S. 495 (1935) challenged National Ind. Recovery Act regulation.
[6] 75 U.S. (8 Wall) 168 (1968).
[7] Ibid. at 183.
[8] *Insurance Regulation at the Crossroads* (College of Insurance, Research Institute, September 1976) p. 17.
[9] *Supra,* note 1 at 16.
[10] 322 U.S. 533 (1944).

Underwriters Association for rate-fixing conspiracy under the Sherman Antitrust Act.[11] The Federal district court followed *Paul v. Virginia* and dismissed the case; the Supreme Court reversed and held that: "No commercial enterprise of any kind which conducts its activities across state lines has been held to be wholly beyond the regulatory power of Congress under the Commerce Clause. We cannot make an exception of the business of insurance."[12] The Court distinguished *Paul* but did not overrule it. On the same day, *Polish National Alliance v. NLRB* was decided, holding the insurance business was subject to application of the NLRB.[13] These decisions appeared to herald the end of State regulation of insurance. The moment was short-lived.

The *SEUA* decision was important because the Court validated governmental regulation of insurance regulation in general. It also gave approval to government regulation of insurance rate setting. Joint rate-making organizations began at a time when competition was seen as unprofitable for infant industries. Initially, the joint underwriting association received legal sanction by the States.[14] "Rates and rating plans had to be filed with the Insurance Superintendent. Discrimination was prohibited and the Superintendent was given the power to order an insurer to file a higher or lower rate if the filed rate was deemed inadequate or excessive." This approach was approved by the Merritt Committee that investigated the San Francisco fire of 1909.[15] The States which later adopted anticompact or rate regulation legislation were predominantly concerned with fire insurance. Life and accident and health insurance rates were self-regulated by competition and legal reserve requirements.[16] The *SEUA* decision gave Supreme Court approval to the trend in State regulation. Since Congress had not acted in this area, the Court indicated that State action was valid.

Neither the insurance industry nor the State insurance commissioners were assured by the Court's assertion that State regulation was now a reality. The industry reversed their earlier desire to have Federal regulation (given the difference in the nature of Federal activity between 1868 and 1944) and now sought exemption for themselves from major Federal antitrust legislation. The National

[11] Arthur C. Mertz, *The First Twenty Years: A Case-Law Commentary on Insurance Regulation Under the Commerce Clause* (National Association of Independent Insurers: June 1965), p. 3.
[12] 322 U.S. 533 at 553.
[13] 322 U.S. 643 (1944).
[14] Ibid. at 8. New York chartered the National Board of Fire Underwriters in 1867 and by statute licenses and regulates such organizations, New York Insurance Law §181.
[15] *Supra*, note 1 at 19.
[16] Ibid. at 21.

Association of Insurance Commissioners (NAIC) proposed to Congress what ultimately became the McCarran-Ferguson Act[17] and the rescue of State regulatory authority.

The act specifically declares that continued regulation and taxation of insurance by the States is "in the public interest." Congress preserved its right to legislate in the area of the insurance business, but it must do so deliberately. The National Labor Relations Act, Fair Labor Standards Act, and Merchant Marine Act will apply to the insurance business "to the extent that such business is not regulated by State law," after January 1, 1948. This obviously provided a period within which States which did not have sufficient legislation to meet McCarran requirements for State action could do so. In no case, however, could the States legislate in such a way as to be inconsistent with the above acts. McCarran-Ferguson also restated the applicability of the Sherman Act to "any agreement to boycott, coerce, or intimidate, or act of boycott, coercion, or intimidation."

Congress not only affirmed that State regulation of insurance was of public benefit, but it also removed from that regulation any possibility of conflict with Federal control over interstate commerce. In other interstate commerce issues, the courts have said that States can regulate within their jurisdiction provided there is no unnecessary burden on the flow of interstate commerce.[18] In McCarran-Ferguson it is specifically stated that "silence on the part of the Congress shall not be construed to impose any barrier" over State regulation and that insurance is "subject to the laws of the several states."[19]

As in the case of many important Federal statutes, passage created as many problems as it solved. The immediate aftermath of passage of the McCarran-Ferguson Act was the establishment of an NAIC all-industry committee to determine what States would have to do in order to prevent Federal antitrust intervention in the States. Principal emphasis was still on fire insurance companies. Life insurance, as well as accident and health insurance, had not been part of the rate-making compacts that existed prior to McCarran-Ferguson, and those companies were able to persuade the NAIC committee that they need not be included in proposed regulations implementing the requirements of the Federal act.[20]

Of the initial model bills proposed by the all-industry committee and adopted by the States, the most relevant to the subject of this paper is the Act Relating to Unfair Methods of Competition and Deceptive

[17] 15 U.S.C. §§1011–15 (1965) enacted Mar. 9, 1945.
[18] E.g., Southern Pacific Company v. Arizona, 325 U.S. 761 (1945); Huron Portland Cement Company v. City of Detroit, 362 U.S. 440 (1960).
[19] *Supra*, note 9 at 17.
[20] *Supra*, note 12 at 11.

Acts and Business of Insurance (hereinafter Unfair Practices Act). The model act or one like it has been enacted in all of the States[21] and gives the insurance commissioner authority to issue cease-and-desist orders when any person in the insurance business: (1) misrepresents or falsely advertises; (2) provides false information; (3) defames; (4) boycotts, coerces, or intimidates; (5) makes false financial statements; (6) rebates; or (7) unfairly discriminates in life insurance and annuities and in accident and health insurance. The list of unfair practices is not exclusive or restrictive or "intended to limit the powers of the Commissioner or any court of review."[22] The NAIC all-industry committee hoped in designing the act to avoid Federal intervention under the Robinson-Patman Act[23] and minimize Federal interference under the Sherman Act. The power of State insurance commissioners under the Unfair Practices Act is key to dealing with race and sex discrimination and will be discussed later in greater detail.

With the exception of the Unfair Practices Act, most post-McCarran legislation excluded life and accident and health insurance. These lines had had their initial trial by fire before *SEUA* and McCarran. The 1905 Armstrong Investigation of the life insurance industry was followed by President Theodore Roosevelt's Committee of Fifteen, the 1910 New York Accident and Health Investigation, and the 1938 TNEC investigation of life insurance that resulted in regulation as to reserves, financial and investment practices, and policy provisions. And, of course, insurers had to be licensed in the State in which they sought to do business.[24] New York imposed minimum required policy provisions.[25] Life insurers' assets were closely watched to assure solvency and stability and, eventually, their policy forms and provisions were also subject to insurance department filing and approval.[26] In rate making, life insurers can discriminate and be within the requirements of the Unfair Practices Act so long as the discrimination is not unfair. Much of their rate making is based on actuarially determined data which, until now, have not been attacked as inherently discriminatory.

As part of the post-McCarran review of the insurance industry, the NAIC all-industry committee found that the accident and health insurers did, indeed, engage in rate making in concert. They agreed, however, to abandon the offensive activities rather than be subjected to legislation similar to that of the fire and casualty companies.[27] The

[21] New York also amended its antitrust law, the Donnelly Act, to include insurance. The State's attorney general enforces this law. New York General Business Law §340(2).
[22] Ibid. at 19.
[23] 15 USCA §13.
[24] *Supra*, note 12 at 21.
[25] New York Insurance Law §155 (individual life); §161 (group life).
[26] New York Insurance Law §236.
[27] Ibid. at 22.

NAIC committee did recommend a model bill for individual accident and health policies. It required:

(a) filing a copy of the policy form, application, rider and endorsement, classification of risks, and premium rates 30 days prior to use;

(b) the commissioner could disapprove any of the above if he found the premiums were not reasonably related to the benefits or that the provisions were "unjust, unfair, inequitable, misleading, [or] deceptive."[28]

As in the history of the development of State regulation over life insurance, the activities vis-a-vis accident and health insurers excluded from regulatory review and authority scrutiny of rates that went beyond a relationship to benefits being paid. The test of "unfair discrimination" did not reveal the inequity of females paying a higher premium than men and receiving fewer benefits.

The NAIC did look at model laws for standard policy provisions for accident and health policies that had been based on 1912 recommendations. In 1950, it adopted the Uniform Individual Accident and Sickness Policy Provisions Law that was ultimately adopted in some form by all 50 States, the District of Columbia, and Puerto Rico.[29] Significantly more flexible than the 1912 version, "it uses an 'in substance' approach permitting provisions not less favorable to the insurer than the prescribed provisions and. . .permits modification or omission of provisions to make them consistent with the coverage provided" when the department approves.[30] Model laws were also adopted for regulation of nonprofit hospital plans, group accident and sickness insurance, and blanket accident and sickness insurance.

Under the impetus of the McCarran Act, States have enacted legislation to regulate rate-making organizations, policy forms, insurance contracts, and financial soundness. Chief Justice Stone, in his dissenting opinion in *SEUA,* stated that the area of State law in insurance was the contract between the insurer and the insured.[31] Within the regulatory area preserved for the States, insurance commissioners can regulate the availablity of contract terms and the price paid for those contracts. States could, therefore, eliminate discriminatory practices of unavailability of an insurance product and unfairly discriminatory rates. State-by-State action is time consuming but has the advantage of an existing legal authority with which to attack the problems.

[28] Ibid. at 23.
[29] New York Insurance Law §164.
[30] Ibid. at 24.
[31] 322 U.S. 533 at 571.

Functions and Powers of Insurance Departments

The private business of insurance is highly regulated by State insurance departments. The regulation must be a delicate balance between total supervision as in the case of a public utility and permitting latitude for private enterprise to make its business decisions. The tension between the regulatory and private nature of the insurance business is apparent in all areas. The industry contends that it is still a private enterprise and cannot be totally regulated; the regulatory authorities contend that the increasingly essential nature of insurance demands that the industry's practices be closely scrutinized.

State insurance departments have both traditional and nontraditional functions. The traditional functions are: "(1) to prescribe the form of annual statement to be used by insurance companies; (2) to be the custodian of securities required to be deposited by life insurance companies; and (3) to examine the insurance company's books at their home offices in the state whenever. . .necessary."[32]

In the 120 years since those functions were defined, nontraditional additions have been made which look at: (1) reviewing and strengthening the market forces in the industry;[33] (2) assuring the quality of the insurance product; (3) providing for availability of the insurance product; and (4) assuring fairness in the dealings between the industry and the consuming public.[34] The undertaking of these additional functions by insurance departments has generated controversy between industry and regulators. Both functional areas give insurance departments the regulatory power for handling the issue of discrimination of insurance.

Commissioners of insurance exercise much of their power through initiatives that are informal. Formal judicial or administrative proceedings are infrequent instigators of department action. Presentation of evidence, correspondence, or filing of complaints are the usual avenues through which the commissioner exercises his powers.[35] It is rare that a statute will directly confer power in the commissioner to promulgate regulations or otherwise act, but that power is implicit in his day-to-day functions. In general, a commissioner has great latitude in his actions. "[S]tatutes are generally silent as to the extent or character of the evidence upon which the Commissioner predicates his decisions or rulings." The main weapons of the commissioner to

[32] Robert E. Dineen, Clifford R. Procter, and H. Daniel Gardner, *The Economics and Principles of Insurance Supervision* (Insurance Series, University of Wisconsin: 1960), p. 16.
[33] Ibid. at 51.
[34] Statement of Commissioner Harold Wilde at Hearing of the United States Senate Subcommittee on Citizens and Shareholders Rights and Remedies, Jan. 18, 1978.
[35] *Supra*, note 32 at 17.

enforce his powers are: (1) revocation of licenses; (2) summoning of witnesses and records; and (3) disapproval of policy forms.[36]

State insurance departments license insurers to do insurance business within the State.[37] Licensing requirements include filing of the company's articles of incorporation or organizational agreement, financial data to indicate that minimum capital and reserve requirements have been met, names and addresses of the directors and officers, and the lines of issuance to be marketed. "The superintendent may refuse to issue or renew any. . .license if in his judgment such refusal will best promote the interests of the people of this state."[38] The superintendent can revoke a license for unlawful discrimination practices against persons because of their race, color, creed, or national origin.[39]

The insurance department can enforce compliance with all of these requirements before issuing a license and can remove a license for any breach. In New York, a special unit in the consumer services bureau investigates all listed directors and officers for good character and trustworthiness; any person found to be unqualified must be removed from the proposed position or a license will be denied.[40]

Some critics of the insurance industry have suggested that the department's licensing power can be used to get greater consumer representation and participation in the decisionmaking of insurance companies.[41] The point has merit, but it seems doubtful that insurance commissioners have authority to act in this area. Most insurance corporations have articles of incorporation and/or bylaws that establish procedures for selection of board members. This is traditionally a management prerogative subject to the requirements and limits of the business corporation law. In the case of not-for-profit health services corporations in New York (e.g., Blue Cross), there are statutory requirements on board membership.[42] The statute does not give the superintendent authority to issue regulations pursuant to the statute although such power can be inferred. Directors and officers in any company can be ordered removed by the department upon a finding of untrustworthiness or when a company is placed in rehabilitation or liquidation.

State insurance departments also license the agents and brokers of the insurance business[43] after recommendation by an insurer and an

[36] Ibid. at 18.
[37] New York Insurance Law §40.
[38] New York Insurance Law §40(4).
[39] New York Insurance Law §40(10).
[40] New York Insurance Law §48(9)(c).
[41] Report on New York State Consumer Protection Board on Blue Shield Boards of Directors (1977).
[42] New York Insurance Law §250.
[43] New York Insurance Law §114 and §119.

examination. Behavior by agents and brokers can be defined as illegal or unethical,[44] and punished by the commissioner. In New York, for example, an agent can have his license revoked after a hearing and he can be fined.[45] If an agent or broker is charged with an unfair trade practice or other violation, an investigation can be conducted either by the insurance department or by the company for whom he is an agent. Investigators can have the authority to issue a cease-and-desist order and even to subpena information and persons as part of the inquiry.[46] When possible, informal means are used to persuade the agent or broker to stop the offensive behavior.[47] The New York department uses a stipulation that the licensee waives his right to a hearing and agrees to pay a fine in lieu of formal procedures.[48] If needed, the agent or broker has a right to a fair hearing. The New York department thus has adequate control over agents and brokers with which to monitor enforcement of discriminatory practices.[49] The sanctions, however, leave something to be desired. Revocation of a license deprives a person of their livelihood and is a very serious punishment; a fine of $50 or $100 is almost painless and not effective as a means of changing behavior. Better sanctions are needed.

Varying degrees of control over policy forms, applications, and riders are another source of regulatory control over insurance companies. It is under this power that commissioners can control availability of contract terms on an equal basis. The approval procedure applies to both individual and group contracts. The difference between these two types of contracts is worth noting.

In a group contract, the insurer and the insured frequently negotiate the terms and conditions of the contract. Prewritten forms are used for customary provisions, but the contract holder can, and often does, demand additional benefits, riders, or other terms. When an individual purchases an insurance contract, the consummation of a contract is much more one-sided. The individual is not in a position to dictate terms and benefits if they are not part of the policy being offered. It behooves regulatory agencies to scrutinize the policy provisions of the individual policies more closely; since, under the circumstances, the department is the consumer's advocate. Indeed, in the studies done in various States on women and insurance, abuses were more frequent in the individual than in group contracts. A group, after all, can negotiate whatever it can buy and the insurer can offer.[50]

[44] 11 NYCRR 51 (1971); amended (1974).
[45] New York Insurance Law §117(1); §119(a).
[46] "The Regulation of Insurance Marketing," 61 *Columbia Law Review* 141 (1961).
[47] Ibid. at 172.
[48] New York Insurance Law §132.
[49] Per Nathan Silver, chief, Consumer Services Bureau, New York State Insurance Department. Such practices are rare.
[50] New York Insurance Law §154(3).

One method of controlling policy content is to mandate the inclusion of minimum standard provisions. New York and several other States have such statutes. "The requirement that a policy contain specified individual provisions has become the most common device of insurance contract control in the United States."[51] The required provisions for individual life insurance contracts include: incontestability, grace periods, loans, cash values and nonforfeiture options, apportionment of dividends, settlement option tables, misstatement of age penalties, and that what the insured receives is the entire contract.[52] That this authority can be used to combat discrimination was confirmed by a Federal district court, which held that the "Commissioner's approval of policy forms and rates constitutes sufficient state action to apply equal protection standards of the fourteenth amendment to insurance contracts."[53]

Minimum provisions are also required for individual and group accident and health insurance policies.[54] The 1972 regulation[55] which implemented statutory authority permitted health insurance contracts to exclude coverage for pregnancy[56] and a variety of other items. A later amendment described what was to be included in a basic medical, basic hospital, and basic major medical insurance policy. In this amendment, complications of pregnancy could not be excluded. Reduction of disability benefits solely on the basis of the sex of the insured is prohibited. By statute,[57] a group contract must also contain a conversion clause allowing a member of the group to get an individual policy if he leaves the group. This is especially important for dependent wives who can continue coverage after the death, divorce, or separation of the husband-subscriber. Difficulty occurs when a dependent female is covered under a contract that was delivered outside New York State and thus not necessarily required to contain a conversion clause. She may have great difficulty in obtaining an individual accident and health policy at a price she can afford.

Under the above statutes and regulations, the New York insurance department has attempted to eliminate some forms of sex discrimination. Nonconforming policies are disapproved and new, acceptable ones are filed.

[51] Spencer Kimball, "Legislative and Judicial Control of the Terms of Insurance Contracts," reprinted in *Essays in Insurance Regulation* (1966) at 124.
[52] New York Insurance Law §155.
[53] Stern v. Massachusetts Indemnity and Life Insurance Company, 365 F. Supp. 533 (E.D. Pa. 1973). The court also held that a statute which discriminates in favor of men is *prima facie* unconstitutional absent a compelling State interest.
[54] New York Insurance Law §§162, 164.
[55] 11 NYCRR 52 (1972). This is basically a disclosure regulation.
[56] Chapter 843 of the New York Session Laws of 1976 changed this.
[57] New York Insurance Law §253(2).

The unfair trade practices acts adopted by States in the wake of the passage of the McCarran-Ferguson Act are excellent for exercising regulatory control over the policies and underwriting practices of insurers to ensure that there is no unfair sex or race discrimination.[58] In addition to the general unfair trade practices acts,[59] the National Association of Insurance Commissioners developed a model regulation to prohibit unfair sex discrimination in insurance. Several States have adopted the regulation or something like it and use it as the basis for getting insurers to issue contracts that conform. Although the model regulation does not specifically prohibit the exclusion of maternity benefits from health insurance contracts, it states that such benefits should be mandated in health insurance contracts because: "Restrictions on these areas of coverage have been deemed to be tantamount to unfair sex discrimination since they apply to sickness or injury which affects only one sex."[60]

The act requires the availability of coverage most frequently denied to women:

> Availability of any insurance contract shall not be denied to an insured or prospective insured on the basis of sex or marital status of the insured or prospective insured. The amount of benefits payable, or any term, conditions or type of coverage shall not be restricted, modified, excluded, or reduced on the basis of the sex or marital status of the insured or prospective insured except to the extent the amount of benefits, term, conditions or type of coverage vary as a result of the application of rate differentials permitted under the (insert name of state) Insurance Code. However, nothing in this regulation shall prohibit an insurer from taking marital status into account for the purpose of defining persons eligible for dependents benefits. Specific examples of practices prohibited by this regulation include but are not limited to the following:
>
> (a) Denying coverage to females gainfully employed at home, employed part-time or employed by relatives when coverage is offered to males similarly employed.
>
> (b) Denying policy riders to females when the riders are available to males.
>
> (c) Denying maternity benefits to insureds or prospective insureds purchasing an individual contract when comparable family coverage contracts offer maternity benefits.

[58] New York Insurance Law §273 makes a discrimination because of race, color, creed, or national origin an unfair trade practice.
[59] New York Insurance Law §272.
[60] Preamble to NAIC Model Regulation on Unfair Sex Discrimination.

(d) Denying, under group contracts, dependent coverage to husbands of female employees, when dependent coverage is available to wives of male employees.

(e) Denying disability income contracts to employed women when coverage is offered to men similarly employed.

(f) Treating complications of pregnancy differently from any other illness or sickness under the contract.

(g) Restricting, reducing, modifying, or excluding benefits relating to coverage involving the genital organs of only one sex.

(h) Offering lower maximum monthly benefits to women than to men who are in the same classification under a disability income contract.

(i) Offering more restrictive benefit periods and more restrictive definitions of disability to women than to men in the same classifications under a disability income contract.

(j) Establishing different conditions by sex under which the policyholder may exercise benefit options contained in the contract.

(k) Limiting the amount of coverage an insured or prospective insured may purchase based upon the insured's or prospective insured's marital status unless such limitation is for the purpose of defining persons eligible for dependents benefits.

When discrimination by sex is defined as an unfair trade pratice, the insurance commissioner has the power to (1) examine and investigate allegations of such unfair trade practices;[61] (2) hold a hearing where the insurer can show cause why he should not be ordered to cease and desist from the practice; (3) issue a cease-and-desist order to the insurer; (4) impose a fine of up to $5,000 for the violation.[62] If, at the hearing, the commissioner does not find a violation and issues an opinion to that effect, he can modify his opinion whenever he feels "conditions of fact or of law have so changed as to require such action or if the public interest shall so require."[63] Such power is broad enough to enforce prohibitions against unfair sex or race discrimination by insurers or their agents.

In New York, the alleged unfair trade practice need not be defined in the law to be the subject of regulatory prohibition. The commissioner can deem a practice by an insurer to be unfair or deceptive, hold a hearing, and then order the activity stopped by requesting the State

[61] New York Insurance Law §274.
[62] New York Insurance Law §276 and §280.
[63] New York Insurance Law §276(3).

attorney general to commence a cause of action to enjoin the method, act, or practice.[64] By letter to all insurers, he then puts them on notice that they are, in fact, subject to the findings of the hearing.[65]

Refusal to "issue any policy of insurance,. . .cancel or decline to renew such policy because of the sex or marital status of the applicant or policyholder" is also prohibited by statute in New York.[66] Unfortunately, such activity was not defined as an unfair trade practice and left the superintendent without specific legislative mandate to enforce under that statute. The superintendent used the broad language in section 278 above to call a hearing. The result was the promulgation of a regulation defining sex discrimination as an unfair trade practice.[67]

State insurance departments can require that insurers and rating organizations file their rates and rate classifications with the commissioner. In the case of rate classifications, the New York superintendent can approve or disapprove as "unfairly discriminatory or violative of public policy."[68] The classifications cannot "permit any unfair discrimination between individuals of the same class and of equal expectation of life, in the amount or payment or return of premimum, or rates charged by it for policies of life insurance. . . ."[69] The department has interpreted the statute to require that classifications be "reasonable, equitable and non-discriminatory."[70] The later term is misleading, since discrimination between groups is the essence of insurance groupings.

