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Achieving Change

A report on the 1978 West Virginia Statewide
Leadership Conference on Civil Rights

January 1981



—A report of the West Virginia Advisory Committee to the United States Commission on Civil Rights prepared for the information and consideration of the Commission. This report will be considered by the Commission, and the Commission will make public its reaction. In the meantime, the recommendations in this report should not be attributed to the Commission, but only to the West Virginia Advisory Committee or to other conference participants.

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Achieving Change

—A report prepared by the West Virginia Advisory Committee to the U.S. Commission on Civil Rights

ATTRIBUTION:

The findings and recommendations contained in this report are those of the West Virginia Advisory Committee to the United States Commission on Civil Rights and, as such, are not attributable to the Commission. This report has been prepared by the State Advisory Committee for submission to the Commission, and will be considered by the Commission in formulating its recommendations to the President and the Congress.

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WEST VIRGINIA ADVISORY COMMITTEE TO THE U.S. COMMISSION ON CIVIL RIGHTS

January 1981

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Dear Commissioners:

On September 29-30, 1978, the West Virginia Advisory Committee held the Mid-Atlantic Region's first Statewide Conference on local civil rights issues. Organized in just 3 months, the conference was in partial response to crucial issues at the close of the 1970s—Bakke, extension of the ratification period for the Equal Rights Amendment, and the rise of taxpayer revolts styled after California Proposition 13. The conference also was aimed at illustrating how selected Federal civil rights enforcement regulations might be utilized by individuals and organizations in West Virginia.

As the Committee has learned through a series of forums held around our State, discrimination continues apace. From Wheeling in the northern panhandle to Beckley toward the south, from Parkersburg along the western border to Charles Town in the eastern panhandle, our forums have spotlighted problems in employment, education, housing, and the administration of justice.

Where discrimination appears we have urged that individual complainants and organizations consider approaching the civil rights units of the Department of Justice, the Office of Revenue Sharing, LEAA, EEOC and other Federal offices in addition to local enforcement agencies at the State and municipal levels. Our own committee has done so on two occasions, resulting in a noncompliance finding in one instance and an investigation in the second.

Thus, as we enter the 1980s, we hope the dissemination of this report will help West Virginians who are seeking information and recommendations on dealing with local civil rights issues and complaints.

Respectfully submitted,

JAMES B. McINTYRE, *Chairperson*
West Virginia Advisory Committee

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Preface

The middle and late 1960s witnessed nonviolent demonstrations in the South, civil disobedience, even riots in the ghettos of American's biggest cities. While a war raged abroad, resources were marshalled to wage a domestic war, a war against poverty—in part as an attempt to quell discontent at home. By the early 1970s both wars had begun to wane. And by the late 1970s the war abroad had been muffled, while little progress was noted in the war on the home front.

Instead, the burning discontent that had once gutted whole neighborhoods in big city ghettos seemed by 1978 to reappear in new surroundings. Middle-class communities replaced Watts as the symbolic residence for fresh discontent. Banners were raised, not in the name of a war against poverty, but in the name of property owners brandishing Proposition 13 as their weapon against high taxes, and big government.

Campaigns were mounted against affirmative action and against equal rights for women. Although affirmative action eventually prevailed more or less intact, Bakke was headlined as winner. While additional years were allotted for ERA ratification, the constitutional amendment was still stalemated at three less than the 38 States needed.

Such was the summer of discontent in 1978.

To many who had served in the vanguard of the civil rights struggle, there appeared disarray and a thinning of the ranks. The West Virginia Advisory Committee concluded that the moment had come to regroup, to rebuild coalitions, to rethink goals and strategies, and to rekindle the commitment to equality.

A conference is surely a modest medium by which to advance such as enterprise. But the committee felt that, if only modest means were at hand, that is what the committee would at least start with. Thus, at its June 15, 1978, meeting—having on the same day confronted municipal officials on urban renewal and the Governor on State employment—the committee voted unanimously to mount a statewide conference in the speediest possible time. It appointed a conference committee to spearhead the work and aimed for a September target date, just over 3 months away. The Committee's statewide call is reprinted in the appendix.

Though the proposal originally approved for the conference estimated only 50 participants, more than 125 gathered from 18 cities and towns throughout the State. This report contains highlights of the conference, including condensed versions of the keynote speech by James Farmer and the closing speech by Franklin D. Cleckley.

But more than conference highlights, this report also offers a glance back to roughly 25 years ago, when legalized discrimination began to give way to

integration and equal opportunity efforts. A survey of selected current Federal programs is included to suggest possible targets for using compliance tools as leverage in advancing equal opportunities in local communities.

For example, Federal general revenue sharing monies are awarded to virtually every political jurisdiction in the State, with a separate allocation to the State itself. Equal opportunity compliance regulations govern use of these funds. Local organizations and even individuals may inquire about the status of equal opportunity compliance in the agencies or jurisdictions using such funds.

Toward that end, the Civil Rights Division of the Treasury Department's Office of Revenue Sharing was asked to lead workshops on its compliance regulations and procedures. Other civil rights officials from the Law Enforcement Assistance Administration (LEAA), the Justice Department, the Equal Employment Opportunity Commission (EEOC), and appropriate State-level agencies or offices led similar workshops.

This conference report has been designed to brief West Virginians about the status of civil rights in the State in recent years and to identify mechanisms that can be employed to overcome the new, more complex forms of discrimination that prevail today. It is hoped that the report may serve as a manual for those mounting local compliance projects and striving for institutional changes at home.

ACKNOWLEDGMENTS

The West Virginia Advisory Committee is grateful to the staff of the Commission's Mid-Atlantic Regional Office in Washington, D.C., for its help in preparing this report.

The report was the principal assignment of Lawrence Riedman, a former research-writer of the Mid-Atlantic Regional Office, and Tino Calabria, who was staff coordinator for the conference. Robert Owens, regional attorney, provided legal research; Suzanne Crowell, research-writer, provided editorial assistance; and Barbara Stafford and Christine Scarnecchia provided secretarial support services. All worked under the supervision of Edward Rutledge, Regional Director, and Everett A. Waldo, Deputy Director, as well as Jacob Schlitt, who served as Regional Director until the spring of 1979.

The staff of the Publications Support Center, Office of Management, was responsible for final preparation of the report for publication.

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Civil Rights in West Virginia

Discrimination because of race, national origin, religion, sex, age, and handicap exists in West Virginia and continues to require the vigorous enforcement of strong civil rights laws.

Acknowledging these needs does not necessarily mean rejecting the generous characterizations of West Virginians offered by such national observers as Theodore H. White and urban affairs columnist Neal Peirce.¹ The simultaneous existence of decency and illegal discrimination in communities is easier to explain if one recognizes that illegal discrimination in its many forms is a complicated, entrenched social pathology. A poor understanding of its workings and a lack of a familiarity with the resources to combat it can frustrate civil rights progress.

Unfortunately, the conflicting phenomena of decency and discrimination persist simultaneously in some West Virginia communities and in some quarters of government, and the conflict underlies many of the problems encountered by civil rights workers in the State.

While this report has been conceived as a tool to help make the latent good will of West Virginians effective in the area of civil rights, the Advisory Committee hopes that it will benefit West Virginians of every belief, race, gender, age, and condition. West Virginians may find an examination of the status of minorities throughout the Nation very illuminating. A number of similarities between the experiences of West Virginians and those of minorities will be described below. The struggle of America's minorities to control their own communities, end workplace exploitation, obtain access to government, and gain improved social services

should prove both familiar and instructive to residents of the Mountain State.

Neither Dixie Nor Megalopolis

West Virginia was at one time part of Virginia, and the east-west line that today provides a portion of the West Virginia-Pennsylvania border is the famous Mason-Dixon Line dividing the North from the South. However, formidable differences exist between "The Mountain State" and the States one usually finds grouped as "Dixie." The status of blacks and the condition of civil rights generally in West Virginia have been shaped by these old, intractable distinctions.

While these differences may not be "as old as the hills," they certainly are inextricably associated with the mountain barriers that isolated early settlers of the Trans-Piedmont region from the Tidewater society that governed them. The best transportation route available to the settlers of western Virginia was the Ohio Valley, which led away from the political and economic centers of the tobacco-and-cotton South to communities where somewhat different values prevailed—Pittsburgh, Louisville, Chicago, St. Louis, and other growing cities.

The geographical obstacles also made it difficult for the State of Virginia to provide the region with services, such as road-building and protection from Indians who resisted the settlers. When the Federal Government provided such services in the early 1800s, it won the political allegiance of the residents.²

Most important, the terrain of western Virginia made the development of a plantation economy

¹ Neal Pierce, *The Border South States: People, Politics, and Power in the Five States of the Border South* (New York: W. W. Norton, 1975), p. 161.

² *Ibid.*, p. 162.

impossible. On one level, this meant that most of the area's residents had little vested interest in the continuance of slavery and therefore less motivation to construct a racist ideology to justify the subjugation of blacks. On a more practical level, it meant that relatively few blacks lived in the region and consequently there was less fear regarding the social adjustments that abolition might cause.

In sum, in the mid-1800s western Virginians experienced in miniature the social, political, and economic stresses that influenced the South as a whole—and with comparable effect. When the South seceded from the Union, western Virginia in turn seceded from Virginia. In 1863, West Virginia entered the Union as an independent State.

The fundamental conditions of West Virginia society and the political choices made by West Virginians up to the Civil War ensured that the State would be spared the most abominable forms of racial oppression that characterized the former Confederate States. However, heavy-handedness on the part of radical Republican administrations in the State in the years immediately following the Civil War produced a popular reaction that kept the Democrats in power from 1871 to 1896. The Democrats, dominated by the southern counties bordering Virginia, developed a West Virginian version of Jim Crow society.³ Segregated schools were created, and the original sanctions for segregated schools remain in the State Constitution to this day. Social segregation was customary, and denial of equal opportunity prevailed. This social system remained in place until the mid-20th century era of civil rights reform, and its effects are manifest even today.

But the level of smoldering racial animosity was mitigated by the absence of sudden surges of black in-migration. Because much of West Virginia's terrain precludes the development of large manufacturing and commercial centers, the State has had small attraction for blacks leaving the South to seek employment. West Virginia's cities have suffered proportionately less racial tension than emerged in northern industrial cities receiving black newcomers during the several great black migrations north during the past century.

The nature of segregation in West Virginia was such that Federal agencies and civil rights groups

urging its end more frequently had to combat the racism of fear, ignorance, and unquestioned social custom, rather than the deeply-held ideological, pseudo-scientific racism that confronted civil rights workers in the Confederate South.

Moreover, the gradual effectiveness of a policy of accommodation in response to black claims has provided a precedent for public and government reaction to the claims of other groups—witness the growth in the number of protected classes. While it bears mentioning that the vestiges of the Ku Klux Klan occasionally resurfaced, overall progress has been inhibited more by apathy, neglect, and misunderstanding than by militant or open hostility.

Civil Rights Progress

In 1950, West Virginia had 114,867 blacks out of a total population of 1,890,282. The 1950 census counted fewer than 500 other nonwhites.⁴ Exhibit 1 summarizes some of the breakthroughs made by black West Virginians during the 1950s. Demonstrations, picketing, and sit-ins were sometimes needed to produce these gains. It is evident from this list that racial segregation was widespread in the State until the mid-1950s, but it is also clear that West Virginians rejected the policies of "massive resistance" and brutal intimidation adopted in the Confederate South.

For example, in 1959, the West Virginia Advisory Committee to the U.S. Commission on Civil Rights reported that:

... discrimination in voting is practically nonexistent. In the area of public education and in the State's institutions of higher education, integration is progressing at perhaps a little better than average rate.⁵

The Committee reported only minimal progress in access to public accommodations, noting that *every* hotel and restaurant in Charleston remained segregated. Such problems were spotlighted nationally in the late 1950s when the All-American basketball star, Elgin Baylor, was refused the right to register at the Kanawha Hotel in the heart of downtown Charleston, the State Capital.⁶ In early 1960, efforts were still being exerted to integrate lunch counters

³ Ibid., p. 163.

⁴ U.S. Commission on Civil Rights, *50 States Report* (1961), p. 638.

⁵ U.S. Commission on Civil Rights, *The National Conference and the Reports of the State Advisory Committees to the U.S. Commission on Civil Rights, 1959* (1960), p. 405.

⁶ Paul J. Kaufman, West Virginia Advisory Committee member, "Our World" (speech delivered at St. Johns Episcopal Church, Charleston, November 11, 1979), pp. 2-3.

like those at the Diamond Department Store in Charleston.⁷

The Committee also found "little or no progress" in access to employment. Even blacks with college degrees were still to be found in service work, and the Committee noted that only one of numerous black chemical engineering graduates from West Virginia State College had found employment in the large chemical industry of the Kanawha Valley.⁸

The Committee identified housing as the area of greatest discrimination. Responses to its questionnaire had made it "evident that there is definite discrimination practiced on a universal basis." The Committee noted that "the subtlety used in such practices has thus far kept them from becoming a public issue."⁹

In 1961, the West Virginia Advisory Committee to the U.S. Commission on Civil Rights again reported to the Commission on the status of civil rights in the State. In public education, the Advisory Committee concluded that substantial progress had been made in most counties, and those persons surveyed by the Committee judged that this had occurred because people were convinced of the rightness of desegregation and because of local press support for desegregation.

However, the Committee expressed its concern regarding a pattern in some counties of failing to encourage black pupils to attend formerly white schools and also regarding allegations that in some counties community pressures had caused school authorities to reject black teachers in favor of less-qualified whites.¹⁰ Inequities in treatment of faculty continued to be an issue through the 1960s, fanned by such trends as the decline in the number of black school principals from 60 to 22 in the period 1964-72.¹¹

In State government employment, the Advisory Committee found that blacks accounted for 9.4 percent of all employees (compared to 5.7 percent of the State's population), but that they were highly concentrated in a few agencies. Moreover, blacks were greatly overrepresented in semi-skilled, unskilled, and service jobs. Noting the State's practice of informal recruiting and reliance upon recommen-

dations by current employees, the Committee concluded that "current employment patterns are being perpetuated."¹²

Thus, although many legal and policy barriers had been eliminated, the effects of these restrictions remained, subverting progress toward genuine equality of opportunity.

Also in 1961, the West Virginia legislature passed the West Virginia Human Rights Act,¹³ creating a State human rights commission. The law declared that it was a policy of the State to provide all citizens equal opportunity in employment and equal access to public accommodations. However, it was not until 1967 that the commission's authority to investigate allegations of discrimination was complemented with subpoena and enforcement powers.

Amendments to the Human Rights Act have also expanded the commission's role and jurisdiction from only combatting prohibited practices and conditions to (1) encouraging and endeavoring "to bring about mutual understanding and respect among all racial, religious, and ethnic groups within the State,"¹⁴ (2) cooperating with government units at all levels "in the promotion and attainment of more harmonious understanding and greater equality of rights between and among all racial, religious, and ethnic groups," and (3) cooperating with private groups "in programs and campaigns devoted to the advancement of tolerance, understanding, and the equal protection of the laws of all groups and peoples."¹⁵

Another feature of West Virginia's Human Rights Act as amended in 1967 was that it authorized the establishment of local human rights commissions. Within a year, such organizations were active in Charleston, Parkersburg, Weirton, and Wheeling. Prior to that time, a local human rights commission had been founded in Beckley. Later, commissions were also formed in a number of other West Virginia communities, but for the most part they failed to sustain the level of activity found in the forementioned cities.¹⁶

As it had with local human rights commissions, the West Virginia legislature took the "enabling legislation" approach to open housing. In early 1968

⁷ "Blacks Remember the Long Struggle: Area Desegregation Has Come a Long Way," *Charleston Daily Mail*, June 20, 1979, p. 1B.

⁸ *National Conference*, p. 406.

⁹ *Ibid.*, p. 405.

¹⁰ *Ibid.*, pp. 645-46.

¹¹ U.S. Commission on Civil Rights, *The Unfinished Business* (1977), p. 204.

¹² *50 States Report*, p. 650.

¹³ Human Rights Commission Act, ch. 135, 1961 West Virginia Acts 692; (codified at W. Va. Code §5-11-1 (1979)).

