Civil Rights Developments in Vermont, 1981

February 1982

--A clearinghouse report of the Vermont Advisory Committee to the U.S. Commission on Civil Rights, published for the information of the Commission and the people of Vermont. The contents of this report should be attributed to the Vermont Advisory Committee and not to the U.S. Commission on Civil Rights.

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--The U.S. Commission on Civil Rights is an independent, factfinding agency of the Federal Government which investigates issues related to discrimination or denial of equal protection of the laws because of race, color, national origin, religion, sex, handicap and age. The Vermont Advisory Committee is one of 51 such bodies composed of private citizens who advise the Commission on civil rights developments in their States.

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CIVIL RIGHTS DEVELOPMENTS IN VERMONT, 1981

Preface

Nationally, many observers characterized 1981 as a year of setbacks and retrenchment in the area of civil rights. The resurgence of organizations such as the Ku Klux Klan, Federal budget cuts in social programs, and changes in the Federal civil rights enforcement structure created fears that, instead of efforts to bring groups that have been discriminated against into the mainstream, the government might be ready to accept a return to neglect and separatism. For example, on the bellwether issue of school desegregation, congressional proposals virtually to eliminate school busing for desegregation and to concentrate instead on "the quality of education" raised the spectre of a return to the days of "separate but equal" schooling for black children.

Concern about these trends was expressed on a number of occasions during the past year by the U.S. Commission on Civil Rights, which examines not only racial discrimination but also discrimination due to religion, gender, age, and handicap. The Commission noted that national developments during 1981 also included much that was disturbing to women, the elderly, and the handicapped. These groups, like racial minorities, are the direct beneficiaries of many of the programs, such as job training and food stamps, whose budgets have been cut sharply. They are also jeopardized by the curtailment of Federal civil rights enforcement activities. Some of the implications of the Federal program changes and Federal budget cuts on minorities, women, the elderly, and the handicapped in Vermont are discussed in Section III below.

In its report last year on civil rights developments in Vermont, the Advisory Committee felt it could separate national and State developments. This year Vermont State Advisory Committee members are concerned that the gains achieved in the 1950s, 60s and 70s are seriously threatened at both State and Federal levels.

Yet, in some areas, the picture in Vermont is less bleak than for the country as a whole. For instance, in a year during which the United States Congress took steps to cut back existing civil rights protections, the Vermont Legislature enacted a law extending antidiscrimination protection in employment to the aged and handicapped. And in a year that saw increased activity by hate groups elsewhere in the Nation, there were no reported instances of such activities as cross burnings or synagogue desecrations in Vermont.

The Vermont Advisory Committee to the U.S. Commission on Civil Rights monitored civil rights developments in the State during 1981, and this report summarizes those issues and events important to

minorities, women, the aged, and handicapped. It also includes a description of the Vermont Advisory Committee's own activities during 1981, and a brief assessment of emerging issues, particularly the possible effects in Vermont of Federal actions. The effects of many of last year's national developments will only be felt at the State and local levels in 1982. The Advisory Committee hopes that this report will be useful to all the citizens of Vermont.

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I. "PROTECTED GROUPS" IN VERMONT

The term "minority" and the factors that cause a group to receive special treatment by the government have been the subject of considerable controversy and confusion. The U.S. Commission on Civil Rights addressed this matter in 1981 in its statement, Affirmative Action in the 1980s: Dismantling the Process of Discrimination. (See Appendix.)

The Commission's statement carefully distinguishes statistical disparities from actual documentation of discrimination. This clarification, and the availability of new Census data, should lead to more appropriate use of quantitative information in the analysis of civil rights issues.

New profiles of minority groups began to emerge in 1981 as data from the 1980 Census were issued. The 1980 Census continued to show very small numbers of racial minorities in Vermont, with a total of only about 1.5 percent of Vermont's population represented by: blacks (0.2 percent), Native Americans (0.2 percent), Asian/Pacific Islanders (0.3 percent), Hispanics (0.6 percent) and "Other Races" (0.2 percent). The overall growth rate for racial minorities and Hispanics was 89 percent, compared to a general population growth of 15 percent since 1970. However, this large percentage rise still left Vermont with a minority population of 8,024 (as compared to about 4,000 in 1970).

The number of blacks, 1,135, was up 49 percent from the previous census. The count of Hispanics increased 34 percent from 2,469 to 3,304.

There was a large percentage increase in the numbers of the peoples that the Census terms "Asian/Pacific Islander" -- Japanese, Chinese, Filipino, Korean, Asian Indian, Vietnamese, Hawaiian, Guamanian, and Samoan. The number climbed 276 percent from 360 to 1,355. Part of this increase might be attributable to a more comprehensive definition of Asians in the 1980 Census than in the previous one which only included figures for Japanese, Chinese and Filipino. In addition, there has been a fairly large influx of Vietnamese as well as other Asians to the State in the last decade.

The 1980 Census count for Native Americans was significantly higher than in 1970. It was closer to the unofficial surveys frequently cited by Indian groups, who long had criticized the census counts as far too low. The 1970 U.S. Census, for example, found 229 Indians, while the 1975 survey conducted by the Boston Indian Council recorded 1,700 in the State. The 1980 Census count of 984 was still far short of the 1975 survey figure, but represented a 330 percent increase over the 1970 official Census. According to Miles Jensen, executive director of the Abenaki Self-Help Organization, much of this increase can be attributed to

efforts made by his organization and the Abenaki Tribal Council to encourage Native Americans to participate in the Census. He states that in 1970 there was a very serious undercounting of Indians and that the increase reflected in the recent Census results from increased Indian participation in the count rather than from any dramatic increase in the Native American population of the State.

