
CIVIL RIGHTS CONCERNS

OF OLDER AMERICANS

ARKANSAS ADVISORY COMMITTEE

TO THE UNITED STATES

COMMISSION ON CIVIL RIGHTS

This summary report of the Arkansas 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.

LETTER OF TRANSMITTAL

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

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Attached is a summary report of information received at a community forum conducted by the Arkansas Advisory Committee in Little Rock on February 3, 1989, on issues involving the civil rights concerns of older Americans. By a vote of 11 to 0, the Advisory Committee approved submission of this report to you with the request that you approve it for publication. It is hoped that the information provided will be of assistance to the Commission in its program planning.

Participants at the forum provided a wide variety of viewpoints on problems of older persons, and described efforts to alleviate discrimination against them because of their age and to assure protection of their constitutional rights. Efforts are currently underway in the State to provide legislation which would correct and prevent some of the abuses found of residents in nursing homes.

Respectfully,

/s/

ALAN PATTESON, JR., Chair
Arkansas Advisory Committee

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INTRODUCTION

In November 1975 Congress enacted the Age Discrimination Act of 1975 (42 U.S.C. Sections 6101-6107) as an amendment to the Older Americans Act (42 U.S.C. Sections 3001 et seq.). Since the enactment of the Age Discrimination Act, the purpose of which was to prohibit discrimination based on age in the delivery of services and benefits supported by Federal funds, the U.S. Commission on Civil Rights has released three reports concerning age discrimination which concluded that barriers have been erected by both public and private administrators between older Americans and services financed in whole or in part by the Federal Government, and that practices of area agencies on aging and organizations funded by them adversely affect minority participation in these programs.¹

Pursuing an interest in this subject, at its July 2, 1988 meeting in Little Rock, the Arkansas Advisory Committee received a briefing from four experts on aging concerning civil rights problems of older persons in the State. These included representatives from the State Department of Aging and Adult Services, the gerontology program at the University of Arkansas and the American Association of Retired Persons (AARP). These persons informed the Advisory Committee that problems of the elderly included the lack of accessibility to housing, medical care and transportation; employment discrimination; and inadequate legal services. Other experts on aging concerns interviewed by staff reported problems in the participation by minority elderly in services provided for senior citizens; physical abuse and financial deceptions by guardians; discrimination against mentally disabled older persons in the provision of services; and difficulties in registering to vote.

Statistics provided by the Arkansas Department of Human Services show that Arkansas ranks second among all States in the percentage of elders in the population and 27th among all States in the total number of older Americans. Eighteen percent of the State's population is 60 years of age or older. The number of persons in Arkansas who are 65 or older grew 31.4 percent between 1970 and 1980, and has increased an additional 7.4 percent since 1980. This age group in the State is projected to increase approximately 2 percent per year between now and the year 2020, compared to an increase of less than 1 percent for younger persons.

With this background information in mind the Advisory Committee conducted a community forum in Little Rock on February 3, 1989, to gather information on the civil rights concerns of older Americans. This was in keeping with the Committee's responsibility to monitor civil rights activities in the State, to gather information to advise the Commission, and to assist in planning future Advisory Committee activities. Efforts were made to select participants who were knowledgeable about the issues and who represented a diversity of perspectives.

During the day-long forum persons who addressed the Advisory Committee were Herb Sanderson, Director of the Arkansas Division on Aging and Adult Services; Dina Wood, Advocate for Senior Arkansans in the Office of the Attorney General; Ann Wasson, Director of the Arkansas Association of Area Agencies on Aging; Phyllis Haynes, Director of Abilities Based on Long Experience (ABLE); Jean Turner Carter, Director of Legal Services of Arkansas; Scott Holladay, Executive Director of Arkansas Seniors Organized for Progress; Dewey Lantrip, former AARP State Chairman; Elmer Von Egmond, AARP State Legislative Committee; Dr. Mark Krain, President of the Arkansas Gerontological Society; Dr. Perry Thompson, Chair of the University of

Arkansas Department of Gerontology; Representative Erma Hunter Brown, a former member of the Arkansas House Committee on Aging and Legislative Affairs; Senator Travis A. Miles, Chair of the Senate Committee on Aging and Legislative Affairs; W.P. Brown, Director of the Little Rock Area Office of the Equal Employment Opportunity Commission (EEOC).

