

# USCCCR

A SUMMARY REPORT SEPTEMBER 1987

*Civil  
Rights  
Enforcement  
In  
Vermont*

*Vermont Advisory Committee  
To The U.S. Commission On  
Civil Rights*

*This summary report of the Vermont Advisory Committee to the United States Commission on Civil Rights was prepared for the information and consideration of the Commission. Statements and viewpoints in the report should not be attributed to the Commission or to the Advisory Committee, but only to individual participants in the community forum where the information was gathered.*

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

The United States Commission on Civil Rights, first created by the Civil Rights Act of 1957, and reestablished by the Civil Rights Commission Act of 1983, 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 and section 6(c) of the Civil Rights Commission Act of 1983. 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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UNITED STATES  
COMMISSION ON  
CIVIL RIGHTS

1121 Vermont Avenue N W  
Washington, D C 20425

DATE: September 25, 1987

FROM: Vermont Advisory Committee

RE: Civil Rights Enforcement in Vermont

TO: Clarence M. Pendleton, Jr., Chairman  
Murray Friedman, Vice Chairman  
William B. Allen  
Mary Frances Berry

Esther G. Buckley  
Robert A. Destro  
Francis S. Guess  
Blandina C. Ramirez

Attached is a summary report on a meeting held by the Vermont Advisory Committee in Montpelier on September 6, 1986. The purpose of the meeting was to discuss civil rights enforcement issues with top State officials and other knowledgeable representatives of agencies and organizations and also to gather from our guests any recommendations that might lead to substantially improving civil rights protections in Vermont.

The outstanding roster of speakers who addressed the Advisory Committee was led by Governor Madeline Kunin and State Supreme Court Chief Justice Frederick Allen. They were followed by panels composed of elected and appointed State officials as well as representatives of private agencies, business and labor organizations, and educational institutions. In addition, the heads of both the Connecticut Commission on Human Rights and Opportunities and the Massachusetts Commission Against Discrimination observed all presentations and then offered their own views.

The Advisory Committee believes that the discussion of the issues and the recommendations which some of the speakers offered must be thoroughly considered as policies are decided and steps are taken to improve the civil rights laws and mechanisms for enforcement in Vermont. The Advisory Committee itself will continue to monitor the situation closely and may convene a followup meeting when a new meeting appears called for. We look forward to your acceptance and approval of this summary report and would appreciate any suggestions which you might offer based on your knowledge of such matters in other parts of the nation.

Kenneth M. Holland, Chair (Abroad on Leave of Absence)  
Kimberly B. Cheney  
M. Jerome Diamond

Samuel B. Hand  
Eloise R. Hedbor

Philip H. Hoff  
A. Peter Woolfson

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

Professor Kenneth M. Holland, Chairperson\*  
Huntington

Kimberly B. Cheney, Esq.  
Montpelier

Eloise R. Hedbor  
South Hero

M. Jerome Diamond  
Montpelier

Hon. Philip H. Hoff  
Burlington

Dr. Murray Dry\*\*  
Middlebury

Samuel E. Johnson\*\*\*  
Burlington

Dr. Samuel B. Hand  
Burlington

Cheryl P. Laymon\*\*\*  
Cambridge

Dr. A. Peter Woolfson  
Burlington

\*On sabbatical 1987-88.

\*\*Resigned.

\*\*\*Moved out-of-state in 1987.

### Acknowledgements

The Vermont Advisory Committee wishes to thank the former staff of the Commission's New England Regional Office, including former Regional Director Jacob Schlitt and former Field Representative Louis L. Brin, both of whom organized and participated in the September 6, 1987 meeting. The Advisory Committee also acknowledges the assistance of the Commission's Eastern Regional Division which took up the responsibilities for staff support after the closure of the New England Regional Office in November 1986. This summary report was the principal assignment of Tino Calabria. In its final phases, the project was carried out under the overall supervision of John I. Binkley, Director, Eastern Regional Division.

## CIVIL RIGHTS ENFORCEMENT IN VERMONT<sup>1</sup>

### Background and Scope of Project

On September 6, 1986, the Vermont Advisory Committee to the U.S. Commission on Civil Rights held a meeting in Montpelier, the State Capital. The meeting had been organized in order to review the status of the State's civil rights statutes, agencies, and methods of enforcement and to develop recommendations which in the judgment of the Advisory Committee might lead to improvements in the protection of the civil rights of the residents of Vermont.

This summary report is based on the proceedings of the meeting and on the deliberations of the Advisory Committee. The information was obtained solely in the course of a one-day meeting. However, the sources of the information included top officials of the three branches of State government such as the incumbent Governor, the incumbent Chief Justice of Vermont, and a member from each house of the Legislature. In addition, candid assessments of the situation under review were offered by the head of the presently constituted Vermont Human Rights Commission as well as by speakers from other levels of government plus the private sector. The Advisory Committee also benefited from hearing the views of veteran heads of the state human rights agencies of Connecticut and Massachusetts.