The Advisory Committee expects that the 1980 Census will provide a clearer portrait of Vermont's largest ethnic group, Franco-Americans. However, data on ethnic groups have not yet been released by the Census Bureau. Federal budget cuts are delaying the process. Because of the unavailability of statistical information on Franco-Americans in Vermont, the Advisory Committee conducted its own study of the status of Franco-Americans and expects to release a report of this study in 1982. Preliminary findings reveal that while Franco-Americans make up about 20 percent of the State's population, they constitute under 6 percent of the graduate students in Vermont public colleges and universities and only 4 percent of the officers and directors of Vermont corporations.

The Census Bureau has yet to issue the income, education, and housing data needed to compare racial and ethnic groups, and lack of data also is hampering analysis of age and gender disparities.

According to the Vermont Office on Aging, 79,000 or 15.4 percent of the State's population are 60 years of age or older. Vermont's population is 51.3 percent female while 44 percent of the labor force are women.

While the 1980 Census should add significantly to understanding of the status of racial minorities, women, and the elderly, it will not add much to the profile of the handicapped. A "disability" item on Census questionnaires was distributed on a sample rather than a complete-count basis, and it does not distinguish types of disabilities. Thus, no comprehensive statistics on the number of persons in the State who are handicapped exists now or is expected to emerge from Census data. However, two recent studies furnish some indication of the number of disabled in Vermont. The final report of Project Outreach for the Severely Disabled issued in late 1980 states that Vermont has about 1,100 residents who are "mobility impaired," and the Vermont Developmental Disability Council's Program Plan for fiscal year 1981 estimates that there are 8,400 developmentally disabled persons in the State. "Developmentally disabled" means persons whose disability occurred before age 21.

II. ISSUES AND EVENTS

Equal Justice Under Law

1. Juvenile Justice

Perhaps the most controversial age discrimination issue in Vermont last year concerned the special legal status of juvenile criminals. A special session of the Vermont State Legislature was convened on July 15 to consider changes in the State's juvenile justice laws. Pressure for this special session came as a response to several brutal crimes reportedly committed by juveniles.

In May, two 12-year old girls from Essex Junction, on their way home from school, were raped and tortured, and one was shot and killed. Two boys, ages 15, and 16, were accused. That same week a pregnant girl was murdered, reportedly by her 15-year-old boyfriend. A few months before, an elderly couple who lived alone on a farm was murdered, allegedly by three young men, one of whom was 15 years old. This rash of serious crimes and murders convinced residents that they faced a burgeoning problem that the old laws for treating delinquent juveniles were inadequate to meet.

The juvenile justice process has been and generally will remain more in the nature of a civil action than a criminal one. Most juvenile offenders are not charged with crimes but with being delinquent. If found delinquent they are given into the custody of the State Social and Rehabilitation Services Department for treatment, not sent to jail. However, last year's vicious crimes revealed defects in certain elements of this approach as it then operated.

Prior to the amendments enacted in the special legislative session, Vermont law provided that children under age 12 who committed criminal acts were absolutely immune from legal proceedings. It also provided that children of ages 12 through 15 could not be prosecuted as adults no matter what crime they might commit. Criminal charges in adult court could be brought against 16- and 17-year olds but jurisdiction could be waived to juvenile court (depending on the act and the capacity of the child). Moreover, under the old law once a juvenile reached his/her 18th birthday, the State lost jurisdiction regardless of the seriousness of the crime. Public outrage was evident when a petition containing 30,000 signatures was submitted to Governor Snelling requesting that he call a special session of the legislature to change those laws which allow juveniles to "get away with murder."

The special summer legislative session produced a new law that subjects juveniles to different judicial processes depending on the seriousness of the crime. For serious crimes, it lowers the age for possible prosecution in adult court to age 10. For non-serious

crimes, children under age 16 will be processed in juvenile courts. Those ages 16 and 17 may be tried in either court. The jurisdiction of the juvenile court which previously ended at age 18 is extended to cover persons up to 21 years of age. The new law also allows juveniles from ages 16 to 18 to be incarcerated in adult correctional institutions in certain cases and eases some of the protections concerning the secrecy of the juvenile proceedings.

The lack of a long-term treatment facility for juveniles in Vermont was an issue that received attention but was not resolved in 1981. Since the Weeks School closed several years ago, there has been no long-term, secure, juvenile treatment center in the State. Neither the short-term detention center in Waterbury nor the Wilderness Camp for delinquents in Benson was ever envisioned as a long-term, maximum security center. Otherwise, juveniles requiring maximum security settings are often sent out of state. After studying this problem for several months, the legislature's Juvenile Services Study Committee recommended in December that the State provide facilities containing 35 secure beds and 40 semi-secure beds. The recommendation of this Study Committee far exceeded the recommendation of the State Department of Social and Rehabilitation Services (20 beds) and that of the Juvenile Justice and Delinquency Prevention Advisory Group of the Vermont Commission on the Administration of Justice (10 beds). It is anticipated that the legislature will once again consider this issue in 1982.

Jack Pransky, Juvenile Planner for the Juvenile and Delinquency Prevention Program, reports that the State has no policy or plan for prevention of juvenile delinquency. A bill requiring the creation of a delinquency plan and affixing responsibility for the implementation of such plan on a council composed of the commissioners of each State agency that deals with youth has been filed with the legislature. While there is no State plan for juvenile delinquency prevention, each county has a Diversion Plan for delinquents in place.

2. Sexual Assault

State Representative Judith Stephaney remarked four years ago when the law on sexual assault (rape) was being rewritten, "Under our present law, rape is the only crime where the victim of the crime is guilty until proven innocent." She was referring to an apparent assumption in law and justice that victims induced the attacks. Three years after the sexual assault law was reformed to attempt to eliminate the propensity to treat rape victims differently than victims of other crimes, the Governor's Commission on the Status of Women conducted a study to determine the effectiveness of the new statute. In its report issued last spring, the Commission found that "only a small percentage of sexual assault cases ever make it through the criminal justice system and result in a conviction." They found that the problem lay not so much in deficiencies of the sexual assault law per se but with the continued

failure of those involved in the criminal justice system -- police, prosecutors, juries -- to treat sexual assault victims like other victims of violent crimes. One major recommendation of the study was that extensive public education on this problem be conducted by rape crisis teams. Other recommendations urged the implementation of uniform procedures, the use of lie detector tests, and the compilation of statistics on sexual assault. The Governor's Commission will continue to monitor this problem and work for the implementation of its recommendations.