STATE AGENCY REPRESENTATIVES

Ms. Dina Wood, Advocate for Senior Arkansans in the Arkansas Attorney General's office, addressed rights of senior citizens granted to them by the U.S. Constitution, and the State Constitution, and other rights that have extended from those documents. These rights she said are often denied to them because of their age, institutionalization, or developmental disabilities. She referred to their right of privacy, their right to vote, and to personal cleanliness and good health. Her special concern was for rights of the residents of nursing homes, some of which are laid out and explained in the Code of Federal Regulations Sections 442, 542 and 1121. She emphasized, however, that there are some nursing homes which are careful to protect the rights of their residents but others who deprive their residents of basic, fundamental constitutional rights. She said that in some facilities her office had investigated there were numerous instances of verbal and physical abuse, unnecessary physical restraint, failure to assist residents in the performance of basic body functions, and lack of medical treatment.

Ms. Wood reported that as a result of their investigation the State legislature had passed the Long Term Care Act designating rights under the Constitution of nursing home residents. Another legislative package under consideration will make the owners of nursing homes personally liable for failure to uphold basic standards.

In response to a question, Ms. Wood said that though her office had not made a specific investigation of the problem, there are many nursing home residents who are not able to exercise their right to vote because of lack of access to the polls. She noted that present legislation does not place on anyone the responsibility for assuring that the right to vote is protected. She felt, however, that it would be a good idea to place this responsibility on nursing home operators.

Mr. Herbert Sanderson, Director of the Division on Aging and Adult Services, stated that Arkansas, as a State, is unique with regard to the topic of aging and the elderly in that 18 percent of its population is 60 years of age or older, second highest among all of the States. Also, he said, only Alabama and Mississippi have higher poverty rates among the elderly.

Mr. Sanderson pointed to the physical abuse of elderly persons as one problem with which his office has some involvement through its Adult Service Protective Program. He reported that, annually, they receive over 1,800 referrals from their adult abuse hotline. Many of these, he said, are not substantiated but they have found that even among family members much abuse and neglect occurs.

Mr. Sanderson said that research by his division on health concerns for older persons revealed that blacks are in poorer health than their white counterparts, and that blacks typically are not represented in nursing homes or to the same extent as their white counterparts. He said the reasons for these discrepancies are not clear and need to be explored.

Health care, he said, is becoming an overriding issue in this country, and it will be a challenge to resolve issues as to how health care is

to be delivered, and whether to limit its provision strictly on the basis of age. He hopes that our society will not follow the path taken by Great Britain where this is done and where, for example, dialysis is not available to people above a certain age.

He also pointed to discrimination against older persons in employment as another area of concern, and the one that ranked first in his opinion. He said that though, historically, there has been a lot of discrimination against older persons in this area, attitudes are changing as people become more informed about the process of aging and some of the stereotypes fade. He pointed out that some companies, such as McDonalds, have already projected that older persons will be needed to meet labor demands. One disincentive, which he said may result in employment discrimination against older persons, are health policies that force companies to make higher health care premiums for older persons.

SERVICE ORGANIZATION REPRESENTATIVES

It was the impression of Ann E. Wasson, Director of the Arkansas Association of Area Agencies on Aging (AAAAA), that older persons vote in larger numbers than any other age group and are hindered only by poor health, bad weather, and illiteracy. She said that illiteracy is a major problem that keeps older persons from voting in larger numbers than they do. She agreed with Mr. Sanderson that there is employment discrimination against older persons, manifested in part by forced retirement as well as by fewer employment and promotion opportunities.

She said, however, that the statistics are encouraging with regard to the participation of minority elderly in the services that are offered for older persons in Arkansas under Title III of the Older Americans Act. Some services offered, such as congregate meals, transportation, chore services,

telephone reassurance, information provision and referrals are used by minorities in much higher proportions than whites. She furnished statistics which showed that 13 percent of the population of older persons in Arkansas are minorities and that their participation rate in these services exceeds 30 percent. But she reported that for unknown reasons, services for counseling, employment training, and education are less likely to be used by minorities than whites.

She pointed out that the drafters of the Older Americans Act had set up a separate bureaucracy to administer programs for older people because studies showed that they were discriminated against when included with all age groups. The administration of these programs in Arkansas, she said, is carried out by eight area agencies on aging, and all of these have advisory councils at least 50 percent of whose memberships are mandated to be participants in the programs.

Phyllis Haynes, director of Abilities Based on Long Experience (ABLE), after explaining that her organization provides training and employment services to older persons, provided her personal assessment of civil rights issues facing older Americans and older Arkansans in employment. She pointed out that 95 percent of older Americans live on their own, and that many of these are very healthy, coherent and enthusiastic with a life expectancy of an additional 20 years after retiring at 65.

