



**UNITED STATES  
COMMISSION ON  
CIVIL RIGHTS**

**Mid-Atlantic Regional Office**  
2120 L Street, N.W., Rm. 510  
Washington, D.C. 20037

(202) 254-6717

**REPORT OF A NOVEMBER 1984 CONFERENCE  
SPONSORED BY THE  
DELAWARE ADVISORY COMMITTEE  
TO THE  
U.S. COMMISSION ON CIVIL RIGHTS**

**DECEMBER 1985**

## **THE UNITED STATES COMMISSION ON CIVIL RIGHTS**

The United States 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 discrimination or denials of the equal protection of the laws based on race, color, religion, sex, age, handicap 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 discrimination or denials of the equal protection of the law; appraisal of the laws and policies of the United States with respect to discrimination or denials of equal protection of the law; maintenance of a national clearinghouse for information respecting discrimination or 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 in which the Commission shall request the assistance of the State Advisory Committee; and attend, as observers, any open hearing or conference which the Commission may hold within the State.



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**LETTER OF TRANSMITTAL**

Delaware Advisory Committee  
to the  
U.S. Commission on Civil Rights

December 3, 1985

**MEMBERS OF THE COMMISSION**

Clarence M. Pendleton, Jr., Chairman  
Morris B. Abram, Vice Chairman  
Esther Gonzalez-Arroyo Buckley  
John H. Bunzel  
Mary Frances Berry  
Robert A. Destro  
Francis S. Guess  
Blandina Cardenas Ramirez

J. Al Latham, Jr., Staff Director

Dear Commissioners:

The members of the Delaware Advisory Committee herewith transmit for your consideration, **Report of a November 1984 Conference Sponsored by the Delaware Advisory Committee**. It summarizes presentations and remarks made during the Committee's first statewide conference, which was convened in Wilmington a year ago in November, and includes other information obtained in subsequent staff interviews.

The Delaware Advisory Committee was rechartered early this year, and the contents of the report do not necessarily represent the views of all current members, nor does its transmittal constitute an endorsement by the Committee of the points of view expressed therein. At their meeting on September 24, 1985, new members and holdover members aired their differences on how they viewed civil rights, discussed the draft report in light of those differences, but ultimately voted to forward a report to the Commission. This final version, in a recorded poll of all members of the Advisory Committee in early December, was adopted unanimously.

The Advisory Committee is grateful to the conferees, who more than filled the ballroom of the Radisson Hotel, and to the panelists and other interviewees who contributed materials and gave thoughtful consideration to the various issues summarized in this report. While opinions may differ on some of the views expressed, we none-

theless agree that this report provides a useful followup discussion piece for the conferees and all those interested in assessing civil rights in Delaware today.

Any comments or suggestions which you may have on the topics reviewed would be warmly received.

Sincerely,

  
WILLIAM J. CONNER, Chairperson\*  
Delaware Advisory Committee

William E. Alsip+  
New Castle

Ruth M. Laws+  
Dover

Jan H. Blits°  
Newark

Emily G. Morris\*  
Dover

Robert G. Carey°  
Wilmington

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Donald B. Coefield+  
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Raymond Wolters°  
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Henry A. Heiman°  
Wilmington

Shirley C. Horowitz+  
Conference Chairperson  
Wilmington

Glover A. Jones\*  
Wilmington

- \* Current and Holdover Member
- + Membership Expired March 1985
- ° New Member

## ACKNOWLEDGEMENTS

The Delaware Advisory Committee wishes to thank the staff of the Mid-Atlantic Regional Office of the U.S. Commission on Civil Rights for its help in preparing this report.

This project was carried out under the direction of Tino Calabria, civil rights analyst. Assistance was provided by Robert Owens, regional attorney until October 1984, and Ki-Taek Chun, Deputy Director. Barbara Stafford and Chequita Carter provided secretarial support services. All worked under the supervision of Edward Rutledge, who was regional director through June 1985, and John I. Binkley, who assumed the regional directorship in July 1985.

Legal review was given by the Office of the General Counsel. The staff of the Publications Support Center, Office of Management, was responsible for final preparation of the report for publication.

**Report of a November 1984 Conference**  
Sponsored by the  
**Delaware Advisory Committee**  
to the  
**U.S. Commission on Civil Rights**  
  
**December 1985**

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**P R E F A C E**

The Delaware Advisory Committee has previously reported to the U.S. Commission on Civil Rights about police-minority relations in Wilmington (1970), the status of male prisoners in the Delaware correctional system (1974), the working and living conditions of mushroom workers in northern Delaware (1977), metropolitan school desegregation in Northern Delaware (1981), and the conditions of migrant farmworkers on Delaware's Eastern Shore (1984).

This is a report of presentations and remarks made at a statewide conference convened by the Delaware Advisory Committee in Wilmington on November 1984, and of information obtained in subsequent staff interviews. Its contents do not necessarily represent the views of current members of the Delaware Advisory Committee nor does its submission constitute an endorsement of any part of the report.

The conference itself featured U.S. Civil Rights Commissioner Mary Frances Berry as keynote speaker, and a summary of her address and subsequent remarks open this report. Other discussions during the conference brought forth opinions about causes leading to alleged problems, and some of the persons separately interviewed also volunteered opinions about causes. However, the present report generally limits itself to a presentation of the issues.

After a brief section offering background and a demographic profile of Delaware, the summary of the conference's keynote address leads to a synopsis of those issues. An in-depth determination of the severity of a specific issue and what underlies any problems related to that issue could well serve as the focus for a follow-up Advisory Committee project.

### DEMOGRAPHIC PROFILE

Delaware ratified the U.S. Constitution in December 1787. Having become the first state to do so, Delaware proclaims itself "The First State."<sup>1</sup> Modern Delaware is home to the nation's biggest chemical firm as well as to other businesses, and it is a type of legal birthplace for more than half the top 500 U.S. companies and a third of the companies on the New York Stock Exchange, many of which were incorporated in Delaware because of the ease in which incorporation can be carried out there.<sup>2</sup>

Yet, apart from its proud heritage and place in American history and its unique role in U.S. business, Delaware is a state whose actual geographic size is as modest as the size of its population. From a national perspective, Delaware ranks second smallest, following Rhode Island in geographic size, and at the same time it is less than two-thirds of Rhode Island in terms of population size.<sup>3</sup> In 1980, its inhabitants numbered 594,338 an increase of 8.6 percent over 1970, a rate of growth which is higher than the national average growth rate of 6 percent over the decade of the 1970s. (See below.)

In the same period, the white population declined from 85.1 percent to 82.1 percent of the total number of inhabitants. However, the black population increased from 14.3 percent to 16.1 percent, as the Hispanic population went from 1.5 percent to 1.6 percent. There were 106,521 individuals among the State's racial minorities in 1980, and 9,661 individuals reported as being of Hispanic Origin. The tables on the following two pages show selected racial, Hispanic Origin, gender, age, and disability statistics from various sources:

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<sup>1</sup>N. Peirce & M. Barone, **The Mid-Atlantic States of America: People, Politics, and Power in the Five Mid-Atlantic States and the Nation's Capital**, 1977, pp. 94-96.

<sup>2</sup>J. Vessels, Delaware--Who Needs to Be Big?, **The National Geographic Magazine**, No. 2, (Aug. 1983), p. 172 (hereafter cited as "Delaware--Who Needs to Be Big?").

<sup>3</sup>U.S., Department of Commerce, Bureau of the Census, **Statistical Abstract of the United States: 1986**, December 1985, p. 194 and p. 937.

## 1980 Racial, Ethnic, Gender, Age and Disability Data for Delaware

| RACE <sup>4</sup>                   | NUMBER  | PERCENT |
|-------------------------------------|---------|---------|
| White                               | 487,817 | 82.1    |
| Black                               | 95,845  | 16.1    |
| Native American <sup>5</sup>        | 1,328   | 0.2     |
| Asian-Pacific Islander <sup>6</sup> | 4,112   | 0.7     |
| Other                               | 5,236   | 0.9     |
| <u>T O T A L</u>                    | 594,338 |         |

| ETHNICITY <sup>7</sup> | NUMBER  | PERCENT |
|------------------------|---------|---------|
| Not-of-Hispanic Origin | 584,677 | 98.4    |
| Hispanic Origin        | 9,661   | 1.6     |
| <u>T O T A L</u>       | 594,338 |         |

| GENDER <sup>8</sup> | NUMBER  | PERCENT |
|---------------------|---------|---------|
| Males               | 286,599 | 48.2    |
| Females             | 307,739 | 51.8    |
| <u>T O T A L</u>    | 594,338 |         |

| AGE <sup>9</sup>  | NUMBER  | PERCENT <sup>10</sup> |
|-------------------|---------|-----------------------|
| Under 18          | 166,595 | 28.0                  |
| Between 19 and 61 | 353,290 | 59.4                  |
| Age 62 and over   | 74,453  | 12.5                  |

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<sup>4</sup>U.S., Department of Commerce, Bureau of the Census, General Population Characteristics: Delaware, 1980 Census of Population, PC80-1-B9 (June 1982), (hereafter cited as General Population Characteristics: Delaware, 1980), p. 9-9.

<sup>5</sup>This category includes American Indian, Eskimo, and Aleut.

<sup>6</sup>This category includes Japanese, Chinese, Filipino, Korean, Asian Indian, Vietnamese, Hawaiian, Guamanian, and Samoan only. Additional Asian or Pacific Islander groups are included in the racial category given as "Other."

<sup>7</sup>Ibid., p. 9-10.

<sup>8</sup>Ibid., p. 9-11.

<sup>9</sup>Ibid., pp. 9-12 and 9-13.

<sup>10</sup>The percentages do not add up to 100 percent due to rounding.



Median age for total State population . . . . . 29.7;  
 Median age for white population . . . . . 31.1;  
 Median age for black population . . . . . 24.2;  
 Median age for Hispanic origin population . . . 21.5.

## DISABLED<sup>11</sup>

According to the 1980 Census, Delaware residents **between 16 and 64 years of age, who were not institutionalized** but who reported a work disability, numbered 30,785.

Estimates offered by one State agency for the number of disabled of any age throughout Delaware are:

|                                   |   |
|-----------------------------------|---|
| New Castle County . . . . .       | 70,107 (1984 est.)                      |
| Kent County . . . . .             | 17,407 (1984 est.)                      |
| Sussex County . . . . .           | 17,854 (1984 est.)                      |
| <b><u>S T A T E T O T A L</u></b> | <b>105,368 (1984 est.)<sup>12</sup></b> |

## INCOME AND COMPOSITION OF LARGEST CITIES

Delaware's median income for a family of four was \$31,676 in 1983, more than the median income for the nation as a whole and ninth highest among all states.<sup>13</sup> For a perspective on the differences among whites, blacks, and Hispanics, the 1979 income statistics from the 1980 Census must be used. For 1979, the overall median household income in Delaware was \$17,846. However, for whites it was \$19,045 and for blacks, only \$11,858. Meanwhile, the median household income for Hispanics was \$11,809.<sup>14</sup>

Along with parts of Maryland and New Jersey, Delaware shares in one Standard Metropolitan Statistical Area (SMSA), and that SMSA included almost 400,000 residents in and around Wilmington.<sup>15</sup> The City of Wilmington alone was home to over 70,000 residents in 1980, while the almost 36,000 blacks and the 3,400 Hispanics in Wilmington comprised over 50 percent of its population.<sup>16</sup> The more than 60,000 blacks in the Delaware portion of that SMSA made up almost two-thirds of the blacks throughout the State. Delaware's second largest city is Newark whose 1980 population was just over 25,000

<sup>11</sup>See section on Disability Issues, p. 30, for discussion of 1984 estimates given by the U.S. Bureau of the Census and the Delaware Developmental Disabilities Planning Council.

<sup>12</sup>Id.

<sup>13</sup>U.S., Department of Commerce, Bureau of the Census, **Median Income for 4-person Families by State**, from an unpublished table provided by Ed Welniak, Income Statistics Branch, U.S. Bureau of the Census.

<sup>14</sup>Telephone interview with George F. Patterson, Acting Chief, Income Statistics Branch, Population Division, U.S. Bureau of the Census (Dec. 5, 1985).