¹⁴ W. Va. Code §5-11-4 (1979).

¹⁵ W. Va. Code §5-11-8(b) (1979).

¹⁶ West Virginia Human Rights Commission, *Annual Report, 1968-69*, p. 32.

the Fair Housing Act permitting cities to enact fair housing ordinances was passed.¹⁷ Charleston was the first to do so, responding to peaceful demonstrations led by clergy and community leaders.¹⁸

Despite these legal responses, black West Virginians remained mired in dismal circumstances. For example, in 1971 the executive director of the West Virginia Human Rights Commission characterized the housing conditions of Charleston's black community in this way:

A trip through the devastation, the "no-man's land," of Charleston's Triangle District and eastward along the path of the interstates through Charleston will reveal a source of irritation that will get progressively worse with more demolition of homes by urban renewal projects and the constant noise, dust, and inconvenience of the construction equipment the next 3 to 5 years. If ever there was a landscape, or panorama, for hopelessness and despair it is that facing the black citizens of Charleston.¹⁹

Economic prospects for black West Virginians were so bleak that the rate of black outmigration far exceeded the white rate. The State Human Rights Commission documented black job losses in the coal industry, and the commission's executive director termed the overall decline in opportunities for blacks "economic genocide."²⁰

In the mid-1960s, West Virginia government also began to acknowledge the special needs of groups other than racial and religious minorities. In 1964, the West Virginia Commission on the Aging was created,²¹ and in 1968 an executive order established the Committee on the Employment of the Handicapped.²² The scope of the State Human Rights Commission was also enlarged. Although the original law embraced "all" citizens, the specified bases for complaints were race, religion, color, national origin, and ancestry. Sex and age discrimination were added as bases for employment and accommodations complaints in 1971,²³ and at that time

housing discrimination was added to the commission's mandate—although only on the basis of race, religion, national origin, and ancestry.²⁴ Blindness was added as a basis for employment complaints in 1973,²⁵ and sex was finally added as a basis for housing complaints in 1977.²⁶

Although West Virginia had approved the Equal Rights Amendment in 1972, it did not establish a commission on women until 5 years later,²⁷ and there were no activities until 1978. However, the State had taken a number of actions to protect the rights of women, including revising the criminal code to ban the use of a woman's sexual history as evidence in rape cases,²⁸ passing an equal-pay-for-equal-work statute,²⁹ and liberalizing divorce laws³⁰ (including no-fault divorce).

(A more detailed description of the responsibilities and activities of West Virginia's civil rights agencies appears in the section on workshops by State civil rights units.)

In summarizing West Virginia's record up to the mid-1970s in the pursuit of civil rights, the term "gradual accommodation" seems apt—a midpoint between "resistance" and "enthusiasm." Persistent advocacy by civil rights groups, the examples and mandates of Federal laws and agencies, and reasonable responses by some State policymakers have produced a respectable apparatus in West Virginia for attempting to ensure the protection of civil rights. A major concern at the West Virginia Advisory Committee's 1978 conference was whether that apparatus will be used to its full potential in a time of government budget cutbacks and rising tensions around issues crucial to the progress of minorities, women, the handicapped, and the aged.

Current Issues

Many of those attending the Statewide Leadership Conference on Civil Rights were as concerned about national issues as they were about State and local ones. The *Bakke* decision, California's Proposition 13, and hardening of opposition to the Equal Rights

¹⁷ 42 U.S.C. §3601-3631 (1976).

¹⁸ Thomas M. Drake and David G. Temple, *Human Relations: A Reader for West Virginians* (Morgantown, W. Va.: West Virginia University Institute for Labor Studies and Bureau for Government Research, 1968), p. 237.

¹⁹ Carl W. Glatt, Executive Director, West Virginia Human Rights Commission, letter to Mrs. John Pianfetti, April 20, 1971 U.S. Commission on Civil Rights files.

²⁰ *Ibid.*

²¹ State Commission on Aging Act, ch. 4, 1964 W. Va. Acts 1308; (codified at W. Va. Code §29-14-1 (1979)).

²² Executive Order No. 3-68 (April 2, 1968).

²³ Human Rights Commission Act, ch. 77, 1971 W. Va. Acts 373; (codified at W. Va. Code §5-11-9 (1979)).

²⁴ *Id.*

²⁵ Human Rights Commission Act, ch. 25, 1973 W. Va. Acts 642; (Codified at W. Va. Code §5-11-9 (1979)).

²⁶ Human Rights Commission Act, ch. 107, 1977 W. Va. Acts 470; (codified at W. Va. Code §5-11-9 (1979)).

²⁷ Women's Commission Act, ch. 161, 1977 W. Va. Acts 910. Due to a printing error, this statute was omitted from the West Virginia Code and its 1980 supplement.

²⁸ W. Va. Code §61-8B-12(b) (1976).

²⁹ W. Va. Code §21-5B-3 (1976).

³⁰ W. Va. Code §48-2-4 (1977 Supp.).

Amendment had led many civil rights advocates in West Virginia to fear that public and government dedication to the cause of equality of opportunity and equal protection under the law was flagging.

At the State level, an affirmative action officer was first appointed in July 1978 after some delay and without directions for State affirmative action planning or compliance activities.

At the local level, Parkersburg civil rights leaders had been urging the city to hire blacks and women on the all-white male police force; one woman had been hired, but the handful of blacks that had been recruited had failed to pass the written test. In Charleston, community groups were concerned about displacement of low-income residents by the proposed Track and Field Hall of Fame and also about equal access to housing and property ownership in the Triangle urban renewal area. In Huntington, the progress of HUD-funded community development projects had become an issue. In Fairmont, a 2-year struggle to establish a human rights commission with jurisdiction in surrounding Marion County was deadlocked. At Alderson, conditions at the Federal Correctional Institution for Women were again being questioned and criticized.

Other issues involved blind persons concerned about what they perceived to be inadequate enforcement of Federal laws, Native Americans wanting support in their effort to recover some of their cultural traditions, and women concerned about access to credit.

West Virginia Today

The accompanying tables provide a portrait of some aspects of West Virginia life most crucial to the progress of civil rights.

A noteworthy recent demographic development has been the slight growth in population recorded during the 1970s, reversing a decades-long out-migration that had caused West Virginia's population to decline "at a rate without parallel in any other State at any time in the history of the country."³¹ Black population losses have been even more severe, causing the black proportion of the population to drop from 5.7 percent in 1950 to 3.6 percent in 1975.

According to the 1970 Census, West Virginia has only a few members of minority groups other than blacks, but the 1980 census will probably reveal

significant gains among Asian Americans and Native Americans.

The State does have an over-65 proportion of the population higher than the national figure. This group, like black West Virginians, has a poverty rate approximately double the rate for the State as a whole. There is also a large number of handicapped persons in the State. Although an aggregate for the number of handicapped is not available, in 1977 Federal Supplemental Security Income payments went to 600 blind and 25,100 disabled West Virginians. Like minorities, women, the elderly, and the handicapped, persons in institutions often find their rights in jeopardy. The 1970 Census recorded nearly 14,000 institutionalized persons in the State, approximately two-thirds of them in mental hospitals or homes for the elderly.

West Virginia is the second most rural State in the country. There are no cities with 100,000 or more residents and only seven with 25,000 or more. The State's five Standard Metropolitan Statistical Areas contained only 36.4 percent of the population in 1976, compared to 73 percent of all Americans residing in SMSAs. Fewer than half of all West Virginians live in towns of 1,000 or larger, compared to 79.5 percent of all Americans east of the Mississippi. It has been asserted that this population dispersion has fostered a family orientation rather than a community spirit,³² a condition that sometimes frustrates civil rights and other advocacy campaigns.

Although the population generally is dispersed, the black population is largely concentrated in a few counties. This is perhaps due more to economic segregation or the persistence of historic patterns than to continuing outright racial discrimination, although complaints of the latter are hardly rare. Whatever the source of these residential concentrations, West Virginia's real estate industry has not warmed to the task of breaking them down: *Fair Housing Forum* reported in October 1978 that only one of the State's 13 boards of realtors had adopted an "affirmative marketing agreement," (a total of 8 percent, compared to 63 percent in neighboring Pennsylvania and 56 percent in Maryland).

For decades, poverty and the lack of economic opportunity have been endemic in West Virginia. Governor Rockefeller observed several years ago that "70 percent of our young people are gone by the time they're 24. . . It's almost an ethic of

³¹ Peirce, p. 457.

³² Ibid., p. 160.

departure. They all know it's not an exciting or promising place to grow."³³ However, as a consequence of the new importance accorded coal since the emergence of the energy crisis it would appear that prospects for the State's economic health will ultimately brighten. West Virginia's ranking among the States according to various income measures began to climb during the 1970s, its poverty rate has fallen, and the ratio of transfer payments to personal income has declined.

Disadvantaged groups have commonly looked to education as their principal route to opportunity. In West Virginia, blacks have relied even more heavily on the public education system. Although neither the black population nor black school enrollment approach the high proportions found in most northeastern cities, and despite West Virginia's reported acceptance of desegregation, as of 1975, 11 percent of black students in West Virginia attended schools that were more than half black.

Higher education in West Virginia, as of 1976, appeared to be becoming more accessible to women. Whereas more than half of all students were men, more than half of *first-time* students in that year were women.

While blacks are more heavily represented in school enrollments than in the general population, they are less heavily represented in the voting age population than in the general population. Persons 65 and over form a larger portion of the voting age population in West Virginia than they do nationally.

At the time of the Statewide Leadership Conference on Civil Rights (several weeks before the November 1978 election), West Virginians had 16 blacks serving in public office. As a result of the November 1978 elections, one black man and nine white women were elected to the State legislature.

Mountaineers and Minorities

As suggested earlier, West Virginians may have much to gain by observing the struggles of minority groups. The two groups share a number of experiences and conditions, and the case can be argued that they stand in similar relation to mainstream America.

Neal Peirce summarizes the political and economic development of West Virginia:

Several writers have noted the similarity between 20th-century West Virginia and the colonial domains of Great Britain and other imperial powers in the 19th century. The situations are strikingly parallel: outside capital, extracting the natural wealth of a colony, treats the natives as a lowly, expendable, cheap source of labor; to protect investments, it is deemed necessary to control the government, and this is accomplished by payoffs, threats, or the use of brute force (such as West Virginia witnessed in the bloody mine union wars of the 1920s). Where any rival force becomes too potent, and cannot be repressed, it is co-opted—the fate of the United Mine Workers in the '50s and '60s.³⁴

The effects of such conditions are evident in West Virginia, and should be familiar to many minority group Americans: lack of access to the policy process and to government; persistently low levels of social services, particularly education; and exploitation by employers. Such treatment speeded the process of emigration from Appalachia, a movement paralleling the migration of blacks from the rural South to the industrial North—and like the blacks, the mountaineers often found themselves clustered in the poorer sections where they had sought opportunity, the “little Appalachias” of Chicago, Detroit, Dayton, Cleveland, and other cities.³⁵

Mountaineers have even been the objects of a familiar stereotyping and cultural chauvinism—the hillbilly has been a staple of American humor and derision for generations, and Appalachian culture and crafts have been embraced by middle class consumers much as black dancing and music entered popular culture in the 1920s and 1930s (and in much the same exploitative fashion).

The deprivation and stigmatization of Appalachian residents have been judged in some quarters to be sufficiently severe to include them in affirmative action and admission programs.

Other programs aimed at alleviating poverty and its effects have influenced West Virginians in ways similar to their influence upon blacks, Hispanics, and similar groups. Neal Peirce summarizes the impact of such programs on the long-standing imbalance of power between average West Virginians and the agents of the absentee wealth-holders:

. . . whatever its other failings may have been, the poverty program did succeed in arousing

³³ Ibid., p. 157.

³⁴ Ibid., p. 154.

³⁵ Ibid., p. 158.

and mobilizing the political consciousness of the long-downtrodden people of counties like Mingo on a scale few would have thought possible. The people began to realize how they had been exploited and denied decent schools and service by the political powers, and they started to raise Cain with the local Democratic machines.³⁶

The conclusion to be drawn from this brief presentation of similarities between mountaineers and minorities is *not* that these groups can be conveniently lumped together. Each group that suffered the denial of its civil rights—racial and religious minorities, women, the elderly, juveniles, the handicapped—has its particular needs and goals.

³⁶ Ibid., pp. 166–167.

³⁷ Margaret C. Mills, member, West Virginia Advisory Committee, memo to Tino Calabia, July 3, 1979, U.S. Commission on Civil Rights files.

Nonetheless, they share a background of struggling for physical security, dignity, and equality of opportunity.

Such a background can foster bonds of trust and understanding that make possible productive common efforts and implementation of laws and policies to promote civil rights and the general welfare. This factor and others, in the words of West Virginia Advisory Committee member Margaret Mills, “may mean that eventually, through a long, arduous, evolving process, this emerging State will sustain human and civil rights of all its people. Then ‘Montani Semper Liberi’ will mean ‘All Mountaineers Are Always Free.’”³⁷

Civil Rights Enforcement

Federal Agencies

The Office of Revenue Sharing, U.S. Treasury Department

[Ronald Ridgley, Northeastern Branch Chief of the Civil Rights Division, led the workshop on enforcement in the Office of Revenue Sharing.]

The General Revenue Sharing (GRS) Program was created through the State and Local Fiscal Assistance Act of 1972 (P.L. 92-512) as modified by the State and Local Fiscal Assistance Amendments of 1976 (P.L. 94-488). Though 1,000 units of government waive payments, over 39,000 eligible townships, towns, cities, counties, and States may benefit from the program. Because GRS is an entitlement program, a unit of government need not fill out an application for receipt of funds.¹ Its share is determined according to a formula using population, per capita income, local taxing efforts, and intergovernmental transfers.

While encouraging more extensive provisions for public participation, the Office of Revenue Sharing (ORS) of the U.S. Treasury Department has also outlined minimum requirements. At least two public hearings must be held by the unit of government. The first hearing is to present information on the proposed use of GRS funds; the second is on the proposed budget. A timetable, outlining the minimum number of days required for public notice before each of the two hearings and stating when the separate budget summary and "use report" become available is also specified in various ORS materials.

In addition, the GRS Program requires all recipient governments to make special efforts to provide senior citizens and their organizations with an opportunity to participate in the required hearings. The notification process for the public in general also specifies that recipient governments must advise the news media, including minority, bilingual, and foreign language media serving the geographic area covered by the recipient government. In this regard, there exists a Public Participation Compliance Unit in the ORS Intergovernmental Relations Division for monitoring and technical assistance.

Any individual, group, or organization believing there has been a violation of such requirements may contact the Public Participation Compliance Unit and should provide written details. Where a complaint is filed alleging systemic discriminatory practices, the name of the complainant is never revealed to the recipient government without the permission of the complainant.

As for compliance with nondiscrimination provisions, a recipient government is prohibited from discriminating in any of its programs on the basis of race, color, national origin, religion, sex, handicapped status, or age. The GRS Program features one of the most comprehensive provisions for nondiscrimination in any Federal program. For example, Title VII of the Civil Rights Act of 1964,² which prohibits discrimination in public employment, does not apply to governments with fewer than 15 employees. Consequently, ORS estimates that approximately 28,000 units of government are

¹ U.S., Office of the Federal Register, National Archives and Records Service, and General Services Administration, *United States Government Manual 1978/79* (May 1, 1978), p. 355.

² 42 U.S.C.A. §2000e (Supp. 1974-79).

covered solely by the nondiscrimination provisions in the GRS Program.³

Furthermore, the compliance procedures of the GRS Program are unique in that they strictly limit the discretion of the Office of Revenue Sharing. Each step is specified, and ORS cannot legally deviate from them. If the government under investigation does not respond in the way and within the time allowed by law, revenue sharing funds must be suspended.⁴

Within 30 days of receiving a complaint from an individual, group, or organization alleging that a recipient government has discriminated, ORS notifies the chief executive officer of the recipient government. An investigation is conducted, and, if ORS has reason to believe discrimination may have occurred, ORS notifies the local government, indicating what remedial actions must be taken. The investigation must be conducted within 60 days of the filing of a complaint, and ORS must make a finding within 90 days.

