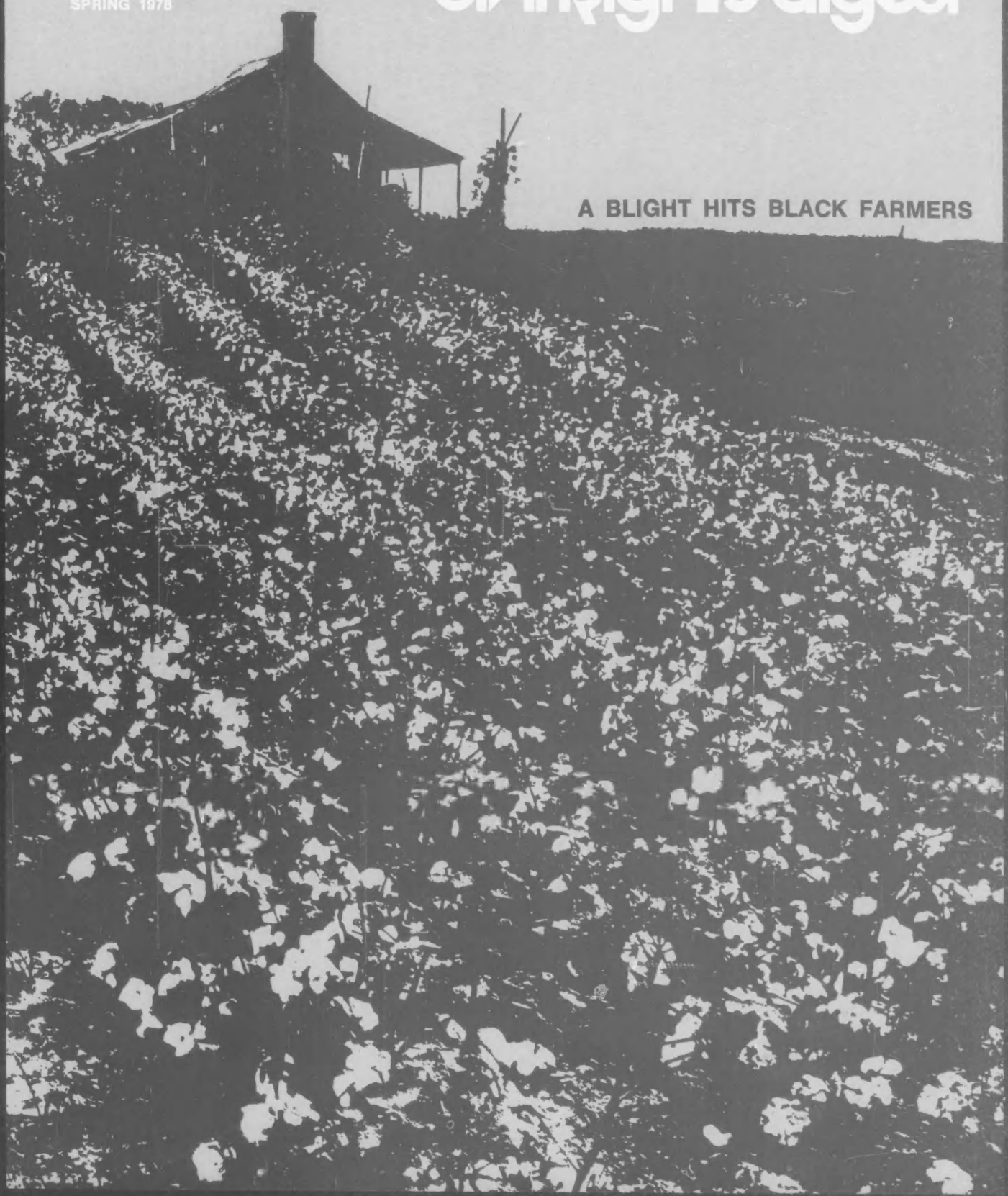
civil rights digest

SPRING 1978



A BLIGHT HITS BLACK FARMERS

IN THIS ISSUE . . . are several articles we hope will be of interest.

First, debate surrounding revision of the $11 billion dollar jobs program authorized by the Comprehensive Employment and Training Act is analyzed by Judy Hersher. At issue is whether the money is properly directed to benefit minorities and women who are unemployed.

Paz Cohen takes up the topic of how female juveniles are treated by the courts. She finds that a double standard of expected behavior still prevails, and that girls are denied equivalent facilities and training.

"Heirs property" is the subject of Scott Graber's article. Such property—usually farms owned by descendants of earlier black families—is vulnerable to forced sale and unusable as collateral. The result has been a significant reduction in black-owned land in the South.

Robert Coulter demonstrates how the U.S. legal system lacks procedures for the determination of fundamental Indian claims and controversies. He concludes that Indian nations, as a result, are denied justice on a massive scale.

Finally, Earl Raines delves into the absence of minority musicians in symphony orchestras and proposes innovative ways to increase their number.

For more copies of the *Digest* or inclusion on our free mailing list, please write to the Editor, *Civil Rights Digest*, U. S. Commission on Civil Rights, Washington, D.C. 20425.

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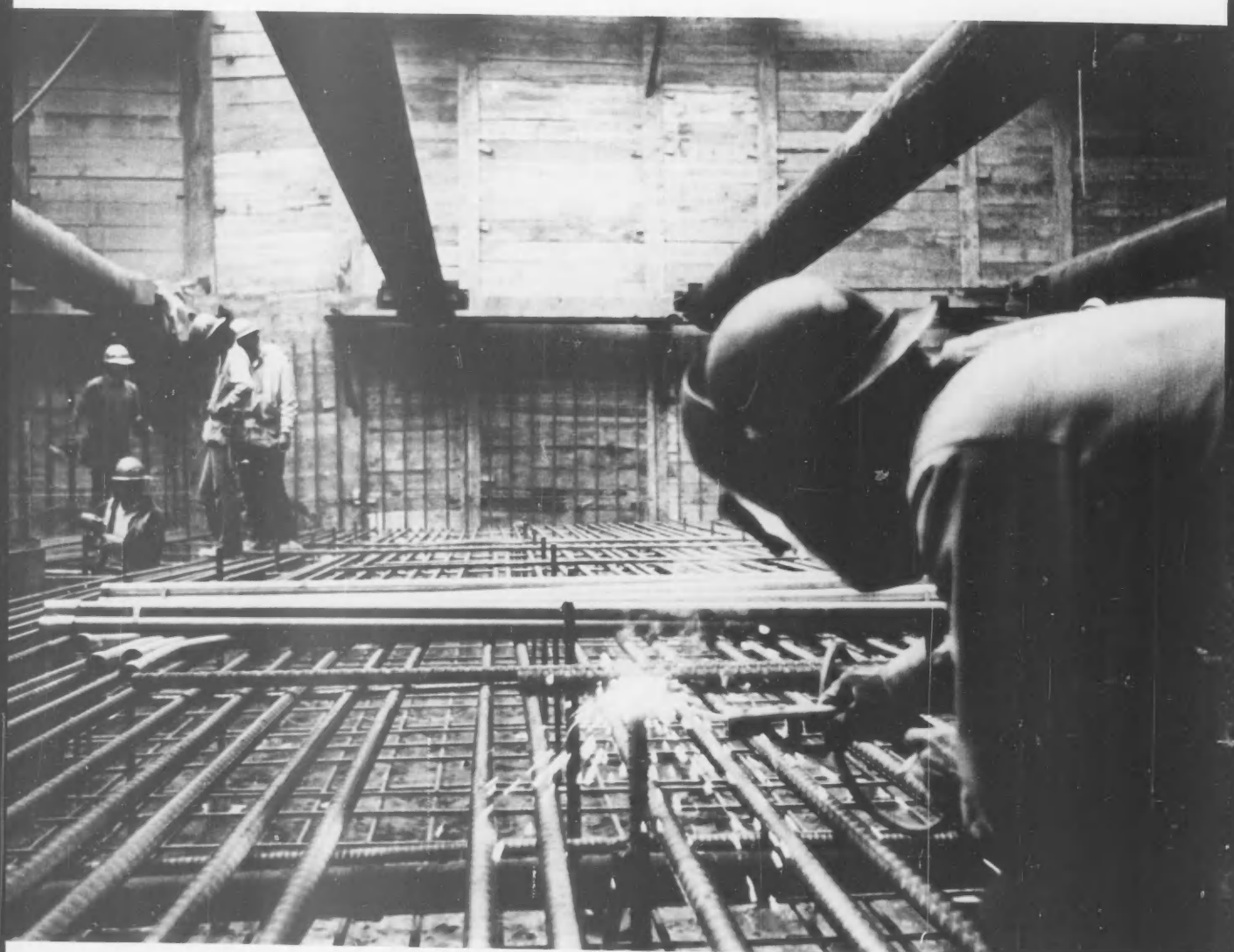
Appraise Federal laws and policies with respect to the denial of equal protection of the laws because of race, color, religion, sex, or national origin, or in the administration of justice;
Serve as a national clearinghouse for information concerning denials of equal protection of the laws because of race, color, religion, sex, or national origin; and
Submit reports, findings, and recommendations to the President and Congress.



CETA'S $11 BILLION

JOBS PROGRAM FOR THE DISADVANTAGED AT A CROSSROADS

By Judy Hersher

The Nation's largest single program to combat unemployment is now before Congress for review and reenactment. Authorized by the Comprehensive Employment and Training Act (CETA), this $11 billion program currently addresses two kinds of unemployment, long term and short term. By 1979, an estimated 1.5 million employment and training opportunities will be available through CETA programs.

Because of its size and funding, CETA has great potential to reduce unemployment and financial hardship among those groups usually hardest hit by long periods of joblessness—namely, women, minorities, and the poor. But it is for these very groups that the program has not met expectations.

For example, statistics show that while the number of minority people living in poverty increased from 1976 to 1977, minority representation in CETA programs actually declined significantly. And although women last year accounted for almost two-thirds of those living in poverty in this country, less than half of those enrolled in CETA programs were female.

At the same time, the women and minorities who were enrolled in CETA programs tended to be concentrated in training efforts and jobs at the lower end of the skill and pay scale, thus helping to perpetuate the discriminatory employment practices of the past.

The question now before Congress, therefore, is whether and how to improve the situation. The answer from social welfare experts, civil rights activists, and a growing number of economists is to reserve all future CETA jobs and services to the most disadvantaged in terms of length of unemployment and income. Such a move (called "targeting") would greatly increase the enrollment of women, minorities, and the poor.

These efforts must, however, be coupled with Labor Department action to ensure that the targeted groups receive fair treatment in the types of training, salary, and jobs they receive through the CETA program. Unfortunately, there currently exists a great deal of opposition to using the targeting concept in the largest of CETA programs now underway.

Judy Hersher is the editor of Employment and Training Reporter, *a newsletter published by Ruttenberg, Friedman, Kilgallon, Gutchess & Associates for the Bureau of National Affairs in Washington.*

In 1973, when CETA was first enacted, the bulk of the available programs did emphasize service to to the long term unemployed and those who have a hard time becoming employed even when jobs are in good supply. These programs created in CETA's earliest days attack the roots of persistent joblessness, namely lack of education, training, or job experience, and help participants compete more effectively for jobs. They are referred to as the CETA "structural" jobs programs and those in need of services are called the "structurally unemployed."

Among the groups targeted for enrollment in these structural programs are the poor, women, minorities, the elderly, the handicapped, the disabled, youth, ex-offenders, and those lacking in education. To enhance their employability, the structural programs provide skill training in the classroom along with on-the-job experience and subsidized employment in the public sector. The training experiences are supplemented by supportive services like counseling, aptitude testing, day care, and transportation to strengthen participants' chances of finding and retaining jobs. Most of the services and training are carried out by State and local governments called prime sponsors.

How CETA grew

Another newer and larger component of the CETA program, however, has become more important over the past several years with the increase in the national unemployment rate and is now funded at three times the level of the structural programs. This newer component is designed to pick up the slack in the job market caused by "down-cycles" in the economy (recessions) by providing temporary federally-subsidized jobs or public service employment in nonprofit agencies and State and local governments. Unlike the structural programs, these "countercyclical" programs do not provide training or supportive services, and are not aimed exclusively at the disadvantaged. Instead they seek to employ those out of work due to changes in the economy, the so-called "countercyclically unemployed."

Due to a variety of circumstances, the CETA countercyclical program enrolls predominantly white, male, educated, and skilled workers, and the rapid growth of the program in size and funding has all but eclipsed the training and targeting efforts of the original structural program. Many in Congress and the Administration are concerned over this turn of events and its impact on the Nation's poor, minorities, and women. Through job training and placement, CETA's structural program efforts were to provide a ticket out of poverty and a way off the welfare rolls. Now, however, the bulk of CETA funding is going to help support the better-educated white male.

There are other disturbing facts before Congress as it considers the fate of this multibillion dollar program. While the Labor Department consistently reports female, minority, and youth unemployment at two and three times the level of white, adult males, the true extent of joblessness and poverty among these groups remains obscured because many continue to be undercounted and thus underrepresented in the Nation's labor force, census, and unemployment data. Thus, CETA currently lacks the necessary measurement tools with which to accurately develop and target its programs. Foremost among these tools is a measure of "discouragement."

Discouraged workers, as the name implies, are those who have given up looking for work because they believe none is available to them. Since they are not seeking employment, they are considered to be out of the labor force and therefore are not counted as unemployed. The meager statistics available on the participation of black males in the labor force show that discouragement is particularly severe among this group.

Measuring "underemployment" is yet another means of identifying need. As it is now defined, an underemployed person is either working part-time and seeking full-time employment, or is a member of a family whose combined earned income is some fixed percentage below the "lower living standard" income determined by the Bureau of Labor Statistics. At present no reliable method exists of accurately counting the number of underemployed persons, but it is generally believed that minorities and women suffer most from underemployment.

Nor do existing measures of unemployment include data on income as a test of actual need. Many workers now classified as unemployed are eligible for unemployment insurance (UI) and/or have an annual family income, despite periods of temporary unemployment, well above the lower-living standard level. Such a means-tested measure of unemployment would help identify those suffering the greatest hardship and thus help target CETA resources. If current statistics are any indication, the CETA program would have to significantly increase services to minorities and women in order to adequately address the situation.


CAUTION

Through "targeting" amendments to CETA's countercyclical program enacted last year, CETA's service record with respect to minorities, women, and the poor has improved, but not enongh. The irony of the present situation is that it is the temporary countercyclical jobs program—and not the structural program aimed specifically at the disadvantaged—that has stepped up efforts to serve the most needy. Because it is the largest of all CETA programs, most social welfare and civil rights organizations, along with the Administration, want the countercyclical program to remain targeted at the same time other provisions are made to ensure the enrollment of more minorities, women, and the economically disadvantaged.

Proposed changes

The Administration now has a bill before Congress that would extensively rewrite provisions in CETA, targeting jobs and training in both the countercyclical and structural programs to the most disadvantaged in terms of income and length of unemployment. If passed, the bill is expected to further increase the enrollment gains of women, minorities, and the poor begun through last year's amendments.

The bill would accomplish this goal by requiring that all CETA enrollees be both unemployed and either "economically disadvantaged" or on welfare. The emphasis on the "and" is particularly important in the structural program, where workers are now enrolled after as little as 7 days unemployment, regardless of family income.

To improve the chances that only the neediest will be attracted to CETA jobs, the proposal seeks to limit almost all employment and training opportunities to the entry level, and put a lid on the amount of wage supplementation permitted at the local level. Currently, prime sponsors can add to the average federally-subsidized CETA wage of $7,800 per year without restraint, and thus support jobs that pay up to $20,000 a year. Limiting the amount of wage supplements should cutdown on the number of highly paid, skilled, and educated workers attracted to the CETA program and increase the enrollment opportunities of needy women, minorities, and the poor.

The bill also makes an effort to increase the amount of training offered in the structural programs by requiring that at least half of all structural program funds be spent on classroom or on-the-job training.

The move to continue targeting CETA jobs in the countercyclical component is the most controversial element in the Administration's proposal, however. Critics believe a countercyclical program should be open to all jobless persons out of work due to changes in the economy, regardless of financial background or relative need. They take the position that both structural and cyclical unemployment are serious problems, and the problems are difficult to disentangle from one another. They further argue that it is impossible to attack structural unemployment when the Nation is experiencing high cyclical joblessness. With experienced workers out looking for jobs, they say it is unlikely an employer will hire a newly trained minority, female, or economically disadvantaged worker.

While the arguments are valid, they ignore two important issues. The first is that Congress will spend only so much to attack the problems that face this country, and has already committed billions to help alleviate the effects of unemployment among skilled workers. The second is that once the economy picks up, as it is now doing, the skilled workers will be the first rehired, leaving the structurally unemployed behind.

Congress long ago provided for the temporary support of the skilled, jobless worker through the unemployment insurance system. UI has been described as the unemployed person's first line of defense against the more devastating effects of unemployment, and most States now provide about 26 weeks of coverage to eligible workers. The majority of private sector workers and all State and local municipal workers are now covered by this program. Importantly, new entrants to the labor force and those with no employment history—the structurally unemployed—are not covered.

A record $74 billion in UI payments was made to covered workers in the 1970s. More than one-half of the total almost $47 billion, was paid in the last 3 years. In 1975 alone, $18 billion in benefits were paid out, lending weight to the argument that the much smaller $11 billion CETA program should be reserved entirely for those ineligible for the UI program—the minority or female worker plagued by persistent or recurring joblessness.

Adjusting the formula by which State and local governments share in available CETA funds has also been suggested as a way to improve service to the disadvantaged. The mayors of large cities have been the chief proponents of this strategy. Prompted by high levels of urban poor, minority, and female unemployment, the mayors are urging a greater share of available CETA funds for the cities.