<sup>15</sup>**General Population Characteristics: Delaware, 1980**, p. 9-7.

<sup>16</sup>Ibid., pp. 9-9 and 9-10.

residents, 4 percent of whom are black and 1 percent, Hispanic. Dover, the State Capital, is situated on the Delmarva peninsula along with portions of Maryland and Virginia, and is Delaware's third biggest city with over 23,000 residents, about 29 percent of whom are black and almost 2 percent, Hispanic.<sup>17</sup>

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<sup>17</sup>Ibid.

KEYNOTE ADDRESS<sup>1</sup>

(Dr. Mary Frances Berry, Commissioner  
U.S. Commission on Civil Rights)

Dr. Berry noted that, from its beginnings under the Civil Rights Act of 1957 to the late 1970s, the Commission engaged in raising the consciousness of people during a period when there seemed a national will to act. Starting in the early 1980s, however, the Commission has appeared to be trying to reinforce a reluctance to do anything, a reluctance mirroring the mood of the country.

She stated that, though the Commission's current majority believes its jurisdiction is narrower than before, this majority operates as if the Commission may adopt positions without first engaging in factfinding. According to Dr. Berry, the present Commission also believes that the prior majority favored quotas and bussing without qualifications and that it wrongly subordinated the individual to the group. Moreover, the present Commission holds that an intent to discriminate must be demonstrated and that remedies are available only to individual victims.

Dr. Berry's own views are that the new Commission is procedurally out of control. For example, it has announced positions without first benefiting from factfinding. It has not recognized the collegial nature of the Commission and has not published dissenting opinions. It has convened press conferences without informing or involving all Commissioners. She, on the other hand, believes that the Commission's jurisdiction should be interpreted as being the same as it had been under the prior Commission majority. She also pointed out that hearings are important because anyone may offer testimony at hearings to express any view; on the other hand, consultations are controlled, permitting statements only from a pre-selected few.

Regarding Commission business affecting Delaware, Dr. Berry said that the companion reports on migrant farmworkers adopted by the Delaware and Virginia Advisory Committees in 1984 and 1983 respectively covered legitimate topics. Like all Advisory Committees, the Advisory Committees which submitted those reports are required by law to advise the Commissioners, and they should not have had their reports cut off at the Staff Director's level. After finally being able to review the reports herself, Dr. Berry communicated with her colleagues, observing that "the report quite clearly says that it is talking about migrant workers, most of whom are Hispanics or blacks, who are covered under the civil rights laws and what has happened to them and what things are needed to remedy the conditions that they face."

With Commission officials recently covered by the national news

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<sup>1</sup>The summary is taken from pages 6-35 and 83-95 of **Civil Rights in Delaware in the Mid-1980s: A Statewide Conference**, (1984), (transcript prepared by Vincent Varallo Associates, Inc., Philadelphia) (hereafter cited as **Conference Transcript**).

media on comparable worth or pay equity,<sup>1</sup> Dr. Berry observed that the issue is serious and complex, one which the full Commission should analyze with care prior to adopting a public position. She also noted an apparent contradiction in the Commission majority's position. The Commission majority believes that the agency ought not to delve into general economic matters; nevertheless, some Commission officials disparage the concept of pay equity by speculating that achieving it would upset the economy.

Dr. Berry noted that the Civil Rights Act of 1984 was defeated in the Senate with the help of the Commission's Staff Director, General Counsel, and other staff. She said that it marked the first time in the Commission's history that Commission officials helped to defeat a civil rights law. If the Commission continues on the same path, it should be abolished, stated Dr. Berry.

Meanwhile, Dr. Berry added that an Advisory Committee could act aggressively, solicit information widely, and forward the information to the Commission in Washington, D.C., then wait to see if the information is acted upon or not. Or, the Committee could be non-aggressive and drift along with wherever the tides go. But she also pointed out that Committee members are not paid and thus could take certain risks and be aggressive about issues.

At the same time, she cautioned against letting issues appear to divide constituent groups. She said that prior to the recent national elections and prior to the defeat of the Civil Rights Act of 1984, it appeared to some that black issues were no longer in vogue. Supposedly in vogue were women's issues, age discrimination, and disability issues. However, the election results and the defeat of the new Civil Rights Act demonstrated that it was civil rights in general that was not in vogue. As a consequence, there is even more reason to work for solidarity and to work on issues that bring the groups together rather than divide people.

Dr. Berry pointed out that the U.S. Justice Department has already intervened in areas where State and local government had passed laws expanding civil rights. Acknowledging that she did not know how to prevent the Justice Department from taking an adversarial position toward positive change, Dr. Berry at the same time emphasized her belief that long term or mid-term strategies would have to be worked out.

In a more philosophic context, Dr. Berry reminded the conferees that in the 1960s, when civil rights proponents adopted a highly activist stance, the general public was not less conservative than now. She noted that in 1850, before slavery was abolished, a poll of slave holders would have shown that they were opposed to the abolition of slavery. A hundred years later, in her home state of Tennessee, any poll would have resulted in the majority being op-

<sup>1</sup>See, for example, Perl, "Rights Chief Derides 'Comparable Worth,'" **Washington Post**, (Nov. 17, 1984), at A-6, and also "Concept of Pay Based on Worth Is the 'Looniest,' Rights Chief Says", Associated Press dispatch appearing in the **New York Times**, (Nov. 17, 1984), at 15.

posed to school desegregation. Nonetheless, in both cases enough people continued to press the issues, and eventually slavery was abolished and later school desegregation policies were adopted.

Dr. Berry concluded by stating that, until the people who are the ones suffering injustice steel their determination and take action, others will ignore civil rights issues because they believe they can do so with impunity. ---

## HOUSING ISSUES

Like states elsewhere, Delaware suffers from a shortage of housing for low- and moderate-income individuals and families. Also like many states, Delaware had no statewide uniform housing code until recently. Of Delaware's three counties, only New Castle County has a housing code, as do 13 smaller jurisdictions--seven of those being in Kent and Sussex Counties. However, as will be seen below, housing advocates believe that in some cases the local codes are not being vigorously enforced.<sup>1</sup> Moreover, a project concluded by the Delaware Division of Human Relations in 1984 uncovered discriminatory practices in the renting of housing units in various communities in the State.<sup>2</sup>

Delaware's largest county, New Castle County, and Delaware's biggest municipality, the City of Wilmington, are two jurisdictions which have adopted housing codes. But adopting a housing code is no guarantee that problems will not persist. As a 1983 Delaware State Housing Authority survey indicates, "The number of substandard housing units found in the suburban Brandywine area<sup>3</sup> of New Castle County is alarming. . . ." <sup>4</sup> Certain types of problems in Wilmington appear not easily susceptible to resolution in spite of the existence of a housing code. In the first place, experience in 1969 showed that tough enforcement of Wilmington's code led to eviction of low-income tenants by absentee landlords, and observers believe the same results could occur in Wilmington today.<sup>5</sup>

Lax enforcement, on the other hand, may lead to other problems, as seems clear from a case study described by the Executive Director of Wilmington's Community Legal Aid Society. In fact, the Executive Director offered the case study as an example of another kind of dilemma in enforcement.<sup>6</sup>

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<sup>1</sup>See p. 13 below.

<sup>2</sup>For a discussion of the 1984 project, see p. 14 below.

<sup>3</sup> Of 11 County census divisions surveyed, Brandywine contained 1,535 substandard units, or 25.4 percent of the County total. State of Delaware, Delaware State Housing Authority, **A Study of Substandard Housing for Delaware State Housing Authority**, Document No. 50-09-84-02-01, by Peter A. Larson, ACIP, Consultant (Oct. 11, 1983), p. 8 (hereafter cited as **Study of Substandard Housing**.) Program Coordinator Mark A. Kleinschmidt of the Delaware Housing Coalition points out that an abandoned apartment complex of about 1,000 units contributes to the percentage of substandard housing in suburban Brandywine, "one of the most developed and affluent areas in the state." Letter from Mark A. Kleinschmidt to Tino Calabria 1 (Nov. 1, 1985).

<sup>4</sup>**Study of Substandard Housing**, p. 24.

<sup>5</sup>Khalid, "Rigid Code Could Leave Tenants Out," **Wilmington News-Journal**, Oct. 14, 1985, at B-1.

<sup>6</sup>Mary M. McDonough, Esq., Executive Director, Community Legal Aid Society of Wilmington, **Conference Housing Transcript** (transcript prepared by Mid-Atlantic Regional Office from cassette tape of housing workshop), p. 4.

According to the Executive Director, a child suffered permanent brain damage as a result of ingesting lead paint flaking off the walls of a public housing unit. Although the Wilmington housing code can presumably protect the family from further poisoning, the child's mother felt that she would be labeled a trouble-maker, if she took legal action, and would then lose her apartment. Therefore, instead of pressing for a legal remedy, she chose to cover the loose paint with masking tape and to tighten her vigilance so as not to let paint chips come into the hands of her children.

Municipal officials aware of such problems have occasionally observed to the Executive Director that voting registration in the affected neighborhood is low, implying that the lack of political participation permits the persistence of such problems. Eventually Legal Services was able to bring suit in Federal court against the Wilmington Housing Authority, asking for declaratory and injunctive relief to force the Authority to obey the law on lead paint. However, the case dragged on for four years until Legal Services was able to obtain financial support enabling it to take lead paint samples. Once the samples showed that over 95 percent of the family units had lead paint, the Authority decided to settle.<sup>7</sup>

The Authority now has a new Executive Director, whom the Legal Services head praised at the Conference. This new Executive Director anticipates correcting the Authority's lead poison problem by the spring of 1986. Of the 1,636 family units under the jurisdiction of the Authority, about 1,520 continued to be adversely affected by lead paint hazards through March 1985. At an average cost of \$3,285 per unit, these hazards are expected to be totally eliminated next year, according to the Executive Director.<sup>8</sup>

In terms of the State as a whole, minorities predominate in the housing units associated with the State Housing Authority. And, in the past, the State has been able to create about 1,000 units a year for those eligible for such housing. However, the State Director of Housing at the State Housing Authority recently expressed fears that the proposed cuts in Federal housing assistance and Federal tax reform proposals could bring to a halt the development of new units around the State.<sup>9</sup>

According to the State Housing Director, the 1,000-units-per year level of progress had been "attributable primarily to the Delaware State Housing Authority's ability to issue tax-exempt revenue bonds. . . . [However,] All three major tax reform proposals under

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<sup>7</sup>Ibid., pp. 5-7.

<sup>8</sup>Telephone interview with MaryAnn M. Russ, Executive Director, Wilmington Housing Authority, Mar. 27, 1985 (hereafter cited as Russ interview) and confirmed in her November 4, 1985 letter to Tino Calabria.

<sup>9</sup>Telephone interview with Robert S. Moyer, Director of Housing, Delaware State Housing Authority, (Mar. 26, 1985) (hereafter cited as Moyer interview).

consideration--Treasury, Kemp-Kasten, and Bradley-Gephardt--would eliminate our tax-exempt financing capability."<sup>10</sup> The State Housing Director further said that State and local governments could not step in and provide the 1,000 yearly units afforded up to the present through Federal assistance.<sup>11</sup>

Meanwhile, the adjusted housing vacancy rate in New Castle County reported in March 1985 was 1.2 percent--a sharp contrast to the 12 percent vacancy rate prevailing as late as 1976. A 5 percent rate is considered useful in accomodating normal turnover.<sup>12</sup> The adjusted rate for Delaware's biggest city, Wilmington, where blacks make up over half of the population, has fallen below 1 percent, a level which the New Castle County Department of Community Development and Housing estimates as indicating "a critical housing supply shortage."<sup>13</sup>

The Wilmington Housing Authority's Executive Director maintains a list of almost a thousand applicants awaiting public housing. Despite the fact that the waiting list is currently closed and is only opened about once every 18 months, 60 to 70 callers a week request placement on the list.<sup>14</sup> Long waiting lists also exist for assisted housing administered by the Newark Housing Authority and by New Castle County.<sup>15</sup>

Any halt in Federal assistance will put increased pressure on the existing short supply, and, for this reason, the State Housing Director believed that adoption of a State housing code was imperative in order to protect the present stock.<sup>16</sup> Though legislation to establish a code met defeat in 1971 and 1974, a new bill passed with only one dissent in the State House in 1984, only to die in the State Senate.<sup>17</sup> That year, proponents of a code were reported

<sup>10</sup>Address by Robert S. Moyer, Director of Housing, "The Economy and Housing During President Reagan's 2nd Term: Impact on the Public Housing Sector," at 7-8, The Society of Real Estate Appraisers (Delaware Chapter) (Mar. 28, 1985).