3. Domestic Violence

Last year saw continued efforts by the Governor's Commission on the Status of Women, the Project Against Domestic Violence, the Coalition on Domestic Violence, and others concerned with this problem to seek effective implementation of the Abuse Prevention Act of 1980, the law designed to protect battered women. Fifty thousand copies of a brochure describing step-by-step how battered women can obtain relief from the courts under the 1980 violence law were printed, and 40,000 had been distributed throughout the State by year's end. The Vermont Police Chiefs' Association began gathering data on family violence following a recommendation made in a study of the enforcement of the new law conducted by the Project Against Domestic Violence.

In recent years, law enforcement authorities have come to recognize that preventing domestic violence involves not only apprehension of the perpetrator but creative efforts to protect victims and potential victims. This approach has been initiated by private groups who later received official support, and this has also been the case in Vermont.

According to Marianne Miller, manager of the Project Against Domestic Violence, there are 14 services in the State which focus primarily on assisting victims of domestic violence and "virtually all of them are struggling to generate funds" to operate. The elimination or reductions in Federal grants threaten to exacerbate this problem in 1982.

The legislature failed to pass a bill which would have increased the fee for marriage licenses to provide funding for domestic violence programs, but it did appropriate $30,000 for spouse abuse programs. The marriage license surcharge bill is expected to be reconsidered during the 1982 session.

The Vermont Conference on Elderly Abuse sponsored by the State Office on Aging was held in Vergennes in September. One hundred fifty persons heard speakers discuss the problems and progress of implementing the Vermont elderly abuse law passed in 1979. The purpose of the conference was to raise public consciousness about the problem of elderly abuse and to provide training to community workers in recognizing abuse, and developing protective service

systems and methods of solving the problem.

Equality of Educational Opportunity

On December 15, the Vermont Headmasters' Association, which establishes the rules for interscholastic athletic competition, agreed to waive its rule prohibiting girls from playing on contact sports teams with boys. The decision came in response to a request made by the Vermont Civil Liberties Union on behalf of a Woodstock girl that she be allowed to play on the high school's all-male ice hockey team.

Federal law mandates equality of educational opportunity and access for language-minority students, but how this requirement would be enforced and supported was a national controversy during 1981. The principal source of funds for these programs has been the Federal "Bilingual Education Act," Title VII of the Elementary and Secondary Education Act of 1965, which authorizes grants to State education agencies as well as to local schools. The Federal Department of Education finally opted to retain Title VII as a categorical grant program rather than lump it with other programs in an education "block grant" as planned early in the year.

Two French Title VII programs are being funded by the Federal government, a program in Richford in its third and final year and a new program for Highgate-Sheldon. In addition, Project Viable, the University of Vermont's training program for elementary teachers with a specialty in bilingual-bicultural education, was refunded in fall 1981 for three more years. The University of Vermont also has a Bilingual Education Service Center which provides technical assistance and workshops to bilingual programs in Maine, New Hampshire and Vermont.

The Vermont Developmental Disabilities Law Project represented mentally handicapped residents of the Brandon Training School in a case in United States District Court, Clark v. Withey, asserting that special education should be provided in community settings to eligible residents. The Brandon Training School is a State institution where 300 mentally retarded persons reside. A partial summary judgment was granted to plaintiffs requiring community placement of those residents determined to be eligible for such special education.

Equality of Employment Opportunity

For the first time, discrimination in employment on the basis of age and handicap is prohibited by State law. A new law outlawing such discrimination became effective on July 1, 1981. In 1980 a similar bill failed to gain legislative approval. This year the bill was actively supported by the Governor, Attorney General, and State agencies serving the aged and handicapped, as well as a broad coalition of advocacy groups for the handicapped and senior

citizens. Lee Viets, Executive Director of United Cerebral Palsy of Vermont and past president of the Vermont Coalition of the Handicapped, believes that the new Vermont law is one of the most comprehensive in the country.

The law defines handicap as including both physical and mental disabilities, and provides that employers should make "reasonable accommodation" to restructure the job and to make the facilities accessible to the handicapped. Under the new law, persons 18 years of age and older are protected from age discrimination. The law prohibits involuntary retirements at any age except for police officers, firefighters, and college professors serving under contracts of unlimited tenure.

The law amended the State Fair Employment Practices Act by adding age and handicap to the already prohibited discrimination on account of race, sex, religion, national origin and place of birth. It is to be enforced by the Civil Rights Division of the Attorney General's Office, which investigates and prosecutes complaints of employment discrimination. Persons who believe that they are the victims of unlawful discrimination also have the option of filing a case directly in State court. Denise Johnson, the Assistant Attorney General for Civil Rights, reports that at year's end, six months after the new law became effective, 18 complaints of age discrimination and 7 complaints of handicap discrimination had been filed with that office.

The new collective bargaining agreement covering 5,500 State employees contains strong affirmative action and anti-discrimination provisions for the first time. It also prohibits sexual harassment in the work place and requires the State to attempt to reassign pregnant women and those of childbearing age who work with materials hazardous to pregnancy. Moreover, the Vermont State Employees Association has recently begun training its union stewards to handle claims of sexual harassment, which is becoming recognized as a problem in Vermont.

In an effort to guage the extent of sexual harassment in State government employment, the Personnel Department published a questionnaire on sexual harassment in its newsletter, "News and Views." While few completed questionnaires were returned, those submitted expressed a wide range of opinions about the extent and seriousness of sexual harassment.

A report on Women in the Vermont Labor Force issued by the Vermont Department of Employment and Training documents that industries in which annual wages are relatively low employ larger percentages of women than industries where wages are fairly high.