While increased funding for the central cities might improve the service record to the structurally unemployed, it would not, in itself, address all the inequities, since the disadvantaged also reside in rural and suburban areas. Women, minorities, and the poor suffer disproportionately high rates of employment, underemployment, and discouragement wherever they are. Thus any change in the way funds are allocated ought still to be tied to provisions that target jobs, training, and services to the most disadvantaged.

The role played by local community organizations in the future design and delivery of CETA programs is another factor that will affect the ability of CETA programs to serve the disadvantaged. By definition, these community-based organizations are staffed by members of the community, and consequently they have strong ties to the target populations. Their staffs not only are able to alert the disadvantaged to the availability of CETA services, but can serve as trusted counselors in the transition from unemployment, discouragement, or underemployment to the demands of full-time employment. Thus, many urge a strong role for such groups in the daily operations of all CETA programs.

Yet another area impacts on a local program's ability to reach and serve its most disadvantaged population—the makeup of the CETA program staff. Getting more representatives of disadvantaged target groups into decisionmaking positions at local CETA offices will result in more equitable services, it is argued. The Administration's proposed legislation attempts to deal with this issue by mandating closer Federal oversight of local program hiring, staffing, and promotion, and stricter Federal enforcement of antidiscrimination and affirmative action hiring regulations tied by law to the receipt of Federal dollars.

In the proposal before Congress is a requirement that a local program's application for CETA funds identify the numbers of disadvantaged members of the community by race, sex, national origin, and age. When requested, this information would have to be cross-tabulated with the characteristics of those enrolled in the CETA program and the program staff. Failure to serve local populations in proportion to their need, failure to hire representative staff, and failure to eliminate discriminatory hiring or promotion practices could result in civil suit and defunding.

In most cases, the proposals expand upon sections of the law or regulations now in effect. If adopted, the success of these strengthened provisions would depend upon the Federal government's ability and willingness to commit time and funds to monitor compliance and to exercise sanctions. In the absence of such a commitment, the provisions will prove toothless.

Private sector involvement

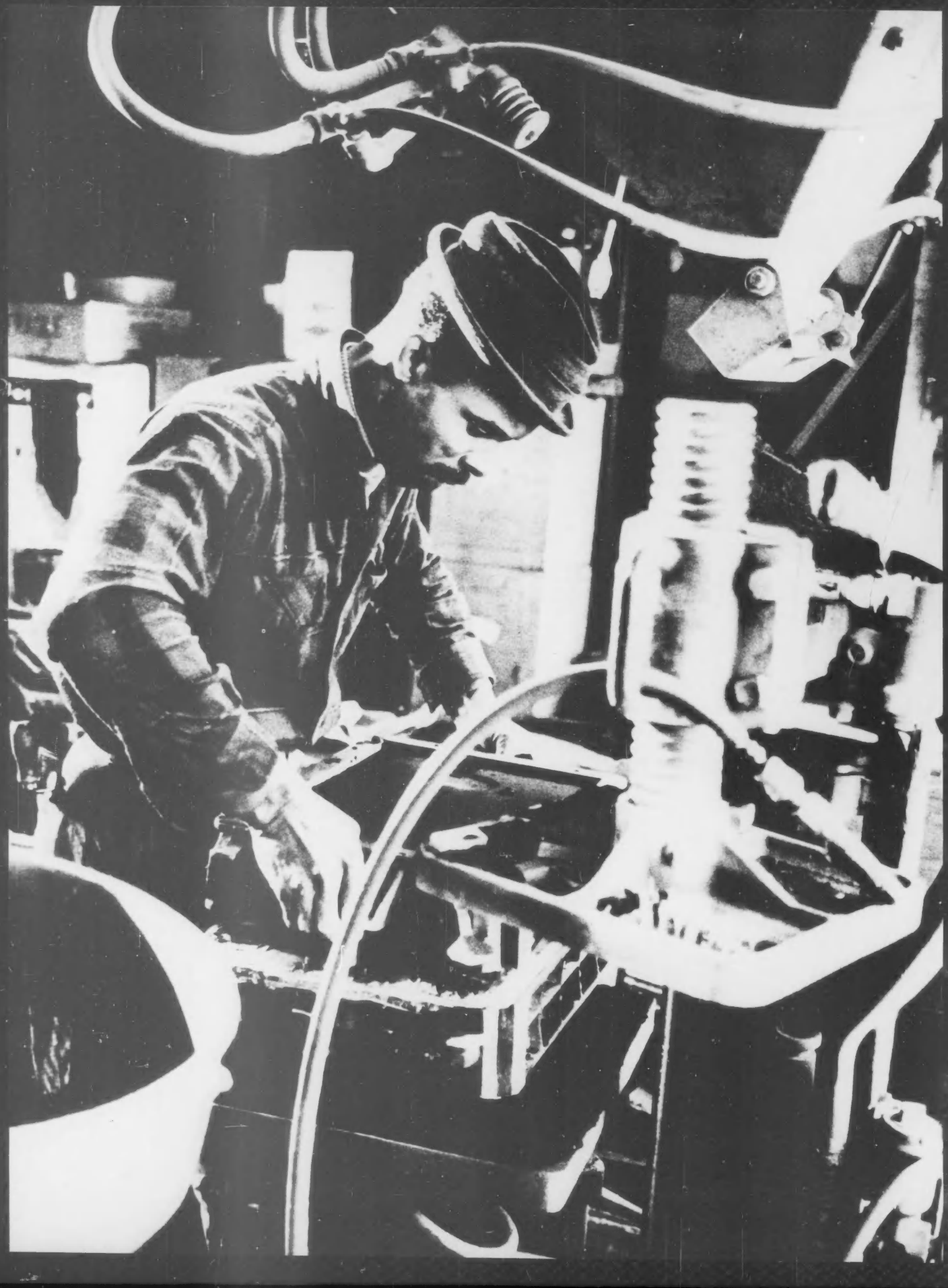
While available research and demonstration studies have shown that the structurally unemployed do benefit from training and can perform competently in a job situation, given enough time and services, the transition from persistent un- or underemployment to stable employment is often a long and difficult road. At present, few who do well in CETA jobs are finding equivalent work outside the program. Thus arguments have been made for both closer involvement of the private sector in the design and operation of structural jobs programs, and a more protective approach to the newly-trained disadvantaged worker.

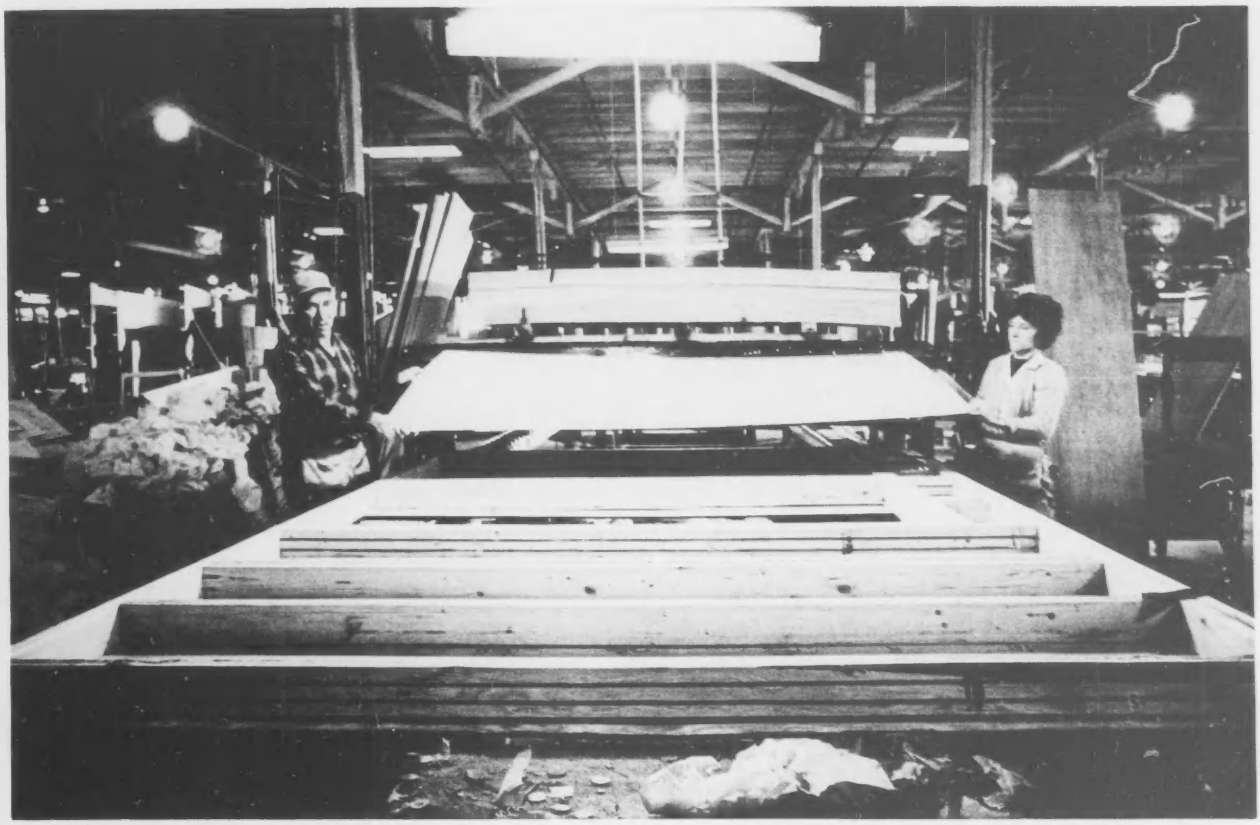
Those arguing for the protective approach want to emphasize longer, subsidized placement in a public sector job or training program than is currently under consideration. Still others want most of the subsidized training to take place in, or specifically for, jobs in the private sector. The argument for the latter position is that the private sector is where most jobs are, and this is where CETA should be concentrating its efforts if the disadvantaged are to gain a real foothold in the labor market.

While the number of needed jobs and services that could be performed by CETA enrollees in the public sector is by no means exhausted, private sector placement and training is an idea with growing support. The Administration, for one, is calling for a $400 million CETA program to garner support from local business and labor for more private sector job training and placement for the disadvantaged. The efforts would encourage the development of programs to move more women into nontraditional jobs.

Private sector involvement is currently sought in the development of on-the-job training programs for the disadvantaged through CETA's structural programs. The actual amount of OJT supported by CETA funds indicates, however, that significant problems have arisen in getting the private sector interested and involved in training programs for the disadvantaged. Other efforts to involve business through special tax cuts have also had limited success.

How well the private sector responds to this proposed new call





for involvement is therefore uncertain. Yet a growing consensus of manpower experts and economists argues that the private sector is where the future and ultimate success of manpower programs lies, and the potential for success outweighs concern of possible private sector abuse of the program.

The Administration's emphasis on private sector involvement is also tied to its economic position that minority employment, for one, must improve if the country is to achieve a 3 percent overall adult unemployment rate in the 1980s. The President and his advisors believe that national unemployment could fall to 4.75 percent for both youth and adults by 1983 without accelerating inflation, but beyond that point, shortages in skilled labor could develop and drive up prices and inflation unless presently underutilized segments of the labor force are ready for work.

The Administration therefore considers CETA an essential complement to its balanced economic program. CETA offers a means of upgrading the marginally skilled or unskilled, and of encouraging private industry to meet future employment needs by hiring the hard-to-employ. By starting now to cut the differential between black and white, adult and youth, and male and female unemployment, a significant impact on the overall unemployment rate could be achieved by 1983, it is argued.

In short, a dual emphasis on targeting and training in manpower programs like CETA is seen as a way to ensure against future labor shortages and spiraling inflation. Training and targeting in CETA programs—once the concern mainly of social welfare and civil rights organizations—are now attracting wider attention in the business community and among economists. This long range view of the Nation's economic health lends weight to the argument that the CETA jobs now available should be reserved for the structurally unemployed, and that greater program and funding emphasis must be placed on training.

The substantial congressional rewrite of CETA is expected to be finished and ready to take effect by September 30, 1978, when its current authorization expires. Whatever the outcome, the countercyclical and structural jobs programs will be watched closely for their effect on the employment of minorities, older workers, youth, and others, and on overall national employment and economic health.

A DOUBLE STANDARD OF JUSTICE

JUVENILE COURTS TREAT YOUNG WOMEN DIFFERENTLY

By Paz Cohen

Many people assume that as women increasingly abandon their traditional roles, previously male domains such as burglary, larceny, and auto theft are among those infiltrated by women. Thus they connect women's rights with a rise in the number of female criminals.

In fact, the relationship of sex roles to crime is much more complicated. For example, drug offenses account for the most precipitous rise in arrests of young women, having increased 5,375 percent between 1960 and 1975. A study of police handling of suspected drug users showed that women who cried, blamed their boyfriends, and otherwise acted in stereotypic ways during raids frequently convinced the police not to arrest them. Those young women who displayed "male" traits of hostility and aggression, however, were often arrested and processed.

Thus, the increase in women charged with crimes may reflect increased criminal activity, or it may result from more aggressive behavior on the part of women apprehended—or both.

These ambiguities, however, do not plague the juvenile justice system. There, young women and girls come in contact with police and the courts for a variety of reasons, and, sooner or later, their sex counts against them.

Three broad categories of youths find themselves involved in the juvenile justice system. Some are judged delinquent; some are deemed to be improperly cared for at home, or have no homes; and some are charged with "status offenses"—acts that, if performed by adults, would not be considered crimes. The word substituted for "conviction" in juvenile cases is "adjudication."

Between 70 and 85 percent of adjudicated girls in detention are status offenders, compared to a detention rate for boys charged with "children's crimes" of less than 20 percent.

Status offenses range from school truancy and running away to refusal to do household chores, use of "vile language," and promiscuity. An informal survey of child advocates throughout the country yielded only one instance of a boy institutionalized for sexual promiscuity, while sexuality appeared to be the underlying cause of most female referrals, even where not directly cited.

Undesirable boyfriends, staying out after curfew, wanting to get married, and "incorrigibility" are among the complaints parents take to the courts along with their daughters. Pregnancy, fornication, or an

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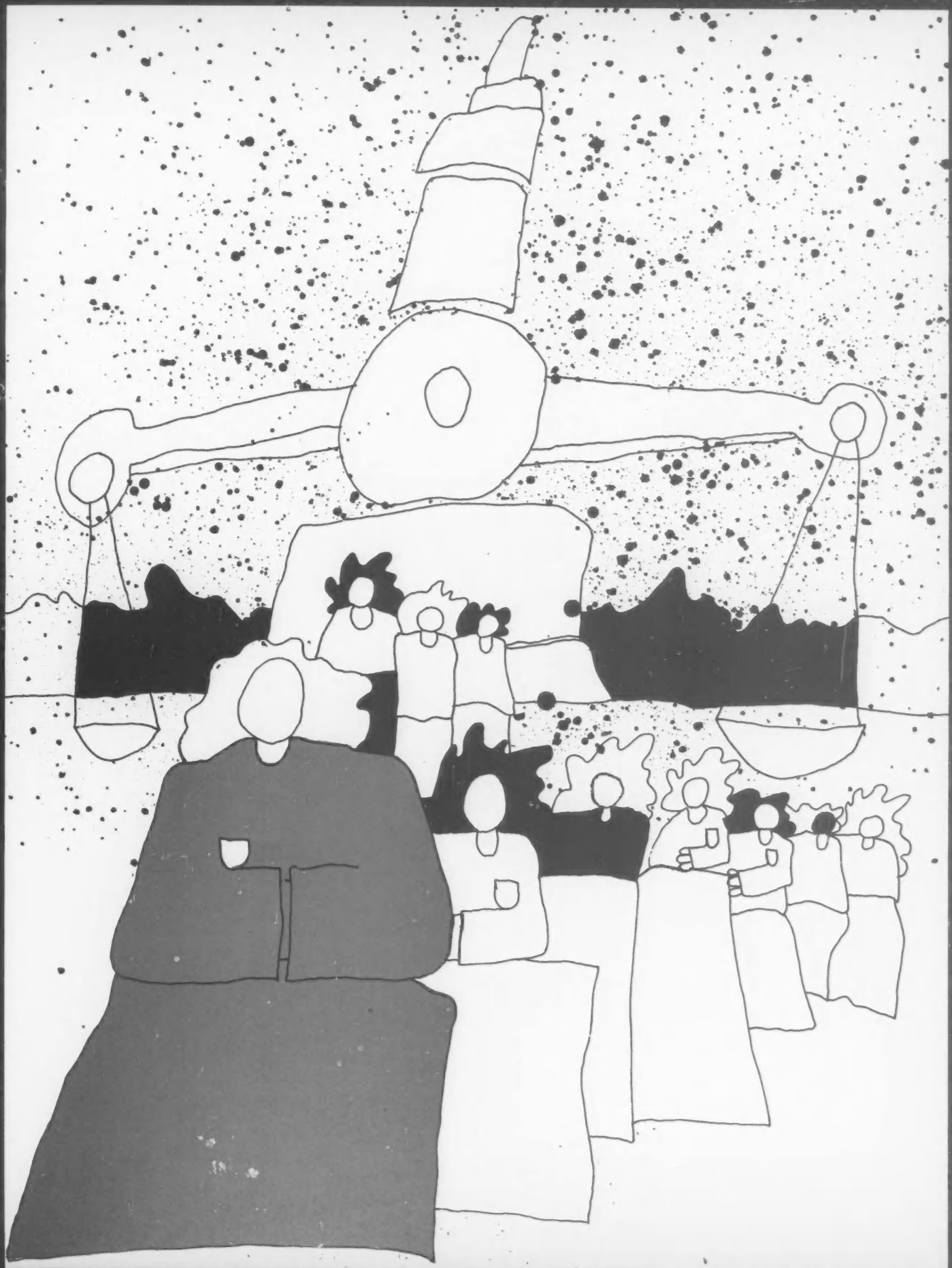


abortion without parental consent falls more obviously under the category of promiscuity, but "truancy and incorrigibility," according to Mary Kaaren Jolly, staff director of the Senate Subcommittee on the Constitution, "are often nothing but buffer charges for promiscuity in girls—or the court's fear of future promiscuity." At home, in school, and throughout the many stages of the juvenile justice system, female sexuality evokes patronizing and/or biased treatment.