The rates themselves are required to "not be excessive, inadequate, unfairly discriminatory, destructive of competition or detrimental to the solvency of insurers." Rates are filed with the superintendent and deemed approved unless the superintendent calls a hearing and demands that the insurer prove the rates filed.[71] Rates which discriminate on the basis of sex can only be based on actual differences of morbidity and mortality that are determined by credible company experience, studies of the Society of Actuaries, or the New York insurance department. Unisex rates for individual accident and health policies are permitted if applied to all coverages.[72]

For life insurance, the NAIC model act on unfair sex discrimination requires that rate differences based on sex be justified in writing to the commissioner and that they be based on "sound actuarial data." The

[64] New York Insurance Law §278.
[65] E.g., Apr. 16, 1963.
[66] New York Insurance Law §40(e).
[67] 11 NYCRR 217 (1975).
[68] New York Insurance Law §176(2)(b).
[69] New York Insurance Law §209.
[70] New York department opinion dated Apr. 20, 1955.
[71] New York Insurance Law §176.
[72] 11 NYCRR Part 52, Sixth Amendment (Apr. 27, 1977).

department almost always relies on the data provided by company actuaries and accepts classification by sex as a legitimate data-gathering device. Once classification by sex is accepted as a valid one, the actuarial results are predictable. Effect regulation of this data is within the power of insurance departments, but is not yet fully effective.

Some rates are not reviewed by insurance departments. If a group holds an insurance contract and is experience rated, the premimum rate after the first year will be based on the actual experience of that group.[73] The new rates established when the contract is renewed are not approved by the insurance department. Contracts with large organizations and employers are frequently experience rated and, thus, beyond the reach of regulatory authority so long as the premium is reasonably related to the benefits provided.

Insurance departments are handicapped in effective rate regulation by the paucity of data that is available in the private sector and in their own department. There is a myth that the insurance business is based on well-documented and sophisticated data systems. The fact that pension systems can be using actuarial data that are 50 years old or that disability cost statistics developed to substantiate male and female rate differentials do not coordinate with United State Public Health reports on morbidity do not instill confidence in the data of the insurance industry.

One of the most significant controls of insurance commissioners is their right to request any information from an insurer "in relation to its transactions or condition or any matter connected therewith."[74]

Domestic insurance companies are subject to periodic onsite examinations by insurance departments. Departments vary in the staff available to do the examinations and the expertise of the examiners. Life companies are examined every 5 years[75] and casualty companies and cooperative life and accident companies examined every 3 years.[76] In addition, a special examination can be requested whenever the department feels it is necessary; e.g., a large number of complaints are filed with the department. The superintendent determines the scope of the examinations.[77] When combined with the annual statement filed by insurers, the examination process has been successfully used as a regulatory tool for ensuring the solvency and market conduct of an insurer.

The most time-consuming aspect of the examination is the review of the financial condition of the company. The NAIC examiner's

[73] New York Insurance Law §221.
[74] New York Insurance Law §27.
[75] New York Insurance Law §28(2)(b).
[76] New York Insurance Law §28(2)(a).
[77] New York Insurance Law §29.

handbook outlines the suggested procedures and each examination generally follows this guide, some more intensively than others. Bonds are counted, checking accounts are reconciled, and reserves are recomputed and verified.

The examination also includes a review of the claims practices, underwriting standards,[78] market conduct, and management of the insurer. The examiner can comment on indications that there is unfair discrimination in marketing, claims handling, and/or hiring and promotion practices within the company. In general, violations are informally related to the insurer and not made part of the formal examination report. Evidences of discrimination in hiring and promotion are not part of convention examinations, which are performed by several States working as a team. The examiner is under a general obligation to note any and all violations of insurance law, including unfair trade practices. Anything cited in the report can be refuted by the company; the department will hold a hearing and then file as a public document the agreed-upon examination report.[79] The report and recommendations contained therein are forwarded to the company's board of directors.[80]

The New York department is organized so that after an examination, the results go to the bureau charged with the regulation of that type of company; e.g., property, life. The bureau must then act on the findings of the report if violations of insurance law are noted. There is some problem with communications here because the financial condition and management of a company are supervised by one bureau and the products marketed by the company are supervised by another bureau. Both bureaus will see the examination report and may choose to act together on a problem. But they can also act within their own jurisdictions with uneven and unequal force. Violations of insurance law as found by examiners must be corrected; the department can fine and even revoke a license if they are not corrected.

There are several problems in trying to use the examination procedure to enforce nondiscrimination:

(1) Examiners' primary commitment is to review financial stability and solvency.

(2) Examiners may not be properly trained to identify discriminatory behavior. The fact that examiners looked at insurers for decades and did not cite the discrimination found by various commissioner's task forces on women and insurance speaks for itself.

(3) An allegation of sex discrimination by an examiner could tie up filing of the report for years while the insurer pleads his case, and

[78] Market Conduct Examination Handbook, NAIC, pp. 22 and 31.
[79] New York Insurance Law §30.
[80] New York Insurance Law §31.

the delay would be detrimental to effective regulation of the solvency of companies.

(4) Until very recently, acts which are now considered discriminatory were not so defined. Examiners could not have cited them.

The Problems

Other papers have examined, in detail, the nature, scope, and manifestations of discrimination in insurance. A brief review is provided here to provide the context for this review of State regulatory authority. Some of the insurance areas where discrimination is a problem, such as social security and pension benefits, will not be discussed, since they are beyond the reach of State regulatory authority and under Federal jurisdiction.

Any discrimination by race that exists in life insurance is subtle and difficult to identify directly: "Race is not now determined as a composition factor of the Group because of its social unacceptability. . . ."[81] The lack of any racial factor in determining rates despite differences in mortality and morbidity creates availability problems; companies with predominately white markets avoid nonwhite markets because sales in the latter population would increase the risks that would have to be paid for out of a rate that did not factor in a nonwhite risk cost; and companies that specialize in nonwhite markets charge higher premiums to offset the experience of the adverse selection in the market to which they are selling.[82]

Racially blind rating may, therefore, have prevented the premise that premium should be based on risk, but it has reinforced the notion that a "rate structure permitting the sale of insurance to the largest possible market cannot be unfairly discriminatory. . . ."[83] In general, the life insurance industry appears to have accepted a prohibition against using racial factors in rate making. The differences in experience between white and nonwhite are attributed to socioeconomic factors that cannot be classified by race.[84] Besides, the nonwhite proportion of the population is only 10 percent and "the impact has been minimal."[85] Subtle discrimination may still exist in marketing targets and access through agents and brokers.

The two main issues for women buying life insurance are the makeup of the rates and the availability of options and policy values.

[81] Report on Academy Task Force on Risk Classification, American Academy of Actuaries, August 1977, at 15.
[82] Ibid. at 18.
[83] Herman T. Bailey, Theodore M. Hutchinson, and Gregg R. Narber, "The Regulatory Challenge to Life Insurance Classification," 25 *Drake Law Review Insurance Law Annual* 799 (1976) at 793.
[84] Janet Sydlaski, "Gender Classification in the Insurance Industry," 75 *Columbia Law Review* 1381 (1975) at 1391.
[85] *Supra*, note 1 at 15.

The essence of the rate problem touches the core of insurance principles:

> The Insurance industry is predicated on the need to group individuals into risk categories and thereby spread the cost of the risk more equitably. While some form of group classification is thus essential to the industry, insurance is also a means of pooling risks among insureds. There is a necessary tension between these two goals—the former leads to utilizing an increasing number of narrow classifications and ultimately to the assignment of risk on an individual basis, while the latter leads toward the abolition of group distinctions and the treatment of all insureds on an equal basis.[86]

It is difficult to argue with the proposition that rates should be adequate and yet not unfairly discriminatory. The American Academy of Actuaries task force has called for a study of the classifications now being used so that they can be either substantiated or invalidated;[87] this is needed. At the moment, the positions of the pro and con gender-based rates are hardening and there is no movement in sight. At issue is whether or not gender is "causally related to the occurrence of the risk"[88] and therefore a legitimate actuarial basis or whether the use of gender is so offensive to standards external to the insurance system as to be invalid per se.[89]

The problem of availability of options and maximum policy limits was documented in several reports on sex discrimination in insurance that were done in 1974 and 1975. "Often, women are not offered the waiver of premium option because insurance companies tie this option to employment disability and feel that women's attachment to the work force is tenuous. . . ."[90] Insurance companies offer family-plan life insurance policies and limit the wife's insurance by the amount of the husband's policy and the husband's age.[91]

Maternity is a health experience unique to women. It is also the one item for which coverage is excluded in many group and individual health policies. Complications of pregnancy, disease of the reproductive organ, and reproduction control are also frequently excluded. The rationale offered by the industry is that maternity is voluntary, not a disease, predictable, and therefore not a proper item for insurance. The issue for regulators is whether the exclusion of maternity benefits for

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[86] *Supra*, note 84 at 1381.
[87] *Supra*, note 81 at 3.
[88] *Supra*, note 84 at 1382.
[89] Ibid. at 1390.
[90] Waiver-of-premium option provides continuation of the policy without premium payment in the event of disability of the policyholder. *Insurance and Women*, Task Force on Critical Problems, New York State Senate, October 1974, p. 14. On this issue New York State is typical of what was found in Pennsylvania, Michigan, California, etc.
[91] Ibid. at 13.

women creates an unfairly discriminatory rate in the health insurance premium.

"Frequently, disability income insurance is not available to women in occupations where men can obtain it,"[92] and the policy terms have more limitations and exclusions, fewer additional benefits, and a more restrictive definition of disability. As a result, current disability policies are not attractive to women.[93] When they are sold, they cost more than for men. The much-quoted study done in New York State[94] and actuarial data all claim to prove that women are more expensive to insure during the years under age 50.

The National Center for Health Statistics calculated the average number of work-loss days for employed females to be 5.6 days in 1972 (including childbirth).[95] This is not significantly more than statistics cited for male employees. In addition, it is conceded that statistics on health

> are greatly affected by social, economic, and governmental influences as well as conditions affecting physical and mental well-being. Because of these influences, the relationship between claim costs in the various classes are continually shifting.[96]

It is difficult, therefore, for regulators to accept higher claims costs as the reason for higher rates for women.

The problem is further obfuscated by assertions that it is the biological differences between men and women which create the morbidity differential. One scientist states:

> There is every reason to assume that the initial pattern for greater male susceptibility to most diseases and defects, set in prenatal life and infancy, continues to be operative. One can only conclude then, that under like conditions, females are better adapted to cope with most human afflictions because they are genetically better constructed and have a more efficient chemical system.[97]

What would appear to be a clear argument questioning available morbidity data is, in fact, presented as an argument for differentials in life insurance premiums where men pay the higher premium. What's sauce for the gander should be sauce for the goose!

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[92] *Supra,* note 84 at 1383.

[93] Ibid. at 1383. Note 14—Sales of disability income in insurance by 50 companies showed 14,689 policies issued of which 12 percent were to women.

[94] New York State Insurance Department, "Disability Income Insurance Cost Differentials Between Men and Women," June 1976.

[95] Jennifer Gerner, "Wisconsin Maternity Leave and Fringe Benefits: Policies, Practices and Problems" (Equal Rights Division, Department of Indiana, Labor and Human Relations), at 39.

[96] *Supra,* note 81 at 21.

[97] Barbara J. Lautzenheiser, "Sex and The Single Table," *Journal,* International Foundation of Employee Benefit Plans, Fall 1976.

The exclusion of maternity from disability income insurance policies is another instance of discrimination. The issue has been before the United States Supreme Court on several occasions.[98] The Supreme Court has not found invidious discrimination in the failure of disability plans to cover the one disability unique to women.[99]

The problem for State regulatory agencies lies within their power to interpret fair and unfair discrimination. States have prohibited insurers from excluding diseases indigenous to one race or creed and have even prohibited classification of risks by blindness or physical or mental disability. In fact, the recent regulatory trend has been to broaden risk classifications rather than to restrict them. In light of this trend, extending disability coverage for maternity could be spread amongst the group that is insured—male and female—since male-only disabilities are now paid for by women who are in the group. The issue is whether external social and economic considerations are such that insurers can no more be permitted to exclude a female disability than they would be permitted to exclude a black (sickle cell anemia) or Jewish (Tay-Sachs syndrome) disability.

Activities Undertaken by States to Eliminate Discrimination

Early attacks on the problems of sex discrimination in insurance began in Pennsylvania when, in light of that State's passage of an equal rights amendment to the State constitution, the insurance commissioner organized an advisory task force on discrimination in insurance.[100] "The Department adopted the position that denial of equal availability was violative of the Equal Rights Amendment to the State Constitution." At the same time, the Federal district court in Pennsylvania held that regulation of insurance companies was sufficient to constitute State action for purposes of applying the equal protection clause of the 14th amendment of the United States Constitution.[101]

When the task force reported in January 1974, many forms of sex discrimination were cited. The insurance commissioner gave notice to insurers that subsequent approval of policy forms would be conditioned upon elimination of sex discrimination. Three-hundred compa-

[98] Geduldig v. Aiello, 417 U.S. 484 (1974). Gilbert v. G.E., 429 U.S. 125 (1976).

[99] Several district courts, however, have found exclusion of maternity to be a discrimination which violates Title VII of the United States Civil Rights Act. CWA v. A.T. & T., 513 F.2d 1024 (2nd Cir. 1975) Wetzel v. Liberty Mutual Insurance Company, 511 F.2d 199 (3rd Cir. 1975). Gilbert v. G.E., 519 F.2d 661 (4th Cir. 1975), reversed 429 U.S. 125 (1976). Holhaus v. Compton & Sons, Inc., 514 F. 2d 65 (8th Cir. 1975). Satty v. Nashville Gas Co., 522 F.2d 850 (6th Cir. 1975), 429 U.S. 1071. Hntchison v. Lake Oswego School District, 519 F.2d 961 (9th Cir. 1975), cert. den., 429 U.S. 1037.

[100] Study for *Select Committee on Insurance Rates, Regulations and Recodification of the Insurance Law* by Jean Molino of New York University Law School at p. 140 of New York State Legislative Document No. 710 (1975).

[101] Stern v. Massachusetts Indemnity and Life Insurance Company, 365 F. Supp. 433 (1973) at 439.

nies had forms disapproved and were given a time limit in which to produce policies that would conform.[102] Many discriminatory practices were thus eliminated. Discrimination involved in underwriting practices, however, is more difficult to monitor and curtail.

Activity in New York accelerated when the New York Civil Liberties Union filed a suit in Federal district court alleging that the insurance department's approval of disability insurance policies constituted discrimination against women.[103] The legislature had failed to act on the issue despite repeated efforts by proponents. The discrimination was alleged in the coverages provided, the underwriting standards used, and the premium rates charged,[104] because actuarial data did not support insurance practices.

After the legislature finally enacted[105] section 40(e), the insurance department held a hearing to determine whether sex discrimination constituted an unfair trade practice (December 16, 1974). The department found discriminatory underwriting practices such as:

(1) offering males higher benefit levels than females;

(2) denying to females in certain occupations the same coverage available to males in the same occupations;

(3) denying to females options available to men;

(4) requiring females to submit to a medical exam not required for males.

The department promulgated a regulation prohibiting insurers from refusing to issue any policy of insurance because of the sex of the applicant.[106] The department's action only applied to underwriting practices; the question of discrimination in rate setting was left for further study[107] by the department.

The resulting study, "Disability Income Insurance Cost Differentials Between Men and Women" (June 1976), has been nationally quoted for the proposition that sex appears to be a major factor in determining cost of disability income and accident and illness benefits. The study differentiated groups by sex and age and found greater claims in women under age 50. As a result of the study, the New York department has not moved to order insurance companies to alter rates. The study uses the traditional approach to classification of insurance risks, which seeks to "maintain equity between different classes of

[102] *Supra*, note 1 at 140.

[103] Gilpin et al. v. Schenck, No. 74C–420, filed Jan. 24, 1974, SDNY.

[104] The case has been held in abeyance pending action by the department. On Jan. 18, 1977, plaintiffs asked for additional documents; their discovery application is still pending.

[105] The Assembly insurance committee held hearings on the insurance problems of women on Mar. 6, 1974.

[106] 11 NYCRR 217 (1975).

[107] The NAIC task force on sex discrimination is being reconstituted under Commissioner John Ingram to look at rate differentials; Illinois also delayed a decision on rate differentials until it had 3 years of monitored experience to review, Rule 26.04, section 4.

policyholders; each insured should contribute according to the risk which he transfers to the common fund."[108] The approach conforms with the State's antidiscrimination law, which states:

> No life insurance company doing business in this State. . .shall make or permit any unfair discrimination between individuals of the same class and of equal expectation of life, in the amount or payment or return of premiums, or rates charged by it for policies of life insurance or. . .in any of the terms and conditions thereof. . . .[109]

The study is not without its critics. Some have contended that the figures are skewed by adverse selection or by the use of sex as a classification. A group in Illinois alleges that the so-called "sound actuarial principles" accepted by State insurance departments for accepting sex-differentiated rates are "the industry's smokescreen for discrimination."[110] They cite a company using unisex rates that had better loss ratios than those using separate rates for men and women and that closer examination of disability claims shows women to have less costly claims than men.

The issue of different rates for men and women represents the next major step to be taken in the elimination of sex discrimination in insurance. One rate discrimination that exists is in life insurance. Because women are actuarially expected to live longer, it is discriminatory for them to pay the same life insurance premium as men who will not live as long. Several States use a 3-year setback so that a women buying life insurance at age 30 would pay a rate as if she were 27. Since women have a life expectancy of 5–9 years longer than men, the 3-year setback was insufficient to resolve the discrimination. In 1977, New York changed its law to provide for a 6-year setback.[111] The life insurance premium now more adequately reflects the life expectancy of the sexes.[112] Some insurers use the alternative of unisex premium rates. The department permits these rates, but their use is not widespread. Problems of equity in annuity premiums and extraterritorial effect make this a difficult product to market.

The use of sex as a classification for determining rates has been challenged in New York by the Division of Human Rights of New

[108] Joseph S. Gerber, "The Economic and Actuarial Aspects of Selection and Classification," *The Forum*, vol. 10 (1975) at 1207.

[109] New York State Insurance Law, §209.

[110] Women Employed testimony at Hearings of the Illinois Insurance Department Regarding Proposed Rule 26.05 (*sic*) Feb. 3, 1976.

[111] New York Insurance Law §208-a(7)(a), as amended (1977).

[112] This represents a significant change in legislative and departmental attitude. When the issue of availability of insurance was raised in conjunction with a union contract that provided less life insurance for women employees than for men, the department's general counsel replied that the decision was the policyholder's; after all, the "distinction reflects the generally different social status and economic responsibilities between men and women." Letter to Dorothy Bell Lawrence, Aug. 8, 1967.

York under the Executive Law. The action was consistent with the long-standing position of the division that most maternity policies of employers and insurers were unlawful discrimination. The division received a number of cases from teachers who complained that the maternity leave policies of school districts were discriminatory and without reasonable foundation. The State's highest court found, in reviewing several of these cases, that section 298 of the Executive Law required that maternity be treated the same as any other temporary disability.[113]

The first challenge to using sex as a rate-making classification came as a result of a complaint to the division of human rights by a married women who could not get single-person health insurance from a not-for-profit health services corporation licensed by the New York State Insurance Department. The division of human rights asserted jurisdiction[114] and planned to hold a hearing to determine whether the rate differential for marital status was an unlawful discriminatory practice in a place of public accommodation. The insurer petitioned for an injunction to prohibit the division from exercising jurisdiction.[115]

The court did not find a legislative intent to prohibit discrimination by marital status, since section 40(10) of the insurance law was not amended to prohibit such discrimination. The court found, therefore, that no unfair discrimination had occurred under insurance law and the division of human rights did not have concurrent jurisdiction over rate making. The superintendent was found to have sufficient authority to deal with any unfair discrimination.

In a similar case decided March 1978,[116] the court granted a writ of prohibition against the division to prevent it from hearing a discrimination complaint that alleged discrimination by sex, age, and marital status in the establishment of automobile rates. Rate-making authoriy of the insurance department was again deemed to be exclusively with the superintendent of insurance.

Availability of disability insurance remains a problem. The superintendent has specific authority to promulgate rules and regulations regarding the application, endorsement, riders, and contract of disability policies.[117] After the hearings and studies done on the issue,

[113] Board of Education of the City of New York v. State Division of Human Rights, 35 NY 2d 675 (1974); Board of Education of UFSD No. 2 v. State Division of Human Rights, 35 NY 2d 674 (1974); Board of Education of UFSD 22 v. Division of Human Rights, 35 NY 2d 677 (1974).

[114] Under Article 15 of the New York State Executive Law.

[115] Rochester Hospital Service Corporation et al. v. Division of Human Rights and Department of Insurance, New York State Supreme Court, County of Monroe, Dec. 28, 1977; Thompson v. IDS Life Insurance Company, 549 P. 2d 510 (1976, Oregon).

[116] Allstate Insurance Company v. State Division of Human Rights, NYC Supreme Court, Special Term, Part 1.

[117] New York Insurance Law §459.

the superintendent asked insurers to review their policies for discriminatory aspects. Some women still cannot obtain policies. Two large New York insurers were contacted for information for this paper and both indicated that they do not sell disability insurance to full-time homemakers.[118] Now the discrimination is by occupation!

The New York Court of Appeals ruled in 1976[119] that the State's Disability Benefits Law,[120] which exempted pregnancy from disability benefit coverage, was invalid. The human rights law prohibits discrimination in employment based on sex. The court read the two laws together as providing concurrent, minimum standards and chose the one which held the greater obligation as controlling. The disability law passed in 1949 excluded insurance coverage for maternity. When the human rights law was amended in 1965 to prohibit sex discrimination in employment, efforts began to get the disability exclusion removed. The court distinguished its decision from the Supreme Court's ruling in *Gilbert v. G.E.* [121] because a different law was controlling. *Gilbert* allowed a private employer to provide a disability insurance plan that excluded benefits for disabilities due to pregnancy. The "Court viewed G.E.'s plan as representing a gender-free assignment of risks in accordance with normal actuarial techniques."[122] The employer was seen as free to contract for coverage of whatever risks he chose even if a risk applicable to one sex was excluded.

