CIVIL RIGHTS DIGEST

A Quarterly of the U.S. Commission on Civil Rights/Fall 1974

GROWING OLDER FEMALE

Volume 7 Number 1

Fall 1974

The U.S. Commission on Civil Rights is a temporary, independent, bipartisan agency established by Congress in 1957 to:

Investigate complaints alleging denial of the right to vote by reason of race, color, religion, sex, or national origin, or by reason of fraudulent practices;

Study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, or national origin, or in the administration of justice;

Appraise Federal laws and policies with respect to the denial of equal protection of 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 the Congress.

Director of Information and Publications
Marvin Wall

Editor
Suzanne Crowell

Art Direction
Joseph Swanson
Del Harrod

PHOTO CREDITS: 3 (lower left)—OEO; 3 (top, lower right), 5—Jones; 10, 16, 20—Black Star/Rozumalski; 13—Black Star/St. Louis Post-Dispatch; 24—Black Star/Messina; 27, 30—Crowell; inside front cover—Crowell, inside back cover—Jones.

The *Civil Rights Digest* is published quarterly by the U.S. Commission on Civil Rights as part of its clearinghouse responsibilities. Funds for printing the *Digest* were approved by the Director of Bureau of the Budget on January 29, 1963. Correspondence related to the *Digest* should be addressed to Editor, *Civil Rights Digest*, U.S. Commission on Civil Rights, Washington, D.C. 20425.

The Compounding Impact Of Age On Sex

ANOTHER DIMENSION OF THE DOUBLE STANDARD

By Tish Sommers

As with other inequities, the double standard of aging between men and women is so obvious that it is taken for granted. It is a pervasive fact of life—rarely questioned and never taken seriously as a possible subject for government concern.

Men generally marry women younger than themselves; when they remarry the age gap increases; employers usually prefer younger women; a love relationship between a young man and an old woman is a source of ridicule. When the producers of *Harold and Maude* were seeking the most bizarre symbol possible to illustrate the absurdity of our values, they picked that shocking combination. (The same age gap between an old man and a young woman is far too common in real life to have any impact.)

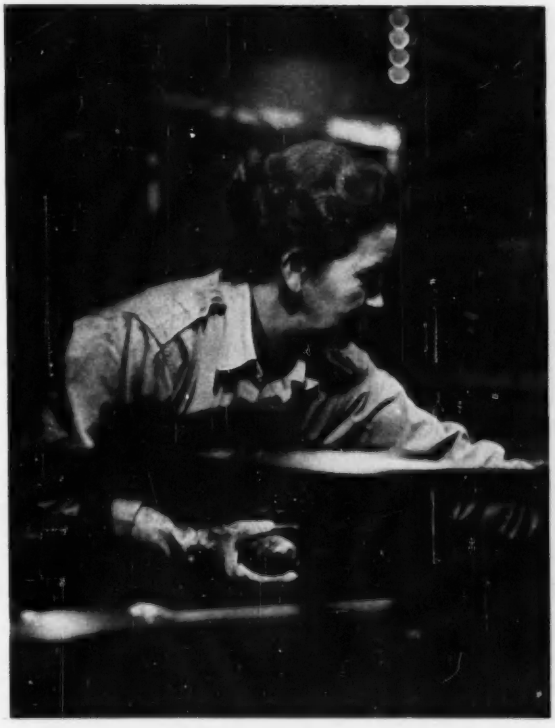
Even feminists have not given serious attention to the implications of this double standard until recently, since younger women have been in the forefront of the movement. In addition, so many assumptions were simultaneously under attack and so many issues required action that the aging question had to wait. We noted that women moved rapidly from sex object to obsolescence, that a billion dollar industry fed upon our efforts to slow down the process, and that we must provide for our own futures.

But we held out little hope for the older generation, already socialized to different standards than ours, and we pinned our hopes on the young. We have only recently begun to consider the serious impact of age upon sex, and to see that beside the mating differential exist problems of societal concern which are not going to go away without special analysis and attack.

One reason that the compounding effects of sexism and ageism have not been sufficiently recognized is that the aged are desexed. At the chronological cut-off of 65, a new status is acquired which falls within the purview of different laws, bureaucracies, and disciplines. These bureaucracies and disciplines tend to see their

---

Tish Sommers is the coordinator of the Task Force on Older Women for the National Organization for Women.



field, the elderly, as separate and distinct. They view their constituency as an undifferentiated category especially in regard to sex, so that the specifics are blurred. Older women tend to become invisible in statistics, theories, and social programs in the aging field.

To understand how aging affects women, and some of the serious gaps in coping with the consequences, examine first the male patterns: society's norms are established in terms of men.

"If we analyze this country as a white male club, committed to technological superiority and dominance on the world scene," said Robert Terry in the spring, 1974 issue of the *Civil Rights Digest*, "much of what has happened and continues to happen in America can be understood more completely." Although relatively few white males run the club, all are offered benefits, he says. Minorities and white women are relegated to secondary status and are exploited for club purposes.

One fact of that club membership Terry failed to mention was age. When members reach 64 they come up for review; if they have become one of the select who run the club thay may stay in. Otherwise, out they go.

As for minorities and women, who were never eligible, they are now doubly excluded. At age 65 the officers of the club, who are in such seats of power as corporation board rooms, on Capitol Hill, in prestigious university positions, or in courts of law, can continue to enjoy the material and psychological benefits of club leadership. The ordinary member must remove himself from the mainstream, lose most of the status he possesses in his community and often in his own home.

Rep. Paul Finley of Illinois pointed out that if mandatory retirement at age 65 were suddenly imposed on Capitol Hill, six Supreme Court Justices, about 60 Representatives, and at least a quarter of the Senate would have to go. John Sparkman at 75 is taking on a new job as chairman of the Senate Foreign Relations Committee. Two 75-year-old economists, Gunnar Myrdal and Frederick Van Hayek, still working, have just shared the Nobel Prize in economics. And age is no barrier to corporation leadership, as the photos in any annual report reveal.

Double Standards

There is, in fact, not only a double standard of aging between men and women, but also a double standard for men themselves—those who run the club and those who don't. The result of that membership check at 64 is a sudden influx of white males who formerly had a privileged postion into the ranks of the "other." In discussions of aging, this is the group generally referred to.

As Simone de Beauvoir said in *The Coming of Age:*

> As a personal experience, old age is as much a women's concern as a man's — even more so, indeed, since women live longer. But, when there is speculation upon the subject, it is considered primarily in terms of men. In the first place, because the struggle for power concerns only the stronger sex.

Considering the sex and race of most of those who write, plan, and speak in behalf of the elderly, it is not surprising that the aging problem is traditionally seen in white male terms although there are far more elderly women than men. It is also typical of our culture to be more concerned about those who rise and fall than those who never rise at all. The unemployed aerospace engineers caused some concern, while there was none at all for clerical workers laid off at the same time. They had just as much trouble getting new jobs, especially if they were over 40.

When the Labor Department finally won a landmark case in support of the Age Discrimination in Employment Act (the Standard Oil case), it was predictably in defense of white males in middle management, forced out of their poitions by ageist corporation policy. No matter that members of the board of the corporation were older than those weeded out.

As members grow older, the club rules become more and more selective. Some may drop out of their own accord, but most of those permitted to remain hold onto their membership—for economic benefits, status, and prestige, as well as for the exclusive right to remain productive. For a very few, there are seniority privileges. But the bulk of those forced out suffer a humiliating fall from favored postions, and in many cases, introduction to the lifestyle of poverty.

What then of women? In a society that practices a youth cult, when do we become old?

Clearly the youth cult extends to both sexes but the timing is quite different. Whatever progress has been made in laws regarding equality, in real life customs change more slowly. In the marriage market, a woman reaches her peak at about 20 or 25. Despite the understandable fury of younger women over the use of the term "girl," the older we get the

more we try to remain girls. If that were not so the billion dollar business which tries to help us maintain that illusion would not exist.

At an age when men are at their most attractive, a woman is usually a has-been. A man's peak usually coincides with his economic opportunities or the height of his power, somewhere in the 40s or even older. He becomes a man. She remains, or tries to remain, a girl. Even the young woman who most protests the term will peer in the mirror for the trace of a wrinkle or a grey hair.

The difference between the term "boy" as used derogatorily against blacks and "girl" against women is that a black wants to become a man—that is where the rewards are—while a woman secretly wants to stay a girl, because so many of her rewards are there. The much ridiculed image of the overweight middle-aged clubwoman "girl" is based upon a deeply-felt defense mechanism. When we are young and sure enough of our physical girlhood, we can resent the term, but the older we get the more we hang on to it.

Sixty-five is that standard mandatory retirement age for men, but women often face the same crisis at an earlier age, complete with economic, physiological, and psychological trauma. The dependent homemaker has little status on her own account at any time, but what she pulls together to create her selfhoood usually crashes in the middle years. The empty nest syndrome, usually coupled with menopause, is a crisis of identity similar to the one men face on retirement.

Yet neither this identity crisis nor the menopause have been taken seriously, although suicide rates peak for women during these years. The lack of medical research on estrogen replacement therapy and other aspects of menopausal care is reminiscent of the slow start on research on sickle cell anemia. While almost one-half of the population will suffer with discomfort, sometimes of a serious nature, club members of the medical profession exhibit a shocking lack of interest. Those in the aging field do not consider it within their purview.

Widowhood is another form of forced retirement — a change of status for which there is no preparation and little opportunity to find a new identity. Since the traditional role of the wife in marriage is to create her identity through her husband as supporter and adjunct, when the husband dies she loses herself as well as her mate. Such women usually look for another husband, with limited success. Since youth and beauty are equated, especially for women, men remarry down in age. Over twice as many bridegrooms are over 65 as brides, and four times as many widowers are past that age.

A factor adding to the growing number of nonmarried women (separated, divorced, widowed, or single) in the older population is the increase of divorce, especially in "no-fault" States. For older women, in most cases, divorce is another form of forced retirement for which they are economically and psychologically ill-prepared. Especially in those States where unilateral "no-fault" has been instituted, the risk of divorce in later years has been dramatic. In Nebraska, for example, within 6 months after the new law went into effect in 1972, a 59.4 percent increase in divorces occurred among those married 31 or more years; a 49.5 percent increase among those married 26-30 years; and an 18.2 percent increase among those married 16-20 years.

Women, especially those trying to reenter the job market, generally face the "over the hill" syndrome earlier than white men. Because it is difficult to face aging, most of us don't recognize age discrimination when it first hits us. After we have made the rounds

and have been turned down repeatedly, even for the traditional "female" job for which we formerly were eligible, we become convinced that we are unemployable. Soon that is the way we do become, in the manner of all self-fulfilling prophecies.

Thus the patterns of aging for men and women have significant differences. Some men can remain in the club, and in a manner of speaking their wives can maintain an auxiliary status. Most women hit "mandatory retirement" earlier than men, but live longer. For nonmarried women especially, the heavy impact is already upon us in our 40s and 50s—yet at that age we fall between the cracks of all social programs.

In order to devise remedies for the problems of older women, aging must be redefined in a way that is more functionally accurate for women and is not based upon male chronology. Clearly women are not going to beat on the doors asking to join the ranks of the elderly at an earlier age than they have to, espeically since aging in our society is synonomous with being sick, dying, poor, dependent, useless, and "over the hill." On the other hand, until sexism is eradicated and women really become self-sufficient, the period between early "forced retirement" and social security is a particularly dangerous one.

The Blackout

There are 21.8 million women between ages 45 and 64. Two million live in families headed by females. Another 5.1 million nonmarried women live alone or with unrelated persons. Of nonmarried women 45 to 54, 72 percent are working outside the home, but the percentage drops to 63 between ages 55 and 64. Among married women 45 to 54, 45 percent work; between age 55 and 64, 35 percent work. Increasing numbers live without men. Although 81 percent of women 45-54 are married, only 66.5 percent of women 55-64 are still living with husbands.

These middle years are an age bracket for which exists a virtual blackout of services or benefits. In the State of California nothing is available for those who do not qualify for the disabled or blind program under Supplemental Security Income, or who live in a county without a general relief program. In 1973, 12 counties gave no benefits for one person cases, while of those that did, the average award was $85.34 per month.

Older black women are even worse off economically than whites. Those who work are virtually limited to domestic and service jobs, all low paying and low status. While they may have learned to cope better than new-poor white women, many black women also experience the hazardous period when Aid to Families with Dependent Children is no longer available. Although younger black women have made some progress in moving out of domestic work—primarily into clerical fields—the same is not true of older black females. Such jobs have declined and many vacated spots are filled by white women over 50.

Typically, material on aging pictures a sweet old couple sharing their twilight years. Yet only 38.1 percent of women over 65 are married. Except for that small, powerful minority of club members, the economic situation for the majority of the aged is bad. In 1971, half the couples had annual incomes under $4,931; 69 percent of non-marrieds under $3,000. (In typical fashion these HEW statistics define 65+ by age of "head of family," although two-fifths of older married men have wives under 65 years of age.)

But for nonmarried women it is worse. Of the 4.3 million (22 percent) of older persons living below the poverty threshold in 1971, almost 2.6 million or 60 percent were living alone or with non-relatives. Of these, more than 2.1 million were women, mostly widows. The older we get, the more likely we are to be on our own. In the age bracket 70-79, 21 percent of the men are widowers, and 61 percent of the women are widows. When speaking of the elderly poor, sex is seldom mentioned, yet the vast majority are women who have outlived "the woman's role" and who are now reaping the fruits of a lifetime of sex discrimination—and in the case of minorities, racial bias as well.

Only a Dependent

Society manifests its values most vividly in the rewards received after the job is done. Members of the club all give careful attention to retirement benefits, annuities, and "transition expenses." While a woman is encouraged to stay at home and care for a family, when she grows old she is penalized for not having "worked." While a massive child care bill was vetoed on the grounds that home care of children is essential to the fabric of American society, a homemaker receives not one penny in retirement benefits of her own. She qualifies only as a dependent.

Nor will her volunteer efforts, which are extolled as essential to maintain worthwhile charitable programs, provide one penny in social security or pension benefits.

Economically speaking, women are punished for doing what society expected them to do.

A good part of the problem for older women is that officially we don't yet exist as a problem. Each group that has emerged on the civil rights scene has come out of invisibility by making a public fuss. Until that happens, a conspiracy of silence reigns, without even statistics to bear witness.

At the magic figure of 65, women are lost in the sexless classification of senior citizens for all intents and purposes. Suddenly we disappear even from the concerns of civil rights activists, not even winning a nod in the list of "forgotten women" carried in the *Civil Rights Digest* issue on sexism and racism. The problem is no longer seen as one of "sex," but as one of "age." But can the two be separated, anymore than sex and race?

Margaret Sloan stated in that *Digest*, "It would be very easy for me if the oppressor would split up the week and say from Monday to Wednesday we are going to put her down because she's black. . .but it doesn't happen that way."

Nor can oppression be divided by sex and age. Laws may separate the two but life does not.

This becomes painfully apparent when one examines laws governing equal opportunity for employment. Title VII of the 1964 Civil Rights Act does not cover age. The Age Discrimination in Employment Act does not cover sex. But a woman who is turned down for a job because she doesn't fit the employer's youth-oriented criterion of beauty is discriminated against as much for sex as for age. If the Equal Employment Opportunity Commission would investigate the matter, it would surely find that age discrimination is differently applied to men than to women. Age bias against women is in practice another covert form of sex discrimination.

Sex and age discrimination are a poisonous combination, because employers look for qualities in most female employees which have no bearing on the job per se, but which reflect their own or community prejudices. One such prejudice is that a woman should be pretty (i.e., young) for certain jobs, such as bank teller, airline hostess, or receptionist. Yet such work could be done just as adequately by a woman 40 or over, and a reentry woman at that. To hire women exclusively for such positions is now considered discrimination against men. It is equally discriminating toward older women, because the custom of hiring only young women for such positions is based on a sexist interpretation of the job. The validity of this charge could be proved by adding age to the EEO-1 forms required of employers.

Employers often argue that in the case of reentry women, it is not their age which disqualifies them, but the fact that they have been out of the job market a number of years. "Recent experience" is the most devastating question on an employment application. In the celebrated *Griggs-Duke Power* case, the Supreme Court ruled that employers must prove the validity of tests designed to predict job performance which also have the effect of excluding blacks. Similarly, no proof exists that reentry women cannot perform adequately in many job categories. The insistence on "recent job experience" while discounting responsible unpaid work may not seem like sex discrimination, but it just happens to eliminate older females.