### Governor Seeks Recommendations from Committee

The opening speaker at the September 6, 1986 meeting was Governor Madeline M. Kunin, who thanked the Vermont Advisory Committee for organizing the meeting to evaluate the civil rights statutes of Vermont as well as State mechanisms to enforce them. She indicated that she knew of no instance in which State civil rights laws

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<sup>1</sup>This report is based on the official transcript of the forum which is on file in the Eastern Regional Division office.

were not being enforced, while at the same time she recognized the possibility that victims of possible discrimination may feel reluctant to come forward.

Pointing to the Vermont Constitution as one of the first to prohibit slavery, the Governor also noted that the State of Vermont approved the Federal Equal Rights Amendment about six months after Congress ratified it. On the other hand, she acknowledged that the Vermont Human Rights Commission, established in 1967, has not been active for about 10 years, has not been funded, and has had no new appointments made to it. Furthermore, its jurisdiction is limited to public accommodations and real estate. Questions which the Governor hoped would be answered in the course of the Advisory Committee's review were:

- Does the State of Vermont need new civil rights laws?
- Does the State need a new agency to administer those laws?

She herself observed that "Simply creating an administrative entity or simply creating an appropriation does not necessarily result in effective enforcement of civil rights laws. So we want to be absolutely certain that when we create a change, if that is agreed upon, that we do it in the most effective way."

#### State Chief Justice Offers Observations

The Chief Justice of the Vermont Supreme Court, Frederick H. Allen, noted that jurisprudence in Vermont has had a role independent of Federal law in charting the course of human rights and individual liberties in Vermont. As early as 1802, the Vermont Supreme Court rejected an argument that the United States Constitution required Vermont courts to honor a bill of sale for a slave.<sup>2</sup> Over time, however, civil rights initiatives appeared to take place at the Federal level more than at the State level, so that Federal fil-

<sup>2</sup>Selectmen of Windsor v. Jacob, 2 Tyl. 192 (1802).

ings increased from under 300 in 1961 to over 13,000 in 1979.

"We live in different times today," observed the Chief Justice, with there being a "notable sense of deference by the U.S. Supreme Court to state court decisions and a new sense of discovery among state supreme courts and a renewed focus on state constitutions." He added that, as a result of Parratt v. Taylor<sup>3</sup> and the cases which it followed, there will be a return of civil rights cases to the state courts. Meanwhile, like residents in other states, Vermont residents "will have to restudy our Constitution [and] reexamine the adequacy of our own laws."

Yet the coming changes in civil rights should not occur solely in Vermont's courts. The Chief Justice added that "Employers, landlords, municipal governments, administrative agencies, labor unions, among others, have a primary duty to listen to the public they serve to understand what the law requires, and to try in the long Vermont tradition to settle disputes short of litigation, if possible."

#### Vermont Professor Testifies Concerning School Climate

Dr. William Bright of the College of Education at the University of Vermont noted that education traditionally has been viewed as a "lifeline" by members of groups that have endured discrimination, although for many of them the schools have not worked, as has been reflected in standard measures. The key to making schools work can be found in the concept of equity or of equal opportunity and equal access. He believed that a systematic review of the schools would reveal access difficulties for certain groups.

Dr. Bright said that "Numerous studies indicate that children of the affected groups, particularly the protected minorities and the disabled, suffer appreciably in schools from the inappropriateness

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<sup>3</sup>451 U.S. 527 (1981).



of materials and delivery. They also endure lower expectations of achievement than the majority representation." He added that "My experience in the schools throughout the State of Vermont tells me that this is generally the case, or certainly, is often the case."

He offered illustrations of alleged insensitivity: one allegation in which a white child is "yelling 'Nigger'" and standing over a black child lying on the schoolgrounds crying, yet a teacher reportedly dismissed the episode as child's play. The second allegation involved a high school at which for some reason a broom closet served as the sole detention area; upon passing by, Dr. Bright happened to come upon the only black student in the school as the student was being confined there.

Dr. Bright pointed out, however, that a concept of "school climate" is being defined in Vermont, a concept aimed at not only improving instruction but also helping students to develop self-respect while staff, students, and the school community share expectations that children can learn and then find that they do learn.

Dr. Bright reported that individual schools in Vermont have been working hard to make such advances, and he concluded that real improvements ultimately occur at the level of individual schools. Regarding the role of a civil rights agency, he suggested that a State Human Rights Commission, broadened in scope and given investigative power, might be able to play a mediation role between the school system and students of the protected groups.

#### The Equity Committee

Ms. Judy Stephany, consultant to the Vermont Department of Education and a former State Representative, noted that the Department has established "an internal group called the Equity Committee" and that in the coming school year an advisory would be circulated on the concept of school climate and ways to measure and improve the learning environment. At the same time, she pointed out that

"one can argue, and I would argue very strenuously that it is possible to have excellence without having equity go hand in hand with that excellence."

Ms. Stephany also recounted how she accompanied a site-visit team which easily identified inadequacies in public school textbooks being used but "in the school climate section, which deals with the issues of stereotyping and bias, it passed right over [the] heads [of the team members.]" Ms. Stephany further opined that "young women are the only group . . . who enter school at a higher level of capability than when they leave . . . the only people who go through twelve years and leave school at a lower level than which they entered. . . . Their schooling has, rather than broadened their horizons, limited their horizons and limited their capabilities."