Pursuant to the court's ruling in *Brooklyn Union Gas,* the workmen's compensation law was amended to allow for an 8-week disability "caused by or arising in connection with a pregnancy." In the event of a complication of a pregnancy, the full 26-week disability benefit is allowed.

Insurers generally do not believe that maternity is a proper subject for insurance. "Pregnancy has been considered by insurers to be a normal condition and not in the accepted sense either an accidental bodily injury or disease. It has been assumed to be substantially within the control of the insured and therefore a planned for or voluntary event. . .it could be anticipated and thus be an event for which one could budget."[123] "The majority of health insurance contracts, however, cover complications of pregnancy"[124] because they are not

[118] The same is true in Illinois. Prof. William Moskoff, *Sex Discrimination in Insurance in the State of Illinois* (1977) at 7.
[119] Brooklyn Union Gas Company v. State Human Rights, 41 NY 2d 84 (1976).
[120] §205.
[121] 429 U.S. 125 (1976).
[122] Pregnancy Disability Benefits and Title VII: Pregnancy Does Not Involve Sex? 29 *Baylor Law Review* 257 (1977) at 281.
[123] Thomas J. Gillooly, Edwin T. Holmes, and John R. Hurley, "The Irrational Trend Toward Mandatory Maternity Coverage," *Drake Law Review* 758 (1976–7) at 759.
[124] Ibid. at 761.

foreseeable. The increased cost of maternity care, an increasing number of women in the work force, and an awareness of inequities in fringe benefit structures has led to pressure on State legislatures and insurance departments to eliminate the disparity.

The statute passed in New York mandating maternity coverage in health insurance contracts is the most comprehensive of its kind. Other States have required provision of maternity benefits in health insurance policies either by law or regulation.[125] Several States have adopted the NAIC model regulation on sex discrimination, which only requires coverage for complications of maternity.[126]

Intensive lobbying for elimination of sex discrimination caused by maternity policies began in 1972 when the Women's Lobby formed and made it a priority issue.[127] In 1974, an interim report by the Temporary State Commission on Living Costs and the Economy[128] revealed that women were paying more for their health care and receiving less, since the area of health services unique to them was either not covered at all or inadequately covered. A study done by the division of human rights of the 50 largest employers in New York State[129] showed the lack of adequate coverage for maternity:

(1) eligibility for maternity benefits was limited to employees' wives, not female employees;

(2) one company only covered pregnancy when there was a multiple birth.

Chapter 843[130] mandated the inclusion of coverage for maternity care "including hospital, surgical or medical care to the same extent that" any other illness is provided for under the terms of the contract. Hospital care coverage can be limited to 4 days and can be limited to persons covered under the contract for at least 10 months. The provision does not apply to a government or public employers.

Since the effective date of the law, commercial insurers who sell accident and health policies have fought its implementation. On January 7, 1977, the Health Insurance Association of America commenced an action challenging the constitutionality of the law and, if constitutional, its impact on existing contracts.[131] During the period of litigation the plaintiff companies have not amended their contracts. Decisions by the courts thus far have upheld the constitutionality of

[125] Florida, New Hampshire, and New York require health insurance contracts to include complications of pregnancy. Ibid. at 722. Colorado, New Jersey, Connecticut, Michigan, and Idaho also require some form of coverage for complications; ibid. at 770.

[126] Ibid. at 768; the Texas Commissioner, however, opposed mandatory maternity coverage. *National Underwriter* (Mar. 25, 1977), p. 29.

[127] The author was a founding member of the Women's Lobby.

[128] *The Cost of Health Care in New York State*, April 1974.

[129] Exhibit in testimony of Barbara Shack before the Joint Economic Committee Hearing on the Economic Problems of Women, July 11, 1973, at 187.

[130] New York Laws of 1976 amending §253 effective Jan. 1, 1977.

[131] HIAA v. Harnett, 395 NYS 2d 372, 390 NY 2d 851 (1977).

the law, but held it to be inapplicable to guaranteed renewable contracts which cannot be cancelled or amended (except for premium changes) by the insurer. The case was recently argued before the court of appeals,[132] the same court that rendered the decision in *Brooklyn Union Gas.* [133]

While this litigation was pending, commercial health insurance policies have become increasingly unavailable to women under age 40 so that insurers could avoid what they feel would be adverse selection if they sold policies before the determination of the pending case.

Other States experienced a burst of interest in sex discrimination in insurance. Several had task forces examine the problem and report with recommendations to the commissioner. The substance of their findings has been noted throughout this paper. Some of their recommendations and followup activity are worth reviewing.

The Pennsylvania study[134] suggested:

(1) Department examinations of insurance companies be required to include review of affirmative action plans and personnel data and include their findings in their report;

(2) Agents' licensing should be monitored by the department and agents' training courses should be instituted to make them aware of discrimination practices;

(3) Companies be required to:

(a) keep claims and expense data by sex and marital status;

(b) notify dependents when their coverage has been dropped or changed;

(c) file programs for affirmative action with the department;

(d) justify any use of sex as a classification.

(4) The department should initiate educational programs and revoke nonconforming policy forms.[135]

Pennsylvania has promulgated an anti-sex discrimination regulation, but the department says that the other recommendations were not implemented.[136] Further revisions of the code are underway.[137]

Michigan's task force[138] urged many actions that would be embodied in the NAIC model regulation. The task force recommended: (1) the commissioner disapprove unfairly discriminatory policy forms; (2) insist on written justifications for differential rates based on race or sex;

[132] Mar. 21, 1978.

[133] *Infra* at 35.

[134] Insurance Commissioner's Advisory Task Force on Women's Insurance Problems, Pennsylvania Insurance Department, June 1974.

[135] Ibid. at 40–46.

[136] Telephone conversation with Pennsylvania department, April 1978; 31 Pennsylvania Code Ch. 145 (1977).

[137] Gayle Lewis Carter, letter to Joseph Tycon, Mar. 29, 1978; Pennsylvania Code Ch. 41 prohibits exclusion of maternity from disability insurance; §41.101.

[138] Women's Task Force Report to the Michigan Commissioner of Insurance on Sex Discrimination in Insurance, June 25.

(3) agents' examinations should include questions on sex discrimination; and (4) the department should publish a buying guide for women.[139] Recently, the unfair trade practice act was amended to prohibit racial and sexual discrimination.[140]

A North Carolina task force[141] recommended amendment of their law to prohibit discrimination on the basis of sex and marital status in the availability of insurance. This has been done,[142] but recommendations on prohibitions for exclusion of maternity coverage in disability policies have not yet been adopted.

The Illinois department commissioned a study on sex discrimination in insurance in that State and an evaluation of the operation of Rule 26.04.[143] The report found that Illinois had similar problems to those of other States. The department, however, is highly critical of the report and has issued a critique. Of the 14 recommendations analyzed, 2 are accepted by the department for implementation.[144] The study did, however, motivate the department's task force on discrimination to establish the objectives of (1) studying the feasibility of extending Rule 26.04 to property-casualty companies, and (2) analyzing other States' activities concerning discrimination.

One of the main criticisms of the report is that it errs in not distinguishing between discrimination and unfair discrimination—the distinction made in all unfair trade practices and antidiscrimination laws and rules. It is argued that underwriting discretion must be allowed in view of actuarial data to support those decisions. Another criticism is that the report seeks legislative remedy where the director of insurance already has authority to act. Rule 26.04, for example, does not need special enforcement mechanisms because the director already has the authority to call a hearing and impose penalties for violations.[145] The director also has the authority to examine companies and review their underwriting guidelines[146] and does not need additional powers in this area.

The department's analysis suffers from its own assumptions in two areas. First, in regard to setbacks for reserves and cash values for policies on female risks, the department sees a change in the setback

[139] Ibid. at 53–54.
[140] *National Underwriter* (Apr. 29, 1977).
[141] Report of the Task Force on Sex Discrimination in Insurance (1976).
[142] Amendments to §58–44.3 and §58–54.4(7).
[143] The Illinois antisex discrimination rule.
[144] Analysis of Prof. William Moskoff's report, "Sex Discrimination in Insurance in the State of Illinois" (July 29, 1977). The recommendations accepted were (1) to ask male applicants for insurance if they have used other names (p. 8); and (2) the department should encourage companies selling disability income insurance in Illinois to make the coverage available to homemakers (p. 12).
[145] Illinois Insurance Code §§401, 402, 403A. Ibid. at 6.
[146] Ibid., §132, 401; ibid. at 9.

from 3 to 6 years as a "stop-gap solution" until new "sex based mortality tables" are developed.[147] It is assumed that sex can still be used as a classification rather than some other characteristic statistically correlated to incidence of death or longevity. The department would not use race as a classification, yet differences in longevity can be documented on that basis. The category is what is in question as a discriminatory practice, not the collected data.

Second, the department agrees that disability income insurance should be made available to homemakers but questions the need for such coverage.[148] While Professor Moskoff's report did not document the need for the coverage or the problem in providing it, others have. Discussions at the National Women's Conference[149] led to passage of a resolution urging States to adopt the NAIC model regulation that prohibits denial of coverage to females "gainfully employed at home."[150] The pivotal issue is whether a homemaker is "gainfully employed at home." The resolution of the issue has broad social and economic implications, but as a "stop-gap" measure, insurance is needed to replace a homemaker's services as housekeeper and child-care worker in the event of disability. As such replacement has become increasingly expensive, a need for insurance has emerged.

Conclusion

In the last 4 years, State insurance departments have confronted the issue of sex discrimination and used their authority to prohibit that which is deemed to be unfair. The responses have been conservative without use of extraordinary or unusual methodology. Problems related to race discrimination have been treated by States under unfair trade practices or special statutes; such discrimination does not appear prevalent in life and accident and health insurance. The discrimination that does exist is part of the socioeconomic conditions that cause minorities to suffer greater unemployment and lower wages; insurance is less available as a result of these circumstances rather than because of behavior by insurers. Insurers are not, however, without fault, and greater efforts at public education and marketing could expand insurance product availability. Racial discrimination in rates is universally prohibited.

A search for creative and innovative programs by States to eliminate discrimination in insurance reveals limited activity. Several States have consumer hotlines—e.g., Pennsylvania, Kansas, and New York—which answer questions and handle complaints. The New York

[147] Ibid. at 7.
[148] Ibid at 12.
[149] Houston, Texas, November 1977.
[150] NAIC Model Regulation to Eliminate Unfair Sex Discrimination §6.

experience is that this does not attract many complaints of discrimination. The reports issued by several departments have been informative only to those who had access to them.

In Wisconsin, the State bar association sponsored a clinical education program on "Women Buy Insurance" in November 1976. The program covered the problems, State activity, and possible solutions. In New York, the women's division of the Legal Aid Society sponsored a conference (February 25, 1978) on legal problems of women and included a panel on insurance.

There is a noticeable trend in women's conferences to include discussions of insurance problems. State insurance departments can be helpful by participating in or setting up such educational programs for women; potential host organizations are abundant. Booklets proposed by insurance departments on women and insurance would also be helpful, since the departments have the needed expertise to prepare them.

The New York mandatory maternity law should become a pacesetter to eliminate this form of discrimination. State insurance departments can, and should, prohibit exclusion of maternity benefits in any accident and health insurance policy. Coverage for maternity as a temporary disability is also necessary to meet the economic needs of working women.

The newly reconstituted NAIC task force on sex discrimination harbingers well for an intensive review of rate structures and actuarial assumptions. States should give their task force active support[151] and urge completion of its work. Ultimate equity requires an intensive review of rate making.

Most importantly, State insurance commissioners must evidence a commitment to ending unfair sex discrimination:

(1) They should appoint and hire women in their departments who will ferret out subtle discrimination practices and bring them to their attention;

(2) They should act against unfair sex discrimination practices with the same enforcements that are used for violations such as misrepresentation, false advertising, and rebating; and

(3) They should set up programs and train department personnel and licensees in examples of unfair discrimination by sex.

There is reason for optimism in that insurance departments can act effectively; there is reason for pessimism in that the remaining issues are difficult and will take time to resolve. Passage of Equal Rights Amendments to the United States and State constitutions will set the

[151] The Report of the Select Committee on Insurance Rate, Regulation and Recodification of the Insurance Law, New York State Document No. 710 (1975), recommended that the State review and verify actuarial data use for rates.

legal framework within which insurance departments can continue current activities with more vigor or begin new ones.

Comments on Paper Presented by Linda Lamel

By Thomas C. Jones, Commissioner of Insurance, State of Michigan

I would like to thank the U.S. Commission on Civil Rights for inviting me to be here today, and to thank Linda Lamel for her thoughtful discussion paper.

I intend to devote my remarks to an extension and amplification of several of the issues raised in Linda's paper. Specifically, I would like to concentrate on the following issues.

- First, the nature of discrimination in insurance and the major theoretical and economic issues which are raised by efforts to limit unfair discrimination.
- Second, what appear to me to be the strengths and weaknesses of the current regulatory system in dealing with the problems of discrimination.
- And third, the question of whether Federal involvement in efforts to combat unfair discrimination is necessary or desirable.

The Nature of Discrimination

The first issue—the nature of discrimination—is a very difficult one and Linda devotes a good deal of effort to the distinction between fair and unfair discrimination in insurance. The peculiar nature of an industry based on the assumption of other people's risks makes discrimination between levels of risk essential. If no distinction is made between good risks and bad, then either the financial solidity of the company is threatened, or low-risk consumers are forced to subsidize high-risk buyers. The question becomes: What is unfair or unjustified discrimination?

The answer to that question, as Linda points out, is not always clear. Many people dispute the validity of the actuarial evidence now in use, and there is controversy as to what kinds of characteristics justify the use of different actuarial classifications.

Not all of these issues can be resolved within what appears to be the main public policy model of insurance regulation. So long as sex and other factors continue to be predictors of risk within accepted actuarial practice, companies will continue to use and regulators will continue to permit the use of these factors. The ultimate decision as to whether sex as an underwriting criterion will continue to be permitted, or banned as race now is, must lie with the legislatures or the courts. While there seems to be a growing consensus that availability should

not be restricted by such factors as sex or age, what should be the permissible impact of these factors on rating structures, is as Linda indicates, a matter of intense debate. The need for some kind of policy framework which will help clarify the distinction between fair and unfair discrimination is clear. Discrimination on the basis of sex, which is the primary example used in the paper at hand, is not the first nor the only classification principle to be attacked. Discrimination on the basis of geographic location is now being challenged, and age classifications could be attacked in some lines of insurance. Many classifications now being used could be questioned in a similar way.

I realize that my remarks have not pointed the way to a resolution of these controversies. What I am suggesting is that the principles which are the basis of insurance are sufficiently imprecise so that what constitutes responsible underwriting and regulatory practice is becoming less and less clear. The courts and legislatures must act to make these principles clear.

The Role of the State

I do not mean to be entirely pessimistic. As Linda points out, many States are beginning to enact legislation which attempts to balance the legitimate needs of the industry to distinguish between levels of risk against the rights of consumers to be certain that classifications accurately reflect risk. In Michigan we now have a strengthened Uniform Trade Practices Act which prohibits refusal to insure or to limit coverage available on the basis of race, sex, or marital status. It also prohibits unfair discrimination based on age, residence, handicap, or occupation. Rates cannot differ according to any of these principles except to the extent they are based on credible loss statistics and sound actuarial principles. While legislation of this type does not eliminate the dilemma completely and does not ban the use of such classifications as sex, it gives the State statutory authority to enforce more stringent adherence to sound actuarial principles. In order to enforce this legislation, our industry standards division has begun reviewing policy forms for evidence of discrimination, and our field examiners have begun a selective review of underwriting manuals and statistics which has turned up some evidence of bias. I must admit that getting the legislation was somewhat easier than enforcing it.

Other States have adopted similar approaches to dealing with the problem of discrimination in insurance. One of the strengths of State-level regulation of the insurance industry is, as the paper points out, that 50 different regulatory systems provide the opportunity for a variety of experimental regulatory approaches. The disadvantage to this system is that fundamental rights are protected in a rather uneven fashion across the country. So long as the system is characterized by

widely varying attitudes toward the regulator's responsibility to protect basic rights, it will remain difficult to develop acceptable distinctions between fair and unfair discrimination.

The Federal Role

One issue with which Linda deals only briefly, but one which is implicit throughout her paper, is that of Federal regulation. It is an issue to which I would like to speak more directly because I believe that discrimination in life, health, and disability insurance will begin to attract increasing attention at the Federal level. Other insurance issues, including no-fault automobile insurance and consumer protection in the life insurance industry, are already being examined by Congress and the Federal Trade Commission, respectively. We can expect that many areas where State regulation is thought to be inadequate will attract similar attention. The fact that this conference is being sponsored by the U.S. Civil Rights Commission indicates such interest.

I believe that the States can and should act effectively to eliminate unfair discriminatory practices in the life, health, and disability insurance industries. I also believe, however, that the response to this problem by the States has been uneven and in many instances clearly inadequate. If we accept the proposition that the right to buy life, health, and disability insurance and at a price which fairly reflects risk are fundamental ones, then Federal involvement to ensure uniform minimum standards may be necessary.

This does not mean that legislation is the only possible or even the most desirable Federal response. In the case of the current Federal interest in life insurance sales practices, the Federal Trade Commission has undertaken a study of life insurance products and is working closely with the States to develop product guidelines and consumer information tools. The intent is to use the resources of the national goverment to strengthen the ability of the States to protect consumers of life insurance products.

While Federal legislation to create minimum standards to ensure the availability and fair pricing of life, health, and disability insurance is a regulatory option which must be considered, a more useful Federal role may be to strengthen the ability of the States to deal with the problems of unfair discrimination. This could be at least partially accomplished by funding studies to update and improve the actuarial data which are currently being used by many companies and State regulators.

As Linda makes clear, much of the actuarial data now being used to evaluate risk and the assumptions which underlie it are being challenged. To the extent that the problem can be alleviated by more closely tieing risk to price and by more fully understanding the factors

underlying risk, this kind of Federal involvement can be extremely useful.

It should also be noted that the threat of Federal legislation to ensure the availability and fair pricing of insurance may be as effective as the fact of Federal intervention in motivating States to develop effective antidiscrimination programs. Continued Federal interest and activity in this area will help to make that threat a credible one.

In summary, our objective should be a regulatory system which allows each State to respond independently to its own insurance environment, while ensuring that basic rights are effectively protected across the country. While primary responsibility for a system of this type continues to lie with the States, Federal involvement in some form is, in my opinion, desirable.

Comments

By Eleanor J. Lewis, Assistant Commissioner of Insurance, New Jersey Department of Insurance

Thank you very much for inviting me to speak today. First I will discuss a few matters which have not been mentioned by any of the previous speakers and which I believe the Commission should be aware of. Then I will discuss some aspects of State regulation of insurance.

Everyone has two breasts, but breast cancer is almost exclusively a female problem. Thus, one area of discrimination against women in health insurance is in the coverage for reconstruction of a breast after surgery. Many of those policies that do reimburse such medical services do so only if the reconstruction occurs at the time that the breast is removed. Many doctors for medical reasons will not do reconstruction immediately after surgery. Therefore, large numbers of women are unable to have this medical service reimbursed.

The logic of the health insurer's requirement for immediate breast reconstruction to qualify for reimbursement is questionable. These same insurers will reimburse for reconstruction of a testicle at any time after surgery. They will also reimburse for implanting a glass eye at any time after surgery.

In June 1977 Blue Cross-Blue Shield of Massachusetts began to reimburse for reconstruction of a breast at any time after surgery. Recently Blue Cross-Blue Shield of New Jersey has adopted the same position. But there are still many health insurers who do not. As of June 1977, only 33 of the 55 Blue Shield plans in the country paid for breast reconstruction with or without restrictions. All insurers should pay for reconstruction done any time after surgery.

Next I will talk about mandatory coverages. Much talk is heard about the expensiveness of mandatory coverage and the problem this creates for the health insurer. I find it hard to understand why, when talking about mandatory coverage, the health insurance industry focuses on pregnancy.

Top-level staff members of the Health Insurance Association of America recently published a law review article *(Drake Law Review,* 26:4) about the dangers and problems of mandatory pregnancy coverage as an example of the dangers and problems of any mandatory coverage in a health insurance policy.

Alcoholism is increasingly becoming a mandatory coverage in health insurance. And there are more alchoholics treated in a year than there are pregnancies. In New Jersey in 1977 there were approximate-

ly 456,000 alcoholics and approximately 89,000 births. And most likely the dollars spent treating medical problems of alcoholics in 1 year surpass the dollars spent to cover the normal pregnancies in the same period.

Another area in which females are discriminated against by health insurers is for treatment of anorexia nervosa. This disease afflicts mainly middle-class and upper-class teenage females and is marked by extreme dieting and even self-starvation resulting in death. Hospitalization is usually required for intravenous feeding and other heroic measures needed to increase body weight and prevent death. It is commonly assumed that anorexia nervosa is psychological in origin, although it obviously results in serious physical problems. Many medical insurers only reimburse for treatment of anorexia nervosa under the mental disorders portion of a health insurance policy. This benefit is usually less than the medical services benefit and may not even provide the necessary number of hospital days per year for an insured needing hosptialization due to malnutrition and starvation.

In contrast to the health insurance industry's coverage of anorexia nervosa is their traditional coverage of alcoholism. Alcoholism benefits are usually more limited than general medical benefits in a health insurance policy, but the alcoholics put in the hospital for cirrhosis of the liver, malnutrition, or any of the other medical disabilities resulting from alcoholism are treated under the medical portion of a policy and not the more limited alcoholism benefit. Therefore, I find it difficult to understand why the industry does not take the same position when treating the medical disabilities which result from anorexia nervosa.

Next I will discuss the sale of industrial life and health insurance which occurs in every State to poor people and needs the attention of this Commission. Industrial life and health insurance is also known as weekly debit insurance. It is sold by an agent who canvasses the ghetto areas of the city and the poor sections of rural communities. Originally, debit life insurance was burial insurance bought to cover funeral expenses.

I am currently conducting market conduct examinations of the four New Jersey insurance companies who specialize in debit life and health insurance. In all cases the expenses of the company in selling the insurance are so great that the insured receives the most minimal coverage of all. In one company, 40 cents of every health insurance dollar goes to pay for commissions, 27 cents goes to pay for company expenses, and 23 cents goes to pay for claims. As a group, these insureds might be better served if they put every dollar they now paid to the company in a bank or a cookie jar and saved it to use when they have a health insurance problem.