Through feminist efforts, Office of Federal Contract Compliance (OFCC) guidelines consider a refusal to rehire after child bearing discriminatory. Why not then after child rearing? If it is sex discrimination to force women to retire at an earlier age than men, why is it not sex discrimination if women cease to be hired at an earlier age?

Social Security

Jobs and pay rates take on double significance as retirement approaches, when women frantically try to get in enough quarters to qualify for social security. Under present law, a person needs at least 10 years (40 calendar quarters) of "creditable work" to meet the length-of-service requirement to earn "fully insured status." For disability benefits the person must have worked in half the quarters during the 10 years immediately prior to disability. This can be a bitter trap for single women unable to find employment in these crucial years.

Social security law is a prime example of efforts to straddle woman's shift from dependence to self-sufficiency. When adopted in 1935, man was presumed to be the breadwinner and woman the homemaker. The plan—a compromise between the insurance principle and a recognition of society's responsibility for the aging—provides benefits for dependents at retirement, disability, or death of the wage earner.

This sets up two kinds of inequities. If a married woman is employed, and "contributes" her monthly payment, she may receive more as a dependent of her husband, considering the wage differential between the sexes. She

feels cheated, receiving nothing extra for her "contribution." On the other hand the woman who works at home, making it possible for her husband to earn his salary, receives nothing in her own name. If they are divorced, she may be left out entirely.

A recent amendment permits women married 20 years to the same man to collect on the same basis as a wife when the man retires or dies. This is not only degrading to the woman, but opens the way for many "catch 65s." One newspaper account from New York described the case of a 73-year-old woman whose husband of 40 years died several years ago. She will no longer receive widow's benefits because he was previously married and never divorced. According to the Social Security Administration, she was one of 119 widows who lost benefits this year because their husbands had not obtained divorces.

Another pitfall of dependency is the assumption that the woman could not be older than her husband. If a divorced woman is 10 years older (and it is not that rare, just hidden), she would be 75 before she could collect as a dependent if he retired at 65. Or a woman might be married to one man for 10 years and another for 15 and collecting nothing.

According to some, as the law now stands it discriminates more against men than against women because of the dependency features. But this is a strictly legalistic viewpoint. As of October 1972 the median Social Security payment—for women both workers and dependents—was $138 per month, while the median for men was $214. In June of 1973, retired women workers were paid an average monthly benefit of $144 while men received an average of $181 per month. These reflect, and continue into old age, the inequities of employment opportunity.

Still more basic is the lack of credits for homemaking and voluntary community work mentioned above. Here is the largest body of workers still uncovered in what purports to be a universal retirement system.

Social security is not the only area in which the economic value of homemaking is yet to be recognized. Economist John Kenneth Galbraith has stated that the economy hangs on the housewife's apron strings. The consumption tasks of the homemaker are essential for the well-being and continuing growth of the economy, but the homemaker's contribution is systematically ignored. No accounting of it is made, and if something isn't measured, it isn't noticed—as with social security.

So homemaking is carefully kept out of the realm of statistics, although an occasional estimate surfaces. In New York City a jury recently awarded $56,000 to the husband of an injured woman for "loss of services" for over 2 months. A Chase Manhattan Bank report of 1972 conservatively computed that the marketplace value of a typical homemaker's labor is $257.53 per week. None of this labor is included in the Gross National Product, but if it were suddenly to disappear, the GNP would take a disastrous dive.

As laws are made more "equal" to reflect the changing status of women, they can adversely affect those whose roles were defined in an earlier day. The white male club members (who are also the lawmakers) are far more receptive to those charging unequal treatment of men than to those seeking economic security for homemakers.

Facade of Protection

Changing divorce laws are a case in point. The tragedy of the new "liberal" no-fault laws, especially those which allow either partner to terminate the marriage at will, is that they superimpose a legal facade of equal protection upon very unequal situations. They are another example of prohibiting the rich and poor alike from sleeping under bridges.

Many women who did not have the choices of the present (such as they are), assumed that marriage was a viable contract which would provide security in later years. Whatever the disadvantages of homemaking as a career, our mothers taught us, we would be taken care of in later life if we performed our part of the bargain. On the whole, other options for women provided much less.

When the contract suddenly is rescinded after 20 to 40 years of unpaid labor, opportunities for remarriage or employment are severely limited. If the woman has saleable skills, they are rusty, her self-esteem probably has taken a nosedive with the divorce, and employers don't want the reentry woman anyway.

When a middle-aged man leaves his wife of many years for a younger woman, the ex-wife is psychologically and socially committed to the junk heap even when her economic situation doesn't take a sudden dip—but it usually does. The publicized cases of women who have "taken their husbands to the cleaners" are in the financial upper brackets and have little bearing on the majority. In setting spousal support for homemaking wives, judges are now

quick to cite women's liberation. "We're taking women at their word; they say they don't want anything from men," said one San Francisco judge.

Even in community property states, the division rarely includes the all-important fringe benefits such as health insurance and retirement. The job resume and experience that make an employer take notice go, of course, with the breadwinner. Spousal support is too often awarded as a gesture and then not paid, so that more assertive ex-wives are forced to fight for a settlement in court and the timid ones give up. A woman who expects to continue being supported is considered without pride, although financial support was, she believed, a condition of her marriage contract.

It is just such results from the backlash to equality that make some older women resist the Equal Rights Amendment. However, a careful look at the fate of elderly women in the traditional dependency role should dispel any illusion that there is much to lose. In fact the impact of sexism is most sharply illuminated by the conditions of older women in contemporary society. If gross inequity between the sexes did not exist, why are so many of us poor when we grow old?

The fate society allocates to aged females exposes the myth of special protection. Legal equality will only supply the underpinning for a continued struggle for authentic protection. The status of dependency, of working without pay, of early obsolescence, of rules of marriage changed midcourse, and the final lonely years all cry out for new solutions. Neither maintaining the status quo nor winning equality under the law will solve them, but the ERA will give a constitutional handle for that struggle.

Once the principle of equality is established, opportunities for revising legal structures in ways that will not eliminate protections for women without substituting meaningful reforms will be increased, not diminished. Just as in the cases of protective labor legislation, which has ambivalent value for working women, dependency protections for older women are eroding in both law and custom whether we like it or not. The only way out is to move forward, seeking new answers which pave the way for self-sufficiency. Whether those answers are application of the community property principle to social security, insistence upon the right and opportunity to work (including effective compliance machinery), legally viable marriage contracts which provide real safeguards, workman's compensation coverage for homemakers, unemployment compensation for divorced women whose ex-husbands default on spousal support, or other extensions to women of protections won through collective effort—new answers will be hastened by passage of the Equal Rights Amendment.

A New Link

On the positive side, the emergence of a new wing into the ranks of those who see themselves excluded from society's benefits opens fresh possibilities. Older women are just beginning to define their self-interest, as other groups have done before. Restive older women can help to link reviving senior activism to women's fight for equality—on the one hand bringing a feminist viewpoint to elders, and on the other, interpreting the realities of aging to younger women. Grey Panther leader Maggie Kuhn is already doing just that, and NOW's Task Force on Older Women, as well as other feminists, are beginning to speak out in these terms.

The current economic situation underscores the need to find common ground. The depression is already here for the elderly, complete with indoor bread lines in federally-financed meal programs. This past month, St. Anthony's Dining Room in San Francisco called in reporters to celebrate its 11 millionth free meal. The person so honored was an 86-year old woman with income of little over $100 a month, who confided that she was "absolutely dependent" on the balanced meal served by the Catholic agency. The deputy director of the project told reporters, "The old stereotype of some wino as the usual diner doesn't hold any more." Elderly women on fixed incomes now are the main customers.

In that same spring issue of the *Civil Rights Digest*, Lucy Komisar pointed out that the feminist movement holds possibilities for social change that have hardly been considered by those that view it from the outside. One such potential for change relates to age and poverty, especially as they affect women—for once we have a clearer view of the causes, we can proceed to find the cures. The vigor of the woman's movement and its widespread impact will suggest new strategies. Understanding the interconnections, as well as the compounding effects, of sexism, racism, and ageism will lead us deeper into the body of the monster.

Once there, we can launch a combined attack.

JUSTICE DELAYED AND DENIED

HEW AND NORTHERN SCHOOL DESEGREGATION

By Roger Mills

Nineteen-year old Willie Bates was graduated last year from an all-black high school in Chicago. Throughout his career in the public schools of that city, he had never attended a school where a single white pupil was enrolled. Many of his white counterparts had never seen a black face in their classrooms.

Racial segregation in northern schools is still common today, 20 years after *Brown* v. *Board of Education*. Ten years ago, in the face of continued resistance by State and local governments to the constitutional commands of the *Brown* case, Congress enacted the Civil Rights Act of 1964. In an effort to enlist the assistance of agencies of the executive branch in enforcing rights declared by the courts, Title VI of the 1964 act provided that no person shall be subjected to discrimination in any program receiving Federal funds. Under Title VI, it became the responsibility of the Department of Health, Education, and Welfare (HEW) to prevent racial segregation and other forms of discrimination against public school students and to withhold Federal assistance from school districts that did not comply with the law.

Each Federal department is responsible under this law for ensuring that discrimination does not exist in the programs and activities which it funds. In financial terms, HEW, which in fiscal 1974 spent some $6.3 billion in aid to education, is the major agency affected by the law. The Secretary of HEW designated HEW's Office for Civil Rights to carry out the responsibility of seeing that school districts receiving Federal aid do not discriminate.

In December 1964, HEW adopted regulations requiring school districts to file assurances that they were not discriminating, that they were complying with court desegregation orders, or that they would submit voluntary desegregation plans subject to acceptance by HEW in order to receive Federal aid. Most important, HEW issued "guidelines" outlining in rather general terms what steps would be required of a segregated school system to bring itself into compliance with Title VI.

Applying *Brown* in the North

At the time the 1964 Civil Rights Act became law, it was unclear how the principles of *Brown* applied to school systems in the North where substantial racial segregation existed, but had not, at least in recent times, been mandated by law. Narrowly read, the decision dealt only with mandatory assignment of children to schools on the basis of race or *de jure* segregation. Broadly interpreted, however, it outlawed any system of pupil assignment that resulted in substantial disparity in racial ratios at different schools (*de facto* segregation) on the grounds that—regardless of its cause—racial separation created unequal education opportunity. A series of Federal appellate cases rejected this latter reading of *Brown*.

With setbacks in several suits against *de facto* segregation, lawyers for black plaintiffs in the North began developing evidence that most segregation in northern districts was *de jure* in character. They argued that *de jure* segregation was manifested not simply by laws or officially announced policies of racial separation, but by decisions made by school authorities in such matters as selecting sites for new schools and determining their size, establishing or modifying attendance boundaries, setting student transfer policies, and assigning teachers.

Where these decisions were made in a manner that furthered racial segregation, plaintiffs claimed that the necessary racial intent could be inferred unless school

---

Roger Mills is an intern at the Center for National Policy Review. This article is adapted from a report of the same title prepared under the supervision of William Taylor, director of the Center, and Roger Kuhn, law professor at George Washington University.

authorities could demonstrate that they had no reasonable alternatives available that would have resulted in less segregation. The Federal courts accepted this view in a series of cases beginning in the late 1960s.

Title VI and Northern Schools

Within a year after Title VI became law, HEW's Office for Civil Rights (OCR) had received 15 complaints of segregation and discrimination in northern and western school systems. It seemed logical to many HEW officials to investigate the most thoroughly documented northern complaint first, and to apply the same compliance procedures used in the South — to hold up Federal funds pending an investigation.

HEW Secretary John Gardner decided, therefore, to act on the complaint of Chicago's Coordinating Council of Community Organizations (CCCO), a federation of civil rights groups. The council charged that School Superintendent Benjamin Willis was maintaining segregated vocational schools and was working with the Chicago Real Estate Board and public housing authorities to maintain overcrowded, segregated schools for black pupils.

HEW investigators went to Chicago in 1965 when the racial crisis was at its height. The preceding 10 years had been marked by a tangled series of lawsuits, school boycotts, discarded studies, and political confrontations. U.S. Commissioner of Education Francis Keppel, with insufficient foresight, passed over the administratively and politically safer route of testing northern Title VI enforcement in a smaller, less complex school district.

Office of Education procedures permitted Keppel to delay funds while complaints were being investigated, and, on October 1, 1965, he wrote the Illinois State superintendent of education that funds would be held up while the district was put in a deferred status pending investigation of the complaint.

This letter of deferral raised a storm of protest from Superintendent Willis, Congressman Roman Pucinski, and Mayor Richard Daley. The latter personally met with President Lyndon Johnson requesting his assitance. The President urged HEW officials to settle the issue at once, and on October 5 HEW negotiated a face-saving settlement. They agreed to release the funds and withdraw investigators for 2 months in exchange for a promise from Chicago school officials to conduct their own investigation of school zone boundaries and to reaffirm two earlier school board resolutions concerning desegregations. Morale in HEW plummeted and the Justice Department, under pressure from Illinois Senator Everett Dirksen, issued guidelines forbidding HEW to hold up funds without prior administrative hearings.

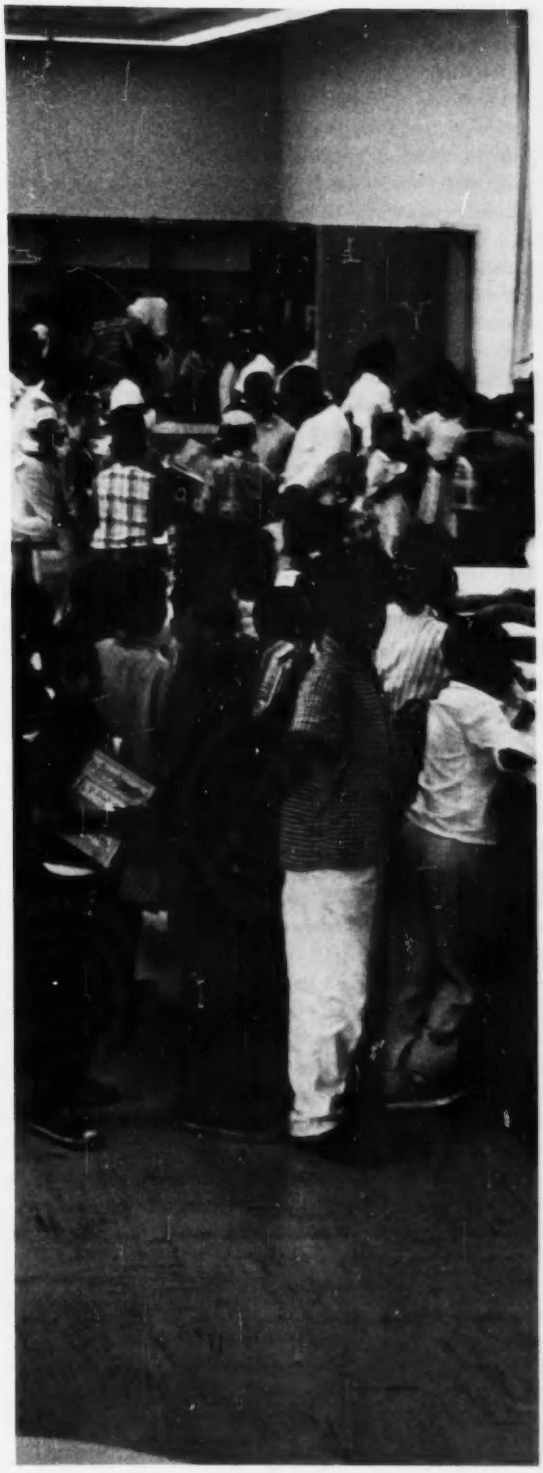
The Chicago misfortune chilled all Title VI enforcement efforts in northern and western school systems for almost 3 years. When congressional pressure renewed HEW's interest in northern enforcement in 1967 and 1968, HEW selected small districts where Title VI cases could presumably be established most readily and without political interference.

