

# Civil Rights Developments in New Hampshire, 1981

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

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--The U.S. Commission on Civil Rights is an independent, factfinding agency which investigates issues related to discrimination or denial of equal protection of the laws because of race, color, national origin, religion, sex, handicap and age. The New Hampshire Advisory Committee is one of 51 such bodies composed of private citizens who advise the Commission on civil rights developments in their States.

Preface

Nationally, many observers characterized 1981 as a year of setbacks and retrenchment in the area of civil rights. The resurgence of organizations such as the Ku Klux Klan, Federal budget cuts in social programs, and changes in the Federal civil rights enforcement structure created fears that, instead of efforts to bring groups that have been discriminated against into the mainstream, the government might be ready to accept a return to neglect and separatism. For example, on the bellwether issue of school desegregation, 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" schooling for black children.

Concern about these trends was expressed on a number of occasions during the past year by the U.S. Commission on Civil Rights, which examines not only racial discrimination but also discrimination due to religion, gender, age, and handicap. The Commission noted that national developments during 1981 also included much that was disturbing to women, the elderly, and the handicapped. These groups, like racial minorities, are the direct beneficiaries of many of the programs, such as job training and food stamps, whose budgets have been cut sharply. They are also jeopardized by the curtailment of Federal civil rights enforcement activities.

Among the reports issued by the Commission in 1981 were three that particularly underscore both the progress made and the necessary continued vigilance in civil rights activity. The Voting Rights Act: Unfulfilled Goals assesses the importance of this legislation and documents the need for the Act's renewal. With All Deliberate Speed: 1954-1977 draws its title from the second Supreme Court decision of Brown v. Board of Education (1955). It provides a legal and policy history of desegregation and asserts, "There is no middle ground. Either we are for desegregation and a system of education that provides equality of opportunity, or we are for a system of education that makes a mockery of our Constitution." Affirmative Action in the 1980s: Dismantling the Process of Discrimination applies a unifying "problem-remedy" approach to affirmative action. The statement's objective is to provide useful guidance to those in business, labor, education, government, and elsewhere who must carry out a national civil rights law and policy.

In its report last year on civil rights developments in New Hampshire, the New Hampshire Advisory Committee to the U.S. Commission on Civil Rights separated national from State developments. This year, the Advisory Committee is concerned that

the gains achieved in the 1950s, '60s and '70s are seriously threatened at both State and Federal levels. However, in a year that saw increased activity by hate groups elsewhere in the Nation, there were no reported instances of such activities in New Hampshire.

The Advisory Committee monitored civil rights developments in the State during 1981, and this report summarizes those issues and events important to minorities, women, the aged, and handicapped. It also includes a description of the New Hampshire Advisory Committee's own activities during 1981. The Advisory Committee hopes that this report will provide useful information to the citizens of New Hampshire and enable them to assess the status of civil rights in our State.

## I. "PROTECTED GROUPS" IN NEW HAMPSHIRE

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 Commission's statement 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 minority groups 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 New Hampshire, with a total of only about 1.15 percent of New Hampshire's population represented by: blacks (0.43 percent), Native Americans (0.14 percent), Asian/Pacific Islanders (0.31 percent), Hispanics (0.6 percent) and "Other Races" (0.24 percent). The overall growth rate for racial minorities and Hispanics was 121 percent, compared to a general population growth of 24.8 percent since 1970. However, this large percentage rise still left New Hampshire with a minority population of only 16,098 out of a total State population of 920,610.

The number of blacks, 3,990, was up 59.2 percent from the previous census. The count of Hispanics increased 108.3 percent to 5,587.

There was a large percentage increase in the numbers of the peoples that the Census terms "Asian/Pacific Islander" -- Japanese, Chinese, Filipino, Korean, Asian Indian, Vietnamese, Hawaiian, Guamanian, and Samoan. The number climbed 212.5 percent from 937 to 2,929. According to the State Refugee Resettlement Office, part of this increase might be attributable to a more comprehensive definition of Asians in the 1980 Census than in the previous one, which only included figures for Japanese, Chinese, and Filipino. In addition, there has been a fairly large influx of Vietnamese as well as other Asians to the State in the last decade. (The Census category "Other" also includes some Asian peoples, such as Cambodians and Pakistanis.)