Debit life insurance is rarely sold in amounts greater than $5,000, and the bulk of the policies are for $1,000 to $2,000. Many of these policies contain an accidental death benefit which pays double the policy's face amount in the event of death by accident. I know of a company in New Jersey where when death occurs by accident they may send the beneficiary $500 and say, "If you think you deserve more money, write us a letter." Since these letters are generally sent to people who are relatively illiterate, the company rarely receives a response and rarely pays the additional money owed.

James R. Young describes very clearly the problems and inequities of credit life insurance in an article titled "Consumer Problems with Industrial Life Insurance," *Journal of Consumer Affairs,* 1976, 10:2, 255–60. A copy is attached.

Now I will discuss some aspects of State regulation which have not been mentioned. Specifically, I will discuss who is the peer group of the insurance commissioners in this country and the environment in which the commissioner operates. At any given time, the majority of commissioners in office come from some area of the insurance industry and will be employed by some area of the industry after they leave office. Therefore, while commissioners they are hesitant to do anything that would damage or upset the industry. In late 1977 Francis Cerra of the *New York Times* wrote an article about the employment history of the last few New York insurance commissioners. She reported how all of these men were employed by the industry after they left public office.

The majority of commissioners are appointed by the governor and serve as a member of the governor's cabinet. A few commissioners are elected.

All commissioners are members of the National Association of Insurance Commissioners.

The main function of the NAIC is to develop model legislation and model regulations. This is done through an extensive network of committees, subcommittees, task forces, and technical advisory committees. While the commissioners and their staff are always the chairpersons of all committees and subcommittees, the input from the industry is overwhelming. Usually, most of the technical work for any model bill or rule is done by the industry because the departments are too understaffed and overworked to give the required time and energy to the task.

At the NAIC's semiannual meetings, model bills and rules are voted on. When debate about a proposed rule or law is particularly strong, the industry and their favorite commissioners urge the dissenters to agree on a model bill. There is constant mention of the benefits of uniformity. Similar discussions occur when any State seeks to adopt

other than a model law or rule. Yet at the same time, whenever Federal regulation of insurance is mentioned, the industry and the NAIC are adamantly opposed because it will eliminate the opportunity for each State to act individually in its own wisdom.

The NAIC holds two major conventions per year, one in December and one in June. At each of these meetings there are approximately 300 people from the insurance departments, 1,200 to 1,500 from the industry, 6 members of the press, and 4 representatives of consumer groups. In the course of a 5-1/2 day meeting, the commissioners do not meet without the industry present for even 15 hours.

The industry generously supports each of the major conventions. Their registration fees and other financial expenditures support several breakfasts and a luncheon for commissioners. They also provide for the extensive "ladies outings" held each day of the meeting for the wives of industry and department people attending the meeting. There is one major lavish dinner at each meeting for all who want to attend; this too is paid for by the industry. There also are several evening entertainment programs provided by the industry, such as boat rides or outings to local spots of interest.

Many companies maintain hospitality suites which are open from 7:30 a.m. and provide liquid refreshments at any time until the last person leaves. Some industry representatives have as their sole responsibility staffing the hospitality suites. Also at each meeting, the people staffing the various desks, the furniture and equipment used, and other amenities needed to hold such a meeting are donated by the industry.

At each meeting, the "Passe Club" holds a luncheon for past and current commissioners. The only former commissioners who attend are those now employed by the industry, so here we have a roomful of current insurance commissioners socializing with past commissioners now employed by the industry.

The NAIC divides the country into six regions. Each of these regions holds a meeting once a year. Normally this meeting is attended by about 50 department people, 150 industry representatives, and a few members of the press. In the fall of 1977, Commissioner James Stone of Massachusetts was hosting the northeast reigon's meeting. He decided to have a meeting without the industry present. He held such a meeting for 2 days in Boston. The insurance department employees present had a very productive work session and learned much about each other and their common problems.

In 1977 Commissioner Harold Wilde of Wisconsin also decided to host a regional meeting without the industry present. He was informed by one of the other mid-western commissioners, a member of the NAIC executive committee, that it was a violation of the NAIC's

bylaws to hold a meeting without the presence of the industry. Eventually it was determined it was not illegal to hold such a meeting, and Commissioner Wilde also hosted a regional meeting without the industry's presence. At meetings where the industry isn't present, each person attending must pay a registration fee of $25 or so to cover the expenses usually paid by the industry.

Thus, there are some faint stirrings of change in the NAIC, but it is very faint and at the current rate it will take decades to achieve significance.

Appendix

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JAMES R. YOUNG

Consumer Problems with Industrial Life Insurance

Purchasing a dime's worth, a quarter's worth or more of weekly premium life insurance with home collection service represented about the only means of owning life insurance for an important segment of our population decades ago. This is no longer the case.[1] Three decades of inflation have practically eliminated "small change" purchases of important categories in the family budget. In addition weekly payment installment plans have almost disappeared as family budgeting has switched to a calendar-month basis.

Even so, over one-third of the individual life policies sold in the United States in 1974 were on a weekly premium payment basis [3]. A brief look at the structure of the industry's marketing system provides an insight to this paradox.

Individual life insurance policies are marketed by two completely different and largely complementary sales organizations. One, called ordinary agencies, serves that segment of the population which can be contacted and interviewed during working hours. "Ordinary" salesmen seek out their prospects over as wide a territory as is economical. The other marketing organization, industrial agencies (also called home service agencies, debit agencies, combination agencies and weekly premium agencies), serves primarily those who cannot be interviewed on the job and hence can be most economically serviced at their homes. Industrial agents are assigned carefully outlined neighborhood territories to which they largely confine their efforts and for which they have franchise rights within the company.

Because of the population explosion of recent decades and because an increasing proportion of jobs do not permit outsiders to interview employees on duty, the industrial agency system has main-

[1] There does remain the indigent sector which possibly needs the collection service, but they should have the relative economy of monthly premium ordinary. This is feasible because the various forms of welfare payments are received on a monthly basis. Actually there is a serious question whether individuals in this group should pay out money for protection against falling into a financial state which already exists with them.

James R. Young is an Assistant Professor in the Marketing–Management Department, East Texas State University, Commerce, Texas.

tained its importance in the total marketing system for individual life and health insurance policies.[2]

This continued and even increased importance is contrary to a widely held belief in mid-century that industrial agents were faced with a diminishing role as part of a phasing-out process. Unfortunately the industry seems to have interpreted this as an endorsement of its underwriting policies, including the entire product line, rather than a reflection of the necessity of continuing the home-service approach. Among the questionable underwriting policies of industrial life companies the following are of special concern to consumers:

1. Continued marketing of an obsolete product line;
2. Unconscionably low persistency of new sales; and
3. Overselling certain low income households.

MARKETING AN OBSOLETE PRODUCT LINE

Some life insurance companies which have industrial agencies have recognized the obsolescence aspect of weekly premium (industrial) policies and have discontinued this product line. Their agents sell essentially the same policies as their ordinary agents. Metropolitan Life, Prudential and John Hancock are examples of companies which have taken this action. Unfortunately very few others have done so.[3]

Many companies still persist in aggressively pushing the sale of industrial insurance. In 1974 total sales of weekly premium policies amounted to $7.6 billion life volume. This is only a fraction of the $176.3 billion total ordinary sales for the same period [3].[4] However for the purchasers of the nearly eight million industrial policies this is an unwarranted loss. Continuing to sell the inadequate, inferior and much more expensive weekly premium policies to buyers who qualify for monthly premium ordinary plans cannot be justified. It could be said this is no fault of the insurers since the consumers had a choice. The weakness of this reasoning is that the buyer cannot be expected to understand life and health insurance. It should

[2] For a current and more extensive discussion of the subject see [4, pp. 3–13, 99–107].

[3] A comparison of the 1966 and 1975 editions of the *Flitcraft Courant* shows about the same number of companies sold industrial life insurance during 1974 as in 1965.

[4] It should be kept in mind that a substantial amount of the ordinary life volume was sold by industrial agents; also over 30 percent of the ordinary volume was term insurance, a type of policy not sold on a weekly premium basis.

accordingly be assumed by both parties that the buyer can rely on the agent to make proper recommendations—much as in the case of the licensed physician, plumber and accountant. Regulating authorities have recognized this to the extent of requiring a certain amount of expertise and professionalism of insurance agents through licensing requirements based on product knowledge and personal qualifications.

LOW PERSISTENCY ON NEW SALES

For the five-year period 1969 through 1973 new sales of ordinary life policies resulted in a 44 percent increase in the amount of ordinary life insurance in force. For the same period industrial sales continued at a slightly increasing rate but resulted in only a 4.5 percent increase in life volume in force [2]. The ratio of new sales to increase in force for eight selected companies is shown in Table 1.

TABLE 1
Life Insurance Sales And Increase In Force, Selected Companies, 1969–1973.

Company and Type	Life Insurance Volume 1969 Through 1973 (million dollars)[1]		In-Force Increase As A Percent Of Issued
	Issued	In-Force Increase	
American General Life of Delaware			
Industrial	$ 211	$ 14	6.7%
Ordinary	1,897	1,001	52.7
Home Beneficial			
Industrial	801	181	22.6
Ordinary	643	268	41.8
Kentucky Central Life Ins. Co.			
Industrial	847	93	9.3
Ordinary	1,060	440	41.5
Life and Casualty Ins. Co.			
Industrial	213	–59	–2.7
Ordinary	1,763	732	41.5
Western and Southern Life Ins. Co.			
Industrial	1,301	308	23.8
Ordinary	4,728	1,908	40.4
Life Insurance Co. of Georgia			
Industrial	1,558	198	12.7
Ordinary	1,717	561	32.7
Lincoln Income Life Ins. Co.			
Industrial	301	26	8.7
Ordinary	536	67	12.4
Independent Life and Accident Ins. Co.			
Industrial	3,937	584	14.8
Ordinary	981	308	31.4

[1] Excludes term life policies
Source: *Best's Insurance Reports, Life-Health, 1974*, A.M. Best, New Jersey, 1974.

It is shocking to note the persistency experience of this sampling of companies. During the five-year period from 1969 through 1973 the Independent Life and Accident Insurance Company of Florida issued nearly four billion dollars of industrial life insurance but increased the amount in force by less than $600 million. Kentucky Central in the same five-year period issued $847 million life volume and gained less than $93 million life volume in force. The jargon of the business for this type of selling is, "If you throw enough mud on the wall, some of it will stick." The data on eight representative companies indicates very little does stick.

This bizarre low persistency cannot be explained away in terms of terminations by death or cash surrender. Only seven percent of the 1969 death claims were on policies which had been in force less than five years [1, p. 47]. As for cash surrendering, industrial policies typically do not have cash values until the end of five years.

The experience of Metropolitan Life, which discontinued selling industrial insurance in 1965, gives credence to the belief that this socially unacceptable low persistency on current industrial insurance production is caused basically by highly questionable underwriting practices on new business. In the five years from 1969 through 1973 Metropolitan's industrial life insurance in force decreased only 22 percent, even though no new business was written. This loss of about four percent per year is an indication that most lapses of industrial policies come from new business sales.

OVERSELLING CERTAIN LOW INCOME HOUSEHOLDS

Still another criticism involves the excessive amount of weekly premiums sold to certain low income households. Coincident with this is the selling of high-cost and inappropriate types of protection.

A study of an industrial debit book for a rural East Texas community and interviews with the agent revealed a number of such cases.[5] The following are illustrative.

Case A.

Ms. A is a widow, age 70 living on social security income. With one company Ms. A has a weekly premium totaling $8.34. Twenty

[5] These interviews were conducted by a senior at East Texas State University majoring in marketing who had three years experience as an industrial insurance agent.

separate policies are involved, of which only eight are life insurance contracts. A total of only $5,750 life insurance is included; the other policies are individual contracts for accidental death, short-term disability and contracts that pay a stated amount per day while in the hospital. None of the life insurance is on Ms. A. She also pays $4.72 a week to another company on a similar mix of policies.

Case B.

Ms. B is a middle-aged widow who works in the kitchen of a restaurant and rents substandard living quarters for herself and six children. Her premiums with one company amount to $5.99 a week, of which $2.13 provides a $25 a day benefit while she is in the hospital; there is no hospital coverage for the children. The remaining $3.86 buys $1,000 of life insurance on herself and each of six children. To another company she pays $2.04 a week for separate $500 whole life policies on herself and each child. To a third company she pays $1.25 a week for fire insurance on her meager personal belongings. To a fourth company she pays 70 cents a week for a $2,000 accidental death policy for each child and $13.28 a month for $1,000 life insurance on herself and two of the children and $1,500 on a third child.

Case C.

Mr. C and his wife are in their seventies and live on social security. Ms. C does some sewing and domestic work for additional income. Mr. C pays $9.85 a week to one company. This is the total for 22 individual policies. Of these, seventeen are life policies. Only one is on Mr. C: a $2.29 weekly premium with $500 death benefit. There are two separate $500 policies on Mrs. C with premiums of $1.68 and $1.06. The remaining life policies are on their children. Mr. C has other insurance, but it was not possible to get information concerning this.

There are admittedly not enough data on these cases to make a substantive judgment of underwriting practices. It does seem obvious however that the amount of premiums involved in each case, relative to the indicated benefits, justifies presumption of abusive underwriting practices by agents and insurers. It also furnishes some insight to one of the reasons for the unbelievably low persistency reflected in Table 1.

CORRECTIVE ACTION SHOULD BE TAKEN

Corrective measures can and should be taken to minimize these abuses and to improve the position of existing policyholders. The following actions are suggested:

1. State insurance regulatory authorities should investigate these practices. This should be followed by appropriate supervision of individual life insurance companies and agents.

2. The top management people of such companies should do some soul searching as to ethical aspects of their modus operandi. In addition if they would implement some realistic cost accounting analyses they would likely find profit motivation for mending their ways.

3. As a specific action to improve the situation of present policyholders—especially those of long standing—the marketing executives involved could institute a program of analyzing the insurance programs of each of their policyholder families. They might well find that most of these families should and would convert their present weekly premium mode of payments to monthly payments at a substantial reduction in gross premiums. In addition many families do not need the home collection service and should be offered discounts for mailing in premiums or payment by bank draft.

4. Consumer education is of course another approach to improving this situation. A difficulty is that the group presently most disadvantaged by the discussed practices may well be one of the groups least educable in insurance. Consumer education may however have some potential in reducing the number of future instances of abuse.

The continued writing of weekly premium insurance does not represent a crisis in the over-all private insurance industry today, but it is an unsightly blot on the picture. Economic and social forces are slowly phasing it out but not fast enough to prevent the victimizing of thousands of families who can least afford it. It does seem true that for weekly premium insurance, "the song has ended" but a malady lingers on.

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1. *Life Insurance Fact Book, 1971*, New York, Institute of Life Insurance.
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4. Marshall and Zuboy, *The Debit System of Marketing Life and Health Insurance*, Englewood Cliffs, New Jersey, 1975.

Discrimination in the Insurance Marketplace: A Pennsylvania Overview

By William J. Sheppard, Insurance Commissioner, Commonwealth of Pennsylvania, and Gayle Lewis-Carter, Special Assistant to the Insurance Commissioner

I. Legal Basis of State Regulation in Pennsylvania

In 1873 Pennsylvania established an insurance department with limited power to regulate companies. Reorganization of the department occurred under the Insurance Department Act of May 17, 1921, P.L. 789. This statute provides for licensure of agents and brokers, penalties for violations, and an enforcement mechanism, including suspension of licensing, revocation, and civil penalties of $1,000 per violation.

The Insurance Company Law of 1921 is another vehicle of insurance department regulation. Section 354 of the above act provides for the prior approval of policies, contracts, certificates and endorsement riders, and applications by the department. Another regulatory vehicle in the area of rate making for the department is the Casualty and Surety Rate Regulatory Act (40 P.S. sec. 1181 *et seq.*), which provides *inter alia* that all rates shall be made in accordance with certain provisions and that all rates shall not be excessive, inadequate, or unfairly discriminatory.

It is within this general regulatory context that the department functions as a regulator.

The expansion of regulatory power has followed the public's reaction to continued abuses in the insurance system, not the least of which has been blatant and overt discrimination. Regulation, however, on the basis of sex and more covertly on the basis of race and ethnic origins is predicated upon more than abuses. Among the reasons given for the continued expansion of regulatory authority are:[1]

(A) The involvement of the public interest.

(B) The nature of the insurance contract (the purchase of a "promise").

(C) Price considerations.

(D) Elimination of unfair forms of insurance.

(E) Ensuring lawful payment of benefits where due.

[1]Boynton, Melbourne Roy, "An Assessment of Consumer Complaint Handling: The Pennsylvania Insurance Department" (M.S. thesis, August 1973).

(F) Supervision of reserves; and,

(G) Speculation by companies.

Spencer L. Kimball[2] in his study on government and insurance regulation suggested the following goals for regulation: "fairness, reasonableness and equity in insurance; preserving a meaningful degree of liberty to do business; dispersion of power to States rather than to Federal government; keeping the market open for new companies and price competition; and keeping adequate capital within the market for solvency and special social needs."

It is in the context of these justifications and goals that regulatory efforts to eliminate all forms of unfair discrimination must be viewed.

The balancing of regulating, on the hand, an industry and a product and regulating, on the other hand, in the public interest with a meaningful degree of liberty to do business is a tenuous situation at best. Nonetheless, State regulators have done much to further the interests of those groups who had been traditionally considered as borderline markets.

II. An Overview of the Problem: Sex Discrimination in Pennsylvania

Pennsylvania was the first State to conduct studies on sex discrimination in insurance. The insurance department advisory task force on women's insurance problems was formed in June 1973. This task force was charged with the responsibility to pinpoint insurance practices which discriminate against women and to focus on women's complaints.

At the same time, Commissioner Sheppard chaired the NAIC task force on sex discrimination. In that capacity, he directed a solicitation of information from all States informing them of the project, thereby gaining information and avoiding a duplication of effort on the part of those States working to eliminate sex discrimination in insurance. Many States naively responded that they had no sex discrimination problem at all.[3] Others said that a problem might exist, but that it had not been brought to their attention. One State began its response: "Vive le difference." It went on proudly to state that:

[2]Kimball, Spencer L., and Herbert S. Denenberg (eds.), *Insurance, Government, and Social Policy: Studies in Insurance Regulation.* Homewood: Richard D. Irwin, Inc., 1969.

[3]Speech to the Women's Insurance Society of Philadelphia, April 1975, on "Sex Discrimination, the ERA, and Insurance Regulation in Pennsylvania."

To date, this State has not ratified the Equal Rights Amendment; it has defeated a proposal for an equal rights commission, and has twice failed to pass their proposed amendment to the Unfair Trade Practices Act, which would have added six new criteria to the list of prohibited reasons for refusal of coverage.

In Pennsylvania, however, a review of insurance policies, application forms, and endorsement riders was underway. Restrictions and limitations in coverage or benefits applicable only to women and differences that were purely sex based were compiled from this review.

The task force study of the department's complaint files found that a disproportionate number of complaints that involved departmental action were maternity coverage problems, indicating a serious problem with health insurance.[4]

The task force, however, found that alleged discriminatory practices were not limited to health policies, but permeated virtually all lines of insurance. The task force found the following abuses by line of insurance occurring with significant frequency:[5]

(1) Maternity coverage was unavailable through Blue Cross and Blue Shield to single women unless enrolled at a higher cost under "family coverage" contracts.

(2) Maternity coverage through commercial carriers was unavailable to single women.

(3) A woman who is eligible for group coverage through her own or her husband's group may not enroll in Blue Cross-Blue Shield nongroup plan.

(4) Commercial health insurance frequently excludes coverage of newborn infants 7 to 30 days after birth.

(5) Married women are unable to enroll as individuals in group coverages.

Disability Income Insurance

(1) Disability from pregnancy and all complications caused or contributed to by pregnancy, childbirth, abortion, or miscarriage, up to 6 months after pregnancy is over, is not covered in personal disability insurance policies.

[4]Insurance Commissioner's Advisory Task Force on Women's Insurance Problems Final Report and Recommendations, June 1974, p. 39.
[5]Ibid., pp. 3–7.

(2) Premiums are substantially higher for women even where coverage and benefits are lower.

(3) Women couldn't obtain coverage if they worked part time or worked at home.

(4) Coverages were not generally available to women in lowest occupational classes although available to men in these jobs.

Life Insurance Pensions and Annuities

(1) Despite mortality data indicating women live 6 to 9 years longer, the industry granted women only a 3-year setback on premium rates.

(2) Where guaranteed-purchase options were offered, full benefits were unavailable to women. Women had fewer dates in which to use the options, for example, at marriage or birth of each child.

(3) Underwriting manuals and ratebooks put women in separate classes with substandard risks and cautioned agents about writing and soliciting women.

(4) Companies had reservations about writing pregnant females.

(5) Companies prescribed special criteria for female insurability, such as "self-supporting," leave home to work, or be employed in a "responsible" position.

(6) Coverage for a married woman often depended upon the extent of her husband's coverage.

(7) Credit life insurance was rarely offered on a married woman's life even when she applied for a loan because credit discrimination itself generally resulted in requiring the husband's signature on personal loans, mortgages, and similar kinds of credit.

(8) Married women whose insurance was part of their husband's family coverage (which may cover husband, wife, and children all on the policy) may lose their insurance if divorce occurs.

(9) Individual annuity programs were sex segregated, leading to lower monthly benefits for women, based on their longer life expectancy, even when they have made equal contributions to those made by men.

Property-Casualty Insurance

1. Complaints of sexism and bias on the part of agents and home office underwriters were substantiated by material found in underwriting manuals such as derogatory references to certain women's occupations or lifestyles.

2. Divorced and separated women were treated as undesirable risks.

3. Women living with men outside of marriage were refused insurance, cancelled, or refused renewal.

4. Single persons, male or female, who work away from home generally had difficulty purchasing homeowner's or renter's insurance.

5. A married woman often had difficulty obtaining insurance in her name only, leading to interruption of coverage in the case of divorce.

Based on these recommendations, the Pennsylvania insurance commissioner took the following action:[6]

(1) All insurance policies which discriminated on the basis of sex were invalidated.

(2) Publication of an appeal to Pennsylvania women to send complaints about sex discrimination and also publicize the consumer services of the department to women for all types of problems. These recommendations were publicized through press releases, taped radio messages, and television spot announcements over an 8-month period.