Jurisdictions that ORS believes have discriminated are asked to discontinue the illegal practices and to redress the grievances. Typical remedial actions include developing and implementing an affirmative action plan, reinstating employees with back pay, and providing the same quality of services to the entire community.

Within 30 days of being notified that it probably has discriminated, a recipient government may demonstrate it is in compliance, show that revenue sharing funds did not support the program or activity wherein discrimination is alleged, or enter into a compliance agreement. If the government chooses not to respond to ORS or does not persuade ORS that it has not discriminated using GRS funds, ORS issues a determination of noncompliance. The government may then request a hearing or may enter a compliance agreement. If the compliance agreement is not entered within 10 days of the determination or, if a hearing is not requested, revenue sharing funds are suspended.

A hearing before an administrative law judge must begin within 30 days after requested by the recipient government, and the administrative law judge is required to issue a preliminary finding 30 days after the hearing starts. Depending on the preliminary finding, GRS funds can be suspended at

that point. After completion of the full hearing on the merits of the case, if the judge rules against the recipient government, the government and the complainant are notified within 10 days and GRS funds are suspended, if a suspension is not already in effect. Of course, if the judge does not rule against the government, any suspension of funds is lifted. Beyond lodging complaints with ORS, charging parties may attempt to find further recourse through the judicial system. The 1976 amendments to the Revenue Sharing Act provide for private civil rights litigation against a recipient government in an appropriate Federal or State court. The law also provides that courts may allow reasonable attorney fees to the prevailing party in a case.

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Equal Employment Opportunity Commission (EEOC)

[Roland Saunders, Equal Opportunity Specialist of the Pittsburgh Area Office, led the workshop on the Equal Employment Opportunity Commission.]

Title VII of the Civil Rights Act of 1964 established EEOC and empowered it to act to prohibit employment discrimination.⁵ The agency is guided by five Commissioners appointed by the President and has a staff of approximately 2,500. The Commission's charge is to investigate and resolve complaints of discrimination based on race, color, religion, sex, or national origin that arise in employment classification, selection, hiring, promotion, benefits, layoffs, or any other condition of employment.

In 1979, as a result of the President's Reorganization Bill Number 1,⁶ EEOC received jurisdiction over equal employment opportunity within the Federal Government and over the Equal Pay Act, as well as the authority to receive complaints of age discrimination from either government or private workers. (See appendix F for laws enforced by EEOC.)

³ 42 U.S.C. §3601-3631 (Supp. IV, 1974).

⁴ U.S., Department of Housing and Urban Development, "Fair Housing U.S.A." (brochure, February 1978).

⁵ 42 U.S.C.A. §2000e (Supp. 1974-79).

⁶ 43 Fed. Reg. 19807 (1978).

Under the leadership of Eleanor Holmes Norton, Chair, EEOC has undergone a major internal reorganization in addition to assuming a new role in the Federal enforcement structure. The agency's field office structure has been expanded so that charges will now be received by a network of 25 area and 22 district offices. Improved charge-processing procedures tested at three of those offices (Baltimore, Chicago, Dallas) have recently been implemented at the other 44, including the Pittsburgh Area Office, which serves West Virginia. The greater efficiency should reduce the criticism the agency has faced through most of its existence for time lags in complaint-handling.

A central element of EEOC's complaint-handling is the "deferral" process through which cases received by EEOC are transferred to State and local equal opportunity agencies for action. These agencies are called "706" agencies after the section of Title VII which provides for such an arrangement. To be classified as a 706 agency, 1) the agency must be in a State or political division that has a fair employment practices law; 2) that law must authorize the agency to grant or seek relief for illegal employment practices or to institute criminal proceedings; and 3) the agency must be operational and processing charges under the law.

West Virginia's 706 agencies are the Charleston Human Rights Commission, the Wheeling Human Rights Commission, and the West Virginia Human Rights Commission. The State's own commission has had deferral authority since 1973. (See section on State agencies, below.) The specific workloads and responsibilities involved in the deferral arrangements are set forth in contracts and worksharing agreements between the EEOC and individual State and local agencies.

In 1977, the U.S. Commission on Civil Rights criticized EEOC's use of State and local agencies as ineffective, citing extensive EEOC review of 706 agency resolutions as duplicative and wasteful. However, in 1978 EEOC involved 706 agencies in training programs to make charge-processing at every level more uniform. To accomplish this, the Commission almost doubled its funding for State and local agencies. Meanwhile, the roster of 706 agencies changes continually. These changes are published in the *Federal Register*.

Persons who believe that they are victims of employment discrimination should contact EEOC as soon as possible after the discriminatory treatment.

Time is extremely important. Where no 706 deferral agency exists, EEOC accepts charges of employment discrimination that have occurred within 180 days of the incident. Where there is a 706 agency, the time limit is 300 days, or within 30 days of receipt of notice that the deferral agency has terminated its proceedings, whichever is earlier.

Because EEOC accepts only written charges of discrimination, the complainant should either fill out EEOC's "Charge of Discrimination" form or prepare in his or her own words a document describing the discriminatory act as completely as possible and identifying the parties. In most instances, however, EEOC requires an in-depth, personal intake interview with the complainant, which serves as the initial phase of the investigation if the charge is accepted by EEOC.

An individual need not personally make the charge of discrimination. Another person, a group, or an organization can make it on behalf of the aggrieved person, although under the new intake procedures EEOC may require the involvement of the aggrieved person. Once EEOC receives the charge, it may defer it to one of the 706 agencies in accordance with an existing worksharing agreement, the State or local deferral agency may waive its deferral jurisdiction, and EEOC may then proceed immediately with an effort to resolve the charge.

EEOC must notify the parties accused of the offense within 10 days of the official filing date of the charge. Then EEOC begins its investigation and, if the evidence suggests a problem, EEOC may act to correct the problem through informal methods of conference and persuasion. If a voluntary agreement acceptable to all the parties is reached, EEOC closes the case.

However, if no voluntary agreement can be reached and if sufficient evidence appears to support the charge, EEOC will issue a determination of reasonable cause and invite the parties to conciliate. Should conciliation also fail, EEOC can then file suit on behalf of the charging party; the charging party at this point also has a right to enter litigation independently. For a variety of reasons, primarily available resources, EEOC may sometimes not pursue a case into Federal court, even though empowered to do so.

If EEOC is not convinced that a violation of the law has taken place, it must issue a determination of no reasonable cause, inform the charging party of his or her right to sue, and must issue a Notice of Right

to Sue, giving the charging party 90 days to take legal action. If EEOC has failed to act within 180 days of the official filing date, the charging party can ask for a Right to Sue letter. As above, the charging party then has 90 days to act.

In addition to handling individual complaints of discrimination, EEOC provides guidance for employers, unions, and others wishing to promote equal opportunity. An effort in this area is the affirmative action guidelines published on January 19, 1979, effective February 20, 1979.⁷

Like previously issued guidelines, these announce to employers, unions, employment agencies, and others covered by Title VII EEOC's posture regarding issues upon which it must frequently make determinations. The issue that these new guidelines addressed is popularly known as 'reverse discrimination'—the charge that *voluntarily adopted* affirmative action programs are illegal because they are *not remedial but preferential*.

The new guidelines explain what will constitute an adequate defense, in EEOC's eyes, to allegations that voluntary affirmative action involves illegal preference. The guidelines set forth a protective framework to encourage employers to adopt voluntary, no-admission-of-guilt affirmative remedies.

Under the guidelines, EEOC will allow an employer charged with reverse discrimination to assert as a defense the employer's good faith reliance upon EEOC guidelines in cases where 1) an employer has conducted a reasonable self-analysis of equal opportunity in the workplace; 2) the employer thereby finds a reasonable basis for concluding that some remedial action is appropriate; and 3) the employer takes reasonable actions to correct the situation. The second point is crucial, for it does not require a formal finding of discrimination or an admission of violation of law; rather, it is sufficient to show that the employment system or practice has an adverse impact against minorities and/or women, or that it perpetuates present effects of past discrimination, or that it results in disparate treatment of minorities and/or women.

What is "reasonable" under each of the three criteria is to be determined in context and with some flexibility on the part of EEOC. The U.S. Commission on Civil Rights has praised these guidelines, citing them as "a document which comprehensively,

specifically, and, in our opinion, positively clarifies national policy on this controversial matter."

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U.S. Department of Justice, Civil Rights Division

Housing and Credit

[Diane Dorfman, Attorney, General Litigation Section, Civil Rights Division of the Department of Justice, led the workshop on enforcement related to fair housing and equal credit opportunity.]

The Department of Justice's Civil Rights Division was set up in 1957 to enforce the Civil Rights Act of 1957 and was subsequently charged with enforcing the Civil Rights Acts of 1960, 1964, 1968, the Equal Credit Opportunity Act, and amendments to these acts, as well as a number of criminal statutes concerning deprivation of constitutional rights.⁸ The division is organized into subject matter sections. The General Litigation Section is charged with enforcing the Fair Housing Act and the Equal Credit Opportunity Act, and school desegregation laws.

Housing

The "Fair Housing Act" is Title VIII of the Civil Rights Act of 1968.⁹ In this measure, Congress declared it to be a policy of the United States to provide citizens protection against discrimination on the basis of race, color, national origin, religion, or sex in connection with the sale or rental of most housing and of any vacant land being offered for residential use or construction. This Federal law does not prohibit discrimination on the basis of age or marital status.)

Accordingly, on the bases thus listed, the following forms of discrimination are prohibited by the Fair Housing Act:

- refusing to sell or rent to, deal, or negotiate with any person;
- discriminating in terms or conditions for buying or renting housing;

⁷ 44 Fed. Reg. 4422 (1979).

⁸ *Jones v. Mayer*, 392 U.S. 409 (1968).

⁹ 42 U.S.C. §3601-3631 (1976).

- discriminating by advertising that housing is available only to persons of a certain race, color, religion, sex, or national origin;
- denying that housing is available for inspection, sale, or rent when it really is available;
- “blockbusting” (for profit, e.g., persuading owners to sell or rent housing by telling them that minority groups are moving into the neighborhood);
- denying or making different conditions or terms for home loans by commercial lenders, such as banks, savings and loan associations, and insurance companies; and
- denying to anyone the use of or participation in any real estate services, such as brokers’ organizations, multiple listing services or other facilities related to the selling or renting of houses.¹⁰

The 1968 Fair Housing Act applies to single-family houses when the owner uses a broker or resorts to discriminatory advertising in marketing the property. It also applies to all single-family houses not owned by private individuals and to such privately owned houses when the owner owns more than three houses or sells more than one house in a 2-year period. Multifamily dwellings of four or fewer units are covered if the owner does not reside in one of the units, and multifamily dwellings of five or more units are covered in any circumstance.

Some of the activities not covered by the Fair Housing Act are covered by the Civil Rights Law of 1866, which was interpreted by the U.S. Supreme Court in 1968 to prohibit “all racial discrimination, private as well as public, in the sale or rental of property.”¹¹ However, complainants seek remedies under the 1866 law by going to a Federal court rather than to a Federal agency.

Complaints under the Fair Housing Act may be filed with the Secretary of Housing and Urban Development. If, within 30 days after a complaint is filed with the Secretary or within 30 days after referral by HUD to a comparable state or local housing authority no voluntary compliance has been obtained, the ‘person aggrieved’ may commence a civil action in any appropriate U.S. District Court, unless the person aggrieved has a judicial remedy under State or local fair housing law. In addition, the Attorney General may, upon reasonable cause,

bring an action in U.S. District Court. Direct complaints to Federal district court under the Fair Housing Law must be made within 180 days of the alleged violation. The court can grant permanent or temporary injunctions, temporary restraining orders, or take other actions. It may also award damages of up to \$1,000.¹²

HUD handles the complaints it receives in various ways. In many States, HUD investigates the complaint, attempts informal, confidential conciliation to end the discrimination, and, if appropriate, refers the complaint to the Department of Justice. However, in West Virginia, because the State’s fair housing law has been judged “substantially equivalent” to the Federal one, housing discrimination complaints are “deferred” to the State Human Rights Commission. (The operations of the West Virginia Human Rights Commission are described in the section on State agency workshops. The address of the HUD area office is given in the appendix.)

Complaints may reach the General Litigation Section in the Department of Justice either through referral by HUD after attempted conciliation has failed or directly from the complainant.¹³ Although individuals may lodge complaints, the Department of Justice will seek court action only if its investigation reveals a pattern or practice of violations, or if the denial of rights to a group forms a case of general public importance.¹⁴ In addition to the nondiscrimination provisions of the Civil Rights Act of 1968, that act has provisions that make it illegal to coerce, intimidate, threaten, or interfere¹⁵ with anyone who makes a complaint under the law.¹⁶

During the fiscal year 1977, to offer some recent examples, a Housing and Credit Section suit produced a court finding that a real estate firm’s assignment of sales personnel on a racial basis influenced black customers in their choice of neighborhoods in violation of the Fair Housing Act. In another case, a court order was obtained prohibiting a neighborhood residents’ association from running its housing referral service discriminatorily. During the year, a total of 18 lawsuits alleging violations of the Fair Housing Act were filed, *amicus* briefs were entered in two private suits, and 42 court decrees ordering compliance were obtained. The court decrees included requirements for affirmative action

¹⁰ Id.

¹¹ *Jones v. Mayer*, 392 U.S. 409 (1968).

¹² 42 U.S.C.A. §3610-3613 (1977).

¹³ Walter Gorman and Charles Bennett, Deputy Section Chiefs, Housing and Credit Section, Civil Rights Division, Department of Justice, interview,

Nov. 14, 1977, as cited in U.S. Commission on Civil Rights, *The Federal Fair Housing Enforcement Effort* (March 1979), p. 3.

¹⁴ 42 U.S.C. §3613 (1976).

¹⁵ 42 U.S.C. §2000a-2 (1976).

¹⁶ 42 U.S.C. §2000e-3 (1976).

to eliminate continuing effects of earlier illegal activities.

Credit

While the Fair Housing Act prohibits discrimination in housing-related financial transactions, the Equal Credit Opportunity Act (ECOA), as amended,¹⁷ prohibits discrimination in essentially all credit transactions. As originally enacted, the ECOA prohibited discrimination on account of sex or marital status. In 1976, amendments to the ECOA added discrimination on the basis of race, national origin, religion, age (with limited exceptions), and receipt of public assistance income to the list of illegal activities. Not only are creditors prohibited from taking these factors into account when judging creditworthiness, they are also prohibited from discouraging anyone from applying on account of any of these factors.¹⁸

The law and the regulation that implements it (known as "Regulation B") contain numerous provisions to ensure that women receive fair treatment when seeking credit. For instance, courtesy titles (Mrs., Miss, etc.) on applications are optional; marital status need not be disclosed on an application except under certain circumstances; income, such as alimony, part-time income, and tips traditionally excluded in evaluating a credit application must now be considered by a lender if that income is regularly received; a husband cannot be required to cosign a credit application except in a few specific situations, and a woman's use of her maiden name must be accepted by the creditor.

Some important changes in women's credit rights include:

- a woman can't be refused credit just because she is a woman;
- a woman can't be refused credit just because she is single, married, separated, divorced, or widowed;
- a woman can't be refused credit because a creditor won't count income she receives regularly from alimony or child support;
- a woman can have credit in her own name if she is creditworthy;
- when a woman applies for her own credit and relies on her own income, information about her spouse or his co-signature can be required only under certain circumstances;

- a woman can keep her own accounts and her own credit history if her marital status changes;
- a woman can build her own credit record because new accounts must be carried in the names of husband and wife if both use the account or are liable on it; and
- if a woman is denied credit, she can find out why.

This last provision—notice of "adverse action"—is one of the most significant provisions of the ECOA since it helps a rejected applicant evaluate the possibility that discrimination has occurred. The prohibition against age discrimination in credit transactions stops creditors from automatically terminating a credit account when a person reaches age 65.

Persons who believe they have been discriminated against may sue in the United States District Court, report the incident to the Federal agency responsible for overseeing the creditor involved, and contact the Department of Justice. Individuals may recover up to \$10,000 in punitive damages, as well as court costs, while a group of persons suing as a class may recover up to \$500,000 in punitive damages. Also, the act requires that successful plaintiffs be awarded reasonable attorney fees.

