

# **Statewide Conference on Civil Rights Complaints and Enforcement in Virginia**

January 1986

A report of the Virginia Advisory  
Committee to the U.S. Commission  
on Civil Rights

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

The United States Commission on Civil Rights, first created by the Civil Rights Act of 1957, and reestablished by the Civil Rights Commission Act of 1983, is an independent, bipartisan agency of the executive branch of the Federal Government. By the terms of the act, as amended, the Commission is charged with the following duties pertaining to discrimination or denials of the equal protection of the laws based on race, color, religion, sex, age, handicap, or national origin, or in the administration of justice; investigation of individual discriminatory denials of the right to vote; study of legal developments with respect to discrimination or denials of the equal protection of the law; appraisal of the laws and policies of the United States with respect to discrimination or denials of equal protection of the law; maintenance of a national clearinghouse for information respecting discrimination or denials of equal protection of the law; and investigation of patterns or practices of fraud or discrimination in the conduct of Federal elections. The Commission is also required to submit reports to the President and the Congress at such times as the Commission, the Congress, or the President shall deem desirable.

## **THE STATE ADVISORY COMMITTEES**

An Advisory Committee to the United States Commission on Civil Rights has been established in each of the 50 States and the District of Columbia pursuant to section 105(c) of the Civil Rights Act of 1957 and section 6(c) of the Civil Rights Commission Act of 1983. The Advisory Committees are made up of responsible persons who serve without compensation. Their functions under their mandate from the Commission are to: advise the Commission of all relevant information concerning their respective States on matters within the jurisdiction of the Commission; advise the Commission on matters of mutual concern in the preparation of reports of the Commission to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public and private organizations, and public officials upon matters pertinent to inquiries conducted by the State Advisory Committee; initiate and forward advice and recommendations to the Commission upon matters in which the Commission shall request the assistance of the State Advisory Committee; and attend, as observers, any open hearing or conference which the Commission may hold within the State.

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## **Right of Response**

Prior to the publication of a report, the Virginia Advisory Committee affords to all individuals or organizations that may be defamed, degraded, or incriminated by any material contained in the report an opportunity to respond in writing to such material. Accordingly, all affected agencies were provided a draft of the report prior to publication and were afforded an opportunity to respond. All responses have been incorporated, appended, or otherwise reflected in the report.



## LETTER OF TRANSMITTAL

Virginia Advisory Committee to the  
U.S. Commission on Civil Rights  
October 1984

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Linda Chavez, *Staff Director*

Dear Commissioners:

The Virginia Advisory Committee submits this report as part of its responsibility to advise the Commission about civil rights problems within the Commonwealth of Virginia.

In November 1983 the Virginia Advisory Committee held a Statewide Conference on Civil Rights Complaints and Enforcement in Richmond, Virginia. Speakers, panelists, and participants from the audience identified various types of civil rights problems that needed to be addressed by the State and local governments in Virginia, discussed the adequacy of existing State and local laws to address those problems, and examined a Model Human Rights Act for Virginia to see to what extent its provisions address civil rights complaints and enforcement problems in Virginia.

This report is a presentation of information obtained by the Virginia Advisory Committee both at the November conference and in follow-up interviews conducted to clarify data provided at the conference. The Virginia Advisory Committee has not made any findings, conclusions, or recommendations and does not propose any specific action to be taken by the U.S. Commission on Civil Rights.

The Virginia Advisory Committee hopes this report will assist the Commission in any study it may make of State and local government civil rights enforcement efforts and will assist the Commonwealth of Virginia in addressing civil rights complaints and enforcement problems at both State and local levels of government.

Respectfully,

CURTIS W. HARRIS  
*Chairperson*  
Virginia Advisory Committee

**VIRGINIA ADVISORY COMMITTEE TO THE UNITED  
STATES COMMISSION ON CIVIL RIGHTS**

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## ACKNOWLEDGEMENTS

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The Virginia Advisory Committee wishes to thank the staff of the Commission's Mid-Atlantic Regional Office, Washington, D.C., for their assistance in the preparation and convening of the Statewide Conference on Civil Rights Complaints and Enforcement held by the Virginia Advisory Committee in November 1983. The conference and report were the principal staff assignments of Wanda Hoffman, Civil Rights Analyst, MARO, and overall supervision was provided by Edward Rutledge, Regional Director, MARO.

Other MARO staff who provided help and guidance were: Suzanne Crowell, Research/Writer, who edited the report; Robert Owens, Regional Attorney, who provided legal research, guidance and review for both the conference and report; Barbara Stafford, Secretary/Steno, who provided administrative assistance, and both Chris Scarnecchia and Chiquita Carter, who provided essential clerical support.

In addition, we want to express special appreciation to: the drafters of a Model Act for a Virginia Human Rights Act, which was discussed at the conference; namely, Professors Steven Hobbs, Martha Morgan, and Toni Massaro and Student Interns Mike Shaffer and Tom Howell, from the Francis Lewis Law Center, School of Law, Washington and Lee University, and Professor George A. Rutherglen, School of Law, University of Virginia, and Carlyle C. Ring, Jr., Chairperson of the Virginia Advisory Committee's Subcommittee on Legal Developments and Issues, who enlisted invaluable research on human rights laws in the Nation and laws in Virginia pertaining specifically to discrimination in public accommodations, employment, and housing. Other members of the Subcommittee are Rev. Curtis Harris, Maya Hasegawa, Jessie Rattley, Vincent Callahan, Jr., and Barbara Wurtzel.





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## Chapter 1

# Introduction and Summary

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On November 13 and 14, 1983, the Virginia Advisory Committee to the U.S. Commission on Civil Rights held a Statewide Conference on Civil Rights Complaints and Enforcement in Richmond, Virginia. In opening the conference, Rev. Curtis W. Harris, Chairperson of the Virginia Advisory Committee, was pleased to relieve some concerns of conferees about the status of both the Commission and the Advisory Committee:

As some of you know, there's been some discussion as to whether or not the Commission is going to function past the 29th of this month. It has been reported that a compromise has been reached and that the Commission will be in business past the 29th.<sup>1</sup>

Approximately 150 persons representative of State and local government agencies, civil rights groups, and the general public attended. Speakers, panelists, and the audience were reminded of their role in the conference by Carlyle C. Ring, Jr., Chairperson of the Virginia Advisory Committee's Subcommittee on Legal Developments and Issues:

The purpose of our gathering here at this time is threefold:

First, to identify, through you and your participation, the types of civil rights problems that exist in Virginia, and that need attention.

Secondly, to look at how well the existing State and local laws are addressing those needs, and those problems.

And thirdly, to examine the provisions of a Model Act . . . to see to what degree that might be a partial

<sup>1</sup> *Transcript of the Statewide Conference on Civil Rights Complaints and Enforcement in Virginia*, November 13 and 14, 1983, Part I, p. 2 (hereafter cited as *Transcript*).

solution to the problems that have been identified during the deliberations of this conference.<sup>2</sup>

J. Marshall Coleman, former Attorney General of the Commonwealth of Virginia, lent support to the proceedings in his keynote address:

Let me commend each of you for your efforts today and in the past to do what I've always thought is important—to turn your attention to Richmond, to the laws that are made here; to recognize that it's not always necessary to go to Washington for justice, but that the State of Virginia can have the kind of laws and the kind of institutions that provide for the justice all of you have been seeking.<sup>3</sup>

Coleman's remarks alluded to the fact that most Virginians must turn to Federal laws and agencies for relief from discrimination, except in the area of fair housing.

Virginia has a fair housing law that prohibits discrimination in both the public and private sectors. The law is administered by the Virginia Real Estate Commission through a Fair Housing Administrator. The Virginia Real Estate Commission is empowered to investigate and seek to resolve complaints of housing discrimination received from complainants in any jurisdiction within the State.

But, the Virginia General Assembly has not passed laws creating State agencies to investigate and seek to resolve complaints of discrimination in employment, public accommodations, and other areas in either the public or private sectors.

<sup>2</sup> *Transcript*, Part I, pp. 5-6.

<sup>3</sup> *Ibid.*, Part II, p. 16.

Alfred Smith, Executive Director of the Richmond Human Relations Commission, also addressed these concerns:

. . . We're still sitting in a State that does not have primary enforcement of many of its own existing laws. . . . [A]s we go into the era where the Federal government no longer now becomes the prime area for relief, we must think about the fact that a State the size of Virginia. . . must have legislation and enforcement powers to guarantee equal rights for all citizens. . . .<sup>4</sup>

The only Virginians having access to a local government agency empowered to investigate and seek to resolve their complaints of discrimination are those who reside in Alexandria, Fairfax County, and Richmond. Each of these jurisdictions has passed an ordinance prohibiting various types of discrimination against persons within their jurisdiction and each has established a human rights commission to enforce their provisions. However, differences exist

between the ordinances regarding bases upon which discrimination complaints may be filed and the enforcement powers of the commissions to resolve those complaints.

Speakers, panelists, and members of the audience identified various types of civil rights problems that need to be addressed by State and local governments in Virginia. These problems involved discrimination based on race, national origin, sex, handicap, age, and other bases in employment, housing, education, public accommodations, the administration of justice, voting, and other areas. Typical concerns were discrimination against the handicapped in places of public accommodation; discrimination in employment against Vietnam veterans, women who live in public housing, the elderly, and minorities; and discrimination in the administration of justice and voting based primarily on race.

<sup>4</sup> Ibid., pp. 95-96.

## Background

While this report to the U.S. Commission on Civil Rights is a result of the Statewide Conference in November 1983, it also incorporates continuing concerns of the Virginia Advisory Committee about civil rights complaints and enforcement previously addressed in reports to the Commission.

In *Cooperative Approaches to Civil Rights: A Statewide Conference*,<sup>1</sup> published in February 1980, the Virginia Advisory Committee reported on a wide array of civil rights problems in employment, education, voting, housing, the administration of justice, health and welfare that were in need of attention at the State and local levels of government. At the November 1983 Statewide Conference, participants again highlighted these civil rights enforcement problems as well as others.

In *Sex Discrimination and Title VII in Virginia*,<sup>2</sup> submitted to the U.S. Commission on Civil Rights in April 1981, the Virginia Advisory Committee discussed enforcement of Title VII of the Civil Rights Act of 1964,<sup>3</sup> which prohibits discrimination in employment.

The *Title VII* report recommended that Virginia adopt a State antidiscrimination law and create a State agency to enforce it. In addition, the report

recommended that the State's Equal Employment Opportunity Committee should receive staff and funds such that the committee might fulfill its responsibilities. Finally, the report asked that the Fair Employment in Contracting Act<sup>4</sup> be amended to parallel Executive Order 11246.<sup>5</sup>

Considerable public interest was generated by the recommendation in the *Title VII* report, which received wide media coverage. Senator L. Douglas Wilder introduced a bill to create a Virginia human rights law and a commission to enforce it in the 1982 session of the Virginia General Assembly.<sup>6</sup> The bill did not pass.

Later in 1982, the Equal Employment Opportunity Committee, which is discussed more fully in Chapter 4, advised Virginia Governor Charles S. Robb that it was studying ways in which the State's equal employment opportunity program might be expanded into a State human rights commission empowered to handle complaints of employment discrimination.<sup>7</sup>

<sup>1</sup> U.S., Commission on Civil Rights, Virginia Advisory Committee, *Cooperative Approaches to Civil Rights: A Statewide Conference* (February 1980).

<sup>2</sup> U.S., Commission on Civil Rights, Virginia Advisory Committee, *Sex Discrimination and Title VII in Virginia* (April 1981) (hereafter cited as *Title VII*).

<sup>3</sup> 42 U.S.C. §§2000e—2000e-17 (1982).

<sup>4</sup> Va. Code §2.1-374—2.1-376 (1950 and 1979 Replacement Volume).

<sup>5</sup> Exec. Order No. 11,246, 30 Fed. Reg. 12,319 (1965).

<sup>6</sup> Commonwealth of Virginia, Virginia General Assembly, Senate Bill No. 360, offered January 29, 1982.

<sup>7</sup> Commonwealth of Virginia, Equal Employment Opportunity Committee, "Goals and Objectives," 1982.

Supporters of the kind of legislation offered by Senator Wilder in the 1982 session asked that he not reintroduce the same bill in January 1983.<sup>8</sup> They believed its provisions needed to be strengthened and updated to conform with Federal civil rights laws both substantively and procedurally before being reintroduced. Also, they wanted to assure that local human rights commissions would not be dissolved or jeopardized under the proposed State human rights law and that ordinances already in effect in Alexandria, Richmond, and Fairfax County could be amended under the State human rights law to incorporate its provisions.<sup>9</sup>

In March 1983, Senator Wilder wrote to the Equal Employment Opportunity Committee concerning his continued interest in passing legislation to create a State human rights commission:

... we decided that the money would not be available at this session [1983] to fund it. Moreover, we desired to more keenly and precisely structure what we would consider a very serious undertaking. . . . It was also felt that if the measure was structured properly, it might have the benefit of the backing of the [Robb] administration. To that end, we decided not to pursue, notwithstanding our interest at the last session.<sup>10</sup>

After passage of the Civil Rights Act of 1964 by Congress, States and local governments without fair employment commissions and other types of agencies that enforced antidiscrimination laws needed technical assistance in developing and passing such laws.<sup>11</sup> The National Conference of Commissioners on Uniform State Laws responded to this need by drafting a model act that could be used by State and local governments, most of which did so.<sup>12</sup>

Since 1966, however, the Civil Rights Act of 1964 has been amended and other Federal laws have been passed that relate to civil rights concerns. In recognition of Virginia's need for technical assistance in drafting a model act for the establishment of a human rights law, Carlyle C. Ring, Jr., President of the National Conference of Commissioners on Uniform State Laws, enlisted the skills of faculty and

students in law schools at Washington and Lee University and the University of Virginia in drafting such a model. More than 30 human rights commissions were surveyed to obtain information about their enabling legislation and experience before drafting a Model Act that both updated the 1966 National Conference model and also incorporated relevant Virginia laws.<sup>13</sup>

The Model Act presented at the Statewide Conference directly addressed all of the *Title VII* report recommendations concerning needed legislative changes. But, as members of the Advisory Committee explained to participants, the Advisory Committee is barred from sponsoring, supporting, or introducing specific legislation.<sup>14</sup>

At the Statewide Conference a number of speakers and participants spoke strongly in favor of someone's sponsoring the Model Act in January at the beginning of the 1984 session of the Virginia General Assembly rather than waiting until the 1985 session. Among the strong supporters was the Executive Director of the Fairfax County Human Relations Commission:

... just for the record, I am opposed to delaying the submission of this particular bill. I feel that the issue stands as it is. . . . The issue needs to be brought forth. . . .<sup>15</sup>

Among those who favored waiting until the 1985 session was Peggy Bendrich, a lobbyist for the handicapped:

We admitted. . . that we do need some corrections. Let's make sure that what we submit will cover the most that it can and make sure that it is in a position where it can't be killed. . . I sure as all the dickens do support it, but I would hate to see it chopped down on the first try.<sup>16</sup>

John Watkins, a member of the Virginia House of Delegates, discussed several options for sponsoring legislation to create a Virginia human rights act. He felt the major hurdles to be overcome in the next session of the Virginia General Assembly would be

<sup>8</sup> Stephen Levinson, Executive Director, Alexandria Human Rights Commission, telephone interview, January 4, 1983.