#### Rural Environment and Historical Development of "Anglo Norm"

Dr. Frederick Schmidt, Director of the Center for Rural Studies at the University of Vermont, described Vermont as the most rural state in the U.S. according to some definitions, 66 percent of its population living in communities under 2,500. It ranks fiftieth among the states in the number of black residents, fiftieth in the number of Native Americans, and fiftieth in the number of Asian American residents. Nevertheless, Dr. Schmidt supports a commission on civil rights at the state level because "the issues of equity in the society do not lie in the statistics . . . . [They] lie in the structure of the society itself, not in the targeted numbers which are sometimes used to make a case" for a civil rights commission.

Dr. David H. Andrews, Professor of Anthropology at Middlebury College, characterized the "Vermont farmer of British descent and his genetic and cultural descendants in the west . . . as the exemplar of the culture of the United States" and suggested that "the core

culture itself derived from England and the modified colonial American experience became the model that all other immigrant groups were expected to conform to." He added his opinion that "when one finds that a particular group falls below the Anglo norm, there is a conclusion that this disparity is the result of systematic negative prejudice and negative discrimination towards the other group in question."

However, he cautioned against misreading the statistics. While saying he did not want to sound as if he were blaming the victim, he wondered whether "some of the underachievement of some ethnic groups might not also be attributed to aspects of their social organization and cultural values," and noted that under some circumstances under-registration for voting has not been the result of negative discrimination on the part of the dominant core society but rather of the values of the ethnic group's culture. In another context, Dr. Andrews acknowledged that without an unbiased understanding of the people of other cultures, including members of minority groups in the U.S., "we are going to cause them--and this is well-documented . . . in the literature--a great deal of unnecessary suffering and pain in the process of Anglo conformity."

#### Size of Minority Populations

Ms. Anh Phi Doane, a member of the Burlington School Board, assumed that a state-level civil rights commission would be necessary. She added that such an agency is needed not only to protect the rights of racial and ethnic minorities or the of elderly and the handicapped but to educate the entire community, and the agencies that serve all the people of the community, about their responsibilities towards protected classes. She also asserted that there is no office in Vermont to which minority persons can go and speak comfortably about whether they have been discriminated against. A civil rights commission should provide such service. As for the size of the minority populations, their numbers are so few and

discrimination can be so subtle that some discrimination "kind of slides by," Ms. Doane remarked.

Dr. L.H. McCrorey, Dean of the School of Allied Health Sciences at the University of Vermont, said that insufficient statistics and the atypical population of a State which has attracted a disproportionate number of professionals mean, for example, that blacks in Vermont may enjoy a higher median income, lower hospitalization rates, and other indices of well-being, compared to blacks elsewhere and especially in urban America. On the other hand, he decried the absence of black representation in public appointments and the "blatant absence" of public school teacher administrators who are black.

The lack of statistics may compel one to fall back on anecdotal evidence, said Dr. McCrorey, but he asserted that such evidence abounds and offered seven examples including the fact that a Federally-supported medical school in Vermont is only one of four in the U.S. having no minority students and has graduated "only two blacks in the past 20 some years." He concluded that "Blacks and other minorities need . . . help here, perhaps more than in other places where the sheer numbers offer some form of protection," and he envisioned such help as coming from a State civil rights commission that wielded enforcement powers.

#### Problems Faced by Aged and Disabled

Ms. Faire Edwards, publicist for the Vermont State Council of Senior Citizens and a former member of the Central Vermont Regional Planning Commission, described herself as representing the largest minority in Vermont, the elderly. She noted that the oldest subcategory is dominated by women, two-thirds of whom live alone. She alleged that some in younger age groups exhibit ageism "which can be pretty vicious, because they tend to think of us as valueless. . . and everybody knows that an old lady's main function is to pet

her cat."

Ms. Edwards also asserted that nearly half of the elderly suffer from arthritis and so can be counted among the disabled. Thus, ageism is compounded by the problems of sexism and discrimination against the disabled. As for official advocacy on behalf of the elderly, she observed that the State Office on Aging lacks departmental status and that "There is just naturally a tendency to skip the advocacy role that was assigned under the Older Americans Act to the state units on aging. It depends on a lot of things whether the Office on Aging can actually speak out as much as it should. . . . [R]emember, it has to go through the Agency of Human Services and then through administration. . . ."

Mr. Stewart Meacham, the former Director of the Client Assistance Project of the State Vocational Rehabilitation Division, expressed support for the establishment of a State civil rights commission, and reported that there were 66,000 disabled people in Vermont. He added that they are scattered throughout Vermont yet live in a ghetto, the ghetto of poverty. He also likened their ghetto to an archipelago with some islands in low income communities, others in low income housing for the elderly, and still others in various trailer parks.

