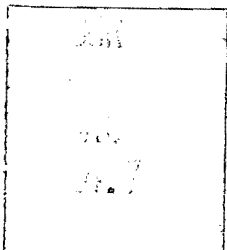


Civil Rights Developments in Maine, 1981

February 1982

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



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CIVIL RIGHTS DEVELOPMENTS IN MAINE, 1981

Preface

Nationally, many observers characterized 1981 as a year of setbacks and retrenchment in the area of civil rights. There was a resurgence of organizations such as the Ku Klux Klan, while at the same time, Federal budget cuts and changes in the Federal law enforcement structure created fears that the government was abandoning efforts to bring racial minorities and other discrimination victims into the mainstream, and instead was ready to accept a return to neglect and separatism. On the bellwether issue of school desegregation, for example, Congressional proposals virtually to eliminate school busing for desegregation and to concentrate instead on "the quality of education" raised the spectre of a return to the days of "separate but equal."

The way racial isolation and ignorance may lead to fears and prejudice is suggested by an episode that occurred in Livermore in March. A rumor circulated that Black Muslims (who generally have come to be regarded as an industrious and law-abiding group) intended to purchase a local farm on which they would raise vegetables and operate a summer camp. This prospect was apparently disturbing to a number of Livermore residents, despite the innocuous nature of the rumored enterprise. As the local paper reported, a number of residents met to plan opposition to the purchase, and even approached the selectmen to request preventive legal action.

This alarm apparently owed more to rumors and fears than to the facts. One fact about race relations in the town is that the 1980 Census showed Livermore with but one black citizen. The residents' limited experience with black attitudes and aspirations perhaps made it inevitable that the rumor would engender speculation that would lead to fear and resistance. Many civil rights leaders believe that a national retreat from integration of schools, housing, and the workplace will lead to a similarly volatile condition of racial separation, misunderstanding, fear, and hostility across the country. Concern about this trend was expressed on a number of occasions during the past year by the U.S. Commission on Civil Rights.

The Commission also examines discrimination due to religion, gender, age, and handicap, and it noted that national developments during 1981 also included much that was disturbing to women, the elderly, and the handicapped. These groups, like racial minorities, rely heavily on such programs as job training and food stamps, whose budgets have been cut sharply.

Such groups and minorities also are jeopardized by the curtailment of Federal enforcement activities, and this was a matter

of concern to Maine's delegation to Congress. For example, Senator William Cohen spoke vigorously against proposed limits on the government's ability to enforce school desegregation and Congresswoman Olympia Snowe questioned the qualifications of a little-known nominee to an important Federal civil rights post. On another front, the entire delegation and the Governor urged the U.S. Department of Justice to act to expedite Supreme Court review of the ERA recission ruling of an Idaho Federal District Court judge.

In contrast to the national trend, actions by Maine's legislature and State agencies show civil rights progress on a number of fronts. For instance, the Maine Women's Lobby observed that despite several disappointments, "Maine women fared quite well this [legislative] session." However, change was not uniformly in a progressive direction. The Maine Department of Indian Affairs ceased operation in 1981, and Indian advocates were particularly concerned about the closing in April of the Department's office in Houlton, which provided a variety of services to off-reservation Indians.

These and other developments are detailed below.

The Advisory Committee further hopes in this report to identify emerging issues, particularly the possible effects in Maine of Federal actions and national trends. The effects of many of last year's national developments will only be felt at the State and local levels in 1982, and the Advisory Committee intends to examine and comment upon these as the year progresses.

The Advisory Committee wishes to acknowledge the cooperation of the Maine Human Rights Commission, Maine Commission for Women, and Bureau of Maine's Elderly in supplying material for this report. The MHRC's newsletter "Update" and the women's commission's newsletter "Inform" are particularly valuable sources of information.

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I. "PROTECTED" GROUPS IN MAINE

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

The statement makes clear that the government's approach to determining whether and which groups need special consideration has been refined over time, and continues to evolve. For instance, the eligibility of the 347 members of Maine's Houlton band of Maliseet Indians for Federal grants from the Federal Bureau of Indian Affairs and from the Indian Health Service was changed by the land claims settlement, and such assistance was awarded during 1981.

The Commission's statement also carefully sets forth the role and limits of statistical disparities in documenting discrimination. This clarification, and the availability of new Census data, should lead to more appropriate use of quantitative information in the analysis of whether discrimination is occurring and whether groups merit special protection.

New statistical profiles of minorities began to emerge in 1981 as data from the 1980 Census were issued. The 1980 Census continued to show very small numbers of racial minorities in Maine, with a total of only about 1.3 percent of Maine's population represented by: blacks (0.3 percent), Native Americans (0.4 percent), Asian/Pacific Islanders (0.3 percent), and "Other Races" (0.4 percent). Hispanics were found to total 0.4 percent of the population, but there is some overlap of this language group with the racial groups, so the aggregate racial minority and Hispanic population is probably in the vicinity of 1.5 percent.

The count of 5,005 Hispanics represented an increase of about 25 percent over 1970. The black count of 3,128 was up 11.7 percent from the previous Census, reversing the drop of 15.6 percent recorded from 1960-70.

There was a large percentage increase in the count of the peoples that the Census terms, "Asian/Pacific Islander" -- Japanese, Chinese, Filipino, Korean, Asian Indian, Vietnamese, Hawaiian, Guamanian, and Samoan. The number climbed 192 percent from 1,007 to 2,947. The Census category "Other" also includes some Asian peoples (for example, Cambodian and Pakistani), and this classification jumped more than 500 percent, from 770 to 4,648. (The 1980 counts are not strictly comparable to 1970 since the classifications have changed somewhat.) The influx of Vietnamese refugees reportedly has given way to Lao and Khmer immigrants.

The 1980 Census figure of 4,087 for Native Americans was significantly higher than the 1970 count of 2,195. It was closer to the totals in unofficial surveys frequently cited by Indian groups, who long had criticized as far too low such other counts as the 1971 Maine Indian Census (2,254) and the Department of Labor's projection for 1981 (2,000).

According to the 1980 Census, fewer than 30 percent of Maine's Native Americans live on the State's three reservations.

The overall growth rate for the racial minorities and Hispanics was 119 percent, compared to a general population growth of 13.2 percent. However, this startling percentage rise still left Maine with only 14,810 residents from racial minorities.

The Census counts of minorities differ markedly from "unofficial projections" published in recent years by the Maine Department of Labor (MDOL):

	<u>Blacks</u>	<u>Others</u>
1980 Census	3,128	11,682 "Native Americans," Asian/Pacific Islanders," and "Other"
MDOL 1981 Projection	2,415	3,159 "Native Americans," "Oriental," and "Other Nonwhite"
MDOL 1982 Projection	2,915	3,739 "Native Americans," "Oriental," and "Other Nonwhite"

It is puzzling that the latest MDOL projections were published late in 1981 yet failed to reflect 1980 Census information available as early as March.

The Advisory Committee expects that the 1980 Census eventually will provide a clearer portrait of Maine's largest ethnic group, Franco-Americans. Reliable, specific data about New England's Franco-Americans, when subjected to the type of analysis set forth in the Commission's statement on affirmative action, may determine the validity of claims that Franco-Americans merit the special status of such groups as blacks, Native Americans, and women. However, profiles of ethnic groups and of age groups have not yet been released by the Census Bureau, and neither have income, education, or housing data. Federal budget cuts are delaying the process.