The 1980 Census count of 1,352 for Native Americans was significantly higher than the 1970 figure of 361 and represented a 274 percent increase. According to the New Hampshire Indian Council, much of this increase can be attributed to improved Census Bureau counting procedures and Native American self-identification and does not represent immigration or an increase in the birth rate.

The Advisory Committee expects that the 1980 Census will provide a clearer portrait of New Hampshire's largest ethnic group, Franco-Americans. However, data on ethnic groups have not yet been released by the Census Bureau. Federal budget cuts are delaying the process. The Census Bureau has yet to issue the income, education, and housing data needed to compare racial and ethnic groups, and lack of this data is also hampering analysis of age and gender disparities.

While the 1980 Census should add significantly to our 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. Thus, no comprehensive statistics on the number of persons in the State who are handicapped exist now or are expected to emerge from Census data.

## II. ISSUES AND EVENTS

### AGE

According to a State legislative amendment which took effect on August 28, 1981, persons who have a criminal history and who are convicted of crimes against the elderly and handicapped will face a mandatory extended sentence. The courts are now authorized to extend the term of a sentence for conviction of a felony (other than murder) a minimum of 10 years and a maximum of 30 years; a misdemeanor conviction carries a 2 year minimum and a 5 year maximum; and a murder conviction carries a mandatory life imprisonment.

Participants at the First National Conference of Family Violence Researchers held in Durham, New Hampshire, agreed that the area in most need of research was the abuse of the elderly. According to Dr. Richard J. Gelles, chairman of the Sociology Department at the University of Rhode Island, "the physical abuse of the elderly is the only growth area in the field of family abuse." Dr. Gelles was also critical of the Administration's proposed budget cuts that would end Federal funds for social research in the area of spousal abuse and physical abuse of the elderly. Dr. Jim Bergman, director of New England Legal Research and Services for the Elderly, said that four preliminary studies indicated the physical abuse of at least half a million people over 65 every year by a relative living in the same home. The Select Committee on Aging of the U.S. House of Representatives, using a slightly broader term for abuse, put the figure at one million of the Nation's 25 million people over 65.

After a drive spearheaded by senior citizen groups, the Generic Drug Substitution bill was signed into law by Governor Hugh Gallen. It directs pharmacists to substitute the lower-priced generic drug unless the physician specifically notes on the prescription that the

brand name is "medically necessary." The State Council on Aging noted that while people over 65 comprise 11 percent of the population, they spend 25 percent of all money spent on prescription drugs, and over half of them spend \$10 a month or more.

Faced with a budget deficit, the New Hampshire Division of Welfare has proposed the elimination of certain optional services available to recipients of medicaid under Title XIX of the Social Security Act. Among the "optional" services to be cut are prescribed drugs, medical supplies, prosthetics and durable medical equipment, ambulance medical transportation and ten other categories of health service. If approved, the proposed actions would have an adverse impact on elderly because only medicaid recipients under the age of 21 who are enrolled and participate in the Child Health Assurance Program would be covered.

### EMPLOYMENT

In November 1981, after holding factfinding meetings, the Employment Task Force of the New Hampshire Commission on the Status of Women released its report, Voices of New Hampshire Women. The task force found a "significant degree of illegal discrimination, and an increase in reports of sexual harassment and resistance to gaining access to nontraditional jobs." According to the head of the task force, there are two especially disturbing issues: the extent to which discrimination in employment continues to exist, and the extent to which women are unaware of antidiscrimination laws and remedies. The Commission concluded that the employment picture for women in New Hampshire in terms of upward mobility, wages, and sex discrimination has not changed substantially since its previous hearings ten years ago.