Federal administrative agencies to which complaints may be forwarded are:

- Federal Trade Commission, for retail stores and most credit cards;
- Comptroller of the Currency, for nationally chartered ("National" or "N.A.") banks;
- Board of Governors of the Federal Reserve System, for State-chartered banks that belong to the Federal Reserve System;
- Federal Home Loan Bank Board, for savings and loans either federally chartered or federally insured; and
- Federal Credit Union Administration, for federally chartered credit unions.

Persons may also address complaints to the Civil Rights Division of the Department of Justice, which may file suit when there is reason to believe that a creditor is engaging in a pattern or practice in violation of the ECOA, or when an administrative agency refers a matter to the Department with a recommendation that suit be instituted.

General Litigation Section
Civil Rights Division

¹⁷ 15 U.S.C. §1691 (1976).

¹⁸ 15 U.S.C. §1691(a)(1976).

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Law Enforcement Assistance Administration (LEAA)

[Winifred A. Dunton, attorney advisor in LEAA's Office of Civil Rights Compliance, led the workshop on LEAA]

The Law Enforcement Assistance Administration (LEAA) was established in June 1968 under the Omnibus Crime Control and Safe Streets Act of 1968.¹⁹ Its main purpose is to assist State and local governments in improving law enforcement and criminal justice at every level. LEAA administers the first major block grant program to have been undertaken by the Federal government. Its block grants are allocated to each State on a population basis, with the programs, projects, and priorities determined locally by the LEAA State Planning Agency in conjunction with lower-level planning units and units of government. In 10 years, LEAA has disbursed nationwide a total of \$6 billion through block grants and discretionary awards.

In West Virginia, the LEAA State Planning Agency is the Governor's Committee on Crime, Delinquency, and Corrections, and it works with 26 lower-level planning units. In fiscal year 1978, the Governor's Committee administered a block grant of \$3,993,580 from LEAA. Almost every law enforcement agency in the State—county, municipal, or other—was supported in some fashion by block grant funds.²⁰

One activity the Governor's Committee supported through the use of block grant funds was the "Law Enforcement Assistance Administration Project" of the West Virginia Human Relations Commission. A primary objective of the project is the development of equal employment opportunity guidelines for law enforcement agencies. Another objective is to increase the numbers of minority group members and women applying for positions with law enforcement agencies. Supported by the

LEAA funds, the State Human Relations Commission was able to provide technical assistance and information to State agencies, county sheriff's departments, and municipal police departments in 1978. A major accomplishment of the program was the signing of a memorandum of agreement between the Commission and the West Virginia Criminal Justice/Highway Safety Division establishing the authority of the Commission to train EEO officers and to monitor EEO programs in criminal justice agencies.²¹

In addition to block grants, LEAA awards discretionary action grants according to criteria and terms and conditions established by LEAA itself. These discretionary awards can be made to public agencies as well as to private nonprofit organizations. In West Virginia in 1978, a grant of \$6,500 to West Virginia State College supported 10 internships at various criminal justice agencies around the State, and a grant of \$129,004 to the West Virginia Department of Welfare supported crisis counseling and referral services and short-term residential care for troubled youths and their families in the 9-county west central region of the State.²²

At the time of the West Virginia Advisory Committee's conference, the LEAA Office of Civil Rights Compliance contained 26 positions including secretarial and other support staff. This small office was responsible for monitoring civil rights compliance by the almost 40,000 governmental units or agencies receiving LEAA funds. This understaffing problem was identified as early as 1972 by the Federal Programs Section of the U.S. Department of Justice. The 1972 study found that the compliance review program was limited, that LEAA relied unduly on grant recipients' assurances, that LEAA had not issued civil rights guidelines, and that relatively few civil rights complaints lodged with LEAA had been resolved.²³ By February 1977, there was a backlog of 325 complaints, as compared to a current caseload of 200. Under ideal conditions, if a complaint were justified and if negotiations were inconclusive, about a year would elapse between registration of the complaint and suspension of

tion, LEAA Grant Program File (PROFILE) System, "All Active Awards for Fiscal Year 1978 in the State of West Virginia Non-Block Categorical File" (abstracts), Jan. 19, 1979.

²³ U.S., Department of Justice, Federal Programs Section, "The Civil Rights Compliance Program of the Law Enforcement Assistance Administration" (September 1972) as cited in U.S. Commission on Civil Rights, *The Federal Civil Rights Enforcement Effort—1974, Volume VI, To Extend Federal Financial Assistance* (November 1975), p. 729.

¹⁹ 42 U.S.C. §3701-3796 (1976). Pub. L. 96-157 is the Justice System Improvement Act of 1979 enacted 12/27/79. The civil rights provisions of the Crime Control Act of 1976 were included with almost no change.

²⁰ Col. N. C. Reger, Law Enforcement Planner in the West Virginia Criminal Justice and Highway Safety Division, letter to Larry Riedman, U.S. Commission on Civil Rights, Mid-Atlantic Regional Office, July 10, 1979, U.S. Commission on Civil Rights files.

²¹ West Virginia Human Rights Commission, *1977-78 Annual Report*.

²² U.S., Department of Justice, Law Enforcement Assistance Administra-

LEAA funds. LEAA's present complaint investigation process is officially described under 28 CFR 42.205, appearing in the *Federal Register*, Volume 43, No. 127, June 30, 1978. Its compliance review process is described in 28 CFR 42.206, also appearing in the same *Federal Register* issue.

A complainant, a representative of a complainant, or an aggrieved group may file a charge. Except under special circumstances reviewed by the LEAA Administrator, the alleged act of discrimination must have occurred within one year of the complaint. Upon receipt of the complaint, LEAA must ascertain within 21 days whether it has jurisdiction over the complaint. If so, the LEAA-funded agency must be notified about the complaint, and the investigation must begin.

Notification to the LEAA-funded agency is by letter preferably including a description of the complaint, the identity of the complainant (if prior written consent has been obtained from the complainant), and a request for pertinent information from the LEAA-funded agency about the complaint. A schedule for investigation of the complaint and the determination of compliance or noncompliance is also furnished to the LEAA-funded agency. Copies of LEAA's notification letter are sent to the chief executive(s) of the appropriate unit(s) of government and to the LEAA State Planning Agency. Neither respondent nor complainant receives copies of materials provided by the other.

If an onsite investigation must be carried out, LEAA has 175 days after the investigation begins to advise the complainant, the LEAA-funded agency, the chief executive(s) of the appropriate unit(s) of government, and the LEAA State Planning Agency of the preliminary findings. Where appropriate, LEAA must also indicate its recommendations for compliance, and, if a resolution to the complaint appears likely, it must offer the LEAA-funded agency an opportunity to request voluntary compliance negotiations with LEAA prior to the LEAA Administrator's determination of compliance or noncompliance. If a resolution agreement is called for, the complainant is not a party to such an agreement. However, LEAA does discuss the proposed terms of resolution with the complainant, and the complainant receives a copy of LEAA's investigatory findings, and proposed resolution, if any.

Should an onsite investigation not be required, the foregoing process must be accomplished in 150 days.

Next, the LEAA-funded agency has 30 days to meet the recommendations made by LEAA for compliance, or to negotiate voluntary compliance. If the LEAA-funded agency fails to meet this deadline, the LEAA Administrator has 14 days in which to make a determination of noncompliance.

Apart from charges of discrimination received from complainants and investigated according to the above process, LEAA periodically conducts compliance reviews of selected LEAA-funded agencies—those that appear to show the most serious equal employment opportunity problems or the severest disparity in the delivery of services to whites and nonwhites or males and females. Such LEAA-funded agencies are selected for compliance review on the basis of:

- 1.—The relative disparity between the percentage of minorities, or women, in the relevant labor market, and the percentage of minorities, or women, employed by the LEAA-funded agency;
- 2.—The percentage of minorities and women in the population receiving project benefits;
- 3.—The number and types of discrimination complaints filed against an agency receiving LEAA or other Federal funding;
- 4.—The scope of the problems revealed by an investigation initiated on the basis of a complaint filed with LEAA against an LEAA-funded agency; and
- 5.—The amount awarded to an LEAA-funded agency.

At the time of the Advisory Committee's conference, LEAA handled one major compliance review a month, dealing with either an employment discrimination problem or a service delivery inequity. It also handled one minor review a month, but these reviews were limited to service delivery inequities.

Throughout the history of the LEAA program, relatively few complaints regarding West Virginia programs have been made.

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Wilbur Brantley, Director

State Agencies

West Virginia Human Rights Commission

[Howard D. Kenney, Executive Director of the West Virginia Human Rights Commission (HRC), led the workshop on the jurisdiction and operations of the State HRC.]

Complaints filed with the State HRC can be for discrimination related to race, color, national origin, ancestry, religion, sex, age (40 to 65 years inclusive), and blindness. The areas for complaints are in employment, housing, and public accommodations, the last term defined as "Any establishment or person, including the political and civil subdivisions of the State, which offers its services, goods, facilities, or accommodations to the general public. 'Private clubs' are excluded."²⁴

The State HRC gained enforcement powers in 1967. In 1973, it began its contract with the U.S. Equal Employment Opportunity Commission, serving as a deferral agency handling employment discrimination complaints. In 1978, the U.S. Department of Housing and Urban Development recognized the State HRC as a deferral agency to handle housing discrimination complaints filed with HUD.

At any rate, although a few complaints were not resolved for as long as 4 or 5 years, the State HRC had begun speeding up the process through predetermination settlements. Such settlements virtually amounted to no-fault settlements. Now the 27-member staff of the State HRC is implementing the Rapid Charge Processing initiated by EEOC; a case must be docketed for hearing within 10 days after it is filed and a meeting, involving the charging party and the respondent, must be held immediately. A special 5-member unit has recently begun to reduce the State HRC's backlog of cases.

Thus far, only complaints from the handicapped based on blindness can be processed by the State HRC. This is because the West Virginia Legislature was unable to agree on definitions of physical disabilities other than blindness. The accompanying diagram illustrates the HRC complaint process.

In addition to processing complaints, the State HRC has also won an HEW grant to analyze school suspensions and their effect on minority students. The project focuses on Cabell County. The first year involved data collection; during the second year,

alternative programs for dealing with disciplinary problems were tested.

The State HRC has also worked with the Beckley police/fire civil service commission on how to adapt Beckley's recruitment and testing processes to facilitate equal opportunities for minorities.

West Virginia Human Rights Commission

Jeffrey O. McGeary, Chairperson
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Executive Director

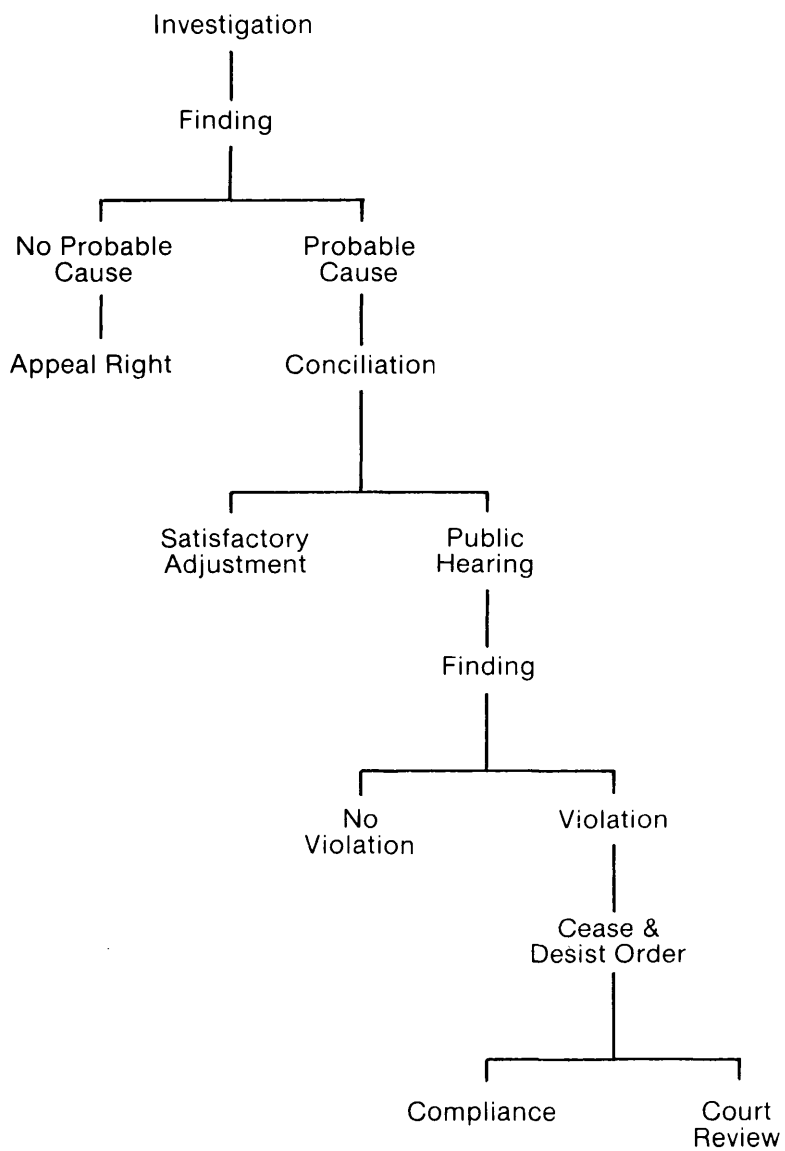
West Virginia Human Rights Commission
1036 Quarrier Street
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Charleston, West Virginia 25305
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West Virginia Affirmative Action Office

[Curtis E. Price, Jr., The State's first Affirmative Action Officer, led the workshop on the mission and activities of his office.]

²⁴ W. Va. Code §5-11-2 (1979).

West Virginia Human Rights Commission, Complaint Process



The post of Affirmative Action Officer (AAO) for the State of West Virginia was created by Governor Rockefeller in July 1978. The AAO's primary mission is to raise the percentage of minorities, women, and handicapped persons in the departments and agencies under the Governor.

At the time of the conference, the Affirmative Action Officer was assisting in the development of an Executive Order stating the Governor's policy on equal employment opportunity. After the issuance of that Executive Order, the AAO was to see to it that those departments and agencies under the Governor drew up equal employment opportunity plans aimed at boosting the percentage of minorities and women within their governmental units. The AAO pursued the related task of educating and motivating department heads to take affirmative action and also of providing technical assistance to their departments in the form of meetings and workshops so that they could design plans or implement existing plans.

Since the conference, the Governor issued Executive Order No. 16-78.²⁵ Over 50 departments and agencies named specific affirmative action coordinators, and the AAO held several meetings with agencies to help in shaping the required plans. State offices not covered under the Governor's jurisdiction include the offices of the State Supreme Court, the Attorney General, the Auditor, the Treasurer, the Senate Clerk, the House Clerk, and the Department of Agriculture. Although these State offices are not under the Governor's jurisdiction, they do voluntarily submit progress reports and statistical data to the AAO.

The AAO also developed a recruitment program to identify qualified minorities, women, and handicapped persons. While the AAO continues to assist agencies to meet their goals and timetables, the functions carried out by the AAO do not include the investigation of complaints. Investigations are carried out by the State Human Rights Commission, which has both investigatory and enforcement powers.

Affirmative Action Office
Office of the Governor
Room 25 Capitol Complex
Charleston, West Virginia 25305
(304) 348-0084 or 0085
Curtis E. Price, Jr.
Affirmative Action Officer

West Virginia Women's Commission

[*Andrea L. Strader, the first Executive Director of the West Virginia Women's Commission, led the workshop on the jurisdiction, composition, and activities of the Women's Commission up to the time of the Conference.*]

Created by the State legislature in 1977, under Chapter 29, Article 20 of the West Virginia Code, the West Virginia Women's Commission is composed of 11 Commissioners appointed by the Governor and confirmed by the Senate. Ex-officio members represent the State's Department of Welfare, Department of Labor, Superintendent of Schools, Human Rights Commission, Civil Service System, and the Attorney General.²⁶ The Governor appoints another 44 persons to the Women's Commission Advisory Council.