<sup>9</sup> Ibid.

<sup>10</sup> Sen. L. Douglas Wilder, letter to Harold O. DeWitt, State Equal Opportunities Committee, March 28, 1983.

<sup>11</sup> Galen Martin, Executive Director, Kentucky Commission on Human Rights, "Start With the Best When Writing Civil Rights Law: A Strategy for Shaping and Gaining Passage of Effective Human Rights Legislation At the State and Local Levels" (International Association of Official Human Rights Agencies, Technical Notes 78-1, June 1978), p. 1.

<sup>12</sup> Ibid.

<sup>13</sup> Mike Shaffer and Tom Howell, "Purpose of the Virginia Human Rights Act" (unpublished paper, September 1983), p. 2.

<sup>14</sup> Eileen M. Stein, General Counsel, U.S. Commission on Civil Rights, memorandum re: Lobbying Restrictions, April 10, 1980.

<sup>15</sup> Fred Allen, Executive Director, Fairfax County Human Rights Commission, *Transcript*, Part II, p. 194.

<sup>16</sup> Ibid., p. 199.

obtaining sufficient funds and sufficient consensus to keep the bill from being killed.<sup>17</sup>

Vincent Callahan, Jr., also a member of the House of Delegates and a member of the Virginia Advisory Committee, pointed out that as an elected official he was not barred from sponsoring the legislation; but, he thought it might be too late to get it passed in the 1984 session:

. . .as has been pointed out, it's getting close to the 11th hour, if we are not already in the 11th hour. What we can do though is introduce legislation and, under the provisions of our Constitution and our rules..hold it over until the 1985 session. . .and get greater public input in the interim between 1984 and 1985 sessions without killing the bill. . . .<sup>18</sup>

<sup>17</sup> Ibid., pp. 191-192.

<sup>18</sup> Ibid., pp. 183-184.

In the 1984 session, Vincent Callahan, Jr., and others were patrons for a bill that incorporated the language of the Model Act discussed at the Statewide Conference. It did not pass out of committee and is being held over until the 1985 session of the Virginia General Assembly.<sup>19</sup>

The Virginia Advisory Committee hopes that the information contained in its report on the Statewide Conference will be useful to State and local elected officials, State and local agencies, civil rights groups, and the general public as they continue to consider the need for a State human rights law and agency to enforce it in Virginia.

<sup>19</sup> Commonwealth of Virginia, Virginia General Assembly, House Bill No. 900 (January 24, 1984).

## A Model Human Rights Act for Virginia

The Model Act considered at the Statewide Conference prohibits discrimination because of race, color, religion, sex, national origin, marital status, handicap, or age in places of public accommodation (including educational institutions), employment and housing by State and local governments and persons in the private sector.<sup>1</sup> It does not cover areas such as voting,<sup>2</sup> administration of justice,<sup>3</sup> sexual preference,<sup>4</sup> and political affiliation,<sup>5</sup> that were also of concern to participants.

The Model Act defines discrimination with regard to both intentional and nonintentional practices or acts:

Discrimination means any direct or indirect practice or act which has the purpose or effect of excluding, evicting, restricting, denying, refusing, limiting, or segregating a person or persons on the basis of race, color, religion, national origin, sex, age, marital status, or handicap, or the aiding, abetting, inciting, coercing or compelling thereof, except that, as provided by the Constitution of Virginia, the mere separation of the sexes shall not be considered discrimination.<sup>6</sup>

<sup>1</sup> Steven Hobbs and George A. Rutherglen, *et al.*, "A Model Act: Virginia Human Rights Act" (unpublished paper, September 1983), §1-201(3) (hereafter cited as "Model Act").

<sup>2</sup> Jeanne Connell, President, League of Women Voters of Virginia, *Transcript*, Part I, p. 37.

<sup>3</sup> J. Marshall Coleman, former Attorney General, Commonwealth of Virginia, *ibid.*, Part II, p. 12.

<sup>4</sup> Rev. Frederick Lowry, Director, Community Ministry in Fairfax County, *ibid.*, Part I, p. 81.

<sup>5</sup> Anthony Azores, Virginia Advisory Committee, *ibid.*, Part II, pp. 59, 60.

<sup>6</sup> "Model Act," §1-201(3).

The Virginia Constitution guarantees citizens that:

...the right to be free from any governmental discrimination upon the basis of religious conviction, race, color, sex, or national origin shall not be abridged, except that the mere separation of the sexes shall not be considered discrimination.<sup>7</sup>

The Model Act incorporates nearly all existing Virginia fair employment and fair housing laws in its substantive provisions.<sup>8</sup> The Model Act also draws upon Federal laws, including: Titles II<sup>9</sup> and VII<sup>10</sup> of the Civil Rights Act of 1964, as amended, Title VIII of the Fair Housing Act of 1968,<sup>11</sup> the Age Discrimination in Employment Act,<sup>12</sup> and the Federal Rehabilitation Act of 1973.<sup>13</sup> It also draws upon other sources such as Executive Orders of the President.<sup>14</sup> The Model Act, therefore, deals principally with Federal and State laws to which Virginians are already subject.<sup>15</sup>

Procedural provisions drew on the 1966 Model Act prepared by the National Conference of Commissioners on Uniform State Laws.<sup>16</sup> The Francis Lewis Law Center also surveyed more than 30

<sup>7</sup> Const. art. I, §11.

<sup>8</sup> "Model Act," §1-102(1).

<sup>9</sup> 42 U.S.C. §2000a—2000a-6 (1982).

<sup>10</sup> *Id.* at §2000e—2000e-17.

<sup>11</sup> *Id.* at §3601-3631.

<sup>12</sup> 29 U.S.C. §§621-634 (1982).

<sup>13</sup> *Id.* at §701-796i.

<sup>14</sup> Mike Shaffer and Tom Howell, "Purpose of the Virginia Human Rights Act" (unpublished paper, September 1983), p. 1.

<sup>15</sup> *Ibid.*, p. 2.

<sup>16</sup> *Ibid.*



human rights commissions to ascertain their experience with various provisions of the 1966 Model Act and studied the enabling legislation of all State human rights commissions in the country.

In order to ensure the independence of the proposed Virginia human rights commission, the Model Act for Virginia takes separate parts of Virginia State laws and consolidates them into a single human rights law, with enforcement responsibility concentrated in a State human rights commission.

The Model Act places the proposed State human rights commission in the Office of the Governor. The commission would have direct access to the Governor's Office and separate funding, insulating it from interagency and intra-agency pressures it might otherwise experience in handling complaints of discrimination involving State agencies.<sup>17</sup>

Under provisions of the Model Act, the State human rights commission would consist of nine members, no more than five of whom would be from the same political party, and be appointed by the Governor subject to confirmation by the Virginia General Assembly.<sup>18</sup> Members of the State human rights commission would be reimbursed for actual expenses incurred by them in the performance of their duties including compensation for services as hearing examiners.<sup>19</sup>

The Commission would be headed by a human rights director appointed by the Governor. The commission could remove the director for cause.<sup>20</sup> The director would carry out the policies of the State human rights commission. Among the director's duties would be investigating unlawful discriminatory practices, filing complaints with the commission when he or she has reasonable cause to believe that a violation of the human rights act has occurred, and conciliating such complaints.<sup>21</sup>

When enforcing the Act, the director or a member of the commission, or a designated person, may endeavor to eliminate an alleged discriminatory practice by conference, conciliation, and persuasion.<sup>22</sup> The commission may also issue subpoenas at the request of the director or at the request of a

party to a complaint proceeding. A subpoena may compel either the attendance of a witness or require the production of any relevant documents.<sup>23</sup>

Unless the commission issues an order dismissing the complaint or stating the terms of a conciliation agreement, a hearing would be held,<sup>24</sup> in accordance with the Virginia Administrative Process Act.<sup>25</sup>

If the commission or a hearing officer of the commission finds against the respondent, the commission, on its own findings or on the recommended order of a hearing officer, is empowered under the Virginia human rights Act to require the respondent to cease and desist from the discriminatory practice.<sup>26</sup> The respondent may be ordered to take affirmative action, as well as to provide other relief to the complainant, including monetary damages.<sup>27</sup>

The commission would also have power to petition for temporary relief against a respondent in a court of competent jurisdiction, including obtaining a temporary restraining order.<sup>28</sup>

The Model Act grants authority to city, town, and county governments to create local commissions.<sup>29</sup> The Act would enable both the State and local commissions in Virginia to become deferral agencies for Federal agencies<sup>30</sup> that administer laws prohibiting discrimination in public accommodations, employment, and housing.

While participants at the Statewide Conference supported a Virginia human rights law, they sought to give input on areas that they strongly supported; on areas they thought needed some clarification; and on areas they believed should be expanded.

The Chairperson of the Virginia Equal Rights Amendment Ratification Council, which was organized in 1973 to urge the Virginia General Assembly to ratify the Federal Equal Rights Amendment,<sup>31</sup> told conference participants that a Virginia human rights commission is needed not only to provide a means of filing sex discrimination complaints, but also for complaints filed on other bases.

In a review of Virginia cases of sex discrimination from the *Federal Practices Digest*, I found 51 cases brought before the Federal courts in Virginia. I know that there

<sup>17</sup> *Ibid.*, p. 14.

<sup>18</sup> "Model Act," §1-601(1).

<sup>19</sup> *Ibid.*, §1-601(6).

<sup>20</sup> *Ibid.*, §1-602(1).

<sup>21</sup> *Ibid.*, §1-602(2) (a-d)

<sup>22</sup> "Model Act," §1-606(1).

<sup>23</sup> *Ibid.*, §1-604(1-4).

<sup>24</sup> *Ibid.*, §1-606(1).

<sup>25</sup> Va. Code §9-6.14:12 (1950 and 1978 Replacement Volume).

<sup>26</sup> "Model Act," §1-609(2)(b).

<sup>27</sup> *Id.*, §1-609(2)(b).

<sup>28</sup> *Id.* at §1-607(1).

<sup>29</sup> *Id.* at §1-800.

<sup>30</sup> Shaffer and Howell, p. 1.

<sup>31</sup> Flora Crater, *Transcript*, Part 1, p. 52

are in the State three human rights commissions—in Alexandria, Fairfax County, and Richmond. I am sure a review of their complaints would show many complaints of sex discrimination.

Given the history of our fight for ratification of the ERA in Virginia [and] the instances of sex discrimination heard before the courts and before human rights commissions, there is an established need for a Virginia human rights commission. . .one that has enforcement powers, that would provide a place to air the grievances of all who have had, or have now, impairment of their civil rights.<sup>32</sup>

An attorney with the State Advocacy Office for the Developmentally Disabled gave strong support to the provisions dealing with the handicapped:

The present Virginia law in that area [disabilities] leaves a lot to be desired, and especially in terms of public accommodation discrimination and employment discrimination. Not only the substantive law but the compliance piece in the proposed Model Act goes a long, long way in remedying the problems currently in [Virginia's] State laws.<sup>33</sup>

A member of the Paralyzed Veterans of America also urged enactment of a Virginia human rights law:

[While] Virginia has some laws that are recently written about public accommodations, employment and fair housing, it would be much to our advantage to have a much stronger law that applies in these areas. There should be enforcement procedures for all of them so that we can be assured. . .they're carried out.

We have somewhat adequate building codes in the State of Virginia now, [but] they're not enforced. There are numerous building code violations just happening on a continuing basis. So one of the main things that should be considered would be enforcement procedures. . . .<sup>34</sup>

The President of the Rappahanock Chapter of the Vietnam Veterans wanted a provision in the Model Act that would prohibit discrimination in employment against veterans of the Vietnam War. He expressed the view that employers have a tendency to be wary of employing any Vietnam veterans because of adverse publicity about the Vietnam War and its veterans:

I've got a unique problem. . .we all agree that the Vietnam War was a terrible situation and I think the citizens of the United States kind of showed that in a very active fashion during the war and after the war. Unfortunately, the veterans, the guys and women that came

back, . . . ended up being the victims of that situation. And today, we're carrying a unique discrimination. . .in trying to find employment.

What I want to address specifically. . .is that I think the way the war was publicized, about the horrible situations that some of the veterans went through—[causes] employers when they're interviewing a veteran. . .[to] kind of look at them as a risky situation. . . .And unfortunately, this is kind of hard to prove in given situations; but I know for a fact that it has happened, and it is hard to deal with. It's kind of an invisible prejudice. . . .<sup>35</sup>

The President of the Virginia State Council of Machinists, AFL-CIO, included Vietnam veterans among those who should be protected in a State human rights law prohibiting discrimination in employment:

We strongly support the establishment of a State agency and State enforcement mechanisms to remedy discrimination on the basis of race, sex, religion, national origin, handicap, age, and veterans of the Vietnam era.