<sup>11</sup>Moyer interview.

<sup>12</sup>Telephone interview with Jane C.W. Vincent, Housing and Community Development Planner, Department of Community Development and Housing, New Castle County, (Mar. 28, 1985). The New Castle County 1985 Annual Rental Survey, showed a 2.2 percent rate, marking the third year in a row in which the adjusted vacancy rate was below 5 percent. New Castle County, Department of Community Development and Housing, New Castle County 1985 Annual Rental Survey (July-Aug. 1985), p. 33.

<sup>13</sup>Ibid. Also, New Castle County, Department of Community Development and Housing, New Castle County 1984 Annual Rental Survey, (Aug.-Oct., 1984), p. 35.

<sup>14</sup>Russ interview.

<sup>15</sup>Jane C. W. Vincent, note to materials sent to Tino Calabria, received Nov. 20, 1985.

<sup>16</sup>Moyer interview.

<sup>17</sup>Gail Brown Light, Research and Information Coordinator, Delaware State Housing Authority, "History of the Proposed Statewide Housing Code," one-page factsheet (Mar. 18, 1985), and tele-



as saying that "The key to securing the passage of the bill . . . is winning the support of lawmakers in downstate Delaware, where most of the violations occur.<sup>18</sup>

Pressed by the Delaware Housing Coalition, which is a group funded by the Campaign for Human Development, concerned lawmakers fashioned new legislation. This time, it passed in the Senate during a special after-midnight session beyond the scheduled June 30th close of the 1985 legislative year.<sup>19</sup> Included among its provisions are those specifying coverage of rental properties and of owner-occupied housing upon the next sale of the house, but resort properties are excluded from coverage. The law "basically requires running hot and cold water, plumbing, heat, and cooking utensils in all dwellings in Delaware . . . [and] that properties be kept in good repair and that they be well-ventilated and free of rodents and pests."<sup>20</sup> It is to take effect three years after the Governor's approval, providing landlords and owners time to bring their properties up to code standards.<sup>21</sup>

Hopes were already high last year that a code would be established, one that would have a "terrific effect" and be beneficial to minorities and female single-headed households, according to one spokesperson for the Delaware Division of Housing.<sup>22</sup> The spokesperson said that she knew of no recent survey of the minorities in housing units identified as dilapidated; however, she has personally made many home visits over eight years, and minorities and female heads of households constituted the majority of the residents seen.<sup>23</sup>

Meanwhile, a State survey issued in October 1983 estimated that there were then over 16,000 units of substandard housing: 6,042 in New Castle County, 5,515 in Kent County, and 4,507 in Sussex County, representing 6.6 percent of Delaware's estimated total 1983 housing stock.<sup>24</sup> Over 10 percent of the housing in Wilmington in New Castle County was substandard. Almost 10 percent of Dover's

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 phone interview with Lynne T. Bie, Housing Specialist, Delaware Division of Housing (July 3, 1984) (hereafter cited as Bie interview).

<sup>18</sup>Warrick, "Housing Code Sought in Delaware," Philadelphia Inquirer, May 5, 1984, at 3-B (hereafter cited as "Housing Code Sought in Delaware").

<sup>19</sup>Telephone interview with Mark A. Kleinschmidt, Program Coordinator, Delaware Housing Coalition, (July 1, 1985).

<sup>20</sup>Troy, "Delaware Poised for State Housing Code," Delaware State News, June 19, 1985, at 1.

<sup>21</sup>Id.

<sup>22</sup>Bie interview.

<sup>23</sup>Id. See also "Housing Code Sought in Delaware."

<sup>24</sup>Study of Substandard Housing, pp. 3, 8. However, the New Castle County FY'83-85 Housing Assistance Plan, stated that there were then 14,284 substandard units throughout that County. New Castle County, Department of Community Development and Housing, New Castle County FY '83-85 Housing Assistance Plan (Mar. 1, 1983), p. 4.

housing stock was substandard, and the number of those substandard in Dover, the State Capital, constituted 37.6 percent of all the substandard housing in Kent County, while the 943 units of substandard housing in Bridgeville-Greenwood made up 20.9 percent of all the substandard housing in Sussex County.<sup>25</sup>

This "windshield" survey was made by viewing only the exterior of dwellings. Consequently, the true figures may be as much as double the estimate suggested by the State's survey, according to an officer of the Delaware Housing Coalition. During the State Conference, the Coalition officer described a rural community where the plight of minority residents is particularly stark and where the root of the problem reportedly began in the absence of a housing code.<sup>26</sup>

Coverdale Crossroads contains blocks of substandard housing. In the late 1960s, they were condemned by the town of Seaford where they had originally been located. Bought by a developer, they were later trucked to Coverdale Crossroads, set up without bathrooms and other plumbing facilities, and then sold to low-income people. Evictions occurred when payments were not met, and for this and other reasons, turnover has been high.<sup>27</sup> This situation illustrates what could continue to occur as long as a statewide housing code was not adopted. The Delaware Housing Coalition officer also acknowledged that several downstate rural communities do have housing codes, but he voiced his conviction that they remain poorly enforced.<sup>28</sup>

As shown above, the absence of a statewide uniform housing code has presented one set of problems for minority and female-headed households dependent on scarce public housing. Weak enforcement of local codes presents another set, and, the dilemma confronting public housing tenants with little political influence, who are fearful of reprisals after registering a complaint, leads to yet a third set.

In addition, discrimination in rentals seems to persist, with two State officials and a City official describing the phenomenon from their different perspectives. In a press interview just prior to the Delaware Advisory Committee's Conference, the Director of the State Housing Authority noted that "unhappily, there is still a great deal of discrimination. It goes on covertly. . . . No one gets denied an apartment due to race, but because of a lack of a good credit rating or prior landlord recommendation. These are the alleged reasons."<sup>29</sup>

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<sup>25</sup>Study of Substandard Housing, pp. 3-4, 8.

<sup>26</sup>Roland Ridgeway, Delaware Housing Coalition, Conference Housing Transcript, pp. 12-14.

<sup>27</sup>Ibid., p. 13.

<sup>28</sup>Ibid., p. 17.

<sup>29</sup>Milford, "Rights Panel Set for Public Conference: Discrimination Is Seen as Persistent Problem," **Sunday News Journal**, (Nov. 18, 1984), at B-1.

In 1984, a testing project was completed by the Delaware Division of Human Relations. Teams of whites and blacks alternately would inquire about the availability of specific rental units. Visits to a sampling of 150 landlords or rental agents throughout Delaware's three Counties resulted in 27 incidents suggesting discriminatory practices, or a rate of about 18 percent. Narrowing further investigation down to what seemed the 17 strongest cases, the Division eventually conciliated eight and brought another seven to hearings. From the above experience, the Division's Executive Director concluded that discrimination persists in the rental housing market in Delaware.<sup>30</sup> More recently, the Executive Director of the Wilmington Housing Authority added that "Delaware is still experiencing discrimination in housing and the very tight rental market exacerbates the problem. . . ."31

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<sup>30</sup>Telephone interview with Andrew Turner, Executive Director, Delaware Division of Human Relations (Mar. 28, 1984). Since the number of visits resulting in valid tests was found to be only 134, the rate of suspected incidents is in the neighborhood of 12 percent.

<sup>31</sup>Letter from MaryAnn M. Russ to Tino Calabria (Nov. 4, 1985).

## EMPLOYMENT ISSUE

Although small in size and population, Delaware--particularly the State's biggest city, Wilmington--is a national business center. As mentioned in the preface, **National Geographic** points out that "[m]ore than half the top 500 U.S. companies and a third of the companies on the New York Stock Exchange are incorporated in Delaware. . . ." <sup>1</sup> In fact, 160,000 large and small companies call Delaware home, although few maintain headquarters there. <sup>2</sup> E.I. duPont de Nemours and Company, the nation's largest chemical firm, was founded over 180 years ago in Delaware and remains anchored there, as do other chemical and related businesses established since then.

DuPont itself has had a policy of centering its managers and other white collar workforce in Delaware and distributing its blue collar workforce outside of the State. <sup>3</sup> However, some heavy industry exists including Phoenix Steel, which was founded in 1783, two auto plants under Chrysler and General Motors, and Amtrak's north-eastern region repair yard. In the past, heavy industry often paved the way for persons with little education and few skills to enter the workforce and earn their way to good paying jobs.

However, during the Conference, the Co-Chairperson of the Civil Rights Committee of United Auto Workers Local 1183 at the Chrysler plant commented on automation and its effects on opportunities for minorities and women. He observed that the introduction of automation at Chrysler, which by then operated about 60 robots, had already had the effect of creating more jobs for skilled workers while reducing the number for those less skilled. <sup>4</sup> A recent "Careers" column in a Wilmington daily pointed out that a University of Michigan study predicts that the industry to be hardest hit by robotics will be the automobile industry. <sup>5</sup>

From 1976, when 13 robots were introduced at Chrysler, to 1983, about 110 employees were lost, about 35 of whom were blacks. <sup>6</sup> At

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<sup>1</sup>"Delaware: Who Needs to Be Big," p. 172.

<sup>2</sup>James, "Tiny Delaware Is Battlefield of Big Business," **Baltimore Sun**, (Nov. 10, 1985), at D-1.

<sup>3</sup>N. Peirce & M. Barone, **The Mid-Atlantic States of America: People, Politics, and Power in the Five Mid-Atlantic States and the Nation's Capital**, (1977), p. 103.

<sup>4</sup>Phil Bannowsky, Co-Chairperson, Civil Rights Committee, United Auto Workers, Local 1183, Conference Transcript, pp. 103-104, as amended during telephone interview (Mar. 24, 1985). According to "Robots Will Create Jobs," in the October 1985 issue of **Delaware Apprenticeship News**, the occupations most affected by robotics will be assembly line painters, welders and flamecutters, machinists and machine operators, assembly workers, and production line supervisors.

<sup>5</sup>Kennedy, "Some Win and Some Lose With Robotics," **Wilmington News-Journal**, (Nov. 14, 1985) at D-3.

<sup>6</sup>Telephone interview with Bannowsky (Mar. 24, 1985).

the same time, the gain in the skilled trades was 37 jobs with only two of those becoming filled by blacks, resulting in approximately

ten blacks in the whole skilled trade from 350-some odd people, and virtually no women, except for, maybe, one or two that get into the nonapprenticeable and nonmarketable trades.<sup>7</sup>

The UAW Local 1183 representative went on to point out that part of the decrease in minority and female utilization is also due to the fact that the apprenticeship programs at Chrysler were dropped several years ago and have not been reinstated. He then added his belief that affirmative action in the skilled trades is meaningless without any apprenticeship programs.<sup>8</sup>

At General Motors, however, there is an apprenticeship program. While General Motors has also introduced robots, it maintains its apprenticeship program and was reportedly training minorities and females in the skilled trades.<sup>9</sup> Nonetheless, speaking in general, the Administrator of Delaware's Apprenticeship and Training Program believes that the

loss of skilled blue-collared workers, a commodity that usually takes four years to produce, will create such a bottleneck in industry's ability to meet market demands that . . . it will lead to the loss of competitiveness and hence will adversely impact certain social economic groups harder than others. . . .<sup>10</sup>

He further observed that the emphasis in training opportunities lies more and more in the white collar field; many have lost sight of the need to bring along more blue collar workers--the employee pool which he viewed as producing what comes to the market. Even some vocational education specialists appear to be focusing on computer training instead of tool-and-die worker training, which the Apprenticeship Program Administrator believed might not benefit minorities as much as it might benefit others.<sup>11</sup>

In a related context, the Chief of the Office of Occupational and Labor Market Information of the Delaware Department of Labor has pointed out that the average unemployment rate for 1984 among white youths between the ages of 16 and 19 was 9.1 percent, but that for black youths of the same age it was 30.3 percent, and for Hispanic youths, 62.8 percent. He added that the State's blue collar work-

<sup>7</sup>Bannowsky, *Conference Transcript*, pp. 104-105.