The delay also hampers analysis of gender disparities, but last year did see the publication of one new estimate of the status of women in Maine. A University of New Hampshire researcher, Kersti Yllo, developed several indices of the status of women in the

50 States. In economic status of women, she ranked Maine in the middle of the States; regarding educational status, Maine ranked 15th; for political status, Maine was 19th; in legal status, Maine ranked 28th. Overall, Maine ranked near the middle of the 50 States; among New England States, this placed Maine ahead only of Rhode Island.

While the 1980 Census eventually should significantly improve understanding of the status of racial minorities, women, and the elderly, it will not add much to the profile of the handicapped. A "disability" item on Census questionnaires was distributed on a sample rather than a complete-count basis, and it does not distinguish types of disabilities. The Handicapped Rights Project in Portland points out that these distinctions are crucial; for example, efforts to improve accessibility typically are aimed at the mobility-impaired, while the sensory-impaired receive less consideration. The Handicapped Rights Project asserts that the number of handicapped individuals in the State exceeds the size of the racial and ethnic minorities. One estimate places the number of handicapped in Maine at 90,000.

II. EQUALITY OF ECONOMIC OPPORTUNITY

As has long been the case, policymakers as well as members of disadvantaged groups continued in 1981 to treat access to employment as the key factor in improving the status of discrimination victims. There were renewed State government efforts to improve employment opportunities, but also new evidence of the persistence of higher unemployment among minorities and women. The Maine Department of Labor issued figures in 1981 that indicate that, in the previous year, the average annual unemployment rate had been 8.3 percent for women and 13 percent for minorities, in contrast to an overall rate of 7.8 percent.

State Government Employment

The Maine Department of Personnel changed its rules last year to give greater consideration to applicants from protected groups. When a State agency has documented that it "underutilizes" a certain group, and no member of that group is on the usual six-candidate list for an opening, the agency can look lower on the candidate register to find such a person to consider for the job. This is called "expanded certification."

State employees also were the focus of a measure passed by the legislature. The "flex-time" bill makes part-time work, job-sharing, and flexible working hours available to State workers, and should benefit elderly workers and women with children. The measure covers five percent (560) of the State's classified jobs. In the fall of 1981 polling of workers about their work-hour

preferences began. However, implementation has been piecemeal pending the completion of the work of a labor-management committee developing rules.

Opportunities for Women

The Maine Department of Labor projects that in 1982 women will represent 45.2 percent of Maine's labor force; 52.8 percent of Maine's women will be employed. More and more women are finding it necessary to support themselves, but they continue to be clustered in the lower-paying jobs. Consequently, in recent years evidence has mounted of a "feminization of poverty."

In response to this trend, policymakers have sought not only to limit sex discrimination but also actively to expand opportunities for women. These initiatives are aimed at improving employability of women per se, and also at opening up nontraditional professions. However, according to Jackie Potter of the Maine Commission for Women, "In the past legislature, there was little understanding of the particular employment needs of Maine women. The feminization of poverty asks us to take a closer look at this area." The trend in Maine is discussed to some degree in Women, Work, and Welfare, a report issued in September 1981 by the Work Opportunities Committee of the Maine Department of Human Services. The report describes current efforts in Maine concerning income assistance, employment, training, education, economic development, and program coordination, and it suggests improvements.

The durability of gender segregation is evident in the fact, reported by MDOL, that women filled 95 percent of all new nonmanufacturing jobs produced in Maine from 1977 to 1980. These jobs chiefly are in retail trade and services, lower-paying occupations long open to women. Women now occupy about two-thirds of all service positions in Maine.

The Maine Commission for Women, in its roles as advisor and advocate, stressed employment issues during 1981. It published a "Job Search Guide," advised the Department of Educational and Cultural Services about sex equity in vocational education, held a conference on employment of women by the media, and wrote legislation (subsequently withdrawn) to conduct a study of comparable worth in State employment.

The Comprehensive Job Opportunities Act of 1981 targets recipients of AFDC for a coordinated training and placement effort by the Departments of Human Services, Education, and Labor. Jackie Potter called it the year's "most significant bill." One component is a new emphasis within the Statewide Apprenticeship Program on getting women into apprenticeships, and two women have been placed in nontraditional apprenticeships. The advisory council for this program largely has adopted as its agenda the recommendations in the report of the Work Opportunities Committee.

The status of "displaced homemakers" has been of particular concern to those working to improve employment opportunities for women. "Displaced homemakers" are women who have been in the home as wives and mothers through most of their adult lives and suddenly are faced with the necessity of supporting themselves. The Maine Commission for Women reports that there are between 19,000 and 22,000 displaced homemakers in the State. As 1981 began, Maine had two programs -- "In Transition" and the Women's Training and Employment Program (WTEP) -- addressing the employment needs of this group. A series of complicated legislative proposals and actions transformed this situation.

WTEP had operated in five communities (Machias, Rockport, Belfast, South Paris, and Rumford) through a \$250,000 Federal grant. A proposal to expand it into a permanent Women's Training and Employment Division in the Maine Department of Labor failed in the legislature. However, the legislature did appropriate \$30,000 for each year of the biennium for the Department of Labor to contract with "In Transition" to provide services to displaced homemakers. Although this arrangement will serve more communities (Bath, Bangor, Lewiston, Farmington, Augusta, and Waterville), its effectiveness may be limited by the fact that the women's participation is part-time rather than full-time. The Work Opportunities Committee said of this funding arrangement, "It is unfortunate that the two programs were not perceived by the legislature as being complementary rather than competing programs, and both funded accordingly."

Another crucial element of employment opportunity for women is child care, as the U.S. Commission on Civil Rights documented in its June 1981 report, Child Care and Equal Opportunity for Women. The report asserted that "women are often kept in poverty and dependence by the absence of adequate child care services." A bill to create tax credits for firms offering or subsidizing day care for their employees' children passed the Maine House of Representatives but failed to pass the Senate, apparently because Senators felt the loss of revenue to the State was unacceptable.

Freedom from sexual harassment, coercion, and intimidation at work also has become an important concern to women. The Maine Human Rights Commission (MHRC) recently reported that in the 12 months after its regulations on sexual harassment were implemented (October 1980) it received more than 40 complaints. Executive Director Pat Ryan said that the complaint volume is growing "very rapidly." An investigator for the MHRC said that the offenders usually act repeatedly, including harassing other employees, so that the accusations often can readily be corroborated. The MHRC acted to help employers understand its handling of sexual harassment complaints by developing five criteria for assessing such complaints. (Administrative aspects of the MHRC's complaint and enforcement activities are described in Section VIII below.)

One of the most gender-segregated types of employment in Maine and elsewhere has been law enforcement. The U.S. Department of Justice threatened court action against the Maine State Police in 1981 unless corrective action were taken to employ more women. At the time, only one officer (0.3 percent of sworn personnel) was a female. The State responded that no new troopers of either gender had been hired in the previous two years; the total force had declined in that period; the force had already dropped an objectionable height requirement and was validating its written exam; and programs aimed at prospective female troopers had been established at the Criminal Justice Academy. Twenty-nine women had attended one such session. (Early in 1982, the first new class of troopers in five years was enrolled, and included two women.)