Those workers in Virginia who have the benefit. . . .[of] a union contract, already have something to protect them against discriminatory practices. They have a grievance procedure and arbitration. But, unfortunately, unionized workers and work places in this State are a small minority. Most workers are at the mercy of employers' practices in which they have no voice. Those workers have a special need for State laws and a State agency to which they can turn and thwart the discrimination.

The old story that was told me when I went to work in a shop was: When you walk through those archways to that mill, you don't have any rights unless they're guaranteed by the law or. . . .in a union contract.

We feel it is time for Virginia to join the vast majority of States in enacting a comprehensive civil rights statute.<sup>36</sup>

He also pointed out the need to protect others from discrimination:

In times of high unemployment, workers who are older or handicapped are especially in jeopardy; and, for women and minorities, discrimination in hiring, promotion, and pay are always a concern.<sup>37</sup>

A representative from Housing Opportunities Made Equal, a nonprofit housing agency in Richmond, stressed the need for assurance that the Model Act would protect single heads of households with children from housing discrimination, and observed that, "[I]n essence, if you discriminate

<sup>32</sup> Ibid., p. 55.

<sup>33</sup> Frank Feibelman, *ibid.*, Part II, p. 63.

<sup>34</sup> W.B. Scott, *Transcript*, Part I, p. 31.

<sup>35</sup> Hodges Mann, *ibid.*, pp. 42-43.

<sup>36</sup> Daniel LeBlanc, *ibid.*, pp. 46-47.

<sup>37</sup> Ibid., p. 47.

against families with children, you're also discriminating against women."<sup>38</sup>

Concern was also expressed about types of discrimination that participants believed should be included in the Model Act:

I noticed that. . .discrimination based on political affiliation is not included as one of the bases for discrimination, and I would like to suggest strongly that it be included.<sup>39</sup>

The speaker provided several examples of ways in which a person could be discriminated against on the basis of political affiliation in employment.<sup>40</sup>

The President of the League of Women Voters in Virginia said the League believes that every citizen should be protected in the right of political representation and the right to vote:

The League of Women Voters believes that every citizen should be protected in the right to vote. . . .Yet in Virginia, according to the 1982 census, only 59.2 percent of eligible voters were registered to vote. Virginia ranked 46th out of the 50 States. . . .The League wholeheartedly supports the goals of the State Board of Elections to increase voter registration by ten percent in 1984.<sup>41</sup>

Accompanying our concern for the right to vote is one of Virginia's reapportionment and redistricting process. We question whether or not in past years, the process has been conducted efficiently and economically, providing just and equitable treatment for all our citizens.<sup>42</sup>

<sup>38</sup> Kent Willis, *ibid.*, p. 76.

<sup>39</sup> Anthony Azores, Virginia Advisory Committee, *ibid.*, Part II, pp. 60-61.

<sup>40</sup> *Ibid.*, pp. 58-60.

<sup>41</sup> Jeanne Connell, *ibid.*, Part I, pp. 37-38.

<sup>42</sup> *Ibid.*, p. 39.

The League of Women Voters' concern for equal protection of rights also covered other areas:

Today, we are concerned about equal access to education, employment, housing, transportation. . . .about feminization of poverty. . . .[and] economic equity. . . .<sup>43</sup>

Several speakers urged that the Model Act also include a prohibition against discrimination based on sexual orientation. Rev. Frederick Lowry reported:

. . .the general senate of that denomination [United Church of Christ], has requested all the members of the United Church of Christ to work in every way possible, at local, State, and national levels, to ensure the civil rights of gay and lesbian persons. So I hope that this will also be taken into consideration by the committee. . . .<sup>44</sup>

A spokesperson for the Richmond Human Rights Coalition urged that a State human rights commission be established with enforcement powers:

What we wanted to bring forth was our idea of what the commission should be or how it should be formed, and it was suggested that a commission of nine members be appointed by the Governor; that this commission have the power to invoke their investigative power, and the power to hold public meetings, appropriate meetings, and to subpoena witnesses; and through the courts to have means of enforcing the law as passed.<sup>45</sup>

<sup>43</sup> *Ibid.*, p. 40.

<sup>44</sup> Rev. Frederick S. Lowry, Director, Community Ministry in Fairfax County, *ibid.*, p. 81.

<sup>45</sup> Earl Chandler, *ibid.*, p. 27.

## State Antidiscrimination Laws in Virginia

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One morning of the Statewide Conference was devoted to an assessment of how well State laws in Virginia address the civil rights complaints of Virginians. J. Marshall Coleman, former State Attorney General, pointed out in his keynote address that changes are needed in Virginia's criminal laws in order to provide equal justice under the law for all Virginians:

There is no greater civil wrong than criminal violence, and I hope that civil rights organizations like this one will take reform of our criminal justice system on as a project and pursue it as seriously as you are pursuing the other important items on your agenda.<sup>1</sup>

Coleman also pointed out the need to guarantee equal opportunity in voter registration and employment<sup>2</sup> and in the school system.<sup>3</sup>

Following Coleman's address was a panel of State officials who administer State laws regarding public accommodations, employment, housing, and contract compliance (areas covered in the Model Act). The information they supplied was supplemented by additional written comments and follow-up interviews.

### Public Accommodations

Virginia currently has no statute patterned after Title II of the Civil Rights Act of 1964, which prohibits discrimination in public accommodations

on the basis of race, color, religion, or national origin.<sup>4</sup>

The only statutory protection from discrimination in public accommodations is granted to the blind, deaf, and physically disabled:

The blind, the visually handicapped, and the otherwise physically disabled have the same right as the able-bodied to the full and free use of the streets, highways, sidewalks, walkways, public buildings, public facilities, and other public places.

The blind, the visually handicapped, the deaf, the hearing impaired, and the otherwise physically disabled are entitled to full and equal accommodation, advantages, facilities, and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motor buses, street cars, boats, or any other public conveyances or modes of transportation, hotels, lodging places, place of public accommodation, amusement or resort, and other places to which the general public is invited, subject only to the conditions and limitations established by law and applicable alike to all persons.<sup>5</sup>

Virginia has no agency to handle complaints of discrimination under this statute. Under the Commonwealth's statutory scheme, the physically handicapped currently receive only injunctive relief, and the mentally handicapped are excluded altogether from protection.<sup>6</sup>

The Chairman of the Legislation Advocacy Committee for Mobility on Wheels, who is also a member

<sup>1</sup> *Transcript*, Part II, p. 12.

<sup>2</sup> *Ibid.*, p. 14.

<sup>3</sup> *Ibid.*, p. 15.

<sup>4</sup> Shaffer and Howell, p. 8.

<sup>5</sup> Va. Code §63.1-171.2 (1980).

<sup>6</sup> Shaffer and Howell, p. 8.

of the Virginia Association for the Blind, told participants at the Statewide Conference that his purpose in attending was to draw attention to the lack of full and equal accommodation for persons in wheelchairs in hotels in Virginia:

My purpose in appearing here today is to try to make you aware of the needs of . . . people who apparently don't have any civil rights; that is, the handicapped. Now, you may say, "Oh, they do." Well, let me ask you a question: Suppose you came to this hotel, you checked in, and they said, "You can stay here, but you can't use the bathroom." You'd think they were crazy, but that's what they tell my wife.

She is in a wheelchair. She can't get the wheelchair into the bathroom. If she wants to come [to a hotel], she has to go through the indignity of my dragging a commode chair through the lobby and up to the bedroom; or else, when she's traveling around the State of Virginia with me, and she has to use the bathroom, I have to go into the ladies' bathroom with her and put a bedpan under her, because they don't make the toilets accessible to handicapped people [in wheelchairs].<sup>7</sup>

The Virginia Advisory Committee directly encountered the lack of public accommodations for persons in wheelchairs when trying to schedule the Statewide Conference. The Advisory Committee postponed the conference from September 1983 until November 1983 when it learned that the hotel and conference center originally selected was inaccessible to persons in wheelchairs.

The September conference site did not have a single toilet accessible to persons in wheelchairs in the hotel, the conference center, or the sleeping rooms. Further, persons in wheelchairs could not get to the dining room from the conference center without going outside and around the building to reenter the front lobby. During inclement weather even this means was unavailable.

The second site selected for the Statewide Conference had rooms and toilets accessible to persons in wheelchairs, and several improvements were completed before the conference to make the hotel rooms meet all regulations for full and equal accommodations.

Under Federal law, federally-funded programs may not be held at a site that would exclude the

participation of handicapped persons, including persons in wheelchairs:

No otherwise qualified handicapped individual in the United States. . . shall, solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance or under any program or activity conducted by an Executive agency or by the United States Postal Service. . . .<sup>8</sup>

### **State Advocacy Office for the Developmentally Disabled**

The State Advocacy Office for the Developmentally Disabled, located in Richmond, "is one of the few State agencies that acts as an advocate for the rights of the developmentally disabled in Virginia,"<sup>9</sup> according to a staff attorney, who also noted:

We are authorized by Federal statute and gubernatorial order to pursue administrative, legal, and other appropriate remedies to resolve and protect the rights of the developmentally disabled in Virginia.<sup>10</sup>

While it is a State agency, the office is totally supported by Federal funds. The office currently has five full-time and one part-time persons on its staff.<sup>11</sup>

The Executive Director of the Independence Center of Tidewater, an advocacy, referral, and training center for persons with severe disabilities, told participants at the Statewide Conference:

I see a real and urgent need to deal with disability civil rights. . . . In the last 3 years, we have seen major attacks by the national Administration on disability and civil rights. . . . in 1981 we [got] a State administration [that] really listened to disability life issues and we began to make some changes in Virginia. But that's just one State administration, and one governor. When this Governor is gone, or we get another administration in Washington that continues to attack our civil rights, we can't count on one individual.<sup>12</sup>

### **Employment**

Virginia, Louisiana, and Mississippi are the only States in the Nation without a State agency designated as a 706 deferral agency<sup>13</sup> enforcing nondiscrimination in employment in either the public or private sectors.<sup>14</sup>

With the exception of employees working for the State government in Virginia, who have access to an

<sup>7</sup> Lyden Harrell, *Transcript*, Part II, pp. 73-74.

<sup>8</sup> 29 U.S.C. §794 (1982). See also, U.S. Commission on Civil Rights, *Accommodating the Spectrum of Individual Abilities* (September 1983), p. 49.

<sup>9</sup> Frank Feibleman, staff attorney, State Advocacy Office for the Developmentally Disabled, *Transcript*, Part II, p. 37.

<sup>10</sup> *Ibid.*, p. 37.

<sup>11</sup> *Ibid.*

<sup>12</sup> John Chappell, *Transcript*, Part I, pp. 28-29.

<sup>13</sup> 29 C.F.R. §1601.70 (1983).

<sup>14</sup> *Id.* at §1601.74.

equal employment opportunity program authorized by the Governor to handle their employment discrimination complaints (discussed later in this chapter), and employees working in Alexandria, Fairfax County, and Richmond, where local human rights commissions are authorized by ordinances to handle their employment discrimination complaints (discussed in Chapter 5), employees in Virginia are for the most part dependent upon Federal laws when facing job discrimination.

The U.S. Equal Employment Opportunity Commission (EEOC) is the lead Federal agency regarding enforcement of Federal laws prohibiting employment discrimination.<sup>15</sup> It handles complaints from persons in both the public and private sectors in accordance with Title VII of the Civil Rights Act of 1964, as amended, the Equal Pay Act of 1963, Section 501 of the Rehabilitation Act of 1973, and the Age Discrimination in Employment Act of 1967.<sup>16</sup> The prohibited acts and practices included in the Model Act are substantially the same as those Federal laws enforced by EEOC.<sup>17</sup>

Virginia currently does not have a fair employment law patterned after Title VII of the Civil Rights Act of 1964.<sup>18</sup> Title VII is the major Federal law prohibiting employment discrimination in both the public and private sectors on the basis of race, color, religion, sex, or national origin with respect to hiring, discharge, compensation, training and apprenticeship, testing, promotion, layoffs, and other terms, conditions, or privileges of employment.<sup>19</sup> It does not cover employment discrimination based on handicap and age.

All employees working in the public and private sectors are not covered under Title VII. Employers who employ fewer than 15 employees are exempt from coverage,<sup>20</sup> as are elected public officials, persons chosen by such officials to be on their personal staffs, appointees on a policymaking level, and immediate advisors with respect to the exercise

of the constitutional or legal powers of office, unless those persons are subject to the civil service laws of a governmental agency.<sup>21</sup>

The Equal Pay Act,<sup>22</sup> an amendment to the Fair Labor Standards Act, prohibits discrimination in pay based on sex. (Virginia's equal pay law<sup>23</sup> is discussed later in this chapter.)

The Rehabilitation Act of 1973<sup>24</sup> regulates employment of handicapped individuals. One provision that applies to the Federal government requires each department, agency, and instrumentality in the Executive branch to engage in affirmative action in the hiring, placement, and advancement of handicapped individuals who are Federal employees or applicants for Federal employment.<sup>25</sup> The model human rights act contains similar provisions applicable to State departments and agencies.

Another section of the Rehabilitation Act requires Federal contractors and subcontractors with contracts in excess of \$2,500 to take affirmative action to employ and advance in employment qualified handicapped individuals.<sup>26</sup> Virginia's Fair Employment Contracting Act does not require affirmative action by contractors and subcontractors; neither would the Model Act. However, the Model Act does provide for debarment of any contractor or subcontractor found to be in violation of its provisions prohibiting employment discrimination.

The Rehabilitation Act of 1973 also contains a broad prohibition of employment discrimination in federally-assisted programs against handicapped persons solely because they are handicapped.<sup>27</sup>

The Age Discrimination Act of 1967, as amended, is designed to promote employment of older persons based on ability rather than age, and to help employers and workers find ways of meeting problems arising from the impact of age on employment.<sup>28</sup> The model human rights act prohibits age

<sup>15</sup> 42 U.S.C. §2000e-5 (1982).