HEW's renewed interest in northern school desegregation was in part a response to a surge of pressure from southern Congressmen who were feeling the heat generated by HEW's growing program of enforcement in the South. Complaining that HEW was treating their region unfairly by ignoring segregation elsewhere, they called for uniform enforcement throughout the Nation, hoping to gain political allies in other areas in an effort to slow enforcement everywhere.

By May 1967, when Congresswoman Edith Green offered an amendment to the Elementary and Secondary Education Act requiring HEW guidelines and regulations to be uniformly applied in *all* regions of the country, HEW had initiated enforcement action against 259 southern school districts and had cut off Federal funds of 38. The Green Amendment became law in January 1968 over the opposition of HEW, which took the position that the requirements for historically dual school systems were properly different from those with no such history and that the amendment would weaken HEW's southern enforcement by diverting needed manpower.

In March 1968, however, HEW issued new guidelines applicable to all school systems, North and South. School systems were required to assure that there would be no segregation of pupils caused by the location of new schools or by additions to old schools, or the granting of student transfers out of certain schools, or the assignment of pupils to certain classes within schools. School systems were also required to assure that pupils of foreign origin were not denied the same educational opportunities generally available to students proficient in English.

Third, systems were told to correct disparities between schools, such as in relative overcrowding of classes, assignment of less qualified teachers, provision of less adequate curriculum or services, spending less money per pupil, provision of books and equipment in a comparatively insufficient quantity, and provision of poorly maintained buildings. Finally, where there had been discrimination in policies and practices toward teachers, school systems were responsible for taking



"whatever positive action might be necessary" to correct the effects.

In April 1968, a separate Northern Branch was formally established in OCR with a staff of 20. They began working with the Justice Department to select for scrutiny school systems in the North of a moderate size with substantial black enrollments. The first OCR regional offices were also opened in four northern cities.

That summer Mississippi Senator John Stennis, a member of the Senate appropriations subcommittee having jurisdiction over HEW, added language to the pending fiscal 1969 Labor-HEW appropriations bill requiring HEW to assign as many staff to investigate the North as were assigned to the South. When the bill became law in October 1968, HEW had 32 staff members in the North and 67 in the South. By March 1969, the northern staff was expanded to 53 persons and the southern staff reduced to 51. By that time, 40 school districts in 13 northern and western States had come under review.

In fiscal 1973, the Northern Branch was staffed with 106 professionals, some 24 more than the Southern Branch. In September 1973, OCR combined the two branches and most of the staff now works out of 10 regional offices, 8 of which are located in northern and western States.

OCR's Investigative Process

To determine which of the approximately 12,500 school districts in the 33 northern and western States have potential compliance problems, OCR depends on statistical reports which school districts are required to file with HEW, and complaints received from pupils, teachers, and parents. The Office has racial data from about 5,500 districts enrolling about 90 percent of all northern and western public school children.

Reports from these districts are analyzed for racial segregation of pupils in schools and classrooms, discrimination in teacher placement, and other practices which may violate Title VI. If a potential problem in a school district appears to be significant and it interests OCR, a review team may be dispatched for an onsite visit.

The object of OCR's compliance reviews is to discern whether the racial segregation in a school district is officially sanctioned by actions of local school officials. This is difficult in the North because pupil assignments there have traditionally been made on a geographic basis, and school board actions which establish or maintain segregation have been more subtle than in the South.

While there is no precise way to establish school board responsibility for discrimination or segregation, OCR looks for evidence in six major areas: student assignment and attendance zone policies; site selection for building schools; over- and under-utilization of facilities; inferior educational services at certain schools; rescision of desegregation plans; and teacher assignment policies. All these matters are under the control of the local school board and can provide a basis for the inference that actions were for the purpose of racially isolating children or subjecting minority pupils to inferior educational facilities or programs.

Upon completion of its field investigation and analysis of the data obtained, the investigating team prepares a report with its recommendations. After approval by both the regional director and the director of OCR's Education Division, the report goes to the Office of General Counsel where it is analyzed to determine whether the evidence it contains is legally sufficient to support the recommendations. The Office of General Counsel (OGC) sends about half of the reports back to the regional offices for additional evidence.

When a report is approved by OGC and the director of OCR, the regional education director then sends the school district a letter of probable noncompliance, indicating the areas of violation and requesting the district to take immediate corrective action. The district is expected to state its position on the problem areas.

The typical response, however, is that the district does not believe any violation exists, but it will undertake a study of the areas. When OCR declares that this response is not sufficient, the district often counters with a request that HEW provide funds to hire consultants to develop a desegregation plan. It has been the informal policy of OCR to allow this sparring to continue for a while, and then to allow a generous period of time for the district to develop its own plan.

Once a plan is developed, the regional office and OGC evaluate it and either indicate their tentative acceptance or note controverted areas and request a conference with the district. If no resolution is agreed to at a conference, the matter is forwarded to the Washington office for more conciliation efforts. If this fails, the director of OCR may then make the reluctant decision to commence enforcement proceedings.

There are two primary methods for enforcing Title VI: termination of Federal aid, and referral of the matter to the Department of Justice for the commencement of a civil action. A July 1969 joint statement by then-Secretary of HEW Robert Finch and then-Attorney General John Mitchell announced agreement that judicial enforcement of desegregation by the Justice Department would, as a matter of general

policy, be preferred to the termination of aid.

Section 602 of the 1964 act provides that enforcement action shall not be taken until HEW determines that "compliance cannot be secured by voluntary means." In practice, enforcement proceedings are begun only after many months, or even years of investigation, negotiation, and conciliation. During that time the school district continues to receive Federal funds.

When the director of OCR decides to proceed with enforcement, an elaborate hearing process takes place over months or even years, during which time the district still receives its Federal funds. All that happens in the interim is that action is deferred on applications for funding of new programs. If, finally, the funds are terminated, the school district may petition the Court of Appeals in its area and ask not only for a review of the cutoff but also a stay of the termination order.

HEW's Current Desegregation Effort

Since 1967, OCR has visited 84 out of a total of 12,500 northern and western school systems for routine Title VI compliance reviews. The total enrollment of the 84 districts is about 2.1 million pupils, of whom 650,000 or 30 percent are black and 182,000 or 8.5 percent are Spanish American. However, 187,000 of the 2.1 million children are enrolled in districts where the schools were actually brought into compliance by the litigation efforts of private parties. Moreover, the Justice Department has taken over enforcement in districts where one-third or 723,000 of these pupils are enrolled.

Together the group of districts handled by Justice and those brought into compliance by private litigation represent about 910,000 or 42 percent of the 2.1 million figure. In short, only about 1.2 million pupils—only 255,000 of whom are black and less than 100,000 of whom are Spanish American—may be or have been affected mainly by HEW civil rights enforcement action in the North and West.

Most significantly, the 255,000 black and 99,000 Spanish American pupils represent less than 9 percent of all black and less than 5 percent of all Spanish American pupils attending public schools in the North and West. These low percentages may be explained broadly by either of two hypotheses. Either there is not much discrimination in the North and West to investigate, or HEW's enforcement efforts have been less than comprehensive or vigorous.

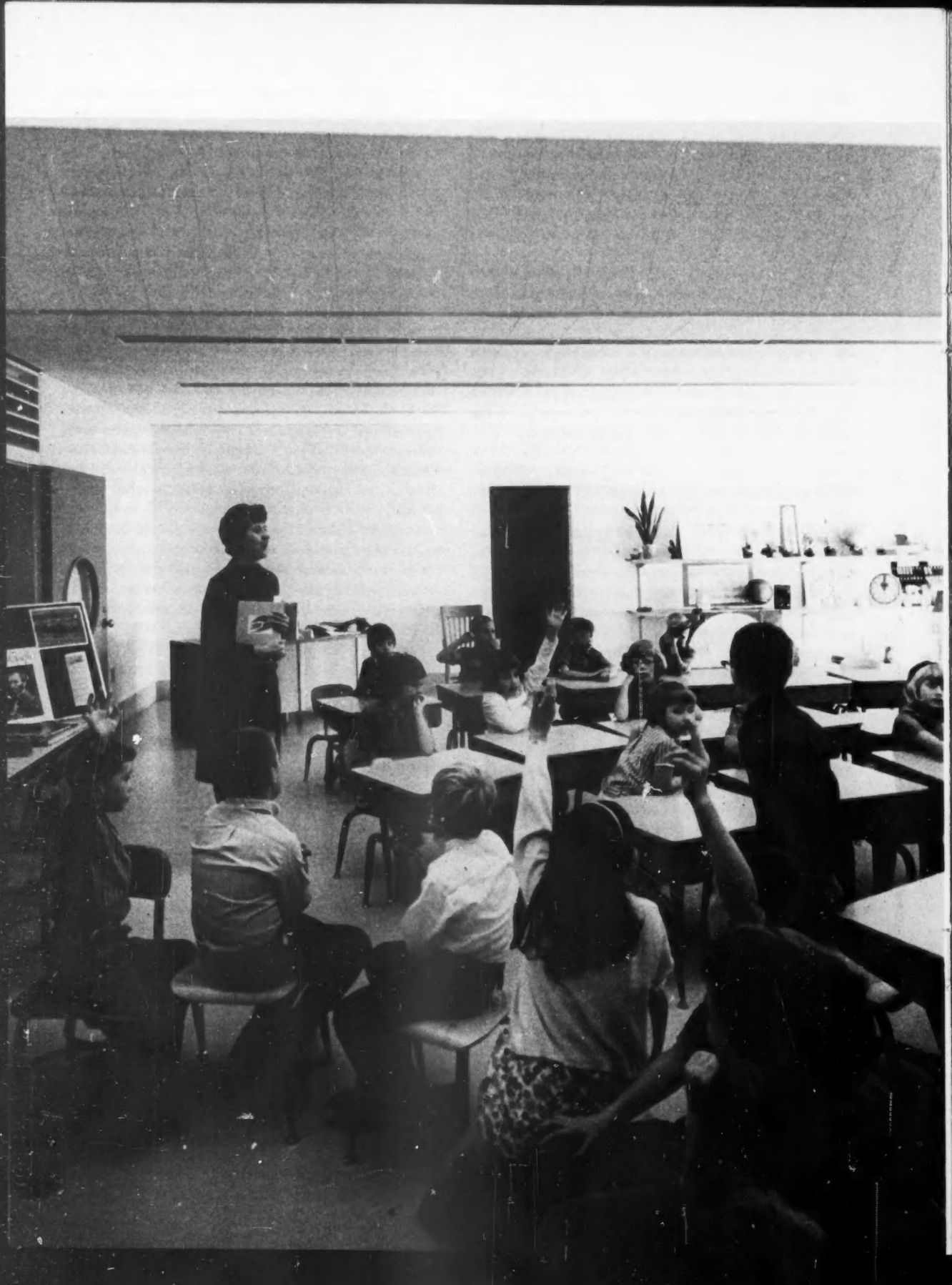
One way of gauging which of these explanations is the more plausible is to compare the HEW track record with that of private litigants in the same area. At least 32 northern and western cities with a composite total enrollment of 1.6 million pupils are or have been involved in school desegregation litigation brought by private parties. The courts have found discrimination so far in at least 20 of these 32 cases. The composite enrollment of these 20 districts is 991,000 pupils, of whom 348,000 are black and 56,000 Spanish American. Segregation was found to be *de facto* or nonactionable in three of the districts and the remainder of the cases are still pending or were settled.

HEW, on the other hand, has found discrimination in and sent letters of probable noncompliance to 22 northern and western schools districts and has settled 3 others without sending a letter. The total enrollment of these 25 districts is 554,000 pupils, 105,000 of whom are black and 48,000 Spanish American. Thus, the efforts of private litigants have affected almost three times as many minority pupils as the actions of the Federal agency charged by Congress with assuring there is no discrimination in federally-aided public schools.

Another disconcerting fact is the steady decline in the number of reviews initiated each year since 1968, when 28 new school districts were selected for review. Although the number of staff continued to increase, in 1969 reviews were initiated in only 16 new districts; in 1970, 15; in 1971, 11; in 1972, 9; and in 1973, 1.

Part of the reason for the drop to zero after January 1973 was a decision to initiate no new reviews until all existing ones were completed and disposed of. In some cases that have remained unresolved for years, the data originally collected have become stale and will have to be investigated again. Also, since 1970, OCR has had the additional responsibility of reviewing thousands of districts receiving Emergency School Assistance Program funds. Nevertheless, the fact remains that a steady increase of staff has brought with it a steady decline in initiating new reviews.

Another measure of HEW's northern effort is the rate at which cases proceed after a review is initiated. By July 1, 1973, of the 84 districts where reviews had been started, the cases of 52 remained open or unresolved. Ten cases were closed on the grounds that the evidence showing noncompliance was insufficient, and three were closed after HEW accepted voluntary changes. Another four were closed when the Justice Department acquired jurisdiction over them, and five were closed when private litigants successfully obtained relief by court order. Eight cases were closed after letters of noncompliance were sent to the districts and a satisfactory negotiated settlement was obtained. The other two closed cases went through ad-



ministrative hearings for the termination of Federal funds.

The 52 open cases have an average age in excess of 37 months, or more than 3 years. Letters of noncompliance have been sent to only 11 of these cases and, of these, only 2 have reached the administrative hearing stage. Four more have been stayed pending the outcome of private litigation. Three-fourths or 37 of these cases are still under review with no enforcement action at all.

OCR staffers concede that, in most Northern and Western cases, no more than a year should elapse from the time a district is reviewed by the regional office to the time a determination is made by OCR and OGC that the district is not in compliance. In fact, this process took less than a year in eight early cases.

From 1971 on, however, the administrative, investigative, and clearance process averaged more than 32 months. While this slowdown may be explained in part by the increasing complexity of issues tackled by OCR, there appears to be no plausible explanation for letting 2 or 3 years go by before presenting the agency's formal findings to the superintendents. This process, however, took more than 4 years in three districts and from 24 to 48 months in six others.

The excessive time lag in the above cases is exceeded only by the extraordinary delay in enforcement encountered in those districts where investigations went on for years and no findings were made at all by June 30, 1973. In 35 open cases, investigations were pending for an average of 33 months and OCR had yet to send districts a letter stating the areas in which investigators had found them in probable noncompliance.

At the end of fiscal 1973, 23 of the 27 cases were being reviewed in regional offices, 3 by Washington area desk chiefs, and 11 by OGC. Five of the 11 cases in OGC had been there more than a year. The three being reviewed in Washington, however, had been there between 2 and 4 months, indicating very little lag at this point in the process. The remaining 23 cases were at the regional level, where 13 had been under review for more than 2 years. The pattern seems to be that once cases leave the regional offices, they are quickly processed by OCR Washington desk chiefs before becoming bogged down again at OGC, where delay tends to make the factual findings of the regions obsolete.

Another key determinant in gauging OCR's alacrity in meeting its statutory responsibilities is the span of time between the dispatch of a letter of noncompliance to the district and settlement or the initiation of an administrative hearing. Twenty-two districts have received letters of noncompliance, but only four have been taken to administrative hearing. The rest are either still negotiating or have reached some form of settlement.

The average time lag from a determination of noncompliance to the scheduling of an administrative hearing has been 18 months, while the average time between the hearing and a decision by the hearing examiner has been 7 months. As of July 1974, one case—Mount Vernon, N.Y.—had gone to the hearing stage, but not futher; two cases—Ferndale, Mich., and Boston, Mass.—had gone beyond this stage; and one—Wichita, Kansas—negotiated an acceptable plan 3 months after the initial decision by the hearing examiner.

In the Ferndale case, it took 12 months for the decision of the hearing examiner to be affirmed by the reviewing authority and even then funds were not immediately terminated. Ferndale petitioned the Secretary of HEW to review the case and several months later the request was denied. Ferndale then obtained an additional month's stay to perfect its appeal for judicial review and apply to the Sixth Circuit Court of Appeals for a further stay. Funds were finally terminated in June 1972, some 42 months after OCR had found the district in noncompliance. By June 1973, Ferndale was the only school district in the North and West which had had Federal funds cut off.

A widely accepted assumption concerning HEW's laggard performance is that political shackles have been placed upon the agency. Politics unquestionably has played an important if incalculable role, but other factors are at work as well. These include sloppy investigative work, bureaucratic caution, unbalanced staffing, and unrealistic requirements for clearing cases for action. Two major factors have caused the compliance machinery to falter: the failure of OCR to assert jurisdiction and investigate, and the inordinate delay or failure of HEW to act on evidence of discrimination.