Despite this statistic, she said, and the reality of a dwindling work force in America, little attention is given to the employment of older persons. In her experience, employment conferences and workshops seldom deal with the issue. Notable exceptions to the lack of employment opportunities available are found at the two extremes: fast food restaurants, which offer the minimum wage, and well-paying consulting jobs.

She said that it is the group of older persons in the middle salary ranges who get laid off when a plant closes, or feel compelled to take advantage of special incentives offered for retirement, but do not have the experience or training to get another job.

Ms. Haynes reported that Congress set aside 3 percent of Job Training Partnership Act (JTPA) (Pub. L. No. 97-300, 96 Stat. 1322 (1982), as amended) funds to work with older Americans, but that as of last year, 32 percent of the State population eligible for these funds was over the age of 55. A national advisory council, she said, has recommended doing away with the 3 percent set aside because in other States it has not been spent. In summarizing her statement Ms. Haynes concluded that there are not adequate services in the private sector directed to the recruitment and training of older employees to provide them with opportunities for advancement or to change occupations.

Jean Turner Carter, Director of Legal Services of Arkansas, which provides legal assistance in civil matters to low income persons in Arkansas, reported that in 1988 her organization completed 280 cases for persons 60 years of age or older. This represented approximately 15 percent of their client base. These cases, she said, covered a full spectrum of legal issues with the majority involving problems in public benefit programs such as food stamps, Medicaid, Medicare and Social Security. She described as the biggest problem access to these programs due to the lack of information provided to potential claimants regarding their eligibility. In many cases this included the lack of information about appeal rights if they are denied benefits.

She stated that a concomitant problem involves elderly persons who are abused by family members or others. If the victims complain, the adult

protective services program of the State Department of Human Services, under current Arkansas statutes, assumes guardianship of them with the usual result that they are placed in a nursing home. No penalties are provided for the abusers, she said, while the abused elderly become prisoners in nursing homes.

In response to a question, Ms. Carter said that legal services are available to the elderly who are poor but that transportation may become a real problem in gaining access to these services. The nursing home population is especially underserved, she said, because these persons lack private telephones, and health or mental impairment may prevent them from calling a legal services office. In criminal matters, Ms. Carter explained, public defender programs in some of the larger counties are available to older persons, but in rural areas they must depend on court appointed attorneys.

Mr. Scott Holladay, Executive Director of Arkansas Seniors Organized for Progress (ASOP), a nonprofit organization concerned with public policy issues, reported that his organization did not become involved with issues such as age discrimination. He said, however, that it was his observation that restrictions placed on older persons in nursing homes result in a serious loss of privacy and freedom. Many are placed there, he said, because it is the only means that society has of taking care of them, and it results in the use of physical restraints and drugs which cost them their freedom and privacy.

REPRESENTATIVES OF COMMUNITY ORGANIZATIONS AND ASSOCIATIONS

Mr. Dewey Lantrip, former chairman of the Arkansas AARP, listed several areas where he felt that discrimination against older persons was a factor. One was the problem of single, divorced or widowed women, many of

whom are elderly, who have trouble obtaining loans or credit cards. Another was employment where companies which claim not to discriminate against older persons will not even interview a person over 67 years of age. This issue he saw as a widespread problem. Another area he mentioned was automobile insurance where some companies will not renew the insurance of anyone over 75. This, he said, works a severe hardship on persons who have no other means of transportation. A third area of discrimination, he said, concerned Medicare supplemental insurance which private companies offer and which are age rated. He reported that some insurance companies will not even sell supplemental policies to persons 75 years of age or older, and those that do charge a premium rate. Having to pay the extra fee, he said, though better than facing the prospect of having no supplementary insurance at all, was discriminatory. He said also that defenseless older persons are often exploited by unscrupulous insurance agents who may sell them a string of health insurance policies, claiming each one is better than the last, without mentioning the 3-month waiting period which leaves the purchaser uninsured for that period each time a new policy is purchased. The agent then gets a large share of the first year's premium on each new policy.