(3) The department notified women employees in group medical care plans about their right to equal maternity coverage under equal employment opportunity laws.

(4) The department published a notice to group insurance carriers spelling out the fringe benefit requirements of the U.S. Equal Employment Opportunity Commission.

(5) The department requested the Pennsylvania Attorney General to issue an official opinion on the legality of treating maternity coverage separately from other medical care and disability insurance coverage.

(6) In the area of disability insurance policies, the department published notices prohibiting discrimination in benefits, coverage, and availability on the basis of sex.

(7) The department required companies to submit extensive annotated lists of policies which discriminate in the above ways; and,

(8) Departmental shoppers' guides were updated to include more information for female insurance policyholders (use of female insurance comparisons in the *Health Insurance Guide* and a *Mini Guide to Insurance: Women's Rights).* Even more on the point, Pennsylvania published the first insurance guide for women.

III. Followup in the Area of Legislation

While some improvements could be made and abuses eliminated under existing statutes, it became evident that additional authorities were needed.

In July 1974 Pennsylvania enacted an Unfair Practices Act, a strong vehicle for eliminating discrimination in insurance. The act is designed

[6]Ibid., p. 39.

to strengthen the insurance department's powers over deceptive, misleading, and anticompetitive practices by both agents and companies. It specifically addresses abuses that women, minorities, and city dwellers have suffered from unscrupulous companies and insurance agents and brokers. One of its most comprehensive provisions is an expansion of the definition of "unfair discrimination," which is defined in section (iii) as making or permitting any unfair discrimination between individuals of the same class and essentially the same hazard with regard to underwriting standards and practices or eligibility requirements by race, religion, nationality or ethnic group, age, sex, family size, occupation, place of residence, or marital status. The inclusion of "marital status" is very important because single, especially divorced, women are more discriminated against than their male counterparts.

A formal attorney's general opinion on discrimination on the basis of sex in insurance rates and discrimination on the basis of normal pregnancy in insurance was in fact requested in late 1974. To date, there has been no such opinion issued, but the insurance department is proceeding through the alternative avenue of regulation.

Suddenly, companies were all aflutter trying to ascertain just what was *unfair* sex discrimination. "Discrimination" is, of course, a key factor in classifying risks and setting rates. The "discrimination," however, must be statistically based.

Our ongoing review to determine compliance with the Unfair Practices Act revealed that the bulk of the discrimination problems—approximately 90 percent—occurred at the application stage. Obviously, this is a most critical stage of the insurance process, as it directly impacts on whether or not women and men will enjoy equal availability with respect to the various types of insurance.

On the application form itself, the most glaring discrimination involved questions pertaining to health. Women were asked graphic questions about their genital organs. No such questions were asked of men, indicating that stricter underwriting standards were applied to women than were applied to men.

Another fairly egregious example of discrimination was consistently found in agents' reports, which the insurance department considers to be part of the application. When the applicant was a woman, she was asked who would pay the premiums on her policy. The inherent assumption is obvious, since a single male applicant is not asked a similar question. The questions asked of a married woman who applies for insurance become even more offensive. In addition to the "Who will pay?" question, she is asked "to disclose the insurance in force on her husband." No counterpart questions are asked of male spouses.

Several questions are still permissible which may at first glance appear to be discriminatory but are not considered so, since no possible counterpart question exists for men. The questions are: "What is your birth or maiden name? Are you pregnant? How many children do you have?" We feel that the latter questions are relevant to a woman's health and are not discriminatory per se. Essentially, then, our goal has been to assure that any question asked of a woman which has a "counterpart" for men is either asked of both or neither. At this date insurance forms used in Pennsylvania have been so altered.

The department's effort to eliminate discrimination against women, not surprisingly, led to allegations of reverse discrimination concerning cost differentials, particularly in life insurance. The most overt instance concerned the 3-year setback for women's life insurance rates. A woman buying life insurance at age 35 pays the rate that a 32-year-old man would pay. The 35-year-old man, however, pays the higher rate, which is a 35-year-old's rate. It is telling that the rating chart is geared to the life expectancy of a man. Rather than expand the effort to develop independent tables for women, the industry elected the setback procedure. To date, the insurance department has left the 3-year setback undisturbed, as we have not felt it expedient, realistic, and more importantly, statistically accurate to alter it at this time. The fly in the ointment, however, is that there may be reason to believe that the 3-year setback is actually inadequate. The Pennsylvania task force on sex discrimination in insurance found that a more acceptable setback would be 6 to 9 years or the alternative of unisex rating.

The "spouse form" presented another example of discrimination via insurance contract forms. It provides insurance on the spouse of the principal insured and was commonly called "the wife rider," with the assumption being that a woman would never be the principal insured. But, if she were, her husband would be out in the cold under this type of insurance. We have insisted that this rider be renamed "spouse rider" and that the pronouns she, her, etc., be changed to she or he, her or his, and that references to wife be changed to husband or wife.

In the same manner, equity for both males and females was established with respect to retirement policies. Benefits available to men always began at age 65; those available to women began at 62. Now, companies must either offer the 65 to both and/or the 62 to both.

Waiver-of-premium benefit presented an interesting quirk in the area of life insurance. Under the waiver-of-premium benefit, which could be purchased for a slight additional charge over the regular premium, a person who becomes disabled to the extent that he or she cannot perform his or her occupation is relieved of his or her responsibility to make premium payments on the life policy. As long as the disability exists, the disabled individual is not required to make premium

payments and the policy remains in force. This option was available to men and women. But it was not equally available. A male policyholder could take advantage of the option until age 60; a woman had only until age 55. As of April 1, 1975, policies containing this provision no longer receive approval from the insurance department.

A final area of contract discrimination concerns the guaranteed-purchase option. Again, this applies only to life insurance. An individual who owns an insurance policy can obtain a rider of a guaranteed-purchase option for as little as $2.50 per month. The option provides that at certain ages the insured can purchase additional coverage from the company without undergoing further physical examination and without proving insurability. The option dates provided to males were general and without specific basis in personal statistics. Those provided to women, if any, were often based solely on changes in personal status such as marriage, birth, or adoption of a child, or the creation of an indebtedness on a mortgage. Further, on these alternate option dates, it was the husband who was given the option to purchase the additional insurance on his spouse.

Another problem that the women's task force in Pennsylvania found in the area of medical care insurance was the problem of coverage for newborn children. Apparently, commercial health insurers frequently excluded coverage of the newborn 7 to 30 days after birth. The nonprofit health insurers were also not doing the job. The foundation of our efforts to extend maternity coverage is the Newborn Child Coverage Act, which is geared to provide for the health and welfare of newborn children and their parents by regulating certain health insurance coverage for newborn children. The legislation is directed to the nonprofit insurance organizations, Blue Cross for example, but it encompasses all individual and group health insurance policies issued by insurance companies, nonprofit corporations, and fraternal benefit societies. The legislation was originally devised to guarantee routine nursery care for healthy infants as well as for infants suffering from an illness, but was interpreted through regulation adopted in October 1976 to only extend coverage to sick or injured newborns.

Extending reform in the area of health insurance, the Pennsylvania General Assembly passed the Individual Minimum Standards Act, P.L. 123 (No. 54) (40 P.S., secs. 776.1 to 776.7), in 1976, thereby providing the insurance commissioner with authority to issue regulations to establish minimum standards for benefits under each of the following categories of coverage in individual policies of accident and health insurance and subscriber contracts of health plan corporations and nonprofit health service plans and certificates issued by fraternal benefit societies:

1. Basic hospital expense coverage.

2. Basic medical-surgical expense coverage.
3. Hospital confinement indemnity coverage.
4. Major medical expense coverage.
5. Disability income protection coverage.
6. Accident-only coverage.
7. Specified disease or specified accident coverage, and
8. Supplemental coverage.

This act not only provides for the reasonable standardization and simplification of terms and coverages, but provides for the facilitation of public understanding and comparisons of this insurance product. Full disclosure to the consumer is mandated by this legislation. The commissioner in his regulations can prohibit policy provisions which in his opinion are unjust, unfair, or unfairly discriminatory to the policyholder, subscriber, any person insured under the policy, or beneficiary. Regulations under this statute have already been published three times in a proposed state. Administrative rule-making public hearings have been held, and the final version of these regulations will be published early in May of this year.

IV. Regulation Leads to Litigation

It would appear that the authority of the commissioner to issue rules and regulations under the Unfair Practices Act is clearly implicit in this legislation. In 1976, however, the Pennsylvania Association of Life Underwriters decided to litigate this exact issue of the commissioner's authority involving the promulgation of certain regulations in the area of disclosure in solicitation of life insurance. The Commonwealth Court of Pennsylvania in its opinion of April 1, 1977, stated: "We believe that the Commissioner here has implied authority to promulgate the regulations here involved which authority is derived from his statutory power and duty to enforce the act by investigating, prosecuting and penalizing violations thereof."

For authority the court used the *Uniontown Area School District v. Pennsylvania Human Relations Commission,* 455 Pa. 52, 313 A.2d 156 (1973), case which "said in regard to statutory provisions. . .evidence to us a legislative intent to empower the commissioner to do a good deal more than merely interpret the act" (*Volunteer Firemen's Relief Association v. Minehart,* 425 Pa. 82, 89, 227 A.2d 632, 635 (1967)) ("we concede the authority of the auditor general to make regulations in connection with his statutorily imposed duties.") *Newport Homes, Inc. v. Kasah,* 17 Pa. Commonwealth Court 317, 332 A.2d 568 (1974) (Secretary of Penna. DOT may validly promulgate regulations in order to exercise statutorily granted discretion.) This case has been appealed to the Supreme Court of Pennsylvania at No. 82 May Term 1977, and the briefs have been filed.

In November 1975, the attorney general's office of Pennsylvania replied to a request from the department of agriculture as to whether they could award grants and make reimbursements pursuant to section 16 of the Harness Racing Act of 1959 to county agricultural societies and other organizations conducting annual agricultural fairs when those organizations discriminate in membership on the basis of sex. The attorney general's office advised in opinion (75–43) that the agricultural department could not award such monies on the basis of both the 14th amendment to the U.S. Constitution and the Equal Rights Amendment to the Pennsylvania constitution, article 1, section 28. [Equality of rights under the law shall not be denied or abridged in the Commonwealth of Pennsylvania because of sex of the individual.]

There are numerous cases in Pennsylvania cited under the ERA where courts have refused to uphold any difference in treatment on the basis of sex wherever there is State action. *(DiFlorido v. DiFlorido,* 459 Pa. 641, 331 A2d 174 (1975). *Commonwealth v. Butler,* 458 Pa. 189, 328 A2d 851 (1974). *Henderson v. Henderson,* 458, Pa. 97, 327 A2d 60 (1974), *Hopkins v. Blanco,* 457 Pa. 90, 320 A2d 139 (1974), *Commonwealth v. PIAA,* 18 Pa. Commonwealth Ct. 45, 334 A2d 839 (1975).)

The Commonwealth court stated in its decision on *Commonwealth v. PIAA, supra,* that "since the adoption of the Equal Rights Amendment in the Commonwealth of Pennsylvania, the courts of this State have unfailingly rejected statutory provisions as well as case law principles which discriminate against one sex or the other." 334 A2d at 841. The court also stated that "the concept of equality of rights under the law" is at least broad enough in scope to prohibit discrimination which is practiced under the auspices of what has been termed "State action" within the meaning of the 14th amendment to the U.S. Constitution, 334 A2d 842.

Commissioner Sheppard requested an attorney's general opinion on whether the Pennsylvania Insurance Department can refuse to issue or renew licenses to and revoke or suspend licenses of licensees who discriminate on the basis of race, color, religious creed, sex, or national origin in their employment policies. The commissioner further requested advice whether the department could adopt a regulation prohibiting discrimination by licensees and setting forth penalties for violations of such regulation. The Attorney General Opinion No. 75–42 was affirmative to both questions.

The thrust of the opinion was that, just as the commissioner must apply and follow the law of the Commonwealth in approving contracts under the insurance laws of Pennsylvania, he then is unquestionably under the same obligation to follow the laws of the Commonwealth in licensure approval. Just as certain contract terms are unenforceable as against public policy, employment discrimination

is prohibited as being against public interest in this Commonwealth. Therefore, it was clearly within the public interest to construe the Insurance Company Act of 1921 to impose a condition of nondiscrimination in employment practices upon insurance companies doing business in the Commonwealth of Pennsylvania.

Further authority for this opinion was found in the Pennsylvania Human Relations Act, 43 P.S. sec. 951 *et seq.,* which makes it unlawful for any employer to discriminate in its employment policies because of race, color, religious creed, ancestry, age, sex, or national origin, unless based upon a bona fide occupational qualification (employer is defined as any person employing more than four or more persons within the Commonwealth).

Thus, any insurance company which employs four or more persons within the State must comply with the Human Relations Act's prohibition against employment discrimination. Violation of this act can mean either suspension of a company's business, suspension or revocation of the licenses of agents or brokers or both or, at the discretion of the commissioner, imposition of civil penalties.

The act of June 5, 1968 (40 P.S. sec. 1008.1 *et seq.*), or Act 78, provides standards for certain automobile policies issued or delivered in Pennsylvania so that no one can be cancelled or nonrenewed arbitrarily or unnecessarily. There are only two valid reasons for cancellation under this act: (1) Nonpayment of premium. (2) The driver's license or motor vehicle registration has been under suspension or revocation during the policy period. (Department's jurisdiction is after first 60 days of application.)

The department has held numerous hearings on complaints regarding improper cancellation under the legislation and regulations, chapter 61.1 *et seq.* Only a small fraction have even alleged discrimination. To date on investigation by the department, only two have been found to involve any issue of discrimination. This act specifically protects against discriminatory cancellations and/or refusals to write if the sole basis of discrimination is age, residence, color, race, creed, national origin, ancestry, or lawful occupation. The department is awaiting final passage of amendments to this legislation, which include sex and marital status. Cancellations, notices for appeals, and refusals to renew owner-occupied private residential properties or personal property owned by individuals that have been in force for 60 days or more are covered by the Unfair Insurance Practices Act, Act of July 22, 1974, and Chapter 59 of Title 41, Insurance, Pennsylvania Code.

In recent testimony before the house committee on insurance regarding the Pennsylvania automobile insurance plan in January 1978 (assigned risk plan), we studied characteristics which influence

underwriting in urban areas, including occupation, marital status, age, etc. We found out that in urban areas like Pittsburgh, Philadelphia, and throughout the State, the most significant factor affecting a driver's placement with the assigned risk plan was the "previously uninsured status" of the applicant. Other significant factors were age and marital status. We surmised that apparently company underwriters attach a great deal of significance to these factors and construe it as reflecting strongly upon the trustworthiness and responsibility of an applicant.

This department is presently proposing to amend the Pennsylvania No-Fault Motor Vehicle Insurance Act (31 Pa. Code, Chs. 66 and 114) to eliminate discrimination in private passenger, nonfleet automobile insurance rates on the basis of sex or marital status. Recognizing that insurance risk classifications are not determined by fixed criteria, theoretically, it should be possible to use other factors in substitution of sex and marital status factors in order to evaluate risks.

V. Present-Day Priorities

The presently adopted regulation in Pennsylvania regarding the elimination of unfair sex or marital status discrimination in all insurance contracts has as its purpose "to prohibit insurers from denying benefits or coverage to individuals on the basis of unfair sex or marital status discrimination, in the terms or conditions of insurance contracts and in the indemnity criteria of insurers."

Section 145.4 Availability Requirements

(a) Availability of any insurance contract shall not be denied to an insured or prospective insured on the basis of the sex or marital status of the insured or prospective insured. The amount of benefits payable for any term, condition, or type of coverage shall not be restricted, modified, excluded, or reduced solely on the basis of sex or marital status of the insured or prospective insured. The preceding sentence shall not be construed to preclude any person from requesting restrictions, modifications, exclusions or reductions of the benefits payable, or of any term, condition, or type of coverage of his individual policy.

(b) Examples of the practices prohibited by this Chapter include but are not limited to the following:

(1) Denying coverage to members of one sex gainfully employed at home, employed part-time, or employed by relatives, when coverage is offered to members of the other sex similarly employed.

(2) Denying policy riders to members of one sex when the riders are available to members of the other sex.

(3) Denying, under group contracts, dependent coverage to husbands of female employees when dependent coverage is available to wives of male employees.

(4) Denying disability income contracts to employed members of one sex when coverage is offered to members of the other sex similarly employed.

(5) Treating complications of pregnancy different from any other illness or sickness under the contract.

(6) Restricting, reducing, modifying, or excluding benefits relating to coverage involving the genital organs of only one sex when such restrictions, reductions, modifications, or exclusion of benefits are not required for both sexes.

(7) Offering lower maximum monthly benefits to members of one sex than to members of the other sex who are in the same classification under a disability income contract.

(8) Offering more restrictive benefit periods and more restrictive definitions of disability to members of one sex than to members of the other sex in the same classification under a disability income contract.

(9) Establishing different conditions by sex under which the policyholder may exercise benefit options contained in the contract.

(10) Denying maternity benefits to insureds or prospective insureds purchasing an individual contract when comparable family coverage contracts offer maternity benefits.

(11) Limiting the amount of coverage an insured or prospective insured may purchase based upon the marital status of the insured or prospective insured, unless such limitation is for the purpose of designating persons eligible for dependent benefits.

(12) Denying coverage for either spouse because of a change in marital status, such as denying an individual policy to a woman no longer eligible under her husband's policy when the husband's policy is allowed to continue.

This regulation was in effect a few months when it became clear to us in Pennsylvania that we had not gone far enough. The regulation still permitted companies to treat normal pregnancy in a manner different from other illnesses covered under an insurance contract. The department's present regulation merely required that a company offer maternity coverage to single individuals if it offered maternity coverage under an existing family plan. Therefore, if a company did not offer maternity under a family coverage contract, it did not have to offer such coverage under an individual medical care health or

disability contract. It is indeed a form of sex discrimination to exclude maternity coverage from medical care contracts as well as disability insurance contracts at the whim of the insurer.

The department's current proposal on sex discrimination seeks to mandate the inclusions of maternity benefits and pregnancy benefits, including complications of pregnancy, in all medical care contracts and disability insurance contracts. This proposal has not been favorably received by our department of justice.

It is our contention that the commissioner's authority under the Unfair Practices Act to define and determine in his discretion unfair practices is an adequate legal basis on which to regulate. A review of existing case law in Pennsylvania, the ERA, and numerous rulings by the attorney general's office[7] will help us to win this battle. The U.S. Supreme Court decision on December 7, 1976, holding that an employer may exclude pregnancy benefits from a disability plan without violating Title VII does not affect the validity of the Pennsylvania HRC regulations, which compel employers to treat pregnancy like any other disability[8] or the further promulgation of the department's regulations.

Conclusion

It is my personal view that regulators in attempting to mandate maternity coverage, equalize rating structure, and generally monitor and enforce discriminatory conduct in the insurance system can effectively fight against the more obvious, visible, and blatantly illegal practices. With better legislation, we can possibly go after the more insidious forms of discrimination. The real gut issues, however, are the rationality of an existing system which perpetuates and uses actuarial statistics with sex-based classifications reflecting mortality and morbidity patterns which are outdated, societal stereotyping of women and ethnic groups, and economic conditions that compound these stereotypes. State insurance regulators can only begin to chip away at the inherent irrationality that causes discrimination in the marketplace. And only the collective social conscience can confront covert causes of discrimination in our society.

[7]Attorney General's Opinion 75–43 at p. 145.

[8]Anderson v. Upper Bucks County Vocational School PHRC (Commonwealth Ct. Opinion).

State Regulation of the Insurance Industry

By Harold R. Wilde, Commissioner of Insurance,
State of Wisconsin

Discrimination is not a pejorative word in insurance regulation.

There is "good" discrimination, and there is "bad" discrimination (or, more accurately, "fair" discrimination and "unfair" discrimination). These concepts refer to the way risks are classified and rated—in other words, to what the regulator permits (to the extent that he or she has a choice) companies to develop and sell in the marketplace.

But there are other ways in which regulators may deal with discrimination, which may be as important as the functions of policy form and rate approval, complaint followup, or enforcement. Specifically:

1. Insurance departments regularly examine insurance companies. While they may have no authority to take action against a company with a poor record of affirmative action (in hiring and board of directors' composition), this does not mean that a company's record may not be highlighted in the exam report, which becomes a public document. [In all Wisconsin exam reports, we have a short section devoted to affirmative action (on the assumption that a company which discriminates in hiring is less likely to fairly discriminate in its underwriting and classification judgments).]

2. In the approval of a new insurance enterprise, a commissioner may reasonably take into account the composition of the company's board of directors. It is at this point that the commissioner has maximum leverage. (We have recently used that leverage in the incorporation of a Blue Plan under a new statute, to require a board that is truly representative of its policyholders.)

3. In its hiring policies, an insurance commissioner's office signals the priority it gives to affirmative action to the insurance industry. This is also true in the various advisory council appointments which a commissioner may make. (For this reason, in Wisconsin approximately one-half of the professional positions we have filled in the past 2 years have been with women, and for the first time, women and minorities have been appointed to such groups as "the insurance agents' advisory council.")

4. The power of an insurance commissioner to "educate" both the public and the insurance industry about issues related to insurance discrimination—through booklets, press releases, press conferences, etc.—is immense and generally untapped. (Our office has produced a special consumer guide on "Women and Insurance." We have

participated in and helped sponsor a forum highlighting the legal issues involved in insurance discrimination against women. In press releases in the future, we intend to highlight such things as the composition of the boards of directors of insurers and their agent forces.)

5. Affirmative action in the marketing of insurance may require commissioners to take a look at the impact of their agent-licensing procedures. (When Wisconsin adopted the uniform Educational Testing Service exam for agent licenses, we also established a special apprenticeship program, for individuals who might be "poor test takers.")

6. Most commissioners' offices have a variety of additional, nonregulatory functions or duties which may have a significant effect on issues of discrimination. For example, commissioners or their staff members may sit on retirement and group insurance boards, which negotiate insurance contracts and establish State policy concerning these matters. There is much potential here for introducing reforms, as well as for trying various innovations (and therefore being a model for the private industry). (In Wisconsin, the commissioner chairs the group insurance board; last year the board decided to treat pregnancy like all other disabilities in the income continuation program for State employees. One unique function of the commissioner's office in Wisconsin is the State Life Fund, the only State life insurance company in America. Here a different kind of reform has been initiated. The fund has had unisex rates for many years; in 1977 the rate structure was altered to give women policyholders the benefit of a full 4–8 year differential in rates.)