Sex discrimination by the police was also an issue in Auburn. In a unanimous decision, the Maine Supreme Judicial Court (SJC) concluded a two-year sex discrimination suit by directing the City of Auburn to hire the two female plaintiffs as police officers if they could pass agility and psychological tests. A lower court had already called for immediate hiring with back pay and retroactive seniority. The suit, which had been brought by the MHRC, has been remanded to State Superior Court for implementation. One of the plaintiffs started work on May 4.

The use of women guards at the Maine State Prison in Thomaston reportedly has proceeded without incident. The practice began in 1980 subsequent to a consent decree produced by a suit by the MHRC. However, a female guard did sue last year for back pay and benefits based on her allegation that prison authorities had discriminated illegally when they initially turned her down for employment in 1977; she lost the claim but is appealing the decision. In addition, male guards last year acted to reopen the consent decree.

Age Discrimination

The efforts of the Bureau of Maine's Elderly to counter age discrimination and assure the civil rights of older people in Maine focused during 1981 on employment. The Bureau and the MHRC issued a joint study, The Status of Older Workers in Maine State Government: Analysis and Recommendations, which found that, even though Maine outlawed mandatory retirement in 1978, only 2 percent of State government workers are over 65.

Staff of the Bureau also met with a State Department of Personnel training officer to set up training programs for affirmative action officers and other personnel staff on dealing with age discrimination. The Department's "expanded certification" provision (described above) covers older workers.

The Bureau also prepared a report on disparities between wages paid elderly enrollees in State-run work programs as compared to programs conducted in the State by national sponsors. Four national

organizations used Maine State Department of Labor money for these projects in Maine under the Federal Senior Community Service Programs (Title V, Older Americans Act). The national sponsors pay the minimum wage, while the State adheres to the principle of equal pay for equal work. The dispute centers on whether the programs are employment programs (which is the State's view) or training programs, and whether a higher wage serves as a disincentive for the enrollees to move on to other jobs. The Bureau pointed out that the placement rate for its enrollees is as good as that in the programs run by national organizations, so the disincentive claim should not hold; the Bureau asserted that the national organizations are practicing age discrimination. The issue remains unresolved.

Minority Economic Development

The most visible form of minority economic development in Maine last year was more than 100,000 acres of tribal land purchases as the tribes used their trust funds to augment their holdings. The Penobscots pursued the more aggressive effort, buying 78,000 acres (taxable at an annual rate of about \$60,000); the Passamaquoddies in contrast began selecting parcels more slowly to put into trust. For the most part, land put into trust comes from unorganized townships and is nontaxable; however, the tribes have purchased more taxable land than trust land. Although the land claims settlement established a \$900,000 trust fund for the Maliseet Indians to purchase 5,000 acres for a reservation, the Maliseets did not purchase any land during 1981.

Contrary to popular expectation, individual Indians have not been suddenly enriched by the land claims settlement. For example, the disbursement of trust fund interest to individual Penobscots was \$339 (\$837 for elderly) for the first quarter of 1981 and \$224 (\$600 for elderly) for the second quarter. The Penobscots disbursed 70 percent of the interest and reinvested 30 percent; the Passamaquoddies disbursed 100 percent. An Act of Congress would be necessary to authorize disbursement of the trust fund itself. The land claims funds open many opportunities, but the future security of individual tribal members has hardly been guaranteed. The tribes recognize that carefully-planned economic and job development will be necessary if the funds are to overcome long-standing problems. For example, the Central Maine Indian Association asserted in January 1981 that the Indian unemployment rate was 47 percent.

III. EQUAL ACCESS TO HOUSING AND PUBLIC ACCOMMODATIONS

The Maine Human Rights Commission received funds from the U.S. Department of Housing and Urban Development for a year-long education effort in 1982 on fair housing, which commenced in 1981 and will continue in 1982. Elements of the project include technical assistance to the Maine Real Estate Commission and review

of the fair housing components of licensing examinations for real estate professionals. Such efforts are timely in light of such recent changes as the 110th Maine Legislature's amendment of the Maine Human Rights Act to prohibit discrimination against a tenant because a child or children will be occupying a rental unit. The measure, which became effective on September 18, provides that landlords may set aside 25 percent of their units for families without children. The set-asides first must be registered with the MHRC.

Maine's Indians have long been the target of special State housing programs, but as part of its general withdrawal from services to Indians, the State Legislature did not appropriate funds in 1981 for the Penobscot and Passamaquoddy tribal housing authorities. The legislature asserted that the land claims settlement relieved the State of this obligation, but the tribes contend that the settlement specifically provides that housing services contracts remain in effect. The tribes have taken the matter to Federal District Court, where arguments were scheduled to be heard in February 1982.

Housing rights of the handicapped were also in dispute in 1981. Since the Pineland Consent Decree of several years ago, Maine's Bureau of Mental Retardation has acted to move retarded residents of Pineland Center into group homes in residential communities. Some communities have refused to authorize such homes on grounds they violate single-family zoning. Advocates for the retarded have called this discrimination. However, in 1981 the Maine Supreme Judicial Court decided in a suit against the City of Brewer that single-family zoning was not illegal discrimination against the handicapped, even though group residences thus were prohibited.

Accessibility by the physically handicapped to buildings was improved when the legislature adopted a standard of building construction. The requirement applies to buildings constructed or renovated after January 1, 1982, and relies on parts of the American National Standards Institute's "Specification for Making Buildings and Facilities Accessible to and Usable by Physically Handicapped People." The action complements existing provisions of the Maine Human Rights Act regarding elimination of architectural barriers in privately-owned, publicly-used buildings.

In addition to protecting housing rights, Maine, like most State governments, affects housing conditions and choices by the ways in which it provides financial assistance.

The legislature passed a bill authorizing the State Department of Human Services to use \$1.2 million in Medicare funds during the next two years (1981-82) for home-based case/personal care services for the elderly and disabled. This change will permit many elderly and disabled persons to continue to live in their own homes and with their families, rather than in nursing homes or other institutions.

Thirteen states have similar arrangements, and the city of Portland had undertaken a pilot program of this type for the handicapped.

Previously, Medicare funds had subsidized only institutional care. Organizations of the elderly assert that it is less expensive to hire home care workers for daytime hours than it is to maintain full-time institutionalization. Moreover, they allege that the previous policy led to premature institutionalization. According to the Maine Committee on Aging, which drafted the legislation, 7.7 percent of Maine's elderly are institutionalized, as compared to five percent nationally. More than a thousand persons attended the hearing on changing the funding arrangement.

IV. EQUALITY OF EDUCATIONAL OPPORTUNITY

Language Minorities

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

Maine's schools have received Title VII funds for about 10 years. During most of this period the focus has been on students raised in homes where an Indian language or French was spoken. In recent years bilingual education in Southeast Asian languages also has been funded. During 1981, the Maine Department of Educational and Cultural Services began to publish its "notice of rights" and several other legal documents in English, French, Lao, Khmer, and Vietnamese, and a Passamaquoddy translation is being prepared. The Maine Department of Educational and Cultural Services received \$11,609 in Title VII funds for Fiscal Year 1981, its third program year. The Department's Title VII funds have been used for technical assistance to schools with Title VII programs and to inform other schools about Title VII and assist them in developing programs.

Also, the University of Maine-Orono received a Title VII grant of \$150,000 for a teacher-training program in French bilingual education. The three-year program is for Maine teachers only.