Acquiring adaptive equipment, such as a wheelchair paid for with Federal funds, can take three and one-half years for the State to accomplish. Regarding employment, the sheltered workshops which once provided work for at least a few of the disabled have been closed down. Mr. Meacham explained that he was "not suggesting that everybody who commits a piece of stupidity is a conscious discriminator. Most people who break the speeding law are not conscious speeders. . . . [That] is not the point. The point is that if you are able on a minor offense like speeding, if you are able to charge the State police to go running around catching speeders, . . . don't you think that the cost in human terms is worth a Commission . . . [?] "

Active Womens' Commission

Ms. Lynn Heglund, the Executive Director of the Vermont Governor's Commission on the Status of Women, noted that women make up the only constituency which can claim an advocacy group structured as part of State government. She added her opinion that without such an advocacy staff there are little data and that without offering staff to share information or take complaints, there is a lack of requests for information and a lack of complaints. The experience of her Commission illustrates how the existence of staff, information, and advocacy can encourage calls for information and about complaints. Therefore, "you are not going to discover the numbers to justify [establishing a state civil rights commission] until you develop the commission, which is going to be able to be the voice and the source of the information," she believed. She also suggested that a commission operating without enforcement authority would be weak.

According to Ms. Heglund, women still encounter discrimination in employment, housing, and education. She acknowledged the anti-discrimination efforts in employment undertaken by the Attorney General's Office, despite the constraints of its budget and the limitations on time and access the Office has to perform outreach; but, she concluded that in the absence of a high profile agency widely seen as a place of recourse, "you do not have a real remedy." As for housing, the Vermont Human Rights Commission, as it now exists in law, is intended to enforce housing and public accommodation statutes; however, "there is a right under law, but there is no remedy in fact."

Ms. Heglund also stated that in the educational arena, the U.S. Department of Education is supposed to monitor Title IX compliance in Vermont. Yet, Ms Heglund complains about the Department's policies and funding.

**Ms. Cheryl Rivers**, is Legislative Advocate of the Low Income Advocacy Council, a grassroots organization of low income Vermonters elected from various areas throughout the State. It was created during the Johnson Administration's War Against Poverty, but has no present funding from public governmental sources. The Council endorsed a State Fair Housing Bill which would have permitted the State to obtain Federal funding for a staff position in the State Attorney General's Office to enforce compliance, but the relevant section of the bill was deleted. Without additional staff, the Attorney General's Office is unable to enforce compliance.

In working on minimum wage legislation, the Council reviewed 1980 Census data showing that "an overwhelming number of the people that work at minimum wage . . . are women [and that a] number of people that work below the minimum wage are women. But the statistics are not complete and not up-to-date," said Ms. Rivers, who repeated the need for a state civil rights commission which could amass the appropriate data. She concluded by saying that "creation of a civil rights commission and some publicity to go with it could go a long way towards giving people the court and jury to get involved with the process, and to question things that currently they may not even know they can question."

**Ms. Gretchen Bailey**, an attorney in the Attorney's Office of the City of Burlington, described an ordinance which dealt with housing discrimination and one with employment discrimination. The new housing ordinance, passed in 1984, supplemented a 1960s law which mentioned race, creed, and national origin; now it prohibits discrimination based on age, sex, fact of minor children, sexual preference, handicap and source of income (such as public welfare) as well. The employment ordinance embodied an affirmative action hiring goal for women in the construction trades. It requires a hiring goal of 10 percent of women in each trade, while excluding from that number those holding clerical positions or the flag or stop sign at construction sites, and is enforced by the City's

Community and Economic Development Office.

Affirmative Action for Women

Ms. Heather Wishik, Adjunct Professor at the Vermont Law School, characterized job segregation by gender as a national problem that Vermont has not escaped and gave examples of low-paying jobs in which Vermont women predominated. Acknowledging that pay equity is being implemented by the State of Vermont for State employees, she said that Vermont women in the private sector still encounter a serious wage gap and a benefits gap. She noted, too, that discrimination in working conditions, retention, and promotion and sex harrassment on the job are compounded by the reinforcement of traditional job choices for females.

As to non-job issues, Ms. Wishik claimed that Vermont women were not receiving fair treatment in divorce settlements and that they received spousal support half as often as women in the rest of the U.S. The labor force participation of single parents approaches 80 percent in Vermont, she observed, and cited a report by the Governor's Commission on the Status of Women which concluded that economic problems affecting Vermont women adversely affect their children as well.

Perspectives from Business Sector

Mr. Steven Gardner, Personnel Manager of IBM/Essex Junction, commented on the work of the Public Protection Division of the State Attorney General's Office. He found the Division's role in carrying out Vermont's Fair Employment Practices Act to be thorough, responsive, and equitable, despite the fact that he did not always agree with the Division's conclusions. At the same time, he said that "more could be expected [from the State in general in terms of] protections and rights and information to the citizens. . . ." Furthermore, he expressed his belief that the activities of the State Education Department, Human Services Department, and the At-



torney General's Office might achieve more "if their activities had a greater focus to them" and if those activities were better coordinated.

Mr. William J. Keogh, Executive Vice President of the Associated General Contractors of Vermont, said that minority workers find more stable employment in industries other than construction because of the eight- or nine-month season for construction work; as a result, his industry does not "have those numbers of people that could be available." Regarding women, he reported "great strides over the past five years," pointing out that along the highways "you will see many more women today than you have ever seen." He mentioned that the industry is being monitored for compliance by the Office of Contract Compliance Programs of the U.S. Department of Labor, the State Agency of Transportation, and the City of Burlington in terms of the City's 10 percent requirement for employment of women in construction jobs.