<sup>8</sup>*Ibid.*, p. 104.

<sup>9</sup>Letter from Francis J. Schneider, Jr., Administrator, Apprentice and Training Section, Division of Employment and Training, Department of Labor, State of Delaware, to Tino Calabria (Oct. 29, 1985). See also "General Motors Goes Apprenticeship," a one-page undated document enclosed with the Schneider letter.

<sup>10</sup>*Id.*

<sup>11</sup>Telephone interview with Francis J. Schneider, Department of Labor (Mar. 28, 1985) and confirmed in his Oct. 29, 1985 letter.

ers constitute about 28 percent of the labor force and that the auto industry makes up between 12 and 13 percent of the manufacturing sector in Delaware. He noted, too, that the production of durable goods showed a 17 percent growth between January 1980 and January 1985, yet the growth rate in the finance, insurance, and real estate sector was about 49 percent over the same five-year period.<sup>12</sup> Indeed, for the coming five years, the Delaware Department of Labor estimates that about 90 percent of the more than 42,000 new jobs projected for the State will be in "services, retail trade and finance, banking or real estate."<sup>13</sup>

The Information Chief further explained that the growth in productivity in manufacturing does not necessarily imply an equal growth in the size of the workforce; on the contrary, the introduction of automation and other kinds of technology has led to a decline in the need for individual workers.<sup>14</sup>

In short, compared to many other states, Delaware enjoys a robust economy and is attracting new businesses. For example, unique incentives resulting from landmark changes in the State's banking laws have resulted in out-of-state banks opening up banking facilities in Delaware.<sup>15</sup> Built into the 1981 Financial Center Development Act, these incentives alone have already attracted 16 major banks which now have subsidiaries in Delaware, and they have "created more than 3,300 jobs directly, with a ripple effect that added another 2,000 jobs. . . ." <sup>16</sup> Subsequent State legislation has encouraged further growth of the banking industry, and recently, current and former members of several levels of government in the State opened the first booth of its type at this year's 1985 annual convention of the American Bankers Association to spark more interest.<sup>17</sup>

However, the nature of most job opportunities in the banking industry does not lend itself well to absorbing out-of-school youths with low levels of educational achievement and/or few work skills. Unemployment and other data appear to bolster the impression of specialists in the field that the traditional path to good wages and a livelihood in heavy industry may be vanishing for many minority and female Delaware residents.<sup>18</sup>

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<sup>12</sup>Telephone interview with James K. McFadden, Chief, Office of Occupational and Labor Market Information, Delaware Department of Labor (Mar. 29, 1985).

<sup>13</sup>Canavan, "Trained Work Force Called Vital to Job Boom," *Wilmington News-Journal*, Nov. 1, 1985, at C-8 (hereafter cited as "Trained Work Force Called Vital to Job Boom").

<sup>14</sup>*Ibid.*

<sup>15</sup>*Id.* See also "Delaware--Who Needs to Be Big?," at 184.

<sup>16</sup>Ming, "Delegation Seeks Banks for Delaware," *Wilmington News-Journal*, Oct. 15, 1985, at C-8.

<sup>17</sup>*Id.*

<sup>18</sup>See, for example, Herbers, "Cities Data Show Gap Between Sun Belt and North," *The New York Times*, Feb. 28, 1983, at B-8, and "Trained Work Force Called Vital to Job Boom."

## PAY EQUITY ISSUE

During the opening session of the Delaware Advisory Committee's November 1984 Conference, a panelist and practicing attorney--recently honored as Woman of the Year by the Delaware Business and Professional Women's Clubs--stated that the wage gap between men and women embodies the most persistent system of sexual inequality in the U.S. today and has also contributed to the feminization of poverty.<sup>1</sup>

She added that in 1981, the National Academy of Sciences concluded that work generally done by women was deliberately undervalued and underpaid and that women have been segregated in the work force. Moreover, she asserted that intentional job segregation and wage fixing constitutes illegal sex discrimination under Title VII of the Civil Rights Act of 1964, and yet local employers placed ads in the Help Wanted--Male and Help Wanted--Female classifieds of area newspapers into the 1970s.<sup>2</sup> During the afternoon Conference workshop, the New Castle County Council President reviewed further details in these matters noting, for example, that discriminatory classifieds appeared in the *Wilmington News-Journal* until January 1971.<sup>3</sup>

The study underway by the New Castle County Commission on Equity in County Employment<sup>4</sup> has revealed that "Animal Keeper Supervisors," a male dominated job, pays over \$15,000 a year but "Senior Citizens Directors," a female dominated job, pays \$13,830, while dog pound attendants, who are predominantly male, make more than most child care workers.<sup>5</sup> Position descriptions for certain entry level male dominated jobs, such as tree-trimmer, are written in great detail but not so for entry level female dominated jobs such as senior center cook.<sup>6</sup>

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<sup>1</sup> Vivian A. Houghton, former Delaware coordinator for the National Organization for Women, *Conference Transcript*, p. 64 (hereafter cited as "Houghton Statement").

<sup>2</sup> Houghton Statement, pp. 65-66.

<sup>3</sup> Karen E. Peterson, New Castle County Council President, *Conference Transcript*, p. 128 (hereafter cited as "Peterson Statement"). Ms. Peterson's views also appear in the Spring 1985 *Delaware Lawyer* in her article "It Is Now 3:15," pp. 22, 24, 26, 28-30. Peterson, "It Is Now 3:15," 3 *Delaware Lawyer*, 22, 24, 26, 28-3 (hereafter cited as "It Is Now 3:15").

<sup>4</sup> The Commission was established in June 1984 under then County Executive Richard T. Collins to study "'all aspects of the county employment system for possible discrimination.'" See Feeley, "'Comparable Worth' Inquiry Set," *Wilmington News-Journal*, (June 15, 1984), at B-6. The term 'comparable worth' presently connotes an employment issue raising a question of sex discrimination; the Commission established by Mr. Collins was to examine other types of job discrimination as well.

<sup>5</sup> Houghton Statement, pp. 69-70, and "It Is Now 3:15," p. 26.

<sup>6</sup> *Ibid.*, p. 71.

Some pay equity opponents claim that different jobs cannot be compared.<sup>7</sup> However, large companies do evaluate the worth of their jobs, said the Conference panelist, and New Castle County has compared jobs as dissimilar as sewer worker, deputy sheriff, planner, and tax assessor.<sup>8</sup> Others engage in blaming the victim, suggesting that, if a woman does not like being a secretary, she should try becoming a plumber; according to the Conference panelist, that admonition seems tantamount to telling the mugging victim, "Get out of the neighborhood if you don't like being mugged," and it still begs the question of non-discriminatory pay for the women who remain secretaries.<sup>9</sup>

Many opponents further argue that pay equity may cost too much, an argument once raised against child labor laws, minimum wage laws, and similar legislation. However, the nation has never subscribed to the idea that illegal acts must be tolerated because of cost factors. A few hold that employers are paying the prevailing rate as determined by the free market, although an opponent indicated that the Supreme Court has rejected the market defense.<sup>10</sup>

Subsequent to the Conference, the New Castle County Council's Job Evaluation Committee received a study drafted by Arthur Young and Company which, according to a press account, showed that

- A female is paid on the average \$1.45 per hour less than a male in equally valued jobs. The current county system undervalues female jobs by 13.6 percent.
- County job classifications are "highly" segregated. Ninety-three percent of county employees work in jobs segregated by sex.
- Under current pay policies, the maximum hourly salary for a female is \$10.70, while the average for males is \$15.33.<sup>11</sup>

During a business meeting of the Advisory Committee after its Conference, the New Castle County Council Finance Chairperson said to the Committee at the outset that some who may oppose the thrust of the pay equity argument do agree with the implied objectives of fair or non-discriminatory compensation for women and men in all their work settings. Nonetheless, he believed that the comparable worth studies undertaken in the name of pay equity do not rest on legally defensible certainties. Moreover, pay equity proponents

<sup>7</sup>"Comparable Worth Splits Justice, Toner," *The News-Journal* (Wilmington), Oct. 17, 1984, at B-9. This article reports that during her election campaign, Rita Justice, the incumbent New Castle County Executive, argued that equating the worth of dissimilar jobs is not possible.

<sup>8</sup>"It Is Now 3:15," p. 28.

<sup>9</sup>Houghton Statement, pp. 72-73.

<sup>10</sup>*Ibid.*, p. 73. See also Peterson Statement, pp. 133-136, and 435 U.S. 702, 716-717 (1978) and 417 U.S. 188 at 205, 207 (1974).

<sup>11</sup>Hunter, "County Pay Has Sex Gap, Reports Says," *Wilmington News Journal*, May 1, 1985.



ignore the individual's right to bargain for the worth of a job.<sup>12</sup>

He went on to say that proponents claim that the historical discrimination against women, supposedly reflected in the wage gap, warrants remedies which actually lead to reparation payments-- something not accorded blacks despite the history of slavery. In fact, he added, blacks and some other minorities may lose out to women, since the types of jobs held by the former may be rated adversely when the jobs held by the latter are rated upwardly.<sup>13</sup>

On the cost argument, the Finance Committee Chairperson claimed that men in female dominated jobs will also receive increases in pay, resulting in a further lifting of all salaries. He estimated that in government such pay escalation would impose new burdens on the tax payer--\$2 million in the County and \$10 to \$14 million in the State.<sup>14</sup>

In addition, he held it to be ironic that segments of the labor movement are advocating pay equity, and yet some present inequities were negotiated into their contracts. It is also ironic, he thought, in that adjustments aimed at improving women's pay may better be achieved through collective bargaining.<sup>15</sup> He emphasized, too, that in 17 years of labor negotiations in the County, no woman has ever raised the issue of disparate pay between men and women, nor was a single complaint made during recent hearings held by the County's Commission on Equity in County Employment.<sup>16</sup>

The above positions were offered by persons addressing the question of pay equity in New Castle County government. With regard to State government, a representative of Delaware Public Employees Council 81 of the American Federation of State, County and Municipal Employees observed during the Conference that Delaware House Joint Resolution No. 23 called for creation of a pay equity study commission to report to the Legislature and the Governor on that aspect of the topic.<sup>17</sup> Introduced by Representative Robert Gilligan, that Joint Resolution expired after the 1984 session. In the

<sup>12</sup>Michael S. Purzycki, Finance Committee Chairperson, New Castle County Council. Mr. Purzycki's views appeared in the Spring 1985 Delaware Lawyer in his article "Sacred Cows and Unacceptable Costs," pp. 23, 25, 32-35, circulated during the March 25, 1985 meeting of the Delaware Advisory Committee when he elaborated on his position. Purzycki, "Sacred Cows and Unacceptable Costs," 3 Delaware Lawyer, 23, 25, 32-35, (Spring, 1985) (hereafter cited as "Sacred Cows and Unacceptable Costs").

<sup>13</sup>Id.

<sup>14</sup>Michael S. Purzycki, "Comparable Worth: the Doctrine Is Seen Mistakenly, as Promoting Fairness for Women," Wilmington News Journal, (Mar. 10, 1985) at C-3.

<sup>15</sup>"Sacred Cows and Unacceptable Costs."

<sup>16</sup>Id.

<sup>17</sup>Betty W. Grant, Staff Representative, Delaware Public Employees Council 81, American Federation of State, County and Municipal Employees, Conference Transcript, p. 144.

following year, Representative Casimir Jonkiert sponsored House Joint Resolution No. 4 with the same purpose, a Resolution presently in the House Administration Committee.<sup>18</sup>

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<sup>18</sup>Telephone interview with Deborah Carey, Office of the Legislative Counsel, Delaware General Assembly, (Sept. 12, 1985).