The double standard revisited

Carol, 13, is now enrolled in a feminist counseling program. She was institutionalized due to her parent's double standard for male and female sexuality. "Boys do have it better," she says, "comparing my life to my brother's. I got sent up to an institution because I was messing around. He went out and got some girl pregnant. He was only 17 and he never got into any kind trouble for it. She did, but he didn't."

When she has children of her own, Carol hopes they are boys:

> It's just a hassle to raise girls because you've got to worry if they get caught having sex, then of course it's the girl that gets arrested on an unlawful morals charge. What do they do to the guy? Nothing.
>
> It's just like in the family. If a man's daughter comes home and her hair's all messed up and her shirt's unbuttoned, he calls her a little slut. But if a boy comes home and tells his dad he made it with someone tonight, he says, "Oh, that's good. That's my son." That's just how it is.

Treatment of the crime of incest provides another example of the double standard. Most often, it is the girl—the victim—who is sent to a foster home while the father stays behind. And children's rights advocate Kenneth Wooden estimates that 40 percent of the girls and young women in city and county jails who were picked up as runaways left home after being sexually molested.

Seventeen-year-old Dominica was sexually assaulted by one of her mother's four husbands. She ran away from home. Picked up by the police, she was placed on probation and returned home. Dominica left again, and was charged with violating probation. Thus she became a full-fledged delinquent.

For the young woman who engages in sexual intercourse of her own volition, school hardly offers a more understanding environment than home, should she become pregnant. Many schools suspend pregnant students, or encourage them to "voluntarily" withdraw.

The Children's Defense Fund found five standard reasons offered by school officials for excluding pregnant girls from school:

1) the need to protect her physical condition (she cannot endure the "rough and tumble" of school; she will "tire easily," "there are too many stairs to climb," "her condition will result in her being sick in school");

2) the need to protect her mental condition ("she will be ridiculed, scorned, and embarrassed by her classmates," "she will be a target for gossip," "she will be happier in some alternative program");

3) the need to protect other students from the "bad influence" of a pregnant girl and unwillingness to appear to condone premarital intercourse ("I have to think of the other children," "we have an obligation to other children—they are here for reading and writing, not sex education," "we'd get calls from the other parents and we reflect the feelings of our parents in the community," "I wonder what my child would see . . . she might wonder if it is the accepted way of life");

4) The need to maintain an orderly environment ("the class can't function normally," "when girls are 13 they won't do any work if someone is showing wedding pictures"); and

5) the school's lack of facilities for day care and flexible scheduling.

Pregnant girls are urged to enroll in the YWCA, get home tutoring, or go to a home for unwed mothers. Many instead end up hanging around the streets where they are likelier to develop serious problems—by remaining undereducated or having frequent run-ins with police—than would have been probable had they remained in school.

For the overwhelmingly male-dominated juvenile justice hierarchy, young women's sexuality is "offensive," as spelled out in the following statement made in 1975 by Hunter Hurst, Director of the Juvenile Justice Division of the National Council of Juvenile Court Judges:

> The issue is that status offenses are offenses against our values. Girls are seemingly overrepresented as status offenders because we have a strong heritage of being protective towards females in this country. It offends our sensibility and our values to have a 14-year-old girl engage in sexually promiscuous activity. It's not the way we like to think about females in this country.

As long as it offends our values, be sure that the police, or the church or vigilante groups, or somebody is going to do something about it. For me, I would rather that something occur in the court where the rights of the parties can be protected.

"We play big daddy," confessed another judge.

Part of the curriculum

Sex-stereotyped course offerings and the attitude that a girl's career is marriage account for a sizeable portion of girls out of school. Many girls who leave school do so because neither their academic nor their emotional needs are being met—or because the standards of excellence seem too farcical to accept:

> I think a lot of teachers look at you and if you dress up all the time and look real cute, teachers look up to you. But if you just wear jeans, then they don't.
>
> Most teachers say, "I don't care. It's up to you whether you learn or not. I don't care." I think that instead of trying to be your teacher, they ought to try and be your friend, too. Not always telling you: do it or else. If you don't want to do it, ask you at least why—maybe there's a reason.
>
> Over here the school system gives me a laugh. They don't teach you like they used to explain it. I think it would be better if they take [sic] more time and teach you what you really want to know instead of making you give up and drop the class.

Carol Zimmerman, Executive Director of the Arizona-based New Directions for Young Women, which compiled the foregoing comments, sees girls caught in a double-bind: If they remain in school, they are molded along lines that limit their futures, and if they cut classes or stop going altogether, they can wind up in jail.

> A great many young women out of school drop out because school isn't meeting their needs; because they aren't getting any encouragement, because the attitude is "you don't really need to learn a career, you don't really need to go on and work, you're going to be taken care of, you're going to marry."
>
> They find no reason to stay in school, to attend classes. They drop out—and become part of the juvenile justice system. The courts say, "You're a truant, you're a dropout, I remand you to this-and-this facility."

"Sexism," adds Shirley McKuen of the Research Center on Sex Roles in Education, "is clearly a part of the curriculum in all educational agencies and institutions" (Jolly notes that there are 48 Job Corps Centers for young men and only 10 for young women, despite higher unemployment rates for female youth.)

Part of the system

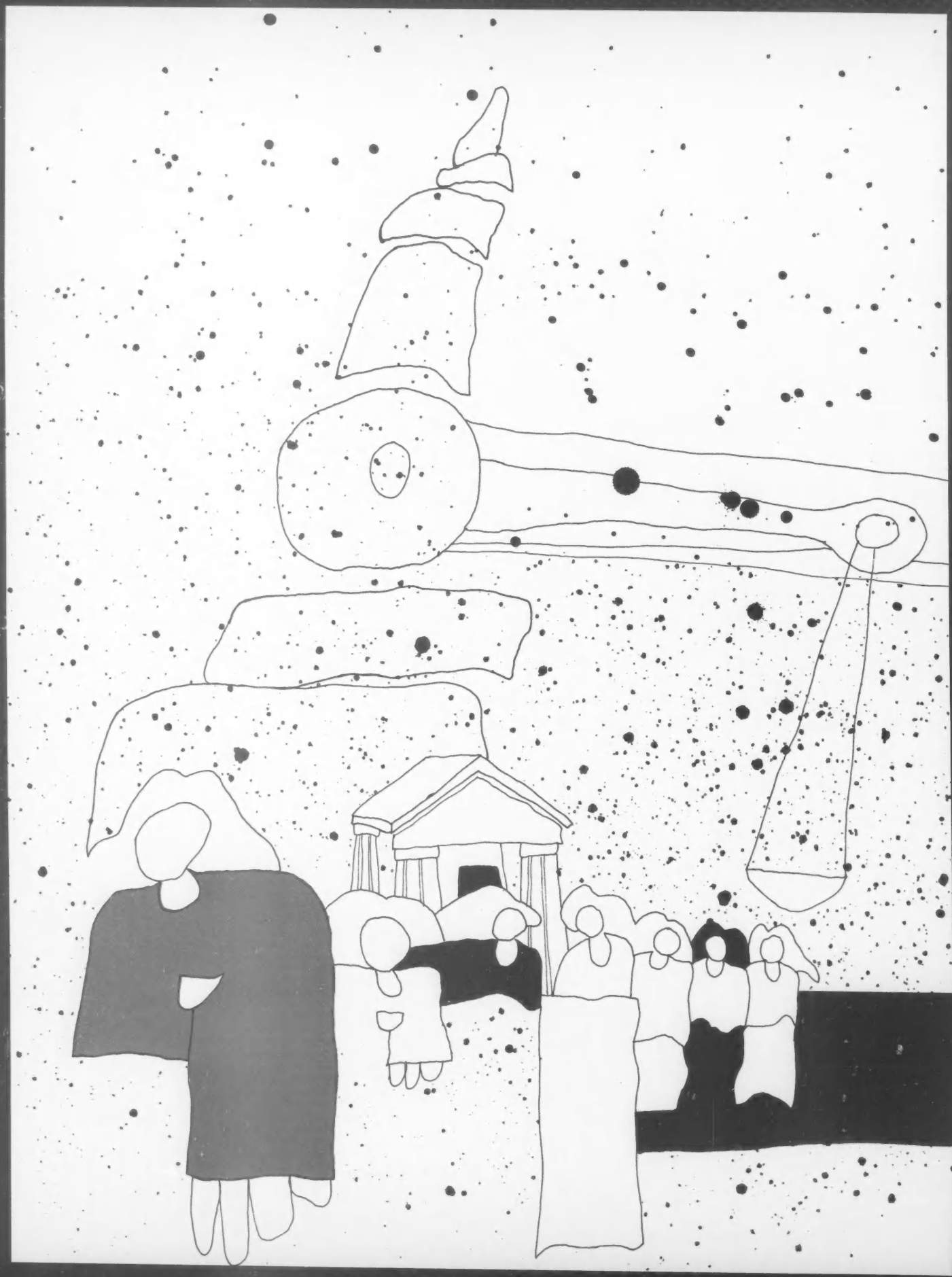
Disparate treatment of young women and men begins with a police decision on whether to arrest a youth or whether to detain the youth pending the initial hearing. More frequently in the case of status offenses, it begins with a court worker's decision to file a petition and, if so, to detain the youth pending final disposition of the case.

A 1972 study conducted in Honolulu by psychologist Meda Chesney-Lind found that 70 percent of the girls and 31 percent of the boys referred to court by police were status offenders. A 1974 study published in the *Yale Law Review* revealed that about half of the youths brought to court intake were girls, while every one of the sex-related status cases (promiscuity, spending the night with a member of the opposite sex, etc.) involved females. The same 1974 study, by Peter Kratcoski, found that detention was more likely to result in cases concerning incorrigible behavior than in cases involving assault and other crimes unrelated to age. Sexual misconduct by young women, Kratcoski found, was the most harshly treated charge of all.

Other studies, with small variations in percentages, reach the same conclusions: referred to court for less serious crimes, girls are more likely to be charged and more likely to be detained.

One important factor in the disproportionate detention rate for girls is that many times their parents refuse to take them home. When it comes time for a court hearing, this parental attitude can prejudice the female youth's chances, as Chesney-Lind points out.

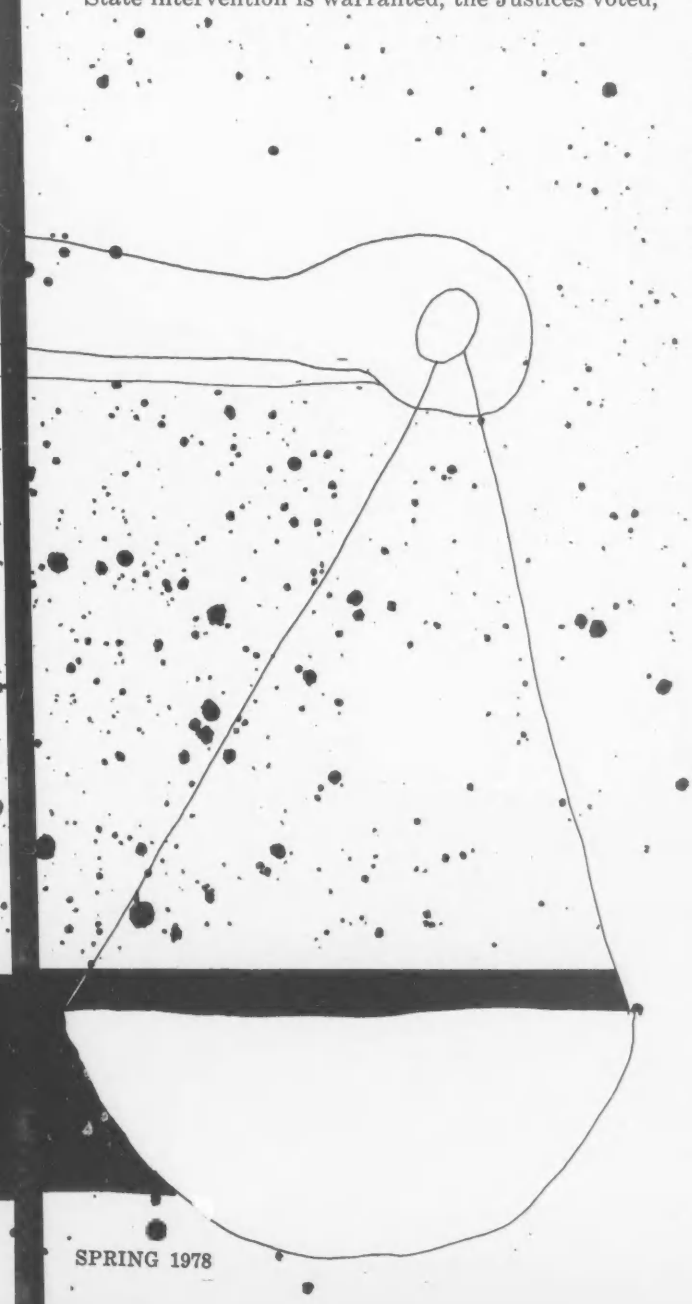
"Children charged with crimes have natural allies in their parents at every step in the judicial process," she writes. But, "Parents of young people charged with status offenses are, themselves, the complainants, and they not only impugn the moral character of their children but frequently refuse to take them home in an attempt to force the court official to retain jurisdiction. Since the determination of good moral character is pivotal in the determination of guilt or innocence in the juvenile justice system, this parental



orientation is significant."

A paternal attitude towards young female offenders and minors in general is reflected in the 1967 U.S. Supreme Court decision awarding children some rights of due process, but not the same ones from which adults benefit. *In re Gault*, the Court wrote that "The right of the State, as *parens patriae*, to deny to the child procedural rights available to his elders was elaborated by the assertions that a child, unlike an adult, has a right not to liberty but to custody."

State intervention is warranted, the Justices voted, when "parents default in effectively performing their custodial functions." When the State does inject itself in a child's life, they continued, "it does not deprive the child of any rights, because he has none."



Two years ago, adults receiving a jury trial stood a 48 percent chance of conviction; adults facing only a judge were convicted 65 percent of the time. In juvenile court, the "conviction" rate is a staggering 89 percent, according to Wally Mlyniec, Director of the Juvenile Justice Clinic of the Georgetown University Law Center in Washington, D.C.

Where young women are concerned, this conviction rate, combined with the "protective" or paternal attitude, portends a high probability for confinement. The Female Offender Resource Center of the American Bar Association, after studying arrest, court referral, and confinement data, found that, "A female status offender is more likely to be confined than a male status offender," and that, "Although only 21 percent of all juveniles arrested are females, 30 percent of the total population confined in local detention facilities and 22.2 percent of all those incarcerated in training schools are females under 18.

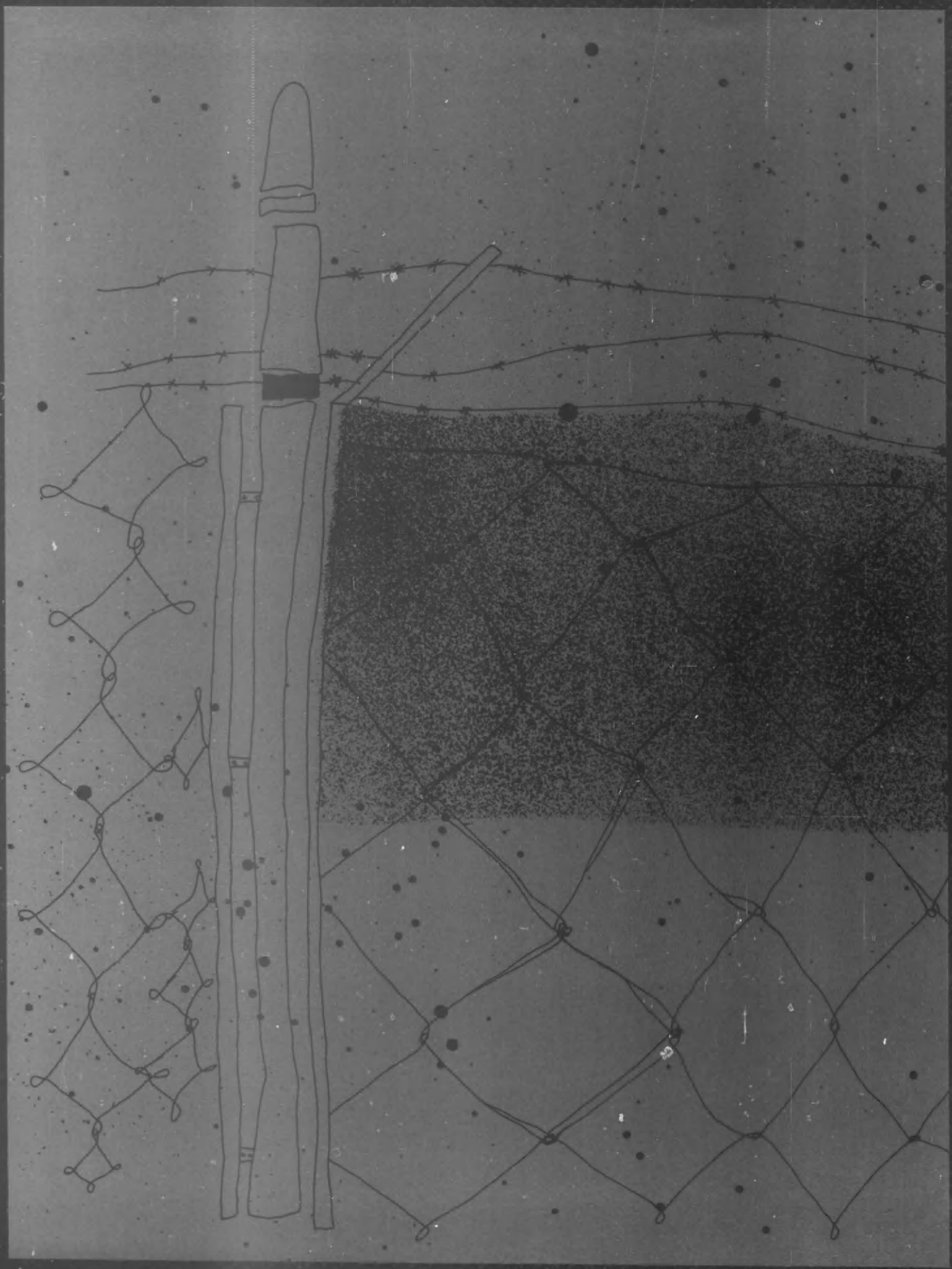
"In comparison, females represent only 6.8 percent of all juveniles sentenced to ranches, camps, and farms, 22.8 percent to halfway houses, and 28.6 percent to group homes."