Failure to Assert Jurisdiction

In 1966, all districts were selected for reviews by the Washington office and decisions were based mainly on whether a complaint had been received about a district. For example, HEW chose to initiate reviews in Chicago, San Francisco, Wichita, and Poughkeepsie, N.Y., because local groups had sent in complaints. When the volume of complaints increased, however, the small staff could no longer handle them. Beginning in 1967, all new complaints were forwarded to the Justice Department for resolution.

Beginning in 1968, regional staffs were asked to suggest which districts in their areas should be selected

for routine compliance reviews. Ultimately, selections were based on several factors. The districts had to have at least one school with an enrollment more than 50 percent minority; they had to be evenly spread among different States; and they had to be equally divided between Democratic and Republican congressional districts. And, most important, the district could not be so large as to tie up all the staff.

Despite the fact that OCR maintains that it has been able to identify and conduct reviews in all northern and western districts where significant civil rights problems exist, the Office has tended in recent years to choose safe districts for review and declined to assert itself in large urban districts where racial isolation is the greatest.

OCR also fails to assert its jurisdication in resolving written complaints from individuals and community groups. In fiscal 1973, the Office received a total of 498 complaints, 177 from northern and western States, according to the regional complaint logs. They ranged widely, from one objecting to the use of an Indian as a mascot at an Idaho high school to a charge of racial discrimination in the discharge of a teacher in Ohio.

About 27 percent of these complaints were resolved favorably for the complainants and another 12 percent were resolved by findings of insufficient evidence of discrimination. At the end of the fiscal year, 113 cases remained open. Thirty-eight were less than 90 days old, but 53 had been open for more than 6 months and 10 were over a year old.

A review of the complaint processing procedure suggests that complaints are looked upon by OCR more as a nuisance than an aid, that the object is to dispose of them with minimum staff time and effort, and that a complaint is officially "resolved" by supplying the complainant with the explanation afforded OCR by school district officials. There is also a tendency in OCR to question the complainant's knowledge of the facts or motivation in filing the complaint.

While complaint handling cannot be allowed to consume too large a portion of staff resources, OCR could still upgrade its complaint procedures to restore the confidence of complainants with legitimate grievances. More serious treatment of complaints might compel school officials to treat such grievances less cavalierly, knowing that OCR would require a good faith effort to resolve them.

Most important, a continuing qualitative analysis of the resolution of complaints should be made by OCR's assistant director for planning to improve the follow-through and ultimate resolution of complaints.

OCR regularly suspends investigation and negotiation efforts when school districts become primary litigants or are added as defendants to school desegregation suits. For example, the OCR case against Westwood, Mich., was suspended in 1972 when the district was included as one of several dozen districts in a possible metropolitan desegregation plan for the city of Detroit. The Detroit school case, filed in 1970, was not decided by the Supreme Court until July 25, 1974.

Meanwhile in Westwood, faculty hiring and assignment discrimination, *de jure* pupil segregation in three of seven schools, and unequal educational services at these schools remained uncorrected, despite the fact that these probable Title VI violations were documented by OCR nearly 3 years ago. It would in no way have impaired the Detroit case or been inconsistent with OCR's statutory responsibilitities to require the district to correct faculty discrimination practices and to take remedial steps to equalize educational opportunities for the schools at once.

OCR has relinquished its jurisdiction over cases occasionally when the Justice Department appeared to be interested in the district. A total of five northern district cases which HEW originally investigated have been taken over by the Justice Department (generally because HEW has persuaded Justice to request them). Their progess has been painfully slow. The most blatant example is Chicago, which the Justice Department took over more than 6 years ago. For all these years, Justice has been negotiating two issues — faculty desegregation and equalizing per pupil instructional expenditures — but no settlement has been reached and Justice has not filed suit.

However one assesses the record of the Justice Department in handling these cases, it does not appear that HEW's practice of voluntarily relinquishing jurisdiction can be justified on grounds that referral to Justice is a means to speedy and effective relief for children who have suffered discrimination.

Failure to Act on the Evidence

Sometimes investigators fail to explore fully all crucial areas of potential discrimination and must make repeated requests for facts, and even return to the district for further investigation. Once this frequently lengthy process is completed and the evidence documented, it is sometimes presented in a disjointed manner emphasizing trivial rather than important matters. This often results in cases being stuck in OGC where they sometimes sit for more than a year.

HEW regional offices tend to allow investigations of school districts to continue for years. For example, OCR conducted an onsite review of South Bend, Ind., in October 1969. It discovered possible higher per pupil

instructional expenditures for white schools and repeated boundary changes that resulted in black pupils attending predominantly black schools—matters which clearly warranted further investigation. Yet none was forthcoming. The case was classified as "dormant" and pupils in South Bend schools today face some of the same problems identified 4 years ago as possible violations of Title VI.

To establish a case, OCR staffers feel they must conduct a detailed in-depth probe, collecting diverse data from the cumulative records of hundreds of pupils. They must interview the special education director, the school psychologist, the personnel director, the curriculum director, and other officials about ability grouping, special education, and curriculum; and they must analyze the data statistically and qualitatively. But even granting these difficulties, there is little excuse for postponing the promise of relief for years, while the original work product becomes stale.

The conduct of OGC is intimately connected with that of OCR. OGC insists that the OCR staff develop voluminous material to prove discriminatory actions by school officals. Moreover, once evidence is developed, OGC often returns the file to OCR after a long delay with the comment that the evidence is inconslusive or that the factual material has become stale. By repeatedly kicking cases back to the regional offices for more information, OGC delays enforcement action to a high degree.

For example, in a memo dated June 19, 1972, the Education Division director of OCR asked OGC what had happened to five cases forwarded to OGC a number of months earlier: reports on Hartford, Conn., forwarded October 16, 1970; Stamford, Conn., forwarded November 25, 1970; Lackawanna, N.Y., forwarded February 2, 1971; Utica, N.Y., forwarded May 21, 1971; and Pleasantville, N.J., forwarded September 16, 1971. At the end of 1973, OGC was still "reviewing" all these cases. No visit had been made to these districts by investigators since the time school opened in the fall of 1971. Action now would probably require new visits to the districts to obtain current data.

Part of the delay by OGC can be attributed to a manpower shortage. In January 1973 the U.S. Commission on Civil Rights reported that the size of the legal staff of OGC had not kept pace with the growth of the investigative staff of OCR. While the OCR staff climbed from 278 to 708 in 1972, the OGC civil rights division staff increased from 17 to 19 attorneys, with only between 3 and 7 actually working on school desegregation. OCR, recognizing that inadequate legal support has blunted its enforcement efforts, asked for and received funding for 16 more attorneys for fiscal 1974. But none of these works solely on education cases. No further increase was requested for fiscal 1975.

While a staff shortage in OGC is part of the problem, the main cause for delay is the quantity of evidence that OGC feels is necessary to meet the burden of persuasion in each northern and western school case. Under general principles of law, OCR bears the burden of persuasion as to issues of pupil segregation or other Title VI violations. OCR must convince the hearing examiner of the existence of each violation which it alleges.

All that is needed, however, is a preponderance of evidence to convince the trier of fact, even though lingering doubts or uncertainties may exist. No mathematical ratio or quantum of evidence is required. It is sufficient if OCR's case is stronger than the district's defense, "though the scales drop but a feather's weight."

OGC, however, differs radically with this fundamental principle of law. Instead of adopting the preponderance of evidence rule, OGC insists that the evidence be sufficient to create a virtually airtight case. To authorize the dispatch of a letter of probable noncompliance, the case must be not just convincing or highly probable, but free of lingering doubt or uncertainty. The evidence must be so overwhelming as to exclude reasonable doubt.

One result of this policy is that OGC has never lost a northern school district case. But another result is that OGC imposed unnecessary data-gathering burdens and unnecessary delays on OCR. Further, OGC has been reluctant to take good cases to a hearing.

A second legal problem is the reluctance of OGC to take advanced legal positions or to venture outside clearly defined limits of school desegregation case precedents, despite the fact that this is one of the most rapidly developing areas of constitutional law. The OCR training manual section on legal matters states OGC policy: "No new law will be made in the enforcement of. . .cases pursuant to Title VI." In fact, OGC is even unwilling to use precedents already available. Another section of the manual flatly declares: "Some of the recent cases go beyond. . .the position of the Department."

On one score, OGC cannot be faulted: the refusal to rely on stronger State racial imbalance laws instead of 14th amendment case law to define the requirements of Title VI. In February 1971, OGC at the urging of OCR flirted with the idea of basing Title VI enforcement in New York on standards supplied by New York State's racial imbalance policies. If a school district could be held to a stricter standard under State law, OCR thought its job of data gathering would be simpler,


14
-8
9
3
7

speeding the enforcement process.

Congress has thought otherwise, however, and attached provisions to HEW's appropriations bills since 1970 to effectively prohibit HEW action to require a district to achieve racial balance, even though State law might require the district to do so. There is little reason, however, for OGC to ignore or to refuse to rely on recent constitutional precedents in Federal courts which could ease OCR's task.

OGC also impedes Title VI enforcement efforts regarding faculty composition, in that it has never developed a policy for discerning violations in northern school districts that have historically lacked minority teachers. The problem in the North, unlike the South, is often less one of faculty segregation than of failure to hire enough minority teachers in the first place. OGC has never determined what is "enough"—whether it is the same ratio as the ratio of black to white population in the community, or the ratio of black to white pupils enrolled in school, or whether it should be based on an estimate of the available minority work force, or on a showing of good faith efforts at recruiting minority teachers.

Instead, OGC has asked investigators to look for evidence of differential treatment of minority teachers and tried to link such treatment to a discriminatory effect. Without using a statistical norm, OGC tries to establish Title VI violations by showing that black teachers seem to be assigned mostly to black schools or that blacks seem not to be recruited as much or promoted as frequently as whites. The lack of a norm makes OCR's job much more difficult.

Even after OGC is satisfied that it has enough evidence to meet the burden of persuasion in a given school case, further delay occurs between the time HEW goes to a hearing and the time Federal funds are actually cut off. While four districts have been taken to a hearing, only one has had its funds terminated. The hearing on Ferndale, Mich., was started in April 1970, but its funds were not cut off until June 1972.

Politics has dominated OCR actions in one area — busing. The furor over busing as a means to desegregate schools has repeatedly surfaced as an emotional political issue in recent years. It reached new heights in April 1971, when the Supreme Court in *Swann v. Charlotte-Mecklenburg Board of Education* ruled that the use of noncontiguous school zones and the busing of pupils are permissible tools for desegregating schools. The Nixon administration had fought the case since 1970, but the Supreme Court unanimously overrode administration objections. Nevertheless, presidential politics continued to exert a strong influence against busing.

The controversy over busing, however, does not provide an adequate explanation for HEW's pervasive default in Title VI enforcement. Transportation is irrelevant to eliminating such violations as within-school discrimination, teacher segregation, and the unequal provision of school facilities. As for student assignment, much can be accomplished in many cities with little or no increase in the transportation of pupils.

A 1971 study commissioned by HEW concluded that "almost complete elimination of segregation in the schools seems possible without exceeding practical limits for student travel. [I]n most school districts very substantial decreases in racial isolation can be accomplished without transporting any student who could otherwise walk to school."

Delay Means Denial

The theme that emerges from this investigation of HEW's performance is that of *delay*—delay that has resulted in an effective denial of the fundamental rights of hundreds of thousands of children, and the granting of millions of dollars in Federal tax funds to the school districts denying these rights.

As HEW's civil rights staff has grown, its work product appears to have diminished. Indeed, it is only the court order in *Adams* v. *Richardson* directing HEW to take enforcement action against a large number of noncomplying southern school districts that has injected the agency's recent civil rights operations with any life or sense of purpose. At present, no court order or other external stimulus prods HEW into performing its statutory responsibilities in the North. Nor is there any action on the horizon that promises to alter the current situation.

This means that minority citizens face continued disappointment of their legitimate expectations that the Federal Government will protect their children's rights. This situation could be altered—by a Congress prepared to exercise its oversight responsibilities to assure that its laws are obeyed by the executive branch; by new political leadership committed to the rule of law and ready to appeal to people's aspirations rather than their fears; by Federal officials determined to be faithful to their oaths of office; and by an aroused citizenry aware that failure to protect the rights of any person threatens the rights of all.

Absent initiatives of this kind, as succeeding anniversaries of the *Brown* decision come and go, our children will still be denied the equal protection of the law—and the bonds of law in this country will be further loosened.

REVENUE SHARING

A PRELIMINARY EVALUATION

By Donald Lief

Every three months, a green check from the U.S. Treasury Department arrives in the offices of some 38,000 governments ranging from States and metropolises to miniscule townships and isolated Alaskan native villages. This check is an automatic dividend of the general revenue sharing program which, in little more than 2 years, has already distributed more than $17 billion.

Each jurisdiction receives an amount determined by a number of factors, including population, per capita income, and tax effort. The formula, which resulted from intense political trading between the Senate and House, appears to favor somewhat poorer states and communities. But there are several Catch 22s.

First, the ceiling on per capita payments has resulted in cities like Baltimore, Philadelphia, Detroit, St. Louis, and Richmond receiving less money than they would otherwise have gotten. Second, requirements for minimum payments have given wealthy suburbs and hundreds of Midwestern townships unexpected bonuses. It is not unusual for a township to receive more in revenue sharing than it collects annually in taxes.

The computer which digests all the information determines how much each State's total share ought to be. The State government gets one-third of the total, with two-thirds going to the local "general purpose" governments in that State, carved up so that counties, followed by the municipalities and finally the townships each get their share.

Researchers are busy analyzing the impact of the distribution pattern of revenue sharing. The problems identified so far include significant Census Bureau undercounts of blacks and Spanish-speaking persons—which reduce payments disproportionately to those communities where they are concentrated; out-of-date income data; and participation by many local governments which perform only one or two legal functions.

Although the formula itself is complex, it is fairly easy to see why this program became a political reality after a decade of discussion about its merits.

Basically, general revenue sharing is a result of two factors. First, the Nixon administration's belief that many traditional patterns of Federal aid should be phased out in favor of giving more power to governors and mayors, and, second, the persuasive arguments that States and localities face overwhelming fiscal crisis without an infusion of string-free help.

The formal title of the law establishing the 5-year $30.2 billion program is the State and Local Fiscal Assistance Act of 1972, which suggests that Congress intended the beneficiaries to use funds to meet their highest priorities. At the same time, however, it has long been recognized that the concept of revenue sharing embraces extreme flexibility in the funds' eventual usage. As a result, general revenue sharing must be regarded as a large-scale experiment to see how well States and localities can apply a new source of unrestricted funds to their most pressing needs.

Judging the Experiment

At a minimum, the experiment must be judged on claims offered by its supporters at an earlier time: fiscal equity, improved decisionmaking, and bringing government closer to the people.

The fiscal justification drew strong support from many who agreed that it was a good idea to harness the progressive Federal income tax mechanism as a partial substitute for further reliance on regressive sales and property taxes. But the program does not address means of making these existing tax systems more equitable.

Proponents spoke of revenue sharing as a means of unshackling local governments from the rigidities of complex categorical grant applications and reports. They contended that new, largely unrestricted funds would release a burst of creative energy, resulting in new decisionmaking processes geared to identifying and responding to community needs. Again, the program provides no way of determining whether this has occurred, nor any reward to accelerate the process.

The concept of "power to the people" was also embraced by supporters of revenue sharing. This rhetoric, however, was not sustained by any provision of the law re-

Donald Lief is the Director of the National Clearinghouse on Revenue Sharing based in Washington, D.C.

quiring public involvment in decisions on how to use the funds.

Balanced against the pro-revenue sharing arguments were the fears of many groups representing minorities, the poor, and the aged that spending decisions by local officials would not be sensitive to their needs. They contended that their traditional lack of power at the local level would be perpetuated, if not aggravated, by the approach embodied in revenue sharing.

An important restriction in the law, it must be noted, was that the funds may not be used for any services or facilities which are denied to any persons on the basis of race, sex, or ethnic considerations. The extension of nondiscrimination language to include sex and government services as well as employment opportunities is significant.