Mr. Christopher Barbieri, Executive Vice President of the Vermont Chamber of Commerce, noted that the Chamber represents about 1,300 employers in Vermont and that 80 percent of all Vermont businesses employ nine or less employees, and 91 percent employ less than 20. By most definitions, these figures suggest that Vermont is "a very small business state," he said, adding that the workplace environment is often less impersonal than elsewhere and that Vermont employers generally have "demonstrated a high level of concern and respect for the employee problems that might potentially result from discrimination." He claimed that very few employment discrimination complaints have been lodged against businesses which are members of the Chamber, but speculated that complaints exist, although the extent to which discrimination occurs is relatively small. As to the present laws and enforcement mechanism, he found them both adequate and satisfactory.

#### Perspectives From Banks, Labor and State Personnel Department

Mr. Timothy Hayward, Vice President of the Vermont Bankers Asso-

ciation, explained that the Association represents 33 of the 35 banks in Vermont and that these include about 4,000 employees, many of whom are women. He quoted an Association policy statement supporting the principle of equal opportunity and member banks who "take Affirmative Action in establishment of a safe, supportive, and equitable environment in which every customer and employee can assure equal opportunity to share and participate in all relevant aspects of the bank." The banking workforce is predominantly female, and he pointed out that in recent years women have begun moving up into the middle and upper management levels of banks in Vermont.

Mr. Thomas Belville, COPE Director for the Vermont State Labor Council, reported that from his 11 years with the Council he can recall eight specific discrimination cases dealing with race, gender, age, or handicap. He also noted that the Council's Montpelier office receives on average a call a day from workers claiming they have been unfairly treated by employers. He estimated that, of those calls, one-third involve discrimination complaints on the basis of gender or age. Callers are referred to the appropriate Federal or State agency. While he believed that State laws are adequate and that enforcement is good, he feared that "a large number of discrimination cases are never identified as such, never reported." Moreover, he suggested that the State is deficient in educating the public about the laws and regulations. He further believed that "many Vermont workers are discriminated against without ever realizing it, or if they do realize they have received unfair treatment, they do not realize there may be a remedy for their situation."

Mr. J. Scott Cameron, Commissioner of Personnel for the State of Vermont, mentioned that the State employs over 6,000 persons in the classified or civil service merit system and several thousand more in the executive, judicial, or legislative branches. He des-

cribed the recourse that employees with complaints have in their Union, the Labor Relations Board, and the State Attorney General's Office. He cited the changing work environment as presenting perhaps the biggest problem today, that is, in historically all-male fields such as law enforcement in general and corrections and some blue-collor occupations in particular.

"People do need a place where they can bring their grievances," he asserted, adding that "I think State employees have those places." The Commissioner also noted that, long before theories of comparable worth emerged, the State of Vermont had applied a point factor to evaluate all jobs in its classified system and to assign a pay scale based on the evaluation. This occurred over 20 years ago, but no review of whether the system remained equitable had been done until recently.

Though admitting less familiarity with employment in the private sector, the Commissioner expressed his opinion that "in the employment area there may well be adequate protections." But he voiced concern that similar protections have not been provided for persons with complaints in housing or education.

#### Employment in Higher Education

Ms. Joan Fobbs, Human Resource Development Assistant at the University of Vermont, explained that her office does the final sign-off on faculty and staff hiring for the University's 3,000 employees. Candidate pools are checked to see whether they included minorities; checks are made to ascertain whether minorities and women were interviewed and identified for appointment and ultimately whether discrimination is occurring. The University recruits nationally for candidates for the faculty, including minority candidates.

Having monitored the hiring, she described the defensiveness that

those involved in hiring exhibit upon being asked about affirmative action steps. She reported that the first minority faculty member and the highest-ranking one was hired in 1962. The most hired in any one year has been four or five, and there are only 28 minorities out of the 3,000 employees, which reflects a "trickle effect over a period of years," according to Ms. Fobb.

Minority candidates who are not hired can have complaints heard at her office, but, she asked, where can they go beyond the University? Local minority community members have felt that they "have been closed out of the UVM system and don't know where they can go to have their problems addressed," she added. At the same time, Ms. Fobb reported that "great inroads" have been made regarding hiring of the disabled, although occasional complaints are voiced about more needing to be done. With regard to women, there remain issues of pay equity, promotions, and benefits. The American Association of University Professors has also pointed to a problem in appointing women in the area of research.

#### Attorney General Praised But Strong Commission Seen As Needed

Mr. Thomas Whitney, Executive Director of the Vermont State Employees Association, asserted that "the present [civil rights] enforcement in the Attorney General's Office works and works fairly well." He also observed, however, that there appears to be a conflict within the State Attorney General's Office in terms of complaints brought by State employees, with "an Assistant Attorney General taking the position of an individual and usually another Assistant Attorney General taking the position of the department."