Author Kenneth Wooden asserts that female juveniles receive longer sentences than male juveniles, although the girls' crimes are usually less serious. The average term of incarceration for a young man is 9 months, Wooden says, on charges ranging from truancy to rape, while the average period of confinement for young women offenders is one year—33 percent longer.

"The alleged justifications [for incarceration in secure facilities] may be diverse and not always apparent," Jolly offers, "but the subcommittee has discovered that the application and results are clearly discriminatory."

"The fact that . . . sexist community norms exist," adds Chesney-Lind, "is no justification for involving agencies of the law in their enforcement, any more than community prejudices would justify judicial racism."

For Judge Lisa Richette of the Court of Common Pleas in Philadelphia, ". . . the offense of most of the young women going before the courts was nonconformity to a social model of what is accepted behavior for young girls. . . . The juvenile courts should no longer act as a legal chastity belt placed around the waists of young women."



Richette surmises that "this protection has served to weaken, debilitate, and cripple young women rather than help them." A look inside some of the facilities to which female offenders are sentenced illuminates Judge Richette's concern.

Detention facilities and treatment

Kenneth Wooden has written an impassioned and compelling denunciation of our juvenile justice system called *Weeping in the Playtime of Others*. He writes: "When I began my study of the juvenile penal system, I was unaware of the particularly degrading treatment of young girls within youth jails. However, after visiting dozens of female facilities and witnessing incredible disparities and gross injustices, the special problems of incarcerated girls became apparent."

Among the disparities, Wooden found that in New York State male status offenders are released from training schools at 18, girls at 20. Security in the girls' facilities nationwide was more intense—"Rules were more rigid, fences were higher, confinement cells smaller. . . . There is disparity concerning even food and education for the females. In general, boys are apportioned more food per serving than girls and are allowed to have seconds. Girls are limited to one serving. . . ."

Educational facilities for girls, if any, are limited and usually operate along stereotyped lines, preparing girls to be clerks, secretaries, or to fill other traditionally "women's jobs." Athletic opportunities are also more lacking for females than for males.

Wooden notes, "In matters of personal hygiene and cleanliness, once again, incarcerated girls suffer greater indignities than their male counterparts. Most female facilities have no individual toilets. An assortment of old pee pots, coffee cans, and other crude containers are issued for disposal of body wastes."

The most degrading and abhorent aspect of the unequal treatment, however, must be the violation of the young women's bodies and sexuality. And the victims are not only those girls incarcerated for commission of crimes or status offenses, but also those institutionalized following removal from physically abusive homes (those who are beaten or can prove sexual abuse) and those who are wards of the State.

Deborah was placed in a county youth home in the Northeast at age 16 because her parents were suspected of beating her. While there she was required to show the supervisor a soiled sanitary napkin before being allowed to go to the infirmary for menstrual cramp medicine.

In many facilities, charts listing the girls' menstrual periods are posted on the walls. Girls are forced to undergo periodic pelvic examinations to determine whether or not they are virgins, and the findings are sometimes forwarded to their schools, were they can be incorporated into permanent school records. In one institution, one color uniform is issued to virgins, another to nonvirgins.

A 14-year-old ward of the State of Illinois was sterilized while anaesthetized for unrelated surgery. The attorney for the Illinois Department of Children and Family Services told a reporter, "Frankly, these children whose medical care is paid for by public assistance are lucky to get any medical service at all."

Other tales of pregnant girls being coerced or forced into having abortions or giving up their children for adoption (under threat of isolation for refusal) are legion, as are accounts of incarcerated young women raped or otherwise used for the sexual enjoyment of the staffs and inmates of the institutions to which they are committed, allegedly for their own protection.

Some girls are sent to adult prisons because facilities for the female juvenile offender are so limited; in the adult jails, the potential for abuse exceeds even that found in juvenile facilities, as the young woman is likelier to be among the weaker members of the population.

In recent years, the use of prisoners in drug experimentation has caused an uproar. Most of the cases brought to light have concerned adult male prisoners; Wooden tells of the forced administration of an unsafe birth control drug to girls at facilities in Texas and Missouri.

The drug, Depro-Provera, caused breast cancer in laboratory dogs, and the U.S. Food and Drug Administration had prohibited its use or sale as a contraceptive. (The children to whom these drugs were administered were, like the sterilized 14-year-old, wards of the State of Illinois. Like her, they had been transferred to out-of-State facilities, a widespread practice that uproots children from any sort of community ties.)

Commenting on the drug's use, Dr. J. Keller Mack, medical consultant to the Children's Department in Illinois, observed: "If you didn't test the drug on somebody, you would never be able to put it on the market. I thought they might just as well test it on our Illinois girls as girls from anywhere else."

Unlike many of the adult male inmates who were the subjects of drug experiments, these girls were not promised any sort of quid pro quo such as favorable

recommendations to a parole board or time off for cooperating. Their options, as in most aspects of life in juvenile prisons, were to accept the treatment handed them or suffer isolations in rooms known as "hell."

Institutionalization and alternatives

The harm inflicted on young women by their experiences in institutions can be gleaned from one brief statistic: A study by the National Association of Counties Research Foundation found that 34 percent of the adult women in county jails had previously been arrested as juveniles.

Carol Zimmerman is not surprised. Upon graduating from juvenile detention facilities at the age of 18, 20, or 21, Zimmerman says, many women "find themselves in more trouble because they're living on their own, they haven't got a support system, they haven't got an educational background.

"Often they find themselves on welfare with a baby. That (all) makes it a lot harder for them to pick up the pieces at age 18 and establish a productive life."

In 1974, Congress passed the Juvenile Justice and Delinquency Prevention Act, which called for deinstitutionalization of status offenders. LEAA later said that all States would have to implement deinstitutionalization in order to qualify for LEAA funds. Several States refused, but even in those that agreed, the results to date have been meager and, once again, where resources are allocated, they are allocated in favor of the male offender.

The comparative populations of young men and young women in State training schools and other institutions still show a disproportionate percentage of female status offenders locked away. LEAA's Task Force on Women reported in 1975 that only 5 percent of all federally-funded juvenile delinquency projects were aimed specifically at young women, and that only 6 percent of all local monies for juvenile justice were spent on programs for women.

Jerry Hissong oversees model delinquency-prevention programs in four States with LEAA funding (the programs are relying more and more on local monies). From his office at the American Public Welfare Association in the District of Columbia, Hissong admits that none of the programs takes the special needs of girls into account.

"We're not sophisticated enough to say, blacks versus whites, boys versus girls," he laments. "It's been hard enough to get people to talk about kids at all."

"The treatment of females in the juvenile justice system is just a reflection of institutional sexism, and institutional sexism exists in every institution, by and large." Peg Jones is the Executive Director of the Coalition for Children and Youth, a grouping of over 200 State and national children's and youth organizations.

"Even those who are advocates for youth under normal circumstances," she charges, "think in terms of male youth—and those very advocates," she adds, "may be sexist because of cultural indoctrination."

The same sex-role stereotyping that occurs in institutional settings takes place in many alternative centers as well. Shirley McKuen points to Comprehensive Education and Training Act (CETA) programs in halfway houses as evidence. There, as in training schools, women are channeled into low-paying "women's jobs."

McKuen feels this is symptomatic of another problem, that of bureaucratic goals. The staffs at the halfway houses, she says, are "being pressured to place people as soon as possible, so they don't want to train them and then not be able to get them hired." The easiest choice is to channel women into sex-stereotyped jobs such as cosmetology and clerical work.

Other alternative programs include group homes, foster care, community-based programs offering residential care, and detention-care programs, the latter placing youth in individual homes pending their court appearances. Each is plagued by problems, the most prevalant being insufficient and disparate funding.

Teenage girls are particularly hard to place in foster homes. In city or county group homes, girls are often subjected to closer scrutiny than boys. A lack of funds plagues innovative one-to-one programs such as Special Approaches to Juvenile Assistance (SAJA), located in Washington, D.C.

Oddly, nontraditional family settings are unpopular with the courts, although the recidivism rate is "fantastically low," according to John McManus, director of a program in New Bedford, Mass. Of some 180 youths enrolled to date, about 30 have been females. McManus says the program receives far fewer referrals than its capacity.

Great changes have occurred in the general assumptions made about women's role in society. Pursuing these changes on behalf of young women is a task that has barely begun. The victims of sex-stereotyping and sexism in the juvenile justice system are not a well-organized voting constituency. That fact makes it all the more incumbent on the rest of us to become involved in their fate.

A Blight Hits Black Farmers

'CLOUD ON THE TITLE'

By C. Scott Graber

In 1865 John Boles, a freedman, bought 10 acres of land in Beaufort County, South Carolina. A part of America's promise is the opportunity to own land; to buy it and build on it, and enjoy the security that land bestows. But for some people this promise brings with it problems—legal problems that often make ownership meaningless. One-third of the land held by blacks in the rural South cannot be bought, sold, or traded away. The same land cannot be used as collateral for housing or for agriculture. Commonly called Heirs Property, it is almost without market value. Tens of thousands of black farm families are affected, but the best way to understand what has happened is to look at the Boles family's long relationship with the land.

John Boles, for our purposes the first of his line, had belonged to a planter named Tom B. Chaplin and the 10 acres he bought had once been a part of Chaplin's plantation. As soon as Boles got title (from the Freedman's Bureau) he planted cotton, okra, and collards; he also raised a family. When Boles died in 1915 he left three boys: John Jr., James, and Hezekiah.

Boles left no will designating one child heir to his 10 acres. In Beaufort County, and generally among blacks in the rural South, wills were rare. When a man died his land usually passed, by statute, to his wife and

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C. Scott Graber is a writer and attorney in Beaufort, S.C. This article is based on research underwritten by the Legal Services Corporation, Washington, D.C. and was originally published in **The Nation.** It is reprinted here by permission.

children. When the wife and children died the land passed to the grandchildren. Two or three generations later 100 people could be part owners of 10 acres.

In the case of Boles's children, Hezekiah had left for New York and a new life in 1880. James followed 5 years later, when Hezekiah told him that steady, predictable work was to be had with the railroad. John Jr., the eldest, stayed on the Beaufort land and farmed it, as his father had done before him. But staying on the land was not easy. There were hurricanes and there were years when the rains failed. In 1919 the boll weevil put an end to cotton farming in Beaufort County. The depression was as hard on John and his family as it was on the South in general. But he managed to hang on, partly because during World War II he could get part-time work at a nearby military base. In 1950 he turned the farm over to his oldest son, Frank, and Frank has been working it for the last 25 years.

The missing interest

Frank lives in the frame house his grandfather built in 1865. It is dark and damp; Rachel, Frank's wife, is weary of the house and has been insisting for several years that it be rebuilt or abandoned.

The Farmers Home Administration (FmHA) is the Federal agency responsible for getting rural people of marginal resources out of shacks and into modest homes; it has put thousands of blacks into small houses. Believing, therefore, that the FmHA would help him build a new house, Frank went to the county supervisor in Beaufort County. The supervisor told him he would need "clear title" and recommended a lawyer who would "quiet title." The lawyer told Frank that he would need "quitclaim" deeds from all the heirs, and from any other persons having an interest in the 10 acres. Frank got "quitclaim" deeds from his own brothers and eventually he got deeds from Hezekiah's three children (all living in Stamford, Conn.). But Frank never knew his Uncle James and never heard if James had married or had children. In spite of his best efforts, he could not find James or any trace of his children.

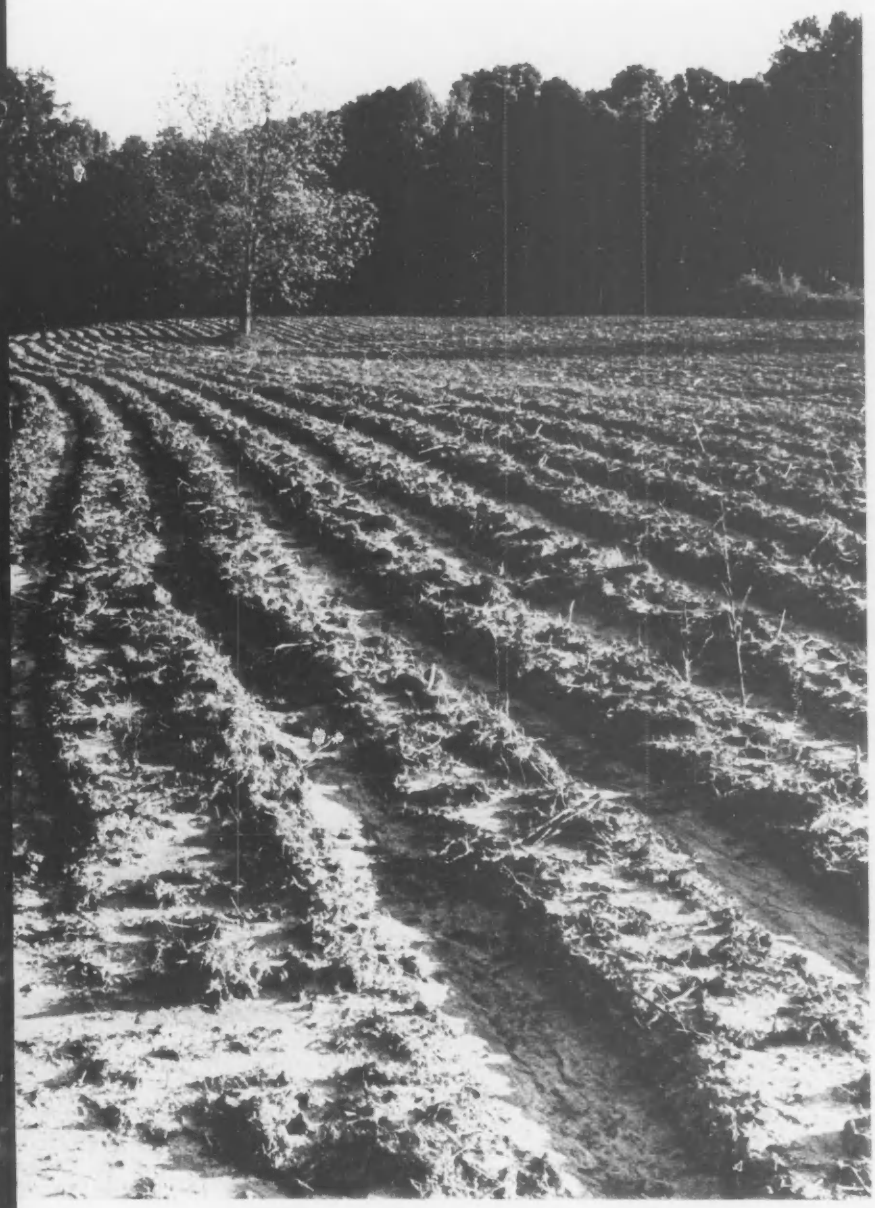
Frank went back to the FmHA and explained his problem. "I can't find no trace of the man. He didn't come home for my daddy's funeral and none of my people in New York know anything about James." The FmHA supervisor then told Frank that this missing interest was considered a "cloud on the title," and meant there could be no title certificate or title insurance. "The best thing for you to do is to find some other land—or get yourself a double-wide."

Although mobile homes ("double-wides") are an acceptable alternative for many people, Frank wants something permanent. Unfortunately, he can get no help at the Farmers Home Administration. He will discover that the "missing interest" will discourage every bank and every lender, and that both bankers and bureaucrats will urge him into a mobile home, because it can be financed without a mortgage.

We are not talking about a problem that is peculiar to South Carolina. Although Heirs Property is estimated to involve 8 percent of the land in that State, it afflicts one-third of black-owned land from North Carolina to Mississippi. Heirs Property is most acute in rural counties, those counties that are still untouched by heavy industry suburban home building, oil exploration, or resort development; counties where agriculture is still the principal source of income and land can be purchased for less than $500 an acre.