<sup>16</sup> U.S., Equal Employment Opportunity Commission, "The Transformation of an Agency," p. 10 (1978). Under President Jimmy Carter's Reorganization Plan No. 1 of 1978, administration and enforcement of the Age Discrimination Act of 1967, as amended, and the Equal Pay Act of 1963, as amended, were transferred from the U.S. Dept. of Labor to the Equal Employment Opportunity Commission, effective Jan. 1, 1979. In addition, all enforcement and related functions regarding Federal employment of handicapped individuals under section 501 of the Rehabilitation Act of 1973 were transferred from the Civil Service Commission to EEOC, also effective January 1, 1979.

<sup>17</sup> Shaffer and Howell, p. 5.

<sup>18</sup> Shaffer and Howell, p. 4.

<sup>19</sup> 42 U.S.C. §2000e-2(a) (1982).

<sup>20</sup> *Id.* at §2000e(b).

<sup>21</sup> *Id.* at §2000e-2(a) (f) (1982).

<sup>22</sup> 29 U.S.C. §206 (1982).

<sup>23</sup> Va. Code §40.1-28.6 (1981).

<sup>24</sup> 29 U.S.C. §701-796i (1982).

<sup>25</sup> *Id.* at §791(b).

<sup>26</sup> *Id.* at §793.

<sup>27</sup> *Id.* at §794.

<sup>28</sup> 29 U.S.C. §621(b) (1982).

discrimination in employment for persons between the ages of 18 and 70.<sup>29</sup>

### State Activity Regarding Handicap

A Virginia law prohibiting employment discrimination against any person because of an unrelated physical handicap was enacted in 1975. It provides that:

No employer shall discriminate in employment or promotion practices against any person on account of a physical handicap which is unrelated to the person's qualifications and ability to perform the job. This section shall not apply to employers covered by the Federal Rehabilitation Act of 1973. Any circuit court, having chancery jurisdiction in the county or city wherein the alleged discrimination occurs, shall, on motion of any handicapped person who is wrongfully discriminated against have jurisdiction to enjoin such discrimination. A suit to enjoin alleged discrimination under this section must be brought within ninety (90) days after such discrimination is alleged to have occurred.<sup>30</sup>

### Virginia Department of Rehabilitative Services

The Title V and Community Education Coordinator of the Virginia Department of Rehabilitative Services told participants at the Statewide Conference that she is responsible for providing technical assistance and consultation to public and private agencies that request help in complying with various sections of Title V of the Rehabilitation Act of 1973. Her agency, however, is not in any way responsible for Title V compliance or enforcement.<sup>31</sup>

While the Title V Coordinator works with all sections in Title V, Section 504 commands the greatest attention:

Section 504 is probably the biggest piece of the responsibility [that I have] and is what we call our civil rights. We don't have civil rights legislation as many other protected groups do. We have Section 504 and that is our civil rights.<sup>32</sup>

The Title V coordinator is assisted by 11 field workers throughout the State who provide technical assistance and consultation regarding disabilities.<sup>33</sup>

### Governor's Council

The Title V Coordinator in Virginia is also the Executive Director of the Governor's Overall Advisory Council on the Needs of Handicapped Persons:

... as professional staff to that advisory council, we advise the Governor in terms of the needs of program improvement and program needs for persons with disabilities. To that end, we have a proposed piece of legislation that we have called the "Virginians with Disabilities Act". . . . [We] would support and encourage and help in any way that we possibly can with a Virginia human rights or civil rights model act.<sup>34</sup>

A "Persons With Disabilities" bill<sup>35</sup> was offered in the Virginia General Assembly in February 1984, but it did not pass. It proposed that a plan of cooperation be formulated by State agencies providing services to the disabled, in accordance with the provisions of the proposed State disabilities law and the Federal Rehabilitation Act.

The proposed disabilities law also contained antidiscrimination provisions that would apply to State grants and programs, employment in the public and private sector, public and private educational institutions, the right to vote, public transportation, public places and public accommodations, and housing.

The proposed disabilities law also authorized any aggrieved person to petition a circuit court having chancery jurisdiction to enjoin a discriminatory act or practice and award affirmative action relief, including damages and reasonable attorney fees to the petitioner. Suits could be filed within 2 years of the occurrence of any violation under the proposed disabilities law.

### Equal Pay Act

The Virginia General Assembly passed the Virginia Equal Pay Irrespective of Sex Act<sup>36</sup> (commonly called the Virginia Equal Pay Act) in 1974—the same year in which Congress amended the Equal Pay Act of 1963 to include Federal, State, and local government employers not previously covered. The Federal Equal Pay Act requires that employees who perform substantially equal work in the same establishment on jobs that require equal skill, effort, and

<sup>29</sup> "Model Act," §1-302(2).

<sup>30</sup> Va. Code §40.1-28.7 (1981).

<sup>31</sup> Betty Mathews, Title V and community education coordinator, Virginia Department of Rehabilitative Services, *Transcript, Part II*, pp. 38, 39.

<sup>32</sup> *Ibid.*, pp. 39-40.

<sup>33</sup> *Ibid.*, p. 48.

<sup>34</sup> *Ibid.*, pp. 40-41.

<sup>35</sup> Commonwealth of Virginia, Virginia General Assembly, House Bill No. 817, offered February 11, 1984.

<sup>36</sup> Va. Code §40.1-28.1 (1981).

responsibility, and that are performed under similar working conditions, shall receive equal wages.<sup>37</sup>

The Virginia Equal Pay Act, which is administered by the Virginia Department of Labor and Industry, prohibits only sex discrimination with regard to equal pay and covers only those employers excluded from coverage under the Federal Equal Pay Act.<sup>38</sup> Although the Virginia Equal Pay Act does not require any process for handling complaints, internal procedures to investigate complaints under the Act have been established by the Virginia Department of Labor and Industry, according to a State Labor official. Also, if there is reason to believe that sex discrimination has occurred under the Virginia Equal Pay Act, the Commonwealth Attorney may sue on behalf of the complainant for up to twice the amount of wages illegally withheld. If the Commonwealth Attorney does not sue, the victim of discrimination may sue on his or her own behalf.<sup>39</sup>

Employers who violate the Federal Equal Pay Act are subject to a \$10,000 fine, possible imprisonment if a prior violation has occurred, payment of back wages unlawfully withheld, and other monetary damages.<sup>40</sup> Also, complaints of discrimination involving equal pay, based not only on sex but also other bases, may be filed with EEOC under the Federal Equal Pay Act or Title VII of the Civil Rights Act of 1964, as amended, or both.<sup>41</sup>

At the request of the Virginia Commission on the Status of Women, a joint resolution was passed in the 1984 session of the Virginia General Assembly requesting that the Secretary of Administration and the Secretary of Finance "study the concept of comparable worth and what changes and the cost thereof which that concept might cause in the Commonwealth's job evaluation and classifications systems."<sup>42</sup> The Governor was authorized "to employ appropriate independent consultants to assist in the study."<sup>43</sup> For this purpose the Virginia General Assembly appropriated \$60,000.<sup>44</sup>

<sup>37</sup> 29 U.S.C. §206(d)(1) (1982).

<sup>38</sup> Va. Code §40.1-28.6 (1982).

<sup>39</sup> W.K. Turpin, director, State Labor Law Administration, Va. Dept. of Labor and Industry, telephone interview, August 24, 1984.

<sup>40</sup> 29 U.S.C. §216 (1982).

<sup>41</sup> Title VII, p. 13 (1981).

<sup>42</sup> Commonwealth of Virginia, Virginia General Assembly, House Joint Resolution No. 35, March 2, 1984.

<sup>43</sup> *Id.*

## Executive Order Number One

In 1973, Governor Linwood Holton was the first of successive governors of Virginia to issue an executive order to assure employees and applicants for employment in State agencies that the Commonwealth is committed to removing discriminatory barriers to employment prohibited under Federal laws.<sup>45</sup> Governor Mills E. Godwin's executive order, which added age, physical handicap, and political affiliation to the Title VII bases, became the prototype for Executive Order Number One signed by Governor John N. Dalton on January 31, 1978,<sup>46</sup> and by Governor Charles S. Robb on January 16, 1982.<sup>47</sup>

The first Executive Order Number One followed the 1972 amendment to Title VII of the Civil Rights Act of 1964, which added State and local governments to the employers covered. In addition to affirming State policy against employment discrimination, the order provides for the handling of employment complaints by a State program discussed below. (Employees in the legislative and judicial branches of Virginia's State government and faculty members of State-supported institutions of higher education are exempt from Executive Order Number One.)

## Employment Services and Program Evaluation

The Office of Employment Services and Program Evaluation (ESPE, formerly the Office of Equal Employment Opportunity) is situated in the Department of Personnel and Training, which is directed by the Secretary of Administration and Finance. ESPE was first established by Governor Godwin in 1974 and has been continued by successive governors. Major responsibilities of ESPE include:

- investigating complaints of employment discrimination from State employees and applicants for State employment;<sup>48</sup>
- providing staff for monitoring activities of the Virginia Equal Employment Opportunity Committee and assisting in its preparation of an annual report to the Governor on the status of equal

<sup>44</sup> Maya Hasegawa, member, Virginia Commission on the Status of Women, telephone interview, April 24, 1984.

<sup>45</sup> Va. Executive Order No. 29 (Jan. 1, 1973).

<sup>46</sup> Va. Executive Order No. 1 (Jan. 31, 1978).

<sup>47</sup> Va. Executive Order No. 1 (Jan. 16, 1982).

<sup>48</sup> Commonwealth of Virginia, Department of Personnel and Training, Administrative Guidelines for Executive Order No. 1(82) and Secretary of Administration and Finance Directive No. 3(82), February 1983, pp. 3, 4.



employment opportunity and affirmative action in State agencies;<sup>49</sup>

- monitoring of equal employment opportunity and affirmative action policies and practices required by directives of the Secretary of Administration and Finance pursuant to Executive Order Number One;<sup>50</sup> and,
- other duties as required by the Director of Personnel and Training.<sup>51</sup>

At the Statewide Conference, the Director of ESPE stated that ESPE and the U.S. Equal Employment Opportunity Commission (EEOC) have no direct working relationship.<sup>52</sup> Section 706(b) and 706(c) of Title VII require that EEOC defer any charges of employment discrimination it receives to State and local agencies, as long as the State or local law prohibiting employment discrimination is *substantially* equivalent to Title VII and the enforcement agency has authority to grant or seek relief from alleged discriminatory practices or to institute criminal proceedings.<sup>53</sup> The ESPE office does not have deferral status since it meets none of the necessary requirements. The investigative procedures used in ESPE, however, closely mirror those of EEOC.<sup>54</sup>

According to the current ESPE director:

We require, similar to EEOC, that a complaint be filed within 180 days of the last act of alleged unlawful discrimination. . . .we attempt to resolve our cases within a 150-day period, which is close to the time period that EEOC as well as. . .other Federal investigative agencies use for a timeframe.<sup>55</sup>

A State employee or applicant for State employment may file a complaint directly with EEOC and bypass ESPE altogether. EEOC will process the complaint without first returning it to ESPE, since ESPE does not have 706 deferral status.<sup>56</sup>

During fiscal year 1982, EEOC received a total of 129 complaints from Virginians alleging discrimination either by State or by local governmental

agencies.<sup>57</sup> The current ESPE Director estimates that approximately 90 of the 129 complaints were filed against State agencies and that of the 90 complaints, about one-third were also filed with ESPE.<sup>58</sup>

Of the 34 complaints received by ESPE in fiscal year 1982, 29 were accepted for investigation, 2 were withdrawn by the complainant, and 3 were rejected.<sup>59</sup> In addition to the 34 complaints filed both with ESPE and EEOC, 55 known additional complaints were filed only with EEOC.<sup>60</sup>

At the Statewide Conference, the ESPE Director indicated that for some reason the number of complaints filed with ESPE had declined in the last few years but that he expected the volume to increase in 1983-84 to a level of about 60 complaints a year or more. This would bring the number of complaints each year to about the level they were before the last 2-year decline.

. . .2 years ago, for whatever reason, I think it [the caseload] was a low of around 36 to 40 complaints. I've been surprised in my 6 months [with ESPE] because if the trend continues, if the numbers of complaints we're receiving continues, I would expect that by the end of the fiscal year we will be back up to the 60 to 70 complaints this year. I think that in previous years, it was 40 to 60 complaints per year.<sup>61</sup>

The ESPE Director also believed that the basis of complaints would begin to change. He noted that:

. . .previously race discrimination complaints were far ahead of any other type of allegations of unlawful discrimination. We are seeing now the emergence of complaints alleging sexual harassment.<sup>62</sup>

Under the model human rights act presented at the Statewide Conference, the activities of ESPE could be incorporated into the activities of the State human rights commission.

Opportunity Commission, letter to Antonia V. Hollomon, chairperson, Virginia Equal Employment Opportunity Committee, August 12, 1983.

<sup>58</sup> George Gardner, *Transcript*, Part II, p. 25.

<sup>59</sup> Commonwealth of Virginia, Equal Employment Opportunity Committee, *Annual Report to the Governor of Virginia on Equal Employment Opportunity in the Commonwealth, 1983*, p. 49 (hereafter cited as *EEO Report*).

<sup>60</sup> *EEO Report*, p. 50.

<sup>61</sup> George Gardner, *Transcript*, Part II, p. 24.

<sup>62</sup> *Ibid.*, p. 21.

<sup>49</sup> Antonia V. Hollomon, chairperson, Virginia Equal Employment Opportunity Committee, telephone interview, April 25, 1984.

<sup>50</sup> George Gardner, director, ESPE, telephone interview, April 25, 1984.

<sup>51</sup> *Ibid.*

<sup>52</sup> George Gardner, *Transcript*, Part II, p. 23.

<sup>53</sup> 42 U.S.C.A. §2000e-5 (1976).