7. Another area for affirmative action by the commissioners' offices is in the residual market vehicles, such as FAIR plans, which are used disproportionately by minorities, and which frequently function under rules of the commissioner. (For example, in Wisconsin, we have mandated that our FAIR plan provide ACV homeowners' coverage. We have also acted to assure minority representation for the first time on the board of the FAIR plan.)

It is important to highlight the spectrum of remedies and approaches available to regulators in addition to what might be called "definitional" and enforcement activities (which are the primary activities pointed out in Ms. Lamel's paper on insurance regulation). Unfortunately, those activities frequently promise more than they deliver. And they sometimes are used to obscure the complexity of the moral and legal issues involving insurance discrimination which remain to be resolved.

Wisconsin has adopted by rule a version of the NAIC model sex discrimination statute. We have also implemented a special rule relating to discrimination in the availability of automobile and

homeowners' insurance on the grounds of physical condition or handicap, sexual preference, past criminal record, and a number of other factors. But we are under no illusion that adoption of such rules "solves" the problem. Many, if not most, consumers are unaware of their rights. And enforcement is, essentially, only in response to complaints. At this point, we do not have the resources to initiate a broad investigation to test compliance.

Finally, we have not resolved in our own minds all of the issues which remain concerning fair and unfair discrimination in insurance. Right and wrong are not always simple determinates. For example, we think the strongest case for abolition of sex as a classification device can be made in automobile insurance (where there is evidence that "miles driven" may almost totally "explain" the differences in accident frequency between young males and young females). Yet, even here, we are concerned about the practical impact (in particular, for young women) in mandating an end to discriminatory rating in an "open competition" State, where insurers may underwrite whom they please. In other areas, such as life insurance, where a reasonably persuasive argument can be made that sex *is* a causal variable (i.e., independent of income, lifestyle, etc.), the issue is one of practicality *and* equity. It is important that insurance commissioners raise both sides of this equity issue as they attempt to move an extremely conservative industry towards a position of greater social responsibility. Our responsibility is to neither defend the past practices of the insurance industry nor ignore the implications of "reforms" implemented in the name of basic concepts of equal rights.

Discrimination Against Minorities and Women in Pensions and Health, Life, and Disability Insurance: The Insurance Industry Response

Presented by Richard Minck, Vice President and Chief Actuary, American Council of Life Insurance

This paper is presented on behalf of American Council of Life Insurance and Health Insurance Association of America, whose 520 member companies have over 90 percent of the life and health insurance in force in the United States.

We are pleased to be given the opportunity to comment on the issues which will be discussed at the consultation on discrimination in the insurance industry. In order to set the stage for subsequent discussion, we would like to outline the general position taken by the two associations and the obligations that existing State laws impose on insurance companies.

Against this backdrop, we shall first give a brief general explanation of the need for and the techniques of classification of risks by life and health insurance companies which are intended to do equity among different groups of policyholders. We shall then address a number of the issues selected by the Commission to be presented at the consultation. The issues which we have chosen to address are the ones which we feel most uniquely involve our member companies as insurers rather than as employers or as corporations. Also, we shall emphasize those questions to which we can respond meaningfully within the limitations of the size of this paper and the time available for its preparation.

In order to provide protection to millions of people of all ages, both sexes, and with a wide range of physical impairments, insurance companies have had to develop a system of risk classification that provides equitable treatment for individuals representing different degrees of risk. The great movements to secure civil rights during the last three decades have led to the enactment of laws and the promulgation of regulations that appear to call into question, in some cases, the distinctions that insurers draw in underwriting risks.

We believe this conflict to be more apparent than real. We think the civil rights movement to be concerned with *unfair* discrimination against minorities and women. Insurers currently offer life and health insurance on identical terms to people, regardless of race or ethnic background. The differences in treatment afforded men and women

are designed to match the premimum rates charged to the risk. The same procedure is used for individuals of different ages and with different impairments for the same reasons. We see no overriding social purposes that should prohibit this practice, nor do we believe that the existing laws preclude it.

General Background

ACLI-HIAA Statement of Policy

In the past it was common among life and health insurers to limit coverages available to women. That practice was due, in large part, to the relatively small size of the female insurance market. Establishing separate contracts, premimum rates, rate books, and related material was disproportionately expensive if only a few policies could be sold. Differences in morbidity and mortality between men and women were, in some cases, too important to be overlooked through the use of a single set of policies and premium rates.

In the early part of this decade, the business decided that these factors no longer justified the practice of limiting insurance coverages available to women. In 1974 our two associations adopted the following joint resolution, which continues to be our policy today.

> We reaffirm the need for insurers to be permitted to classify insureds for rating purposes according to expected risk of loss based upon relevant information, including mortality and morbidity experience by sex.
>
> We do not oppose legislation or regulation prohibiting arbitrary and unfair discrimination among members of the same class of risk who share an equal expectation of loss. We also do not oppose the adoption of legislation or regulation prohibiting discrimination based solely on sex with respect to availability of coverage.
>
> Pregnancy, as opposed to sickness or injury as the result of an accident, can generally be planned or avoided. For these reasons pregnancy, a normal physical condition, is generally not treated in the same manner for health insurance purposes as a sickness or injury resulting from accident. Therefore, we believe that benefits payable for normal pregnancies should not be mandatory in either group or individual health insurance coverages.
>
> We recognize that complications of pregnancy are usually unpredictable and therefore not budgetable. Consequently, we should not oppose the adoption of legislation or regulations requiring the inclusion of health benefits payable for treatment of pregnancy complications in insurance or employee benefit plans. We do oppose, however, the adoption of laws or regulations requiring the inclusion of health benefits for normal pregnancy.

The State Antidiscrimination Laws

All States have antidiscrimination laws applicable to life and health insurers. Such laws are usually similar to the antidiscrimination provisions of the Model Unfair Trade Practices Act developed by the National Association of Insurance Commissioners. The NAIC model act defines as unfair, among other practices, the following:

> Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon, or in any other of the terms [and] conditions of such contract
>
> [and]
>
> Making or permitting any unfair discrimination between insureds of the same class for essentially the same hazard in the amount of premium, policy fees or rates charged for any policy or contract of insurance other than life, or in the benefits payable thereunder; or in any of the terms or conditions of such, or in any other manner whatsoever.

These antidiscrimination provisions clearly require an insurer to establish fair procedures for placing each individual in a premium class which fairly reflects the risk he represents. We fully support these laws, and companies, of course, comply with them.

The Need to Set Equitable Rates

Life and health insurance are voluntary mechanisms, through which individuals can avoid the risk of catastrophic loss resulting from accident, sickness, or death by paying premiums to an insurer. In the early days of insurance, companies or associations attempted to operate on the basis of charging all insureds an equal premium rate. It soon became evident, however, that if individuals found themselves paying more than the insurance was worth to them, they would either elect not to enter the plan or, after entering, would subsequently withdraw. An ever-increasing number of the better risks would elect not to participate in the insurance system, leading to an upward spiral of claim costs and premium rates and to the eventual collapse of the arrangement. This happened to a number of assessment companies and fraternal insurers in the United States in the late 1800s. Similar operations had failed in Europe previously. The failure of such operations showed that the fair classification of risks is not only a legal requirement but also a necessary business practice.

The existing competitive system affords the consumer who feels he has been offered life or health insurance at an unfair and inequitable rate the opportunity to seek a better arrangement from another insurer.

It also provides a strong incentive to companies to charge premium rates that properly reflect the risk involved. Charging premium rates to any class of policyholder which are clearly too high would cost companies sales. Correspondingly, charging any class of policyholder premium rates that are too low for the risk involved can cause companies to write more business than they can afford. An insurance company charging unfairly discriminatory rates would lose both customers and agents and could ultimately become insolvent.

Private Insurance Companies Cannot Subsidize One Group of Policyholders at the Expense of Others

It has sometimes been argued that equity should be disregarded in setting premium rates and that policyholders who present a lower risk of loss should be forced to subsidize the insurance costs of those who are unfortunate enough to present a greater risk of loss. However, as we have noted earlier, broad equalization of premium rates has repeatedly failed in a private insurance system because those who feel they are being charged an inequitable and unfair rate can make other arrangements. In contrast, governments can serve social purposes by the *compulsory* transfer of wealth. Government programs such as social security provide a basic floor of protection which all members of our society enjoy as a matter of right. The private life and health insurance system provides a means by which individuals can purchase additional protection at a price commensurate with its value.

The Risk Classification Process

Insurance policies cover either individuals or groups of people. In either case the insurer tries to set a premium rate for the individual or the group which is commensurate with the expected risk of loss. Such a premium rate should be determined as accurately as possible within the constraints imposed by the costs of developing pertinent information and by the current state of the art of risk selection.

As we mentioned, there was a time in the 19th century in the United States when some life insurers, known as assessment companies, tried to do without any risk classification. When that approach failed, classification by such factors as age, sex, build, family history, physical condition, personal history of illnesses and ailments, occupation, avocations, and habits with respect to alcohol and drugs was adopted.[1] Some of these factors had previously been used by insurers.

Risk classification has reached a state of considerable refinement, but the cost of obtaining information is an important consideration. A very thorough physical examination might help accurate classification,

[1] Pearce Shepherd & Andrew C. Webster, *Selection of Risks* (1957), p. 6.

but it is clearly impractical to spend several hundred dollars on each application. Insurers use the available information that is relevant to the risk. For example, a person's age and condition of health are information relevant to the degree of risk involved in most kinds of life or health insurance coverage. As aids in classifying risks, insurers have compiled various tables of death, sickness, and/or accident rates for persons with specified health characteristics based on studies of insured lives. For example, there have thorough studies of death rates among insured persons whose weight and/or blood pressure are above or below average. On the other hand, the available data concerning a relatively uncommon physical condition might be limited to one or two clinical studies consisting of a few cases not involving insured persons. The application of such data in the underwriting process calls for the exercise of considerable judgment.

The use of available data from the past helps insurers to establish an estimate of the expected risk of loss in the future. They must take into account trends in health and health care, longevity, employment, and other aspects of the environment. In estimating expected risk of loss, voluminous data may not of itself be sufficient to determine a proper rating classification. On the other hand, the lack of voluminous data would not prevent an insurer from making a sufficiently informed judgment to arrive at a fair rating. Underwriting is as much an art as it is a science.

The cost of making studies of the mortality or morbidity experience among insured lives has always forced insurers to concentrate in such studies on the risk factors which have the most economic significance, because they are the most commonly encountered, and are the easiest to identify and categorize with sufficient homogeneity to make a meaningful analysis possible. Age and sex are the two characteristics which most clearly meet those criteria. Occupation, build, and blood pressure (which are commonly studied together), other health characteristics, and habits (e.g., use of alcohol or other drugs) are factors which are studied at much less frequent intervals. Many health characteristics are found too infrequently, or are too hard to classify with a sufficient homogeneity, to have justified inclusion in intercompany experience studies.

Importance of Insurable Interest

A different type of consideration which insurers must always take into account is insurable interest. For life insurance to be sound, the person who will benefit from the proceeds must have a real financial interest in the continued life of the person insured. Such interest should only be partly compensated for by the insurance. Otherwise, the insurance contract could prove hazardous to the insured. Dependence

on a breadwinner's earnings constitutes an insurable interest. Another type of insurable interest is dependence on the work done by a homemaker, such as a breadwinner's spouse, but placing a monetary value on this type of insurable interest is more difficult. In health insurance, a person has an insurable interest when that person would suffer a substantial economic loss if the insured became disabled and/or incurred medical expenses.

Insurable interest must be present if an insurance policy is to be issued on a sound basis. If the insurer cannot discern an insurable interest that exceeds the amount of life or health insurance applied for, it has little choice but to decline the application. The willingness of the applicant to pay for more insurance than he needs may reflect knowledge about a condition that would result in substantial loss to the company. Under such circumstances the company could not reasonably hope to set a fair price on the policy.

One aspect of insurable interest is the insured's ability to predict, or perhaps even desire to bring about, the event which is insured against. This element is highly significant in the case of insurance providing benefits for normal pregnancy. As we shall explain in more detail in a later section of this paper, normal pregnancy is insurable only under group insurance policies issued to fund employee benefit plans, unless the benefits provided are severely limited.

Sex Discrimination in Health, Life, and Disability Insurance

We shall now address the issues scheduled for discussions in the paper on sex discrimination in health, life, and disability insurance. We shall state each issue and give our comments. The first five issues have to do with life insurance.

(1) *The availability of options, such as guaranteed insurability option, disability option, waiver of premium, etc., to women on the same terms as they are available to men.* In December 1975 the National Association of Insurance Commissioners adopted a Model Regulation to Eliminate Unfair Sex Discrimination. The model regulation requires equal availability of coverages without regard to sex or marital status. A copy of the model regulation is attached to this paper as appendix I. Paragraph 6(j) of the model regulation addresses specifically the matter of options, and paragraph 6(b) addresses the matter of riders (such as might provide a waiver-of-premium benefit).

We have supported the promulgation of the NAIC model regulation by the several States, and the model regulation has been promulgated by 12 States. We anticipate that other States will act in the near future. We certainly agree that options should be available to both men and

women on the same terms, but observe that differences in premiums may be appropriate for some coverages.

(2) *The adequacy of coverage amounts available to women.* Paragraph 6 of the NAIC model regulation specifically addresses this matter. We support the idea that adequate coverage should be available to both women and men, subject to the requirement of sufficient insurable interest whether the applicant is a man or woman.

(3) *The question whether rates fairly reflect differences in mortality.* Here we shall first give a bit of history. One writer summarized the early history of classification by sex in life insurance as follows:

> Women were a puzzle to life insurance companies for a century and more before 1900. First of all companies to write life insurance on a systematic basis was Equitable of England, 1762. They accepted women, but required extra premium. Then came general population studies of mortality in France, Sweden and Switerland that showed women to be living longer than men. English companies dropped their surcharge until a joint survey of 17 British offices in 1843 gave the surprising information that female insureds had a higher death rate than males. Back went the extra premium. Came then American studies at the beginning of this century topped by the huge Medico-Actuarial Investigation on 400,000 female policyholders insured between 1885 and 1908. There were 15,500 deaths. In the first year of coverage, mortality ratio was 113 per cent of expected, 108 in second year, 105 in third-fourth-fifth year, 99 per cent thereafter. But, spinsters had an 81 per cent ratio, widows and divorcees 105 percent, married women 119 per cent. . . When unmarried women bought for themselves, endowments especially, they lived to collect. When married women had insurance bought on them for others to collect, others did just that—they collected.[2]

As the 20th century progressed, it became apparent that women were outliving men not only in the population at large, but also in the population of insured lives. This fact was recognized by the National Association of Insurance Commissioners in 1941 when it adopted the Standard Valuation Law and the Standard Nonforfeiture Law. Those laws, which by 1948 had been enacted by nearly all States, prescribe the minimum reserves which life insurers must carry on their balance sheets as liabilities and the minimum amounts of cash or of paid-up life insurance which insurers must offer when the holder of a life insurance policy stops paying premiums on his policy. In their original form, the Standard Valuation and Nonforfeiture Laws provided that the minimum reserve and nonforfeiture values for policies covering women could be calculated on the same basis as policies covering men

[2] H. Dingman, *Risk Appraisal* (1957), p. 171.

who were 3 years younger. This approach is known as a 3-year age setback for females.

Over the last few decades, female mortality has continued to improve in relation to male mortality. Amendments to the Standard Valuation and Nonforfeiture Laws which were adopted by the NAIC in 1976 permit an age setback for females of up to 6 years, instead of up to 3 years.

The Standard Valuation and Nonforfeiture Laws establish minimum reserves and nonforfeiture benefits. They do not deal directly with premium rates or with policy dividends. However, companies have used the same age setback for not only reserves and nonforfeiture benefits, but premiums (and dividends) as well. When the latest NAIC model amendments have been enacted by all States, many companies will adopt a 5- or 6-year age setback for both benefits and premium rates. Others will use different ways to do equity. For example, a company could provide the same benefits for men and women, charge the same premium rates, and reflect the differences in costs in dividend scales that differ by sex.

Life insurers did not adopt separate male and female premium rates for individual life insurance when the Standard Valuation and Nonforfeiture Laws were first adopted in 1941. In those days insurers did not vary premium rates by the size of the policy. The premium rate per $1,000 of life insurance was the same for a small policy as for a large policy, even though the cost per $1,000 of insurance to issue and maintain a small policy was greater than that for a large policy. Women, on average, bought smaller policies than men. The extra administrative cost to insure women for these smaller amounts offset, to some extent, their lower mortality. The relatively small size of the female market at the time and the small net difference in mortality costs offset by expenses caused companies to avoid the expense of creating separate premium rates for the two sexes.

In the 1950s companies introduced premium rates that varied by size of policy. Thus, the administrative cost offset that had existed because of the small average of female policies disappeared almost entirely. Moreover, female mortality continued to improve relative to male mortality, and most insurers began to differentiate their premium rates for life insurance by sex.

The latest intercompany experience among individual life insurance policies issued in the standard premium class shows female mortality rates at a level of about 60 percent of the male mortality rates. Although the mortality differentials varied by issue age, on the average they work out to the equivalent of an age setback in the neighborhood of 5 years. Accordingly, the maximum 6-year age setback in the latest NAIC model valuation and nonforfeiture

amendments should prove adequate for insurers who wish to use a uniform age setback approach in setting premium rates for individual life insurance policies.

If a company were to use a 5-year age setback, not only for premium rates but also for nonforfeiture benefits, including cash surrender values, such cash values would be smaller than cash value based on the actual age of the female policyholder. If instead a company decided to pay the somewhat larger cash values to females based on actual age, the appropriate premium rates for females would cover the extra cost of paying such higher cash surrender values.

In the case of participating polices there are many ways, involving premiums, cash surrender values, or dividends or a combination of them, by which equity between men and women can be achieved and different commpanies will, almost certainly, use different approaches in the future, just as they have in the past.

(4) *The question whether female medical problems are treated as more serious than is justified.* The answer to this question is difficult to ascertain. The intercompany mortality studies that are carried out each year by the Society of Actuaries are limited to standard class policies. Published experience of each substandard mortality class by sex might help determine whether males and females are being classified fairly on the whole. However, variations in classification procedures among companies makes such data impossible to compile. Many of the larger companies have, no doubt, made their own studies of substandard mortality for each sex and are using the results to make sure that their risk classifications are fair for each sex.

(5) *The question whether sales literature is geared to a white male audience.* The answer to this question is hard to quantify. To the extent that it concentrates on the insurance needs of the breadwinner, it is appropriate to both sexes and all colors regardless of pictures in the text or pronouns used. Thus, the examination of current or old sales literature may or may not lead to the conclusion that it does not give enough attention to nonwhites or to females. It is certain that insurers have made efforts to increase the amount of that attention.

We do know that, by whatever means, insurers have greatly increased the proportion of their individual life insurance sales which are made on female lives. For example, between 1971 and 1976 the percentage of policies purchased by women increased from 24 percent to 28 percent. Over the same period the average size policy issued on the life of an adult female rose by 81 percent, while the average size policy on the life of an adult male increased by 46 percent.

Corresponding information by race is, of course, unavailable. Insurers do not ascertain the racial characteristics of their applicants.

Ethnic background is also neither determined nor recorded by insurers.

The next five issues have to do with health insurance.

(1) *The availability of adequate coverage for pregnancy, including both routine cases and complications for married as well as single women.* As indicated in our joint statement of policy, we do not oppose requirements that health benefits be paid for treatment of complications of pregnancy. The NAIC model regulation contains that explicit requirement in its paragraph 6(f), and that requirement is being included by the States as they promulgate their regulations. We feel, therefore, that the treatment of complications of pregnancy is no longer at issue.

Similarly, the availability of pregnancy coverage to single women is no longer at issue. The NAIC model regulation prohibits, in paragraph 6, discrimination by marital status. It also requires, in paragraph 6(d), that female employees be given the same pregnancy coverage as is given to the wives of male employees.

Coverage for normal pregnancy is quite a different matter. In discussing this issue, we shall first assume that the question is whether health insurers should be required to offer full coverage for normal pregnancy or, perhaps, even to include it in all health insurance policies on the same basis as coverage for illness or accident.

A brief discussion of health insurance principles may be helpful. Health insurance is intended to provide coverage against loss arising from sickness or accidental bodily injury. Such losses can include either wages or income or can be medical expenses. The medical profession, while stating that pregnancies do cause a "variable degree of disability," states that "pregnancy is a physiological process."[3] Pregnancy is not a sickness, illness, injury, or abnormality of the human body and cannot be assessed for risk purposes as such.

Of equal importance, normal pregnancy is often both desired and planned and is, therefore, voluntary to a degree unlike any other significant condition covered by health insurance. One of the important characteristics of an insurable risk is that it must produce a loss that is accidental in the basic sense; that is, the loss to the insured must be fortuitous, unexpected, and unpredictable in time and place. The voluntariness and the predictability of pregnancy render it uninsurable in the classic sense.

It has sometimes been argued that health insurance policies routinely cover "voluntary" disabilities other than pregnancy. Among the other "voluntary" disabilities, such things as sport injuries, attempted suicides, venereal disease, disabilities incurred in the commission of a

[3] Statement of American College of Obstetricians and Gynecologists, March 1974, cited in Gedulding v. Aiello, 417 U.S. 484, 500 n.4 (1974).

crime or during a fight, and elective cosmetic surgery have been mentioned. All but the last of those can be consdered activities where the actor began the activity more or less of his own free will, but did not expect to become disabled. A normal pregnancy is different because any resulting disability can be foreseen.

As for cosmetic surgery, insurance plans which cover elective cosmetic surgery as a disability are rare. Second, the number and cost of claims for coverage of such a disability would be *de minimis* in comparison with claims for normal pregnancy, and the effect of exclusion or inclusion of such a disability would not seriously affect the costs of any group of insured persons.

Complications of pregnancy, of course, are similar to some of the events listed above. Pregnancy is a voluntarily entered condition with a voluntary result of some disability, but complications of pregnancy are not commonly foreseen. Complications of pregnancy can, therefore, be insured like any other illness.

Despite the failure of normal pregnancy to meet the criteria of an insurable risk, coverage can be provided under some circumstances. In individual policies, coverage can be provided if it is made subject to sufficiently stringent limitations. In group health insurance, the benefits for normal pregnancy can be quite liberal, provided the employer (or other plan sponsor) pays a significant part of the cost of the plan, in order that all employees have an incentive to enroll.