One of the most gender-segregated types of employment in Vermont has been law enforcement. The U.S. Department of Justice threatened court action against the Vermont State Police in 1981 unless

corrective action were taken to employ more women. In December a consent decree requiring the State Police to actively recruit females was entered into between the U.S. Department of Justice and the Vermont Department of Public Safety. At present there are five female State police officers, which represents 2 percent of the force. The decree requires that the department undertake an active and ongoing recruitment program for women in an attempt to increase the percentage of qualified female applicants to 20 percent.

The Vermont Civil Liberties Union is representing a woman in a sex discrimination case filed in Federal district court in September. The case, Stark v. Saxon Industries, alleges that a female employee who applied for a promotion to the position of cutter-packer (all of whom are males) was not considered for that job because of her sex. No decision is expected in the near future.

In April, a suit brought by the Vermont Civil Liberties Union charging the Vermont State Fish and Game Department with sex discrimination in violation of the equal protection clause of the 14th amendment was settled. The case involved a woman who charged that because of her sex she was denied enrollment in a State-sponsored program to train hunting safety instructors. She was the first female to attempt to enroll in this course. The settlement agreement provided that she would be admitted to the training course.

In November, oral argument before the Vermont State Supreme Court was held in the case of a black who charged that he was fired from his job as a corrections officer at the Chittenden Community Correctional Center because of his race. The case is on appeal from the 1979 decision of the Vermont Labor Relations Board, which found race discrimination and ordered that the plaintiff be reinstated to his job as prison guard. The State claims that he was terminated for unauthorized absences, but the Vermont Labor Relations Board found that the hostile racial atmosphere to which he was subjected at work justified his absences. No decision has yet been reached by the State Supreme Court.

The Vermont Office on Aging has developed an employment program for people over 60 which uses VISTA volunteers based in Job Service offices as special job developers. They work to sensitize local business and industry to the value of hiring people over 60; develop jobs for older people with local businesses; and counsel older job applicants. On the results of the program's first year, VISTA plans to increase the program by almost 500 percent, allowing it to grow from three volunteers to fourteen.

Because Vermont alone among the New England States has no State human rights commission or antidiscrimination agency, the Civil Rights Division of the Attorney General's Office handles complaints of employment discrimination. Denise Johnson, the chief of the

Civil Rights Division of the Attorney General's Office, reports that employment discrimination complaints increased 26 percent in 1981 over 1980 figures. She attributes this increase to the Division's added jurisdiction over claims of age and handicap discrimination. Because of a decrease in the Federal grant from the Equal Employment Opportunity Commission, the Civil Rights Division staff decreased from 5 full time and 1 part time in 1980 to 3 full time and 1 part time by the end of 1981.

The Attorney General's Civil Rights Division estimates that about $85,000 in benefits, such as back pay, interest, and fringe benefits, was awarded to plaintiffs as a result of successful resolution of their cases in 1981. The Division reports that 51 percent of the cases filed with it are settled or conciliated before any formal finding of discrimination is made.

Other Issues Affecting Protected Groups

In addition to the law prohibiting employment discrimination against the handicapped, the legislature passed two other laws affecting the handicapped. One statute provides that handicapped persons are entitled to special parking cards to be displayed on the dashboards of their cars. However, under this law the practice of issuing special license plates for the handicapped will be discontinued. Another law establishes the right of handicapped people who are not drivers and, hence, do not have driver's licenses, to obtain an official identification card from the Department of Motor Vehicles.

Other than arguments on procedural issues, no significant activity occurred during 1981 on the case in State district court concerning the aboriginal fishing and hunting rights of the Abenaki Indians. In 1979 several Abenakis were arrested for violation of the State's fishing laws when they staged a "fish-in" by fishing without licenses. The Abenakis argue that they are not subject to fish and game laws because, as the original residents of the land, they retain the right to hunt and fish on these lands because such rights were never terminated by legislation or treaty. The case is still pending.

On December 8, 1981, for the first time since 1977, representatives of the Abenakis met with the Governor. Chief Leonard Lampmano of the St. Francis/Sokoki Band of the Abenakis and several members of the Tribal Council discussed possible reactivation of the State Indian Commission with Governor Snelling. This Commission, authorized by a Governor's Executive Order, has been inactive for several years, and the Abenakis would like it to be revived.

Twenty-one Vermonters attended the White House Conference on Aging during the first week in December in Washington, D.C. The issues brought to the White House Conference by the Vermont

delegation had been decided upon months earlier at a series of public forums and at a Vermont Conference on Aging. Among the recommendations Vermont delegates deemed most important were the strengthing of the Social Security System and the expansion of health insurance benefits to the elderly.

The Washington conference resulted in the adoption of more than 600 resolutions concerning issues such as retention of Social Security benefits, increased Medicare coverage, and improved access of the elderly to jobs and training. U.S. Commission on Civil Rights Vermont Advisory Committee member Susan H. Webb, from Plymouth, was the chairperson of the Vermont White House Conference Planning Committee. She found the conference "frustrating" but believes that the delegates made it clear that they were an important group to be reckoned with by the government. The Vermont delegates to the White House Conference are now in the process of pinpointing the most important of the 600 conference resolutions. When that task is completed, a coalition of elderly advocacy groups will work toward the implementation of the targeted resolutions.

A resolution designating the fourth Sunday in June as Franco-American Day in Vermont was adopted by the State Legislature and signed by the Governor. This date was selected to coincide as closely as possible with June 24, St. John the Baptist Day, the national holiday for French Canadians. The resolution urges communities to plan proper celebrations on that date.

The fourth annual National Franco-American Conference was held in Burlington in October. This four-day conference was attended by over 250 persons from all the New England's States and from as far away as Louisiana. Representatives of the government of the Province of Quebec and the Canadian National Government in Ottawa also attended. The Conference featured discussions, workshops, and exhibits as well as a folk music concert. The conference title, "La Grande Famille Se Rencontre," loosely translated means "the grand family reunion." Andre Germain, an Advisory Committee member and President of La Societe Des Deux Mondes, says that what encouraged him the most about the conference was the large attendance by local Franco-Americans as opposed to outside experts.