<sup>54</sup> George Gardner, *Transcript*, Part II, pp. 20-21.

<sup>55</sup> George Gardner, *Transcript*, Part II, p. 21.

<sup>56</sup> Gardner interview.

<sup>57</sup> John Seal, Management Director, U.S. Equal Employment

### Equal Employment Opportunity Committee

The Virginia Fair Employment Practices Act<sup>63</sup> was amended in March 1979 to give statutory authority to the Equal Employment Opportunity Committee (EEO Committee) previously established by executive order.

When first established, the EEO Committee was to advise the EEO office (now ESPE). As a statutory body, the EEO Committee is now charged with monitoring ESPE and other State agencies to assure that their equal employment opportunity and affirmative action practices and policies are equitable for State employees and applicants.<sup>64</sup> The Department of Personnel and Training and ESPE are responsible for assuring that State agencies develop affirmative action plans, follow equal employment opportunity guidelines promulgated by the Secretary of Administration and Finance, and comply with appropriate EEO and affirmative action requirements of Federal laws and regulations.<sup>65</sup>

The EEO Committee is composed of 16 individuals from across the Commonwealth, appointed by the Governor.<sup>66</sup> Its members are not compensated, but are reimbursed for expenses.<sup>67</sup> No staff is available to the EEO Committee except that provided by ESPE and any hired consultants.<sup>68</sup> Such dependence upon ESPE is awkward, since the EEO Committee is responsible for monitoring ESPE as well as other State agencies.

The amount of monitoring that can be done onsite by members of the EEO Committee is quite limited. Generally, members are not self-employed and have limited time off from their paid employment. Also, members often do not come to the EEO Committee already equipped with the degree of knowledge and experience necessary for onsite monitoring. As a result, the EEO Committee is almost totally dependent upon the State agencies it is supposed to monitor to furnish the EEO Committee data it uses to make reports to the Governor.<sup>69</sup>

Under current Virginia law, a Governor may not serve two consecutive terms in office.<sup>70</sup> Since the

Governor appoints members of the EEO Committee, most of them are not retained from one administration to the next. Therefore, knowledge and experience that is gained by a member during a four-year term is often lost. The work accomplished by one EEO Committee may not be adopted or pursued by the next. The lack of continuity minimizes the effectiveness of the EEO Committee in getting State agencies to implement Committee recommendations.<sup>71</sup>

In making its report to Governor Robb in January 1984, members of the EEO Committee recommended that a State law be enacted to prohibit employment discrimination, covering not only State employees, but also employees in the private sector, and that a State agency be established to implement the law.<sup>72</sup>

The Model Act presented at the Statewide Conference, if passed by the Virginia General Assembly, would repeal the State law establishing the EEO Committee and its monitoring activities and transfer those functions to the State human rights commission.<sup>73</sup>

### Fair Employment Contracting Act

The Virginia Fair Employment Contracting Act,<sup>74</sup> enacted in 1980, declares that it is State policy:

...to eliminate all discrimination on account of race, color, religion, sex, or national origin from the employment practices of the State, its agencies, and government contractors.<sup>75</sup>

However, the law does not create a State agency to enforce the provisions of the legislation and specifies no penalties for violation, nor is any specific State agency required to monitor contractors for compliance. Rather, all contracting agencies must include in every government contract of over \$10,000 a provision stating that the contractor will not discriminate against any employee or applicant for employment because of race, religion, sex, or national origin, except where religion, sex, or national origin is a bona fide occupational qualification

<sup>63</sup> Va. Code §§2.1-116.10-116.14 (1979).

<sup>64</sup> *Id.* at §2.1-116.14.

<sup>65</sup> Commonwealth of Virginia, Department of Personnel and Training, *Administrative Guidelines for Executive Order No. 1 (82)* and *Secretary of Administration and Finance Directive No. 3 (82)*, February 1983, p. 5.

<sup>66</sup> Va. Code §2.1-116.11 (1979).

<sup>67</sup> *Id.* at §2.1-116.13.

<sup>68</sup> Antonia V. Hollomon, *Transcript*, Part II, p. 47.

<sup>69</sup> Antonia V. Hollomon, telephone interview, March 8, 1984.

<sup>70</sup> Va. Const. art. V, §1.

<sup>71</sup> Hollomon interview.

<sup>72</sup> *EEO Report*, p. 2.

<sup>73</sup> "Model Act," §1-105.

<sup>74</sup> Va. Code §2.1-374-376.1 (1979).

<sup>75</sup> *Id.* at §2.1-374.

reasonably necessary to the normal operation of the contractor. The contractor is also required to post this notice in a conspicuous place.<sup>76</sup>

Several Federal laws enforced by the Office of Federal Contract Compliance Programs (OFCCP), located in the U.S. Department of Labor, also affect the State government, and contractors and subcontractors; namely Executive Order 11246,<sup>77</sup> section 503 of the Rehabilitation Act of 1973,<sup>78</sup> and the affirmative action provisions of the Vietnam Era Veterans Readjustment Assistance Act of 1974.<sup>79</sup> According to Labor officials:

...with the exception of federally assisted construction (which we discuss further below) coverage under all three programs attaches only as a result of a "government contract" or "subcontract" (see definitions at 41 C.F.R. 60-1.3, 60-250.2 and 60-741.2), and does not attach as a result of a grant or other Federal financial assistance. Further, a Federal contract held by one agency of the State or local government does not obligate the entire government. Agencies, instrumentalities and subdivisions of the government which do not participate in work on or under the contract are exempt (see 41 C.F.R. 60-1.5(a) (4), 60-250.3(a) (4), and 60-741.3(a) (4)). Thus the State government and its agencies are covered only to the extent that they have "government contracts" with the Federal government, and firms which contract with the State government are only covered (assuming no other direct dealings with the Federal government) if they have a "subcontract" as defined in the regulations.

The one additional basis of coverage is the "federally assisted construction contract" (see definition at 41 C.F.R. 60-1.3). Under this concept there is Executive Order 11246 coverage of companies (and of agencies, instrumentalities and subdivisions of State and local governments) participating in federally funded construction even if the Federal funding is provided by a financial assistance arrangement rather than by government contract. Please note that this concept applies only to Executive Order 11246, as amended, and not to the two other programs administered by OFCCP.<sup>80</sup>

Executive Order 11246,<sup>81</sup> effective October 24, 1965, prohibits employment discrimination on the basis of race, color, religion, and national origin by Federal contractors, subcontractors, and federally-assisted construction contractors and subcontractors.

In addition, the order requires affirmative action, regardless of whether discrimination has ever occurred, to ensure that applicants and employees are treated without regard to race, color, religion, or national origin.<sup>82</sup> In 1967, this order was amended by Executive Order 11375 to include sex as a prohibited basis for discrimination.<sup>83</sup>

Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974 requires Federal contractors and subcontractors with contracts of \$10,000 or more to take affirmative action to employ and promote qualified disabled veterans and veterans of the Vietnam era.<sup>84</sup>

Section 503 of the Rehabilitation Act of 1973,<sup>85</sup> as amended, requires Federal contractors and subcontractors with contracts in excess of \$2,500 to take affirmative action to employ and promote qualified handicapped individuals.

During fiscal year 1983, OFCCP investigated nationally approximately 475 complaints under Executive Order 11246, and 1,890 complaints under Section 503 of the Rehabilitation Act of 1974 and the affirmative action provisions of the Vietnam Era Veterans Readjustment Act of 1974.<sup>86</sup>

#### Office of Minority Business Enterprise

The Office of Minority Business Enterprise (OMBE) is a State office operating with State funds, with some additional Federal flow-through dollars received through the Highway Supportive Service Program, which varies in amount from year to year.<sup>87</sup>

The Highway Supportive Service Program has been operated by OMBE since 1976.<sup>88</sup> Under this program, OMBE has sought to increase the participation of minority and women-owned firms in Virginia in highway construction jobs that use Federal funds. Prior to January 1983, OMBE had a Federal goal for minority participation in construction.

<sup>76</sup> *Id.* at §2.1-376(1).

<sup>77</sup> Exec. Order No. 11,246, 30 Fed. Reg. 12,319 (1965).

<sup>78</sup> 29 U.S.C. §793 (1982).

<sup>79</sup> 38 U.S.C. §2012 (1982).

<sup>80</sup> Frank White, Acting Deputy Solicitor, U.S. Department of Labor, to Edward Rutledge, Regional Director, Mid-Atlantic Regional Office, U.S. Commission on Civil Rights, dated September 24, 1984.

<sup>81</sup> Exec. Order 11,246, 30 Fed. Reg. 12,319 (1965).

<sup>82</sup> *Id.*

<sup>83</sup> Executive Order 11,375, §32 Fed. Reg. 14303 (1967).

<sup>84</sup> 38 U.S.C. §2012 (1982).

<sup>85</sup> 29 U.S.C. §793 (1982).

<sup>86</sup> White letter, dated September 24, 1984.

<sup>87</sup> Ruth R. Moneybun, program manager, OMBE, telephone interview, August 27, 1984.

<sup>88</sup> *Ibid.*

tion-related contracts of 3 percent and a 1 percent goal for women-owned businesses.<sup>89</sup>

Carolyn Jefferson-Moss reported that, "The enactment of the Surface Transportation Assistance Act of 1982 raised the goal for minority business to 10 percent, and as of October 31, [1983] we have a 10-percent goal for minority businesses and a 1-percent goal for women-owned firms."<sup>90</sup> Jefferson-Moss, who is Director of OMBE, estimated that these federally-mandated goals would generate about \$126 million for these firms in Virginia.<sup>91</sup>

Although OMBE is a consultative and technical assistance program, it has been able to strengthen both compliance and enforcement of Virginia's Fair Employment Contracting Act and applicable Federal laws:

... we have been able to convince the State officials to make several changes in the highway construction program since early 1982, which are designed to remove some of the restrictive barriers or practices that have impeded minority firms' abilities to participate in the construction industry.

One, we have been successful in getting the Highway Department to remove the requirement that subcontractors be bonded [for contracts up to \$1 million]. Two, we have been able to remove the requirements for prequalification of subcontractors on jobs up to \$1 million.

We are also breaking some of the large construction contracts into smaller increments of work; here again, to provide more opportunities for minority firms to serve as prime contractors. . . .<sup>92</sup>

Jefferson-Moss reported that some complaints of discrimination regarding highway construction have surfaced in OMBE. Since the Highway Department is responsible for monitoring its highway construction programs, the complaints are referred to that State agency.<sup>93</sup>

The Market Development Program, also operated by OMBE, is designed to increase public and private sector procurement opportunities for minorities and assist minority firms in identifying and profiting by expanded market opportunities. Special emphases and assistance are directed toward increasing the numbers of dollars that the State spends directly

with minority firms for the purchase of goods and services.<sup>94</sup>

Goals set by the State agencies for nonconstruction contracts are entirely voluntary, in contrast with federally-mandated goals in highway construction contracts.<sup>95</sup> The goals for State purchases from minority and women-owned firms for the 1983 fiscal year ranged from 1 to 3 percent and varied from agency to agency. The Virginia OMBE expects this goal to generate between \$10 million and \$20 million in procurement opportunities for minority and women-owned firms in Virginia.<sup>96</sup>

In Virginia the Division of Purchases and Supply (DPS), Department of General Services, is the centralized purchasing agency for materials, supplies, equipment and printing required by any State agency or institution. Each agency generally has the authority to enter into its own contracts for services and construction projects. Persons desiring to sell goods, supplies, and services to State agencies should contact the Division of Purchases and Supply for placement on their vendors mailing list so they can be notified of upcoming requirements for goods and services, and contact each agency directly for information on their service requirements.<sup>97</sup>

Jefferson-Moss told participants at the Statewide Conference that some contract purchasing practices with an adverse impact upon minority and women-owned business in Virginia have been changed:

One of the things that we found when I first came here was that there was a very small number of minorities and women. . . registered on the bidders' list. Two, we found that the State used a rotational process for soliciting from vendors. So your name might come up once or twice or maybe five times during the year, but you would not receive solicitations every time the State went out to make a purchase. . . .

We have been able to change that process. Every time the State makes a purchase for goods and supplies, they include minorities in the list. . . . We feel that this will increase the chances of having a minority vendor as the lowest bidder, and here again, it's not really giving preference. It's a way in which we hope the State can

<sup>89</sup> Carolyn Jefferson-Moss, Director, OMBE, *Transcript*, Part II, pp. 28-29.

<sup>90</sup> *Ibid.*

<sup>91</sup> *Ibid.*, p. 30.

<sup>92</sup> *Ibid.*, pp. 30-31.

<sup>93</sup> *Ibid.*, p. 80.

<sup>94</sup> Lilia M. Williams, Deputy Director for Market Development, OMBE, Richmond; interview, September 21, 1984.

<sup>95</sup> Jefferson-Moss, *Transcript*, Part II, p. 55.

<sup>96</sup> *Ibid.*, p. 30.