However, even though Title VII will continue to support services for bilingual education, and although French bilingual programs continue to operate in a number of school systems, no elementary or secondary schools in Maine were awarded Title VII funds for French

programs in 1981-82. Local funds will now have to support such programs, reflecting a shift in Federal emphasis that was first felt last year on bilingual education in the St. John Valley. (In operation since 1970, the St. John Valley program was the only bilingual program in the Nation to have been validated by the National Diffusion Network, which identifies "special programs that work" and are replicable.)

One unique French bilingual program did get underway in 1981. A \$65,000, three-year, Title VII grant was given to the Baxter School for the Deaf for deaf students from French backgrounds. "Project FACET" involves 34 students (about one-third of the Baxter School) and their families as well.

The currently funded Indian bilingual programs are the Wabanaki Bilingual Education Project in Indian Township, where 99 elementary school children are being taught in the Passamaquoddy language in the final year of a three-year project, and the bilingual program of the Pleasant Point Indian Schools, a similar program for Passamaquoddy children now in the first of a projected three years.

During the current school year, Title VII is supporting bilingual education for 90 Indochinese children in Portland's schools in the Portland Multilingual Project. The program is in the second of three years. According to the director of the program, most children enter "mainstream" classes in two or three years.

Although Title VII is important, as Maine has become the home of significant numbers of Southeast Asian immigrants in recent years, a second Federal language program actually has involved more school districts. This is the Transition Program For Refugee Children. More than 900 Indochinese have settled in the State. As of October 1981, the Maine Department of Educational and Cultural Services had recorded 289 refugee children spread through 25 Maine school districts. Educational and Cultural Services Commissioner Harold Reynolds alerted school districts of the need to develop suitable programs, and he stated explicitly to school superintendents in an "informational letter" that limited English ability of itself is insufficient reason to place a child in special education.

During the 1980-81 school year, the Transition Program for Refugee Children provided Maine's schools with \$36,082 for Lao, Khmer, and Vietnamese children (at a rate of \$164 per child) and \$5,005 for Cuban refugee children (at a rate of \$310 per child). For 1981-82, a grant of \$46,251 was received; no Cubans are participating.

The Maine Department of Educational and Cultural Services also receives funds under Title IV of the Civil Rights Act of 1964 for "national origin desegregation." The current grant -- \$56,000 for the program year beginning July 1, 1981, an increase from \$40,000 the previous year -- underwrites technical assistance to schools

around the State that serve "limited English proficient" students. Schools are eligible to receive such assistance even for only a single student, and for any language and any grade level. The technical assistance includes assessments for children's language dominance; training of teachers and preparation of instructional materials in English as a Second Language (ESL); development of bilingual-bicultural programs; and programming to comply with the U.S. Supreme Court's Lau decision on bilingual education. Already in the current program year the department has sponsored six conferences on these issues, and has received assistance requests from schools in nine counties.

Sex Equity

The career preparation programs for women described in the section on "Economic Opportunity" are being complemented by educational efforts to improve general awareness of the role of working women in society. One emphasis is to break down gender-stereotyping by making sure that higher education includes the historical contributions of women to the professions. A pilot program that had been conducted at the University of Maine at Orono matured last year into the "Leadership for Educational Equity Program" funded by the Women's Educational Equity Fund. According to Dr. JoAnn Fritsche, the co-chair of the program, "Women's studies...can be done as a separate program, which is very expensive, or it can be done through mainstreaming or infusion, which we are trying to do here." Faculty from four separate disciplines -- humanities, social sciences, education, and science -- have joined to develop the program, stressing the importance of introductory courses in eliminating gender role stereotyping. A model and manual developed in the program will be field tested at a minimum of five other colleges in northern New England. In addition to curriculum development, the project focuses on the key roles of administrative and faculty "opinion leaders" in building support for this approach to education.

Handicapped Children

The Maine Department of Educational and Cultural Services prepared new regulations for participation of handicapped children in summer special education. The Office for Civil Rights in the U.S. Department of Education had found that the old regulations violated Section 504 of the Rehabilitation Act of 1973, and Pine Tree Legal Assistance, Inc., had sued in U.S. District Court. A number of local school systems also had been named in the complaint, which concerned the rights of children with severe mental, emotional, or physical disabilities. The regulations extend the maximum length of State funding of such education.

Indian Scholarships

A legislative action of concern to members of Maine's Indian

tribes was the termination in July of the Indian Scholarship Fund, which had operated since 1972. The program had supported about 80 students annually in secondary, vocational, and college education. Federal funds from the Bureau of Indian Affairs will offset part of the loss of the \$50,000 program, but eligibility and use requirements for the Federal money are stricter. The Federal aid is limited to members of the three federally-recognized tribes -- Penobscots, Passamaquoddies, and the Houlton band of Maliseets. In addition, assistance for vocational education is more limited under the Federal program than was the case through the State.

Minority History

While educational opportunities for Indians may be narrower, the treatment of Indian history in the public schools was broadened in 1981 as a new text, Maine Dirigo, "I Lead," went into use. As many as one-third of the State's public junior high school students used the book last year. Wabanaki tribal members participated in the writing of several chapters of the text, which incorporates the Indian perspective on American history rather than only the traditional viewpoint of the immigrant and settler groups.

Another resource for secondary schools is an interdisciplinary approach to Franco-American studies developed by the University of Maine-Orono and implemented at Waterville High School. The English, French, social studies, and guidance departments of the high school were involved in this "Canadian/Franco-American Institute." The approach is described in two teaching manuals developed by the University, Consider Canada and Initiating Franco-American Studies. These materials are being distributed throughout Maine and elsewhere in New England.

V. EQUAL JUSTICE UNDER LAW

Whether police protect and treat members of all groups equally was the subject of the Civil Rights Commission's 1981 report, Who Is Guarding the Guardians? Although the Commission's report dealt primarily with racial minorities, one notorious police abuse in several cities across the country has been unwarranted strip searches of women, and it has been the subject of citizens' complaints and suits. Last year, the city of Portland adopted guidelines on strip searches as a response to a suit brought in 1979 with the assistance of the Maine Civil Liberties Union (MCLU). The defendant had been arrested, strip-searched, and incarcerated but was never charged.

Another sex discrimination issue is whether the law and police treat domestic violence victims as seriously as they do victims of street crime. Both the Maine Advisory Committee and the MCLU issued studies of Maine's new domestic violence law last year, and judged

it to have greatly improved the protection of battered women, despite uneven implementation. (See Section IX.)

In recent years, law enforcement authorities have come to recognize that preventing domestic violence involves not only apprehension of perpetrators but efforts to protect victims and potential victims. This approach has been applied in Maine and in other jurisdictions, typically at the initiative of private groups who later received official support.

In 1981, the Maine Legislature appropriated \$150,000 in the Part I budget and \$84,000 in Part II to fund services to victims of domestic violence. The programs are being administered by the Department of Human Services. The additional funds support programs in the Dover-Foxcroft and Camden-Rockland areas and in Washington County, and allow the maintenance of counseling positions previously funded by CETA.

The Federal VISTA (Volunteers In Service To America) program last year accepted a proposal to participate in providing services to domestic violence victims in Maine. Five VISTA workers are now working with the Maine Coalition for Family Crisis Services, which consists of nine organizations providing shelter and crisis intervention services to domestic violence victims in Maine. The Coalition coordinates services and information, refers victims to other services, compiles data on and educates the public about domestic violence, and helps local groups attempting to provide services to victims.