Partitioning

What is really wrong with shared ownership? The land can be lived on and farmed by any of its owners. What's wrong with that? The land can be lived on and farmed, but that's about the extent of it. Because ownership is uncertain or scattered, this land cannot be mortgaged, or



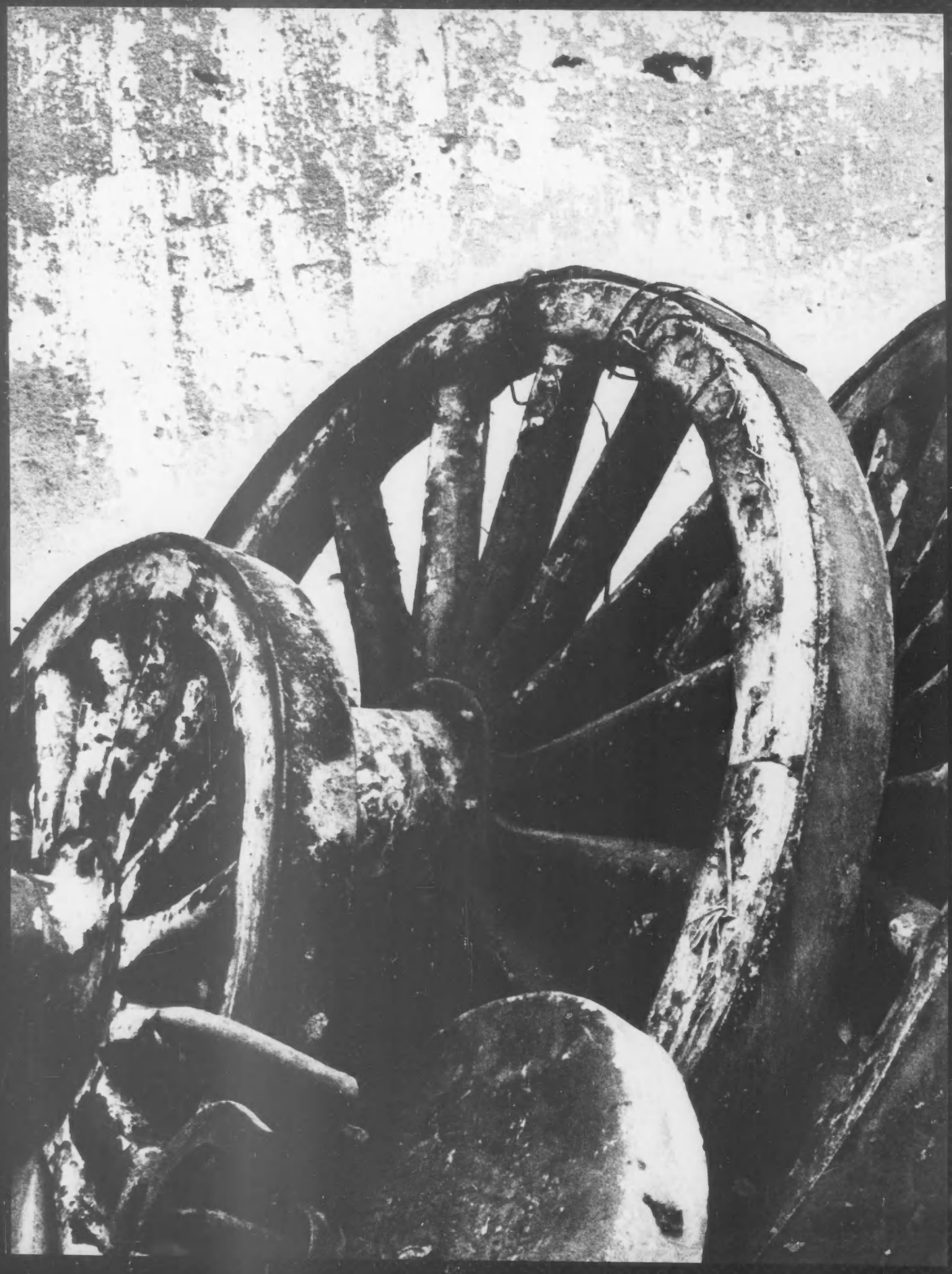
put up as collateral to finance farm equipment, or used in any other way to generate credit. But the biggest problem is not credit; the biggest problem is the likelihood that the property will be lost by those who own it. To understand this danger, one must understand what happened to the Southern black family as it "grew" and migrated from the South.

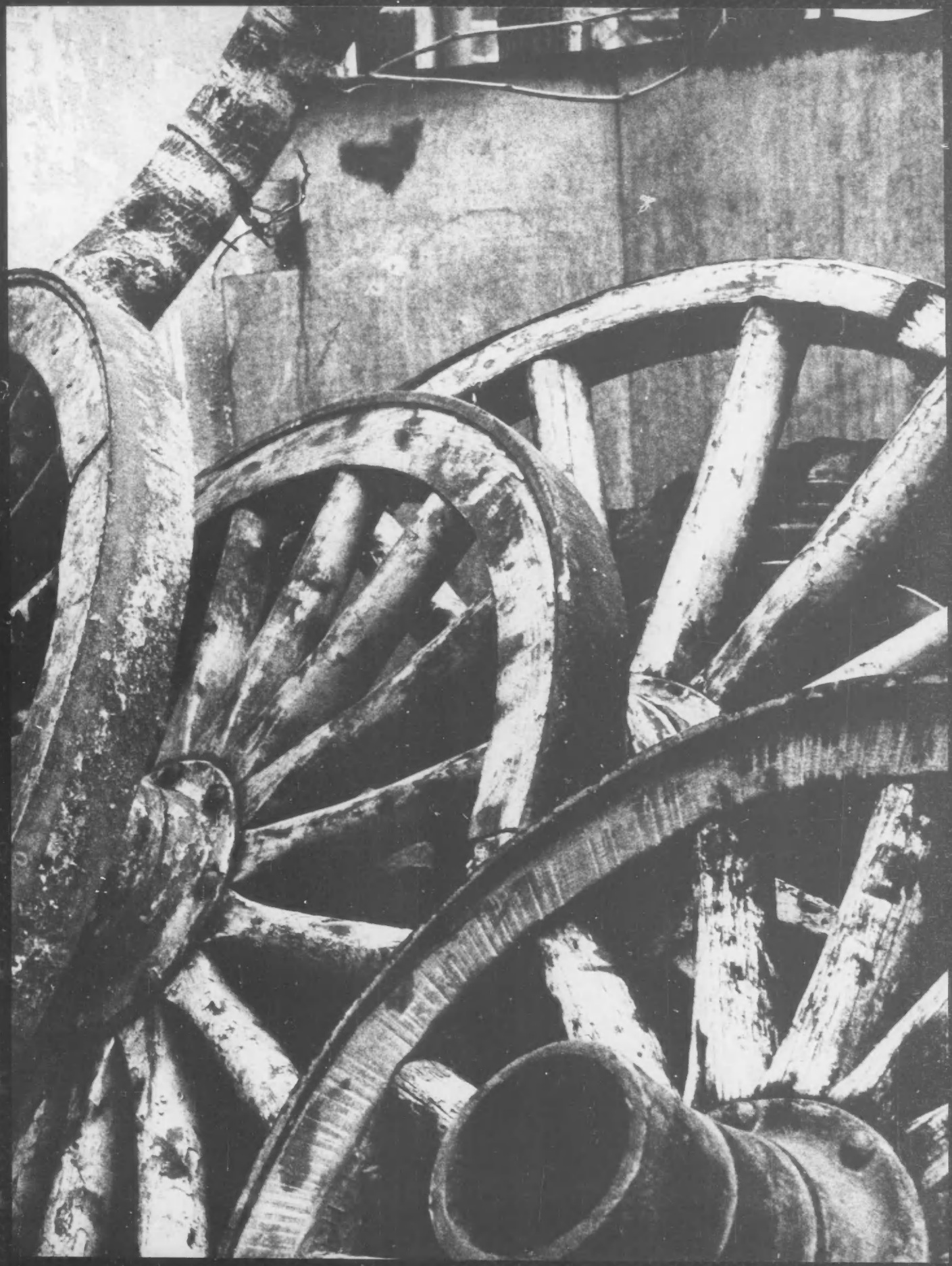
It was predictable that some of the family, some of these displaced heirs, would lose interest in paying taxes and keeping fences tidy. These children and grandchildren were leading lives that would eventually alienate them from the land. But something else was happening to these people: as the family grew, individual interests in the land were getting smaller.

In 1932, C.V. Kiser, who was writing a book called **Sea Island to City**, interviewed a number of black migrants in New York City. When he asked these recent emigrants if they owned land, they would invariably say that they owned an "interest in some." Kiser wrote, "The number of individuals nowadays having an 'interest' in land may be ascertained somewhat by the 18 quitclaim signatures which a recent purchaser of a small tract of land secured in order to obtain a clear title."

Thirty-five years after Kiser wrote about the problem created by 18 heirs, a tract of land in Mississippi (one believed to be above oil) required 1,000 signatures, and 1,000 heirs provide 1,000 targets to a "developer" who really wants the land. A person bent on acquisition can purchase the interest of any single heir—any fractional interest—then demand that "his" interest be partitioned from the tract. If the land cannot be easily subdivided, and very often that cannot be done equitably, the court will order a sale of the land and a division of the proceeds. It is not uncommon for the person triggering the sale to purchase the entire tract, that having been the plan.

Land in South Carolina's Sea Islands (a popular coastal resort) and tracts in the Citronelle Oil Field





(north of Mobile, Ala.) were forced on the market by this device. These involuntary sales are a serious and continuing problem in Alabama. The Emergency Land Fund—a nonprofit organization created to slow black land loss in the South—spends a great deal of its time trying to rally heirs, raise enough money to purchase the endangered property, and keep those heirs who live on the land in their homes. The Alabama office of the ELF participated in at least 70 partition suits during 1977. It estimates that between 150 and 200 partition sales, involving land in Alabama's Black Belt, occurred that year. The total of such sales throughout the South is not known, for the records are scattered in county courthouses across the whole region. Alabama lawyers receive a 10 percent nonnegotiable fee for handling a partition action that results in a sale. While no on has drawn a direct relationship, this fixed sum can only encourage sales and discourage division.

Taxes and credit

Tax sales can be an equally serious consequence of multiple ownership. Usually one heir, the one still living on the land, has been paying the taxes. Thus, his death precipitates a crisis. Which heir will assume the tax burden? Who will return home and maintain the land? Sometimes the family discovers that no one is interested in farming or paying the taxes. If the family is small, it may be able to consolidate the interests and sell, but that kind of cooperation is difficult when 20, 40, or more people are involved.

While there are many reasons for black owners to lose their land—including voluntary sales—Heirs Property accelerates this loss. With two or three exceptions, every county in the South having significant minority land ownership "lost" a large part of that ownership between 1969 and 1974. Barbour County, Alabama, is a good example. In 1969 the Agri-

cultural Census reported 17,901 black-owned acres; by 1974 blacks held only 10,687 acres in this county. According to the same census, black holdings in Mississippi dropped by 500,000 acres in these years, and in Alabama, blacks lost 300,000 acres. For Georgia the figure was 230,000 acres; for South Carolina, 200,000 acres; for North Carolina, 100,000 acres. While the census figures may not be precise, they do indicate erosion. If it continues, one can reasonably assume that black land ownership in the South will be insignificant by 1985.

Another problem—the one confronting Frank Boles—is credit. The Farmers Home Administration has a well-intentioned housing program designed to put lower-income families under a decent roof, but when it comes to security for a loan, the agency is stiff-necked. It wants a clear title and nothing less will do.

The Housing Act of 1949 (the act that created the FmHA's program) does not insist on clear title. The language requires security "upon the applicant's equity in the farm" that will reasonably assure repayment of the debt. There is even language in the FmHA regulations that would allow the use of a "partial interest" to secure a housing loan, when that interest is large enough to cover the value of the loan. But despite this language qnd although Frank can show a two-thirds interest in the 10 acres, it s unlikely that the FmHA will make him any kind of loan. It is also unlikely—in the five Southern states that I surveyed—that the FmHA will finance Frank's attempt to find James or his children. But the chances are very good that the FmHA will encourage Frank to find another piece of property on which to build or to purchase a mobile home.

This kind of advice removes thousands of acres from use as collateral, and it eliminates thousands of acres that could be used as sites for new homes. More important, this practice means that thousands of families, large families, have been forced into

mobile homes that were not designed for families or for long use. In short, this Federal policy simply defers the problem of rural housing for blacks until these mobile homes disintegrate.

Scattered ownership creates other problems. For example, those who live on Heirs Property cannot in most States qualify for the homestead exemption. But the reality is the continuing failure to recognize and label Heirs Property for what it is—a serious debilitating handicap that prevents economic activity on millions of acres of Southern farmland. Many blacks still believe that Heirs Property is a blessing, that this confused ownership protects them from developers. But in fact Heirs Property is no obstacle to anyone who wants to trigger a partition sale.

There are lawyers who argue that Heirs Property is **not** widespread, and that in any event existing statutes are adequate to deal with the problem. North Carolina lawyer Herbert Toms says, "There is no property that cannot be cleared." "The existing laws can deal with the heir situation in Alabama," says Jerry Austell in Mobile. "We shouldn't make any changes . . . at least the law is comprehensible now."

In one respect, these lawyers are correct. The existing statutes are logical and can be made to deal with almost any situation, assuming you can pay the legal costs. A "quiet title" action—even one that involves no more than two or three heirs—is expensive. After the heirs have been located, they must be persuaded to consolidate what they own. This takes time, money, persistence; and in the end one stubborn heir, or an heir who cannot be found, can destroy a well-conceived effort.

Recognizing this problem, the South Carolina Legislature in 1974 introduced a bill that would have authorized the State housing authority to underwrite suits to clear title on land involving 15 acres or less and having a market value of $15,000 or less.

The bill might have released thou-

sands of acres in South Carolina from title bondage. Unfortunately, the legislature adjourned before action was taken, and the legislator who pushed for passage has since retired. But at least some people in South Carolina realized that the State (not to mention its black citizens) would benefit if these properties were in a position to be built upon (and fully taxed). But South Carolina is the only Southern State that has made any move to that end, although Mississippi is considering legislation. Organizations like the Emergency Land Fund are without funds, without staff adequate to deal with the massive amount of acreage involved. The people who recognize Heirs Property for what it is have no ability whatsoever to remedy the problem.

A solution

Although there is no functioning program at the FmHA that would help people like Frank Boles, there is a proposed amendment to Senate Bill 1150 that could make FmHA housing available to folks with Heirs Property. This amendment would authorize the Secretary of Agriculture to make loans on land even though there are "remote outstanding claims." While this language would have obvious application in the South, the amendment would also be important in New Mexico, where Spanish land grants have clouded titles. It would make the FmHA housing program available to Indians and Eskimos in Alaska. In Maine, litigation by Indians has clouded title to thousands of acres.

Gloria Tinubu, who wrote her masters thesis on Heirs Property in South Carolina, found that the "inability to agree" was the primary reason why Heirs Property remained Heirs Property. The proposed amendment speaks directly to this problem. The distant cousin in Cleveland who will not cooperate or even acknowledge that he has a 1/64th interest would not be allowed to block the loan, since it is hoped that the amendment would identify such an interest as "remote."

At this writing the FmHA is trying to define "remote." State offices are asking the county supervisors what kind of "remote claims" prevented loans in the past. Obviously the definition of "remote" is as critical as the amendment itself.

To return to Frank Boles, what is the likelihood that James, or his children, will show up and attack the title? How long has it been since anyone has seen James? Questions of that sort must be answered if the FmHA is realistically to assess "risk." If it is unlikely that James or his heirs will return, then that missing interest, even though it is one-third, is a "remote interest."

For the first time there is an opportunity at the Federal level to untangle this legal mess. The Farmers Home Administration has demonstrated a willingness to assume a certain degree of risk in an attempt to put millions of acres back into productive use. It will be a tragedy, a quiet tragedy, if the Congess fails to seize this chance.

This paper was prepared for submission to the International Nongovernmental Organizations' Conference on Discrimination Against Indigenous Peoples—1977: The Americas, held last September at the United Nations in Geneva, Switzerland.—ed.

LEGAL REMEDIES DENIED TO INDIAN NATIONS UNDER U.S. LAW

By Robert T. Coulter

LACK OF REDRESS

Does U.S. law enable the Indian peoples and Indian governments to vindicate their rights as distinct peoples and as nations? The answer is no. Leaving aside the question of whether Indian nations are sovereign and entitled to recognition under international law, and ignoring may aspects of U.S. law that are disadvantageous to Indian peoples and governments, four principal characteristics of U.S. law make such vindication impossible.

The horrible wrongs to Indian nations committed by the United States and its citizens, both historically and presently, are well-established and copiously documented. The question of greatest concern to other nations, to nongovernmental organizations and to other observers is whether the United States and its legal system provide a legal and effective means for redressing these wrongs.

Under well-accepted principles of international law, national governments, arguably including Indian governments, are not obliged to resort to municipal law remedies for national wrongs. Nevertheless, if such remedies were available, the need for international attention and action would be lessened. The United States' legal system does not, however, offer such legal procedures for determination of the most fundamental Indian claims and controversies.

The law of the United States does not permit the legal redress of the most serious wrongs to Indian nations and Indian peoples because the fundamental legal issues are not subject to judicial review. In addition, U.S. law through the legislature and the courts has conclusively resolved the most crucial legal issues in favor the United States and contrary to Indian interests. Finally, no real remedy is provided for some classes of cases such as claims against the United States.