At some point, of course, every experiment must be reviewed, data collected and analysed, conclusions drawn. Unfortunately, the day-to-day operations of this program do not lend themselves to easy evaluation. Intensive scrutiny is not encouraged by the program's provisions or administrators, but a body of evidence nevertheless has been accumulated which must be considered. Three major national studies assessing general revenue sharing have been mounted—by the Brookings Institution, the General Accounting Office, and the National Revenue Sharing Project. The latter is jointly conducted by four organizations deeply concerned about this program's application to several major policy issues.

Those issues are: 1) responsiveness through spending decisions to the needs of those disadvantaged by race, sex, low income, age, or poor health; 2) the extent to which the public has had access to the budget making process as a result of revenue sharing; and 3) the effectiveness of enforcement of nondiscrimination requirements on the part of the Federal Government and the recipient States and communities. The project's sponsors are the League of Women Voters Education Fund, the National Urban Coalition, the Center for Community Change, and the Center for National Policy Review.

These organizations believe that these issues are proper tests of revenue sharing's validity—tests which are of at least equal importance to the amount of money which the Treasury Department mails every three months.

On the other hand, the Washington-based groups which represent governors, mayors, and county officials view their legislative offspring with paternal pride. They seek little discussion of these issues. Their judgment is already firm: Revenue sharing is a successful experiment and ought to be made permanent at the soonest possible moment.

Program Responsiveness

Underlying the debate on revenue sharing was a persistent belief that the funds for this experiment would not only be "free" but also "new"—that is, they would not supplant existing grant programs which had been the target of political opposition by those who had called for large-scale redirection of grant programs. As it turned out, this belief was mistaken.

The Nixon administration's budget for fiscal 1974 revealed plans to curtail many domestic grant programs, victims either of political or fiscal priorities. Among the most visible targets were programs directed toward the needs of the poor and disadvantaged. Even today, the actual dollar impact of these proposals is uncertain, since the Congress often ignored such legislative or budget proposals. In addition, lawsuits against impoundments of grant funds were usually successful, releasing dollars previously appropriated.

In general, however, the signals of the White House budgeteers were not ignored by groups representing the beneficiaries of the grant programs most endangered: Model Cities, social services, community action. Soon, the local revenue sharing pot became a target for community-based organizations seeking alternative funding sources. On the whole, their efforts have not yielded much success.

City and county officials offer many reasons why they veto requests to spend these funds for the disadvantaged. The most widespread response is that, since the program's future is uncertain, expenditures for social services might commit the localities to higher tax rates in the future should revenue sharing be killed. Another common position is that revenue sharing is to benefit the entire community, not merely some special group of citizens. Still another is that social services are the responsibility of a different local government than the one in question. A variation on this theme is that general revenue sharing was not intended to deal with these problems since there are other existing grant programs for those purposes.

This has not prevented local governments from designating public safety departments as the major beneficiaries of revenue sharing—despite the existence of the fast growing budget of the Law

Enforcement Assistance grant program. It appears that public safety, primarily police agencies, will receive a $7 billion bonanza from revenue sharing during the current law's 5 year life span.

Granted that persons living in poor neighborhoods are typically the victims of crime, the emphasis on public safety shows little concern either for improving the efficiency of police forces or for promoting programs to prevent crime.

Local officials have taken their cue from what the majority of the voters seem to want, but this is not the same as carefully determining what the needs of the community actually are. The evidence is scanty that city and county governments have used revenue sharing to strengthen their priority-setting skills to help choose the wisest use of the funds.

In those instances where revenue sharing has been designated for social services—often by contracting with nonprofit local agencies—it is common for traditional projects, not innovative ones, to receive the blessings of the city council or county supervisors.

Public Involvement

The revenue sharing law, consistent with its no-strings philosophy, does not obligate any form of public participation in the expenditure of the funds. There is a history of citizen involvement required in such Great Society programs as Model Cities and community action as well as special revenue measures for manpower and community development, but general revenue sharing stands as a striking exception to the trend of recent years.

Some stimulus to citizens groups' participation in the budget process has clearly resulted from revenue sharing's visibility. But rarely has such participation been initiated or encouraged by local officials to a point of arousing new pressures. Community organizations, however, have had some influence, particularly where they formed active coalitions. Typically, results have been limited: bringing about special hearings on revenue sharing, rather than resulting in adoption of new spending priorities.

An important aspect of the question of public involvement is the lack of useful information required by the law. Two relatively simple reports—planned and actual use reports—are so generalized that they are worthless as information. The reports must be published, according to regulations, but they often appear with legal notices, are reduced to the point of near-illegibility, and are unannounced.

Civil Rights Enforcement

The revenue sharing law is unmistakable about the intent of Congress that there be no discrimination in the use of these funds. The program reinforces and goes beyond Title VI and other Federal agencies' responsibilities. For example:

- The program bars sex discrimination while Title VI does not.
- It prohibits discrimination in the provision of services and

facilities, many of which had never received Federal assistance and therefore were not covered.

- It includes all recipient governments, regardless of size or number of employees.
- It includes all secondary recipients of revenue sharing funds, such as private suppliers and contractors, regardless of their total work force or the amount of revenue sharing funds involved.

The sweeping nature of these prohibitions are unfortunately almost unknown among State and local human rights commissions or equal employment offices. Not until last November did the Treasury's Office of Revenue Sharing issue a complete guide to civil rights requirements under the law.

Limited information among these agencies makes it virtually certain that the actual victims of discrimination will remain ignorant of their rights. The facts seem to bear this out. Fewer than 100 civil rights complaints have been received by the Office of Revenue Sharing. And ORS has barely a half dozen compliance staff with civil rights responsibilities—for 38,000 jurisdictions, their suppliers and contractors.

The philosophy of ORS is to rely on voluntary compliance and the efforts of State-level auditing agencies. ORS itself is not inclined to initiate ongoing, systematic spot checks of States and localities. Although the voluntary compliance strategy involves State agencies, there are no assurances that they are equipped or motivated to press vigorously for compliance with the law's anti-discrimination provisions.

In addition, ORS has not aggressively exercised its administrative authority even where it has verified that funds were used to discriminate. In the most-publicized action so far—the challenge by black and Chicano police officers to Chicago's use of the funds—ORS found that the police department violated the law in its recruitment, testing, promotion, and assignment practices. But it chose to go to court rather than take swift steps to defer further payments to the city. For this tactic, the agency was publicly rebuked by Senator Edmund Muskie during congressional hearings. ORS further chose not to prepare administrative regulations which could have been followed to cut off funds to noncomplying governments.

In early November 1974, a Federal judge ruled that Chicago was guilty of discrimination in its police department, but no assurance was offered that the court decision would prompt any ORS action.

In another case, however, ORS accepted the findings of the New Jersey Civil Rights Division that the town of Montclair had used revenue sharing funds in a discriminatory fashion in the police and fire departments. This marked the first time that the Federal agency relied on the findings of a State agency without conducting its own separate investigation. Several months later ORS announced that it had worked out a voluntary arrangement with Montclair to end the practices. Attorneys for the complainants—Operation PUSH and the local NAACP chapter—expressed strong reservations about the terms of the agreement.

Beyond complaints specifically involving the provisions of the revenue sharing laws, several civil rights lawsuits have involved the program in what may turn out to be trail-blazing court decisions. Three Southern communities—Shaw and Itta Bena, Miss., and Sanford, Fla.—agreed to Federal court orders to use revenue sharing funds to remedy earlier acts of discrimination. They were ordered to equalize their municipal services and facilities, using various fiscal resources, including revenue sharing. The cases did not involve the Office of Revenue Sharing; instead, they relied on Title VI of the 1964 Civil Rights Act or the 14th amendment.

In the long run, these cases may set precedents which go far beyond the limited civil rights efforts of ORS.

What Happens Now?

In a few months, legislative proposals to continue revenue sharing will be before the Congress. Although there will be strong pressure for prompt congressional action, there is equally strong reason to insist that the program be reshaped to respond to the problems mentioned above.

Since the likelihood is great that revenue sharing will be continued, and possibly made permanent, it should also more directly address some of the nagging questions of our Federal system: how to encourage intergovernmental cooperation and minimize fragmentation, how to stimulate more progressive local tax systems, how to devise fairer means of distributing Federal resources to needy communities, and how to reward those States and localities which undertake serious efforts at modernization.

This agenda will be quickly rejected by those who prefer the coziness of he current revenue sharing program. But the expenditure of billions of dollars in a time of scarce resources should produce a greater assurance that national objectives are being met.

THE FEDERAL REFORMATORY FOR WOMEN

WHAT DOES IT ACCOMPLISH?

By Suzanne Crowell

During 1968-1973, arrests of females for serious crime increased 52 percent, while arrests of males increased 5 percent. This startling difference, combined with the new strength of the women's rights movement, has begun to focus attention on the female offender.

The Federal Reformatory for Women—the only Federal prison with an all-female population—is located in Alderson, W.Va., on the fringes of the Southern Appalachian coalfields. More than half, or about 525, of all the women sentenced to prison by Federal courts reside on the "reservation," as the prison is also called (an appellation which must be regarded by America's Indians with some irony).

Approximately two-thirds of the women are black or members of some other minority, and some 40 percent have a history of drug use. Under an arrangement between the District of Columbia and the Federal Bureau of Prisons, women sentenced by local courts in Washington for terms of more than one year are also sent to Alderson. Thus the population includes women convicted of forgery, bank robbery, narcotics violations, mail fraud, transporting stolen goods across State lines, and, occasionally, murder and kidnapping. Some are there for their first offense and others have seen the inside of prisons all across the country.

A 1971 survey of the Alderson population by the Federal Women's Bureau confirms the beliefs of most prison observers—that the inmates are poor, badly educated, and generally young. More than half the inmate population is under 30. Half made less than $70 a week in wages before conviction, and only 15 percent made more than $100.

Two-thirds are of average or above average intelligence, but slightly less than one-third completed high school. More significant, only 3 percent are actually at the 12th grade level, according to the Scholastic Achievement Test, and 59 percent rank below 8th grade.

In addition, 80 percent are married or have been married, and of those, three out of four married before they were 20 years old. Eighty percent have children, and 66 percent have been in jail before.

Alderson was opened in 1928 in West Virginia because a large proportion of Federal female prisoners at that time were convicted for selling moonshine—a pastime peculiar to mountaineers. Its population has changed radically. The women now come from all over the eastern and middle United States; a few come from as far away as Utah. They are by and large from distant cities, and therein lies Alderson's most obvious problem.

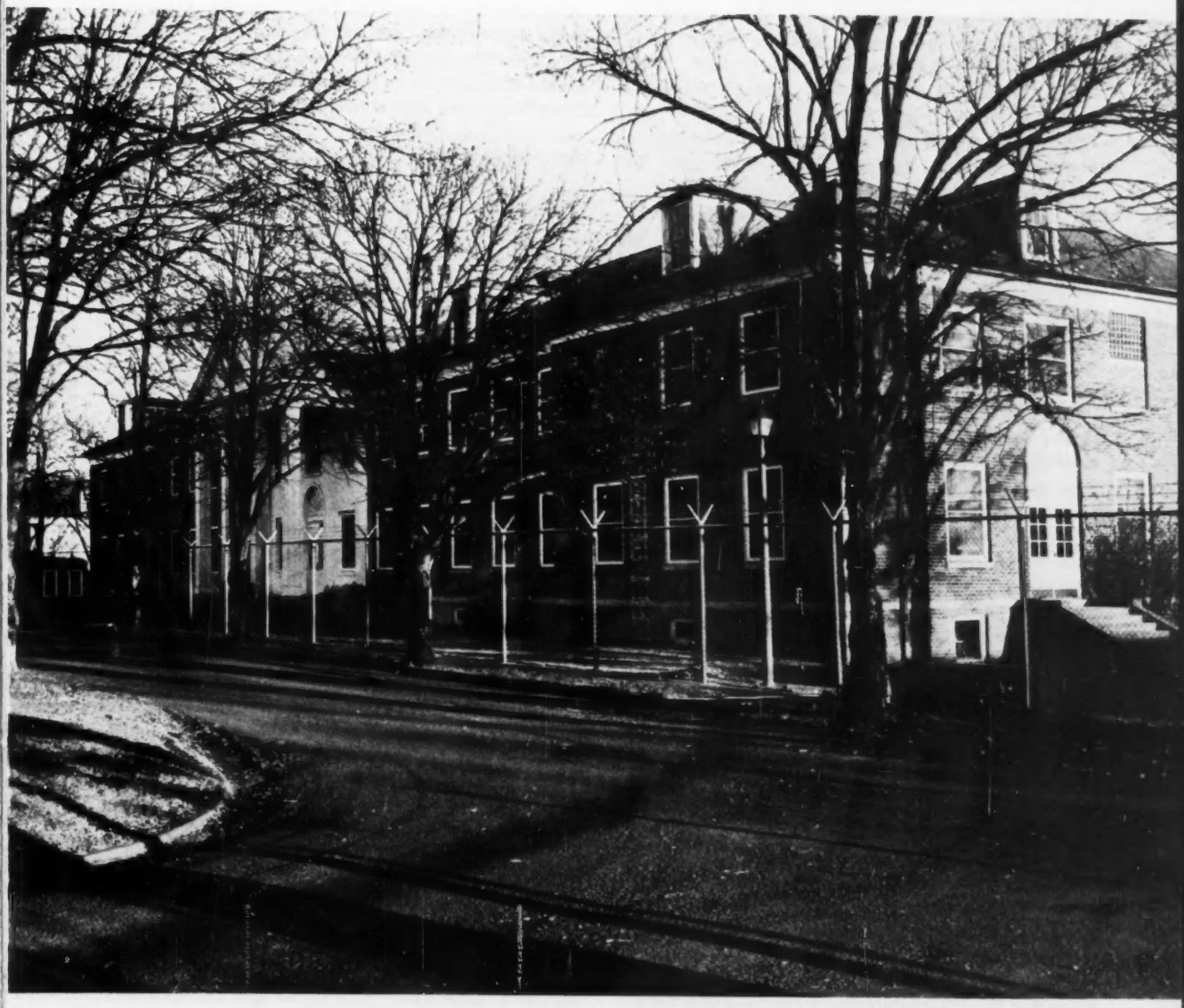
While the visitors policy is liberal, Alderson's remoteness makes visits problematical. Visiting hours are from 8:30 am to 3:30 pm daily and up to six people may visit an inmate at any one time. But the nearest public transporation is in Lewisburg, W.Va.—12 miles and $8.00 away by taxi. The town of Alderson has only one motel. This situation is all the worse because so many of the women incarcerated at Alderson have children.

The prison's location—2 to 3 hours away from any major city—also precludes work and study release programs, makes minority staff recruitment difficult, and limits the availability of outside volunteers, entertainment, and legal assistance. It also keeps Alderson out of the public eye which might otherwise focus attention on the special problems of women—a subject the American correctional community has largely ignored.

Most of Alderson's staff is recruited locally from the conservative white, poor small-farm communities surrounding it. Residents of this area have little reason to be acquainted with the background, attitudes, or problems of the prison population, especially those of the blacks and other minority group members. The

---

Suzanne Crowell is the editor of the Civil Rights Digest *and is not connected with the nationwide prison study currently being conducted by the Commission. The views expressed in this article are, therefore, her own and not those of the Commission.*



hometown communities of prisoners and staff are mutually exclusive. The blacks may well have had no contact with whites outside their schools or the legal system; the white staff has had virtually no contact with blacks at all, to say nothing of Chicanas and Puerto Ricans. Misunderstanding and racial tension are often the result.

Unlike the usual complaint about State prisons—that the staff is low-paid and therefore of poor quality—the Alderson staff, part of the Federal civil service, is affluent compared to the surrounding community. This creates a peculiar syndrome: the local attitude that the prison is "a country club" on the one hand, and an absolute dependence on it for 245 of the best local jobs available on the other.

That is not to say that the correctional officers, in particular, are well qualified for their jobs. The U.S. Civil Service, which sets the standards for employment, does not require a minimum educational level. To qualify, an applicant must must have 3½ years of experience in one or more of the following or similar lines of work: supervisory or leadership experience; teaching or instruction, with adults or disadvantaged groups; enforcement of rules and regulations relating to safety, health, or protection; rehabilitation or corrections; counseling in a welfare or other social service agency; interviewing and counseling; or sales work which involved extensive person-to-person relationships.