An innovative approach to combatting juvenile crime came to an end in August when Portland's Restitution Alternative Program closed its doors. The program aimed at getting juvenile offenders to provide restitution for crimes and to assist victims. The Federal government failed to renew funding, even though it earlier had characterized the Portland project as a model among 83 such pilot programs nationwide. Requests for State and private support were unsuccessful.

VI. POLITICAL PARTICIPATION

The Maine Legislature last year considered a joint resolution to amend the U.S. Constitution to provide full, voting, Congressional representation for the District of Columbia. The House passed it, but the resolution failed in the Senate.

The Maine Commission for Women last year continued its effort to facilitate appointment of women to State boards and commissions. The Commission maintains a "talent bank" of potential appointees.

Of Maine's 184 legislators, 42 are women. The Maine Senate,

with six women members, reportedly leads the Nation in this regard. Moreover, State Senator Barbara Trafton claims that "women legislators sponsor more bills, get more passed, and are on more committees than their male counterparts."

A mid-year count by Davis Rawson in the Bangor Daily News found that women account for only 15 percent of the gubernatorial cabinet and about 7 percent of the judiciary. Vacancies on the State Supreme Judicial Court created hopes that the Governor might appoint a woman, but he did not. More disturbing was the rejection by the legislature's judiciary committee of the Governor's female nominee to a district court seat, an unprecedented rebuff.

The legislature approved the reappointment of Dr. Stanley J. Evans, a black, as chair of the board of trustees of the University of Maine. Also, the University of Maine system recently chose its first female president of a campus, Constance H. Carlson of the University of Maine at Presque Isle.

The growing role of women in local government was epitomized by the Portland City Council's selection of Pamela P. Plumb to serve as Mayor of Maine's largest city.

VII. SPOTLIGHT ISSUE: FEDERAL FUNDING CHANGES

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

Congress subsequently enacted many of the President's proposals. However, as 1981 ended, specific funding levels and program responsibilities still were not altogether clear. Indeed, Congress has not yet passed all the appropriations for 1982 (many Federal agencies will operate under a continuing resolution until March 31, 1982). That this is an area of domestic policy still prone to change is suggested by the budget revisions during 1981 and by the President's recent call for a "New Federalism."

Nonetheless, several features of this new landscape are clear:

--Many familiar Federal aid programs have been combined into "block grants."

--Many remaining "categorical grant" programs have been modified-- e.g., eligibility of clients or scope of legitimate activity is altered.

--Most block and categorical programs will operate at lower funding levels in 1982 than in 1981.

--Indian tribes are eligible for a wider variety of direct Federal aid, but actual overall funding may be lower.

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

Are the types of aid being cut the very ones that assist protected groups in their quest for access to jobs, housing, the legal system, etc?

Will the "block grant" arrangement for administering Federal Aid permit effective enforcement of the laws prohibiting discrimination in the use of Federal funds?

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

Block Grant Administration

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

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

The program guidance roles of the Federal agencies from which the funds originate are minimal. The U.S. Commission on Civil Rights has pointed out that studies of long-standing existing block grant programs (such as Revenue Sharing and Community Development) have found that this relaxation of Federal oversight can lead to failure to comply with nondiscrimination requirements. Although nondiscrimination provisions governing the use of Federal funds

continue to apply, implementation of those protections has not been very effective in block grants. Discrimination may occur more easily when there are such administrative defects as failure to collect data about the clients and beneficiaries of the programs, absence of adequate onsite reviews, and reliance on complaints rather than systematic enforcement mechanisms to remedy discrimination. Lack of effective administrative enforcement puts the full burden of pursuing relief on discrimination victims.

The Budget Reconciliation Act called for all States to assume responsibility for block grants in social services and low-income energy assistance as of October 1, 1981. The act also offered the States the option to assume control of several of the remaining seven grants at the same time, or to defer responsibility for a year. Maine, along with most other States, chose to accept control of four optional block grants -- community services; maternal and child health; preventive health care; and alcohol, drug abuse, and mental health. The Maine Legislature met in special session on September 25, 1981, to establish State administration of these six grants and to appropriate funds from them to State agencies through June 1983.

The 1982 legislature will consider assumption of the three remaining block grants-- education, primary care (the State has indicated it will seek planning funds in 1982), and community development in small cities. The Maine Municipal Association has observed, "If the State exercises its option to administer these additional block grants, there will be a major shift in governmental responsibilities from the Federal to State level."

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

Social Services Block Grant -- The act contains no specific language against discrimination, although existing nondiscrimination laws apply. The block grant, from the U.S. Department of Health and Human Services (HHS), incorporates Social Security Title XX programs for day care, State and local training, and social services. The statewide framework for the program will continue to be the Maine Department of Human Services' Title XX plan.

Community Services Block Grant -- Discrimination based on race, color, national origin, sex, age, and handicap is prohibited. The grant is made from the Office of Community

Services of HHS to the State Division of Community Services, which must pass 90 percent of it through to local governments or nonprofit organizations. In Maine, the recipients principally will be the 12 local Community Action Programs (CAPs). The State may opt to transfer up to 5 percent to programs of the Older Americans Act, Head Start, or Low-Income Energy Assistance.

Community Development Block Grant -- The act expands existing nondiscrimination coverage from race, color, national origin, and sex to include age and handicap. As they have since 1974, large cities ("entitlement" cities) continue to receive the funds directly from the U.S. Department of Housing and Urban Development, and continue to have to prepare Housing Assistance Plans (HAPs) describing efforts to meet the housing needs of low-income residents. However, the State-level review and sign-off (OMB Circular A-95 review) have been eliminated. The State may choose to administer the Small Cities Program. Small cities need not prepare HAPs. One significant change for disadvantaged groups is that the maximum portion of CDBG funds that can be applied to social services is being phased down to 10 percent; previously, in Portland, for example, the figure had been as high as 35 percent.

Education Block Grant -- The act contains no specific language against discrimination, although existing nondiscrimination laws apply. Eighty percent of the grant, which is to be made from the U.S. Department of Education to the Maine Department of Educational and Cultural Services, must be passed through to local education agencies. (The block grant does not incorporate Title I grants to school districts with poor children, nor does it include "central programs" for the handicapped and disadvantaged, which remain categorical grant programs. As noted in an earlier section, bilingual education also remains a categorical grant.)

The experience of 1982 will begin to disclose whether less formal oversight of State and Federal funding agencies is sufficient to prevent discrimination where administrative and regulatory mechanisms have been reduced.

Categorical Grant Administration

Several programs targeted at disadvantaged groups continue to bear their familiar names but are undergoing important changes. The coming year will show whether these changes have eroded the equality of access of such groups to housing, employment, justice, etc. Several of the key categorical programs are:

Aid to Families with Dependent Children (AFDC) -- The Maine Department of Human Services continues to run the program. There has been a reduction in benefits to those with earnings, i.e., the working poor. States may reduce benefits to those who

have food stamps or housing subsidies. States are authorized to set up "workfare" requirements, although Maine has not elected this alternative. The earned income tax credit counts as income in reckoning eligibility. Working mothers are expected to suffer most from the changes.

Food Stamps -- There is a higher income test for eligibility, but elderly and disabled are exempt from it. A cost-of-living increase was deferred until after October 1, 1982. A recent report by the Audit and Program Review unit of the Maine Department of Human Services recommended that the State should administer the program rather than the counties.