In our view, omission from a health insurance policy of full coverage for normal pregnancy does not constitute sex discrimination. It constitutes a choice not to include full coverage for an essentially uninsurable risk. All insurable risks are covered for males and females alike. Moreover, where the policy covers medical expenses, most claims for normal pregnancies would be paid to males for expenses incurred by their wives.

Some observers may feel that women, or couples, should have the expenses of normal pregnancy paid for them by society generally. We must object to a view that those expenses should be paid for by those other people who buy health insurance. People should be free to buy the health insurance coverages they want and can afford. If they do not want coverage for normal pregnancy expenses (perhaps because they have no plans for a pregnancy), they should not be forced to pay a premium which will cover such expenses for others.

We have also opposed the concept that employers (or other sponsors of health insurance plans) should be required to include normal pregnancy in the coverages for which they help pay. Employers and their employees should be free to decide what coverages they wish to purchase with their available funds. They may

consider it more important to meet the expenses of major ("catastrophic") illness, for example, than to pay the cost of having babies.

It may be noted that medical expenses and lost wages due to pregnancy are only a part of the cost of having, and raising, children. The Federal Government and many State governments already help with that cost by various means, including income tax deductions. However, imposing those costs on society at large and imposing them on employers, employees, or insureds are quite different matters.

(2) *The availability of coverage for family planning and gynecological services.* We are not sure exactly what need exists in this area that does not involve illness or accident but does involve significant personal expenses. If voluntary sterilization is one of the items contemplated, it may be noted that that is almost the epitome of an uninsurable "risk."

(3) *The extent of fairness of underwriting practices which consider the father's insurance policy the primary policy, thus overriding the wife's when benefits are claimed for children.* This issue has to do, evidently, with the coordination-of-benefits provisions in group health insurance policies. We recognize that a provision which always makes the husband's coverage primary can appear to be discriminatory, even if it is motivated by the desire to have a simple universal rule. We are seeking an alternative approach. One possibility for parents that are legally separated or divorced is a system under which the benefits of the plan of the parent having custody of the dependent child or children shall be primary over the benefits of the parent without custody. When parents are legally divorced and the parent with custody of the dependent child or children remarries, the benefits of the plan of the natural parent with custody could be primary over the benefits of the plan of the step-parent, and the benefits of the plan of that step-parent could be primary over the benefits of the plan of the natural parent without custody. This custody test would be applied except where it has been shown that there is a legal decree which otherwise establishes financial responsibility with either parent. This set of rules gives some insight into the reason that companies had adopted a simple approach.

(4) *The question whether present rates fairly reflect costs—male versus female, family versus individual coverage.* We do not survey the premium rates which insurers are charging. Such a survey by a trade assocation might be felt to be improper. Moreover, health insurance coverage (hospital and medical expense insurance) is highly complex and is subject to great variations from policy to policy. The costs of the care which is insured against are increasing rapidly. Any analysis of the fairness of a particular company's premium rates would have to be based on the company's own form of coverage and its own claim experience.

(5) *Social justifications for spreading the medical costs of pregnancy over the entire population.* We commented to some extent on this issue in connection with issue number 1. Our chief point is that if the costs of normal pregnancy are to be spread over any persons other than the prospective parents, they should not be required to be spread over other people participating in a voluntary health insurance system who do not wish to purchase coverage for normal pregnancy.

The next five issues have do with disability insurance.

(1) *The availability of coverage for housewives.* Most disability insurance is designed to replace lost income. If an individual is employed by a third party, any income which is lost because of disability is a fairly clearly definable amount. Moreover, the third party can help the insurer to determine the fact of disability. In contrast, it is difficult to determine the economic loss suffered if a homemaker becomes disabled and difficult to determine that disability exists in terms of inability to perform normal duties. Accordingly, homemakers' disability is far from an ideal subject for insurance.

Despite the foregoing, several insurers have experimented with homemaker's disability policies. These experiments have been met with an extremely light market demand for the coverage. We feel that it would be improper to mandate, through legislation, the development of a coverage whose soundness is so uncertain and for which there appears to be so little demand.

(2) *Availability of long-term coverage and pregnancy coverage.* As for the availability of long-term coverage, the NAIC model regulation requires equal availability to the two sexes in paragraph 6(i). As for pregnancy coverage, our comments on issue number 1 under health insurance apply here, for the most part. The NAIC model regulation requires that complications of pregnancy be treated the same as other illness. Normal pregnancy, on the other hand, presents a different form of risk. If employers must include coverage for normal pregnancy in their employee disability benefit plans, then runaway costs can result if the duration of disability payments for normal pregnancy is not properly limited.

(3) *The comparative adequacy of maximum coverage for men and women.* The NAIC model regulation requires, in paragraph 6(h), equal maximums for men and women in similar circumstances.

(4) *The fairness of risk classifications with sex implications.* We think that this issue involves differing classifications of men and women who list their occupations as the same. This question raises an issue if the individual's occupations are solely those that are listed. If, however, the individual's occupations involve significant activities other than those called for by the listed occupation itself, then the individuals should be classified on the basis of their actual activities. When the

classification results in different occupational ratings for males and females who report the same occupation, the classification may be, in fact, fair, even if it appears to be unfair.

(5) *The question whether present rates reflect actual experience.* Let us, here again, give some background. One writer had the following to say about disability insurance:

> Women. An important innovation which took place at this [1930] was the general adoption of higher rates of premium [for disability insurance] for women than for men. The rates of disability among women had been from 1-1/2 to 3 times those among men. Nearly all companies announced in connection with the new 1930 contracts that rates for women would be either 1-1/2 times or twice rates for men. This increase, added to the general increase in rates, meant that thereafter women had to pay from 2-1/2 to 3 times the rates they had formerly been charged for a more liberal type of contract. In addition, some companies adopted stricter selection rules in regard to women, restricting them to comparatively small amounts or in some cases granting only the waiver-of-premium benefit, while the more unfavorable classes were either refused disability benefits on any terms or given a high extra rating.
>
> At a later date, many companies discontinued issuing polices with disability income benefits to women although continuing to issue policies with a waiver-of-premium provision, often at double the rates for men.[4]

The latest intercompany experience under individual disability income policies shows significant differences by sex, with the female rates being higher than the male at most ages. We have not made a survey of the premium rates being charged by insurers. In any event we would need information about the insurers' own claim experience, and information of various types, in order to be able to form a reliable judgment on this issue.

We wish to note a study of individual health insurance premium rates which was made 2 or 3 years ago by another organization and which has received some amount of attention. The study report was highly critical of insurers' pricing of individual disability income policies. The experience data cited in the report came from various sources, such as employment records, group long-term disability insurance, and social security, but the report made no mention of the single most significant body of data—the intercompnay experience under individual disability income ("loss-of-time") policies.

In 1976 the New York insurance department published the results of a study it had made of the individual disability insurance experience of

[4] Joseph Maclean, *Life Insurance* (1962), p. 236.

a number of large insurers. The department concluded that sex is a factor which influences expected claim experience under such policies. The department subsequently promulgated a regulation prescribing how insurers should reflect the sex differential in their premium rates.

Risk Classification and Actuarial Tables

Next we shall discuss some of the issues cited in the outline for the paper on "risk classification and actuarial tables."

In the introductory portion of our paper we discussed the need for and the techniques of risk classification by life and health insurers. Here we shall discuss the differentiation by sex in rates charged for insurance and annuities. It is indisputable that females live longer, on the average, than males. Female mortality rates are lower than male rates throughout the world. Mortality records kept in Europe and the United States show such differences have existed for several centuries. In the United States, the differences between male and female mortality rates have been growing larger in recent years even while differences between the roles of men and women in our society have been diminishing. There are explanations in medical science and in genetics for the differences.

Perhaps the most convincing statistical evidence that females are inherently longer lived than males is the mortality rates actually observed among persons who have been issued individual life insurance policies at standard premium rates. These are people who, when they applied for insurance, did not have any health problems or other characteristics (such as occupation) which in the insurer's judgment would place them in a substandard class requiring an extra premium. The only significant difference between these males and females, from the standpoint of insurability, was their sex. Yet the mortality rates among the females in this group have been only about 60 percent as high as the mortality rates among males of the same ages. That fact, of course, is why women pay less than men for life insurance.

The validity of using sex as a basis for the classification of risk has been recognized by the Federal Government and by almost every State.

Sections of the Internal Revenue Code and Treasury regulations specifically prescribe the use of sex-segregated actuarial tables. Regulations under section 72 of the Internal Revenue Code, for example, require the computation of "expected return" under annuity contracts based upon actuarial tables which are sex-segregated and involve a 5-year differential between male and female life expectancy.

Section 20.2031–10 of the estate tax regulations prescribes mortality tables differentiated on the basis of sex to be used in valuing

noncommerical annuities, life interests, and remainders. These tables have been incorporated by reference into the tax schemes of numerous States.

The recently created Pension Benefit Guaranty Corporation, created by the Employee Retirement Income Security Act of 1974, prescribes sex-segregated actuarial tables to be used in valuing plan benefits upon pension plan termination.

State insurance laws typically contain provisions prohibiting discrimination in rates between similarly situated individuals. Such laws have not, however, been construed to prohibit use of sex-segregated mortality tables; the differential in male-female life expectancy is considered to place males and females of the same age into different classes.

It is important to distinguish sex from race as a mortality indicator. Mortality differences between blacks and whites that have been observed in the past were due in large measure to the economic and social differences that existed. The mortality differences between blacks and whites are diminishing, while the mortality differences between males and females are increasing. Premium rates for insurance and annuities are independent of the race of the insured for these reasons and because of public policy.

If legislation were enacted which prohibited sex classification, the premium rates would most certainly tend toward the level which had been the higher of the two previously separate premium rate levels. For example, the premium rates for individual immediate annuities would tend toward the level that had been prevalent for females. If an insurer established a level of premium rates based on an assumed mixture of male and female annuitants, it would soon find that it was selling more annuities to females than it had assumed and fewer annuities to males, since the annuities would be a good bargain for females and a poor bargain for males. The insurer would have to adjust its premium rates upward to fit the actual mixture of its sales. After it adjusted its premium rates upward, it would have still more trouble selling annuities to males, and it would have to make a futher upward adjustment. This process would be repeated until the premium rates stablized at a point at or near the previous level of female annuity premium rates.

Similar tendencies would, no doubt, appear in life, health, and disability insurance. The only uncertainty is where the point of stabilization would be reached for each type of product. Another way of looking at the question is to ask how many members of the sex for which the particular product had become more expensive would buy that product in the same amount that they would at lower rates.

One might speculate that some women would buy individual life insurance policies, since there is really no substitute for that product (although many women are covered through group life insurance or through social security). As to individual health insurance polices, some men might seek coverage against illnesses and accidents that are catastrophic and try to self-insure against the others. Few, if any, men would buy individual annuities. Most would invest their funds elsewhere and hope that they did not outlive not only their capital, but also the ability of their children to provide for them.

With respect to group insurance and group annuities, similar tendencies would appear. For example, a pension plan which has a relatively large proportion of females would find unisex purchase rates to be financially attractive. Pension plans with a small proportion of women would set up a trusteed plan to pay benefits directly to participants. The unisex purchase rates would rise, and more and more medium or large pension plans would use the trust vehicle to pay benefits. Small plans where employers cannot take the risk of self-insuring might instead be terminated.

It may be noted that pension costs for a self-insured plan would reflect the actual mortality experience of the plan participants. For those plans, therefore, nothing would have been changed by unisex legislation except that they would have lost the opportunity to insure their annuities at realistic purchase rates. The cost of a unisex rating requirement would be a human cost, rather than a monetary cost. It would be reflected in uninsured or terminated pension plans and individuals whose benefits are less secure than they otherwise would have been.

There is mention in the outline for the paper on "risk classification and actuarial tables" of classification criteria which may impact differentially by sex, race, or ethnic background. A few States have enacted laws prohibiting classification on the basis of one or more race-related characteristics such as sickle cell trait. We do not oppose such legislation when it is limited to traits. In contrast, we must oppose legislation which would prohibit classification on the basis of conditions such as sickle cell anemia (the disease, not just the trait) that involve significant extra mortality.

Legislation and Litigation Relating to Discrimination in Pensions and Health, Life, and Disability Insurance

We shall address only issues number 4 and number 5 from the outline for the paper on legislation and litigation.

The case, *City of Los Angeles, Department of Water and Power v. Marie Manhart,* presently awaits a decision by the U.S. Supreme Court. The question to be decided is whether it is a violation of law to require female pension plan participants to make greater contributions than similarly situated males in order to receive equal monthly pension benefits. American Council of Life Insurance filed a brief *amicus curiae* on behalf of the petitioners.

As we pointed out earlier in this paper, females are inherently longer lived than males. Since pension plans that now differentiate monthly benefits or contributions by sex are basing the benefit payments or contributions on the mortality rates of male retirees in the aggregate and female retirees in the aggregate, they quite clearly do not discriminate unfairly against female retirees.

One particular argument advanced by persons who maintain that males and females should receive equal monthly pension benefits in return for equal contributions requires mention. Under what has become known as the "overlap theory," Professor Barbara Bergmann and others have argued that it is possible to match approximately 83 percent of males and females as to years of death; that is, if a group of 100,000 males, age 65, and a group of 100,000 females, age 65, were used as a test sample, when all of the members of the group had died, it would be found that approximately 83,000 of the females had died at the same age as approximately 83,000 of the males. Thus, because 17 percent of the females live longer than a corresponding percentage of the males, it is supposedly unfair to penalize the other 83 percent of the females who can be paired with males as to age at death by charging females higher annuity premiums.

It should be noted at the outset that the Bergmann study arbitrarily selected as the basis for pairing males and females the year of death. This is no more correct than pairing by one of the many other possible methods, such as by order of death. Thus, if the first woman who dies is paired against the first man who dies, and this process of consecutive pairing is followed, by the end of the third year no male will be matched against a female who died at the same age. In fact, continuing this process to age 110 for males and age 115 for females leads to pairings over most of the period, with the male age at death being 5 years lower than the age at death of the "corresponding" female.

The logical fallacy and economic irrelevance of the "year of death pairing" approach is obvious when this is viewed in terms of actual dollars. If a company (or a government) were to issue annuities of $1,000 per year to each of 100,000 men and 100,000 women experiencing the mortality rates referred to in the Bergmann study, it would have to make payments of $100,000,000 in the first year to each group. In the 5th year the payments to the male annuitants would have

dropped to $90,329,000, while those to the female annuitants would amount to $94,053,000, and in the 10th year annuity payments would have been $73,657,000 to males, and $83,328,000 to females. Over the course of 50 years, an aggregate of $1.561 billion would have been paid to male annuitants and $1.926 billion to females. The females, as a group, would have received $305 million—23 percent—more than the males.[5]

Professor Robert J. Myers, formerly chief actuary for the Social Security Administration for 23 years, and professor of actuarial science at Temple University, criticized the overlap theory in a recent article in *Civil Rights Digest,* a publication of the U.S. Commission on Civil Rights.

He noted that, while the years of death of 84 percent of men and women concide, the 16 percent of unmatched men would have an average age of death of approximately 70 years, and the average age at death of the unmatched women would be approximately 88. He then illustrated the absurdity of the overlap analysis by observing that, if the years of death of members of a group of 1,000 men at age 65 were matched with the years of death of a group of men aged 60, there will be an overlap of approximately 85 percent. Thus, under that theory, it presumably would be improper or unfair to utilize mortality tables based on age in setting insurance premiums. Of course, the logical result of following this mode of analysis is to dispense with any actuarial analysis at all; a result which, we submit, is neither desirable nor mandated by Federal statute.

In addition to the issue of whether the basic monthly pension benefits should be required to be equal for similarly situated males and females, there is the question of whether to prohibit the use of separate male and female mortality rates in determining the amount of optional forms of retirement settlement. For example, under such a prohibition a male retiree electing a lump-sum settlement would have to be given just as big an amount of money as a female retiree qualifying for the same monthly pension benefits, even though the male's pension would normally be worth less than the female's because of the male's shorter average life expectancy. Males would tend to elect the lump-sum option, which would normally be worth the most to them, and females

[5] Looked at from another perspective, if benefits of $1,000 per year were to be paid to each of 100,000 males beginning at age 65 from a fund earning 5 percent after taxes and all expenses, such a fund would have to be $1,040,000,000. The corresponding fund needed for female annuitants would amount to $1,194,000,000.

Alternatively, a fund equal to that used to provide $1,000 a month to male annuitants could provide $870 per month to female annuitants. If female annuitants were to draw $1,000 per month from this last fund rather than $870 per month, it would be exhausted after 18 years. For those females surviving beyond that period and receiving no further payments, the overlap theory would provide cold comfort.

would tend to elect monthly payments, which would normally be worth the most to them.

One result of the selection by retirees of the options worth most to them would be an increase in pension plan costs. Another result would be that some retirees would take a chance on the form of settlement that was worth the most to them actuarially, instead of selecting the one that best fit their personal needs.

In 1976 the Federal Equal Employment Opportunity Coordinating Council received from a task force of actuaries an estimate of the average cost that would be involved if all pension benefits were required to be equal for both sexes. That task force took the approach that if the amount of an optional form of benefit differed by sex, the lower amount currently payable to one sex would be increased to the higher amount currently payable to the other sex. The task force applied this assumption to "about twenty pension plans that varied rather widely by plan provisions, actuarial assumptions, and experience as to actual ages at retirement." The result was that the average additional annual cost, if the equalization were to apply only to benefits accruing in the future, would be about 2 percent of present plan costs. If benefits which have already accrued (but of which the payout has not yet begun) were also to be equalized, and the cost of the added "past service" benefits were to be amortized over the next 30 years, then the estimated average total additional cost during those 30 years would be 3 percent instead of 2 percent.

It is nearly impossible to determine how closely the 20 or so plans studied by the task force represent all pension plans in the United States. If, however, the estimated average 3 percent increase in annual costs is applied to the $60 billion of actual payments into pension plans in the United States in 1976, the estimated additional cost nationwide is about $1.8 billion annually.

It is not clear from their report whether the actuarial task force that prepared the 3 percent estimate included among its assumptions the tendency of retirees to select the option most advantageous to them actuarially. More importantly, however, it appears that when the task force assumed that their current distribution of optional forms of retirement elected would change as a result of the Employee Retirement Income Security Act of 1974, it obtained estimated additional annual costs in the range of approximately double the 3 percent average cited above.

Perhaps the most important point to note is that the impact of an equalization requirement would be uneven. For a pension plan including a large percentage of women and under which the monthly benefits now payable under the normal form do vary by sex, the additional annual cost for future service benefits alone could be in the

neighborhood of 10 percent. For other plans, the additional cost for future service benefits might be only 1 percent. The relatively high additional costs for some plans, in combination with various other problems that many pension plans have faced recently, might further increase the number of pension plans that have been terminated.

Some have suggested that not only should monthly pension benefits be equalized by sex, but also the annuity purchase rates charged by insurers should be required to be the same for men and women. We discussed earlier in this paper the probable results of a requirement that insurers eliminate sex classification in the pricing of their products.

Health and Disability Benefits for Pregnancy

We shall turn now to the area of health and disability benefits for pregnancy. There has been much legislation and litigation in this area. As explained earlier in this paper, we oppose the mandating of coverage for normal pregnancy in health or disability insurance policies. Normal pregnancy does not have all the characterisitics of an insurable risk. Although it can be insured against under some conditions, those conditions must be appraised for each individual case. Buyers of insurance policies should not be forced to buy coverage which they are almost certain never to use and in the process subsidize others who are almost certain to use it.

Pending legislation in Congress (S. 995) would require employers to provide both disability and medical expense coverage for normal pregnancy on the same basis as for illness. The bill, which would apply to all benefit plans whether or not insured, has passed the Senate and is currently before the House in a somewhat modified form.

The costs of providing the coverage required by S. 995 would, of course, be borne ultimately by the general public in the form of increased prices for goods and services. We estimated in 1977 that if pregnancy benefits were to be mandated in all employee benefit plans, the additional annual cost of providing these benefits would be $1.0 billion for medical expense plans (excluding Blue Cross and similar plans) and $0.6 billion for disability income plans.

When S. 995 was introduced, we urged that if it were to be enacted, it first be amended to keep the costs under control. Our suggestions were:

(1) To remove the requirement that medical expense benefits for normal pregnancy be provided on the same basis as coverage for sickness or injury, but to require that the benefit levels of coverage for a female employee be the same as that of a dependent of a male employee. Such a requirement should cover concerns over discrimination.

(2) To treat complications of pregnancy in the same manner as a sickness or injury under both medical expense and disability income plans.

(3) To permit disability income plans to provide only limited coverage for normal pregnancy; e.g., benefits for up to 6 weeks.

(4) To allow employers to limit benefits relating to normal pregancies to those incurred after the employee is in the employ of the employer.

Solutions Proposed or Developed by the Insurance Industry to Recognized Problems

One of the other papers presented to the consultation will have discussed at length the various affirmative action programs undertaken by insurers with regard to employment. We will not try to supplement that discussion here.

As indicated earlier, our member companies have modified their portfolios and underwriting practices to remove distinctions in the treatment of men and women that they found to be inappropriate. Sales efforts have led to substantial increases in the amount of life insurance purchased by women and the share they represent of the life insurance market. Recruiting efforts have increased the number of women who are life insurance agents.

To help improve the equity in designing nonforfeiture benefits and reserves for life insurance policies, the Society of Actuaries is developing separate mortality tables reflecting male and female experience. Companies are trying to preserve and improve equity in pricing and benefit design while treating men and women equally with regard to availability of coverage.

Other problems that the insurance business is trying to help solve—such as the impact of inflation on the costs of health care—are of great importance to all citizens and, therefore, not appropriate to this discussion.

Appendix I

MODEL REGULATION TO ELIMINATE UNFAIR SEX DISCRIMINATION*

Table of Contents

Preamble.

This model regulation responds to conditions within the insurance industry and among regulatory authorities which have allowed the development of unequal treatment of males and females and treatment which varies according to marital status in the sale of insurance. Reasonably exhaustive research has been conducted by several states in an effort to identify the nature of such unequal treatment. These studies have disclosed a pattern of activities which can conveniently be divided into two categories. The first relates to the availabity of equal coverage and the second is the comparability of the rates charged for that coverage.