The first Executive Director was hired in April 1978 to head operations carried out by a four-person fulltime staff financed by the Governor's contingency fund and CETA. The general purposes of the Women's Commission include reviewing the status of women in the State, recommending means of overcoming discrimination both in employment and the exercise of civil rights, promoting more effective ways for women to develop their potential, strengthening home life by clarifying problems confronting women as wives, mothers, homemakers, and workers, and working with the State Human Rights Commission on women's issues.

As a result of a 1978 informal poll by the Women's Commission, the following issues were ranked in priority order: 1) the Equal Rights Amendment; 2) battered women; 3) abused children; 4) employment of women; 5) inheritance tax; 6) Social Security benefits; 7) property settlement; 8) multicultural education; 9) sexual assault; and 10) divorce laws. A separate poll was made with the assistance of the Department of Welfare, which sent out 38,500 inquiries to public assistance recipients. The concerns reported back were in priority order: 1) employment; 2) benefits; 3) equal rights; 4) discrimination; 5) training and education; 6) day care; 7) housing; and 8) aid to the elderly.

To carry out its functions, the Women's Commission organized task forces on domestic violence; a job bank/talent bank; communications/public rela-

²⁶ Women's Commission Act, ch. 161, W. Va. Acts. 910.

²⁵ Executive Order No. 16-78 (November 4, 1978).

tions; women on the bench; and legislation. Workshops on the legislative process have been held in Fairmont, Beckley, and Charleston. Having spearheaded a statewide lobbying effort, the Women's Commission saw the Family Protection Bill made law in March 1979, thereby offering emergency legal protection to battered spouses and children.²⁷ A Domestic Violence Directory was also published, and a 13-part television series on various issues of concern to women was produced and broadcast on public television stations in the State, and subsequently developed into community discussion programs. The Women's Commission also circulates a quarterly newsletter to 10,000 persons and has held evening public meetings around the State. The present Executive Director is Barbara Matz. The Commissioners are:

The Rev. Reba Thurmond, Chair
Morgantown, W. Va.

Mary Virginia DeRoo, Vice Chair
Charleston, W. Va.

Dr. Nell Bailey
Salem, W. Va.

²⁷ W. Va. Code §48-2A-1(1976).

Thais Blatnik
Wheeling, W. Va.

Hazel Bond
Ona, W. Va.

M. Ann Bradley
Charleston, W. Va.

Mae Halsey
Charleston, W. Va.

Barbara Kight
Parkersburg, W. Va.

Nancy Matthews
Huntington, W. Va.

(Two seats are vacant as of Spring, 1980.)

West Virginia Women's Commission
WB-9 Capitol Complex
Charleston, W. Va. 25305
(304) 348-8816

Major Addresses

Keynote Address

By James Farmer*

We are here on very important business, and I think the U.S. Civil Rights Commission and its West Virginia Advisory Committee ought to be congratulated, because you are in the vanguard of those folks around the country who are beginning to come together and assess where we are in the struggle for civil rights—what has been accomplished, what remains to be accomplished; what the limitations of the successes of the sixties were, and where we go from here, and how we proceed. It is a most important adventure, and I trust that you will be enormously successful in it.

The days of the sixties were exciting ones, and those of us who were in that struggle look back with some element of nostalgia, but also with a great deal of pleasure at the accomplishments that were achieved albeit through great suffering and great pain on the part of so many, many people. Those who shed life's blood: the Schwerners, the Goodmans, the Chaney's who died in Mississippi; the Viola Liuzzos who died in Salem; others whose heads were broken; those who filled the jails of the South and did it happily and gladly, though they were terrified at what they were doing. They were filled, imbued with a determination which transcended that fear.

* James Farmer is Executive Director of the Coalition of American Public Employees (CAPE), a Washington, D.C. based organization with three million members. His involvement in the labor movement goes back to the 1940s as does his service in civil rights, when he founded the Congress of Racial Equality (CORE). From 1959 to 1961 he was Program Director of

And I suppose, after all, that is the real meaning of courage—not being unafraid, but doing what has to be done, in spite of fear. If one is unafraid, then he must have no imagination; he must not be able to anticipate the things that might happen. But they had imagination and they acted. The Nation was on the move as it had not been, certainly in my memory. Hundreds of thousands of people, possibly millions of people—white and black, North and South, were involved in that struggle. Families, sometimes, were split; parents objected to their children going to Mississippi, volunteering to live without a tomorrow, and some gave up their tomorrows. Many youngsters dropped out of college because they felt they were a part of a revolution that was going to transform the Nation and bring, to quote the slogan of the day, “Freedom Now!”

And we won victories, there is no question about it. All one has to do is travel around the country, particularly, in the Deep South, to see the magnitude and the drama of those victories. I find it exciting and good now to visit Mississippi, Alabama, Georgia. I never dreamed that day would come, but it is a pleasurable experience, now, to see what was wrought by the many people who suffered and died.

If, 15 years ago, someone had told you that in the 1970s George Wallace would be crowning a black queen at the University of Alabama, you would have sent him or her to the nearest mental institution. But

the NAACP and from 1961 to 1966 he served as National Director of CORE. A worldwide lecturer and consultant on minority issues, Mr. Farmer is also the author of *Freedom—When?* published by Random House in 1966, and held public office as Assistant Secretary for Administration at the U.S. Department of Health, Welfare, and Education in the late 1960s.



George Wallace did that. In fact, he not only crowned her; he also kissed her.

The changes are obvious: one checks into a hotel where he wishes, eats at a lunch counter or in a fancy restaurant downtown, sits on the front seat of a bus. But the struggle for change is unending. When little victories are won, bigger, more complex victories loom ahead.

And I think that is what has happened now. Our goals in the struggles of the sixties were for limited objectives—public accommodations, transportation, and voting rights. Those were simple and crystal clear issues. No one of any decency could have argued on February 1, 1960, when those four black freshman students from North Carolina A&T College in Greensboro walked into Woolworth's and said, "I'd like a cup of coffee, please." No one of

decency could say that they should not have been served, if they had the price.

The same was true of the bus struggle, during the freedom rides. If one paid the same fare, then obviously he or she should have a right to sit where he or she chose. The issues were clear.

You could also tell when you had achieved a victory. If you got the cup of coffee at the lunch counter, you had won. If you did not get it, you had not won. If you sat on the front seat of the bus and were not thrown off or arrested or beaten, then you were victorious. If one of those dire consequences did occur, then you had not succeeded.

The same was true of voting rights. If a black in Mississippi or Alabama or Louisiana went down to register and if he or she were allowed to register without having to risk life and limb, and if he or she went to vote and nothing happened, then obviously, the victory had been achieved.

We achieved some victories in job rights; anti-employment discrimination laws were established. We won the Civil Rights Act of 1964, we won the Voting Rights Act of 1965, but those were limited objectives. There was a spirit of euphoria that swept the land after that. In fact, the spirit of euphoria was visible right after the 1963 March on Washington. People said, "Hurray, we won. The ballgame is over."

The simple days are over. The complex days loom ahead. Though we battered down doors of segregation in certain areas in the sixties, there is more segregation in vital areas of the Nation's life than there was at that time. The Kerner Commission report issued in 1968 concluded that we are becoming two nations, one black and one white, separate and unequal. And it issued a supplemental conclusion a year later saying that the trend was continuing. The census of 1970 underscored that fact by pointing out that around the Nation our cities are becoming blacker and blacker and our suburbs whiter and whiter.

Along with that has come an increase in school segregation on a nationwide level and, according to the general counsel of the NAACP, Robert Carter, more school segregation now than there was in 1954, the time of the Supreme Court school desegregation decision. But it is *de facto*, largely, rather than *de jure*—not the old southern type, which had separate school districts, but the northern type, which is tied to residential segregation. And as residential segregation has increased, so, indeed, has

de facto school desegregation. Our Nation cannot remain viable with black cities surrounded by white suburbs or black and white enclaves in our cities. It is an invitation to disaster.

We are aware, too, that while we knocked down those doors of segregation, the gaps remain wide in vital, complex areas such as education, income and employment, and health, and there has been a tendency for some of those gaps to widen rather than narrow. While we were battering down walls of segregation, many minority youngsters, inner city youngsters, were graduating from high school functionally illiterate. This means that they are being pointed toward failure, toward dead ends, and that is allowed to happen in a Nation which is the most advanced technologically in the world.

I spent almost 2 years in HEW, and I know that there are hundreds of pilot projects which have developed effective methods to deal with social problems, and those pilot project reports are on shelves or in desk drawers or in filing cabinets collecting dust and aging. We suffer from a dread disease in our country: you might call it pilot projectitis. We have a pilot project to prove a thesis, file the report away, and, a couple of years later, a pilot project is undertaken to reprove that same thesis. No real attempt is made to cull the information from the successful pilot projects and hammer out a national program that will deal with problems such as education.

We know, too, the gaps in income. Statistics show us that the median black income is only about 62 percent of the median white income. That gap has shown some fluctuation, but the tendency has been toward a widening of the gap.

We know, too, in health, that the gap between the majority and minority populations is wide. The Hispanic, Native American, and Asian minorities are all affected. The infant mortality rate among the poor and, especially, the minority poor, is more than twice as high as the national average.

Life expectancy is an equally effective indicator of progress. The life expectancy gap between black males and white males has not only widened in the past 10 years, but the life expectancy of the black male has actually declined. It has dropped from 64 to 61. The life expectancy of the white male is 71 to 72. There has been a slight closing of the gap between the life expectancies of black and white females. It is 68 for blacks and 74 for whites.

We know some of the reasons for the decline of life expectancy of black males. We don't know all of them. Maybe it's partly soul food. It may taste awfully good, but with all that fat and cholesterol, it may not be the best thing for you. Hypertension has increased rapidly, and so, of course, have heart attacks and strokes. Suicides have increased, too. That may be one indication of some progress. Only when you move up the ladder can you jump down.

We are aware, too, that we no longer have that kind of working, functioning coalition which put together the 1963 March on Washington. We are aware that we no longer have a majority of the country with us. We did, in the sixties, after the March on Washington. Public opinion polls indicated that more than 75 percent of the American people, North and South, wanted strong civil rights legislation that could be enforced to bring an end to segregation. I suspect that if a poll were taken now, asking whether people wanted further advances in civil rights for minorities, those figures would be quite different. In the sixties blacks were viewed as the long-suffering victims of oppression. People saw the marches led by Martin Luther King, Jr., by SNCC, by CORE. They saw Bull Connor, the Chief of Police in Birmingham, with his minions, beating heads and police dogs ripping little kids' clothing and flesh. They saw high-pressure fire hoses rolling women down the streets. And the American people said, "Now that's horrible. Bull Connor is a beast. Give us laws that we can enforce to put an end to this atrocity."

That was the day when we had the majority with us. Almost any civil rights issue then could swing a majority on Capitol Hill.

It has changed. The view of blacks shifted after the victories of the sixties. In the days of the backlash, blacks came to be perceived not so much as the long-suffering victims, but as victimizers—partly as a result of the riots of the summers of '64 through '68; partly as a result of the publicity of the inner-city crime; partly as a result of the talk of snipings and bringing the cities down.

People were frightened. And many whites, especially semiskilled, industrial workers and the lower-middle class, felt frightened at progress which blacks were making. Look at a worker with limited skills in Cicero or Cairo, Illinois, in a lower-middle class, suburban community. Here is a man who has worked hard, saved money to buy a little house and make the down payment. He is mortgaged for life;

he has to struggle to make the payments. He has a garage and a car. He budgets carefully, and makes those payments. He gets a little worried. He wants to hang on to his job. He sees the manpower programs and job training programs, sponsored with government money. He says, "My tax money is going there, and who is being trained?—blacks, Puerto Ricans, Chicanos. What job are they being trained for?—my job?" He panics.

Then he goes home and hears that a black family is going to move in down the street because we have fair housing laws now, and he is told that if that happens, his property values will go down. He panics. The person who has one foot up the ladder tends to panic when there is any motion from below. This is the climate we confront in our Nation now. But it is only part of the picture. The Humphrey-Hawkins full employment bill is just a shell of its former self, little more than setting certain goals and principles without any real implementation even allowing the President to change those goals. We are in difficulty.

That difficulty is exacerbated by new activity on the part of the extreme right wing of our country. We met them in the sixties in the Klan, the White Citizens Council, the American Nazi Party, the John Birch Society. Now we find many of the same right wingers in new organizations which are anti-union, anti-ERA, anti-gay rights, anti-anyone's rights. The right wing, today, has become more sophisticated; they don't beat heads, though they have a lunatic fringe that does beat heads. Rather than talking arrant nonsense, they now come up with issues which cut across ideology and ethnic lines.

One of those issues was Proposition 13, in California. Everybody is opposed to paying lots of taxes, property taxes; but what Proposition 13 in California means is that the little people, the poor people, are going to be hurt. The savings will go to the big corporations, 60 percent of it. The little people will be hurt because they will be laid off when city services are cut. Affirmative action will be gravely weakened. The last hired were minorities and women and the young and the handicapped, and they will be let go. Many of the people who voted for Proposition 13, according to polls, thought they were voting to cut people off welfare, which meant to them blacks and Chicanos.

It was a racist act, but it used code words and it touched a vital concern of people. The proponents of Proposition 13 promised to cut property taxes

without saying what services would be cut and where the revenue was going to come from to take up the slack. It was a reckless kind of tax change without genuine progressive tax reform where those who can most afford to pay would be required to pay the most. This tax-cut fever is spreading around the country, spearheaded by Jarvis and Gann. There are at least 20 States where such propositions are now burgeoning.

Further indicative of the climate was the *Bakke* decision. I happen to think the decision is a setback in the drive for equal rights for minorities and for women. It has been a long struggle to achieve equal rights in our country. When the fair employment practices laws were passed, we were all supposed to be colorblind. We said to employers, "Don't see the color of an applicant. Hire the best-qualified person who applies and you will fulfill your obligation." We would go back to that employer a couple years later and say "How many Puerto Ricans or blacks do you employ?" His answer would be "How should I know? I'm colorblind."

We'd check and find out he had none. He'd say, "Can you prove that I discriminated? Can you prove that I failed to hire a black who was better qualified than a white whom I hired for the job?" We couldn't and we were told that the law says you may not use race as a criterion.

The old styles were not adequate, so we then moved into affirmative action. We said it was not enough not to discriminate. What you have to do is act affirmatively to get minorities into the workforce.

I remember discussing that with Lyndon Johnson when he was Vice President and Chairman of the President's Committee on Equal Employment Opportunity. We in CORE, then, had a poor public relations sense. We called the idea "compensatory preferential hiring." I can't imagine a worse term, public-relations wise. Johnson listened, then said, "Yes, it is a good idea, but don't call it compensatory. That's terrible. Call it affirmative action. It is moving the Nation forward! It is going out of our way to bring minorities in that have been excluded! That is positive affirmative action!"

Affirmative action was adopted by the government. President Kennedy was stepping off a plane one day looking at the honor guard there to greet him and observed it was all-white. He called an officer over and said, "I see there are no Negroes in the honor guard." The officer smiled and said,

"That's correct, Mr. President. None have applied." Kennedy allegedly said, "Well, go out and find some." Next time he got off the plane, there were blacks in the honor guard. That was not color blindness. That was color consciousness to wipe out color discrimination.

But that didn't work either, though it may have worked in some places. We went back to the supervisor, the line manager, the foreman, whoever did the hiring, and said, "you've been practicing affirmative action 2 years now. How many blacks do you have?" He'd say, "I've tried hard but I couldn't find any that were qualified." How are we to prove that he did try? We had to have some criteria.

The only criteria that we could come up with was numerical goals and timetables. The employer must move toward that goal and his efficiency would be judged on the basis of his advancement toward that goal. Included in the goal are women, the handicapped, the blind, the elderly. And my interpretation, as a nonlawyer, is that the use of these numerical goals and timetables, which were called quotas by many, was jeopardized by the *Bakke* decision. I think that is further indication of the job that we have to do.

On the positive side of the ledger, people are beginning to come together. Bakke and Proposition 13 may be just the thing we need. It may be a blessing in disguise. Within one week after Proposi-

tion 13 was passed in California, a broad coalition of hundreds of people came together from several States. These were not only public employees. They were representatives of black, Puerto Rican, Chicanos, and Asian American groups, the disabled, representatives of the mentally retarded and the aged. There were the deliverers and the consumers of services who were going to be hurt by this kind of mood in the country.