## EDUCATION ISSUES

During the Committee's November 1984 Conference, the Regional Director of the Office for Civil Rights of the U.S. Department of Education (DOE) spoke about his responsibilities across Delaware. His Office has been occupied primarily with the issue of desegregating higher education. He explained that few complaints are received from Delaware involving elementary and secondary education. Those which do affect these levels of public education have to do for the most part with problems faced by the disabled.<sup>1</sup>

In discussing this with the Executive Director of the Delaware Division of Human Relations, the DOE Regional Director came to the conclusion that there appears to be no place in Delaware to which a parent or student may go to register a civil rights complaint about the schools except to the school system itself.

I'm not sure that there is any place in the State of Delaware right now that a kid who feels discriminated against based on race, sex, or handicap can go other than to the local system. Now there should be. Most states have places. . . .<sup>2</sup>

Meanwhile, the State Division Director has acknowledged that the statute governing the mission of the Division does not explicitly mention the field of education. Nevertheless, he explained that the Division's mandate and jurisdiction does permit it to accept all civil rights complaints. Thus, the Division is entitled to issue charges on any civil rights complaints involving education.<sup>3</sup> He more recently pointed out also that he joined with other parties in Sussex County to resolve certain questions of apparently disparate treatment of students in the Milford School District.<sup>4</sup>

The State Division Director went on to say that a draft memorandum of understanding proffered by the Federal Office for Civil Rights, but not accepted by the State, would only have allowed the Division to accept reports of complaints registered with the Federal Office. The memorandum did not call for the Division to investigate complaints jointly with the Federal Office. Furthermore, the arrangement would not necessarily have provided fresh resources to meet any new responsibilities in handling complaints supplied by the Federal Office. At present, the Division is staffed by only nine persons to handle the range of program areas which it has been covering thus far. With occasional exceptions as noted above

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<sup>1</sup>Dewey Dodds, Regional Director, Region III, Office for Civil Rights, U.S. Department of Education, **Conference Education Transcript** (transcript prepared by Mid-Atlantic Regional Office from cassette tapes of education workshop), pp. 30-31.

<sup>2</sup>Ibid., p. 30.

<sup>3</sup>Telephone interview with Andrew J. Turner, Jr., Director, Delaware Division of Human Relations, (Mar. 28, 1985).

<sup>4</sup>Letter from Andrew J. Turner to Tino Calabria (Nov. 12, 1985), at 1.

regarding the Milford School District, these areas do not now include education, and the Director did not anticipate any changes in the situation in the near future.<sup>5</sup>

Meanwhile, based on the profile of the workforce of downstate public schools, allegations have been made that affirmative action seems either needed or failing, said one Conference panelist.<sup>6</sup> In a newspaper interview on the day prior to the Statewide Conference, the State Superintendent of Schools himself noted that "the most important issues today are maintaining desegregated schools and integrating school staffs to provide role models for minority students."<sup>7</sup>

A second Conference panelist, the Chairperson of the nine-member Desegregation Advisory Committee (DAC) serving the Delaware Board of Education, discussed statistics indicating that black and other minority students are suspended at rates disproportionate to their numbers in New Castle County. She also presented data showing how the proportion of black and other minority students goes down as courses climb to advanced levels.<sup>8</sup>

As background to this, it should be noted that public education in Delaware has gained national attention because of the history of school desegregation in New Castle County, the largest county in the State. In 1978, despite opposition in some quarters and prolonged litigation, Greater Wilmington "became the first community to undergo court-ordered, inter-district, metropolitan desegregation."<sup>9</sup> A single school district was assembled by consolidating the heavily black school district of Wilmington with 10 neighboring school districts in New Castle County.

In early 1981, a national daily newspaper praised the relatively trouble-free atmosphere during the transition--entitling its front page story "Wilmington: a Community Pulls Together to Make Busing Work."<sup>10</sup> In 1984, on the thirtieth anniversary of the U.S. Supreme Court's decision on Brown v. Board of Education, Wilmington's Sunday News Journal commented on local desegregation efforts, observing that [in 1952] "It was a Delaware judge, Collins Seitz, who was the first official voice to declare the fraud of the 'sep-

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<sup>5</sup>Turner telephone interview and Turner letter.

<sup>6</sup>Mitchell B. Gordon, Jr., Associate Principal, Dover Central Middle School, Conference Education Transcript, p. 16.

<sup>7</sup>Milford, "Rights Panel Set for Public Conference; Discrimination Is Seen as Persistent Problem," Sunday News Journal (Wilmington) Nov. 18, 1984, at B-1.

<sup>8</sup>Helen Foss, Executive Director, Delaware Chapter of the National Conference of Christians and Jews, and Chairperson, Desegregation Advisory Committee, Delaware Board of Education, Conference Education Transcript, pp. 5-6.

<sup>9</sup>Raffel, The Politics of School Desegregation: the Metropolitan Remedy in Delaware (1980), 13.

<sup>10</sup>Malone, "Wilmington: a Community Pulls Together to Make Busing Work," The Christian Science Monitor, (Jan. 14, 1981) at 1, 7 (hereafter cited as "Wilmington: a Community Pulls Together").

arate but equal' doctrine." The **News Journal** added that

There is a direct line from 1952 to 1978, when New Castle County schools were desegregated. It is worth noting that Delaware, despite the deeply held, if unacceptable beliefs of many people, never witnessed the violence other states did. We are a nation of laws and Delawareans, subscribing to that principle, obeyed the law.<sup>11</sup>

Although repeated appeals continued up to the U.S. Supreme Court, Wilmington and its newly surrounding school district found many of the parents determined to make the best of the situation, whether or not they agreed with the Federal courts' remedy.<sup>12</sup>

Nonetheless, efforts were already underway to redivide the consolidated district into four new, autonomous districts, each of them incorporating a portion of the old Wilmington school district. As the Delaware Advisory Committee reported to the Commission in February and March 1981, many minority parents, organizations, and elected representatives opposed the breaking up of the consolidated district.<sup>13</sup> However, the redistricting was implemented.

Recently the Conference panelist and Chairperson of the Desegregation Advisory Committee, which started operations in 1982, stated that desegregation in the County stands at a crossroads today; developments have moved beyond second generation problems into more subtle problems that go to the very heart of the education process. Problems of disparate suspensions of minority students and the lack of access to academic courses for minority students must be resolved through a keener awareness by teachers and administrators of what they are doing and the total effect of their actions, said the DAC Chairperson, a former school teacher herself.<sup>14</sup>

To assist school personnel in coming to grips with these problems, the DAC sponsored a retreat for teachers on strategies to facilitate access to academic courses and a conference for staff, administrators, and school board members on alternatives to suspension. Efforts to reduce the school dropout rate and to encourage potentially high achieving secondary students were also made.<sup>15</sup>

In February 1985, the DAC launched an investigation to examine allegations of discriminatory hiring and promotional practices. Although some findings proved encouraging, ultimately the DAC became concerned about "the overall status quo and apparent lack of re-

11 "Brown Plus 30: What's Done and What's Not Done," **Sunday News Journal** (Wilmington), May 13, 1984, at C-2.

12 "Wilmington: a Community Pulls Together."

13 U.S., Commission on Civil Rights, Delaware Advisory Committee, "Metropolitan School Desegregation in Northern Delaware," memorandum from Beatrice Ross Coker, Chairperson, Delaware Advisory Committee, to Arthur S. Flemming, Chairman, U.S. Commission on Civil Rights, with a report and attachments, Mar. 12, 1981.

14 Interview with Helen Foss in Wilmington, Del. (Sept. 24, 1985).

15 Id.

sults in moving to improve the proportion of minority staff since the inception of the four districts."<sup>16</sup>

At the district level, Conference panelists did highlight progress achieved in recent years. For example, the board President of the Red Clay School District noted that his district raised its standards to require two years of both mathematics and science before graduation. The Delaware Board of Education similarly raised its standards the year after it was done by the Red Clay District. The local school district also instituted programs to improve attendance rates and to identify deficiencies in those doing poorly in standardized tests in order to develop individualized programs for such students.<sup>17</sup>

Over the past year, there has been an effort by several State legislators to encourage the State Attorney General to work towards removing the districts from the Federal Court's monitoring. During its March 1985 meeting, those who were members of the Advisory Committee at that time expressed concern over the situation and agreed to monitor developments and to inform the Commission if the changing situation warrants.<sup>18</sup>

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<sup>16</sup>"Annual Report: 1984-85; State Board of Education Desegregation Advisory Committee," undated 16-page document and attachments supplied by DAC Chairperson Foss, p. 7.

<sup>17</sup>Joseph Reardon, President, Red Clay School District, **Conference Education Transcript**, pp. 24-25.

<sup>18</sup>U.S., Commission on Civil Rights, "Report of Official Advisory Committee," Mar. 25, 1985, p. 2.

## AGING ISSUES

Numbering almost 75,000, the men and women who were 62 years old or older in 1980 made up 12.5 percent of the total population of Delaware.<sup>1</sup> Of that number, those who were in the early age bracket from 65 to 69 years of age represented a slightly larger percentage of the overall population in 1980 than that same age bracket represented in 1960; those 65 to 69 years of age made up 3.6 percent in 1980, and 3.3 percent in 1960. However, over the same period, the number in the oldest age bracket of 85 years and beyond increased from 0.6 percent in 1960 to 0.9 percent in 1980.

While the numbers in both the 65 to 69 age bracket and the 85 and beyond bracket were small compared with the youth and middle-aged populations, the rate of growth of the 85 and beyond bracket was markedly higher than the rate of growth of the 65 to 69 age bracket.<sup>2</sup> And, as the Executive Director of a non-profit nursing home in Delaware recently pointed out, "We know that demographic projections indicate that the aged are going to increase, particularly the oldest age groups (those 85 years and older) who are the most frail and, therefore, likely to need care."<sup>3</sup>

Moreover, the plight of the frail elderly is severe and apparently not rapidly improving. Lacking an infrastructure of support services such as home health care, home-delivered meals and the like, some elderly may find themselves having to turn to nursing homes.<sup>4</sup> This happens with decidedly more frequency to women;<sup>5</sup> they outnumber men in the oldest age group, 85 years and older, by more than 2.5 to 1.<sup>6</sup> Assuming these elderly men and women are eligible for Medicaid, they may then have their nursing home bills paid by Medicaid, the program funded by the Federal and state governments

<sup>1</sup>U.S., Department of Commerce, Bureau of the Census, **General Population Characteristics: Delaware, 1980 Census of Population**, PC80-1-B9 (June 1982), p. 9-12 (hereafter cited as 1980 Census).

<sup>2</sup>1980 Census, p. 9-19. The Associated Press now reports that "the middle-aged and the very old [are] becoming the fastest growing segments of society. . . ." See "Half U.S. Population Is Over 31 Years Old," **The Washington Post**, Apr. 11, 1985, at A-8.

<sup>3</sup>Daniel G. Thurman, Executive Director, The Milton & Hattie Kutz Home, Inc., "How to Pay for Nursing Home Care," **Sunday News Journal** (Wilmington), Apr. 14, 1985, at C-3 (hereafter cited as Thurman, "How to Pay. . .").

<sup>4</sup>Thurman, "How to Pay. . .".

<sup>5</sup>Corty, "Hospital in Smyrna Is Well Run," **Sunday News-Journal**, (Wilmington) Dec. 9, 1984, at H-4 (hereafter cited as Corty, "Hospital in Smyrna"). Reporting on the ratio of women to men at the Delaware Hospital for the Chronically Ill, Corty observes that "As in other nursing homes, women outnumber men; at Smyrna it's a two to one ratio. . . . At the other homes I have visited, the proportion of men residents is even smaller."  
Id.