The Task Force recommended that:

1. The Commission on the Status of Women should appoint a State task force on employment problems to provide the public with information on antidiscrimination laws; establish a hotline; conduct workshops; and compile a list of resources for women facing employment problems.
2. A State task force on sexual harassment should be established by the Commission to educate the public and promote State legislation to deal with the problem.
3. The Governor should appoint a task force on discrimination in State government to conduct a review of the classification, job description, and salary structure of all clerical and support staff within the State Civil Service system. The task force on discrimination should also draft a bill creating a State affirmative action office for introduction in the 1983 legislative session.

Shortly after release of Voices of New Hampshire Women, the Governor and the Commission on the Status of Women adopted these recommendations.

The New Hampshire Commission for Human Rights has been certified to continue to receive funding by the U.S. Equal Employment Opportunity Commission (EEOC) to process employment discrimination complaints. EEOC funding amounts to more than 50 percent of the New Hampshire Commission's annual budget of approximately \$40,000. The Commission is proud of its 100 percent acceptance rate for its EEOC-reimbursable cases.

The Commission also has an excellent record on appeals before the New Hampshire Supreme Court; very few of the New Hampshire Commission's orders have been appealed after a public hearing. Discrimination complaints have increased by 21 percent over the previous year. In FY 1981 the Commission closed 182 formal charges of discrimination compared to 143 charges in FY 1980.

The executive director of the Commission, in an open letter concerning sexual harassment in the work place, indicated that harassment is sex discrimination and illegal under New Hampshire law. The director suggested that persons who believe that they have been discriminated against because of sex should file a complaint with the New Hampshire Commission For Human Rights.

The New Hampshire Commission on the Status of Women and the Title IX Office of the State Education Department are working with the New Hampshire Commission for Human Rights in developing a poster and pamphlet on sexual harassment in employment. They hope to distribute the materials statewide to both employers and workers in the private and public sectors. In addition, the Commission for Human Rights is planning to contract with a private consulting firm to conduct training sessions for government and industry officials on the problems and issues of sexual harassment in the work place.

In September 1981, the Commissioner of Public Safety indicated that the number of female State police officers will be increased by at least two and possibly as many as seven. (The Department has no female State troopers.) According to a newspaper account, the State Public Safety Department, responding to the threat of a sex discrimination suit by the U.S. Justice Department, will begin recruitment of women as State troopers to fill 20 percent of the vacancies in the Department as they occur. However, the Department has not filled any vacancies with women because of a hiring freeze.

#### HOUSING

During 1981, the New Hampshire Commission for Human Rights processed a total of 11 housing discrimination complaints, (4 complaints were based on discrimination because of race or color, 2



were based on age, 1 on national origin, 1 on sex and 3 on marital status).

The Commission is currently processing several cases which allege discrimination against renters with children. According to the Commission's interpretation of age discrimination, it is illegal to deny the rental or sale of an apartment or house to a person because he or she has children. Discrimination against families with children is a major housing issue in the State, the Commission has noted. Newspapers routinely carry advertisements for rental housing which exclude children. The Commission has informed several newspaper editors that it is a violation of State law. The editors responded that they do not censor ads. The Commission is planning a public education program to inform editors, landlords, real estate agents and the general public about fair housing laws, and about filing discrimination complaints with the Commission.

A \$20,000 grant has been awarded to the Commission by the U.S. Department of Housing and Urban Development's Office of Fair Housing and Equal Opportunity to handle housing discrimination complaints under Title VIII of the Civil Rights Act of 1968.

#### HANDICAP

A member of the New Hampshire Association for the Retarded and parents of children at the Laconia State School for the Retarded filed a lawsuit against the State claiming that patients at the school were routinely mistreated, and asked the court to place the patients in community programs. In August 1981, a U.S. District Court Judge ruled in favor of the complainants and ordered the State to dramatically upgrade the facilities and services at the Laconia School. The judge rejected the complainants' argument that retarded people have a constitutional right to treatment in their own communities. Some advocates for retarded people were displeased with the ruling because of the emphasis it places on upgrading the State institution rather than expanding community services.