I have never seen such enthusiasm since the sixties. They have been meeting to plan a counterattack. They are not saying, "We don't need to cut taxes." Where there are bad taxes, inequitable taxes, cut them, but let us have genuine tax reform that puts the burden of paying for those services where the burden should be—upon those who can most afford to pay for them, and let us not cut out services that people need.

Around the country, people are getting together. It is my hope and I suppose it is the hope of those who called this meeting that we can get that kind of a coalition, that kind of spark once again, among people who care—the people who care deeply about justice, no matter the color.

In the words of Hillel, the great Rabbi of over 2,000 years ago, "If I am not for myself, who will be for me? If I am for myself, alone, what am I? And if not now, when?"

Closing Address

By Franklin D. Cleckley*

I. *Bakke* : The Case and Decision

Clearly, the *Bakke* opinion has been one of the most widely discussed cases in America's recent history. Professor Ralph Smith of the University of Pennsylvania Law School has humorously labeled Bakke as "a latter-day Great White Hope." In an article entitled "A Third-Rate Case Shouldn't Make Hard Law," Professor Smith observes that:

A fair appraisal of the specifics of the Bakke case history compels us to the conclusion that the case has no business before the highest Court of the land, that the facts do not fairly raise the issue purportedly presented, and that Bakke is a decidedly inappropriate vehicle to carry what may well be the most profound judicial pronouncement of the decade.

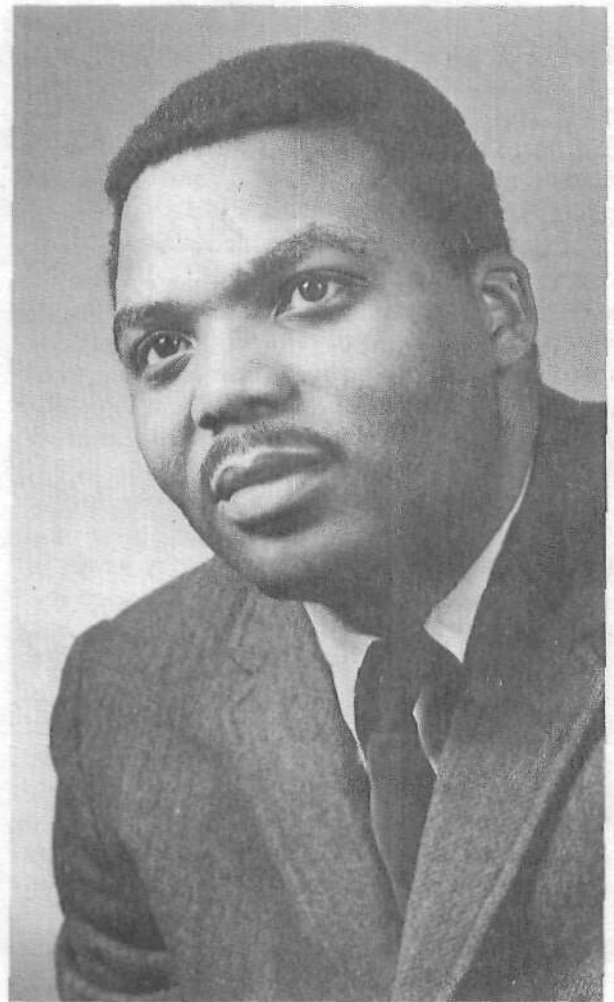
In the *amicus curiae* brief of the National Conference of Black Lawyers, some interesting background facts about the case are explored. In that brief, it is stated that:

Two weeks after Bakke indicated that he was inquiring about the possibility of formally challenging the concept of special admissions, the University official thanked him for his "thoughtful" letter, suggested that he "pursue (his) research into admission policies based on quota-oriented recruiting," voluntarily disclosed information on the special admissions program, urged him to "review carefully" the pending suit (*DeFunis*) against the University of Washington, and gratuitously supplied the names of persons who could be of assistance in challenging the special admissions programs.

In a subsequent letter, the same University of California official endorsed Bakke's plan to sue the Davis Medical School even though Bakke had outlined another option and had graciously afforded the University official veto power over his course of action.

Now let's put the *Bakke* facts in some perspective. In 1972 Bakke applied and was rejected by two medical schools. In 1973 he applied and was rejected

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by 11 medical schools, including the Davis Medical School. Professor Smith notes that:

In 2 years, 13 institutions and committees of dozens of faculty members had reviewed Allan Bakke's file and had concluded that while a good student, Allan Bakke was not so outstanding an applicant as to be considered clearly superior to the thousands of other students competing for the limited number of seats available for students entering medical schools.

In his speech entitled "The Assault on Affirmative Action: A Contextual Look at the Implications of the *Regents of the University of California v. Allan*

Redress Committee. In 1968, he was named the first Martin Luther King, Jr., Fellow by the Woodrow Wilson Fellowship Foundation. During earlier service in the U.S. Navy, he received the U.S. Navy Commendation Medal for Vietnam Service, distinguishing himself as the "most requested Navy Lawyer in Vietnam."

Bakke," given at the West Virginia University Law Center, Professor Smith also points out that the University of California at Davis maintained two special admission programs:

It is also interesting to point out that the University of California at Davis maintained two special admission programs—the one challenged by Bakke and another for the offspring of the rich and influential. It has been reported that each year a designated number of seats were set aside for this second special admissions program. Moreover, even in those seats not set aside there was evidence of substantial irregularities which afforded preferential treatment to certain well-connected applicants.

The procedural developments of the *Bakke* case in the lower state courts led the National Conference of Black Lawyers to argue gracefully that:

The circumstances surrounding the origin, development and conduct of this case show that it has not been presented in the true adversarial manner best suited for judicial resolution of this very important issue and as a consequence is of dubious justiciability. . . .

Further, argued the National Conference of Black Lawyers, "the facts show that an official of the University facilitated, encouraged, and supported the bringing of this suit against the University of California Davis Medical School." But despite this just, but harsh, criticism of the case, the Supreme Court agreed and did in fact render a landmark decision despite an ill-developed record. On June 28, 1978, the Supreme Court of the United States ruled that Bakke should be permitted to enter the Medical School of the University of California at Davis.

Bakke had filed a lawsuit in the lower California court alleging that his two-time rejection from medical school violated the Federal and State constitutions and Title 42 U.S.C., section 2000d, since less qualified blacks were admitted under a special admissions program. The Superior Court of California sustained Bakke's challenge, holding that the Davis Medical School's special admissions program was violative of the Federal and State constitutions and Title VI. The Court enjoined the petitioner from considering Bakke's race or the race of any applicant in making admission decisions. It refused, however, to order Bakke's admission to the medical school, holding that he would not have been admitted but for the constitutional violation.

The Supreme Court of California affirmed those portions of the trial court's judgment declaring the special admissions programs unlawful and enjoining the medical school from considering the race of an applicant for any purpose. It modified that portion of the judgment denying Bakke's requested injunction and directed the lower Court to order his admission. The case was appealed to the United States Supreme Court.

The Supreme Court, by default, agreed in part and disagreed in part with the Supreme Court of California. Carefully, the United States Court held that the special admissions program was unconstitutional and that because of the medical school's earlier concession, the California Supreme Court decision that he be permitted to enter the medical school was affirmed.

The Court then held, again by default, that the portion of the lower Court's opinion that held that race could not be considered as a factor for admission was reversed.

Clearly, the *Bakke* case has rejected racial quotas under most circumstances but has approved employment and admission policies that permit consideration of race only as one of the factors to be considered. Rather than repeat the obvious, I want at this time to merely outline the avenues of racial preference left open by the Court.

There are two situations in which race may be considered in the admission or employment process.

1. *Where a constitutional violation is declared based upon reasonable evidence.* The Court noted that a judicial determination of a constitutional violation is a prerequisite for the formulation of a remedial classification. Further, the Court stated that such a preference also has been upheld where a legislative or administrative body charged with the responsibility to make determinations by the industries affected and fashioned remedies deemed appropriate to rectify the discrimination.

This means that the West Virginia Human Rights Commission's finding of past discrimination exists as a prerequisite to the commission's imposition of a quota system to correct the problems.

2. *Consideration of race as a factor for admission or employment.* Even without a finding of past discrimination, race may be considered as a factor among other factors in the determination process as long as it is not the only factor to be considered.

In essence, the Court has ruled quotas *no*, affirmative action *yes*.

Before concluding, let me suggest to you that in the 1950-1960s the civil rights litigant's most important ally was the U.S. Supreme Court. It is obvious that this Court has now changed its allegiance and has for the moment sided with our most vocal opponents. The same switch of allegiance is clearly seen among lower Federal court judges. To those West Virginia lawyers who are frequently engaged in civil rights work, it is clear that Federal courts are not the playground for sensitive civil rights litigation. And the future is bleak considering that Federal judges are given life tenure.

Consequently, the civil rights lawyer must look beyond the U.S. District Courts for West Virginia. There are two choices. One may look towards the Fourth Circuit, a court of appellate jurisdiction over the district court, or towards the administrative and judicial machinery of the States of West Virginia. "For me and my house," I choose Charleston. I would like to explain that decision.

The West Virginia Human Rights Commission

West Virginians have the benefit of an administrative agency known as the human rights commission, whose full resources have never been fully tapped. In discussing the potential of the West Virginia Human Rights Commission, two things need be preliminarily pointed out.

1) *Bakke* suggested that agencies such as the human rights commission have the power to impose racial quotas and other stringent remedial sanctions upon a showing and finding of discrimination.

2) The human rights commission represents the only trial tribunal in West Virginia where a litigant is *assured* of getting a judge who also has experienced the pains and disappointments of discrimination. I refer to the diversity of the Commissioners.

The Human Rights Commission, while blessed in one sense, is burdened with mammoth problems in another sense. For example, it is understaffed and overworked. It is virtually ignored each year by the legislature, the governor and the State's attorney general's office. More significantly, there are issues, important issues, concerning its jurisdictional limits. Can its decisions bind municipalities, counties, and other governmental agencies? Does it have jurisdiction beyond those areas of housing, employment, and public accommodations? Under the bold and excellent leadership of its current executive director, these questions have been answered "yes" but

further legislative and/or judicial clarification is needed.

I need not remind you that the human rights commission carries an impossible caseload. It is constantly criticized for its inability to reach a disposition timely and promptly. Some of this criticism is perhaps justified, but until we require a more satisfactory legislative response to its fiscal limits, these problems will persist.

Because of the newfound importance given to the commission by *Bakke*, its leadership should expect a constant professional critique of a constructive nature from the interested and concerned public. The human rights commission must be perserved and improved to meet the new, challenging demands at its doorstep. It may be the only real hope for West Virginia to rejoin, as Justice Douglas said, the human race.

My final comment on the human rights commission is that it possesses a unique position in the West Virginia judicial family. Unlike EEOC and various other agencies or lower courts, its decisions on the merits of a particular case are final and conclusive except where an abuse of its discretion is clearly shown. Judicial review of its operations is extremely limited. But while judicial review is limited, legislative and executive review has not been. It is the NAACP, the Mountain State Bar Association, and the Lawyers Guild's job to see that that review is also limited.

Secondly, the West Virginia Supreme Court of Appeals has shown recent signs of bending a helpful ear towards the claims of the disadvantaged. The unfortunate part of all of this is that the Court of Appeals has never been explored "or exploited" in the area of civil rights. The Court has an amazing history.

1) Long before *Shelley v. Kraemer*, (334 U.S. 1 (1948)) the Court of Appeals refused to recognize racially restrictive covenants in *White v. White*, (108 W. Va. 128 (1929)). Of course, at that time blacks were called Ethiopians.

2) Long before *Brown v. Board of Education of Topeka*, 349 U.S. 294 (1955) the Court of Appeals decided that a West Virginia Board of Education had no right to exclude colored persons from public libraries. Ironically, the name of this 1928 case was *Brown v. The Board of Education of Charleston*, (106 W. Va. 476 (1928)).

3) As early as 1919 in *State v. Young*, (82 W. Va. 714 (1918)), and in *State v. Frazier*, (104 W. Va. 480

(1927)), the Court was making it clear that blacks could not be intentionally excluded or grossly underrepresented on grand and petit juries, a proposition recognized by the United States Supreme Court but not, as of then, that fully developed.

4) At the time the United States Supreme Court was attempting to decide what were the rights of the black defendant in criminal trials, the Court of Appeals was making a bold decision reversing a murder conviction of a black woman because a white juror was racially prejudiced in *State v. Dean*, (134 W. Va. 257 (1950)). Some of the rights to *voir dire* questions by a black defendant recognized in *Dean* were not recognized by the United States Supreme Court until 1973 in *Ham v. South Carolina*.

5) In 1975, the West Virginia High Court gave teeth to the rules and regulations of the Human Rights Commission to award actual compensatory damages to victims of unlawful discrimination, *State*

Human Rights Commission v. Pauley, (212 S. E. 2d 77 (1975)), and in 1977 the Court, in *State Human Rights Commission v. Pearlman Realty Agency*, (239 S. E. 2d 145 (W. Va. 1977)), held that the human rights commission may award damages as compensation for humiliation, embarrassment, emotional and mental distress, and loss of personal dignity, without proof of monetary loss and, to that extent, overruling *Pauley*.

It takes little imagination to predict my conclusion. The ballpark for civil rights litigation in West Virginia is in the State's administrative and judicial courts. We must now abandon the notion that the filing of a complaint in a Federal court is the ticket to a fair trial.

I submit that in the bleak post- *Bakke* era, there is a bright and shining light. It's the West Virginia judicial family.

APPENDIX A

UNITED STATES COMMISSION ON CIVIL RIGHTS

MID-ATLANTIC REGIONAL OFFICE
2120 L STREET, NW - ROOM 510
WASHINGTON, D.C. 20037
TELEPHONE: (202) 254-6717

WEST VIRGINIA
ADVISORY COMMITTEE

September 5, 1978

Dear Colleague:

James B. McIntyre,
Chairperson
Charleston
Ancella R. Bickley
Institute
Charles V. Brock
Parkersburg
Cora L. Floyd
Huntington
Harold A. Gibbard
Morgantown
Sarah E. Goines
Parkersburg
Betty A. Hamilton
Charleston
Nelbert J. Horstmeyer
Weirton
Pauline F. Huffman
Charleston
Anne P. Jones
Wheeling
Paul J. Kaufman
Charleston
Howard D. Kenney
Charleston
Margaret C. Mills
Charleston
Donald L. Pitts
Beckley
Sally K. Richardson
Charleston
Paul D. Stewart
Huntington
Fred Wintercamp
Charleston
Charlene C. Pryor
Beckley

- Concerned about the Bakke decision? Or confused?
- Like California, West Virginia has maintained a State budget surplus--\$26 million this year. Is Proposition 13 far behind?
- How are grants from the Law Enforcement Assistance Administration spent locally? Have you seen any minorities or women on your police force yet?
- And General Revenue Sharing dollars. They're everywhere, but who really benefits from these Treasury Department funds?
- Who gets mortgages for housing on land bulldozed by urban renewal years ago? Where has school integration gone? Is ageism illegal? Is abortion a right? Is health care? Just what are the civil rights issues of today--and tomorrow?
- And who cares anymore?

We care. Like you, the West Virginia Advisory Committee to the U.S. Commission on Civil Rights has wrestled with these kinds of questions over the past year. But then last October, like you, we found ourselves on edge, awaiting the Supreme Court's decision on Bakke and affirmative action. And suddenly, out of California came the Proposition 13 taxpayers' revolt. Now, ten years after the King assassination and fifteen years after his Freedom March, we stand wondering just what is happening, what lies ahead for civil rights? Who can be counted on to maintain the struggle started in the '50s and '60s?

We haven't the answers yet. We're not even sure whether all the right questions have been asked for West Virginia yet. But, before the momentous year of 1978 draws to a close, we hope you will join us in Charleston, September 29th and 30th, to pose questions, seek answers, and rededicate ourselves to action towards solutions in our towns, our cities, our State.

Please circulate the enclosed Conference prospectus, discuss it with your organization and friends, and mail back the response on your attendance. We need you. We honestly hope you'll agree that we need each other in the days ahead.