In a case concerning the deinstitutionalization of residents of the Brandon Training School, a Consent Decree was reached requiring eligible residents to be placed in "appropriate community residental settings" within ten years. The decree also establishes standards for appropriate community placements. According to William J. Reedy, attorney for the Vermont Developmental Disabilities Law Project, a very high percentage of the approximately 250 Brandon residents reviewed thus far have been declared to be eligible for community placement.

A bill establishing procedural safeguards regarding the sterilization of the mentally retarded passed the Vermont House in

1981 and is expected to be acted upon by the Senate in 1982. The existing law concerning sterilization of mentally retarded individuals had been declared unconstitutional by Rutland County Superior Court in 1980.

III. SPOTLIGHT ISSUE: FEDERAL FUNDING CHANGES

The Reagan Administration proposed early in 1981 that Federal aid to State and local governments be funded at far lower levels and administered much differently than previously. In June, the U.S. Commission on Civil Rights expressed its concern about the civil rights implications of these proposals in a report, Civil Rights: A National, Not a Special Interest, which outlined the effects of the changes in several major programs.

During the summer of 1981, Congress enacted many of the President's proposals. However, as the year ended, specific funding levels and program responsibilities still were not altogether clear. Congress had not yet passed a final 1982 budget for all of the Federal departments which provide funds to the States under the various Federal programs. This is an area of domestic policy still prone to change as final Federal budget figures for fiscal year 1982 emerge and as Congress considers the President's call for a "New Federalism" for fiscal year 1983.

Nonetheless, several features of this new landscape are clear:

-- Many familiar Federal aid programs have been combined into "block grants."
-- Many remaining "categorical grant" programs have been modified-- e.g., eligibility of clients or scope of legitimate activity is altered.
-- Most block and categorical programs are operating at lower funding levels in 1982 than in 1981.

For those concerned about the status of minorities, women, the aged, and the handicapped in this new situation, two questions have been and will remain paramount:

> Are the types of aid being cut the very ones that have assisted protected groups in their quest for equal access to jobs, housing, the legal system, etc.?
>
> Will the "block grant" arrangement for administering Federal aid permit effective enforcement of the laws prohibiting discrimination in the use of Federal funds?

What follows is more an elaboration of these questions than an attempt to answer them. The focus is on the changes adopted in 1981 and effective in 1982, and therefore excludes the Administration's

latest initiatives on the "New Federalism." Governor Snelling, who is the president of the National Governor's Association, is an expert on the concept of Federalism and will undoubtedly play a key role nationally as specific proposals regarding the appropriate relationsip between the States and the Federal Government are debated and decided upon in 1982.

Block Grant Administration

The Omnibus Budget Reconciliation Act of 1981, passed August 13, combined 57 Federal programs with specific goals or target groups in the fields of education, health, community development and welfare into nine "block grants." The Federal legislation (in reality, a group of acts) provides only broad purposes and goals for the block grants. The States have great discretion in deciding how block grant funds will be used.

The States must apply for the grants, but this is not a competitive process. The size of a grant is not linked to the merit of the State's program but is set by a national allocation formula. The State must indicate in its application the services and benefits for which it will use the money from a particular block grant, must meet certain requirements about public comment on the plan, and must provide certain assurances that it will comply with Federal laws in administering the grant. Consistent with the Administration's intention of reducing regulatory requirements, these funding conditions are generally less thorough and detailed than in previous programs.

The program guidance roles of the Federal agencies from which the funds originate are minimal. The U.S. Commission on Civil Rights has pointed out that studies of previously existing block grant programs, such as Revenue Sharing and Community Development Block Grants, have found that this relaxation of Federal oversight can lead to failure to comply with nondiscrimination requirements. Although nondiscrimination requirements governing the use of Federal funds continue to apply, implementation of those protections has not been very effective in existing block grants programs. Discrimination may occur more easily when there are such administrative defects as failure to collect data about the clients and beneficiaries of the programs, absence of adequate onsite reviews, and reliance on complaints rather than systematic enforcement mechanisms to remedy discrimination. Lack of effective administrative enforcement puts the full burden of pursuing relief on the victims of discrimination.

Of the nine new block grants established in the Budget Reconciliation Act, all States had to assume responsibility for two block grants as of October 1, 1981 -- social services and low-income energy assistance. The act establishing the block grants also offered the States the option to assume control of several of the remaining seven grants at the same time, or to defer responsibility for a year. Vermont, along with most other States, chose to accept

control of four optional block grants -- (1) community services, (2) maternal and child health, (3) preventive health care, and (4) alcohol, drug abuse, and mental health. Vermont has appointed block grant directors for each of the six block grants it has accepted thus far and the State has begun administering funds allocated under these grants.

In 1982 the State will decide upon the framework for the assumption of the three remaining block grants -- education, primary care and community development.

Of the nine block grants, four that have been of particular importance to disadvantaged groups serve to illustrate some of the potential civil rights enforcement problems. These programs are social services, community services, community development, and education. Although the Federal funding agencies legally continue to have the oversight responsibility regarding discrimination, it seems likely that in practice the States are inheriting a new increment of responsibility -- perhaps the key responsibility -- to see that the money is used nondiscriminatorily.

Social Services Block Grant -- The budget act contains no specific language against discrimination, although existing nondiscrimination laws apply. The block grant, from the U.S. Department of Health and Human Services (HHS), incorporates Social Security Title XX programs for activities such as day care, State and local training, and social services to the elderly. The State Human Services Agency is administering this new block grant, and reports a 22 percent reduction in Federal funds in Fiscal 1982 under the block grant from the amount it received for the same purposes in Fiscal 1981.