Mr. Elmer Von Egmond, Chair of the AARP State Legislative Committee, explained that his committee was primarily a legislative advocacy group for older persons and the handicapped. Their primary concern, he said, was to improve the quality of life and care of older persons in long term care facilities. He included in this what he felt to be subtle forms of abuse and discrimination, such as unnecessary physical and scheduling restrictions, and other limitations on their activities. He listed abuse of guardianship relationships as another area of major concern. He said

that once older persons are declared incompetent, it is an extremely arduous and expensive process to get this declaration reversed, even though it might have been due to a temporary condition, or to overmedication or wrong medication. Even if the situation is corrected, these persons may be released from a nursing home to find that their homes and other assets have been disposed of by their guardians. Abuse of the guardian relationship, he said, is classified in Arkansas as a civil, not a criminal offense, and pursuing legal remedies against irresponsible guardians is very difficult. It was Mr. Von Egmond's understanding that though guardians are appointed by the judge in probate court, and that it is the court's responsibility to monitor these relationships, they are not well monitored.

Dr. Mark Krain, President of the Arkansas Gerontological Society and professor of gerontology at the University of Arkansas in Little Rock, stated that the society's major focus was advocacy and legislative with regard to concerns of older persons. One effort of the organization has been to advocate for a change in guardianship legislation to benefit the elderly.

Dr. Krain reported that he had been a co-recipient, with Dr. Trevino-Richard, an associate professor of sociology at the University of Arkansas, of a grant from the AARP Andrus Foundation to study differences in the utilization of services for the elderly by blacks and whites in southeast and central Arkansas. Data from 16 counties were collected to determine if black elderly are underserved as compared with white elderly, if they use services in different ways or for different reasons, and if the occasions for the use of elderly services are different for blacks than for whites.

It was determined from the study that about the same proportion of blacks utilized services for the elderly as whites. It was found, however,

that blacks who use these services are from lower-middle and middle socioeconomic levels, while whites who use the services were pretty much from the lowest socioeconomic levels. Dr. Krain said that this meant that among whites the elderly who need the services most are getting them, because they are somehow linked into the network where they have knowledge of the existence of the programs and transportation available to obtain them. On the other hand, among the black elderly only those with a certain level of economic resources had the opportunity to link into the system.

Dr. Krain also briefly explained a theme in the gerontology of minority groups called the multiple jeopardy hypothesis with which Dr. Trevino-Richard has been working. This hypothesis holds that each additional minority group in which an individual participates entails additional problems. Thus, elderly have problems because of their age, female elderly are at a double disadvantage because they are both female and elderly, and black female elderly have the additional burden of being part of a racial minority. He said that current academic literature holds that this is not uniformly true. Variations in the degree to which belonging to 2 or 3 minority categories increases problems depends upon certain conditions, such as family relationships and the degree of support from the family. Being old and female and black predicts a good deal more supportedness from the family system than does being old and white, he said.

Dr. Krain predicted that in the future, as it becomes more necessary to ration resources, such as medical care, policies for the elderly will more and more be approached from the standpoint of civil rights. The question of who gets what resources, and who is excluded from medical care will involve civil rights issues, he said.

UNIVERSITY OF ARKANSAS REPRESENTATIVE

Dr. Perry Thompson, Chair of the Department of Gerontology at the University of Arkansas, stated that the University becomes involved with issues of civil rights for the aging at various levels. The right to an education, he said, should involve accessibility for older persons, not only to classrooms, but to campus services as it does for disabled students. He observed that colleges have been largely out of reach to our older generation. The University of Arkansas, he noted, does offer senior citizens over 60 a tuition-free education. It follows, he said, that all persons should be able to take advantage of services which a community extends to its citizens, and this concept speaks to a changing definition of what the whole aging process means.

We have come to the point, Dr. Thompson said, where death is no longer random and capricious but predictable and associated with old age. He went on to say that increasing longevity has economic implications which call into question the cost of equity between young and old in the distribution of health delivery systems and housing, and of their independence for those who are old. He felt that the protection of the rights of access to services for the elderly, without age discrimination, is a paramount concern. He raised questions as to whether we can afford what is happening, and as to what the choices are before us. The right to choose, he said, or to discontinue, a medical treatment, for example, is a civil right and the protection of that right is a sensitive issue touching on ethics and mega-technological life support systems, which cost money. He asked rhetorically if rights to services free of discrimination include the right to wellness and rehabilitative health plans as well as health plans that are curative, and the right to an adequate retirement system. Dr.

Thompson said that, at present, to be an older single woman seems almost a guarantee of poverty in our society. He felt the Civil Rights Commission should address this.

Dr. Thompson pointed out that as family units become smaller, as they are doing in our society, the "caregivers" become scarcer, burned out and economically depleted. The result is, he said, that the frail elderly and the disabled become increasingly vulnerable and likely to suffer from poverty, inadequate services, inappropriate housing relocation, and lack of adequate protection in our society. Disabled persons or mentally retarded older persons, for example, are prohibited by law in Arkansas from being placed in nursing homes, yet if their families cannot care for them no other provision is made for them. He suggested that the civil rights of these persons need to be addressed in these areas as well as in other areas such as employment and housing.