Sincerely,

James B. McIntyre
JAMES B. MCINTYRE, Chairperson
West Virginia Advisory Committee

Anne P. Jones
ANNE P. JONES, Chairperson
Conference Committee

STATEWIDE LEADERSHIP CONFERENCE • SEPTEMBER 29th AND 30th

Conference Resolutions

- A call for stronger enforcement of existing Federal and State civil rights legislation.
- A call for political and social action at the local level aimed at widespread education about civil and human rights.
- An appeal to West Virginia Senators Robert C. Byrd and Jennings Randolph that they work to gain extension of the deadline for ratifying the Equal Rights Amendment.
- A call for funding of staffs for local human rights commission.
- A call for increased funding for the West Virginia Women's Commission.
- A call for augmenting the staff of the Governor's Affirmative Action Coordinator.
- Support for measures, such as the Multicultural Education Act, intended to heighten consciousness of the diversity of American society and to deepen an appreciation of its richness.
- A call for the Advisory Committee to press for provision of multicultural orientation programming for the local police and fire civil service commissions.
- A call for the State to establish a State Commission on the Blind.
- A call to broaden the term 'handicapped' so that it also embraces the mentally impaired.
- A proposal that the Advisory Committee examine procedures of the State Civil Service Commission that discourage minority, female, and handicapped applicants.
- Support for the establishment of an advocacy network of public interest groups, churches and synagogues, antipoverty organizations, women's groups, labor, and other like-minded organizations and institutions—a network which can be mobilized when action is needed on specific civil rights issues.
- A call for followup conferences to take up the tasks yet undone.

Conference Participants

A partial list of those who registered at the conference.

Beckley

Ronald B. Cantley
Beckley

Roy J. Dawson
Beckley

Sandy Fisher
Beckley

Sandy Fox
Beckley

Arthur A. King
Beckley

Rev. W. H. Law
Beckley

Donald L. Pitts, SAC Member
Beckley

Charlene C. Pryor, SAC Member
Beckley

Cedric R. Robertson
Beckley

Rudolph Simon
Beckley

Richard F. Swain
Beckley

Greater Metropolitan Charleston

Herbert W. Watson
Belle

Polly Buckingham
Charleston

George E. Chamberlain, Jr.
Charleston

Mary Virginia De Roo
Charleston

Ida F. Eastman
Charleston

Nathan C. Eastman
Charleston

Carole Ferrell
Charleston

Ann Garcelon
Charleston

David A. George
Charleston

Sharon Gillman
Charleston

Elizabeth Harden Gilmore
Charleston

Robert Guerrant
Charleston

Mae M. Halsey
Charleston

Marguerite Frances Haston
Charleston

Pauline F. Huffman, SAC Member
Charleston

H. Bruce Jeffries
Charleston

Catherine Johnson
Charleston

Ruth E. Jones
Charleston

James Karantonis
Charleston

Paul J. Kaufman, SAC Member
Charleston

Rose Jean Kaufman
Charleston

Susan Kelley
Charleston

Karen Mainon
Charleston

James B. McIntyre, SAC Member
Charleston

Virginia McIntyre
Charleston

Margaret C. Mills, SAC Member
Charleston

Joselyn Anita Mimms
Charleston

Sally Minsker
Charleston

Connie Mooney
Charleston

Ruth Stephenson Norman
Charleston

James E. Parker
Charleston

Sylvia D. Parker
Charleston

Jo M. Percy
Charleston

Mabel H. Peyton
Charleston

Lucille S. Pianfetti
Charleston

Clyde H. Price
Charleston

Curtis E. Price, Jr.
Charleston

John Purbaugh
Charleston

Don R. Richardson
Charleston

Sally K. Richardson, SAC Member
Charleston

Roy Riffe
Charleston

Martha D. Sanders
Charleston

Lawrence Smith
Charleston

Sterling P. Smith
Charleston

Andrea Strader
Charleston

Zerbie D. Swain
Charleston

Della Brown Taylor
Charleston

Shelley A. Thomas
Charleston

Russell Van Cleve
Charleston

Merritt Wilson
Charleston

Doris T. Armstead
Institute

Dr. Ancella R. Bickley, SAC Member
Institute

Nelson R. Bickley
Institute

Loreletha Carr
Institute

Dr. Betty Harris James
Institute

Hazel Kroesser
Institute

B. A. Ellis, Jr.
South Charleston

Pamela Ellis
South Charleston

Frances M. Campbell
South Charleston

Col. L. B. Tixier
South Charleston

Howard D. Kenney, SAC Member
St. Albans

Clarksburg-Fairmont-Morgantown

Kathleen Skehan
Clarksburg

Willie H. Smith
Clarksburg

Iris Bressler
Fairmont

George Brooks
Fairmont

E. Carlyle Chamberlain
Fairmont

Dr. Paul Edwards
Fairmont

Jesse L. Lawson
Fairmont

Amy Parks
Fairmont

Marion F. Dearnley
Morgantown

Dr. Harold A. Gibbard, SAC Member
Morgantown

Marian Jensen
Morgantown

Len Penootz
Morgantown

Gerald M. Pops
Morgantown

Martha S. Reinhardt
Morgantown

Anita C. Trice
Morgantown

Huntington

Sid Allen
Huntington

Warren Armstead
Huntington

Ralph Sonny Brown
Huntington

Emma M. Burks
Huntington

Vaida M. Carey
Huntington

Timothy Diggs
Huntington

Martha L. Edwards
Huntington

Cora L. Floyd, SAC Member
Huntington

Edward P. Floyd
Huntington

Teresa N. Gariett
Huntington

Robert Lamont
Huntington

Barbara J. Radford
Huntington

Betty J. Radford
Huntington

Rev. James M. Reed
Huntington

Cynthia D. Slaughter
Huntington

Dr. Paul D. Steward, SAC Member
Huntington

Troy M. Stewart, Jr.
Huntington

Martha C. Woodward
Huntington

Parkerburg-Weirton-Wheeling

Charles V. Brock, SAC Member
Parkersburg

Delbert J. Horstemeyer, SAC Member
Weirton

Delores J. King
Weirton

Naomi Turner
Weirton

Kevin J. Knight
Wheeling

Other West Virginia

Chet Fleming
Waverly

Raymond H. Frazier, Jr.
Charles Town

Billie Gray
Romney

Robert L. Hunt
Buckhannon

Pennsylvania

H. Edward Burton
Steelton, Pennsylvania

Zerbie Dorsey
Pittsburgh, Pennsylvania

Civil Rights Leader Predicts Renewed Interest

Complexity Cited in Activism Slowdown

By Robert Morris
Staff Writer

Although the civil rights movement has fallen into a relatively dormant state when compared to the early and mid-1960s, longtime rights leader James Farmer believes the United States is "on the verge of another wave of activity."

Farmer, whose involvement in civil rights dates back to the 1940s when he founded the Congress of Racial Equality, says there are a number of reasons for the slowdown in activism, not the least of which is the complexity of and difficulty in understanding problems now facing minority groups. He was in Charleston Friday for a two-day statewide leadership conference on civil rights at the Heart-o-Town Holiday Inn.

"In the 1960s, we dealt with simple issues such as hot dogs at a lunch counter or sitting in the back of the bus," he said. "If you got the hot dog then you were victorious."

PROBLEMS facing minorities today, Farmer said, include questions on how to close the gap between whites and minorities in regard to income, unemployment and education. "These are not simple questions," he said. "No one has a clear answer."

Farmer, executive director of the *Coalition of American Public Employees*, a political arm of public employee unions, said the time has passed for a recognizable leader in the mold of the late Martin Luther King Jr. to emerge in the drive for equal opportunity. Much as whites are splintered into different groups, he said, minorities also



James Farmer
Civil Rights Leader

represent a broad spectrum of political leanings, ranging from the militant to the conservative, and thus would not identify with a single leader.

"The black community, like the white community, is not monolithic," he said.

In addition to the growing complexity

of problems, Farmer said, the increasing number of minorities who have moved into the middle class and who have realized, to an extent, opportunities available to whites has contributed to the decrease in civil rights activity.

"A natural tendency, unfortunately, is that people who are making it tend not to want to rock the boat," he said.

But Farmer, noting there is still a sizable block of underprivileged minorities, said he believes recent Supreme Court rulings, most notably the Bakke decision, would touch off a renewed interest in civil rights. The Bakke case questioned the concept of minority quotas.

CALLING the decision an indication of a backlash against the civil rights movement, Farmer said it reflected the much discussed swing toward conservatism in the United States. The Supreme Court, he said, was "responding to the climate of the nation."

"I think the effect is a negative one. I've felt that numerical goals and timetables have been essential to affirmative action."

Meanwhile, James B. McIntyre, chairman of the *West Virginia Advisory Committee* to the U.S. Conference on Civil Rights, which is sponsoring the conference, said the state is faced with specific problems in regard to minority rights.

They include, he said, alleged police abuse in Parkersburg, difficulty in organizing a *human rights commission* in Clarksburg and reports of beatings in the Alderson Federal Correctional Institution for Women.

McIntyre said the conference was intended to provide an impetus for the renewed activism discussed by Farmer.

Friday, September 22, 1978, The Charleston Gazette 7B

Rights Conference Opens Sept. 29

United Press International

Civil rights leader James Farmer and Charleston Mayor John G. Hutchinson will address a Statewide Leadership Conference on Civil Rights Sept. 29-30 in Charleston.

More than 200 people are expected to attend the conference, sponsored by the West Virginia Advisory Committee to the U.S. Commission on Civil Rights.

Among the issues to be discussed are the impact of the recent Bakke decision, housing and urban renewal plans in Charleston, affirmative action efforts in state government, the status of women, and the civil rights implications of measures similar to Proposition 13.

Bakke Case Stirs Civil Rights

United Press International

Charleston

The Supreme Court's controversial Bakke decision is bound to stir renewed interest and activity in the field of civil rights.

That's the opinion of longtime civil rights leader James Farmer, who was in Charleston this weekend for a statewide leadership conference on civil rights.

Farmer, executive director of the Coalition of American Public Employees, said the country is "on the verge of another wave of activity" in response to the Bakke decision, which questions the concept of minority quotas.

"I've felt that numerical goals and timetables have been essential to affirmative action," said Farmer, who founded the Congress of Racial Equality in the 1940s.

The longtime activist said the increasing complexity of civil rights issues is a factor in the lapse of activity since the civil rights movement of the 1960s.

"In the 1960s we dealt with simple issues such as hot dogs at a lunch counter or sitting in the back of the bus," he said. "If you got the hot dog, then you were victorious."

He said today's problems center around how to close the income, unemployment and education gaps between whites and minorities.

"These are not simple questions. No one has a clear answer," Farmer said.

Once the gaps are narrowed, he noted, many families' use interest in the civil rights struggle.

"A natural tendency, unfortunately, is that people who are making it tend not to want to rock the boat," said Farmer.

The increasing diversity of the minority community has also contributed to a pause in civil rights activity, Farmer said, because the splintered factions are no longer likely to mobilize behind a single, recognizable leader such as the late Martin Luther King Jr.

The Herald-Dispatch — Huntington, W. Va., Sunday, Oct. 1, 1978

10A

Bakke To Stir Interest—Activist

CHARLESTON (UPI) — The Supreme Court's controversial Bakke decision is bound to stir renewed interest and activity in the field of civil rights.

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Around the State

ERA Stands Supported

The Associated Press

The West Virginia Advisory Committee to the U.S. Commission on Civil Rights has adopted resolutions supporting West Virginia Sens. Jennings Randolph and Robert C. Byrd for their stand on the Equal Rights Amendment.

The committee, meeting here with civil rights activists for a two-day session, also urged Byrd and Randolph to vote for extension of the deadline for ratifying ERA and to vote against amendments which ERA backers fear would cripple the amendment.

The committee will consider the conference's resolutions in its recommendations to the larger federal commission.

Conferees also resolved to support the West Virginia Women's Commission and called for the state to establish a state commission for the blind. In addition, they asked the state commission to examine procedures of the state Civil Service Commission that they believe discourage female, minority and handicapped applicants.

The state advisory committee was also asked to study how competency-based testing in public schools could be applied without discrimination.

The Herald-Dispatch — Huntington, W. Va., Monday, Oct. 2, 1978

Civil Rights Committee Backs Lawmakers For Stand On ERA

Associated Press

CHARLESTON — The West Virginia Advisory Committee to the U.S. Commission on Civil Rights has adopted resolutions supporting West Virginia senators Robert C. Byrd and Jennings Randolph for their stand on the Equal Rights Amendment.

The committee, meeting here with civil rights activists for a two-day session,

also urged Byrd and Randolph to vote for extension of the deadline for ratifying ERA and to vote against amendments which ERA backers fear would cripple the amendment.

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lutions in its recommendations to the larger federal commission.

Conferees also resolved to support the West Virginia Women's Commission and called for the state to establish a state commission for the blind.

APPENDIX B

Abolishing Segregation in West Virginia

Public Education

Immediately after the *Brown* decision (May 1954) and again after the implementation ruling (May 1955), Governor Marland said West Virginia would follow the decision. The State school superintendent and the State school board also supported compliance.

Of the State's 44 counties with black school-age children, 16 were fully desegregated and 19 partially desegregated within a year of the implementation ruling; others began desegregation the next year.

In 1956 the *Charleston Gazette* commented that "segregation is about over in the Mountain State."

School-Related Groups

Black and white teachers associations merged in October 1954.

Higher Education

The State's two all-black and four all-white public colleges desegregated in 1954, as did its two private all-white colleges.

Elections and Appointments

Blacks had held public office before in the State, but firsts in the mid-1950s included an assistant State school superintendent, a rate analyst at the State insurance commission, and a chairman of the State probation and parole board.

Employment

Union Carbide and Chemical hired its first black professional in 1955, and in the same year a leading Charleston department store hired its first black clerk. In the same period, A&P began hiring blacks for the first time, as part-time clerks.

Organizations

The State Boy Scout council began to admit blacks in 1956.

Housing

In the mid-1950s, two public housing projects in Charleston were desegregated.

Health and Medicine

In 1956 black and white mental hospitals and tuberculosis-care facilities were merged into single centers. Blacks were also admitted for nursing training at St. Francis Hospital to be trained and housed on an integrated basis.

Transportation

Greyhound and Trailways terminals began serving meals to blacks in 1955. The restaurant at the Charleston airport admitted blacks after a court order in 1954.

Recreation

In 1954 Huntington opened four city swimming pools on an integrated basis.

Religion

In 1956 the West Virginia Methodist Conference took steps to desegregate all phases of conference activities. In Charleston in the same year a Baptist youth group held its first desegregated statewide meeting. In Buckhannon in 1954 blacks worshipped for the first time at any of the "white" Protestant churches.

Military

The Governor ordered the National Guard desegregated in 1955, the same year the Reserve Army Officers Assn. in Charleston desegregated.

Hotels, Restaurants, and Theaters

Four of Charleston's largest theaters began integrated seating in 1955. In Beckley in the same year the Lyric Theatre removed its "for colored only" balcony sign, and the largest hotel began admitting blacks.

Source: This chart is adapted from David Loth and Harold Fleming, *Integration North and South* (New York: The Fund for the Republic, 1956), pp. 56, 61, 66, 67, 71, 77, 79, 83, 86, 91, 95-96, 98, 101, and 105. Loth and Fleming group West Virginia with the Southern States.

APPENDIX C

A Statistical Portrait of West Virginia

DEMOGRAPHY AND POPULATION

Population, 1977

1,859,000

1950-60	Annual Change 1960-70	1970-77
-0.8%	-0.6%	+0.9%

Black Population, 1975

64,000

Black Percent of Population			
1950	1960	1970	1975
5.7	4.8	3.9	3.6

Other Races, 1970

American Indian	Philippino	Japanese	Chinese	Other	Spanish Language
751	722	368	373	1,201	6,261

Age Distribution, 1977

Percent Over 65

11.8 (10.9 nationally)

Percent Under 18

29.4 (29.7 nationally)

Institutionalized Persons, 1970

Corrections	2,301
Mental Hospitals	5,235
Chronic Disease Hospitals	613
Homes for Aged	3,954
Juvenile Delinquent Facilities	1,007
Mental Handicap Homes and Schools	60
Physical Handicap Homes and Schools	337
Neglected Children Facilities	771
	<hr/>
	13,841

Urbanization

Percent in SMSAs

1970—38.1 (73.5 nationally)

1976—36.4 (73.0 nationally)

Percent in Towns of 1,000 or More, 1970

47.5 (79.5 in U.S. east of Mississippi River)

SMSAs, 1977

5

Cities Larger than 25,000,

July 1975

7

Cities Larger than 100,000

1975

0

Size of SMSAs, December 31, 1977

Charleston	257,500
Huntington-Ashland (Ky.)	292,600 (145,300 in W. Va.)
Parkersburg-Marietta (O.)	152,800 (92,900 in W. Va.)
Steubenville (O.)-Weirton	164,900 (70,700 in W. Va.)
Wheeling	181,800 (99,500 in W. Va.)