The order directs the school to improve its educational services, hire qualified staff, improve medical procedures and treatment, and provide furniture and recreational materials for the residents. The school is also prohibited from discriminating against the more severely retarded patients in providing these services.

The legislature passed a law making it illegal for unauthorized persons to park in places assigned for the handicapped. Violators are subject to arrest, and if convicted, face a fine of up to \$100. The New Hampshire Division of Motor Vehicles will issue identification plates and decals to persons who qualify for handicapped privileges.

The Rockingham County Commissioner filed a complaint with the Office for Civil Rights of the U.S. Department of Health and Human Services, charging that the State violates the civil rights of all handicapped persons under Section 504 of the 1973 Rehabilitation Act. Specifically, the complaint charges that the State House and Legislative Office Building in Concord are not accessible to all handicapped persons. The executive director of the Governor's Commission on the Handicapped was pleased that the complaint was filed, because the issue of access for the handicapped in State government buildings previously had been brought to the attention of the Legislature's leadership, who had not acted on it.

New Hampshire Ball Bearings, Inc., of Peterborough was given the 1981 Employer of the Year Award for Southwestern New Hampshire for its outstanding record of hiring the handicapped. The award was presented by the Deputy Commissioner of Education because of the firm's policy of hiring and working with handicapped individuals, accommodating many kinds of disabilities, and promoting the hiring of the handicapped in the community. The company has worked closely with the Division of Vocational Rehabilitation of the State Department of Education in training and placement.

Five handicapped people in the Monadnock Region are operating a restaurant in Antrim as a result of the efforts of the Monadnock Workshop, a State-supported training facility. The Eating Place is functioning successfully under the supervision of the workshop, and the handicapped workers are assuming responsibility for the kitchen, the bakery and dining room maintenance.

#### WOMEN'S RIGHTS

The marriage license fee was increased by the legislature in order to provide funding for a Domestic Violence Grant Program. Thirteen dollars of the \$20 marriage fee will be collected by the State Treasurer and deposited in a fund for domestic violence programs. The coordinator of the New Hampshire Coalition Against Family Violence believes that about \$100,000 will be collected as a result of the marriage license fee increase, representing the first State money that domestic violence groups have gotten. The amount available to local groups will be about \$62,000; 8 percent of the collected funds will go to the Division of Welfare for administration and 30 percent to the New Hampshire Coalition Against Family Violence to coordinate the program. The rest of the funds will be distributed by the Coalition to volunteer groups throughout the State which work with and for adult victims of family violence. Grants are also available to community groups providing services to elderly victims of family abuse. Private organizations and public agencies that have a track record of providing service to victims of domestic violence will be eligible to apply for funds from the coalition. The effectiveness of the grant program will be evaluated by a three-member board appointed by the Governor and Executive Council.

The Coalition complimented the Governor and legislature for responding to the problem of domestic violence by passing the domestic violence funding program and updating the domestic violence law. New Hampshire's domestic violence law has been strengthened, and the duties and authority of police officers and judges have been clarified as a result of recent changes in the law. It will now be easier for victims to get court orders to restrain their attackers, and the requirement that unmarried couples must live together for a year to be protected by the law has been eliminated.

An amendment was approved by the legislature which removes the spousal exception to sexual assault offenses, thus making it possible for a husband to be charged with raping his wife. The traditional law which prohibited spouses from testifying against each other is inapplicable under the new amendment.

The category of professionals required to report known cases of adult abuse was broadened by the legislature to include health care professionals, hospital personnel, social workers, clergy, law enforcement officials, protection officers, volunteers, or persons residing in the home. Persons who are required to make reports of adult abuse and fail to do so can be charged with a misdemeanor. The law also abrogates privileged communication between husband and wife and any professional and his patient or client, and exempts attorneys and client.