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

Legal Services -- There will be additional restrictions on the types of activities Legal Services lawyers may undertake.

Funding Cuts

Budget cuts appeared to receive even more publicity in 1981 than administrative changes, if only because the estimated levels of the cuts were modified so frequently. The exact losses to Maine are not yet clear, but national figures suggest the size of the changes.

Cuts in the funding of those programs now supplanted by block grants have been deep. For example, the Appropriations Committee of the U.S. House of Representatives estimated that in comparison to Fiscal Year 1981 budget authority for the supplanted categorical programs, the FY 82 reductions for the comparable block grants are: Community Services -- 33 percent; Education -- 9 percent; Social Services (Title XX) -- 20 percent. The cut in the already-existing Community Development Block Grant is 6 percent. The New York Times calculated in November, after the "first-round" cuts, that the block grants represented a 25 percent lower level of funding than the previous year's programs.

The reductions in many remaining categorical programs are equally formidable:

Categorical Education Grants

Title I (disadvantaged students)	-7%
Handicapped Education	+6%
Bilingual Education	-14%
Head Start	+11%

Categorical Housing and Community Development Grants

Urban Development Action Grants	-34%
New Public Housing	-30%
Public Housing Operating Subsidies	+7%

Categorical Income Assistance and Human Service Grants

Aid to Families with Dependent Children (AFDC)	-12%
Food Stamps	-10%
Child Nutrition	-31%
Medicaid	+5%

Categorical Employment Grants

CETA	-60%
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<u>Legal Services</u>	-24%
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The Wall Street Journal put the overall decline in direct Federal grants to State and local governments from the first round of cuts at 14 percent. The American Federation of State, County, and Municipal Employees calculated that the cuts proposed as of November 1981 would cost Maine the following aid losses in 1982: General Revenue Sharing -- \$13.0 million; CETA -- \$22.2 million; Education -- \$2.6 million; Child Nutrition -- \$7.5 million; Dependent Children -- \$6.9 million; Social Services -- \$3.1 million; Medicaid -- \$4.1 million. The total loss to the State, local governments, and individuals was calculated at \$107 million.

In October, the Maine Municipal Association characterized the Federal cuts as "sharp blows to State and local programs" and feared that the second round might be "a knockout punch." Washburn town manager Sheldon Richardson, writing in the December newsletter of the Maine Town and City Managers Association, said of the effects of the cuts on small cities, "Major repercussions will follow in the budget year starting February 1, 1982," and he predicted "financial consternation" at upcoming town meetings. Richardson noted that local expenditures were already rising for such items as medical care, housing, fuel, and food relief.

The future of General Assistance in the new funding scheme is of particular concern. Kay Rand of the Maine Municipal Association said that most municipalities traditionally have viewed General Assistance as a one-shot, emergency program. As State and Federal programs aimed at particular needs or groups of persons are curtailed, Richardson pointed out, General Assistance becomes a first rather than a last resort for the needy. Rand explained:

The tardy start-up of a financially decreased Home Energy Assistance Program, decreases or losses in AFDC benefits,

decreases in Food Stamps and Supplemental Security Income (SSI) allotments, and losses in Federal medical benefits are already forcing increases in local General Assistance expenditures.

Richardson said, "I have a feeling that many of the poor and lower class have fallen through some of the holes in the 'safety net' and are just hanging on by their fingers."

Several recommendations to adjust to the new funding climate were made by a Maine Municipal Association (MMA) task force in September and served as the basis for MMA lobbying during the legislature's special session:

- Municipal officials should have meaningful input and serve as "equal partners" in State determinations of block grant allocations.
- The legislature should define State and local roles in allocating block grant funds.
- The State must recognize the sensitivity of local property tax rates to financial aid shifts.

The Maine Legislature by-and-large has taken a very responsible approach to softening the impacts of the Federal cuts in Maine. When the legislature authorized the State to administer six of the nine block grants, it also acted to adjust to shifts in Federal support for social programs. At the urging of the Maine Department of Human Services, the AFDC allocation formula was altered to admit some individuals dropped under the new Federal plan. However, the legislature also transferred \$1 million from AFDC to the General Fund to offset other Federal cuts.

The legislature also acted on the Governor's proposal to put \$220,000 in the General Fund to make up for lost Federal aid in such areas as public health nursing, day care, homemaker services, family planning, and maternal and child care.

Indian Tribes and Federal Funding

On May 5, 1981, New England Indian organizations under the umbrella of the Indian Task Force of the Federal Regional Council made presentations on eleven critical issues to Congressional representatives, and outlined the effects of looming budget cuts and program changes. Maine's Senator William Cohen was a co-sponsor of the day-long event.

Subsequently, the Omnibus Budget Reconciliation Act authorized designated Indian tribes to apply directly for six of the nine block grants:

Community Services -- A tribe or tribal organization is eligible if it is recognized as such in the State or considered as such by the U.S. Secretary of the Interior. (The land claims settlement provides that all of Maine's tribe are federally- rather than State-recognized.)

Community Development and Low-Income Energy Assistance -- The act does not define what is a tribe or who is an Indian.

Primary Care; Alcohol, Drug Abuse, and Mental Health; and Preventive Health and Health Services -- Tribe or tribal organization is defined as in sec. 4 (b) and 4 (c) of the Indian Self-Determination and Education Assistance Act.

Community Development Block Grants (CDBGs) have been made to Indian tribes all along, but not on an entitlement basis (as is the case with large cities). Prior to 1978, tribes submitted proposals for grants in the CDBG Small Cities program, competing not only with other tribes but with municipalities. Since 1978, there has been a CDBG Indian set-aside, for which tribes compete only with one another. Both of Maine's Passamaquoddy reservations have applied for such funds this year. No applications of Maine tribes were funded last year (although CDBG funds had gone to the tribes in previous years).

On the basis of having received direct Federal Community Services funds when that was a categorical program, tribes are eligible to seek Community Services Block Grants. As with States, this is on an allocation rather than a competitive basis. However, the total allocation for Maine's eligible tribal organizations is only about \$5,000; in contrast, last year the tribes received about \$150,000 in categorical Community Services grants. Penobscot, Passamaquoddy, and Maliseet tribal organizations have applied. These groups may also apply to the State for re-grants from the State Community Services Block Grant. Off-reservation groups such as the Central Maine Indian Association and the Association of Aroostook Indians are ineligible for the Federal allocation and must apply to the State for funds if they are to continue to undertake Community Services programs.

In contrast to the Community Services grants, tribes are ineligible for direct Social Services Block Grants because they were not direct grantees under the previous categorical programs. However, the Penobscots, Passamaquoddies, and Maliseets all are eligible for and have applied for the Energy Assistance Block Grants.

The Omnibus Budget Act does provide that when Federal block grants are awarded to tribal organizations, the corresponding State grant will be reduced appropriately. Moreover, at least in the U.S. Department of Health and Human Services, the Secretary retains the power to determine whether State- or tribally-administered funds better serve Indian residents.

The facts that tribes may seek some block grants directly from the Federal Government and in other cases must apply for re-grants from the State creates some degree of confusion. Moreover, while the tribes' direct access to certain Federal funds may actually simplify the State's role vis-a-vis tribes, the new situation leaves unsettled questions about services to off-reservation Indians.