<sup>6</sup>1980 Census, p. 9-19.

but administered by the states.<sup>7</sup>

But, as a writer for the *Wilmington Sunday News-Journal* reports, Medicaid payments by the State of Delaware generally fail to cover the true cost of nursing home care.<sup>8</sup> Or, as the State's Ombudsman explains it, the problem is access to nursing homes for Medicaid recipients, with the "bottom-line" problem really being how the State's Medicaid program reimburses nursing homes.<sup>9</sup> The situation is especially acute for non-profit nursing homes of which only seven operate in Delaware; all seven are in New Castle County. The number of beds occupied by Medicaid recipients does not approach the need.<sup>10</sup>

With regard to the nursing homes, the fact that the State's reimbursements do not uniformly cover the costs of Medicaid beds in each facility leads nursing homes to prefer to accommodate those elderly who do not require Medicaid support.<sup>11</sup> One of the eight proprietary homes in New Castle County maintained 44 percent of its bed for Medicaid recipients in the calendar year 1984. However, none of the remaining seven went above 30 percent, and two were at 5.9 percent and 5.5 percent respectively. In Kent County and Sussex County, only four of the total of 10 proprietary homes maintained at least 50 percent or more of their beds for Medicaid recipients; four others maintained less than 15 percent of their beds for whom Medicaid recipients, with one proprietary home down to only 6.8 percent.<sup>12</sup>

On the other hand, in New Castle County, three non-profit homes in Wilmington maintain in excess of 55 percent of their beds for Medicaid recipients. The Layton Home for Aged Persons, which is the predominantly black nursing home in Wilmington, ranks first--with

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<sup>7</sup>Thurman, "How to Pay. . . ." To be eligible in Delaware, a person can have liquid assets of no more than \$1,600. Though Federal guidelines allow Medicaid recipients to have monthly incomes up to \$975, Delaware stipulates that a monthly income cannot exceed \$585--less than two-thirds of the Federal maximum.

<sup>8</sup>Sue Corty, "Layton Home Residents Like Inner-City Neighborhood," *Sunday News Journal*, (Wilmington), Apr. 7, 1985, at C-8 (hereafter cited as Corty, "Layton Home Residents").

<sup>9</sup>Telephone interview with Marietta Z. Wooleyhan, (Title III) Long-Term Ombudsman, Division of Aging, Delaware Department of Health and Social Services, (Apr. 16, 1985).

<sup>10</sup>Corty, "Hospital in Smyrna."

<sup>11</sup>Telephone interview with John Larkin, Director, Wilmington Senior Center, (Apr. 10, 1985). Also, telephone interview with Daniel G. Thurman, Executive Director, The Milton & Hattie Kutz Home, (Apr. 11, 1985).

<sup>12</sup>Telephone interviews with Catherine C. McMillan, Nursing Home Coordinator, Division of Economic Services, Delaware Department of Health and Social Services (Apr. 11 and 17, 1985) (hereafter cited as "McMillan Interviews"). In a November 27, 1985 telephone interview, she reported that 10 proprietary homes operate in Kent and Sussex Counties.



more than 90 percent of its beds serving Medicaid recipients.<sup>13</sup> It should be noted, however, that although the 100-bed Layton Home is a relatively new facility completed in 1982, it reportedly verged on closure due to financial problems.<sup>14</sup> While more stable now, The Layton Home still loses an average of \$8 daily for each Medicaid recipient for whom it cares. Because 90 or more Medicaid recipients are usually maintained there, the annual deficit could run in excess of \$250,000.<sup>15</sup>

The Executive Director of The Layton Home said that he understood the State's ceiling on Medicaid reimbursement to reflect the 75th percentile of the varying costs per patient reported by each facility in the program.<sup>16</sup> To reduce any deficits, he proposed that the State consider reimbursing nursing homes for all or at least more of the reasonable costs incurred in caring for Medicaid residents in the same manner that hospitals are reimbursed for treating Medicaid patients.<sup>17</sup> This, he suggested, would provide an incentive for nursing homes to admit more Medicaid residents.<sup>18</sup>

The State's Nursing Home Coordinator indicated that it is not possible to reimburse nursing homes as hospitals are reimbursed. She explained that the State of Delaware uses a method of determining assistance through a "prospective method." Each nursing facility is grouped into one of three categories. Then all costs for each group are arrayed within the appropriate category. After factors such as inflation are taken into account, the State reimburses each type of nursing facility at no more than the 75th percentile level of those facilities within its own category. This system follows the guidelines of the Federal government, but the Federal government deals with reimbursements to hospitals through an entirely separate kind of payment system.<sup>19</sup>

The Nursing Home Coordinator was asked if it would be possible to modify the State of Delaware's method by introducing data based on the rate of Medicaid beds which a nursing home maintained over the preceding year. That rate could form the basis for an index representing Medicaid effort, an index that might be introduced as another variable in the reimbursement formula or method. The extent of a nursing home's Medicaid effort could then be more equitably reflected in Medicaid's support through reimbursement. In this way, nursing homes with high proportions of Medicaid recipients could anticipate receiving more for each such recipient than those homes with low proportions of Medicaid recipients.

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<sup>13</sup>Corty, "Layton Home Residents."

<sup>14</sup>Corty, "Layton Home Residents."

<sup>15</sup>Telephone interview with Aubrey C. Smith, Administrator, The Layton Home, (Apr. 11, 1985).

<sup>16</sup>Letter from Aubrey C. Smith, Administrator, The Layton Home, to Tino Calabria (Nov. 4, 1985), amending comments in a telephone interview with Mr. Smith (Apr. 11, 1985) (hereafter cited as Smith letter).

<sup>17</sup>Telephone interview with Aubrey C. Smith (Apr. 11, 1985).

<sup>18</sup>Smith letter.

<sup>19</sup>McMillan Interviews.

The Nursing Home Coordinator replied that the concept had never been considered, but also acknowledged that it would not necessarily be prohibited.<sup>20</sup>

At the same time, the Nursing Home Coordinator observed that not every nursing home incurs the level of deficits shouldered by The Layton Home or by other non-profit homes. Some proprietary homes --while remaining profitable overall--lose money caring for some individual Medicaid residents. However, in their totality, such individual losses may not be as great for the proprietary homes as the losses are to the non-profit homes, according to the Nursing Home Coordinator, because all of the non-profit homes provide extra services which boost their costs.<sup>21</sup>

From another viewpoint, one nursing home head writes that "some of the proprietaries have figured out that they lose less leaving a bed empty, preferring to wait for a privately financed patient."<sup>22</sup>

In the course of researching the above issue, one source who preferred to remain anonymous suggested that an inquiry into how elderly blacks are served by Downstate meals programs might reveal discriminatory patterns. The source indicated that a few senior centers may have declined to offer Federal Title III meals, since the program would attract blacks who might not otherwise patronize these centers which predominantly serve whites.

Staff of the Delaware Division of Human Relations and a Downstate resident and officer of the State NAACP were consulted. Both expressed interest in following developments related to the allegation, but neither was aware of complaints.<sup>23</sup> However, apparently four senior centers in Sussex County do not serve on-site meals, and separate organizations have been established elsewhere to do so. Furthermore, a former Delaware Advisory Committee member, who is a Sussex County resident, reported that she had heard similar allegations and stated that she would inquire into the matter.<sup>24</sup> Since then, she has collected some information on the situation and also reported that questions might also be raised about possible inequities in the assignment of home health care.<sup>25</sup>

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<sup>20</sup>Ibid.

<sup>21</sup>Ibid.

<sup>22</sup>Thurman, "How to Pay . . . ."

<sup>23</sup>Telephone interviews with Darlene Webb, Assistant to the Executive Director, Delaware Division of Human Relations, and Andrew Haman, First Vice Chairperson, Delaware NAACP (Aug. 27, 1985).

<sup>24</sup>Telephone interview with Marilyn Hawk Morris, Assistant Director, Sussex County Community Action Agency, and Delaware Advisory Committee Member from July 1983 to April 1985 (Aug. 29, 1985).

<sup>25</sup>Letter from Marilyn Morris to Tino Calabria, 1-2 (Oct. 29, 1985).

## DISABILITY ISSUES

There are at least two ways of gauging the size of the disabled population in Delaware. In 1980, the U.S. Bureau of the Census asked a question in the 1980 decennial census regarding work disability. From the responses, the Bureau determined that of those persons who were between 16 and 64 years of age and who were not in institutions, there were 30,785 Delaware residents who had a work disability. This figure represented 7.9 percent of that specific age group not institutionalized in Delaware in comparison with the 8.5 percent of the same non-institutionalized age group throughout the U.S.<sup>1</sup>

A second method attempts to estimate the number of persons with a disability in the population at large for all age groups. Thus, applying the figure of 17.2 percent--borrowed from the Ridge formula which is widely used to provide an estimate of the number of the disabled throughout the U.S.--there are roughly 105,300 residents with a disability in Delaware. As many as 70,000 may live in New Castle County, another 17,400 in Kent County, and perhaps 17,800 in Sussex County. This estimate includes persons with a range of disabilities with varying degrees of severity. Agencies serving individuals with specific disabilities can supply more accurate estimates of their respective service populations.<sup>2</sup>

However large such populations may be, the major areas of concern to the State of Delaware's Advisory Council for the Coordination of Services to the Handicapped are the high cost of specialized transportation for those requiring it and the absence of acute and chronic care for adolescents in need of psychiatric care.<sup>3</sup>

In a January 1985 statement, the Advisory Council declared that "transportation [is] critical to the quality of life and well-being of disabled citizens. Transportation affects their ability to be employed, to live where they choose, and almost every other aspect of their lives." With regard to adolescents, the Council also pointed out that

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<sup>1</sup>U.S., Department of Commerce, Bureau of the Census, 1980 Census of Population and Housing, "Table 1.--Work Disability Status of Noninstitutional Persons 16 to 64 Years of Age: 1980," a table provided by Jack McNeil, Chief, Poverty and Wealth Branch, Population Division, Bureau of the Census.

<sup>2</sup>Telephone interview with Donna E. Curtis, Management Analyst, Developmental Disabilities Planning Council, Delaware Department of Community Affairs (Apr. 10, 1985), and letter from Donna E. Curtis to Tino Calabria, (Nov. 8, 1985). Though the Ridge formula is widely used, Ms. Curtis points out the "softness" of any local estimates using it, since this 1972 formula was primarily intended to express the number of the disabled in the U.S. at large.

<sup>3</sup>Letter from Sherrie Blatt, Chairperson, Advisory Council for the Coordination of Services to the Handicapped, Department of Community Affairs, State of Delaware, to Tino Calabria (Apr. 10, 1985).

(1) There are no long-term facilities available to the severely mentally ill adolescent. (2) Short-term hospitalization is currently provided at Delaware State Hospital which is ill-equipped to serve these adolescents and (3) There is insufficient therapeutic group care and no therapeutic foster care for mentally ill adolescents.<sup>4</sup>

In March 1985 testimony before members of the State Legislature, the Council Chairperson noted the case of an individual who travels on the Delaware Administration for Specialized Transportation (DAST) system, and whose travel costs are not supported by a voluntary organization or other agency. To travel just two miles to work, this individual pays a two-zone fare of \$12.40 round trip each day.<sup>5</sup> During a more recent interview, the Council's chairperson added that an acquaintance, afflicted by cerebral palsy, could have been charged \$20 a day, a sum which creates a disincentive for anyone considering employment in a sheltered workshop or in an entry-level or parttime position.<sup>6</sup>

The Director of the State-funded Client Assistance Program described a more drastic situation in which a disabled person would have been effectively paying to go to work. Cost for this person to travel about 10 minutes from home amounted to \$24 per day on DAST.<sup>7</sup>

The Client Assistance Program Director also noted other problems affecting accessibility to jobs for the disabled. While a Federal law requires some employers to provide reasonable accommodations for the disabled, the requirement applies only where Federal funds are used. Delaware has no State law calling for reasonable accommodations, and the State's executive order prohibiting discrimination against the disabled deals only with discrimination in State employment.<sup>8</sup>

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<sup>4</sup>Blatt, State of Delaware, Department of Community Affairs, Advisory Council for the Coordination of Services to the Handicapped, "1984 Annual Report Supplement," (Jan. 1985), pp. 5-7. In an undated note of October 1985, Ms. Blatt wrote to Tino Calabria that some short-term and long-term facilities have become available out-of-state and that a new private provider is constructing a facility in Delaware called Meadow Wood. See also Brown, "More Public Awareness of Mental Illness Needed, Experts Say," *Wilmington News Journal*, (Nov. 9, 1985), at A-3, reporting on a "private teen psychiatric hospital" under construction that can house children placed by the State.

<sup>5</sup>"Testimony of the Chair of the Advisory Council for the Coordination of Services to the Handicapped: Department of Transportation," Mar. 12, 1985.