URBAN CONDITIONS

Cities Over 25,000 Population

	Population, July 1975	Black % 1970	Black % Change 1960-70	65 + yrs. 1970	Total Pop. % Chng. 1970-75	Black % of Pub. and Priv. Sch.
Charleston	67,348	10.3	-10.6	12.6	-5.8	13.9
Fairmont	26,000	5.9	-4.3	14.2	-0.4	7.7
Huntington	68,811	5.9	-7.4	14.0	-7.4	8.5
Morgantown	30,318	1.9	21.2	9.4	3.0	2.5
Parkersburg	38,882	1.6	11.1	12.3	-12.0	1.9
Weirton	25,935	4.6	-15.4	8.2	-4.4	7.2
Wheeling	44,369	3.7	-0.2	15.0	-7.9	5.6
STATE TOTAL		3.9	-24.7	11.2	3.2	4.7

	Leading Employment Sector, 1970	Median Family Income, 1969		Poverty Rate, 1969		Rape Rate (per 100,000 pop.)
		Total	Black	Total	Black	
Charleston	Trade (23.6%)	9,316	5,570	13.2	28.1	20.8
Fairmont	Mfg. (26.5%)	8,026	5,831	11.1	18.1	15.4
Huntington	Mfg. (23.1%)	7,963	5,650	14.1	32.6	42.1
Morgantown	Govt. (47.9%)	8,598	5,429	11.6	13.2	16.5
Parkersburg	Mfg. (33.0%)	8,548	8,176	10.4	19.7	5.1
Weirton	Mfg. (52.8%)	10,644	7,842	5.9	16.3	3.9
Wheeling	Trade (25.3%)	8,575	4,827	11.3	39.0	9.3
STATE TOTAL	Mfg. (32.2%)	7,414	4,851	18.1	32.2	9.3

Source: *County & City Data Book, 1977*, pp. 768-79.

APPENDIX C (CON'T)

ECONOMIC CONDITIONS

Income Rank Among States

Per Capita Personal Income

1970	1975	1977
45	38	36

Family Income

1959	1969	1975
39	47	42

Wealthholders (more than \$60,000 personal assets)

	1962	1972
Male	16,100	23,800
Female	6,700	28,300

Percent of Families Below Poverty Level

All families 1959	30.2
All families 1969	18.0
White families 1969	17.5
Black families 1969	32.2
Persons over 65, 1969	39.1
All families 1975	11.5

Nonagricultural Employment, 1977 (thousands of workers)

Total	Mfg	Trade	Govt	Svcs	Transp	FIRE*	Construct
605	124	122	111	84	40	20	36
Unemployment				1974	1975	1976	1977
Percent of labor force				6.9	8.6	7.5	7.1
Percent of insured workers					5.6	4.4	4.4

Ratio of Transfer Payments to Total Personal Income, 1976 (U.S. average equals 100)

Income maintenance transfers	104
Unemployment compensation	65
Retirement and other	142
Total transfer payments	131

* Finance, insurance, and real estate.

EDUCATION

Median School Years Completed, 1976

West Virginia	12.1
U.S.	12.5

Percent of Population Who Are High School Graduates, 1976

	18-24 Years of Age		25+ Years of Age	
	Male	Female	Male	Female
W.Va.	72.7	72.7	49.3	49.8
U.S.	78.2	79.7	64.1	63.5

Illiterate Proportion of Population, 1970

W.Va.	1.4%
U.S.	1.2%

School Enrollments, 1977

Public Elementary	285,000
Public Secondary	120,000
Private approx.	13,000

Minority Students, 1974

12,800 (89% in schools less than 50% minority; 11% in schools 50-100% minority)

Students Transported at Public Expense

75.3%

Schools for the Handicapped, 1976

46

Higher Education, 1976

Enrollment in Public Institutions	69,400
Enrollment in Nonpublic Institutions	10,800
Total Male Students	41,800
Total Female Students	38,400
Male First-Time Students	7,700
Female First-Time Students	8,100

APPENDIX C (CON'T)

POLITICAL LIFE

Incorporated Places
226

Units of Local Government
1966-67
455

1971-72
508

Govts per 100,000 pop.
28.7 (37.9 U.S. average)

Voter Participation

	1960	1964	1966	1968	1970	1972	1974	1976
Presidential	77.9	75.5	—	71.1	—	62.4	—	58.1
Congressional	76.3	73.4	47.1	67.1	40.9	59.1	33.5	51.3

Age Distribution of Voting-Age Population, 1978

18-24	25-44	45-65	65+
16% (18.5 in U.S.)	36.5 (37.7)	30.1 (28.2)	16.6 (15.5)

Black Percentage of Voting Age Population

1960	1970	1976	1978
4.5	3.4	3.3	3.1

Black Elected Officials, July 1978

U.S. Congress	0
State Legislature	1
City and County Officials	14
Law Enforcement Officials	1
Education Officials	0

Sources for Appendix C

U.S. Department of Commerce, Bureau of the Census, *Statistical Abstract of the United States, 1978*, pp. 14, 30, 33, 35, 52, 134, 145, 146, 149, 152, 156, 162, 409, 413, 449, 456, 470, 477, 519, 522, 523, 525, 938-43.

U.S. Department of Commerce, Bureau of the Census, *County and City Data Book, 1977*, pp. 768-79.

U.S. Appalachian Regional Commission, *Appalachia—A Reference Book* (June 1977).

APPENDIX D

Complaints to West Virginia Human Rights Commission

BASIS OF CHARGES OF ALLEGED DISCRIMINATION FOR REPORT YEARS 1977-1978

<u>Basis</u>	<u>Employment</u>	<u>Public Accommodations</u>	<u>Housing</u>	<u>Total</u>
Race	166	22	21	209
Sex	194	13	7	214
National Origin	2	2	0	4
Religion	1	0	0	1
Color	0	0	0	0
Age	65	0	0	65
Blindness	5	0	0	5
Reprisal	11	3	0	14
Totals	444	40	28	512

SUMMARY OF CASES PROCESSED

<u>Basis</u>	<u>Employment</u>	<u>Public Accommodations</u>	<u>Housing</u>	<u>Total</u>
Satisfactory Adjustment	86	9	1	96
No Probable Cause	108	8	7	123
No Jurisdiction	29	1	0	30
Withdrawals	56	2	2	60
Other	62	4	9	75
Public Hearing	0	0	0	0
Totals	341	24	19	384

Source: West Virginia Human Rights Commission, *Annual Report, 1977-78*.

APPENDIX E

Federal Programs in West Virginia

RATIO OF FEDERAL EXPENDITURES TO REVENUES

1975	1976
1.21	1.14

PER CAPITA FEDERAL EXPENDITURES, 1976

Total	\$1,317 (national, \$1,524)
Selected Programs	
DOD	82 (346)
Highways and Sewers	56 (41)
Retirement	517 (449)
Welfare (SSI, AFDC, Food Stamps, unemployment)	115 (119)

CLIENTS OF FEDERAL PROGRAMS, 1977

AFDC	63,000
SSI	42,900
Aged	17,200
Blind	600
Disabled	25,100
Food Stamps	226,000 (est.)
School Lunch Program	249,000 pupils in 1,257 schools
CETA Title I	9,657
Classroom Training	2,561
On the Job Training	1,624
Public Service Employment	561
Work Experience	5,579
CETA Title II	1,525
Public Service Employment	1,525
Other	0
CETA Title VI	3,190
Public Service Employment	3,190
Other	0

Individuals Placed by U.S. Employment Service

Veterans	8
Women	17
Poor	19
Minority Group	5
Older Workers (45+)	3
Youth (less than 25)	24
Handicapped	2
TOTAL	48

ORIGINS OF STATE AND LOCAL GOVERNMENT REVENUES, 1976

Federal	28.8% (21.7 nationally)
State	50.7% (41.9 nationally)
Local	20.5% (36.4 nationally)

Federal Aid to West Virginia State and Local Governments, 1977

Total \$631 million

Selected Agencies

Social and Rehabilitation Service—Public Assistance	114
Social and Rehabilitation Service—Medicaid	50
Office of Revenue Sharing	61
DOT Highway Fund	117
Office of Education—Elementary and Secondary Education	18.7
Environmental Protection Agency	17.9
HUD Public Housing	10.2
HUD Community Development Block Grants	19.2
Department of Labor ETA Manpower	24.5

Sources: U.S. Department of Commerce, Bureau of the Census, *Statistical Abstract of the United States, 1978*, pp. 267, 295, 298, and 357.

U.S. Department of Labor and U.S. Department of Health, Education, and Welfare, *Employment and Training Report of the President, 1978*, pp. 308-312, and 315.

APPENDIX F

Laws Enforced by the U.S. Equal Employment Opportunity Commission

Title VII, Civil Rights Act of 1964, as amended

Citation: P.L. 88-352, July 2, 1964, as amended by P.L. 92-261, Mar. 24, 1962, 42 U.S.C. 2000e-2000e-13, 2000e-15, and 2000e-17 (Supp. II, 1972).

Description: Prohibits discrimination in classification, selection, hiring, upgrading, benefits, layoffs, or any other condition of employment. The act created and empowered the Equal Employment Opportunity Commission to seek out and eliminate unlawful employment practices in accordance with procedures prescribed in the law.

Bases: Race, color, religion, sex, national origin.

Targets: Private employers with 15 or more employees, State and local governments, labor organizations, employment services, apprenticeship systems.

Agency Roles—

Independent: Equal Employment Opportunity Commission. Department of Justice.

Regulations: 29 C.F.R. 1601, et seq.

Section 717, Equal Employment Opportunity Act of 1972

Citation: P. L. 92-261, Mar. 24, 1972, 42 U.S.C. 2000e-16 (Supp. II, 1972).

Description: Requires that all personnel actions affecting employees or applicants for employment in the Federal Government be made free of discrimination. Federal departments and agencies are required to develop an affirmative action program for all employees and applicants for employment. The EEOC is required to make an annual review of these programs.

Bases: Race, color, religion, sex, national origin.

Targets: Federal departments and agencies.

Agency roles—

Supervisory: Equal Employment Opportunity Commission

Administering: Federal departments and agencies.

Regulations: 5 C.F.R. 713.

Executive Order 11478, Equal Employment Opportunity in the Federal Government, as amended

Citation: 33 F.R. 12985, Aug. 8, 1969; 42 U.S.C. 2000e note (1970).

Description: Sets forth U.S. policy of providing equal opportunity in Federal employment, prohibiting discrimination in employment, and promoting equal employment opportunity through affirmative action programs in each Federal department and agency. Federal departments and agencies are required to develop affirmative action programs for all employees and applicants for employment. The EEOC is required to make an annual review of these programs.

Bases: Race, color, religion, sex, national origin.

Targets: Federal departments and agencies.

Agency Roles—

Supervisory: Equal Employment Opportunity Commission

Administering: Federal departments and agencies.

Regulations: 5 C.F.R. 713.

Equal Pay Act of 1963, as amended

Citation: P. L. 88-38, June 10, 1963, 29 U.S.C. 206 (d) (1970).

Description: Amended the Fair Labor Standards Act of 1938 (29 U.S.C. 201, *et seq.*) to prohibit employers from compensating members of one sex at a lower rate than members of the other sex for equal work.

Bases: Sex.

Targets: Private employers, State and local governments, labor unions in their capacity as employers.

Agency roles—

Independent: Equal Employment Opportunity Commission

Regulations: 29 C.F.R. 800.100, *et seq.*

Section 501, Rehabilitation Act of 1973, as amended

Citation: P.L. 93-112, Sept. 26, 1973, 29 U.S.C. 791 (Supp. IV, 1974).

Description: Established within the Federal Government the Interagency Committee on Handicapped Employees which, along with the EEOC, reviews the employment practices of the Federal Government with respect to handicapped individuals and makes recommendations for legislative and administrative changes to foster such employment practices. The act requires Federal agencies to develop affirmative action programs for the employment of individuals who have received rehabilitation services under a program for handicapped individuals.

Bases: Handicap.

Targets: Federal departments and agencies.

Agency roles—

Independent: Equal Employment Opportunity Commission; Interagency Committee on Handicapped Employees.

Administering: Federal departments and agencies.

Regulations: Federal Personnel Manual Letters 306-5, -7, -8, -10, and -12.

APPENDIX F (CON'T)

Age Discrimination in Employment Act of 1967, as amended

Citation: P.L. 90-202, Dec. 15, 1967, as amended by P.L. 95-256, Apr. 6, 1978, 29 U.S.C. 621-633, 634.

Description: Prohibits employers, employment agencies, and labor organizations from discriminating in employing any individual because of such individual's age. These prohibitions are limited to individuals who are at least 40 years of age but less than 70 years of age.

Bases: Age.

Targets: Private employers, State and local governments, labor organizations, employment agencies.

Agency roles—

Independent: Equal Employment Opportunity Commission

Regulations: 29 C.F.R. 850, *et seq.*

1974 Amendments to the Fair Labor Standards Act

Citation: P.L. 93-259, Apr. 8, 1974, as amended by P.L. 95-256, Apr. 6, 1978, 29 U.S.C. 633 (a).

Description: Prohibits age discrimination in Federal Government employment. This prohibition is limited to persons who are at least 40 years of age. The act does not set an upper age limit.

Bases: Age.

Targets: Federal departments and agencies.

Agency roles—

Independent: Equal Employment Opportunity Commission; Library of Congress.

Administering: Federal departments and agencies.

Regulations: 5 C.F.R. 713.501.

Source: Updated and adapted from U.S. General Accounting Office, *A Compilation of Federal Laws and Executive Orders for Nondiscrimination and Equal Opportunity Programs* (Aug. 2, 1978), pp. 5-25.

APPENDIX G

President's Reorganization Plan

COMPARISON OF CURRENT AND PROPOSED ALLOCATION OF EQUAL EMPLOYMENT AUTHORITIES

CURRENT DISPERSED RESPONSIBILITY

EQUAL EMPLOYMENT AUTHORITIES

AGENCY	PROGRAM	DISCRIMINATION COVERED	EMPLOYERS COVERED	AGENCY
EEOC	Title VII	Race, Color, Religion, Sex, National Origin	Private and Public Non-Federal Employers and Unions	EEOC
Labor (Wage and Hours)	Equal Pay Act, Age Discrimination Act	Sex Age	Private and Public Non-Federal Employers and Unions	EEOC
Civil Service Commission	Title VII, Executive Order 11478, Equal Pay Act, Age Discrimination Act, Rehabilitation Act	Race, Color, Religion, Sex, National Origin, Age, Handicapped	Federal Government	EEOC
EEOCC	Coordination of All Federal Equal Employment Programs			EEOC
Labor (OFCCP)	Vietnam Veterans Readjustment Act, Rehabilitation Act	Veterans Handicapped	Federal Contractors	
Commerce Defense Energy EPA GSA HEW HUD Interior SBA DOT Treasury	Executive Orders 11246, 11375	Race, Color, Religion, Sex National Origin	Federal Contractors	Labor (OFCCP)
Justice	Title VII, Executive Order 11246, Selected Federal Grant Programs	Race, Color, Religion, Sex National Origin Varied	Public Non-Federal Employers, Federal Contractors and Grantees	Justice

* A number of Federal Grant statutes include a provision sharing employment discrimination by recipients based on a variety of grounds including race, color, sex, and national origin. Under the reorganization plan, the activities of these agencies will be coordinated by the EEOC.

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