Whether even ongoing services to Maine's tribes are adequate is an open question, for last year Penobscot Governor Timothy Love asserted that the Federal Government had failed to meet the land claims act's provisions for Federal services to the tribes. Ironically, some forms of Federal funding to Maine's tribes have increased from the 1981 to 1982 to 1983 budget years. The explanation is that Federal funding for the tribes is so recent that the tribes are only beginning to participate in these Federal programs for Indians. The "increase" in funds is merely start-up grants maturing into regular program grants.

VIII. CIVIL RIGHTS ENFORCEMENT

The administrative apparatus of civil rights enforcement itself underwent changes in Maine during 1981. In contrast to the apparent weakening of Federal oversight, Maine took action to put more teeth into civil rights enforcement. The Maine Human Rights Act was amended to (1) increase civil penalties to \$500, \$1,000, and \$2,500 for first, second, and third offenses, and (2) provide attorney's fees in certain cases when administrative processes have been exhausted. Prior to the change, a State Assistant Attorney General pointed out, the fine for violating the Maine Human Rights Act was only one-fifth as much as the fine for molesting a beaver trap.

Another change in the enforcement process is that Maine Human Rights Commission (MHRC) negotiations for pre-determination settlements are now confidential. In addition, the MHRC made administrative initiatives to improve its handling of civil rights complaints. For example, it set up a file of "precedent cases."

One indicator of the MHRC's efficiency was an evaluation issued in 1981 by the U.S. Equal Employment Opportunity Commission (EEOC) regarding the MHRC's performance in handling employment discrimination complaints in 1980. The MHRC's average time of 51 days to process new charges was the third-best in the nation; the national average is 104. No backlog exists. Eighty percent of the cases were settled voluntarily, the second-best rate in the Nation; the national average was 39 percent. The acceptance rate by EEOC -- indicating that the State agency's handling was appropriate -- was 99 percent.

Overall in FY 1980-81, the MHRC received 317 complaints and closed 356 cases. Of the 356 cases closed, 60 were administratively

dismissed, 163 ended in pre-determination settlements, 98 produced findings of "no reasonable grounds," and 33 led to findings of "reasonable grounds." Nearly 50 percent of closed cases came from pre-determination settlements.

Although the MHRC handles cases efficiently, civil rights advocates both in Maine and nationally doubt whether individual complaints can lead to societal changes that will end discrimination. For example, attorney Judson Esty-Kendall of the Handicapped Rights Project in Portland noted that use of the MHRC by handicapped discrimination victims has grown, but "solving the general employment problem through individual complaints is akin to attempting the excavation of an ocean beach with a child's spade; the ocean seems to wash in more than you can ever dig out." MHRC Executive Director Pat Ryan has noted "an enormous growth" in handicap complaints.

On another front relating to enforcement within agencies, the Maine Department of Labor has included equal employment opportunity questions in employment interviews for all management or supervisory positions. Candidates are questioned about their attitudes toward equal opportunity and awareness and support of the agency affirmative action plan.

IX. ADVISORY COMMITTEE ACTIVITIES

During 1981, the Advisory Committee sponsored one public event, carried out several projects, issued three publications, and was rechartered by the U.S. Commission on Civil Rights for a two-year period.

In January, in cooperation with the Kennebec Valley Chamber of Commerce, the Advisory Committee distributed more than 600 copies of its Information Kit on Sexual Harassment in Employment to other local chambers of commerce, businesses, Maine State government agencies, and labor organizations. The 10-page kit, which stresses preventive measures rather than complaints and enforcement, has been used in training sessions by several State agencies. The U.S. Commission on Civil Rights distributed copies to members of Congress.

In February, the Advisory Committee issued Civil Rights Developments in Maine, 1980. The 17-page report summarized legal, policy, and institutional developments, and also identified emerging issues.

In March, upon request by members of the State Legislature, the Advisory Committee prepared and submitted background information on the implications of the proposed amendment for full representation of the District of Columbia, and of the imminent cut-off of funds for State Indian services. The Advisory Committee compared the 1980

Census figures for Native Americans with previous counts and reported that the new data called into question the previous low counts on which State services had been based. The Committee's testimony to the Joint Standing Committee on Appropriations and Financial Affairs noted that if policymakers relied on the previous low figures, they may have understated the Indian population's size and needs by half. Moreover, the Committee pointed out, services and benefits oriented to the reservations miss the vast majority of the Indian population, who live off-reservation.

The Advisory Committee's principal activity during 1981 concerned domestic violence, and began in March with the printing and distribution of wallet cards listing emergency phone numbers and sources of help for domestic violence victims. Supplies of the cards were sent to organizations serving victims, to district courts, and to police departments. Newspapers and broadcast media were urged to carry the information.

In August and September, the domestic violence project continued as the Advisory Committee studied the implementation of Maine's domestic violence law and prepared a report, Maine's Domestic Violence Law Has Made A Good Beginning. The 44-page report identifies problems and benefits that have emerged in the law's first year and recommends administrative changes to State agencies, local governments, the police, prosecutors, judges, and advocates and counselors to make the law more effective. On October 17, the Advisory Committee sponsored a forum on the domestic violence law, and issued its report. A panel (including a State legislator, judge, police sergeant, private attorney, and shelter worker) discussed the law and the findings and recommendations of the report.

In addition to the Maine Advisory Committee's activities, the U.S. Commission on Civil Rights focused on Maine when it released a report in June that chronicled Indian land claims litigation and settlements. The report states that Maine's government officials failed to act on many chances to resolve the issue at an early stage, thus escalating the conflict. The Commission points out that "tensions arising from the [Eastern] land claims have exacerbated racial animosities in affected communities, especially where State and local officials have been unwilling either to take the claims seriously or to negotiate." In addition to the extensive discussions of Eastern land claims, Indian Tribes: A Continuing Quest for Survival recounts issues concerning rights of Western tribes and law enforcement responsibilities involving tribal rights, and recommends that:

--Congress recognize Indian tribes "on the same basis as it recognizes States and their subdivisions for purposes of general funding";

--Congress "enact legislation permitting Indian tribes, at their option, to assume criminal jurisdiction over all persons within reservation boundaries";

--the FBI no longer have lead investigative responsibility for major crimes on Indian lands; and

--tribal courts have greater responsibility.

X. EMERGING ISSUES AND PRIORITIES

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

Congress will act on renewing the Voting Rights Act of 1965, judged by many to be the most significant civil rights law in history. Some who have stated support for the bill in fact have proposed changes that would weaken it. Even as the Voting Rights Act is debated, State legislators will be re-drawing Congressional Districts, and there have already been allegations in some States that these new districts reflect racial discrimination.

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

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

In addition, 1982 will also see how effective new Federal civil rights enforcement strategies are. The U.S. Commission on Civil Rights plans to monitor State enforcement of civil rights, as well as enforcement in block grants and in programs experiencing funding cuts. The Commission also plans to conduct projects on minority economic development, community leadership responses to hate group activity, and other issues of national interest.

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

Status of Protected Classes

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

During the next year, the Indian Tribal-State Commission established by the land claims settlement should begin to operate. Among its first items of business will be reviewing a bill that

would repeal the Indians' long-standing right to free hunting and fishing licenses.

Employment

Affirmative action in Maine will receive a boost if the legislature approves "A Bill To Amend the Code of Fair Employment Practices and Affirmative Action." The proposal focuses on private firms that contract with the State.

The progress of the "flex-time" work arrangement in State government is likely to be watched by other employers in Maine and elsewhere. By fall of 1982, rules governing the program should be in place. The State will have had substantial experience with the law, and should be able to begin to ascertain whether it is producing benefits for elderly and female workers.