<sup>97</sup> Williams interview; September 21, 1984.

correct some of the previous practices that have adversely affected minority firms.<sup>98</sup>

The OMBE Director pointed out another example of practices used by the State in contracting that may have an unnecessary adverse effect upon minority and women-owned firms:

...when I first came here. . .I. . .made contacts with a number of State agencies and. . .started those State agencies to do business with a minority travel agency. Later on I learned that the State was going to let a single contract to have all of the State's travel services come under one umbrella contract; and, of course, this in my opinion has precluded other State agencies that were already doing business with the minority. . .from continuing to do business with that minority travel agency. . . .We are looking at some options for correcting that situation. . . .<sup>99</sup>

...at the State level, one of the things that we have repeatedly requested HUD to do is to advertise their procurement opportunity in the minority press or with minority press. We feel that that has, indeed, been one of the shortcomings of State agencies in seeking minority firms to participate. That is also true of the Highway Department.<sup>100</sup>

Although the political subdivisions of the State are not specifically mentioned in the Virginia Fair Employment Contracting Act, Jefferson-Moss indicated that the same procurement process should apply at local levels of government as well.<sup>101</sup> Edward Peeples, Chair of the Richmond Human Relations Commission, alleged that some problems exist in local procurement procedures because of "monopolies in some of the cities and counties"<sup>102</sup> in the provision of goods and services. Peeples suggested that a model Virginia Human Rights Act contain provisions requiring nondiscrimination in State and local government contracts.<sup>103</sup> The Model Act does include such a provision.<sup>104</sup>

## Housing

The Virginia Fair Housing Office, located in the Virginia Real Estate Commission, is the only State entity that handles complaints of housing discrimination.<sup>105</sup>

Virginia's Fair Housing Act,<sup>106</sup> enacted in 1972, has been administered by the Virginia Real Estate Commission (VAREC) since 1975.<sup>107</sup> VAREC is within the Virginia Department of Commerce, which administers numerous boards and commissions overseeing professions, occupations, and businesses that the Commonwealth of Virginia has chosen to regulate.<sup>108</sup>

When enacted in 1972, the Virginia Fair Housing Act prohibited discrimination in housing on the basis of race, color, religion, sex, and national origin.<sup>109</sup> In 1984 the Virginia General Assembly amended the Act to cover handicap, single parenthood, and the elderly.<sup>110</sup> With the 1984 changes, Virginia's Fair Housing Act has more bases for filing allegations of discrimination than does the Federal fair housing law, Title VIII of the Civil Rights Act of 1968, as amended, which does not cover parenthood, handicap, or age.

Otherwise, Virginia's Fair Housing Act parallels Title VIII, including the exemptions currently allowable under Title VIII for government-supported housing, religious organizations, nursing homes, small apartment buildings, and single-family homes.<sup>111</sup>

Virginians who believe they have been discriminated against by any person who has the right to sell, rent, lease, control, construct, or manage any dwelling constructed or to be constructed or by any agent, independent contractor, or employee of such person, may file a complaint with the Virginia Real Estate Commission within 180 days of the occurrence of the alleged discriminatory housing practice.<sup>112</sup>

A Fair Housing Administrator, who reports to the Executive Director of the Virginia Real Estate Commission, carries out the routine daily operations of the Office of Fair Housing, as well as handling complaints of housing discrimination. The Administrator investigates complaints, determines if there is reasonable cause to believe that discrimination has occurred, negotiates and conciliates agreements on

<sup>98</sup> Ibid., pp. 78-79.

<sup>99</sup> Ibid., p. 56.

<sup>100</sup> Ibid., p. 69.

<sup>101</sup> Ibid., p. 79.

<sup>102</sup> *Transcript*, Part II, p. 79.

<sup>103</sup> Ibid.

<sup>104</sup> "Model Act," §1-609(3) (a-e).

<sup>105</sup> Ron Claiborne, assistant director of fair housing, Virginia Real Estate Commission, *Transcript*, Part II, pp. 41, 87-88.

<sup>106</sup> Va. Code §§36-86 through 36-96 (1984).

<sup>107</sup> Ron Claiborne, *Transcript*, pp. 42.

<sup>108</sup> Ibid., pp. 41-42.

<sup>109</sup> Ibid., p. 42.

<sup>110</sup> Va. Code §36-88 (1984).

<sup>111</sup> Va. Code §36-92 (1984).

<sup>112</sup> Va. Code §36-94 (1984).

behalf of the Virginia Real Estate Commission, and refers complaints to the State Attorney General.<sup>113</sup>

If in the course of an investigation, the Fair Housing Administrator is unable to obtain the voluntary cooperation of a person who may have information, records, or documents pertinent to the investigation, he or she may request the Attorney General to subpoena pertinent materials.<sup>114</sup>

The Real Estate Commission may also, when appropriate, refer complaints to any other State, local, or Federal agency appearing to have an interest in the enforcement of respondent's obligations with respect to discrimination in housing.<sup>115</sup>

According to the Fair Housing Administrator,<sup>116</sup> the Office of Fair Housing receives approximately 105 complaints of discrimination a year. Probable cause is found in about 50 percent of these complaints. Of the 40 to 50 probable cause findings handled over an 18-month period in 1983-1984, most aggrieved parties obtained the services of an attorney and went either to State or Federal court to seek resolution of their complaints.

Staff for the Office of Fair Housing consists of the Fair Housing Administrator and a secretary.<sup>117</sup> The Administrator may consult with a lawyer from the Attorney General's Office assigned to work with the Office of Fair Housing on housing discrimination complaints. Also, from time to time the Administrator is assisted by field investigators in regional offices of the Real Estate Commission located in Richmond, Virginia Beach, Roanoke, and Falls Church. One field investigator is primarily responsible in each of these four offices for investigations.<sup>118</sup>

The budget for the Office of Fair Housing is an integral part of the budget for the Virginia Real Estate Commission.<sup>119</sup> The Real Estate Commission receives about \$500,000 per year to carry out all of its regulatory functions as well as the functions performed through the Office of Fair Housing.

The Virginia Real Estate Commission has been designated as a referral agency to receive from HUD complaints filed by Virginia residents under

Title VIII of the Civil Rights Act of 1968, as amended.<sup>120</sup> According to the Assistant Secretary for Fair Housing and Equal Opportunity at HUD:

The fair housing law administered by the Virginia Real Estate Commission (VAREC) has been determined to be substantially equivalent to Title VIII of the Civil Rights Act of 1968, as amended, and the VAREC receives financial assistance from the Department of Housing and Urban Development (HUD) to investigate housing complaints cognizable under Title VIII and referred from HUD. On March 12, 1982, HUD entered into its first contractual agreement with VAREC for \$110,000 to assist them in carrying out their fair housing law.<sup>121</sup>

The Office of Fair Housing, like the ESPE office in the Virginia Department of Personnel, is subject to the overall supervision of officials in the State agency in which it is located. The Model Act would establish the State human rights commission as an independent agency in the Governor's Office, with its own staff and budget.<sup>122</sup> This commission would be authorized to handle all housing complaints filed under the Virginia Fair Housing Act.<sup>123</sup> The fair housing provisions in the Model Act are consistent with provisions of the Virginia Fair Housing Act.

Gregory Lucyk, President of the Fan District Tenants Association in Richmond, told participants at the Statewide Conference that the Model Act "would go far" to assist handicapped persons and single parents in finding housing.<sup>124</sup> (At the time he spoke, the Virginia Fair Housing Act did not include handicap and marital status.)

Alma Barlow, President of the Richmond Tenants Organization, told participants at the Statewide Conference that persons who receive aid to dependent children (ADC) are discriminated against when they apply for jobs because they live in public housing or are on welfare. She summed up by saying:

[If] they live in public housing or are welfare recipients [in public housing]. . . immediately the doors are closed in their faces.<sup>125</sup>

<sup>113</sup> *Id.* at §36-95.

<sup>114</sup> *Id.* at §36-94.1.

<sup>115</sup> Virginia Fair Housing Regulations, §12.16(b).

<sup>116</sup> Ron Claiborne, interview in Richmond, March 19, 1984.

<sup>117</sup> *Ibid.*

<sup>118</sup> *Ibid.*

<sup>119</sup> *Ibid.*

<sup>120</sup> 24 C.F.R. §115.11 (1984); also, Ron Claiborne, *Transcript*, p. 42.

<sup>121</sup> Antonio Monroig, Assistant Secretary for Fair Housing and Equal Opportunity, U.S. Department of Housing and Urban Development, to Edward Rutledge, Regional Director, Mid-Atlantic Regional Office, U.S. Commission on Civil Rights, dated September 25, 1984.

<sup>122</sup> "Model Act," §1-601(1); also, "Model Act Paper," p. 16.

<sup>123</sup> "Model Act," §1-105(3).

<sup>124</sup> *Transcript*, Part I, p. 33.

<sup>125</sup> *Ibid.*, Part II, p. 51.

An official with the Virginia Employment Commission (VEC) told the Statewide Conference that any individual making application for jobs listed by VEC and who complains of discrimination as a result of the referral, can file a complaint with VEC. Such complaints may also be referred to appropriate Federal and State agencies such as the EEOC and the Virginia Fair Housing Office.<sup>126</sup>

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<sup>126</sup> Jack Yeager, equal employment opportunity officer, Virginia Employment Commission, *Transcript*, Part II, pp. 32, 34, 35, 52-53.

The Model Act would enable the State human rights commission to handle a complaint involving employment, housing, or a combination of such complaints. It would not be necessary to refer covered complaints to more than one State agency or to a Federal agency.

## Local Antidiscrimination Laws

Only three local governments—Alexandria, Fairfax County, and Richmond—have passed human rights laws prohibiting discrimination and created local human rights commissions to enforce them.<sup>1</sup> However, local governments in Virginia are subject to the so-called Dillon's Rule,<sup>2</sup> a legal doctrine essentially meaning that a local government has only the authority expressly granted to it by the State legislature.

The Model Act would allow local governments to adopt or amend local ordinances that incorporate the provisions of a State human rights law.<sup>3</sup> They would be permitted greater enforcement power<sup>4</sup> and could thus qualify as referral agencies for HUD<sup>5</sup> and 706 deferral agencies for EEOC.<sup>6</sup>

EEOC deferral status and HUD referral status, respectively, under Title VII of the Civil Rights Act of 1964, as amended, and Title VIII of the Civil Rights Act of 1968, as amended, allow a State and/or local agency to enter into a contract with both EEOC and HUD to process and resolve complaints within their political jurisdiction filed with those Federal agencies.<sup>7</sup> The State and/or local agency may be paid by the Federal agency to

handle complaints. Thus, deferral and referral status are important not only to increase the financial resources of the agency to carry out its legislative mandate but also to strengthen enforcement of Federal civil rights laws.<sup>8</sup>

As of November 1983, none of the three local human rights commissions in Virginia had referral status under Title VIII, although the Alexandria Human Rights Commission had an application pending in HUD, and two—Alexandria and Fairfax County—had deferral status under Title VII.<sup>9</sup> Nationally, 76 State and local agencies have contracted with EEOC and been designated by EEOC to receive deferred complaints under Title VII, as amended. Of these, 46 are State agencies and 30 are local agencies.<sup>10</sup>

According to information furnished by the Executive Director of the Lexington-Fayette Urban County Human Rights Commission in Kentucky, State and local agencies as a whole receive and process approximately 68 percent of all employment discrimination complaints filed in the Nation that fall within the jurisdiction of Title VII. Of these, 28 percent are filed with EEOC and then deferred by

<sup>1</sup> Flora Crater, chair, Virginia Equal Rights Ratification Council, *Transcript*, Part I, p. 55; also, *Title VII*, p. 26.

<sup>2</sup> A discussion of the Dillon rule can be found at *Com. of Va. v. County Board of Arlington County*, 232 S.E. 2d 30, 217 Va. 558 (1977).

<sup>3</sup> "Model Act," §1-800(1).

<sup>4</sup> *Ibid.*, §1-800(3).

<sup>5</sup> 24 C.F.R. §115.3 (1983).

<sup>6</sup> *Id.* at §1601.70 (1983).

<sup>7</sup> *Id.* at §115.3 (1983) and 29 C.F.R. §1601.70 (1983).

<sup>8</sup> Shaffer and Howell, pp. 5-6, 14 and 16; Stephen M. Levinson, executive director, Alexandria Human Rights Commission, *Transcript*, Part II, p. 96.

<sup>9</sup> Stephen M. Levinson, *Transcript*, Part II, p. 96; Stephen M. Levinson, interview, March 14, 1984; Ron Claiborne, interview, March 19, 1984.

<sup>10</sup> Stephen M. Levinson, *Transcript*, Part II, p. 109; and telephone interview, September 21, 1984.



EEOC to State and local agencies, and 40 percent are complaints filed only with the State or local agencies.<sup>11</sup> EEOC alone handles the remaining 32 percent of all employment discrimination complaints that fall within the jurisdiction of Title VII, as amended.<sup>12</sup> State and local 706 deferral agencies process complaints deferred to them at one-third the cost of processing these complaints within EEOC.<sup>13</sup>

### Establishing Local Agencies

A staff member of the Petersburg Community Relations and Community Affairs Office related difficulties the City has encountered in trying to get enabling legislation to create a local human rights commission:

We've run into the enabling legislation blockage a number of times. . . I think until the State or someone above and beyond just local ability starts giving a little bit of encouragement and starts indicating a little interest in localities doing something for themselves, that it won't happen.<sup>14</sup>

In 1974, the Petersburg City Council created the Community Relations and Community Affairs Office to help resolve community problems and to advise the City Council.<sup>15</sup> This office may use its resources to persuade parties to comply with relevant local, State, and Federal laws, but it lacks any investigative, conciliatory, or enforcement powers. Civil rights complaints received by this office are referred to appropriate State or Federal agencies for investigation and resolution.<sup>16</sup>

Jessie Rattley, a member both of the Virginia Advisory Committee to the U.S. Commission on Civil Rights and of the Newport News City Council, pointed out that she and others have also been unsuccessful in their efforts to have a local human rights ordinance passed. The major argument advanced against the establishment of such legislation has been:

. . . this is taken care of at the Federal level. . . [and] at the State level. So there is no need for such an organization or commission locally.<sup>17</sup>

The Director of the Fairfax Commission commented that local jurisdictions in other States have

also faced that kind of argument trying to establish a local commission, but the business organizations and other groups have generally ended up supporting such enabling legislation when they realize that it is convenient in the long run to have such a local option:

I think they find a lot of comfort in being able to know that [the Fairfax County Human Rights Commission director] is only a few blocks away, that he has a vested interest in Fairfax County, and that his door is open. I think that is the kind of relationship that you can establish if, in fact, you are present [in Virginia], as opposed to [a Federal employee's] being assigned to being in Maryland one week and. . . in Virginia the next week. . . .<sup>18</sup>

The Executive Director of the Alexandria Human Rights Commission pointed out that complainants are at a disadvantage when they do not have a local commission as an option in filing a complaint:

. . . what that entails is more time. . . and a situation where, because of their backlog, the resolution. . . is quite a ways down the road. It also involves a situation where people who are not familiar with the locality, not familiar with the individuals, not familiar with the politics, come in from the outside and begin to make some judgments that may or may not be correct.<sup>19</sup>

. . . [O]n a local basis, we are much better able to deal with the local problems in the community. . . and. . . resolving [the complaint] locally puts different kinds of pressures on a respondent.<sup>20</sup>

The directors of the Alexandria, Fairfax County, and Richmond human rights commissions also mentioned another reason localities have resisted establishing local commissions—the belief that it would present an unnecessary additional cost to taxpayers. They believe more could be done to show that local commissions could save citizens money by giving people:

. . . a basis where they can participate in a legal process quickly, without a great deal of financial expenditure. . . . [M]any of you. . . know that taking a civil rights case to court is prohibitive. Not only can't you maybe find an attorney, but the costs are outrageous, and the time-

<sup>11</sup> Antha Borman, executive director, Kentucky Commission on Human Rights, telephone interview, March 14, 1984.