Community Services Block Grant -- Discrimination based on race, color, national origin, sex, age, and handicap is prohibited. The grant is made from the Office of Community Services of HHS to the State Economic Opportunity Office, which must pass 90 percent of it through to local governments or nonprofit organizations. In Vermont the recipients principally will be the local Community Action Programs (CAPs). The State may opt to transfer up to 5 percent to programs of the Older Americans Act, Head Start, or Low-Income Energy Assistance.

Marjorie J. Witherspoon, Director of Vermont's Economic Opportunity Office and the person designated by Governor Snelling to administer the new Community Services Block Grant, reports that while final 1982 figures are still unavailable, she expects about a 57 percent reduction in Federal funds under the block grant for this fiscal year below the 1981 amount. Ms. Witherspoon adds that the impact of this huge reduction has been softened because some of the CAP agencies received large Federal grants in the last quarter of fiscal 1981 just before the block grant system became operable. However, no such cushion will exist in Fiscal 1983 when the

Community Services Block Grant is targeted to be cut drastically again, according to Witherspoon.

Community Development Block Grant -- The budget act expands existing nondiscrimination coverage from race, color, national origin, and sex to include age and handicap. Large cities ("entitlement" cities) will continue, as they have since 1974, to receive the funds directly from the U.S. Department of Housing and Urban Development, and will continue to have to prepare Housing Assistance Plans (HAPs) describing efforts to meet the housing needs of low-income residents. However, the State-level review and sign-off (OMB Circular A-95 review) have been eliminated. Small cities need not prepare HAPs. This is one of the new block grants not yet accepted by Vermont.

Education Block Grant -- The budget act contains no specific language against discrimination, although existing nondiscrimination laws apply. Eighty percent of the grant, which will be made from the U.S. Department of Education to the Vermont Department of Education, must be passed through to local education agencies. This block grant does not incorporate several important Federal education aid programs such as Title I monies for school districts with poor children and "central programs" for the handicapped and disadvantaged. These remain categorical grant programs. As noted in an earlier section, Federal funds for bilingual education also remain a categorical grant. The Education Block Grant is another on which Vermont has deferred acceptance until October 1, 1982.

Categorical Grant Administration

Several programs targeted at disadvantaged groups continue as Federal categorical grants outside the new block grant apparatus, but they too are undergoing important changes. The coming year will show whether these changes have eroded the equality of access of such groups to the programs that have served them.

Aid to Families With Dependent Children (AFDC) -- The Vermont Department of Social Welfare continues to run the program. However, under new provisions enacted by Congress, States are reducing benefits to those who have food stamps or housing subsidies. States are authorized to set up "workfare" requirements, although Vermont has not opted for this method of moving AFDC recipients from welfare to work. It is anticipated that working mothers will suffer most from these changes.

William Kirby, business manager of the State Social Welfare Department, states that 1982 Federal reimbursement to Vermont for AFDC costs will decrease about $1,230,000 from fiscal year 1981 or from $26,470,000 to $25,239,000. These figures are based on the State's fiscal year (July 1 through June 30) rather than the Federal government's (October 1 through September 30).

Food Stamps -- There is a higher income test for eligibility, but elderly and disabled are exempt from it. A cost-of-living

increase was deferred until after October 1, 1982. This program is also administered by the Department of Social Welfare and Mr. Kirby report a $1,100,000 decrease of Federal money from State fiscal year 1981 to 1982.

Work Incentive Program (WIN) -- This program which assists the poor to find employment suffered a 33 percent decrease in funding effective October 1, 1981.

Low-income housing -- Rents for tenants in existing public housing projects will be raised gradually from 25 percent of a family's earnings to 30 percent. Operating subsidies for private and nonprofit multifamily housing will end.

Legal Services -- There will be not only substantial cuts but also restrictions on the types of activities the legal services attornies may undertake.

Education -- Gerard A. Asselin, Director of Federal Assistance for the State Department of Education, reports that funds distributed pursuant to Title I of the Elementary and Secondary Education Act for programs for disadvantaged children have been reduced between 4 and 6 percent. However, other categorical grants for education have not suffered any reduction in Fiscal 1982.

IV. EMERGING ISSUES AND PRIORITIES

National decisionmakers will face a number of critical choices in civil rights in 1982.

Congress will act on renewing the Voting Rights Act of 1965, judged by many to be the most significant civil rights law in history. Some who have stated support for the bill in fact have proposed changes that would drastically weaken it.

Even as the Voting Rights Act is debated, State legislators will be re-drawing congressional districts, and there have already been allegations in some States that these new districts may reflect racial discrimination.

Congress will likely be considering whether it should outlaw tax-exempt status for racially discriminatory private schools.

This will also be a year of decision on the Equal Rights Amendment (ERA), which must be ratified by three States by June if it is to become part of the Constitution.

In addition to changes in laws, 1982 will also see how effective new Federal civil rights enforcement strategies are. The U.S. Commission on Civil Rights plans to monitor State enforcement of

civil rights, as well as enforcement in block grants and in programs experiencing funding cuts.

The Commission also plans to conduct projects on minority economic development, community leadership responses to hate group activity, minority students in public higher education, disparities in health insurance, and the distinctions between "reasonable accommodation" and requirements to provide equal access to the handicapped.

While many of the national issues are of limited importance to Vermont life and politics, Vermont nonetheless has its own agenda of civil rights issues to address. Some of these matters involve the progress or outcomes of processes begun last year or earlier. However, there are also opportunities to choose and initiate new policy directions.

Status of Protected Classes

Considerably more information from the 1980 Census should be issued during the coming year, giving a better profile of the relative earnings, educational attainment, occupational status, and housing quality of different race, ethnic, gender, and age groups.

Government Services

Probably the most significant issue facing the State will be determining the scope of government services to be provided to minorities, women, the aged and handicapped in light of Federal funding reductions and changes in program regulations and eligibility requirements. This issue cuts across many areas -- education, employment, health services, social services, housing, and administration of justice. In addition, during 1982, policymakers will have to consider President Reagan's call for a "New Federalism," and the complex implications of this proposal will receive close scrutiny from civil rights leaders both for the quality of civil rights enforcement and for the feasibility of funding the programs.