To be sure, restricted legal remedies are available for certain wrongs to individual Indian people and, to a very limited extent, for wrongs to Indian nations or "tribes." However, it can be stated with certainty

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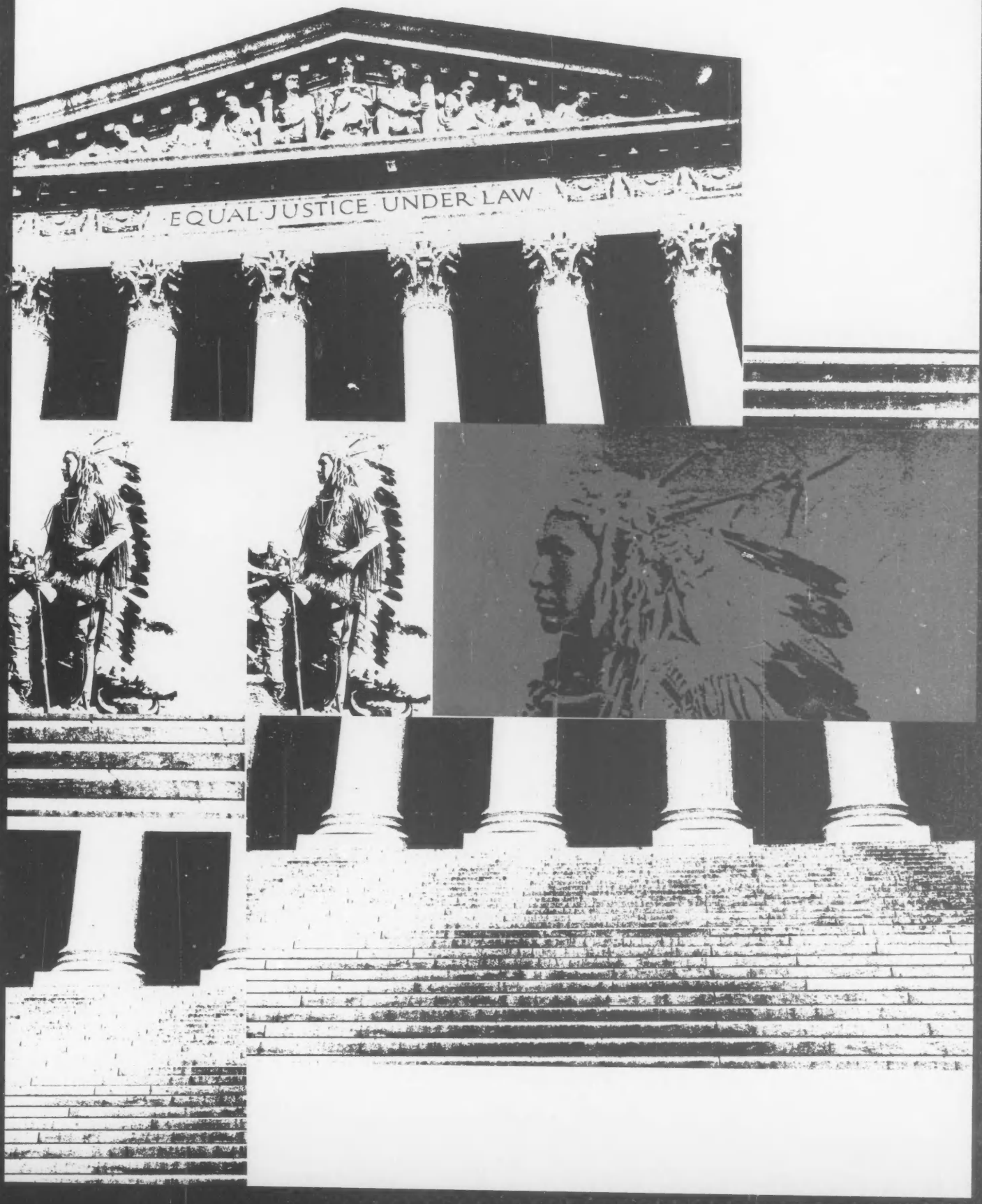

EQUAL JUSTICE UNDER LAW

that no remedy is available and no legal relief is possible under United States law with respect to any of the following fundamental issues of Indian rights and Indian relations with the United States: the status of Indian governments; the title to Indian lands; the validity and operation of Indian treaties and purported or alleged treaties; the power of Congress to legislate over Indian people and territory; and historic Indian claims against the United States.

The United States is not necessarily obliged to make domestic legal remedies available for the redress of wrongs to other nations, for it is well understood that nations, in their relations with each other, rely principally upon international law for legal protection. But where municipal or domestic remedies are lacking, the right of the aggrieved Indian nations to claim and resort to the protection of international law can scarcely be denied by the United States

The political question doctrine

The rule of United States constitutional law known as the "political question" doctrine has served to preclude from court review most of the legal issues that are central to the protection of Indian rights. The result has been that the courts of the United States are unable to provide any remedy for the most fundamental wrongs to Indian nations.

Simply stated, the political question doctrine holds that the courts will not decide an issue that has been committed for determination by the Constitution to the legislative or executive branch of government. The following issues of importance to Indian nations have been excluded from court review by the political question doctrine: the status of Indian nations; the validity of treaties under international law and foreign constitutional law; the validity of Federal statutes under international law; the international boundaries of the United States; the territorial sovereignty of foreign states and Indian nations; and the existence of foreign insurgents, governments, and states.

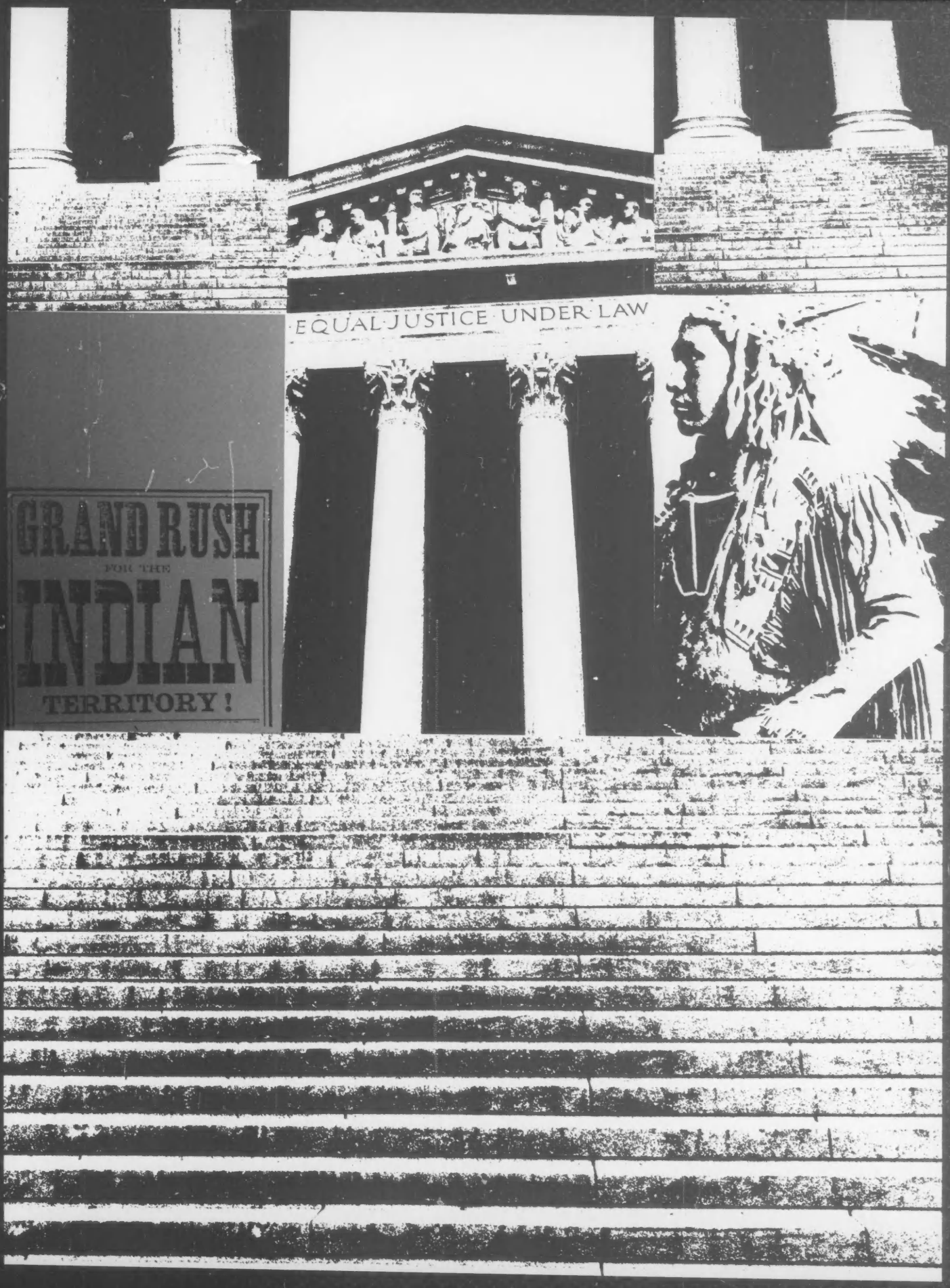
The only areas of law in which the political question doctrine has been consistently applied are foreign relations, Indian affairs, and certain questions relating to internal governmental processes. Certainly a demonstrable constitutional commitment exists reserving foreign relations to the executive and legislative branches—the "political" departments of the government. By far the greatest application and the principal thrust of the doctrine is in the field of foreign relations.

The application of the political question doctrine to Indian affairs thus appears to be an implicit categorization of Indian matters within the field of foreign relations. The result of applying this doctrine to Indian affairs is that Indian nations are treated in certain fundamental and critical respects just as other nations of the world in the United States courts. It is not contended that the political question doctrine is not properly applicable to Indian affairs, though the doctrine has been applied overbroadly in particular cases. However, if Indian affairs are treated in the courts in the same manner as affairs with foreign nations, and Indian nations are subject to the same legal disabilities as foreign nations with regard to the application of the political question doctrine, fairness and consistency suggest that Indian nations be regarded as separate nations for other legal purposes.

Perhaps the best illustration of how the political question doctrine functions to deny Indian governments a remedy under United States law is the case of *Lone Wolf v. Hitchcock* (1903). By the Medicine Lodge Treaty of 1867, a reservation was created for certain tribes in Oklahoma. Article 12 of the treaty stipulated that no cession of reservation lands would be valid unless at least three-fourths of the adult male members of the tribes gave their consent. In 1900, Congress ratified an agreement that purported to cede 2.5 million acres of that same Indian land to the United States, but which lacked the three-fourths consent required by the 1867 treaty.

In the suit by the Indian governments challenging the constitutionality of the act, the Supreme Court refused to question the constitutional authority of Congress to abrogate rights guaranteed by treaty. Because the Court considered the issue to be a political question, it never considered the tribes' claims that the cession agreement had been obtained by fraudulent misrepresentations, that the requisite number of adult males had not signed the agreement, and that Congress had amended the agreement without the consent of the tribes. As a result, the tribes were denied a remedy for a gross violation of their treaty rights.

More recently, a Federal district court invoked the political question doctrine to preclude consideration of the issue of whether Congress can legally and constitutionally legislate and extend criminal jurisdiction over territory that is by treaty reserved to another sovereign power. an Indian nation (*United States v. Cooper*, 1975). The defendants in *Cooper*


EQUAL JUSTICE UNDER LAW
GRAND RUSH
FOR THE
INDIAN
TERRITORY!

challenged the assertion of criminal jurisdiction by the United States over Indian people on the Pine Ridge reservation, arguing that the Fort Laramie Treaty of 1868 reserved such jurisdiction to the Sioux.

For American Indians, the political question doctrine has meant that the courts will not consider whether Congress has exceeded its legal authority in enacting laws concerning the subject matter areas mentioned above. The doctrine also means that even obviously fraudulent treaties ratified by Congress will not be questioned by the courts. Acts of Congress that purport to "terminate" Indian nations will not be questioned by the courts. Likewise, executive decisions to recognize or not to recognize Indian governments will not be questioned by the courts. Thus, it can be seen that virtually all important matters are beyond the power of the courts entirely.

Recently, however, there has been a hint that the political question doctrine may be losing some of its force as an impediment to Indians seeking justice in American courts. In *Delaware Tribal Business Committee v. Weeks*, the plaintiff challenged the constitutionality of two acts of Congress providing for the distribution of certain Indian Claims Commission awards. The Supreme Court concluded that the political question doctrine did not prevent it from determining whether a particular statute is constitutional. The challenged statutes, however, were found by the court to be constitutional and were upheld.

The rule of "Tee-Hit-Ton"

Closely related to and growing out of the political question doctrine is the substantive rule of law usually referred to as the rule of *Tee-Hit-Ton*, from the decision of the U.S. Supreme Court in *Tee-Hit-Ton Indians v. United States* (1955). This legal ruling concerns title to Indian land, but it has such broad ramifications that it makes impossible the vindication of Indian rights in a wide variety of cases.

The Tee-Hit-Ton Indians argued that their rights were violated when the United States refused to compensate them for timber taken from lands they had held since time immemorial and that had never been ceded. The U.S. argued that it did not recognize any property right in the Tee-Hit-Ton Indians, and that therefore, it could take the Indians' property without due process and without compensation.

The Supreme Court accepted the government's argument and wrote:

> It is well settled that in all the States of the Union the tribes who inhabited the lands of the States held claim to such lands after the coming of the white man, under what is sometimes termed original Indian title or permission from the whites to occupy. That description means mere possession, not specifically recognized as ownership by Congress.
>
> After conquest they were permitted to occupy portions of territory over which they had previously exercised "sovereignty," as we use that term. This is not a property right but amounts to a right of occupancy which the sovereign grants and protects against intrusion by third parties but which right of occupancy may be terminated and such lands fully disposed of by the sovereign itself without any legally enforceable obligation to compensate the Indians. No case in this Court has ever held that taking of Indian title or use by Congress required compensation. The American people have compassion for the descendants of those Indians who were deprived of their homes and hunting grounds by the drive of civilization. They seek to have the Indians share the benefits of our society as citizens of this Nation. Generous provision has been willingly made to allow tribes to recover for wrongs, as a matter of grace, not because of legal liability.

In a recent decision by a unanimous three-judge Federal court in Washington, D.C., the court applied the *Tee-Hit-Ton* rule to decide the case. The court wrote:

> Clearly emerging from the holding of the Court in *Tee-Hit-Ton* are several principles which have a direct bearing upon this case: (1) fee title to the Indians' aboriginal land is vested in the United States even if an Indian tribe can claim that it originally held Indian title to the land; (2) any right which Indians of today have in such former Indian territory is a mere right of possession or occupancy, subject at any time to taking or extinction by Congress; and (3) recovery for past wrongs to the Indians who were deprived of their lands is a matter of legislative grace rather than legal liability on the part of the United States. Harsh as these rules may seem, they remain the law applicable to plaintiff's claim. (*Osceola v. Kuykendal*).

The *Tee-Hit-Ton* rule has never been supported by

law or history. The Supreme Court cited inaccurate authority to support the *Tee-Hit-Ton* decision. The Court relied almost entirely upon a mistaken reading of the opinion in *Johnson & Graham's Lessee v. McIntosh* (1823). There, the Court decided that title to land derived from an Indian government grant is not good when subsequently the same land is ceded by the Indian government to the United States and later granted by the U.S. to another party. The case does not support the view that Indians have no legally protectable interest in their lands. Furthermore, the "conquest" relied upon by the Court never occurred. The Congress and the Executive have consistently taken the legal position that the United States has never based its claim to Indian land upon the right of conquest.

The rule of *Tee-Hit-Ton* is a shocking and, frankly, racist rule of law. Yet the United States, in all its branches, uses and defends the rule. For example, the Justice Department, while purporting to represent the Passamaquoddy and Penobscot people in their claims against the State of Maine, has advised the court in that case that, in the view of the Justice Department, Congress can and should take action to extinguish the aboriginal right of the Indians. Attorneys studying the matter and advising Congress have concluded that the *Tee-Hit-Ton* rule permits Congress to extinguish aboriginal Indian land rights without legal process and without compensation.

Plenary power doctrine

Today, Congress' power over Indian affairs is often said to be "plenary," meaning almost absolute. The power of Congress to legislate concerning Indian affairs has become practically unlimited largely because the courts have considered Congress' power over Indians to be a political question beyond the scope of judicial review. With minor exceptions, United States courts have consistently refused to find any constitutional restrictions on the exercise of power by Congress over matters relating to Indians. Throughout the history of Indian-U.S. relations, only three acts of Congress relating to Indians have been declared unconstitutional; and one of the three was unrelated to the question of the power of Congress to affect Indian rights. In the other two cases, the acts of Congress were declared invalid only because they infringed rights previously recognized or created by Congress, not because they infringed Indians' inherent or aboriginal rights.

The origins of the plenary power doctrine and its legal foundations are unclear. The plenary power doctrine is closely related to the political question doctrine discussed previously. Because the issue of the scope of congressional power in Indian affairs was deemed to be a political question, the courts refused to place limits on the exercise of that power. No court has made any effort to discover or state the legal principles from which the plenary power doctrine derives, yet the doctrine continually functions to deny legal protection to Indian rights.

The case most often cited in support of the plenary power doctrine, *Lone Wolf v. Hitchcock*, merely assumed, without historical or constitutional analysis, that Congress always possessed plenary power. Most cases in which the constitutional power of Congress was an issue were concerned primarily with providing some justification for this shocking doctrine.