<sup>12</sup> Stephen M. Levinson, *Transcript*, Part II, p. 109.

<sup>13</sup> *Ibid.*, p. 123.

<sup>14</sup> Arthur Kreiger, *ibid.*, Part I, p. 74.

<sup>15</sup> *Ibid.*, pp. 70-71; telephone interview, February 28, 1984.

<sup>16</sup> *Ibid.*, pp. 71, 73.

<sup>17</sup> *Transcript*, Part II, p. 106.

<sup>18</sup> Fred Allen, *ibid.*, p. 110.

<sup>19</sup> Stephen M. Levinson, *Transcript*, Part I, p. 49.

<sup>20</sup> *Ibid.*, Part II, p. 108.

frame involved is one in which resolution is so far down the road that sometimes the issue tends to get lost.<sup>21</sup>

The Executive Director of the Richmond Human Relations Commission pointed out that citizens in Virginia could pay fewer taxes to run the government if the State attracted more industry and business that would pay taxes. New business depends on a good atmosphere:

The only way to do that is to develop an environment in which industry and businesses will come. . . . We found that the greatest publicity in terms of attracting industry is the promise of a stabilized community. Without this kind of legislation, Virginia doesn't have it. You can have all of your slogans. But if you want to get industry into Virginia, show them a stabilized community, which means an ability of a community to resolve its own problems.<sup>22</sup>

A staff member of the Petersburg Community Relations and Community Affairs Office told participants at the Statewide Conference that more needs to be done to convince people with power at the local levels of government that having a local human rights ordinance and commission is good public policy:

And the question remains: You've got State agencies; you've got the Federal regulations. Why do you need it locally? Basically you have to sell it because I think the people who have the power are always reluctant to give it up, and you have to look at . . . how you [can] market. . . . that discrimination is bad policy. . . .<sup>23</sup>

The Executive Director of the Alexandria Commission also emphasized that local human rights ordinances and commissions support civil rights enforcement efforts by showing that discrimination:

. . . is not something that will be condoned in a particular city, and that we are going to pay money to enforce that. . . .<sup>24</sup>

State and local human rights ordinances and commissions have been resisted in some areas of the Nation because they are misperceived as either adversarial or advocacy bodies for persons protected from discrimination in the enabling legislation. The Executive Director of the Alexandria Commission stressed that such commissions:

. . . are empowered, by law, to carry out a legislative mandate. . . . [as] independent, impartial, third-party [bodies].<sup>25</sup>

Among supporters of the creation of local human rights commissions in Virginia was the President of the Fairfax County branch of the National Association for the Advancement of Colored People (NAACP):

Perhaps each commission will reinforce the other, such that the individuals and groups traditionally targeted for discriminatory behavior and the new target, those pluralistically but economically-handicapped persons known as the have-nots, will have a clearly identifiable, accountable, and empowered body to ease their load. Perhaps these commissions will reach a level of effectiveness which will allow the Fairfax County NAACP to enhance its posture of positive, proactive, communicative advocacy.<sup>26</sup>

## Existing Virginia Agencies

### Alexandria Human Rights Ordinance

A human rights ordinance was adopted by the Alexandria City Council in April 1975.<sup>27</sup> It prohibits discrimination in employment, education, housing, health and social services, credit, public accommodations, and city contracts on the basis of race, color, ancestry, national origin, religion, sex, age, marital status, and both physical and mental handicap.<sup>28</sup>

The ordinance also established the Alexandria Human Rights Office (commonly referred to as the Alexandria Human Rights Commission).<sup>29</sup> The Alexandria commission has 13 Commissioners appointed by the City Council from areas throughout the City.<sup>30</sup> Also, the ordinance requires that four of the Commissioners be representative of the Mayor's Committee for the Handicapped, and the City's Commission on the Status of Women, Landlord-Tenant Relations Board, and Economic Opportunity Commission.<sup>31</sup> Staff for the Commission consists of the Director, two investigators, and two clerical support staff.<sup>32</sup>

EEOC has designated the Alexandria Commission as a 706 deferral agency.<sup>33</sup> The Alexandria Commission has also applied to the U.S. Department of Housing and Urban Development for referral status

<sup>21</sup> Ibid., Part I, p. 49.

<sup>22</sup> Alfred Smith, *ibid.*, Part II, p. 128.

<sup>23</sup> Elaine Roberts, *ibid.*, p. 111.

<sup>24</sup> Stephen M. Levinson, *ibid.*, p. 109.

<sup>25</sup> Stephen M. Levinson, *ibid.*, Part I, p. 61; Part II, p. 100.

<sup>26</sup> Pat Parris Blackwell, *ibid.*, Part I, p. 85.

<sup>27</sup> Alexandria, Va., Code §12-4-1 through §12-4-30 (1981).

<sup>28</sup> *Id.* at §12-4-2(b)(4).

<sup>29</sup> *Id.* at §12-4-12.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> Stephen M. Levinson, *Transcript*, Part II, p. 96.

<sup>33</sup> 29 C.F.R. §1601.80 (1983).

under Title VIII of the Civil Rights Act of 1968, as amended. The latter was pending as of March 1984.<sup>34</sup>

The annual budget for the Alexandria commission in 1983 was \$147,500, of which \$37,500 was supplied by EEOC.<sup>35</sup> This was the only Federal money included in the budget.<sup>36</sup> The EEOC money enables the Commission to have more staff and resources than it might otherwise have. As stated by Stephen M. Levinson, Director of the Alexandria Commission:

That contract provides us with some dollars to have additional staff and to have the resources to process the cases that are deferred to us.<sup>37</sup>

According to Levinson, definite advantages accrue to both the complainant and the respondent (the person alleged to have discriminated) when complaints are processed by local commissions rather than by EEOC:

Clearly, one of the the advantages of having a local commission is the time involved in processing those charges. EEOC, as we all know, . . . has done significant things in clearing up its backlog but still receives 350,000 charges per year and has an average processing time that can run between 8 months to 10 months to 12 months at a minimum. Our average processing time is 126 days, and we average somewhere between 120 and 140 days from the date of filing to the date of determination.<sup>38</sup>

A complainant in Alexandria, who initially files an employment discrimination complaint with EEOC rather than with the Alexandria Commission, must deal with the Alexandria Commission anyway since EEOC will defer the complaint.<sup>39</sup>

Where investigators have reasonable cause to believe that discrimination has occurred under the Alexandria human rights ordinance, the experience of the Alexandria Commission has been that most such cases are resolved by Commission staff through conciliation on a predetermination basis.<sup>40</sup> If the complaint is not successfully resolved in this manner, the Director may issue a cause finding. In the event a cause finding cannot be conciliated or is

rejected by the respondent, the case may be appealed to the full Commission.<sup>41</sup>

The Alexandria commissioners, as a whole, sit as a hearing body when complaints of discrimination are not resolved at the staff level. If the ruling of the Commission is not accepted by the respondent, the Commission is authorized to secure compliance by court injunction obtained through the assistance of the City Attorney's office.<sup>42</sup> During the nine-year life of the Commission, none of the findings of either the full Alexandria Commission or the Commission's Executive Director have been overturned by a court of competent jurisdiction.<sup>43</sup>

In many cases, the Executive Director of the Alexandria Commission issues a no-cause finding and the cases are closed. If such cases were deferred by EEOC, they go back to EEOC and EEOC will issue a right-to-sue letter to the complainants, who may then take the cases to court. The Alexandria Commission does not have authority to issue such a letter.<sup>44</sup>

Complaint statistics, according to the Director of the Alexandria Commission, have changed dramatically since 1981. Three years ago, 80 to 90 percent of all complaints received by the Commission were race-related. Since 1981, about 51 percent of all complaints received by the Commission have been race-related, about 45 percent have been sex-related, and the remaining 5 percent have been divided about equally between the other protected categories. Sexual harassment complaints filed by women comprise about 20 percent of all complaints filed with the Alexandria Commission.<sup>45</sup> All complaints received from handicapped persons in Alexandria have involved alleged discrimination because of a lack of worksite accessibility. In all such cases except one, accommodations were obtained.<sup>46</sup>

In addition to processing complaints of discrimination, the Alexandria Commission has monitored contract compliance by employers, contractors, and vendors who contract to supply goods or services to the City.<sup>47</sup> Since 1975, each contractor/vendor must agree in writing to comply with the equal employ-

<sup>34</sup> Levinson interview.

<sup>35</sup> Ibid.

<sup>36</sup> Ibid.

<sup>37</sup> *Transcript*, Part II, p. 96.

<sup>38</sup> Ibid., pp. 97-98.

<sup>39</sup> Levinson interview; see also *White v. Dallas*, 581 F.2d 556 (1978).

<sup>40</sup> Stephen M. Levinson, *Transcript*, Part II, p. 98.

<sup>41</sup> Ibid., p. 99.

<sup>42</sup> Alexandria, Va., Code §12-4-25(a) (1981).

<sup>43</sup> Stephen M. Levinson, *Transcript*, Part II, p. 99; Levinson interview.

<sup>44</sup> Levinson interview.

<sup>45</sup> Ibid.

<sup>46</sup> Stephen M. Levinson, *Transcript*, Part II, p. 121.

<sup>47</sup> Levinson interview.

ment opportunity provisions of the Alexandria human rights ordinance. The ordinance requires affirmative action plans with goals and timetables.<sup>48</sup>

Alexandria's human rights ordinance does not have a set-aside provision to assure that a certain percentage of City contracts will be awarded to minority or female-owned businesses,<sup>49</sup> nor does Alexandria have a full-time contract specialist to monitor compliance with the equal employment opportunity and affirmative action requirements that are included in each City contract. Ultimately, such compliance depends upon the filing of a discrimination complaint.<sup>50</sup>

Since 1976, as required by the Alexandria human rights ordinance, the City has had its own affirmative action plan that is monitored by the Alexandria Commission.<sup>51</sup> The City Manager is required by the ordinance to submit a progress report to the City Council on all affirmative action and equal employment opportunity activities in the City, both in the public and private sectors, every 6 months.<sup>52</sup> Prior to submitting this report, a detailed evaluation is made by the Alexandria Human Rights Commission and the Commission on the Status of Women.<sup>53</sup>

The Alexandria Commission works with the City's personnel office to ensure nondiscriminatory employment policies and practices. The City personnel office submits employment data to the Director of the Alexandria Commission on an ongoing basis for monitoring.<sup>54</sup>

On a biweekly basis, the Alexandria Commission monitors any appointments made by the City Council to the 54 boards and other agencies in the City to determine whether minorities and women are being appointed in a nondiscriminatory manner.<sup>55</sup>

The Alexandria Commission assists the City personnel office in developing equal employment opportunity policies and affirmative action guidelines and programs on an ongoing basis. The Alexandria Commission has developed a reduction-in-force (RIF) policy covering employees working for the City government. This policy requires that an

Impact Statement be prepared prior to any RIF. The sexual harassment guidelines developed for City employees, according to the Director of the Alexandria Commission, are among the strongest in the country. The Alexandria Commission also provides technical assistance and training programs for City government officials to help them develop nondiscriminatory policies and practices.<sup>56</sup>

### Fairfax County

When the Fairfax County Board adopted a human rights ordinance in July 1974, it established the Fairfax County Human Rights Commission and prohibited discrimination in employment, housing, education, credit facilities, public accommodations, and county services and contracts, but did not specify the bases on which discrimination was prohibited.

A bill resulting from the efforts of the Board of Supervisors to clarify the Fairfax County Human Rights Commission's authority was enacted in 1984.<sup>57</sup> The bill gives the Fairfax County Board of Supervisors authority to enact an ordinance prohibiting discrimination based on race, color, religion, sex, national origin, age, marital status, and handicap.<sup>58</sup> The Board believed the clarification was necessary because the County had been receiving an increasing number of complaints about rental housing from single parents and the handicapped.<sup>59</sup>

The effect of the 1984 legislation, however, will not broaden the scope of the Commission's investigative efforts. Since its inception in 1974, the Fairfax County Commission has investigated discrimination complaints based on the same grounds as those specified in the 1984 bill.<sup>60</sup>

The 1974 ordinance was amended in 1976 to give specific enforcement powers to the Fairfax County Commission, including the power to subpoena information. However, in 1979 the circuit court ruled in

Commission, telephone interview, March 14, 1984. House Bill No. 104 passed in the 1984 session of the Virginia General Assembly and was signed by Governor Charles S. Robb. It amends and reenacts §15.1-776.1 of the Code of Virginia relating to commissions on human rights in counties having urban county executive forms of government.

<sup>58</sup> *Id.*

<sup>59</sup> Code of Va. §15.1-776.1 (1984); also, Allen interview.

<sup>60</sup> Allen interview.

<sup>48</sup> Alexandria, Va., Code §12-4-6(a) (1981).

<sup>49</sup> Levinson interview.

<sup>50</sup> *Ibid.*

<sup>51</sup> Alexandria, Va., Code §12-4-5(c) (1981).