Employment

The implementation of the new law prohibiting age and handicap discrimination in employment will continue in 1982. In early 1982, the State filed an important suit under this law against Sears Roebuck & Co. for terminating a 72-year-old woman because of her age. Sears has a policy of not employing persons over 70.

Insufficiency of employment training programs for women and the elderly is an issue of concern to advocates for these groups. In times of decreasing government services, women and the elderly need training to enable them to secure gainful employment.

Administration of Justice

The issue of juvenile justice remains important in 1982 as the State faces the issues of juvenile delinquency prevention planning and securing a long-term treatment center for juveniles.

Once again this year the legislature is considering the bill to increase the marriage license fee to fund programs for battered women.

Housing and the Handicapped

A bill to extend the powers of the State Architectural Barriers Review Board to cover building renovations is pending in the State Legislature.

V. Advisory Committee Activities

In January 1981 the Vermont Advisory Committee was rechartered by the U.S. Commission on Civil Rights for a two-year period. The Committee met eight times during the year.

In June, the Advisory Committee issued a statement, "Public Education's Unchanged Obligation to Minority Language Students," summarizing the legal obligations that local school districts have toward children whose primary language is not English. Copies of this statement were distributed to educators, public officials and other persons concerned with the issue of bilingual education.

The Advisory Committee has almost finished its study on the status of Franco-Americans in Vermont which will contain a brief history of French and French Canadian influence in Vermont in addition to statistical data.

The Governor's Commission on the Status of Women and the Advisory Committee have been gathering information on sexual harassment. They are preparing a booklet for distribution to employers and a brochure for employees on this topic. When these documents are completed they will be distributed with cooperation from the Vermont State Chamber of Commerce.

The Advisory Committee is also in the process of developing a kit on prejudice and stereotyping for use by community groups. The Committee believes that such a kit is important to heighten the awareness of the continued need to deal with stereotyping and the discrimination which often results from it.

APPENDIX A

Excerpt from, U.S. Commission on Civil Rights, Affirmative Action in the 1980s: Dismantling the Process of Discrimination (1981).

"Group Entitlements"

Race, sex, and national origin statistics in affirmative action plans do not mean, as some have alleged, that certain "protected groups" are entitled to have their members represented in every area of society in a ratio proportional to their presence in society.[44] As this statement has repeated, numerical data showing results by race, sex, and national origin are quantitative warning signals that discrimination may exist. While highlighting the effects of actions, they cannot explain the qualitative acts, much less their motivation, that cause those effects. The Commission shares the frustration of Supreme Court Justice Thurgood Marshall, who set out similar distinctions in a dissenting opinion in a recent voting rights case:

> The plurality's response is that my approach amounts to nothing less than a constitutional requirement of proportional representation for groups. That assertion amounts to nothing more than a red herring: I explicitly reject the notion that the Constitution contains any such requirement. . . .[T]he distinction between a requirement of proportional representation and the discriminatory-effect test I espouse is by no means a difficult one, and it is hard for me to understand why the plurality insists on ignoring it.[45]

We reject the allegation that numerical aspects of affirmative action plans inevitably must work as a system of group entitlement that ignores individual abilities in order to apportion resources and opportunities like pieces of pie.

Individuals are discriminated against because they belong to groups, not because of their individual attributes. Consequently, the remedy for discrimination must respond to these "group wrongs." The issue is how. This statement has argued that when group wrongs pervade the social, political, economic, and ideological landscape, they become self-sustaining processes that only a special set of antidiscrimination techniques—affirmative action—can effectively dismantle. Such group wrongs simply overwhelm remedies that do not take group designations into account. Affirmative action is necessary, therefore, when two conditions exist: when members of identifiable groups are experiencing discrimination because of their group membership *and* the nature and extent of such discrimination pose barriers to equal opportunity that have evolved into self-sustaining processes.

These are rational, factually ascertainable conditions, not arbitrary value judgments or unthinking entitlements to statistically measured group rights based on statistically measured group wrongs. The first condition exists when evidence shows that discrimination is occurring. The second condition is more difficult to determine, but it is still a factual matter. We suggest that discrimination has become a self-sustaining process requiring affirmative action plans to remedy it when the following four characteristics are present:

1. *A history of discrimination* has occurred against persons because of their membership in a group in the geographical and societal area in question;
2. *Prejudice* is evident in widespread attitudes and actions that currently disadvantage persons because of their group membership;
3. *Conditions of inequality* exist as indicated by statistical data in numerous areas of society for group members when compared to white men; and
4. *Antidiscrimination measures* that do not take race, sex, and national origin into account have proven ineffective in eliminating discriminatory barriers confronting group members.

These four categories of evidence focus on the time, depth, breadth, and/or intransigence of discrimination. Their presence demands that concern about discrimination extend beyond the more palpable forms of personal prejudice to those individual, organizational, and structural practices and policies that, although superficially neutral, will perpetuate

[44] Those who stress this view range from the most vocal opponents of affirmative action to those who claim that they, too, should be covered. *See, e.g.*, Brief of American Jewish Committee, American Jewish Congress, Hellenic Bar Association of Illinois, Italian American Foundation, Polish American Affairs Council, Polish American Educators Association, Ukrainian Congress Committee of America (Chicago Division), and Unico National, Amici Curiae at 32–33, in Regents of the University of California v. Bakke, 438 U.S. 265 (1978).

[45] City of Mobile, Alabama v. Bolden, 446 U.S. 55, 122 (1980) (Marshall, J. dissenting). The plurality opinion was written by Justice Stewart, who was joined by Chief Justice Burger and Justices Rehnquist and Powell.

discriminatory processes.[46]

The Federal Government, based on its experience in enforcing civil rights laws and administering Federal programs, collects and requires that others collect data on the following groups: American Indians, Alaskan Natives, Asian or Pacific Islanders, blacks, and Hispanics.[47] It is the Commission's belief that a systematic review of the individual, organizational, and structural attitudes and actions that members of these groups encounter would show that they generally experience discrimination as manifested in the four categories set forth above.