As to whether a new state commission should be established, Mr. Whitney said that a separate, independent human rights commission is needed, with enforcement authority, and allotted funds to publicize the law and answer questions that individuals might have about their rights or about how discrimination is defined. He al-

so called for the development of a recording system on what the State has specifically done in terms of affirmative action in State employment. Regarding the State's comparable worth system, mentioned by an earlier speaker, Mr. Whitney said that three years ago his Association began negotiating for an update of that system.

Ms. Margaret Lucenti, Chairperson of the Vermont Human Rights Commission, opened her remarks by saying she wished that the Advisory Committee had held its factfinding meeting ten years ago, when she was appointed, because "I thought that we needed a Commission to cover all discrimination in the State [not solely discrimination in housing], but it just didn't work out." She further pointed out that "the problem has always been that there has been no enforcement." The other members of the Commission all believe that their terms have expired, but in checking with the Governor's Office, Ms. Lucenti said she has been told that they and she remain members until they are replaced.

She continues to take housing complaints and other discrimination complaints not in her Commission's jurisdiction, and she has been investigating them out of her kitchen. At the same time, she has hoped that the Legislature would pass a measure that would eliminate what she viewed as her "so ineffective" Commission and replace it with "a good Commission to do something."

#### Attorney General's Office Enforcement

Ms. Susan Sussman, an Assistant Attorney General with the Public Protection Division of the State Attorney General's Office, described her Division as enforcing the State Fair Employment Practices Act and investigating complaints for the U.S. Equal Employment Opportunities Commission (EEOC). About 500 calls a year are handled by two investigators and the equivalent of one fulltime attorney in the Division. In 1986, up to the time of the meeting on September 6th, 110 formal charges had been completed and re-

turned to the Division and filed with the EEOC. An additional 50 charges have remained outstanding since April 1986, and Ms. Sussman estimated that before the end of 1986 there would be approximately 165 cases--up from the 131 charges filed in 1985.

Of the cases filed by September 1986, 5 percent were charges of race discrimination, 54 percent sex discrimination, 18 percent age discrimination, 18 percent discrimination on the basis of disability, 1 percent national origin, and 5 percent retaliation for filing a charge. There were no charges on the basis of religion. In addition to processing charges, legal and investigative staff of the Division participate in workshops and make public appearances to speak about employment discrimination. They also prepare material on women rights and on aspects of housing discrimination.

Ms. Denise Johnson, Chief of the Public Protection Division of the State Attorney General's Office, noted that in her six years in the Division she has seen increased interest in civil rights issues on the part of private attorneys, a byproduct of amendments to the aged and handicapped laws which permit a private right of action. Consequently, more cases arriving at the Division have started with a private attorney. She has also observed "a lesser emphasis now in the law on Fair Employment Practices Act and Title VII, because they have much more limited remedies than a litigant could get under tort laws or other kinds of legal remedies. . . . [W]hen a case comes into our office that has this potential [for winning damages], our advice now to the charging party is that they should seriously consider using a private attorney . . . ."

#### Gaps in Vermont Laws and Importance of Adequate Funding

Regarding gaps in Vermont law, Ms. Johnson judged the Fair Employment Practices Act to be adequate, though she would prefer to have a statement more clearly including discrimination on the basis of pregnancy; the Division does process charges on such a basis already. She also pointed out that the housing law only allows for

a private right of action and that the damages are not going to be significant; for these reasons, she believed that another enforcement mechanism needs to be developed.<sup>4</sup> Likewise, the State anti-discrimination laws should require equal opportunities regarding educational benefits for boys and girls in schools, and the State public accommodations law should establish an enforcement mechanism to cover sex and age. As for legislative priorities, she argued that the gaps in laws should be filled before any request is made of the Legislature that an umbrella civil rights unit be created.

Ms. Johnson also stressed that, when appealing to the State Legislature for the umbrella unit, civil rights must be presented as such a priority that sufficient funds are granted; otherwise, she feared, the present problem of an ineffective civil rights commission for housing will be repeated. She estimated that the recent budget for the State Attorney General's Office for enforcement was about \$100 thousand, only \$21,000 of which was specifically designated by the Legislature for civil rights.

She did recognize a conflict when charges against State agencies are brought to the State Attorney General's Office for processing. However, she believed that the conflict "is an apparent conflict and not a real conflict" and favors retaining the functions in the Office. She said that she would favor this over the alternative of sending such charges to EEOC. She added that a number of cases in the Attorney General's Office have been settled to the satisfaction of the parties.

#### State ACLU Calls for Improvements in Enforcement

Mr. Scott Skinner, Executive Director of the American Civil Liberties Union of Vermont, in characterizing the enforcement system

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<sup>4</sup>A statute adopted by the State of Vermont since the forum provides for enforcement by the Attorney General. See Vt. Stat. Ann. Section 4506.

stated that it "isn't broken, or broke, . . . but can be improved." He implied that improvement is needed regarding handicapped access, claiming that there is "emerging evidence of almost a non-existence of enforcement" by the State Department of Labor and Industry where such enforcement is meant to be managed. Speaking about employment discrimination, he then discussed what he termed were his "assumptions:" (1) More discrimination exists than is reported into the system, though the true number may not be enormous; (2) there is an "institutionalized lack of visibility" as to where people can go to discuss charges, with visibility decreasing after the Civil Rights Division was "swallowed up into Public Protection;" (3) the threat of a suit is a deterrent to discriminatory practices; and (4) efforts are needed to improve the laws and to close gaps.