The opportunities in the town of Alderson to acquire experience other than teaching and sales work are limited at best. And once on the job, the officers receive minimal training. They spend 2 weeks in a more or less formal on-the-job training program, and are sent to Atlanta (site of a large Federal male prison) for a week of training by the Federal Bureau of Prisons. Except for some further training in counseling at Alderson, no other preparation is offered. Nor is there apparently any training specifically in race relations or minority cultures.

While the teaching, medical, social work, and other professional staff for the most part do meet adequate standards, correctional officers are critical to the atmosphere of the prison. It is they who are in constant contact with the inmates, who are most likely to initiate disciplinary proceedings, and who keep the whole system running. They can make life miserable or bearable for all concerned. That so little is invested in their training by the prison system does not bode well for its operation.

Alderson is set up somewhat like a campus, with 17 residential buildings or cottages, as they're called. It was originally intended to be a self-sufficient community, raising its own vegetables and meat in a country atmosphere. It was felt at the time that experience with productive activity and virtuous living would reform its inmates, called "ladies." The first warden, Dr. Mary B. Harris, was credited with creating a wholesome, pleasant atmosphere for wayward women.

Over the years, that atmosphere evaporated. Later wardens greatly restricted the programs available, tightened discipline, instituted uniforms, and the like. This development paralleled the rise in numbers of black inmates. Alderson was segregated until the mid-1950s. Some of the restrictions have been relaxed. Women now wear their own clothes and may use cosmetics. But the correctional staff remains organized along semi-military lines; within the last few years a new chain-link, barbed wire fence has been constructed around the disciplinary segregation unit; and punishment has simply been renamed "adjustment."

Prison Work

Work is perhaps the chief source of frustration for most inmates. While theoretically it is not required that an inmate work or go to school, all the inmates interviewed felt that it was mandatory to do one or the other. If you did not wind up in solitary for failing to work, you would certainly be denied parole. Therefore, you worked.

But jobs at Alderson are not that easy to get. In fact it is doubtful that everyone could have a job unless some inmates were in school or segregation. Besides the punitive factors prompting work, there are two other reasons. One is boredom and the other is money.

Each inmate entering Alderson works for 30 days without pay in the dining room or kitchen unless her health prevents it. During that time, she had better start investigating what she is going to do for the rest of her sentence. If an inmate does not realize that it behooves her to look for a job on her own, she will be assigned to whatever is left by her treatment team.

Her fate will largely depend on the vacancies existing at the end of her first 30 days, although her skills—sewing or typing, for example—will be taken into account. If she hasn't located a job on her own, the chances are she'll be assigned to a prison maintenance job such as clerk, hospital aide, laundry or kitchen worker.

Such jobs are paid at the rate of $10 a month. After 3 months the pay may be raised by $5 a month, and thereafter raised $5 every 6 months up to a maximum of $50 per month. However, the prison lacks the funds to begin paying an inmate until after she has served 90 days on the "reservation". Presumably this applies to inmates transferred to Alderson as well as those who

begin serving their sentences there. The hours of work vary from 3 or 4 a day to 6 or 7, depending on the job and the amount of work to be done.

The other category of work besides prison maintenance is prison industries. Federal Prison Industries is a separate corporation which runs programs in most Federal prisons. The board of directors is made up of six private citizens assigned to represent retailers and consumers, industry, labor, agriculture, and the Secretary of Defense.

At Alderson, Prison Industries has three operations—the garment factory (146 workers), an automatic data processing unit which is on contract to the Department of Commerce (36 workers, with 13 in training), and SECAS, a project which processes data to be fed into computers for the U.S. Navy (7 workers). These jobs are paid on an hourly basis. Garment workers are paid by grade. First grade workers make 56¢ an hour; second grade, 45¢; third grade, 34¢; and fourth grade, 23¢.

In addition, the garment factory operates on a group piecework basis. The unit cost of a garment is set by the head office of Prison Industries in Washington, and the incentive pay is then divided proportionately to those in each grade. Overtime is also available on occasion, paid doubletime. As a result, garment workers make substantially more than anyone else—averaging about $45 a month for a 6-hour day.

Profits from Federal Prison Industries are returned to the Federal Government after enough money is taken out to pay prisoners' salaries. Work at either maintenance or industry jobs is also rewarded with "good time." During the first year, inmates may earn 3 days a month off their sentence; thereafter, they can earn 5 days a month.

Two things should be noted. First, it is impossible to enter the garment factory as anything other than a fourth grade worker, regardless of the skill an inmate may have. Second, each grade level has a quota, and no one can be promoted until someone quits, which rarely happens, or leaves the prison.

And while work in the garment factory at Alderson is comparatively lucrative, working in a garment factory on the outside is not. Thus inmates must choose between a job which pays more now, or one which might pay more later on the outside.

In the 19th century, work was said to have a morally uplifting effect on prisoners, and they were farmed out as contract labor to the highest bidder. But by the early 1900s, the evils of contract labor became so well known and its use against an emerging labor movement so hated that it was eventually abolished. In its stead arose the prison industry system backed by Franklin Roosevelt and the conservative wing of the Nation's labor movement.

Federal Prison Industries (FPI) has been a business success story of the highest order. From 1935 to 1970, Industries grossed $896 million, added $50 million to its net worth, and contributed $82 million to the U.S. Treasury. The armed forces have been major customers, and consequently war is good business for FPI.

The irony of it all, of course, is that the only lesson to be learned by a prisoner is that work doesn't pay. And the only real difference between contract labor and Prison Industries is that the convicts are no longer farmed out; the work is farmed in. In either case the prisoner receives a fraction of the pay available on the outside for the same work, and the Government buys from a captive labor market what it ought to be purchasing from private industry where workers are paid real wages.

The women at Alderson are acutely aware of the exploitation of their labor and it is just one more factor likely to increase their bitterness toward society in general. They know that none of the jobs available offer much hope of a good salary outside. Women with drug records work in the prison hospital; they will never be hired on the outside in such a position. Laundry and kitchen work are unlikely to pay well either.

In fact, the whole job structure at Alderson not only reflects all the problems endemic to the Federal prison system, it also perpetuates sexist job stereotyping which has kept working class women, especially black women, poor ever since the industrial revolution.

Going to School

What then, of education? Women at Alderson who choose to go to school fulltime receive prison pay on an hourly basis—20¢ to 26¢— and good time. This means most women face a choice in prison they have faced on the outside since they were 16. They can either make money by taking menial jobs or they can go to school and stay poor while there. Thus school at Alderson is at the same disadvantage schools are on the outside. And while it is possible to go to school at night in prison, it is not easy to work all day in a factory and be energetic or alert enough to learn much at night.

The academic program at Alderson, headed by Margaret Carey, concentrates on teaching inmates how to read and on preparing them to pass a high school equivalency exam (the GED test). Special monetary awards of $10-$20 are made for successful completion of the GED program. Beyond the GED level are advance studies classes designed to prepare an inmate to

enter college or at least begin taking college level courses. While a couple of college courses are taught by instructors from the outside and correspondence courses are permitted, the lack of a study-release program severely limits the progress that might be made toward a college degree.

Vocational education is similarly limited. Automatic data processing is offered, and students in that class may eventually be employed in the Prison Industries ADP unit. Otherwise, the courses are limited to nurse's aide, business education, homemaking (meaning learning to do daywork), and tailoring. Courses requiring equipment are necessarily limited and are filled on a first-come first-served basis, with some consideration of the job opportunities available in the inmate's hometown. Approximately 225 women are enrolled at any one time in academic or vocational education.

Like the jobs available, the vocational education courses concentrate generally on low-paying occupations long considered "women's work."

The Alderson recreation program is under the energetic direction of a black man from Beckley, W. Va., named Richard Harless. In the year that he has held that job, the recreation budget has been doubled, two tennis courts, a volleyball court, and a basketball court have been added to the already existing tennis court, basketball court, and softball diamond; and more than twice as many bands have been enticed to visit Alderson as had the previous year.

The "rec" hall, really a small auditorium, is still inadequate, but it is the pleasantest place to visit at Alder-

son. Equipped with pool and ping pong tables and juke box, the rec hall lacks the sense of repression felt elsewhere.

Harless believes recreation is crucial to the prison. He wants to integrate it into prison life as a rehabilitative force, rather than a program aiding what he calls "passive institutional adjustment." He is in the process of designing a genuine physical education program to develop sports skills and athletic ability, and has set up a recreation council made up of inmates to stimulate interest and bring in new ideas.

Punishment and Rehabilitation

Harless's recreation program, or any well-designed prison recreation program, for that matter, only serves to point up the basic contradictions of jailing people for crimes. Such a program tries to make pleasurable what is by nature a punitive situation, and calls into question the whole idea of punishment.

Progressive opinion is pretty well agreed that convicts are sent to prison as punishment and not for punishment. That is, prisoners ought not be subject to cruel or inhumane treatment once they are incarcerated; mere imprisonment will suffice.

At the same time, observers alarmed at high recividism rates have, over the last two decades, become advocates of rehabilitation or "treatment." Psychiatrists, psychologists, and social workers were all enlisted in the cause. Many prisons were set up to reflect the so-called "medical model" philosophy which dictated that with enough programs, experts, and psychiatric "help," prisoners could be induced to abandon crime upon release.

But after 15 or 20 years, this approach has been widely discredited, at least by many outside the prison system. Evaluations of such prisons and their programs show that recividism varies very little from the norm. Horror stories of brainwashing under the guise of psychiatry, the injustice of the indeterminate sentence, and increased politicization of black prisoners (and others) have created public awareness of the extreme "Clockwork Orange" aspects of the medical model approach.

What has been the result? Prisons now occupy a never-never land of punishment and treatment. In his essay, "Adult Felons in Prison," Donald R. Cressey sums up the situation well:

> Prison officials are supposed to be punitive and restrictive. That is what prisons are all about, when it comes down to it. After all, the number of escapes a warden is allowed is zero.
>
> Yet prison officials also are—in administering treatment—to be nonpunitive and nonrestrictive. A warden who argues that his program is punitive and nonpunitive at athe same time must do some fast talking, and most "progressive" wardens, especially, talk a mile a minute.

The warden at Alderson is Virginia McLaughlin, the only female warden in the Federal prison system. She is a silver-haired, middle-aged West Virginia native with many years behind her in the prison business. She happens to be the first married warden at Alderson, and she conducts her office in a breezy, offhand style. Her basic philosophy is uncomplicated as she explained it to an open meeting of the West Virginia State Advisory Committee to the Commission on Civil Rights:

> I don't think any jail is a very good place. . . you can call it what you want to, but a joint is a joint, and they are not good places. The most we can hope for is that in our institutions we can provide a system that people can grow and develop what talents they have, and everyone has the talent.
>
> I think the staff and the philosophy of the institution has been to emphasize and be concerned with the importance of each human being and the dignity and worth of that human being.

The work, education, and recreation programs described above constitute the rehabilitative side of Alderson. There is also the punitive, restrictive side, which until quite recently was known as the "special treatment unit" but is now simply called Unit 5, or more commonly, Davis Hall. Women wind up in Davis Hall, aside from orientation, for administrative reasons upon arrival (for violating parole or having a "bad rep"), or for disciplinary reasons arising from an incident at Alderson. The majority are in the latter category.

Disciplinary proceedings begin with an incident report written up by a correctional officer who witnesses, or is the victim of, an infraction of the rules. The rules, which are contained in a sheaf of policy statements 188 pages long, periodically updated, prohibit such things as two inmates being in a room with the door closed, being away from one's assigned place at the assigned time, or going too near a cottage other than one's own. Infractions which violate Federal law, such as assaulting an officer or bringing contraband into the institution, are investigated by the FBI for possible prosecution.

An incident report is turned over to a lieutenant who investigates and writes a report. The report is given to

the adjustment committee which interviews the inmate involved and prescribes punishment. Recently, another level of review has been added and all cases referred to Davis Hall are heard first by a central adjustment committee. This review, the privilege of having representation (by another staff member), and the calling of witnesses are all the result of a new directive by the Bureau of Prisons reforming disciplinary procedures in the vague direction of due process.

While a presumption of innocence is implied by the proceedings, it would be difficult to persuade an inmate at Alderson that she was in fact receiving a fair hearing. The officer who reports her, the lieutenant who investigates her, the staff member who represents her, and the adjustment team which in effect sentences her all work for the same institution. They have a community of interest which under any other circumstances would be called a conflict.

Except in the case of staff provocation, the probability is that the woman could be found guilty of something. But exactly what she is guilty of and how serious it is poses the real problem, because there are no set punishments for any offense. "Different strokes for different folks," the inmates call it.

The chances of such a process increasing one's respect for the law are dim. And the punishment itself is no more likely to do so.

Modifying Behavior

The major form of discipline is a so-called "modified behavior modification" program. Inmates referred to it are placed in cells in a separate complex surrounded by a chainlink, barbed wire fence.

The program is operated in stages. It is possible to begin in what is known as stripside, which is a cell with only a mattress and no toilet facilities. Inmates in stripside are required to wear an institutional gown without underwear or shoes, in violation of Federal regulations. After that comes the first level, which involves 24-hour lockup (with clothes) for 2 weeks. In order for inmates to wash or eat meals, a male correctional officer must be present (elsewhere on the "reservation". only female officers monitor behavior).

The second level is 3 weeks of 22-hour lockup; the third level is 4 weeks of 16 to 17-hour lockup; and in the fourth level inmates may leave Davis Hall for work or school. After level 4, the inmate is transferred to Cottage 27, which is next to Davis Hall behind the fence, where she must stay generally for another 30 days.

Although the program is designed to take 13 weeks (plus the extra month in 27), it is possible to stay there indefinitely. Progress in achieving acceptable behavior is measured by the correctional officers, other staff encountered by the inmate, the unit manager, and a psychologist. Not only can an inmate stay in one level indefinitely, she can also be bounced backwards an indefinite number of times.

This program is reminiscent of the "medical model" used in the California prison system, where the Alderson psychologist who set it up did an internship in clinical psychology. He is Dr. Norman Ream and his duties have since been transferred to a new psychologist while Ream oversees the mental health program. One of the peculiarities of the Federal prison system is that psychologists do not have to be licensed to work for it. Ream is actually a doctor of religion who concentrated in psychology.

Ream believes the program has been a success, and points to the fact that of all the inmates who have gone through it and rejoined the general population, only three have been sent back. This failure rate must be viewed in light of the fact that inmates may be kept in it indefinitely, however.

Success might also be measured in another light, namely, how do inmates feel when they get out of it? Are they any more likely to be less embittered and resentful as a result? Are they any more inclined to live within the law upon release after experiencing the type of repression that such "behavior modification" represents?

These questions do not appear to weigh heavily in the operation of the program. As Ream said in an interview, "The motto of the Bureau of Prisons is custody, care, and corrections, in that order. Our mission is to society, not to the inmates. If they escape, then we've failed."

While the threat of discipline is the major means of control at Alderson, pacification also has its effect. Sexual activity of any kind is prohibited by the Bureau of Prisons, but homosexuality at Alderson is common. Except for overt acts, lesbian relationships are tolerated; they are so pervasive, in fact, it would be impossible to extinguish them. From a civil liberties point of view, this is just as well, but an observer cannot help but note that these relationships serve to preoccupy the inmates to such an extent that their energy is diverted from causing trouble for other reasons. They may supply inmates with emotional involvement and intimacy otherwise denied them, but they are also in many ways a boon to the prison administration.

Some inmates also think that drugs are used as a means of control. They believe that women in Davis

Hall as well as the mental health unit are kept on tranquilizers and the like for control purposes and not for medical reasons. All prescription drugs are authorized by a licensed physician, however, and it would be impossible to verify these allegations without a medical evaluation of each case.

It is certainly true that individual inmates have been forced to take drugs such as Thorazine against their will for at least brief periods of time. But the matter of forced medication is a controversial one among psychiatrists and psychologists outside prisons as well. Within the prison situation, two issues are germane. One is the means by which the prison may control inmates generally, and the other is the right to treatment of prisoners who are also classified as mentally ill. Both issues are the subject of much controversy.

Perhaps the most serious charge that can be leveled against Alderson in this regard is that no one there is trained specifically in the use of psychotropic drugs. There is no psychiatrist, although a staff slot for one has existed for many months.