<sup>52</sup> *Id.*

<sup>53</sup> Stephen M. Levinson, *Transcript*, Part II, p. 101.

<sup>54</sup> *Ibid.*

<sup>55</sup> *Ibid.*

<sup>56</sup> *Ibid.*, p. 100; Levinson interview.

<sup>57</sup> Fred Allen, executive director, Fairfax County Human Rights

*Fairfax County Human Rights Commission v. Giovannoni*<sup>61</sup> that while the County Board could set up a human rights commission to investigate and conciliate discrimination complaints, the Board could not endow the commission with the power to award monetary damages or the power to issue subpoenas. The court was of the opinion that these two powers could not be implied from the general grant of powers charge from the Virginia General Assembly, and that no express authority for these two powers had been granted. Also, the court held that these purported powers were not essential and indispensable to the function of the Fairfax County Commission.<sup>62</sup>

As a result of the *Giovannoni* case, the County ordinance was amended in 1980 to remove the power to subpoena information.<sup>63</sup> According to Fred Allen, Executive Director of the Fairfax County Commission, the removal of subpoena power has had minimal impact upon the day-to-day operations of the Commission and its effectiveness in resolving complaints of discrimination:

Out of the hundreds of complaints that have been investigated, only a small percentage of companies have refused to cooperate voluntarily. Most companies realize that refusal to cooperate with the local investigative agency, which has been granted deferral status by EEOC, will only result in the complaint being handled by EEOC. The Fairfax Commission provides an opportunity to resolve complaints on a local level, quickly, inexpensively, and confidentially, which are benefits that have not been diminished by the court's ruling.<sup>64</sup>

At the Statewide Conference, Allen urged other local jurisdictions to create a human rights commission. He saw a number of advantages both to the complainant and the respondent:

I would hope that a lot of the local jurisdictions and various counties will enact their own local human rights ordinances, and I think that there are at least a couple of good reasons for doing that.

Firstly, it's like part of the family. You actually know the [local area]. You begin to know the businesses. You have one-on-one contact. A lot of the cases I receive [I am able to resolve] with a telephone call or two because I have a working relationship with respondents.

... we're not advocates for either side, and if, in fact, we find a violation or we are able to identify patterns or practices that may be illegal at the conclusion of an investigation, we convey that information to a company, and based on our prior experiences and conversations with those companies are able to resolve them fairly amicably to both the complainant and to the respondent.<sup>65</sup>

Of the 800 to 1,000 complaints of discrimination received each year by the Fairfax County Commission, both formal and informal, approximately 98 percent are in the area of employment.<sup>66</sup>

About 49 percent of all complaints made to the Fairfax Commission are based on race, an additional 49 percent are based on sex, and the remainder of less than 2 percent are based mostly on handicap, marital status, and age.<sup>67</sup>

Approximately 25 to 30 percent of all complaints, both formal and informal, become formal cases; that is, the complainant files a written charge. Where the Fairfax County Commission has found that a violation was committed, it has been able to resolve 100 percent of those cases, according to the Executive Director.<sup>68</sup>

On October 17, 1977, the County adopted an affirmative action plan as required by Federal Executive Order 11246. However, the Fairfax County Commission does not have a full-time contract compliance specialist. Monitoring is minimal unless a complaint is filed with the Fairfax County Commission regarding a specific County agency, contractor, or subcontractor.<sup>69</sup>

The Fairfax County Commission is also responsible for rendering advice concerning the establishment of voluntary affirmative action plans.<sup>70</sup>

### City of Richmond

The ordinance creating the Richmond Human Relations Commission prohibits discrimination based on race, color, sex, religion, national origin, marital status, age, or physical, mental or developmental causes in housing, credit, city contracts and city employment, alleged police misconduct, and possible tension producing discrimination in the City of Richmond.<sup>71</sup>

<sup>61</sup> *Fairfax County Human Rights Commission v. Giovannoni*, No. 57174 (Fairfax County Cir. Ct. Feb. 5, 1979).

<sup>62</sup> *Id.*

<sup>63</sup> Fairfax, Va., Code §11-1-1 through 11-1-17 (1982); Fred Allen, *Transcript*, Part II, p. 103.

<sup>64</sup> *Title VII*, p. 28; Allen interview.

<sup>65</sup> *Transcript*, Part II, pp. 104-105.

<sup>66</sup> *Ibid.*, p. 103; Allen interview.

<sup>67</sup> Allen interview.

<sup>68</sup> Fred Allen, *Transcript*, Part II, pp. 103-104.

<sup>69</sup> Allen interview.

<sup>70</sup> Fairfax, Va., Code §11-1-5(a) (1982).

<sup>71</sup> Richmond, Va., Code §17.1-2(a) (1975).

The annual budget of the Richmond Commission in 1983-84 was \$244,700.<sup>72</sup> It does not have either deferral status from EEOC or referral status from HUD.<sup>73</sup> The Richmond Commission receives all of its funds from the City of Richmond.<sup>74</sup>

In 1983 the 15 Commissioners were divided into four standing committees: the executive committee, public affairs in government committee, cultural affairs committee, and employment and training committee.<sup>75</sup> Staff responsibility is directed toward five major areas: complaints, training and education, community relations, research and contract compliance.<sup>76</sup> The Commission has an authorized staff of 9 persons.<sup>77</sup>

If a complaint cannot be resolved by the staff, a public hearing may be held.<sup>78</sup> The Richmond Commission has authority to apply for subpoenas<sup>79</sup> and seek injunctions through the City Attorney's office.<sup>80</sup>

All complaints of discrimination received by the Richmond Commission come either from persons employed by the City of Richmond or in the private sector.<sup>81</sup> Of the 1,100 complaints and inquiries received by the Richmond Commission in 1982, 73 percent were filed by private sector employees, and 50 complaints were filed by City employees.<sup>82</sup>

Of the complaints received in 1982, only two alleged sexual harassment. However, Alfred Smith, Executive Director of the Richmond Commission, believes that a number of sexual harassment complaints and inquiries go unreported, partly because the Richmond Commission has had difficulty in effectively resolving this type of complaint. Apparently, some people who might be victims of such discrimination have tended to "pull away from involvement" with the Commission's complaint process.<sup>83</sup>

Smith told participants at the Statewide Conference that he believes Richmond's minority business enterprise (MBE) ordinances are among the strongest in the Nation:

<sup>72</sup> Alfred Smith, executive director, Richmond Human Relations Commission, telephone interview, March 15, 1984.

<sup>73</sup> Ibid.

<sup>74</sup> Ibid.

<sup>75</sup> Alfred Smith, *Transcript*, Part II, pp. 90-91.

<sup>76</sup> Ibid., pp. 91-93.

<sup>77</sup> Smith interview.

<sup>78</sup> Richmond, Va., Code §17.1-13(g) (1979).

<sup>79</sup> *Id.* at §17.1-13(a).

...the City of Richmond has perhaps the most aggressive, progressive MBE legislation in this country. There are two key pieces of legislation that we monitor that are as follows:

We have a CDBG [Community Development Block Grant] MBE requirement that requires that any monies expended in that area be allocated in the form of a 10 percent minority involvement, whether it is construction, purchasing, procurement, etc. Regardless of the face value of that contract, 10 percent must be allocated to a minority business enterprise.

The second piece is a construction contract over \$10,000 require[s] that . . . 30 percent is subcontracted to a minority, . . . female, or handicapped [firm].<sup>84</sup>

There is a companion piece of legislation. . . and that is a 20 percent aggregated face value requirement. This is a key piece of legislation because in many, many cases the actual implementation of a set-aside program is very difficult to pin down, because no one actually knows the total aggregate amount spent to comply with the contract area.<sup>85</sup>

In order to acquaint City officials and community agencies with the provisions of the City ordinance and applicable Federal laws, the Richmond Commission staff conducts training and education programs.<sup>86</sup> These programs provide an opportunity for those who may suffer discrimination to understand what relief is available to them. They also afford an opportunity to resolve some problems that could otherwise generate complaints.<sup>87</sup>

The Richmond Commission has recently begun research and contract compliance activities designed to compile data on conditions that adversely impact on the quality of life of Richmond residents and to suggest steps that might prevent discriminatory policies and practices in City government and in the private sector.<sup>88</sup>

An affirmative action plan for the City of Richmond was approved by the City Council in November 1982 and is monitored by a full-time equal employment opportunity/contract compliance specialist. This person also monitors affirmative action

<sup>80</sup> *Id.* at §17.1-13(a).

<sup>81</sup> Smith interview.

<sup>82</sup> Alfred Smith, *Transcript*, Part II, p. 91.

<sup>83</sup> Ibid., pp. 91-92.

<sup>84</sup> Ibid., p. 93.

<sup>85</sup> Ibid., p. 94.

<sup>86</sup> Ibid., p. 92; Smith interview.

<sup>87</sup> Smith interview.

<sup>88</sup> Alfred Smith, *Transcript*, Part II, p. 93; Smith interview.

and nondiscrimination in purchasing and procurement contracts with the City.

## Conclusion

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This report is principally the result of a Statewide Conference on Civil Rights Complaints and Enforcement held by the Virginia Advisory Committee to the U.S. Commission on Civil Rights in Richmond, Virginia, on November 13 and 14, 1983. But, it also incorporates continuing concerns of the Virginia Advisory Committee about civil rights complaints and enforcement previously addressed in reports to the Commission.

In *Cooperative Approaches to Civil Rights: A Statewide Conference*, published by the U.S. Commission on Civil Rights in February 1980, the Virginia Advisory Committee reported on a wide array of civil rights problems in employment, education, voting, housing, the administration of justice, health and welfare that were in need of attention at the State and local levels of government. At the November 1983 Statewide Conference, the Advisory Committee heard these same concerns highlighted by State officials, human rights officials, various advocacy and service organizations, and other interested individuals.

In *Sex Discrimination and Title VII in Virginia*, submitted to the U.S. Commission on Civil Rights, April 1981, the Virginia Advisory Committee discussed types of employment discrimination based on sex in Virginia and enforcement of Title VII of the Civil Rights Act of 1964, which prohibits discrimination in employment. In this report, the Virginia Advisory Committee recommended that Virginia adopt a State antidiscrimination law and create a State agency to enforce it. In addition, the report

recommended that the State's Equal Employment Opportunity Committee receive staff funds such that the committee might fulfill its responsibilities. Finally, the report asked that the Fair Employment in Contracting Act be amended to parallel Executive Order 11246.

This report on a *Statewide Conference on Civil Rights Complaints and Enforcement in Virginia* provides information on State and local antidiscrimination laws in Virginia for handling complaints and enforcement that goes beyond the area of employment, which was the primary concern of the *Title VII* report. However, the recommendations made in the *Title VII* report are still perceived as the major recommendations of the Advisory Committee for handling civil rights complaints and enforcement in Virginia.

### State Antidiscrimination Laws

Virginia is one of six remaining states in the Nation that do not have a State human rights law and agency to enforce it. The Model Act considered at the Statewide Conference prohibits discrimination because of race, color, religion, sex, and national origin, marital status, handicap, or age in public accommodations (including educational institutions), employment and housing by State and local governments and persons in the private sector. It does not cover areas such as voting, administration of justice, sexual preference, and political affiliation that were also among the civil rights concerns of the participants.



Virginia currently has no statute patterned after Title II of the Civil Rights Act of 1964, which prohibits discrimination in public accommodations on the bases of race, color, religion, or national origin. The only statutory protection from discrimination in public accommodations is granted to the blind, deaf, and physically disabled. There is no State agency to handle complaints and enforcement under the statute.

There is no State law in Virginia prohibiting employment discrimination that is patterned after Title VII of the Civil Rights Act of 1964, which prohibits discrimination in employment on the basis of race, color, religion, sex, or national origin.

Virginia is one of three remaining States in the Nation that do not have a State agency enforcing nondiscrimination in employment in either the public or private sectors.

Virginia has a law prohibiting employment discrimination against the physically handicapped but there is no State agency to handle complaints and enforcement under the statute.

Virginia has an equal pay law that prohibits only discrimination based on sex. There is no State agency to handle complaints or enforcement under the statute.

The Virginia Fair Employment Contracting Act prohibits discriminatory employment practices on account of race, color, religion, sex, or national origin by the State, its agencies, and government contractors. The law, however, did not create a State agency to handle complaints and enforcement.

With the exception of employees working for the State government in Virginia, who have access to an equal employment opportunity program authorized by the Governor to handle their employment discrimination complaints against State agencies, and residents working in the political jurisdictions of Alexandria, Fairfax County, and Richmond, where local human rights commissions have been established by ordinances to handle employment discrimi-

nation complaints, Virginians are largely dependent upon Federal laws and agencies when facing job discrimination.

Virginia has a Fair Housing Act that prohibits discrimination in housing based on race, color, religion, sex, national origin, handicap, single parenthood, and the elderly. The Virginia Real Estate Commission is authorized under the statute to handle complaints and enforcement.

### **Local Antidiscrimination Laws**

Only three local governments—Alexandria, Fairfax County, and Richmond—have passed human rights laws prohibiting discrimination and created local human rights commissions to enforce them.

The Alexandria ordinance prohibits discrimination in employment, education, housing, health and social services, credit, public accommodations, and city contracts on the bases of race, color, ancestry, national origin, religion, sex, age, marital status, and both physical and mental handicap.

The Fairfax County ordinance prohibits discrimination in employment, housing, education, credit facilities, public accommodations and county services and contracts on the bases of race, color, religion, sex, national origin, age, marital status, and handicap.

The Richmond human relations ordinance prohibits discrimination based on race, color, sex, religion, national origin, mental status, age, or physical, mental or developmental causes in housing, credit, city contracts and city employment, alleged police misconduct, and possible tension producing discrimination in the City of Richmond.

The Virginia Advisory Committee hopes this report will be useful to the U.S. Commission on Civil Rights in any future studies of civil rights enforcement at the State and local levels of government, to Virginians in utilizing State and local agencies for handling their civil rights complaints and to others interested in civil rights complaints and enforcement.