Regarding the State Attorney General's Office, Mr. Skinner characterized the staff as competent and committed to enforcement and their investigations as excellent. He added that "our present system of employment discrimination is working better than the human rights commissions in most states." He also argued that the Office ought to retain all enforcement powers, while a human rights commission "would more or less be the investigatory unit, the public education unit. . . ." Having praised the Office, Mr. Skinner then suggested that pressure ought to be put on the Attorney General to place more emphasis on civil rights laws; civil rights advocates ought "to go after the Attorney General and get him to . . . fill in some of our [civil rights] gaps."

#### Views of Connecticut Anti-Discrimination Chief

Mr. Arthur Green, Executive Director of the Connecticut Commission on Human Rights and Opportunities (CCHRO), and his counterpart in Connecticut had been invited to address the Advisory Committee to share their experiences and views as heads of funded state civil rights agencies. Mr. Green stated that his agency dates back to 1943, and that its current staff is 117 people, with four regional offices and a total budget of \$3.5 million. There are also nine commissioners who are not compensated. CCHRO informs the public about civil rights but is also empowered to hold hearings, sub-



poena records, compel witnesses, and issue orders. It is one of several models that exist among about 150 agencies belonging to the International Association of Official Human Rights Agencies, of which about 110 exercise deferral authority on behalf of EEOC and/or the U.S. Department of Housing and Urban Development.

As to Vermont, whether a human rights commission plays a role similar to CCHRO's or whether the State Attorney General's Office does (as is the case in New Jersey also), Mr. Green said that "what ultimately matters . . . is whether [the] laws have adequate remedy attached to them when there are violations found, and, of course, most importantly, an appropriate budget. . . . You cannot have a viable governmental entity, call it whatever you wish, without appropriate dollars." He noted that the Connecticut Attorney General's Office, in effect, provided counsel to the CCHRO until the mid-1960s, but that the CCHRO houses its own legal staff of eight or nine attorneys representing the Commission and handling complaints against state agencies as well.

#### Views of Massachusetts Anti-Discrimination Chief

Mr. Alex Rodriguez, fulltime Chairman of the Massachusetts Commission Against Discrimination (MCAD), explained that his agency is composed of three fulltime, paid Commissioners and a staff of 83 fulltime or parttime employees. The agency received approximately \$3 million to carry out its mission in 1986. A Goddard College graduate, Mr. Rodriguez described his familiarity with Vermont and his acquaintanceship with many residents active in public affairs in the State. He also noted that the 120 cases processed by the Vermont Attorney General's Office contrasts with the 2,500 cases a year processed by MCAD.

Under MCAD's jurisdiction is antidiscrimination based on race, religion, national origin, gender, age, and disability in the areas of employment, housing, public accommodations, and credit. In addition, by a State executive order, MCAD monitors how State, city and town government officials make their contracts and jobs accessible to the protected classes. Records on the latter have been kept since 1979, and MCAD can document how "\$100 million a

year worth of salaries and contracts . . . go to people of color today in Massachusetts through city and town budgets that were not going to the same people before 1979."

Mr. Rodriguez emphasized that MCAD is independent of other State agencies which means that no State employer is treated differently from any other employer. Indeed, he said that were circumstances to call for it, he would sue the Governor himself. The Massachusetts Attorney General supervises a civil rights division and is also responsible for enforcing criminal civil rights laws, as when a refugee from southeast Asia is the victim of a beating or arson. At the same time, MCAD works closely with that division and with similar divisions under local district attorneys. For example, MCAD has been offering inter-group relations workshops in cooperation with the district attorneys of three counties in south Massachusetts.

In contrast, the Attorney General of Vermont may feel that he is on both sides of a complaint, acting for the State and for an employee with a grievance. Describing such a situation as clumsy, Mr. Rodriguez maintained it could be overcome if there is the will to act. He expressed his belief that "if you do get serious about civil rights, an amazing thing happens, a thing called equity. . . . The pyramid's top gets cut off a little and it changes its form. And more people share in the bounty that we know exists."

#### Prospects for Improving Legislation

State Senator William Hunter, a Senate Judiciary Committee member, characterized the legislative prospect for affirmative action and human rights in the Legislature as "very good," especially if compared to what it was 12 years earlier when he was first elected. For example, in the most recent session of the Vermont Legislature, there was an overwhelming vote of support for the proposed State Equal Rights Amendment. The Legislature also voiced its opinion against apartheid in South Africa and initiated a reporting law regarding abuse of the elderly and disabled. The Senate Judiciary Committee favorably reported out a mini-Section 1983 statute proposing a private right of action on the part of persons whose

State constitutional rights have been violated, although final action was postponed because of concerns in the State Attorney General's Office about potential financial liabilities.