<sup>6</sup>Telephone interview with Sherrie Blatt, (Apr. 8, 1985) (hereafter cited as Blatt Interview).

<sup>7</sup>Telephone interview with Anna M. Grunert, Director, Client Assistance Program, (Apr. 10, 1985).

<sup>8</sup>Ibid.

In a more general vein, the Chairperson of the New Castle County Committee on the Employment of the Handicapped, recently honored as Delaware's Employee of the Year for his work among the disabled,<sup>9</sup> noted that the major obstacle to employment stems from "a.) negative attitudes and misconceptions surrounding the handicapped and b.) the lack of education of the general populace as to the capabilities and the availability of qualified handicapped persons."<sup>10</sup> Each month, this Chairperson's county-level Committee helps place up to 75 "Job Ready" applicants.<sup>11</sup> The October 1985 New Castle County edition of the "Qualified Job Applicant Listing" provided by the Governor's Commission on Employment of the Handicapped noted that 13 persons recently became employed of a total of 73 listed.<sup>12</sup>

Regarding adolescents, the Delaware Advisory Council Chairperson stated that for those with physical, and not mental, disabilities, public schools are being retrofitted to make them accessible, but some are still not barrier-free. Those requiring psychiatric care are housed with long term psychiatric patients at the Delaware State Hospital. The Chairperson believed that at least 20 beds for adolescents ought to be maintained in a separate facility.<sup>13</sup>

Regarding the psychiatric needs, the Administrator for the Disabilities Law Program (DLP) recently reported that a long-hoped for agreement between DLP and the State Health and Human Services Department fell through at the end of September. Over a year ago, DLP had registered a complaint of discrimination on the bases of age and handicap, arguing that the State has failed to provide appropriate facilities to care for youths 13 to 17 years of age who suffer from mental illness. At present, over a dozen such children a month seek care at the Delaware State Hospital which is not geared to their needs, according to the DLP Administrator, and the State acknowledges that it is out of compliance.<sup>14</sup>

Just as it appeared that an agreement might be reached on how to resolve the issue, the State tried to negotiate a clause stipulating that DLP would not file any future complaints on behalf of fu-

<sup>9</sup>Brown, "Delaware Honors Blind Worker, Others," *Wilmington News-Journal*, (Oct. 11, 1985), at B-1.

<sup>10</sup>Telephone interview with Anthony S. Macznyski, Jr., Committee Chairperson, New Castle County Committee on the Employment of the Handicapped, (July 29, 1985) plus untitled, undated materials supplied to Mid-Atlantic Regional Office, U.S. Commission on Civil Rights.

<sup>11</sup>*Ibid.*

<sup>12</sup>State of Delaware, Department of Labor, Governor's Committee on Employment of the Handicapped, "Qualified Job Applicant Listing - New Castle County," by Bob Riale, Executive Director, (July 1985) pp. 1-16, and an undated October 1985 note to Tino Calabria furnishing newer data.

<sup>13</sup>Blatt Interview.

<sup>14</sup>Telephone interview with Christine M. Long, Administrator, Disabilities Law Program, Delaware Community Legal Services, (Oct. 1, 1985).

ture clients. DLP declined to foreclose future causes for action. The Office for Civil Rights of the U.S. Department of Health and Human Services then proceeded to start formal factfinding. Meanwhile, DLP continues to try to facilitate care for children who come to its attention.<sup>15</sup>

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<sup>15</sup>Ibid.

## REPORTING INCIDENTS, MEASURING BIGOTRY

Four years ago, when the U.S. Commission on Civil Rights launched its national survey of racial and religious intimidation, few incidents of violence and bigotry were reported in Delaware. One police source observed that reports of cross-burnings were occasionally logged, and another police source noted that the rate of incidents had declined since 1968.<sup>1</sup>

Since then several incidents have occurred, including recent death threats to a black State representative and black Wilmington minister. According to a November 13, 1985 newspaper account, both men stated that the telephone caller made racial slurs in the course of the threats. (Another death threat was made against the white Mayor of Wilmington on the same evening as the calls made to the two blacks, but early published media reports did not mention racial causes as being ascribed to that call.)<sup>2</sup>

While newspaper accounts may take note of some incidents that at least appear to be racially or religiously motivated, almost no official tabulation is made. Like the Federal government and all other states except neighboring Maryland, Delaware in 1981 had no systematic procedure for classifying racially or religiously motivated incidents, nor does it have such today. As the Director of the Delaware Division of Human Relations recently explained it, "No system [in Delaware] has yet been developed that would automatically classify and identify collectively these types of complaints and incidents within the police record keeping system."<sup>3</sup>

In Delaware, as almost everywhere, the description of an incident is translated into a classification system which ultimately becomes fitted into the Uniform Crime Reports of the Federal Bureau of Investigation (FBI.)<sup>4</sup> The FBI itself does not distinguish between racially or religiously motivated incidents and other incidents; for example, cross-burnings are classified under "arson."<sup>5</sup> In the face of Congressional requests that the FBI do so, the FBI

<sup>1</sup>U.S., Commission on Civil Rights, Mid-Atlantic Regional Office, "Selected Strategies for Combating Hate Group Activity," (hereafter cited as "Selected Strategies"), Tino Calabria, Region III Coordinator, National Project on Violence and Bigotry, Nov. 15, 1981), p. 31.

<sup>2</sup>"Police Probe Threats to Mayor, Legislator, Minister," *Wilmington News-Journal*, (Nov. 13, 1985), at B-1.

<sup>3</sup>Letter from Andrew J. Turner, Jr., Director, Delaware Division of Human Relations, to Tino Calabria, (Nov. 12, 1985) (hereafter cited as "November 12, 1985 Turner letter") at 2.

<sup>4</sup>Telephone interview with Connie Moore, Records Technician, Bureau of Identification, Delaware State Police, (Mar. 29, 1985). See also, "November 1981 Selected Strategies," pp. 30-31.

<sup>5</sup>National Institute Against Prejudice and Violence, *Prejudice and Violence; an Annotated Bibliography of Selected Materials on Racial, and Ethnic Violence and Intimidation*, (Sept. 1985) at 14.

has testified that it is not possible.<sup>6</sup> In short, in Delaware it continues to prove virtually impossible to glean from police records the frequency of racially or religiously motivated incidents and also, in turn, to discern the magnitude of the problem at the State or the local levels.

Newspapers can help, but, as a June 5, 1984 Delaware case might suggest, information on whether an incident is racially or religiously motivated may differ from one day to the next. On June 10, 1984, the **Sunday News Journal** reported on the divergent views of the black victims of an incident and their white neighbors. The victims and other blacks believed racism was behind the incident, the white neighbors disputing the claim.<sup>7</sup> Just days before, the same newspaper quoted a New Castle County Police lieutenant, who said that the police had not yet found any "indication that the incident was racially motivated." The officer added, "I'm not saying it is not racism, but usually there is writing or crosses or something that indicates racism."<sup>8</sup> A week after the incident, the newspaper quoted a County police captain who addressed the local civic association, declaring that the incident had been racially motivated. Many of the whites continued to disagree about the charge of racism.<sup>9</sup>

To cope with such problems, about two years ago, within the Delaware Human Relations Commission, a committee was set up to begin to monitor violence and extremism and to encourage more systematic responses among the law enforcement agencies. According to the Delaware Division of Human Relations Director, after a few meetings, the committee became dormant. However, he himself reported that at least two cross-burnings have occurred more recently, one in suburban Wilmington in October 1984, and a second in Wilmington in January 1985. Both incidents appeared to be the work of teenagers rather than that of an organized group.<sup>10</sup>

The October 30, 1984 incident actually included two cross-burnings in and near Newport. One was widely publicized in some detail--partly due to the fact that a newspaper reporter for a Wilmington daily happened to live in an apartment adjoining the courtyard in which that cross-burning took place. An inter-racial couple may have been the intended victims of the harrassment, and the white male friend of the black female resident tried to extinguish the flames. Later that night, four blacks who carried "chains, baseball bats and other weapons confronted four whites who had come to the area drinking beer," but no violence erupted. However, a sec-

<sup>6</sup>"Can't Log 'Hate Crimes,' Lawmen Say; Congress Invited to Collect Newspaper Clippings," **Washington Post**, Mar. 22, 1985, at A-4.

<sup>7</sup>Campbell, "'Bad Kids,' Racism Cited," and Harris, "Community Loses Serenity," **Sunday News Journal**, June 10, 1984, at A-1.

<sup>8</sup>Campbell and Milford, "Vandals Plague Black Family's Home," **Wilmington News-Journal**, June 7, 1984, at B-1.

<sup>9</sup>Campbell, "Officer: Attack Racially Motivated," **Wilmington News-Journal**, June 12, 1984, at B-1.

<sup>10</sup>Telephone interview with Andrew J. Turner, Mar. 28, 1985 (hereafter cited as Turner interview).



ond cross-burning occurred in Newport the same night.<sup>11</sup>

A brief attempt to obtain further details on the Wilmington incident illustrates how uneven the information may be among police agencies. A call to State Police Headquarters yielded the explanation given earlier on the shortcomings in data tabulated for eventual transmission to the FBI. A call to a State Police office in New Castle County was routed to an information officer and resulted in information about how overlapping responsibilities are roughly divided between the State and County Police forces. The State Police monitor areas around major highways with the County Police monitoring the rest except for the City. The officer then suggested calling the police of the City of Wilmington.<sup>12</sup>

A telephone interview with a City Police Captain and a follow-up call from the Captain the same afternoon provided details on the Wilmington incident, which took place on January 19, 1985, at 10:35 p.m., on Gilles Street in Union Park Gardens, a neighborhood "whose property values continue to rise and which remains a desirable location in which to live."<sup>13</sup> An upright cross made of tree limbs, three-and-half feet by two feet, was ignited on the lawn of the house of a 33-year-old black male. Next to the burning cross was a green plastic jug which had also ignited. Apart from the perpetrators, a white neighbor was the first to see the flames and summon the Police. It was further reported that the victim's house had been pelted with snowballs by some white males just the day before the cross-burning.<sup>14</sup>

For the official record, the above report was put in a category known as "Miscellaneous Incidents" and classified as a "Reckless Burning." No arrests have been made as of mid-November 1985.<sup>15</sup> The City Police Captain characterized this as an "isolated incident [which] gives no indication of any pattern of bigotry or racially motivated violence."<sup>16</sup>

Presumably other such cases are reported in similar fashion after police are summoned in Wilmington, in other parts of Delaware, or elsewhere in the U.S. Despite the difficulties, the Delaware Division of Human Relations Director states that New Castle County Police do forward to his Division "police reports, unsolicited, of incidents involving racial tension and violence that appear to be racially motivated and other acts of bigotry and discrimination

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<sup>11</sup>Campbell, "How a Cross Burning Reopens Old Wounds," *Sunday News Journal*, Nov. 18, 1984, at H-3.

<sup>12</sup>Telephone interview with Corporal Dale Hall, Delaware State Police, (Mar. 29, 1985).

<sup>13</sup>Letter from Captain Francis T. Monaghan, III, Commanding Officer, Personnel & Training Division, Wilmington Police Department, to Tino Calabria, Nov. 12, 1985 (hereafter cited as Monaghan letter).

<sup>14</sup>Two telephone interviews with Captain Francis T. Monaghan, (Mar. 29, 1985) (hereafter cited as Monaghan interviews).

<sup>15</sup>Monaghan interviews and Monaghan letter.

<sup>16</sup>Monaghan letter.

that are reported to that agency," and follow up information is also forwarded. The Wilmington Police Department, upon solicitation, supplies the Division the same kinds of data on incidents in their jurisdiction.<sup>17</sup>

Only in Maryland have there been concerted efforts to collect data on these incidents and track them specifically as incidents of violence and bigotry.<sup>18</sup> While a committee of the Delaware Commission on Human Relations once set out to look into such issues, difficulties continue to be encountered by those attempting to identify and quantify the extent of bigotry through close monitoring of incidents such as that which transpired on Gilles Street in January 1985.