Is Prison Necessary?

The basic issue of control, however, involves the smooth operation of the prison and not the protection of the public. According to Warden McLaughlin, perhaps 400 inmates could be returned to community-based facilities immediately. Inmates at Alderson say they judge only 5 percent of their population to be dangerous, and wardens across the country generally agree with that figure.

Then what are the other 95 percent doing in prison? Anyone who examines the subject of prisons eventually comes to that question. If punishment is the sole object, then the prison system, and Alderson, are serving us well. Any other rationale for incarceration falls apart upon closer inspection.

The manipulation of crime statistics is too well known to be recited here. It is well known that poor and minority people go to jail more often and for longer periods for the same crime. Crimes are class-biased; deliberate violations of safety laws in an auto plant by managers are punished less severely than auto theft, although the former may result in injury or even death to more people. And for every convict kept in prison, a dozen more commit crimes which are never solved or even reported. Statistically, the public is protected very little by the present system of incarceration.

Quite the contrary is probably true. Prisons have long been called schools of crime. Recividism continues at an alarming rate, and the only statistically proven fact about criminals is that they tend to cease criminal activity spontaneously at the age of 35 or 40.

For women, the consequences of incarceration extend to their children who may be placed in foster homes and, in any event, are deprived of the normal family relationships most experts agree are essential to healthy mental development. The difficulties the women face in obtaining well-paid jobs are exacerbated by their forced removal from the job market and the lack of relevant training available to them at places like Alderson.

Any way you look at it, institutionalization of most convicts, and certainly most female convicts, is counterproductive. When one harks back to the fact that 40 percent of the inmates at Alderson have a history of drug use which in most cases led them to crime, imprisonment seems all the more irrational.

In its place, many observers now advocate commitment to community based correctional facilities. In view of the dismal record of most prisons in preventing repeat offenses, it is hard to see that such programs could do worse. They are much cheaper to run. The convict can take advantage of study and vocational training opportunities which, while not adequate, are more numerous in metropolitan areas than they are behind bars or barbed wire fences. She can even work for a living. Family, friends, and other support would be available. Relationships with her children could be maintained. The difficult transition from the totally repressed, dependent state fostered by prison life would be eliminated.

There are caveats, of course. As the move toward such facilities gains momentum, the rehabilitators who have failed elsewhere and the professional grant-seekers will get into the act. It may be, in fact, that groups hitherto totally divorced from corrections will prove to be more adept at running community halfway houses than will established agencies. In making this point, criminologist David A. Ward points out that Synanon, the drug treatment organization, has had more success than the experts in the California prison system who oppose the group. Ward advocates giving black, Chicano, and other minority group organizations a crack at the problem directly, and the same should be said for white and minority women.

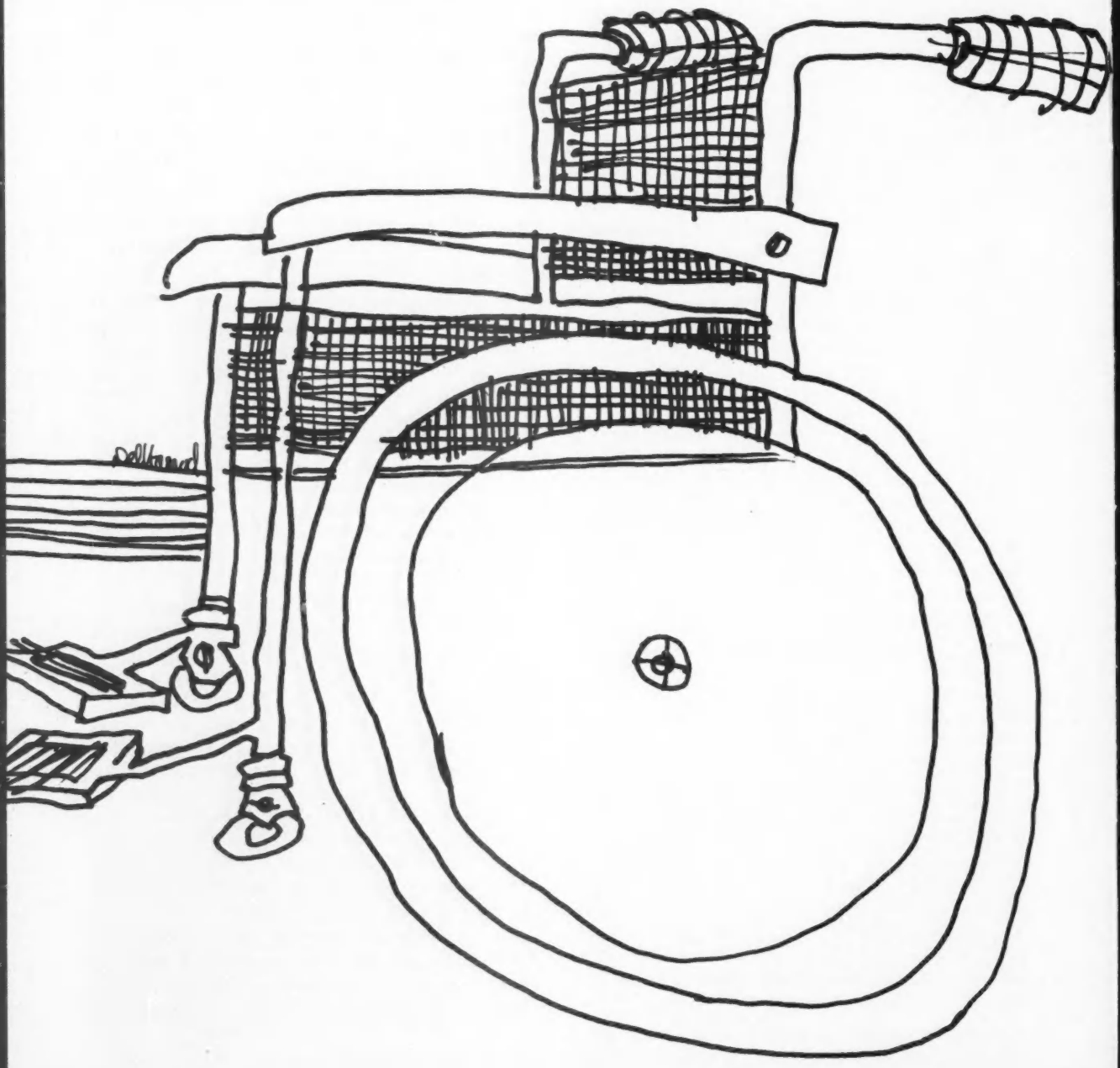
One ex-inmate told me that during orientation at Alderson, she felt "like they had taken my name, my pride, my morals, my womanhood, and given me back a number. If I hadn't come to the halfway house, I don't think I could have made it on the outside."

Is there much to lose?

Evaluating Contract Compliance

FEDERAL CONTRACTS IN NONCONSTRUCTION INDUSTRIES

By Gregory J. Ahart



The Federal contract compliance program is mandated by Executive Order 11246, signed in 1965, which forbids discrimination in employment by Government contractors and subcontractors on the basis of race, color, religion, or national origin. The order was amended in 1967 to forbid discrimination in employment on the basis of sex as well. It requires Government contractors to take affirmative action to insure that job applicants and employees are not discriminated against on the basis of race, color, religion, national origin, or sex.

Contractors subject to the requirements of the program must ensure that equal employment opportunity principles are followed at all company facilities, including those facilities not engaged in work on a Federal contract. For example, if a Government agency enters into a contract with a contractor in Washington, D.C., and that contractor has other facilities scattered throughout the United States, each of the contractor's facilities is required to comply with the provisions of the Federal contract compliance program.

Each nonconstruction contractor that has 50 or more employees and a Government contract of $50,000 or more is also required to prepare a written affirmative action plan (AAP) applicable to each of its facilities.

To meet the standards for acceptability set forth in regulations issued by the Secretary of Labor, the AAP must include specific types of data. These include: (1) goals for improving the employment of minorities and females in those cases where the contractor is found to be deficient (i.e., where the contractor is presently employing fewer minorities and/or females than would reasonably be expected considering their availability within an area where the contractor can be expected to recruit); and (2) timetables for achieving those goals. Following this plan, the contractor should be able to increase materially the utilization of minorities and women at all levels and in all segments of its work force where deficiencies exist.

Various sanctions are authorized if a Government contractor fails to prepare an acceptable AAP or to exercise good faith in implementing it. These include contract suspension, contract cancellation, debarment from future Government contracts, and referral to the Department of Justice for court action under Title VII of the Civil Rights Act of 1964.

Gregory J. Ahart is the director of the Manpower and Welfare Division of the U.S. General Accounting Office. This article is adapted from testimony delivered September 11, 1974, before the Joint Economic Committee's Subcommittee on Fiscal Policy.

Responsibility for administration of the Executive order is assigned to the Secretary of Labor. The Secretary has redelegated some of his authority (including the authority to designate agencies to act as compliance agencies) to the Director of the Office of Federal Contract Compliance (OFCC) within the Department's Employment Standards Administration.

OFCC's responsibilities include:

- Establishing policies, objectives, priorities, and goals for the program,
- Reviewing and evaluating the capability and performance of each contracting agency to assure maximum progress to achieve the objectives of the Executive order; and
- Developing and recommending such standards, rules, and regulations (referred to here as guidelines) for issuance by the Secretary of Labor as are necessary for the administration of the Executive order.

The Compliance Agencies

The primary responsibility for enforcing the Executive order and related guidelines rests with the Federal agencies designated as compliance agencies, which at the time GAO began its review numbered 13 for nonconstruction contractors. These were:

Agency for International Development (AID)
Atomic Energy Commission (AEC)
Department of Agriculture
Department of Commerce
Department of Defense (DOD)
Department of Health, Education, and Welfare (HEW)
Department of the Interior
Department of Treasury
Department of Transportation
General Services Administration (GSA)
National Aeronautics and Space Administration (NASA)
United States Postal Service (USPS)
Veterans Administration (VA)

OFCC assigns to each of the compliance agencies the responsibility for contractors in specified industries. This assignment is made primarily on the basis of standard industrial classification codes, irrespective of which Government agency has entered into the contract. For example, GSA is responsible for the utilities and communications industries, Treasury is responsible for banking institutions, and HEW is assigned universities and hospitals.

Effective August 1, 1974, OFCC reduced the number

of compliance agencies responsible for nonconstruction contractors from 13 to 11. AID's compliance responsibility was transferred to GSA and NASA's was split between AEC and DOD.

The compliance agencies are responsible for performing compliance reviews of Government contractors within the industries assigned to them. Compliance reviews (including preaward reviews, initial compliance reviews, followup reviews, and complaint investigations) consist of investigation by a compliance officer who conducts an in-depth and comprehensive analysis of each aspect of the contractor's employment policies, systems, and practices to determine adherence to the nondiscrimination and affirmative action requirements. Where the review discloses that the contractor has not prepared a required AAP, has deviated substantially from his approved AAP, or has a program which is unacceptable, a "show cause notice" is required to be issued.

The show cause notice affords the contractor a period of 30 days to show cause why enforcement procedures should not be instituted. If the contractor fails to show good cause for his failure to comply with the program or fails to remedy that failure, debarment or other appropriate sanction actions are required to be initiated, and the contractor must be given the opportunity of having a formal hearing before sanction actions are imposed.

Scope of Review

Although definite minimum standards and criteria are needed in order to apprise bidders of the basis upon which their compliance with OFCC guidelines will be judged, GAO evaluated the implementation of the Federal contract compliance program under existing guidelines issued by the Secretary of Labor and OFCC.

At the request of the Joint Economic Committee's Subcommittee on Fiscal Policy, the GAO review, which is still underway, is directed toward an evaluation of:

- Compliance agencies' efforts in implementing OFCC guidelines for conducting compliance reviews and complaint investigations,
- Application of enforcement measures available to the compliance agencies,
- OFCC's guidance to the Federal agencies assigned compliance review responsibility for nonconstruction contractors, and
- The coordination of compliance review and complaint investigation activities between OFCC and the Equal Employment Opportunity Commission.

Audit work is being concentrated at OFCC and at two of the largest compliance agencies--GSA and DOD. At each of these agencies, audit work is being done at headquarters and regional offices in Chicago, Philadelphia, Washington, D.C., and San Francisco. Also, limited audit work is underway at the headquarters offices of the other compliance agencies responsible for the administration of the contract compliance program for nonconstruction contractors.

The Implementation

Results to date show that compliance agencies are not adequately implementing the guidelines prescribed by the Secretary of Labor and OFCC for carrying out the contract compliance program. More specifically:

1) Only one of the 13 compliance agencies has identified all contractors for which it is responsible.

2) Some compliance agencies do not always perform the required preaward reviews.

3) Most compliance agencies make periodic compliance reviews at only a small percentage of the total number of estimated contractor facilities for which they are responsible.

4) DOD and GSA are approving contractors' AAPs although these AAPs do not meet OFCC's guidelines.

5) Sanction actions prescribed by the Executive order for noncompliance are seldom imposed.

OFCC guidelines provide that each compliance agency is responsible for assuring that all the contractors in its assigned area of responsibility comply with the Executive order and implementing guidelines. However, OFCC has not developed a centralized system to identify all contractor facilities for which each compliance agency is responsible.

Officials of GSA and DOD at the three regions stated that they did not have complete information showing all contractor facilities in their regions for which they were responsible. Headquarters officials at 12 of the 13 nonconstruction compliance agencies also advised GAO that they too did not have complete information showing the identity of all contractor facilities under their responsibility. Only at NASA did officials state

that they had complete information on all contractor facilities for which NASA was responsible. They also stated, however, that NASA—unlike the other compliance agencies—is only responsible for contractors having NASA contracts and which are located on or near NASA installations.

If a compliance agency is unaware that a particular business firm is a Government contractor, it will obviously not review the contractor to determine if it is in compliance. Without knowledge of the identity of all contractor facilities for which it is responsible, the compliance agency can not systematically select for review those contractor facilities which offer the most potential for improving equal employment opportunity.

More accurate identification of contractor facilities under each compliance agency's responsibility is not necessarily difficult. For example, the Manpower Administration of the Department of Labor entered into a contract effective June 1, 1973, with a private firm under which the firm provides periodic listings to the Department of Labor and to State employment offices of current contractors holding Government contracts of $2,500 or more.

These listings are used in assisting veterans in obtaining employment with Government contractors, but are not presently used in identifying Government contractors subject to the Executive order. An OFCC official informed investigators that OFCC is considering using these listings as an identification aid.

Preaward Reviews

DOL regulations require that before an agency awards a contract of $1 million or more, the awarding agency must first assure itself that a compliance review of the contractor has been performed within the preceeding 12 months and that the contractor was in compliance with all provisions of the contract compliance program. When the contracting agency is not the responsible compliance agency for a particular contractor, the contracting agency is required by DOL regulations to request preaward clearance from the responsible compliance agency. If the latter has not performed a compliance review of the contractor within the preceding 12 months, preaward clearance may not be granted until a preaward reveiw takes place and the contractor is found in compliance.

In some instances compliance agencies are granting preaward clearances without having performed the required compliance reviews. In others, contracting officers are apparently awarding contracts in excess of $1 million without requesting a preaward clearance from the responsible compliance agency.

For example, in November 1973, AEC requested preaward clearances from HEW for two proposed AEC contract awards, each in excess of $1 million, to two large universities in California. HEW advised AEC that its records indicated that each of the universities appeared to be able to comply with the requirements of the Executive order and were therefore eligible for contract awards.

HEW officials told investigators in May 1974 that neither university had an approved AAP, that reviews of the schools had not been performed in the 12 months prior to the preaward clearances; and the preaward reviews were not performed. If HEW had been following OFCC guidelines it would have had to perform preaward compliances reviews and find the schools in compliance before notifying AEC that the schools were eligible for the proposed contract awards.