On the question of an independent unit for civil rights enforcement, the Senator preferred the establishment of an entity outside of the State Attorney General's Office. Alleging a retreat in civil rights on the part of the Federal Government, weakening financial support for Legal Aid reducing its abilities, and noting embattled unions whose membership is declining, he suggested that Vermonters have few recourses to turn to when they have civil rights complaints. He further pointed out that the State of Vermont is probably the largest employer in the State and that at the same time many Vermonters feel that their rights have been violated by the State.

Engaging the State Attorney General's Office in civil rights cases and pitting that Office against other State agencies puts that Office in an obvious conflict of interest, the Senator maintained. Alleging that some three years ago the Island Pond case involved the State Attorney General's Office itself in flagrant violations of civil rights, he repeated that "there needs to be both the perception and the reality of an independent enforcement agency, and that really needs to go on outside." At the same time, a private right of action with payment of attorney fees should be available.

State Representative Betty Nuovo reported that the Judiciary Committee passed a bill for interpreters for the handicapped and for people of foreign background and a different bill to end discrimination in housing. She urged that the Advisory Committee write its report and work toward implementation of its recommendations. On the question of setting up a State civil rights commission independent of the State Attorney General's Office or strengthening the latter, Representative Nuovo reserved comment.

#### Thematic Summary of Proceedings Given by Guest Judge

Judge Frank Mahady, then of the Vermont district court<sup>5</sup> and a

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<sup>5</sup>Now Associate Justice of the Vermont Supreme Court.

former visiting professor of constitutional law at Middlebury College, summarized in thematic terms the day-long proceedings. He said that Vermonters can take pride in their State Constitution and Declaration of Rights, which predate the U.S. Constitution and which had the effect of abolishing slavery. He also reminded the Advisory Committee that the first black elected to any legislature in the U.S. was elected to the Vermont Legislature, that Vermont volunteered and lost proportionately more men in the Civil War than any other state in the Union, and that the first woman lieutenant Governor in the U.S. was elected in Vermont.

On the other hand, as late as the late 1960s, the house of a black minister who had moved to a remote Vermont town was fired at from a car which made two passes by the house; subsequently "high-ranking members of the Vermont law enforcement community moved heaven and earth to cover up the fact that the principal night rider was the son of one of the area's most prominent businessmen," alleged the Judge. He also suggested that pride in the election of women to high office is diminished by the fact that only two women, recently appointed, serve on the entire State judiciary.

The Judge also noted the pride Vermont takes in its various ethnic groups, yet recently the national media had publicized deeds to Greensboro real estate which contain restrictive covenants, such as not selling or renting to Jews, and which U.S. Supreme Court Chief Justice Rehnquist agreed were obnoxious. As beautiful as is his home court in Middlebury, Judge Mahady acknowledged that "a person who is handicapped has about as much chance to enter that courthouse as does the camel to pass through the eye of a needle." Moreover, by his own observation, many of the elderly in Addison County have been precluded from serving as jurors since the jury is required to mount a steep flight of stairs to get to the jury room.

Speaking to the members of the Advisory Committee, most of whom he described as old and close friends, Judge Mahady told them that the Advisory Committee was virtually invisible and that, although he is an avid reader of most statewide newspapers each day, he was "hardly aware of a civil rights presence in the State of Vermont," adding that "I would submit to you that those who are discriminat-

ed against and who suffer discrimination have less opportunity to be informed."

He agreed with other speakers that the State Attorney General's Office has been doing "a fine job . . . of the relatively small part of the problem assigned to them." However, he stated that it is overworked, understaffed, underfunded, and vulnerable to the charge of conflict of interest. As a result, there is what the Judge called a void, one that he personally did not have the expertise to remedy. "But I will say, in Vermont, so long as we can and did have an Irasburg, our tradition demands that we do better; insofar as we can and did have an Island Pond, our tradition demands that we do better. . . . Insofar as those who suffer discrimination must learn of their remedies themselves, must enforce themselves, and must do so on their own nickel, our tradition demands that we . . . not leave these important concerns and important matters to happenstance and to a jury-rigged system, which is what we now have. Our history and tradition demands that Vermont exercise moral leadership in this area. . . ."

#### Summary Observations

Members of the Vermont Advisory Committee expressed their appreciation to the speakers who joined in the discussion of the issues and who offered various recommendations. Advisory Committee members themselves believe that the issues raised during the meeting are of great importance and the Advisory Committee, therefore, is releasing this summary report in the hope that it will contribute to State efforts to improve the civil rights laws and mechanisms for enforcement in Vermont.

The relatively small communities of racial and ethnic minorities diffused in the general population of the State may be more vulnerable than larger communities of minorities elsewhere, where sheer numbers may lend at least some form of solidarity and protection. Forum speakers active on behalf of the rights of women, the aged, and the disabled spoke eloquently of the plight of these protected classes, whom they felt would similarly benefit from substantially strengthened civil rights measures in Vermont.

The Advisory Committee members have pledged themselves to monitor the situation closely and to convene a followup meeting to review developments, and perhaps issue formal recommendations, when such an event appears timely.