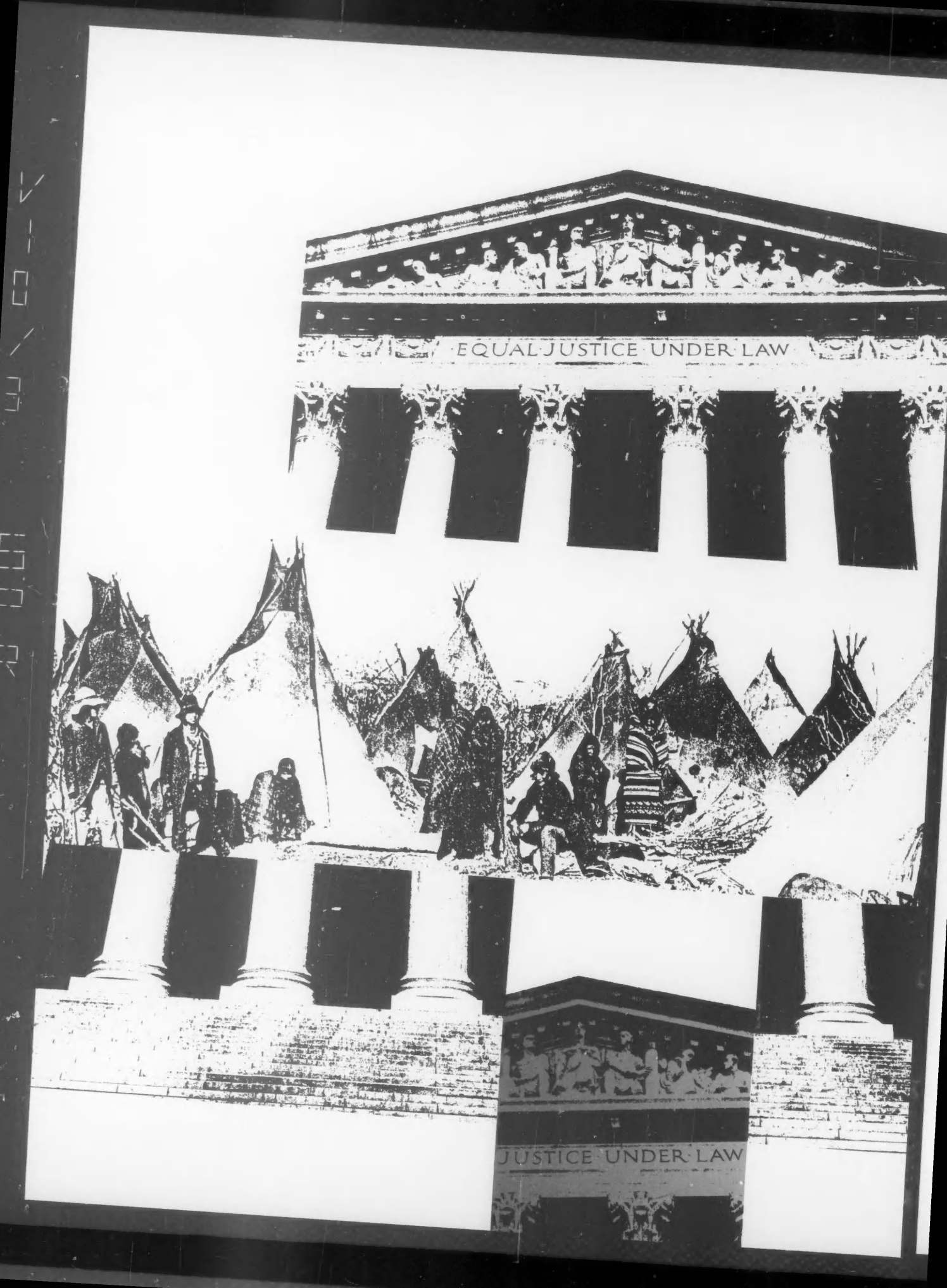
For example, the Supreme Court attempted to justify the unilateral extension of United States criminal jurisdiction over Indian territory by labeling Indian nations "dependent wards" in need of protection by the United States (*United States v. Kagama*, 1886). In *Kagama*, the Court conceded that no provision of the Constitution authorized Congress to take such an action, yet the Court validated Congress's action and gave it the appearance of legality.

It should be emphasized that there is no textual support in the Constitution for the proposition that Congress has plenary authority over Indian nations. The only express grant of power to Congress with respect to Indian affairs is the power to regulate commerce. In fact, the authors of the Constitution specifically rejected a proposal to give Congress wider powers in Indian affairs. Thus the plenary power doctrine would appear to be inconsistent with both the letter of the Constitution and the intent of its authors.

Nevertheless, the two recent opinions by the Supreme Court in *Oliphant v. Suquamish* and *U.S. v. Wheeler* reaffirm the Court's reliance upon the plenary power doctrine. In these two decisions, the court even more strongly than it has in the past premises its reasoning upon the wholly unexamined and unsupported assertion that Congress has plenary authority over all aspects of Indian affairs.

Indian claims against the U.S.

The United States has responded in a variety of ways to a great number of compelling claims asserted by Indian nations and Indian peoples. The foundation of United States law relating to claims against the United States has been the doctrine of sovereign immunity. Sovereign immunity in itself does not necessarily create injustice. Like all other nations, the


EQUAL JUSTICE UNDER LAW
JUSTICE UNDER LAW

United States has refused to be sued without its consent, and this rule is applied to Indian claims as well as all others.

From time to time, Congress has passed acts granting narrow waivers of sovereign immunity and permitting Indian claims to be heard. As a rule, all such claims were heard only in the United States Court of Claims, which has power to grant only money awards and which has consistently interpreted its jurisdictional acts in an exceedingly narrow manner. Claims for the return of land or for the specific enforcement of treaty provisions have never been permitted.

In 1946, the Congress established the Indian Claims Commission, an administrative agency designed to hear and determine Indian claims. The Claims Commission, far from settling the old claims honorably, has become a travesty—a mill for liquidating Indian claims by paying a few cents on the dollar, destroying Indian rights to their former land holdings, and summarily excusing the United States from its solemn treaty obligations. Those who have benefited from Indian Claims Commission activity have been primarily the large mineral companies, ranchers, and other holders of lands illegally seized from their Indian owners, and the few attorneys who have handled the claims and who take 10 percent of all awards. One law firm is said to have received over $15 million for Indian Claims Commission work.

The Claims Commission has taken the position that it can grant only money awards. No other claims are heard, even though no such limitation is expressed in the statute. Attorneys representing claimants are permitted to take 10 percent of any award on a contingent fee basis. This is another factor inducing Indian people to make money claims, since that is the only means by which they can retain and pay their attorneys.

It is rarely explained to Indian people that making a claim through the Indian Claims Commission will result in loss of land rights and treaty rights. The legal effect of the payment of an Indian Claims Commission award for the taking of Indian land is to eliminate any legal claim for return of the land. With respect to land claims, a Claims Commission judgment "in favor" of Indian claimants includes an adjudication that the Indian rights to the land have been forever extinguished. In other cases, attorneys make compromises and settlements that have the legal effect of conceding and destroying forever vast land rights and other rights guaranteed by treaties.

Most of the injustices created by the Indian Claims Commission are difficult or impossible to correct because the Commission refuses to adhere to generally accepted standards of procedural due process and fair play. Claims may be and often are made on behalf of an entire Indian nation by a few individuals claiming to be representative members of the nation. The Claims Commission statute gives the Indian governments established under the Indian Reorganization Act and largely controlled by the Bureau of Indian Affairs the exclusive right to bring claims on behalf of the tribes they supposedly represent. In no case is the claimant required to notify anyone other than the United States that the claim is being made. There is no requirement that other interested parties be notified or be heard. Where Indian people have sought to intervene to oppose unauthorized or unwise claims, the Claims Commission has refused to permit intervention or even to grant a hearing.

To date there has been no successful legal challenge to the Claims Commission's lawless proceedings. With the Claims Commission scheduled to go out of existence in 1978, it appears unlikely that the courts will act now to curb the abuses.

In a very few instances, the United States has responded to Indian land claims by returning land for Indian use. In these cases, however, the land was not returned outright but merely held in trust by the United States for the use of the Indians involved.

The United States has never established, nor even sought to establish, an honorable and fair means for permanently resolving Indian claims. What is needed is the establishment of a claims settlement procedure acceptable both to the United States and to the Indian governments. Until such a mechanism is established through negotiation, mediation or otherwise, a vast unmet legal obligation will remain upon the United States.

Indian nations and Indian peoples cannot expect a legal resolution of their conflicts with the U.S. by resorting to its legal system. For many Indian nations, resort to international law and the support of the international community interested in human rights may be the most appropriate approach to future controversies.

In any event, it is or ought to be clear that the relations between Indians and the United States are not merely domestic affairs. The United States cannot continue to subject Indian peoples to all the legal disadvantages of foreign nationhood and yet insist that Indian affairs are not a matter for international concern and that Indian nations are not subjects of international law.

BEHIND

By Earl E. Raines

"Daddy, why are there no black people in the orchestra?" This unsolicited interrogatory from my 6½-year-old son caused me to prepare the report that follows.

My son has seen me conduct the Angel City Symphony Orchestra, a community orchestra in Los Angeles, and has been accustomed to seeing a "salt and pepper" appearance of musicians. That week we had attended concerts of three symphony orchestras based in the Los Angeles area—the Los Angeles Philharmonic, the Pasadena Symphony, and the Glendale Symphony. The orchestras appeared all-white or nearly so.

I could have given my son a one-word answer. However, he would not have understood. The one word is too broad in concept and too elusive in total understanding. Even I as a black youngster in the South could not understand why Marian Anderson was barred in 1939 from singing in Constitution Hall. I could not understand why we black youngsters could not go to the Memorial Symphony Orchestra except on "special days" and were then told to sit in a "special section." I did not understand why Dean Dixon, a black Julliard graduate who had guest-conducted the New York Philharmonic, Philadelphia, NBC, and Boston Symphonies, found it necessary in 1949 to leave America to secure a part-time conducting post in Europe, where he lives and conducts today.

When I was drafted into the United States Army in 1952, I passed the audition for the United States Army Band. When I was assigned, I did not understand why there was a black band and a white band—housed next door to each other but not permitted to play together.

This article is designed to pave the way for change so that when my son reaches age 40, his young son will not need to ask the same question. Nor will the reply be as I made it that week: "There is one, the bassoon player; look, she is behind the cello player on the right—look hard. She is the same one we saw last week in the other orchestra in Glendale!"

Finding the facts

> When did you last attend a symphonic concert? (Not your own!) Did you observe the players in the orchestra? Next time, please do. Make a mental note of how many minorities participated as players.

With these questions and suggestions, a letter from the author exhorted 135 orchestra managers to take interest in the negligible participation of minorities as musicians in symphony orchestras. Attached to the letter was a questionnaire that the orchestra man-

Earl E. Raines is the executive director of the Pasadena Community Services Commission. This article is adapted from a study done by Raines and the Pasadena commission staff.

THE CELLO PLAYER

INTEGRATING AMERICA'S SYMPHONY ORCHESTRAS

agers were asked to complete and return—a questionnaire to document the level of minority participation in each of the orchestras addressed. The results of the survey are in, and they confirm what one knows if one has ever observed the players in a symphony orchestra—minority participation is very small.

The questionnaire was sent to 135 American symphony orchestras—27 major, 79 metropolitan, 32 urban. These classifying terms are economic, not artistic, designations. As classified by the American Symphony Orchestra League:

- A *major* orchestra's annual budget exceeds $1,000,000.
- A *metropolitan* symphony orchestra has an annual budget between $100,000 and $1,000,000.
- The annual budget of an *urban* symphony orchestra is between $50,000 and $100,000.

The two-page questionnaire asked for information on the orchestra's history, current salary levels of musicians, number and classifications of minority musicians, training mechanism for minority players or conductors, sources and levels of funding, and the size and sources of operating budget.

Answers to 89 questionnaires were received—65 percent of those sent. No significant difference occurred in the rate of response of the symphonies of the various categories; 56 percent of the urban orchestras responded, 65 percent of the metropolitan orchestras, and 70 percent of the major symphony orchestras.

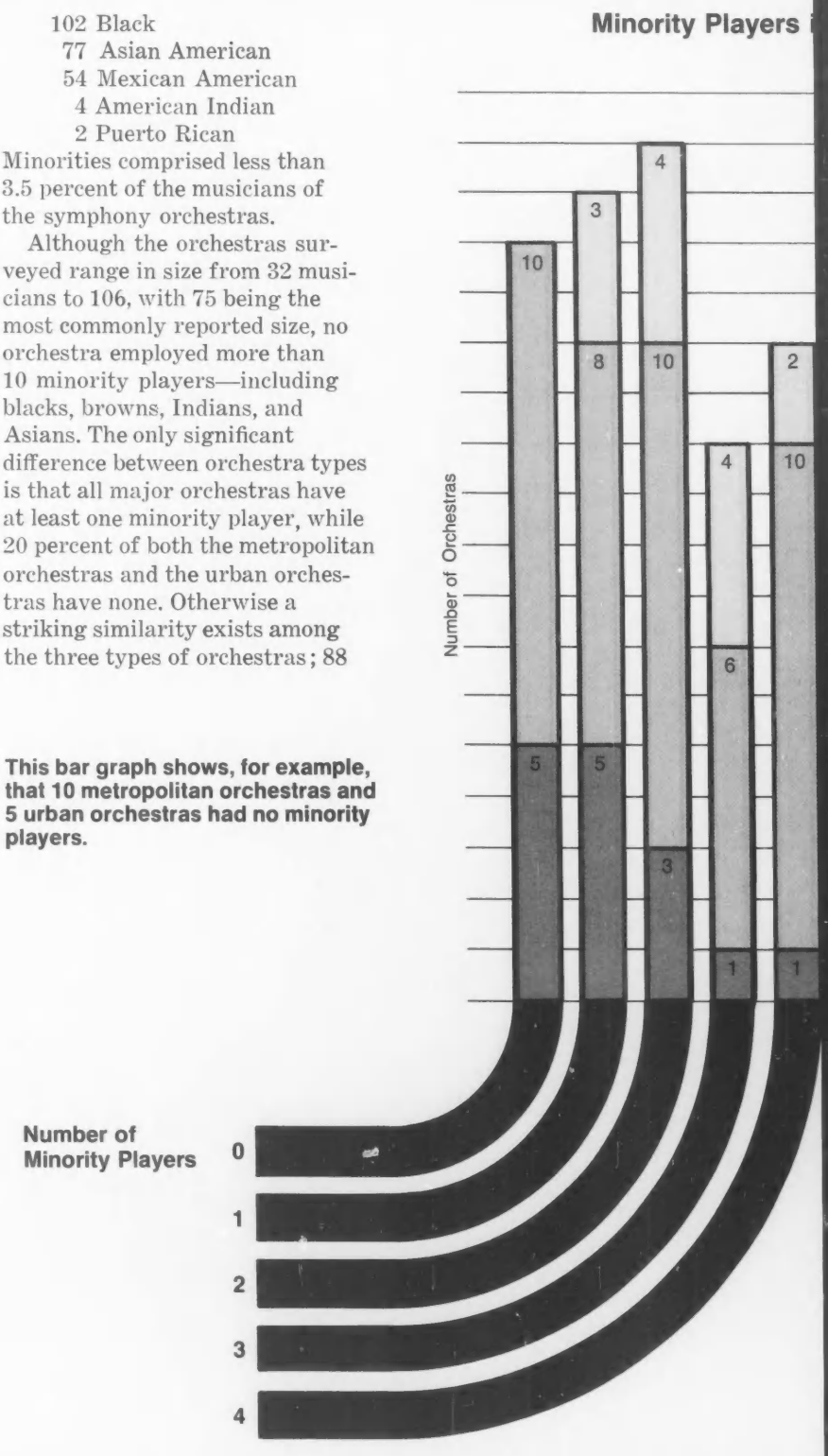
Minority participation

Over 6,800 musicians play in the responding orchestras. Of these, 239 are members of a minority group:

102 Black
77 Asian American
54 Mexican American
4 American Indian
2 Puerto Rican

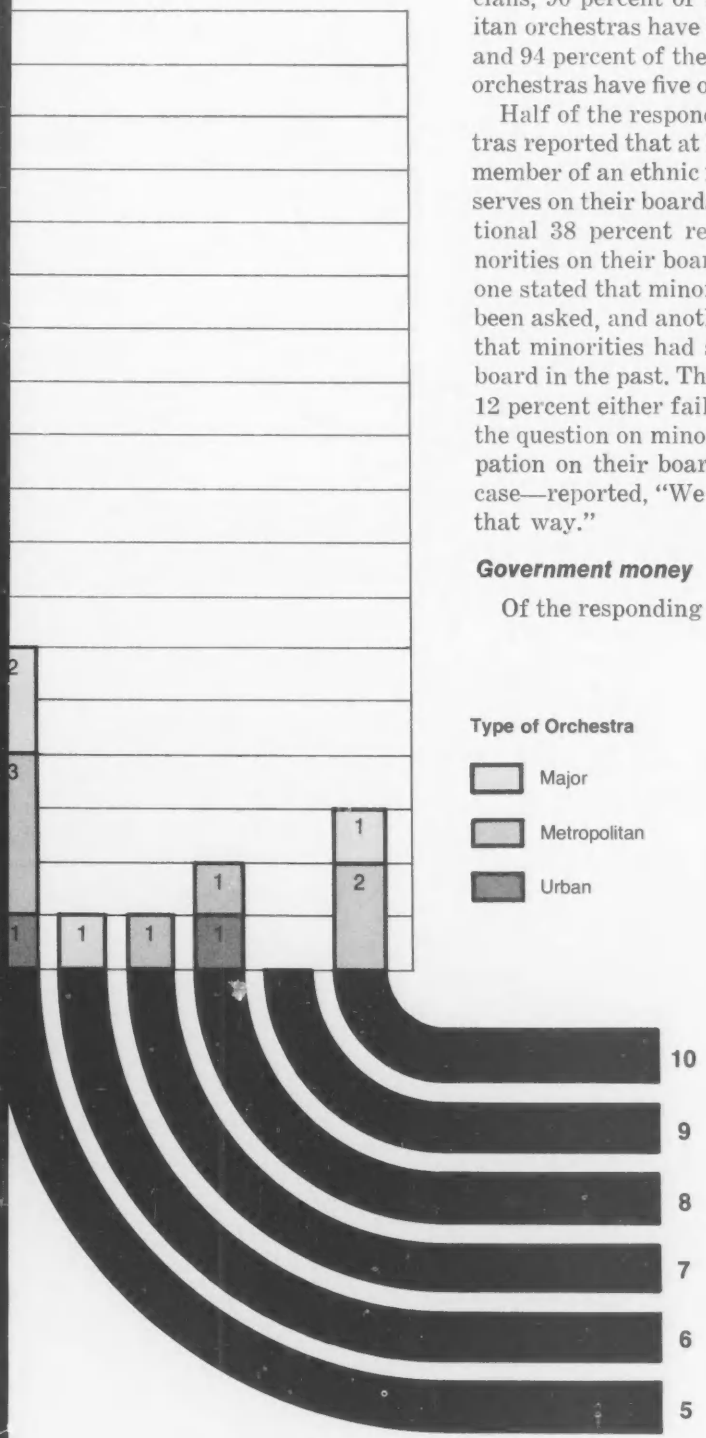
Minorities comprised less than 3.5 percent of the musicians of the symphony orchestras.