Meanwhile, the Delaware Division of Human Relations Director stated that, upon receiving allegations about an incident, he does try personally to contact reported victims of bigotry and to work with the police force which responded to such incidents. He anticipates a resumption of activities by the State Commission in these matters, once the Commissioners reach their full complement again.<sup>19</sup>

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<sup>17</sup>Nov. 12, 1985 Turner letter, at 1-2.

<sup>18</sup>"Selected Strategies," pp. 17 and 21.

<sup>19</sup>Turner interview.

## ISSUES IN CORRECTIONS

Just as former Delaware Governor Pierre S. du Pont's second and final term was winding down, the National Institute of Justice issued a January 1985 research brief authored by Governor du Pont. In **Expanding Sentencing Options: a Governor's Perspective**, he acknowledged not accomplishing during his tenure everything he had wished in the area of corrections. He also noted that only two other States incarcerate more people per capita than Delaware, which has 274 prison inmates for every 100,000 people. Moreover, while Delaware pays \$17,000 each year to incarcerate one prisoner, 7 percent of the State budget must be spent on corrections this year in comparison with only 3 percent in 1977, when he first assumed office.<sup>1</sup>

Governor du Pont further observed that

In the 1970's Delaware had built one of the most up-to-date prison facilities in the Nation. It was designed to handle the State's needs until 1990. At least, I was assured as the new governor, there would be no need to worry about building more prisons for some time.

The prison that was to last until the end of this decade was filled to capacity before this decade began. We have since had to construct two major additions to the facility, and a third is in progress today. We have built a multi-purpose correctional facility in Wilmington, and a minimum security institution is now in the planning stages. We are being told to begin thinking about building still more space.

. . . .

Despite its great cost, and the promise of more increases to come, the present system might be largely acceptable if it were working properly. But it isn't. . . . In my judgment, a fundamental reshaping of our approach to corrections is not only in order, it is feasible and imperative.<sup>2</sup>

The goal of reform, he suggested, is to provide sentencing options between the extremes of probation and prison, and the system should be based on the belief that an offender ought to be sentenced to the available sanction least restrictive and least costly yet consistent with public safety. Furthermore, the approach should begin by conceiving of punishment in terms of certainty rather than severity. The Governor observed that the criminal justice system is undermined when those who actually deserve to go to jail are sentenced to probation, or when those who ought to continue behind

<sup>1</sup>U.S., Department of Justice, **Expanding Sentencing Options: a Governor's Perspective**, prepared by Pierre S. du Pont for the National Institute of Justice (Washington, D.C., January 1985), pp. 1-2.

<sup>2</sup>Ibid., p. 2.

bars are released from jail on probation.<sup>3</sup>

Instead, he recommended that an alternative developed by the Delaware Sentencing Reform Commission be considered. It stresses accountability of the offender to the victim and the State as well as accountability of the corrections system to the public and the other criminal justice agencies. The proposed system would offer incentives for offenders to work at rehabilitation, since progress would permit them to move into less restrictive, and at the same time less expensive, forms of control. A matrix is included in the Governor's paper detailing the various levels of security and the kinds of restrictions at each level or fines--and even fees--to be paid by those convicted depending on the level of security warranted.<sup>4</sup>

More recently, the Delaware Council on Crime and Justice released a summary of its April 27, 1984 public forum on prison overcrowding. The consensus of a panel discussing the cause of overcrowding was that the public's perception of crime and the pressure put on legislators and the law enforcement system led to a "lock 'em up" attitude. Each speaker at the forum also pointed to the need to educate the public to the adverse effects of this attitude.<sup>5</sup>

A second panel looked at the effects of overcrowding on both the inmates and their guards. It was agreed that overcrowding serves to magnify all the bad effects of prison, leading to increased assaults, mental disorders, and even riots. In the process, rehabilitative programs yield any priority to physical control of the prison. Ultimately, overcrowding debilitates the law and the entire judicial system.<sup>6</sup>

The final panel suggested remedial actions largely outlined in the Sentencing Reform Commission's work, as summarized by the Governor in his National Institute of Justice paper discussed above.

The audience's evaluation of the Council's public forum rated it for the most part as excellent or very good. At the same time, many participants indicated a desire to deal specifically with the issue of overcrowding and its effects at the Women's Correctional Institution.<sup>7</sup>

On that subject, the Executive Director of the Delaware Commission for Women--who reported on that Commission's first visit to the Correctional Institution at a Delaware Advisory Committee meeting in 1984--informed Commission on Civil Rights staff in early 1985 that a 20-bed addition will open as a half-way house for female offenders. She also expressed the hope that health care at the women's prison in Claymont may improve when new bids to deliver

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<sup>3</sup>Ibid.

<sup>4</sup>Ibid., pp. 2-3.

<sup>5</sup>Delaware Council on Crime & Justice, "Forum Summary & Evaluation," (Wilmington), a one-page undated document.

<sup>6</sup>Ibid.

<sup>7</sup>Ibid.

health services are made including bids from hospitals.<sup>8</sup>

Nonetheless, a February 1985 three-part investigative series in the *Delaware State News* on the Claymont prison reported:

Many people believe that [Claymont's receiving of] what's left over [from the men's prison near Smyrna] has led to two separate and unequal prison systems; one for men, with all the opportunities the system offers to learn a trade or to be otherwise rehabilitated; another for women, with mostly broken promises of opportunity and little chance to make prison more than a punishment for their crimes.<sup>9</sup>

Actually, the Claymont prison is a facility on property deeded to the State for the purpose of serving as a school for girls. "State officials are overlooking that problem, however; for now, there is no other place for the women to go," concluded the reporter. From 1979 to February 1985, the prison population increased approximately 44 percent, up to about 90 inmates. The majority are black, under 30 years of age, and mothers.<sup>10</sup> And, as a June 1984 report issued by two groups observed, "Most . . . have children that are devastated when the mother is incarcerated. The children are usually kept by a family member or the State during incarceration. Rarely does the natural father keep the children. . . ." <sup>11</sup>

Women inmates and others have claimed that, though men and women may be convicted of the same offense, men are often released sooner than women. State correction officials dispute such charges, but the investigative account by the *Delaware State News* observed that "a recent list of prisoners on supervised custody showed men within parole dates four, five, and in some cases 12 years away. The women on the list were all within two years of their release date."<sup>12</sup> Situations such as these last year prompted the Delaware Commission for Women and like groups to begin reviewing questions of unequal treatment, and it may have been that interest which has helped to lead to recent changes launched by the State.

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<sup>8</sup>Telephone interview with Irene Dardashti, Executive Director, Delaware Commission for Women, (Apr. 17, 1985).

<sup>9</sup>Rosenberg, "Women in Prison: Separate, and Not Even Equal," *Delaware State News*, Feb. 24, 1985, at 1.

<sup>10</sup>*Id.*, at 1, 41.

<sup>11</sup>Citizens Coalition for Criminal Justice Reform, **Justice Citizens Report on Reform Recommendation for Delaware** 29 (June 1984). Wendell Howell, Chairperson, was one of several persons appointed in July 1983 by State Representative Al O. Plant to report to the State House Judiciary Committee on conditions in the State prisons.

<sup>12</sup>Rosenberg, "Do Men Have a Better Shot at Parole?," *Delaware State News*, Feb. 24, 1985.

## MINORITIES AND WOMEN IN PUBLIC OFFICE

A group's level of success in elective politics may offer a measure of the degree to which the group is accepted among the general population. In the case of Delaware, the Washington-based Joint Center for Policy Studies reported that 22 blacks were elected to public office in 1984, signifying no net change for blacks over the prior year.<sup>1</sup> Among them are one State senator of 21 senators, two State representatives of 41 representatives, one mayor, two vice-mayors, and two city council presidents, including the Wilmington City Council President. No blacks were elected to County Council membership in any of the State's three Counties, although a black was reelected to serve as prothonotary for the Kent County court system.

At the request of the Mid-Atlantic Regional Office, League of Women Voters officers assembled a statewide list of women elected to public office. While 14 women candidates lost their bids during the November 1984 elections--including one who ran for Delaware's only Congressional seat in the House of Representatives and one who ran for lieutenant governor--16 others were successful. Eleven of the 16 had already served as incumbents.<sup>2</sup> One is a State senator, eight are State representatives, one is New Castle County Council President, one is County Executive for New Castle County and one is Treasurer for Kent County. The black Kent County prothonotary, a member of the Delaware Advisory Committee to the U.S. Commission on Civil Rights, is also a female.

The tight race for Delaware's lieutenant governorship--a seat that can be held by a member of a political party different from that of the political party of the governor--was between a Republican female candidate and a Democratic male candidate who is also Asian American. The gender of the Republican and the race of the Democrat made it inevitable that the outcome would result in a 'first' in Delaware politics.

Although a Republican took the post of governor, the Asian American Democrat, a Chinese immigrant university professor and trustee of the University of Delaware, narrowly defeated his opponent and simultaneously became the highest ranking Asian American holding state office on the U.S. mainland. With regard to top State appointments, there are 15 members of the Governor's cabinet; of the 15, one is black, and two are women.<sup>3</sup>

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<sup>1</sup>Telephone interview with Carolyn Barnett-Jones, Research Analyst, Roster of Black Elected Officials Project of the Joint Center for Policy Studies, Apr. 9, 1985, and letter to Tino Calabia (Oct. 31, 1985), with attachment.

<sup>2</sup>Letter from Letitia L. Diswood, President of the Wilmington League of Women Voters, to Tino Calabia, (Apr. 14, 1985) (two-page attachment).

<sup>3</sup>"Castle Selections for Top State positions," **Wilmington News Journal**, Jan. 10, 1985, at B-2.

At the local level, it should be noted that the Central Delaware Branch/NAACP is spearheading a suit against the City of Dover that challenges the City's at-large elections system for City Council. The NAACP argues that minorities are at a disadvantage in running at-large in Dover since blacks, for example, constitute less than 30 percent of the City's population. The NAACP contends that all Council seats should be filled through district elections. Seven black candidates have run in Council elections since 1970, but only one black has served on the Council. That member began as an appointee named to fill a vacancy, though he subsequently was re-elected. Mention should also be made of the fact that on the day of a Federal court hearing on the case, a fire reportedly of "suspicious origins" destroyed the Central Delaware Branch/NAACP offices in Dover.<sup>4</sup>

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<sup>4</sup>Murray, "Judge Refuses to Dismiss NAACP Suit," *Wilmington News-Journal*, Nov. 20, 1985, at B-1, B-4.

## C O N C L U S I O N

The foregoing review touches upon numerous issues affecting many Delawareans in terms of housing, employment and pay equity, education, problems of the elderly, problems of the disabled, violence and bigotry, corrections, and electoral participation. Most were discussed during the Statewide Conference sponsored by the Delaware Advisory Committee in Wilmington in November 1984. Others emerged from Committee and staff followup during 1985. No specific findings or recommendations have been made by the Committee, but the foregoing descriptions of the issues are being submitted to the U.S. Commission on Civil Rights in Washington for the information of the agency's eight Commissioners.

The Delaware Advisory Committee realizes that there may be important civil rights issues in Delaware not covered in the Conference and that some of the issues discussed may not be civil rights issues. Nonetheless, this brief compilation does offer a number of areas worthy of further inquiry and research. The Committee thanks all who participated in the Conference or in subsequent interviews for their cooperation. Now the Committee invites the readers of this report to bear these and related issues in mind as they carry on the business of the communities in which they live and work.

For its part, the Delaware Advisory Committee, which was rechartered for a two year-term beginning this past spring, decided at its December 3, 1985 meeting to undertake a further review of at least three issues. During a business meeting involving 10 of the Committee's 11 members, the Committee planned new projects and decided to examine the issue of representation of minorities among the faculty and administrators of local public school systems and the issue of how special education is being implemented in those school systems. Special monitoring of housing issues will also be carried out by the Committee.<sup>1</sup>

Delawareans interested in these subjects or in assisting the Advisory Committee in any way are encouraged to communicate with their local Advisory Committee members or through the Mid-Atlantic Regional Office in Washington, D.C.

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<sup>1</sup>U.S., Commission on Civil Rights, Delaware Advisory Committee, "Report of Official Advisory Committee Meeting," recording decisions made during the Delaware Advisory Committee's December 3, 1985 meeting in Dover, p. 2.