The New Hampshire Legislature adopted an "act relative to the support and custody of children" which presumes that joint custody is in the best interest of the child, and instructs judges not to give any preference to either parent because of the parent's sex. The courts may also grant reasonable visitation privileges to the grandparents of the children. The Coalition has expressed reservations concerning the new law in situations where there has been spousal violence and/or child abuse.

## EDUCATION

The U.S. Department of Education's Regional Office for Civil Rights (OCR) has expanded its technical assistance program in order to provide school districts with guidance on voluntary compliance with the civil rights laws. The Office sees an acute need for such a program particularly in the area of handicap discrimination and the implementation of Section 504 of the Rehabilitation Act of 1973. Its technical assistance staff will be available to assist school districts in determining their Section 504 priority issues and training needs. OCR can also provide followup technical assistance, including resource materials, training, on-site visits, and referrals.

OCR has requested school districts to identify problem areas in bilingual education services, opportunities for handicapped students

and compliance issues with respect to civil rights laws in order to develop training workshops around these issues and problems.

### FRANCO-AMERICANS

In November 1981, Action for Franco-Americans of the Northeast, Inc. (Act FANE) adopted its constitution in Worcester, Massachusetts. Act FANE was incorporated as a private, nonprofit organization and will provide services to the Franco-American community of the Northeast Region. The organization's main function will be to develop and establish cultural, educational, linguistic, and social programs to meet the needs of the Franco-American community.

Act FANE was able to establish an office in Manchester, New Hampshire, with the cooperation of the Quebec Ministry of Intergovernmental Affairs and a grant from the French Language Council of North America. The Manchester central office will serve as the Secretariat and a clearinghouse for Act FANE.

### FEDERAL FUNDING

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. 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.

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?

#### 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. New Hampshire was one of the few States that chose to defer assumption of the optional block grants.

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.

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. The State Agency must pass 90 percent of it through to local governments or nonprofit organizations. 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.

Education Block Grant -- The act contains no specific language against discrimination, although existing nondiscrimination laws apply. (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) -- 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.

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 New Hampshire 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.

During 1982, the New Hampshire Advisory Committee will monitor the new Federal funding arrangement for effectiveness of civil rights enforcement and inequities in impacts of cuts.

III. ADVISORY COMMITTEE ACTIVITY

In February 1981, the New Hampshire Advisory Committee to the U.S. Commission on Civil Rights issued its first report on Civil Rights Developments in New Hampshire, 1980. The 10-page report discussed the activities of the legislature, government agencies, and the criminal justice system.



In April 1981, the Advisory Committee issued a statement, "New Hampshire's Unchanged Obligation to Language Minority Students." The statement was issued in response to concern regarding the meaning of the U.S. Department of Education's withdrawal of proposed rule changes to the Bilingual Education Act. The statement has been utilized by the National Council of State Directors of Bilingual Education, which has distributed copies to all chief State school officials.

The New Hampshire Advisory Committee Chair was invited to testify before a legislative panel considering the restructuring of the New Hampshire Commission for Human Rights and the transfer of the Commission's jurisdiction over housing discrimination to the State Housing Commission. The panel's decision concurred with the Advisory Committee's recommendation that the Commission for Human Rights should retain jurisdiction over housing discrimination.

Finally, as a followup to its report, Battered Women and the New Hampshire Justice System, the Advisory Committee prepared and distributed several thousand cards listing emergency phone numbers for battered women. The cards were sent to hospitals, State and local police stations, battered women's shelters, and women's organizations statewide, as well as the media, which were urged to use the information in public service announcements.

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.<sup>44</sup> 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.<sup>45</sup>

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

<sup>44</sup> 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).

<sup>45</sup> *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.<sup>46</sup>

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.<sup>47</sup> 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 groups<sup>48</sup>—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.<sup>49</sup> 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.

<sup>46</sup> 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 Man Monopolies* (Garden City: Doubleday, 1980), pp. 129-68.

<sup>47</sup> 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."

<sup>48</sup> 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 on kinds on Euro-ethnics, it has not been possible to assess the extent of the discrimination they may be experiencing, much less 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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