The primary area of difficulty arises in the health and disability lines of insurance where the morbidity tables which are currently in use and current company experience reflect a higher utilization of benefits by female insureds. As a result, many companies restrict the types and amounts of coverage which are available to females and charge rates for females which exceed male rates for identical coverage. Life insurance and annuity rates reflect lower mortality rates for females although the adequacy of the rate differentials are subject to question since general population mortality studies produce larger differences in male and female mortality than is generally assumed by either the life insurance industry or regulatory authorities in their development of reserves, cash values and premium rates. Many life insurance companies have also been found to apply restrictions to the availability of coverage to females which do not apply to males.

The automobile insurance business is characterized by a rating system which produces higher rates for males and unmarried individuals. Higher rates for these classes of insureds result from higher claim levels. Availability of automobile insurance with some companies is also affected by marital status. The premium rates charged for

homeowner and property insurance do not vary by sex although a single or divorced female may encounter more difficulty in obtaining coverage than a male in similar circumstances.

Although discriminatory practices have been identified in both the premium rates and availability of insurance, an appropriate objective is to determine which of these practices constitute an unfair discrimination and to adopt regulations which prohibit those practices. Since there is apparently no segment of the public or the insurance industry which is prepared to dispute the right of females to have equal access to insurance, it is desirable to adopt a regulation which enforces this standard of equality. This model regulation is designed to accomplish that purpose as it relates to contract language and underwriting practices.

On the other hand however, since the business of insurance is built upon the ability of the insurance company to evaluate risk and assign a price tag to that risk, any attempt to tamper with the pricing mechanism of the insurance business must be approached with great care. The subjects of premium rates and availability of coverage have been determined to be separate issues which can be dealt with more effectively if handled separately. As a result, the NAIC Task Force on Unfair Sex Discrimination has chosen to propose this model regulation for adoption as the first step in a two stage program. The second stage will involve the review of rating systems which are currently in use in an attempt to determine the validity of assumptions, statistics and actuarial methods which have been routinely accepted in the past. Several states, including Pennsylvania, New York, New Jersey and Oregon, have adopted regulations similar to this model with little or no oppositon. The major insurance industry trade associations have actually taken a public position of not opposing adoption of such regulations and many insurance companies are presently in the process of voluntarily removing all sex related restrictions in their contract language and underwriting rules. This model regulation, however, is necessary to assure that this standard is adhered to by the entire industry.

One subject which is a recurring topic of interest in the research which has been conducted is that of pregnancy related covering in health insurance contarcts. Since normal pregnancy is not a sickness or injury as a result of an accident and can generally be planned or avoided, the NAIC Task Force has not subscribed to the theory that such coverage should be mandated in all health insurance contracts in the name of equal availability of coverage. Such action is beyond the scope of the authority of this regulation and if the subject is to be addresed, it should be included in the NAIC Health Insurance Minimum Standards Regulation. This model regulation does, however, contain language

which may either be retained in this regulation or transferred to the Minimum Standards Regulation, whichever is most convenient in a particular jusisdiction. That language relates to mandatory coverage of pregnancy complications and the restriction of coverage for the genital organs of one sex only. Restrictions on these areas of coverage have been deemed to be tantamount to unfair sex discrimination since they apply to sickness or injury which affects only one sex.

This regulation may appropriately be promulgated pursuant to the authority of the Insurance Trade Practices Act either under the unfair discrimination section or as a regulation identifying a previously undefined unfair trade practice.

Section 1. Purpose

The purpose of this regulation is to eliminate the act of denying benefits or coverage on the basis of sex or marital status in the terms and conditions of insurance contracts and in the underwriting criteria of insurance carriers.

Section 2. Authority

This regulation is issued pursuant to (variable authority of each state—promulgation of this regulation under the State's Unfair Trade Practices Act is considered to be the most viable source of authority).

Section 3. Definition

Contracts—any insurance policy, plan, or binder, including any rider or endorsement thereto offered by an insurer.

Insurer—any insurance company, association, reciprocal or inter-insurance exchange, nonprofit hospital plan, nonprofit profession health service plan, health maintenance organization, fraternal benefit society or beneficial association.

Section 4. Applicability and Scope

This regulation shall apply to all contracts delivered or issued for delivery in this state by an insurer or on or after the effective date of this regulation and to all existing group contracts which are amended on or after the effective date of this regulation.

Section 5. Effective Date

This regulation shall be effective on (insert the date of adoption or promulgation).

Section 6. Availability Requirements

Availability of any insurance contract shall not be denied to an insured or propsective insured on the basis of sex or marital status of the insured or prospective insured. The amount of benefits payable, or any term, conditions or type of coverage shall not be restricted, modified, excluded, or reduced on the basis of the sex or marital status of the insured or prospective insured except to the extent the amount of benefits, term, conditions or type of coverage vary as a result of the application of rate differentials permitted under the (insert name of

state) Insurance Code. However, nothing in this regulation shall prohibit an insurer from taking marital status into account for the purpose of defining persons eligible for dependents benefits. Specific examples of practices prohibited by this regulation include but are not limited to the following:

a. Denying coverage to females gainfully employed at home, employed part-time or employed by relatives when coverage is offered to males similarly employed.

b. Denying policy riders to females when the riders are available to males.

c. Denying maternity benefits to insureds or prospective insureds purchasing an individual contract when comparable family coverage contracts offer maternity benefits.

d. Denying, under group contracts, dependent coverage to husbands of female employees, when dependent coverage is available to wives of male employees.

e. Denying disability income contracts to employed women when coverage is offered to men similarly employed.

f. Treating complications of pregnancy differently from any other illness or sickness under the contract.

g. Restricting, reducing, modifying, or excluding benefits relating to coverage involving the genital organs of only one sex.

h. Offering lower maximum monthly benefits to women than to men who are in the same classification under a disability income contract.

i. Offering more restrictive benefit periods and more restrictive definitions of disability to women than to men in the same classifications under a disability income contract.

j. Establishing different conditions by sex under which the policyholder may exercise benefit options contained in the contract.

k. Limiting the amount of coverage an insured or prospective insured may purchase based upon the insured's or prospective insured's marital status unless such limitation is for the purpose of defining persons eligible for dependents benefits.

Note: Although the above examples are oriented toward unfairly discriminatory practices in the accident and sickness disability incomes and life insurance lines, this model regulation is appropriate for us in prohibiting the use of sex or marital status as the sole base either to deny coverage or to offer differential coverage in all lines of insurance.

Legislative History (all references are to the Proceedings of the NAIC). *1976 Proc. I 502–504*

Comments

By Cruz Alderete, President, First Americans Financial Services, Inc.

I have been asked to react to the insurance industry's response in a paper entitled "Discrimination Against Minorities and Women in Pensions and Health, Life, and Disability Insurance." The paper written and presented by Mr. Minck is very well prepared and was done very professionally. The document indicates that the industry is showing concerns regarding discrimination.

The paradox of my own situation is one of trying to understand the validity of consumer and client concerns in the area of *discrimination* and to determine the validity of the industry's posture toward this dilemma.

Earlier discussions have focused on the practice of discrimination as being one of the following:

(1) Overt discrimination.
(2) Disparate treatment.
(3) Neutral action.

In resolving this issue for our own corporate method of operating, we concluded that *overt discrimination* was not the real problem with respect to insurance carriers. Insurance companies' risk selection process by its nature is a process of discrimination (i.e., selecting the good risk through the underwriting process) and, as the authors of the article have said, the State laws "prohibit discrimination on the basis of race and sex." In order to provide protection to millions of people of all ages, of both sexes, and with a wide range of physical impairments, insurance companies have had to develop a system of risk classification that provides equitable treatment for individuals representing different degrees of risk. So overt discrimination in its classical sense would not be the problem.

In an effort to react to the issues here presented it occurs to me that the focal point of the conflict is in the *disparate treatment* given minorities and women and the *neutral action* of carriers and regulators.

Because disparate treatment can be and has been explained subject to each writer's interpretation, I wish to focus on the *neutral posture* taken by many carriers.

Neutral Posture of Insurance Carriers

The paper indicated that the 520 mmembers of the American Council of Life Insurance and HIAA represent 90 percent of the life and health insurance in force.

Given this fact I should like to make the following observations and inquiries:

(1) Of those 520 members, how many stock companies are owned by minorities?

(2) How many minorities and women are represented on the boards of any of those carriers?

(3) How many of those carriers have women and minority *general agents* or serving as corporate officers?

(4) What plans do these insurance companies have for involving minority ownership of insurance companies? Are there any strategies?

I make these observations on the basis of the traditional approach of *marketing insurance* (e.g., a married man will sell mostly to other men in his situation, while a female will sell to females; a black will sell to the blacks; a Chicano, to Chicanos).

If minorities and women get into the business of being the insurance carrier, disparate or *de facto* discrimination will be met on more realistic grounds.

State Antidiscrimination Laws

The position of ACLI–HIAA in opposing overt discrimination and encouraging State antidiscrimination laws is a sound and fair approach to the problem. The promotion of the Model Unfair Trade Practice Act developed by the National Association of Insurance Commissioners is the proper way of approaching risk selection. My question here is: How many States have adopted the model?

Sex Discrimination in Life, Health, and Disability

In the article presented by Mr. Minck about sex discrimination in health, life, and disability insurance regarding the following:

(1) Same options for men and women.

(2) Adequacy of coverage amounts available to women.

(3) The question of whether rates reflect the difference in mortality.

(4) The question whether female medical problems are treated more seriously than is justified.

(5) Question whether sales literature is geared to a white male audience.

With respect to points 1 and 2 regarding options for men and women and amounts, it is interesting to me that the NAIC has developed a model stating that there is to be equality between men and women; however, only *12* States have adopted the model (24 percent have passed, 76 percent have not).

Insurance companies as a business should be viewed as highly regulated instruments of profit which succeed based on the following:

Sound marketing methods which result in premium dollars being generated. The carrier will make a profit based on:

(1) Good risk selection in mortality and morbidity—keeps claims low.

(2) Sound investments of the premium dollar.

(3) Low operating and acquisition costs.

It is in the foregoing context that insurance companies should be permitted to charge a fair rate for the risk; *but,* insurance companies should make the effort to market their services more widely by *encouraging minority-owned insurance companies to be created* so that they too can engage in the service of underwriting risk for a profit and investing the dollars generated through premium collection. This will require a different kind of commitment from insurance carriers. It will require the commitment of capital, technical assistance, and a risk, but should the industry undertake to broaden its base in this way, much of the *cause* of the conflict will be resolved.

The ACLI and HIAA can be instrumental in innovating such a program, and the benefits can be long term in nature to both the industry and the consumer.

On the matter of risk classification and actuarial tables: The statement by the author is, in the business context, correct in stating that women live longer; therefore, the annuity rate at retirement should be lower to compensate for this fact. But how do you solve the problem of providing fair return to annuitants? What can be done? Merely explaining the facts is *no response* to the problem.

The task force perhaps started the solution by estimating the probable costs of equalization. They estimate that an average increase would be 2 to 3 percent. It is nearly impossible to determine. Perhaps there should be a task force consisting of minorities, women, insurance industry, and insurance regulators, and representatives of the Civil Rights Commission.

These task forces should be *industry inspired,* not reactionary or defensive. Such an approach would be more likely to result in solving the problem, rather than every entity explaning its own point of view.

Summary

Certainly it can be said that many strides have been made in making the insurance industry more responsive to the mandates of the consumer. Perhaps I oversimplify the solution by stating that insurance carriers should look for ways of involving minorities and women as owners, managers, sellers, and administrators of insurance companies.

We make the further recommendation that there be positive steps to include minorities and women in the regulation process.

Another observation would be that the industry structure or beef up consumer affairs and minority affairs departments within its corporate structure.

Thank you for allowing me the opportunity of presenting the views of an insurance industry person who is a minority citizen.

A Health Insurance Perspective on Discrimination

By Thomas J. Gillooly, Associate General Counsel, Health Insurance Association of America

The attitude of our society on social justice has changed—particularly in the last 25 years—and I believe the insurance industry has been reasonably responsive to such changes. The health insurance business, primarily because of its reliance upon the classification system as an aid in establishing the predictability of an individual's health, has been a natural target for special interest groups who insist that they must be insured on the same basis as everyone else. This has led to the adoption of a variety of legislatively mandated benefits, only some of which are based upon alleged unfair discrimination. The lack of uniformity in such legislation has created serious problems for employers doing business on a multistate basis and for their insurers. Such legislation has occurred not only in areas of alleged discrimination such as mandated coverages for maternity, but also in such instances as mental illness, drug addiction, alcoholism, newborn children, handicapped children, and surviving spouses. There are also conflicting State laws requiring reimbursement for services of various practitioners of the healing arts, including chiropractors, podiatrists, psychologists, social workers, and practitioners of orthomolecular and Oriental medicine.

From statements which have been made at this conference, it appears that discrimination because of race and ethnic background is not really in issue as far as the insurance business is concerned. The sole remaining area of consequence from the standpoint of health insurance appears to be alleged sex discrimination. The insurance business, of course, is closely regulated by the States. Its practices are, therefore, subject to wide public accountability, thus offering consumers in general, and women's rights advocates in particular, an opportunity to forcefully present their cases. In addition, the issues under discussion in this consultation which are related to health insurance should be viewed from the standpoint of national developments which have occurred in the health care field during the recent years, in particular the skyrocketing increase in costs. As of December 1977, the medical care component of the Consumer Price Index stood at 209.3 or 12.5 percent higher than the overall CPI. Medical care costs have continued to far outpace overall costs since 1974 when price controls were removed. From December 1976 to December 1977, overall costs rose 6.8 percent, while medical care costs rose 8.8

percent or almost 30 percent more. (Source: *Social Security Bulletin,* March 1978)

During the past 15 years, the interest of all branches of government in women's economic status has become manifest. When Congress enacted the Equal Pay Act of 1963, and then followed it by the passage of the Civil Rights Act, including Title VII in the succeeding year, the basis was laid for fundamental reconsideration of employment practices, including compensation in relation to the sex of the individual.

In 1967 an Executive order of the President added sex as a prohibited basis of discrimination to race, color, religion, and national origin for all parties to Federal contracts.

In March 1972, the proposed 27th amendment to the United States Constitution—the Equal Rights Amendment—was approved by Congress. This amendment provides that, "Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex."

The Equal Rights Amendment is still a few States short of the necessary 38 for ratification, and it is not clear whether that goal will be realized. It has become evident, however, that whether or not ratification is obtained, merely keeping this issue in the forefront of national publicity has had the effect of focusing the attention of Federal and State legislative and administrative officials, as well as the courts at all levels, upon a variety of related issues.

As these Federal enactments were being implemented, a number of cases arose in the early 1970s in the Federal courts concerning the rules of the EEOC mandating pregnancy disability benefits for employees. This ruling was overturned by the United States Supreme Court in *Gilbert v. General Electric Co.,* 429 U.S. 125 (1976); and Congress is now considering S. 995, a bill to nullify the effects of this case by an amendment to the Civil Rights Act of 1964.

Because of the above-mentioned events, it became apparent that a general review of sex-based practices in availability, underwriting, and premium rates of health and life insurance coverage was in order. Probably, the industry was most vulnerable in not having made coverage equally available to men and women, particularly in disability income coverages. As an example, it was clearly indefensible to prohibit females from including husbands as dependents, while males were permitted to include wives as dependents.

The object of insurance underwriting is to classify subjects into groups with about the same expectations of loss. Traditionally, it has been recognized that the probability and the average severity of loss are affected by age, sex, occupation, health, type and amount of benefit, income and cost factors, and moral hazards.

Although women live longer than men, for reasons not fully explained, statistics show that they tend to incur more disabling diseases, whether physiologically or psychologically based. Since this difference is reflected in claim experience, underwriters have concluded that women should be charged premiums which are considerably higher for disability coverage than those for males.

Insurance rates are established on the same basis of classification which was described above. By establishing reasonable categories with the risk or cost of insurance as nearly uniform as possible within those categories, a premium rate can be established that is adequate, but not excessive, for the insureds that fall within a given category. The theory is for each insured to pay his or her fair share of the cost of the insurance and thus make every insured equally desirable as a prospect for a policy.

Against this background the health insurance industry, particularly major writers, already were engaged in extensively changing their practices at the time that the State insurance regulators became interested in sex discrimination. In 1974, after he was made a party defendant in a sex discrimination case in *Stern v. Massachusetts Indemnity and Life Ins.*, 365 F. Supp. 433 (E.D. Pa. Oct. 12, 1973), and following the adoption of the Equal Rights Amendment into the Pennsylvania Constitution, Pennsylvania Insurance Commissioner Herbert Denenberg began to question rate filings for disability income policies. Shortly afterward, industry representatives filed a report giving the Pennsylvania department their recommendations for guidelines to regulate individual disability income policies in the light of the Equal Rights Amendment. These recommendations considered that, traditionally, there have been significant differences in the treatment of women and men by the industry, but pointed out there was already a strong trend toward equalization in benefit provisions and underwriting rules with regard to women which reflected the growing significance of the status of women in today's economy and society.

In essence, the guidelines adopted by the department provided for equal availability of coverage with no essential difference permitted in benefits or underwriting rules, with the exception of continuing to allow a normal pregnancy exclusion. Also, rate differentials by sex were permitted where valid statistics were presented. Not long afterwards, other major States and the National Association of Insurance Commissioners, acting in large part upon the initiative of representatives of the insurance companies, adopted similar regulatory guidelines. For many companies, these guidelines merely formalized practices which they were already following or moving toward. They did have the important effect of providing a uniform standard for the

industry to observe. In 1974 the respective boards of the Health Insurance Association of America and the American Life Insurance Association had reaffirmed the need for insurers to classify insurance for rating purposes based upon mortality and morbidity experience and other relevant factors; however, the associations determined not to oppose legislation or regulations prohibiting sex-based differentiations as to availability of amounts of coverage. Also, it was recognized that there would be no industry opposition to efforts to mandate benefits for treatment of complications of pregnancy.

As noted earlier in this consultation, the National Association of Insurance Commissioners has recently reconstituted its sex discrimination task force. It is not clear what issues are to be studied, but the mandatory maternity issue described below, and the health insurance disability income rating process have been mentioned. The New York Insurance Department in June 1976 published a comprehensive analysis entitled "Disability Income Cost Differential Between Men and Women." This study and a consequent regulation by the department provide the definitive study and prototype regulation on individual disability income rates.

Those in government have been beset by requests from a wide variety of special interests insisting that certain specific benefits be included in each contract written on a mandatory statutory basis. Usually such benefits are already available from many insurers, to the extent there is a public demand. Such inflexible, mandated legislative actions are usually self-defeating even though well-intended by their sponsors. The U.S. Civil Service Commission has estimated that, for Federal employees, the cost of compliance with State insurance laws is 5 percent of the premium and rising. Using the 5 percent estimate, the ERISA Industry Committee (ERIC), an association of 80 major U.S. corporations, claims that the increased costs of State regulation for its members would exceed $400,000,000 annually.

The mandating of maternity coverage is a prime example of a special interest being given undue prominence in the private health insurance regulatory structure. A number of States, including New York, have enacted statutes concerning health insurance benefits for maternity. There are also a number of State insurance department regulations regarding maternity benefits. Maternity legislation is a popular issue not only in State legislatures, but also in the United States Congress.

We are opposed to legislation and regulations mandating maternity coverage because of the following reasons: Our industry already makes adequate coverage available to those who wish to purchase it. Mandating health insurance coverages deprives consumers of the freedom to choose whatever benefits they need and can afford. Also, piecemeal mandating of coverages results in an incomplete and

disjointed health insurance product. The health insurance industry would prefer to offer consumers well-balanced, comprehensive insurance policies. Each mandated coverage further burdens our industry, which is already heavily regulated. Moreover, the cost of mandatory maternity coverage to employers and women is high.

The very nature of private insurance, which is based upon classification of risks, lends itself to the charge of unfair discrimination by any who espouse a cause which is limited or excluded by the system. It is often overlooked by reformers that private insurance is a competitive business based upon principles which guarantee its soundness; but without protection of those principles, the business can be a fragile and vulnerable vehicle. Although it has proved to be remarkably flexible, private insurance can never equal social programs in responding to the social goals of the moment because government-sponsored plans need not be concerned with either profit or liquidity—as long as the taxpayers do not rebel.

We believe that those in government should be particularly wary of requests by special interest groups for unwarranted changes in our system. Admittedly, some of the issues before this consultation have been the subject of justifiable criticism for our industry in the past. As far as health insurance is concerned, the few sex discrimination issues discussed above remain. Each of the 50 States has enacted wide-ranging laws granting the insurance commissioners authority to regulate every conceivable facet of this business. The Model Unfair Trade Practices Act, which is the law in virtually all States, is an unprecedented grant of authority by legislators to the insurance commissioners. Incidentally, this statute guarantees equity in the classification systems used by insurers. Most of the sex-based practices by insurers, to the extent they may be unfair or questionable, can be adequately dealt with by an insurance commissioner under already existing law.

The Nation is presently engaged in a national debate over the structure of our health care system. The Health Insurance Association of America believes that the present health care system performs quite adequately for most of the people in most instances. There are areas where health care and health in America can and should be improved. President Carter has identified controlling the rising cost of health care as the primary issue which government must address. In this goal our industry heartily concurs. We also favor a comprehensive national health insurance program as endorsed by HIAA in the Burleson-McIntyre bill before Congress.

The principles for delivery, scope, and financing of health care which the private health insurance industry are promulgating are as follows: (1) Every American should have access to adequate health

care regardless of income. (2) The present health care system should be retained, but it should be modified to facilitate the containment of rapidly escalating cost and improvement in the delivery of health care. (3) Comprehensive health insurance and prepayment plans covering essential health care services should be available to all citizens regardless of health status or ability to pay. Plan design should include features such as cost sharing to motivate providers and patients to lessen the incidence of unnecessary services. (4) Maximum use should be made of the private sector with the government programs being used to meet the needs which cannot otherwise be met. (5) There should be a major focus on the concept of the development and maintenance of good health by the individual, assisted by a variety of educational and environmental programs.

While the record of the insurance industry may not have been perfect, it compares very favorably with other segments of our society in its responsiveness to social change. When viewed in the perspective of the national need for a sound health care system, the issues remaining with respect to discrimination, although important, do not appear to be of great relative significance. There undoubtedly are problems which remain, but their solution should not be accomplished in such an irrational manner that the private insuring or financing segment of health care is needlessly damaged at a time when it is struggling to meet major national priorities in the interest of all our citizens.

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