The conclusion that affirmative action is required to overcome the discrimination experienced by persons in certain groups does not in any way suggest that the kinds of discrimination suffered by others—particularly members of Euro-ethnic groups[48]—is more tolerable than that suffered by the groups noted above. The Commission firmly believes that active antidiscrimination efforts are needed to eliminate all forms of discrimination. The problem-remedy approach insists only that the remedy be tailored to the problem, not that the only remedy for discrimination is affirmative action to benefit certain groups.

Arguments against affirmative action have been raised under the banner of "reverse discrimination." To be sure, there have been incidents of arbitrary action against white men because of their race or sex. But the charge of "reverse discrimination," in essence, equates efforts to dismantle the process of discrimination with that process itself. Such an equation is profoundly and fundamentally incorrect.

Affirmative action plans are not attempts to establish a system of superiority for minorities and women, as our historic and ongoing discriminatory processes too often have done for white men. Nor are measures that take race, sex, and national origin into account designed to stigmatize white men, as do the abusive stereotypes of minorities and women that stem from past discrimination and persist in the present. Affirmative action plans end when nondiscriminatory processes replace discriminatory ones. Without affirmative intervention, discriminatory processes may never end.

Properly designed and administered affirmative action plans can create a climate of equality that supports all efforts to break down the structural, organizational, and personal barriers that perpetuate injustice. They can be comprehensive plans that combat all manifestations of the complex process of discrimination. In such a climate, differences among racial and ethnic groups and between men and women become simply differences, not badges that connote domination or subordination, superiority or inferiority.

[46] The Small Business Administration (SBA), pursuant to congressional directive (15 U.S.C.A. §637(d)(3)(c) (Supp. 1981)), has developed a similar four-point test. In ascertaining whether a group has suffered chronic racial or ethnic prejudice or cultural bias, the SBA applies the following criteria: (1) if the group has suffered the effects of discriminatory practices or similar invidious circumstances over which its members have no control; (2) if the group has generally suffered from prejudice or bias; (3) if such conditions have resulted in economic deprivation for the group of the type that Congress has found exists for the groups named in Pub. L. No. 95-507; and (4) if such conditions have produced impediments in the business world for members of the group over which they have no control that are not common to all business people. 13 C.F.R. §124.1-1(c)(3)(iv)(B) (1981).
The test is used to determine whether members of a minority group, not specifically designated by Congress as socially disadvantaged, qualify for the section 8(a) program of the Small Business Act (15 U.S.C. §637(a) (Supp. 1981)). This program fosters business ownership by socially and economically disadvantaged persons. 13 C.F.R. §124.1(b) (1981). The groups specifically designated by Congress as socially disadvantaged are black Americans, Hispanic Americans, Native Americans, and Asian Pacific Americans. *See* 13 C.F.R. §124.1-1(c)(3)(ii) (1981), pursuant to 15 U.S.C.A. §637(d)(3)(c) (Supp. 1981).
For another four-point test to determine whether certain groups should be included in affirmative action plans, *see* Daniel C. Maguire, *A New American Justice: Ending the White Male Monopolies* (Garden City: Doubleday, 1980), pp. 129-68.

[47] Directive No. 15, Race and Ethnic Standards for Federal Statistics and Administrative Reporting, Statistical Policy Handbook, *reprinted in* 43 Fed. Reg. 19,269 (1978). The data collection, of course, also includes whites and women within each category. The directive is careful to note the following: "These classifications should not be interpreted as being scientific or anthropological in nature, nor should they be viewed as determinants of eligibility for participation in any Federal program."

[48] The term "Euro-ethnic American" is an umbrella term, including persons from the various and unique ethnic, religious, and nationality groups of Eastern and Southern Europe. In January 1981 the Commission issued a "Statement on the Civil Rights Issues of Euro-Ethnic Americans" based on a consultation on this subject matter held a year earlier. In that statement, the Commission observed that due to the lack of statistical data of all kinds on Euro-ethnics, it has not been possible to assess the extent of the discrimination they may be experiencing, much less its varied forms and dynamics. The Commission urged appropriate Federal agencies to explore ways of gathering appropriate employment data. The Commission currently is doing research on Euro-ethnics in its "Ethnicity in Employment Study."

THE UNITED STATES COMMISSION ON CIVIL RIGHTS

The U.S. Commission on Civil Rights, created by the Civil Rights Act of 1957, is an independent, bipartisan agency of the executive branch of the Federal Government. By the terms of the act, as amended, the Commission is charged with the following duties pertaining to denials of the equal protection of the laws based on race, color, sex, age, handicap, religion, or national origin, or in the administration of justice: investigation of individual discriminatory denials of the right to vote; study of legal developments with respect to denials of the equal protection of the law; appraisal of the laws and policies of the United States with respect to denials of equal protection of the law; maintenance of a national clearinghouse for information respecting denials of equal protection of the law; and investigation of patterns or practices of fraud or discrimination in the conduct of Federal elections. The Commission is also required to submit reports to the President and the Congress at such times as the Commission, the Congress, or the President shall deem desirable.

THE STATE ADVISORY COMMITTEES

An Advisory Committee to the United States Commission on Civil Rights has been established in each of the 50 States and the District of Columbia pursuant to section 105 (c) of the Civil Rights Act of 1957 as amended. The Advisory Committees are made up of responsible persons who serve without compensation. Their functions under their mandate from the Commission are to: advise the Commission of all relevant information concerning their respective States on matters within the jurisdiction of the Commission; advise the Commission on matters of mutual concern in the preparation of reports of the Commission to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public and private organizations, and public officials upon matters pertinent to inquiries conducted by the State Advisory Committee; initiate and forward advice and recommendations to the Commission upon matters which the Advisory Committee has studied; and attend, as observers, any open hearing or conference which the Commission may hold within the State.

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