ARKANSAS STATE LEGISLATURE REPRESENTATIVES

State Representative Erma Hunter Brown, a former member of the House Committee on Aging and Legislative Affairs, pointed out that elderly persons in Arkansas comprise a sizeable proportion of the State's population and that, despite numerous Arkansas statutes designed to enable the elderly to live with greater dignity and more enjoyment, a lot of the same black-white problems may flourish in the elderly population as in the general population. Discrimination against black elderly is still a problem, she said. She observed that growing old is difficult regardless of one's race, worse if you are black, and worse yet if you are a black woman. Antidiscrimination laws do not totally address the problem, she said.

Senator Travis A. Miles, Chairman of the State Senate Committee on Aging and Legislative Affairs, indicated that proposed legislation

concerning the rights of elderly nursing home residents has recently been considered by the State legislature. This bill contains provisions to protect all of their constitutional rights including the right to be free from physical and mental abuse. Senator Miles was optimistic that this legislation would pass in the upcoming legislative session. He said, however, that the legislature had not dealt specifically with issues regarding age discrimination. He said that there is no question but that age and race discrimination exist, but that these are moral issues which are difficult to deal with legislatively. It was his feeling, however, that stricter enforcement of legislation at the national level is necessary.

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION REPRESENTATIVE

Mr. W.P. Brown, Director of the Little Rock Area Office of the U.S. Equal Employment Opportunity Commission (EEOC), addressed the Advisory Committee on the role of his agency in the enforcement of the Age Discrimination in Employment Act of 1967, as amended (29 U.S.C. Sections 621-634), a responsibility which it inherited in 1979. He explained that this act covers employment discrimination against persons age 40 and above by organizations employing at least 20 persons during 20 or more calendar weeks in a given year. Complainants have 180 days following an alleged violation to file a complaint.

Mr. Brown said that a complaint filed with the EEOC is acted upon using the following procedures. Prior to an actual investigation of a discrimination complaint, the EEOC arranges for the two parties to get together and attempts to conciliate the matter. If conciliation is unsuccessful the agency must conduct an investigation to determine the merits of the case. If it is found that the aggrieved party was

discriminated against, the conciliation is again pursued, and a period of time granted for filing a lawsuit. If conciliation fails and the matter is litigated, Mr. Brown said, liquidation damages may be assessed and punitive damages are available if the violation was willful.

Mr. Brown provided statistics which showed that the EEOC's Memphis District Office received 1,406 complaints during FY 1988, of which 10 percent were age discrimination charges. Within the past 2 years there has been no drastic increase in the number of charges of age discrimination. Mr. Brown's overall assessment was that there is indeed an employment discrimination problem among older persons which involves both hiring and early retirement.

SUMMARY

Participants at the February 3, 1989, community forum were invited to provide information on civil rights concerns of older Americans in Arkansas. Chief among the concerns expressed was alleged physical and emotional abuse of nursing home residents and denial of their constitutional rights to make choices for themselves, to receive adequate health care, and to be assured of dignified treatment. Other allegations involved guardianship abuse; restricted ability to vote; discrimination in employment, credit and insurance availability and access to services; and the lack of availability of legal resources. A study conducted by faculty in the Department of Gerontology at the University of Arkansas shows that, for reasons which are not clearly defined, elderly blacks and elderly whites have differing patterns for the utilization of available services. A representative from the Attorney General's office and State legislators described current efforts to pass legislation specifically protecting the rights of nursing home residents. Representatives from ASOP, AAAAA, AARP

and ABLE, in addition to outlining the concerns of older persons, described efforts and programs designed to alleviate discrimination and ameliorate its effects in areas such as employment, housing and in the provision of services.

This summary report does not purport to be an exhaustive review of civil rights issues pertaining to older Americans in Arkansas. It does identify and provide information on concerns which the Advisory Committee may decide merit further investigation and analysis. The report will be disseminated to agencies and organizations in the State which have responsibilities or involvements with older Americans. It will also be made available to the news media and to the general public. The Committee hopes that the information presented will be of value to the Commission in its program planning.

Notes

1. U.S. Commission on Civil Rights, The Age Discrimination Study (1977), The Age Discrimination Study, Part II (1979), and Minority Elderly Services: New Programs, Old Problems (1982).