Although the orchestras surveyed range in size from 32 musicians to 106, with 75 being the most commonly reported size, no orchestra employed more than 10 minority players—including blacks, browns, Indians, and Asians. The only significant difference between orchestra types is that all major orchestras have at least one minority player, while 20 percent of both the metropolitan orchestras and the urban orchestras have none. Otherwise a striking similarity exists among the three types of orchestras; 88



This bar graph shows, for example, that 10 metropolitan orchestras and 5 urban orchestras had no minority players.

ajor Orchestras



percent of the major orchestras have five or fewer minority musicians, 90 percent of the metropolitan orchestras have five or fewer, and 94 percent of the urban orchestras have five or fewer.

Half of the responding orchestras reported that at least one member of an ethnic minority serves on their boards. An additional 38 percent reported no minorities on their boards, although one stated that minorities had been asked, and another reported that minorities had served on the board in the past. The remaining 12 percent either failed to answer the question on minority participation on their boards, or—in one case—reported, "We do not think that way."

Government money

Of the responding orchestras, 80 percent reported receiving at least one form of government subsidy, whether it be Federal, State, city, or county. (Ten percent did not respond to that question.)

All of the major orchestras receive Federal funds, ranging from 2.5 to 19 percent of their total annual budgets. Of the 42 metropolitan orchestras that reported the breakdown of their annual budgets, 38 receive Federal funds. Only 11 percent of the urban orchestras report Federal funding, accounting for up to 13 percent of their annual budgets. In larger orchestras, the Federal share of the annual budget ranges from 1 to 19 percent. Expressed in dollars, the Federal government provides as little as $5,500 and as much as $200,000 to individual orchestras.

More than half of the orchestras surveyed reported that they receive State funds. Of the major orchestras, 68 percent receive State funds accounting for 0.1 to 49 percent of their annual budgets. The amount of State funding ranges from $1,900 to $500,000.

Of the metropolitan orchestras, 63 percent receive such funds, in amounts from $1,000 to $580,000. Metropolitan orchestras receiving State funds subsidized from 0.1 percent to 58 percent of their annual operating costs from this source. Of the urban orchestras, 22 percent reported that they receive State funds, which in no case represent more than 15 percent of an annual budget. Funding levels range from $1,400 to $9,000.

Existing training programs

More than half of the symphony orchestras reported that they have no training program for minority players. One quarter indicated that they have training programs, but the programs were not neces-

sarily designed for minority musicians.

Some of those orchestras that have training programs provided further information. One, the Los Angeles Philharmonic Orchestra, reported that it has "spent over $100,000 on its program, which it considers valuable not only for the training it provides to minority musicians, but for the fact that it is helping shatter the myth that minorities are not capable to play in symphony orchestras."

Three of the participants in the Los Angeles program are permitted to rehearse with the orchestra or perform at its regular concerts as substitute players. Apparently, Los Angeles recognizes the fact that an instrumentalist must have constant orchestral experience to become "qualified." Two of these participants received their orchestral training in the Angel City Symphony Orchestra. What the Los Angeles orchestra is doing appears to transcend the efforts of all other orchestras in the country.

The Music Assistance Fund aids nonwhite musicians:

> to prepare for careers in the major orchestras. Over 25 musicians in prominent orchestras across the country have received aid from this fund on a continuous basis until they were able to achieve their goals, including one black member of the Los Angeles Philharmonic and the principal bass and the associate principal cellist in the Minnesota Orchestra.

The Continuing Education Program is set up "to help young nonwhite professional musicians in the New York area to study with New York Philharmonic musicians."

Symphony orchestras, developed in America as privately-funded, privately-supported groups performing in concert halls to small audiences, by no means represent America's population. In the past 10 years, however, government funding has come to play a significant role in the operation of symphony orchestras, as the cost of operation increases and services are expanded. Ideally, government funding will provide some financial stability for the orchestra while allowing for artistic expression and growth. With that funding, however, comes a responsibility to the community.

Affirmative action

Overt acts of racial discrimination are not necessarily the only reason for the current absence of minorities in the Nation's symphony orchestras. But a long history indicates that minorities have been bypassed in the orchestras' recruitment and employment programs.

Several of the orchestras surveyed indicated that few minority persons live in their areas and that few—if any—have auditioned to fill vacancies in the orchestra. The Symphony of the New World in New York has issued a report indicating that a number of well-qualified minority musicians are able to relocate where jobs are available. Its training programs, begun in the sixties with a foundation grant, produced capable, "qualified" minority musicians, but they could find no available employment.

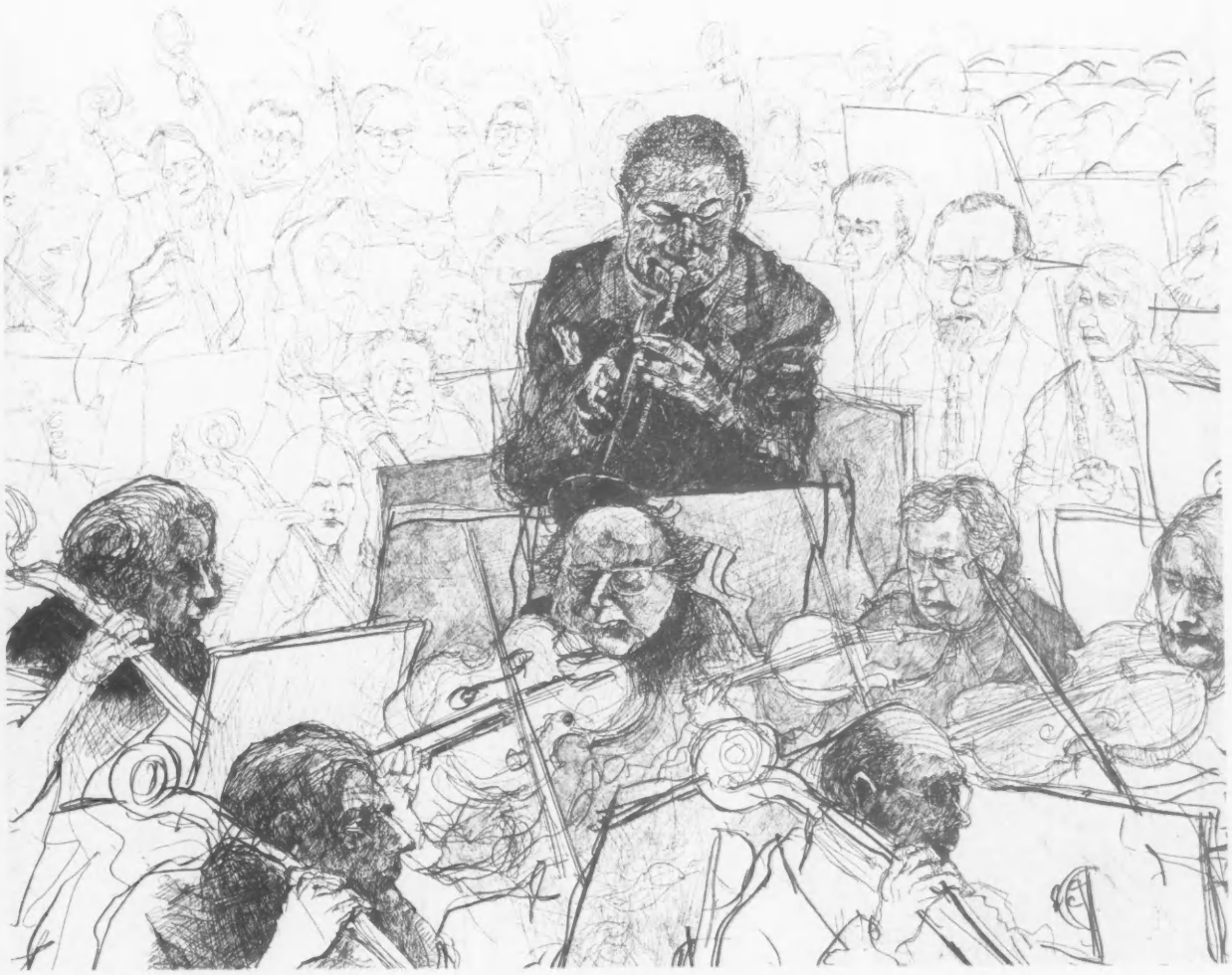
To match orchestras that cannot find minority musicians with those who are available, a data bank should be established. Such a bank would be a national clearinghouse of information on minority musicians seeking employment in symphony orchestras. It could be developed in cooperation with the Symphony of the New World, which has done preliminary data collection, and the American Symphony Orchestra League. This data bank might be established with funds from the National Endowment for the Arts, which already has an annual investment of over $7 million in the Nation's symphony orchestras.

Such funding would be proof that the NEA intends to enforce the civil rights provisions required in all its Endowment grants. Additionally, NEA could require that to qualify for a grant, a symphony orchestra must have an affirmative action plan for recruitment and employment of minorities. NEA must have adequate staff to provide orchestras with technical assistance in drafting such affirmative action plans.

Affirmative action plans will be meaningless if no mechanism exists to monitor their effectiveness. NEA should establish an administrative staff to check on the orchestras to determine if the plans are working. The Federal government is not the only source of government funding for orchestras, as we have seen. City and county governments should also incorporate affirmative action plans in their grant agreements with symphony orchestras. Each agreement should include a specific clause against discrimination, similar to that found in construction contracts of most cities.

Educational efforts

The cultures of most of America's ethnic minorities do not foster interest in symphonic music or encourage training in orchestral music. Although the public schools have had a small role in fostering interest in instrumental music, these advances are being reversed



as music programs are among the first to be cut in the current budget crunch.

Symphony orchestras themselves must bear the responsibility for encouraging minority youngsters to pursue training in orchestral music. Indeed, the National Endowment for the Arts should share this responsibility by requiring that a specific portion of each NEA symphony grant be used to train minority musicians.

The benefits of an extensive network of training programs include:

- Providing additional employment for orchestra members—teaching and acting as consultants and specialists;
- Allowing advanced students to perform with the orchestra, especially in minority areas where special concerts should be given;
- Giving aspiring musicians a positive image of the symphony orchestra.
- Increasing support and interest from the minority community.

For practical reasons, a training program is imperative. Let us suppose next week that all grantees were required to have 10 percent minority players. The orchestras surveyed employ 6,800 players. With our current count of 239, the symphonies would need to find 441 other "qualified" minority persons rather than lose more than $7 million in Federal funding.

The results of this effort would be to hire players who were, perhaps, unqualified. After the resulting criticism developed primarily from white players who made it through the "ranks," the orches-

tras would say to the Federal government, "we tried." We do not propose this kind of solution to the problem. There is a better way.

Innovative funding

Foundations have long been contributors to symphony orchestras. Indeed, one-third of the responding orchestras reported receiving funds from foundations. The level of support ranged from 0.8 to fully 23.2 percent. Foundations could be instrumental in increasing minority participation in symphony orchestras by subsidizing internships, so that fledgling minority musicians might join orchestras.

While many orchestras may complain that their hiring is restricted by limited funds, foundations could ease this burden by providing up to 50 percent of a musician's salary for up to 3 years. This would not only allow the musician to gain experience playing with an orchestra, but would immediately increase minority participation in symphony orchestras. Foundations currently support minority involvement in business and education by direct grants to businesses and colleges for minority apprenticeships—why not the orchestra?

The Music Performance Trust Fund subsidizes the training of nonprofessional musicians and various music functions all over the USA. Why not have this organization expand its scope by zeroing in on the matter of minority apprentice training? Not one dollar more would be needed for music services—just a different approach. This approach would involve the various musicians' unions, whose rules (no play without pay and seniority must prevail) have contributed significantly to the existing problems. A different pay scale can be used for apprentice musicians just as in certain craft trades. The funds would come from the Trust Fund, Federal government, State government, foundations, etc.

The result would be to create more work for key section leaders who may, in connection with this effort, be employed as teachers for the apprentice players in their sections. The effect would be that a 108-piece orchestra would have 10 or 20 additional players—at absolutely no cost to the orchestra.

Developing an audience

The symphony orchestra can broaden its appeal to minorities by ensuring that minority persons are active as musicians, managers, conductors, and board members. Symphony orchestras should also leave the concert halls to give performances in minority communities. However, these special concerts should feature minority soloists and guest conductors or minority players in special performances, prompting audience identification.

Immediately following the domestic strife in major cities, innovative funding sources and orchestras, notably in large urban cities, went into the ghettos to "bring good music to the minorities." What they brought was a white orchestra, a white conductor, and, rarely, black soloists.

The results were varied, depending on whether one was the public affairs director of the orchestra or a member of the ghetto audience. Later, when free tickets were distributed for downtown concerts, minorities were not there. When questioned why, the response from the orchestra generally was, "Those folks don't relate to classical music."

The Los Angeles Philharmonic, which has only two black players, presents a series of unique concerts in black churches with black soloists and black choirs playing, among other things, black gospel music. They play to standing room only audiences. However, when the Los Angeles Philharmonic stays "at home" in the Music Centre in regular concerts, black and Chicanos are also at home.

Limiting minority involvement to the musician alone is not enough. The conductor holds a position of great leadership importance. The inclusion of minority conductors on a regular basis can attract audience interest and participation that might not otherwise exist. The mere fact that an audience will go even once into the hall for this reason may cause them to come back.

A board of directors has great influence on the policy and direction of the orchestra. Minority participation should be encouraged. This alone could dramatically affect minority communities' support for symphony orchestras.

It is clear that minorities generally do not share in the orchestral life of this country. It is also clear that some strategies for change have already been developed. Federal and local governments should take the lead in promoting increased minority participation.

But other strategies are yet to be devised. People in orchestras, funding sources, public and private schools, politicians, lovers of music, and lovers of justice should devote themselves to creating and implementing these strategies.

The job must be done.

READING & VIEWING

BOOKS RECEIVED

How the Rural Poor Got Power by Paul David Wellstone (Amherst, Mass., University of Massachusetts Press, 1978). Chronicles the origin, development, and failures of a grass roots coalition of rural poor in southern Minnesota. *240 pp.*

Equality of Opportunity Within and Among Nations ed. by Khadija Haq (New York, Praeger Publishers, 1977). Selected papers and summarized proceedings of the 15th World Conference of the Society for International Development. *223 pp.*

The Invisible Children by Ray C. Rist (Cambridge, Mass., Harvard University Press, 1978). Examines in depth the effect of the school desegregation effort on black children and on the educational process. *286 pp.*

Of Crimes and Rights by Macklin Fleming (New York, W. W. Norton and Co., Inc., 1978). Analyzes the purposes and methods of criminal law; proposes specific improvements in the criminal justice system and suggests that the system should treat only "true crimes." *273 pp.*

The Chains of Protection by Judith A. Baer (Westport, Conn., Greenwood Press, 1978). Examines constitutional basis and history of women's labor legislation and discusses philosophical aspects of the relationship between law and sexual differences. *238 pp.*

Riot, Rout, and Tumult ed. by Roger Lane and John J. Turner, Jr. (Westport, Conn., Greenwood Press, 1978). Readings in American political and social violence, including several essays on lynching and mob violence, interracial confrontations, and urban rebellions. *400 pp.*

COMMISSION REPORTS

The State of Civil Rights. Second annual appraisal of civil rights progress in the U.S. *63 pp.*

Age Discrimination Study Vol. I: Findings and recommendations of special report done at request of Congress. Analyzes age discrimination in federally-funded programs, such as community mental health centers and legal services. *112 pp.*

HEARINGS

Hearing Before the U.S. Commission on Civil Rights: Miami, Florida *Vol. I: Testimony August 22–23, 1977.* On age discrimination in federally-funded programs. *273 pp.* Exhibits to be published later.

Hearing Before the U.S. Commission on Civil Rights: San Francisco, Calif., *Vol. I: Testimony June 27–28, 1977.* On age discrimination in federally-funded programs. *300 pp.* Exhibits to be published later.

Hearing Before the U.S. Commission on Civil Rights: Denver, Colorado *Vol. I: Testimony July 28–29, 1977.* On age discrimination in federally-funded programs. *220 pp.* Exhibits to be published later.

Hearing Before the U.S. Commission on Civil Rights: Washington, D.C. *Vol. I: Testimony September 26–28, 1977.* On age discrimination in federally-funded programs. *410 pp.* Exhibits to be published later.

Last Hired, First Fired. Edited transcript of an informal hearing held October 12, 1976, on discrimination, seniority, and layoffs. *150 pp.*

SAC REPORTS

Bridging the Gap: A Reassessment (Minnesota Advisory Committee). Reviews issues raised in 1975 report concerning education and employment of American Indians in the Minneapolis-St. Paul area. *25 pp.*

Affirmative Action or Inaction? (Ohio Advisory Committee). Examines equal employment opportunity in Cleveland. *77 pp.*

The Quest for Equal Employment Opportunity in Oklahoma State Government (Oklahoma Advisory Committee). Examines employment of minorities and women and assesses the impact of the State's merit system on EEO. *77 pp.*

Liberty and Justice For All (South Dakota Advisory Committee). Recounts ways in which State's criminal system discriminates against American Indians. *70 pp.*

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