The status of women in the law enforcement professions will continue to be of interest. The presence of two women in the latest State Police recruit class is encouraging. The Criminal Justice Academy plans additional orientation sessions for prospective female troopers, in cooperation with the Maine Commission for Women.

A whole battery of employment policy questions is posed in the recommendations of the Work Opportunities Committee, and 1982 will present opportunities to act on these.

According to Jackie Potter of the Women's Commission, "The issue of comparable worth has not gone away." She believes the State-funded study her agency called for last year may occur as a part of a collective bargaining agreement. Moreover, Union Mutual Insurance Company is scheduling a conference on the subject in the spring of 1982.

Housing

The Indian lawsuit against the State alleging that the State failed in its contractual obligation to fund the tribal housing authorities is likely to be decided soon.

Another housing issue for Indians is property loss to taxes. In 1947, Maine began to tax off-reservation Indians. In the ensuing 23 years, about 40 homes were lost to taxes. Whether the new land to be acquired by the Maliseet tribe will be taxed is therefore a key issue. Negotiations between the State and the Maliseets are in progress.

A housing issue of broader concern is the right to establish group homes for the handicapped in residential areas. A bill is to be submitted to the legislature to ease the creation of such homes while acknowledging the rights of residential communities to protect their character.

Education

Providing adequate education to refugee children will continue to concern Maine's educators. The Department of Educational and Cultural Services recently sent guidelines to local schools on proper placement of refugee children, attendance, credits for graduation, and appropriate programming at the secondary level.

Administration of Justice

A bill has been entered that would make the law against domestic violence permanent, even though a year remains in the original term of the law under its sunset provision. The outcome of this vote will be an important signal to judicial and law enforcement personnel and local officials as to the seriousness with which domestic assaults are to be taken.

Participation on juries has been a concern of the Maine Association for the Deaf and the Maine Association of Handicapped Persons, which have submitted bills that would assure that otherwise qualified handicapped persons are not excluded from juries only because of their handicap.

Government Services

The legislature will decide in its current session whether Maine will administer block grants in Primary Care, Education, and Community Development in Small Cities.

A matter of concern at the local level is accommodations to provide access of the handicapped to public services. As required by Section 504 of the Rehabilitation Act of 1973 (although the regulations for Section 504 are currently being reviewed as part of Federal "regulatory relief" efforts and may change), the Federal Office of Revenue Sharing's current regulations stipulate that by March 28, 1982, municipalities that receive such funds determine possible discrimination against the handicapped by:

- completing, with handicapped involvement, self-evaluations of the accessibility of their programs, of employment practices and policies, of policies and practices governing services, and of contracting terms;

- preparing a transition plan for handicapped accessibility to public buildings, i.e., structural changes needed; and

- completing non-structural program accessibility changes.

If municipalities have more than 15 employees or more than \$25,000 in Federal Revenue Sharing funds, they must also designate a Section 504 coordinator and establish a grievance procedure.

These activities are similar to the Age Discrimination Act self-evaluations that were to have been completed by the start of 1981. The Maine Municipal Association has prepared technical guidance materials. Municipalities can be sued by individuals for violations.

Finally, the administration of a huge range of services crucial to minorities, women, the elderly, and the handicapped will be at issue during 1982 as policymakers consider President Reagan's call for a "New Federalism." Civil rights groups will be studying the implications of this proposal both for the quality of civil rights enforcement and for the feasibility of funding the programs.

The Maine Advisory Committee intends to monitor these State and national issues as 1982 progresses, and will attempt to keep the citizens of Maine informed about them.

APPENDIX A

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

"Group Entitlements"

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

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

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

Individuals are discriminated against because they belong to groups, not because of their individual attributes. Consequently, the remedy for discrimination must respond to these "group wrongs." The issue is how. This statement has argued that when group wrongs pervade the social, political, economic, and ideological landscape, they become self-sustaining processes that only a special set of antidiscrimination techniques—affirmative action—can effectively dismantle. Such group wrongs simply overwhelm remedies that do not take group designations into account. Affirmative action is

necessary, therefore, when two conditions exist: when members of identifiable groups are experiencing discrimination because of their group membership *and* the nature and extent of such discrimination pose barriers to equal opportunity that have evolved into self-sustaining processes.

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

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

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

⁴⁴ Those who stress this view range from the most vocal opponents of affirmative action to those who claim that they, too, should be covered. See, e.g., Brief of American Jewish Committee, American Jewish Congress, Hellenic Bar Association of Illinois, Italian American Foundation, Polish American Affairs Council, Polish American Educators Association, Ukrainian Congress Committee of America (Chicago Division), and Unico

National, Amici Curiae at 32-33, in *Regents of the University of California v. Bakke*, 438 U.S. 265 (1978).

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

discriminatory processes.⁴⁶

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

The conclusion that affirmative action is required to overcome the discrimination experienced by persons in certain groups does not in any way suggest that the kinds of discrimination suffered by others—particularly members of Euro-ethnic groups⁴⁸—is more tolerable than that suffered by the groups noted above. The Commission firmly believes that active antidiscrimination efforts are needed to eliminate all forms of discrimination. The problem-remedy approach insists only that the remedy be tailored to the problem, not that the only remedy for discrimination is affirmative action to benefit certain groups.

Arguments against affirmative action have been raised under the banner of "reverse discrimination." To be sure, there have been incidents of arbitrary

action against white men because of their race or sex.⁴⁹ But the charge of "reverse discrimination," in essence, equates efforts to dismantle the process of discrimination with that process itself. Such an equation is profoundly and fundamentally incorrect.

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

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

⁴⁶ The Small Business Administration (SBA), pursuant to congressional directive (15 U.S.C.A. §637(d)(3)(c) (Supp. 1981)), has developed a similar four-point test. In ascertaining whether a group has suffered chronic racial or ethnic prejudice or cultural bias, the SBA applies the following criteria: (1) if the group has suffered the effects of discriminatory practices or similar invidious circumstances over which its members have no control; (2) if the group has generally suffered from prejudice or bias; (3) if such conditions have resulted in economic deprivation for the group of the type that Congress has found exists for the groups named in Pub. L. No. 95-507; and (4) if such conditions have produced impediments in the business world for members of the group over which they have no control that are not common to all business people. 13 C.F.R. §124.1-1(c)(3)(iv)(B) (1981).

The test is used to determine whether members of a minority group, not specifically designated by Congress as socially disadvantaged, qualify for the section 8(a) program of the Small Business Act (15 U.S.C. §637(a) (Supp. 1981)). This program fosters business ownership by socially and economically disadvantaged persons. 13 C.F.R. §124.1(b) (1981). The groups specifically designated by Congress as socially disadvantaged are black Americans, Hispanic Americans, Native Americans, and Asian Pacific Americans. See 13 C.F.R. §124.1-1(c)(3)(ii) (1981), pursuant to 15 U.S.C.A. §637(d)(3)(c) (Supp. 1981).

For another four-point test to determine whether certain groups

should be included in affirmative action plans, see Daniel C. Maguire, *A New American Justice: Ending the White Male Monopolies* (Garden City: Doubleday, 1980), pp. 129-68.

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

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

THE UNITED STATES COMMISSION ON CIVIL RIGHTS

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

THE STATE ADVISORY COMMITTEES

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

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