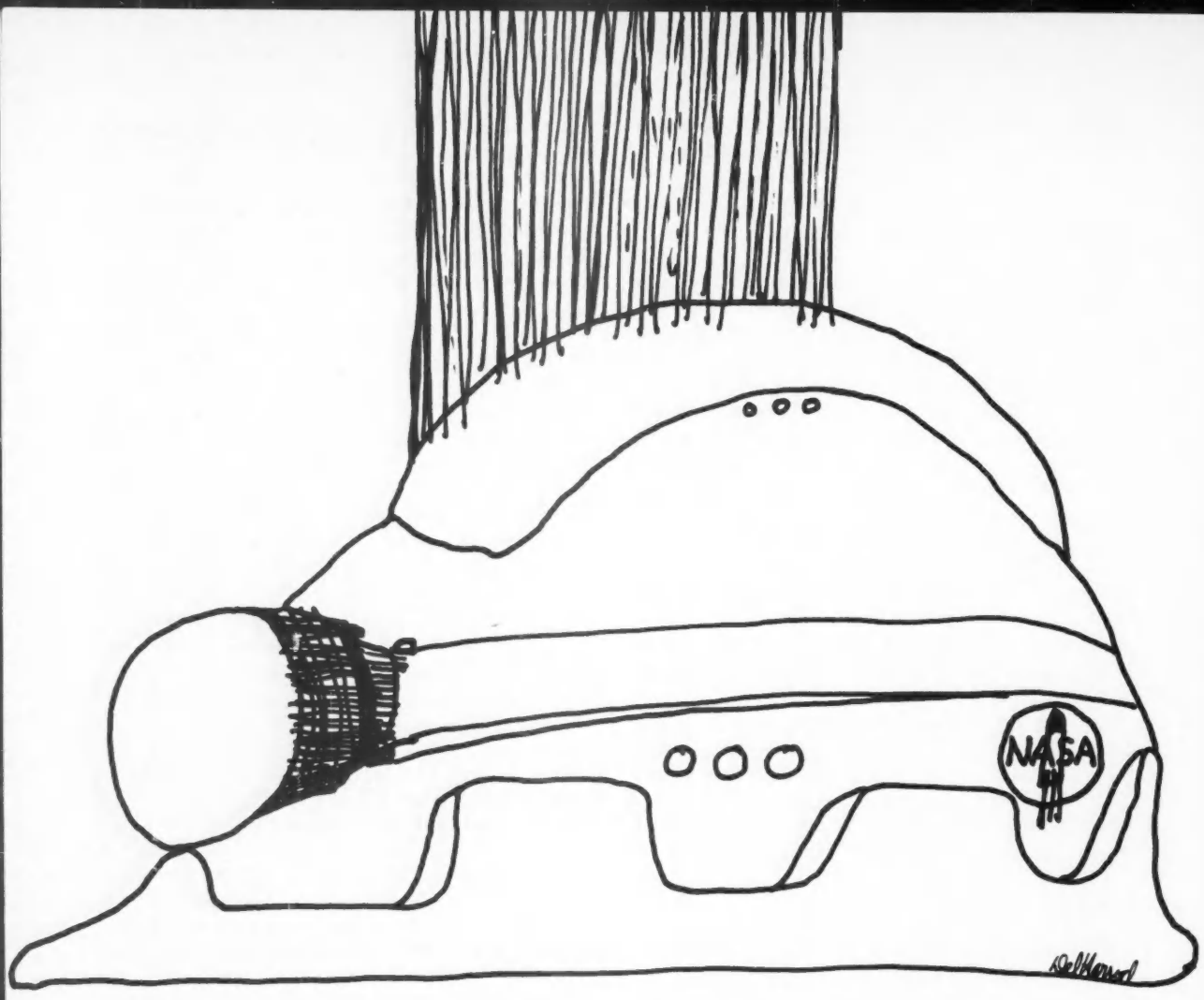
In July 1974, HEW officials said that because only 16 colleges and universities had currently approved AAPs, it was HEW's policy to grant a preaward clearance to a school unless HEW had reviewed the school's AAP, found it deficient, and found that the school was not, in a timely manner, revising the AAP to correct the deficiencies noted.

GAO reviewed six requests by DOD for preaward clearance received by the Department of the Interior during calendar year 1973. The Department of the Interior issued preaward clearances to DOD in all six instances. The review showed, however, that in four of the six instances DOL requirements for preaward reviews were not followed. In these four instances, the contractors had not been reviewed during the preceeding 12 months, nor had preaward reviews been performed.

A Department of the Interior compliance official stated that when a request for preaward clearance is received, a preaward review is not performed even if the prospective contractor had not been reviewed during the preceeding 12 months. Preaward clearances are withheld only if there are outstanding show cause notices against prospective contractors.

DOL regulations require that compliance agencies must respond to requests for preaward clearances within 30 days. But the Department of the Interior compliance official stated that as a practical matter, it is not possible to perform an in-depth preaward compliance review and persuade contractors to resolve deficiencies within the 30-day period.

In another case, an AID official said that AID requires contractors (during a compliance review) to list their current Government contracts. As a result, AID found instances in which other Government agencies had awarded contracts in excess of $1 million to con-



tractors for which AID has compliance responsibility without requesting preaward clearances from AID.

The Number of Reviews

The GAO review showed that with one exception—NASA—the compliance agencies are performing compliance reviews at a relatively small percentage of the estimated total number of contractor facilities for which they are responsible. (On August 1, 1974, NASA's compliance responsibility was transferred in part to DOD and in part to AEC.) In April and September 1973 OFCC reviewed NASA's enforcement of the Executive order and implementing guidelines and found that 1) NASA was not consistently following OFCC's standards and requirements, and 2) NASA was apparently reluctant to issue show cause notices or take sanction actions.

Table I shows for each compliance agency the number of compliance reviews performed during fiscal years 1973 and 1974 (through March 31, 1974), expressed as a percentage of the total number of contractor facilities for which those agencies estimate they are responsible. Eight of the 13 nonconstruction compliance agencies reviewed less than 15 percent of their contractor facilities in fiscal 1973. Four agencies reviewed 17 to 28 percent.

During fiscal year 1973, about 45 percent of the compliance reviews performed were followup reviews of contractors reviewed previously. If the compliance agencies were to perform annual followup reviews on each contractor previously reviewed, they would not perform compliance reviews at many of their contractor facilities.

For example, during fiscal year 1973 the Department of Agriculture performed compliance reviews at about

TABLE I

Small Percentage of Government Contractor Facilities Reviewed

Compliance agency	Estimated number of contractor facilities eligible for review (as of March 1974)[1]	Reviews performed expressed as a percentage of est. number FY 1973	FY 1974 (to 3/31/74)
AEC	4,140	14 %	12 %
Agriculture	21,200	4	2
AID	1,200	12	4
Commerce	780	28	20
DOD	36,000	17	11
GSA	23,000	13	10
HEW	3,420	13	7
Interior	4,000	19	10
NASA	260	100	79
Postal Service	19,000	21	3
Transportation	380	8	7
Treasury	6,000	8	6
VA	12,480	1	1
Total	131,860	13	7

[1]With one exception neither OFCC nor the compliance agencies have data showing: 1) the identity of all of the Government contractors for which they have compliance review responsibility or 2) the total number of employees of Government contractors in their assigned industries.

4 percent of its contractor facilities. If the Department of Agriculture were to perform followup reviews in subsequent years of only the same facilities, it would be unable to examine the other 96 percent of the contractor facilities for which it is responsible.

Affirmative Action Plans

Compliance reviews are often directed towards an evaluation of, and approval or rejection of, contractors' AAPs. In this regard, OFCC has specified certain requirements which must be included in AAPs.

To determine the consistency of application of OFCC regulations and the adequacy of approved AAPs, a random sample of 120 AAPs approved during the first 9 months of fiscal year 1974 was selected for review. The sample consisted of 20 approved by DOD and 20 approved by GSA in each of the three regions reviewed. The investigators analyzed each of the AAPs to determine if they met the requirements for acceptable AAPs as established by OFCC.

Based on the analyses, 42 (or 70 percent) of the 60 GSA-approved AAPs, and 12 (or 20 percent) of the 60 DOD-approved AAPs did not meet OFCC's guidelines and should not have been approved. In most instances, GSA and DOD regional officials agreed with this conclusion.

One deficiency frequently noted was that the AAPs did not contain a sufficient breakdown of job categories. The job category of "salesworkers" might include highly paid salesmen selling expensive merchandise on a commission basis as well as over-the-counter salesclerks earning the minimum wage. If a contractor were to discriminate against females and limit them to salesclerk positons, and if the data on these two types of jobs were combined in the AAP, it would not be possible by reviewing the AAP to discern a possible pattern of discrimination against females for further investigation. Other deficiencies noted included inadequate work force utilization analyses and the lack of goals and timetables as required by OFCC regulations.

In one regional office, GSA representatives were unable to provide GAO with copies of several AAPs that their records showed as having been approved. The GSA representatives stated that errors had been made in reporting these AAPs as approved; in fact, GSA had not reviewed nor approved the AAP in question. The proportion of deficient AAPs ranged from a low of 15 percent in the DOD Chicago region to a high of 80 percent in the GSA Washington region.

TABLE II

Review of 35 AAPs Approved by DOD and GSA In San Francisco Region

Job category	Females as percentage of workforce		Increase (Decrease) in female employees	
	Prior year	Current year	Number	Percent of total increase
Officials, managers & professionals	5.7%	5.4%	(2)	–
Technicians	12.6	14.3	132	10%
Salesworkers	8.0	10.8	8	1
Office & clerical craftsmen, operatives laborers, service workers	38.4	41.7	1,122	89
Totals	27.3	29.8	1,260	100%

	Prior year	Current year	Increase	Percent increase
Total number of employees	16,981	19,789	2,808*	17%
Total number of female employees	4,638	5,898	1,260*	27

*Females accounted for 45% of the net increase in jobs.

GAO investigators concluded that OFCC has not adequately monitored the implementation of the Executive order by the compliance agencies. If OFCC had been adequately monitoring and supervising the compliance agencies, it is likely that the failure of GSA and DOD to meet OFCC's standards with respect to reviewing and approving AAPs would have been detected by OFCC and could have been brought to the attention of appropriate GSA and DOD officials for corrective action.

In reviewing the 20 AAPs approved by the San Francisco DOD regional office and 15 AAPs approved by the San Francisco GSA regional office, investigators compared the employment of females by job category during the current year and the prior year (see Table II). Five of the GSA-approved AAPs could not be used in the comparison because GSA files did not contain sufficient information.

Table II shows a net increase in employment of 2,808 by the 35 contractors. Females accounted for 1,260 or 45 percent of this increase. However, there was a net decline of two females holding upper echelon jobs (officials, managers, and professionals), and most of the increase in female employment occurred in the office and clerical, craftsman, operative, laborer, and service worker categories.

Investigators found that GSA was performing compliance reviews at contractor facilities which had a relatively small number of employees. For example, in the San Francisco region the average number of persons employed by the 20 GSA-approved contractors whose AAPs were selected for review was 122 persons. In contrast, the average number of persons employed by the 20 DOD-approved contractors was 909 persons. Similar variations were noted in the Chicago and Philadelphia regions.

Selecting Contractors for Review

The difference in the industries assigned to GSA and DOD may partly contribute to the differences in the sizes of the contractor facilities being reviewed by GSA and DOD. However, a major cause of the difference is that policies on selecting contractors for review differ.

DOD policy states that contractor facilities are to be considered for review in descending order of the number of their employees. Based on this policy and the capability of the DOD compliance staff, contractor facilities with less than 200 employees generally will not be selected for review.

The GSA Chicago and Washington regions expect each compliance officer to complete six compliance

reviews per month, while the GSA San Francisco region expects its compliance officers to complete four reviews per month. Consequently, in two of the three regions reviewed, GSA compliance officers indicated that they often selected small contractors which require less time to review, so that they could complete the designated number of reviews per month.

Small contractors should not be excluded from the review process. But the Federal contract compliance program should generally emphasize reviewing contractors with the greatest underutilization of women and minorities and with the most hiring and promotion opportunities, rather than selecting contractors on the basis of achieving a standard or recommended number of reviews per month.

In this regard, OFCC has developed a system to be used by the compliance agencies to identify those contractor facilities where compliance with the Executive order is below that which could be expected by the presence of minorities and women in the area work force. OFFC guidelines state that compliance agencies are to use this method as a primary criteria to select contractors for review. GAO's review showed, however, that the nonconstruction compliance agencies were not fully implementing the OFCC system for selecting contractor facilities for review, but rather were relying on internally developed selection criteria which varied among agencies.

Table III shows that the compliance agencies issued relatively few "show cause" notices—in less than 2 percent of the reviews conducted—and imposed even fewer sanction actions.

The data in Table III could be interpreted in either of two ways: 1) most contractors are complying with the requirements of the Executive order and there is little need for show cause notices or sanction actions; or 2) the compliance agencies are reluctant to issue show cause notices and to take sanction actions against con-

TABLE III

Show Cause Notices and Sanctions Imposed For Fiscal Years 1972, 1973, and 1974 (to 3/31/74)

Compliance agency	Reviews conducted	Show cause notices issued		Sanctions imposed[1]
		Number	Percentage of reviews conducted	
AEC	1,596	41	2.6%	0
Agriculture	1,820	19	1.0	0
AID	287	13	4.6	0
Commerce	604	1	.2	0
DOD	15,855	127	.8	0
GSA	7,071	276	3.9	1[4]
HEW[2]	974	4	.4	0
Interior[3]	1,012	34	3.4	0
NASA	714	1	.1	0
Postal Service	9,684	0	.0	13[5]
Transportation	109	10	9.1	0
Treasury	1,112	0	.0	0
VA	593	10	1.7	0
Totals	41,431	536	1.3%	14

[1]Does not include proposed sanction actions or preaward clearances withheld.

[2]Excludes data for the first six months of fiscal year 1972 since this data was not available.

[3]Excludes enforcement data for fiscal year 1972 since this data was not available.

[4]One company was debarred after the firm declined to request a hearing.

[5]Thirteen trucking companies were referred to the Department of Justice for appropriate legal action and a consent decree has been entered into with the companies under which the companies have agreed to stop their discriminatory practices.

tractors who are not in compliance.

Indications are that the latter is true. DOD and GSA representatives stated that they attempted to persuade contractors to comply with the Executive order and implement guidelines through conciliation efforts rather than by invoking formal sanction actions.

Officials of the Department of Commerce and the Department of the Treasury said that they follow the practice of issuing informal pre-show cause notices, or warning letters in lieu of show cause notices, to contractors which have not been fully responsive to OFCC requirements. These notices, however, do not automatically require further sanction actions if the contractor fails to show good cause why sanction actions should not be imposed.

For the fiscal years 1973 and 1974 (through March 31, 1974), these two agencies performed about 1,200 compliance reviews, issued no show cause notices, and had not initiated any sanction actions. A Department of Transportation official told GAO that the issuance of a show cause notice only points to the failure of the compliance agency's conciliation function.

Moreover, the Director of AID's compliance program said that her agency had not found it necessary to proceed to the hearing stage of the sanction process but that if it had necessary, she would have had to have OFCC's assistance because she was not familiar with all of the requirements for initiating a hearing.

Clarifying OFCC Guidance

The Secretary of Labor and OFCC have established and published certain guidelines to assist the compliance agencies in carrying out their compliance review and enforcement responsibilities under the Executive order. Despite this, however, the GAO review showed—and the compliance agencies generally agreed—that clarification of certain guidelines and additional guidance was needed in several areas to enable the compliance agencies to carry out their assigned responsibilities more effectively. Two of the most important areas in which additional DOL guidance was needed concern 1) employees who are victims of "affected class" discrimination and related remedies and 2) employee testing and selection procedures.

One of the guidelines issued by DOL is known as Revised Order No. 4 which, in part, requires that before a contractor is found in compliance, the contractor must first agree to provide relief to "affected class" employees who have been subjected to discrimination in the past and who continue to suffer its effects.

Neither Revised Order No. 4 nor other DOL guidelines establish specific criteria for identifying or remedying affected class problems. Revised Order No. 4 merely states that relief for members of an affected class must be afforded in order for a contractor to be found in compliance. According to an OFCC official, remedies can include 1) revised transfer and promotion systems and 2) financial restitution, or "back pay."

Officials of three compliance agencies (VA, USPS, and the Department of Transportation) said that their compliance officers did not determine in their reviews whether affected class situations existed, or whether back pay relief was called for, because DOL had not provided sufficient instructions or guidelines to enable such determinations to be made.

For example, in December 1973, the Maritime Administration of the Department of Commerce sent a letter to the Director of OFCC stating that 1) it had identified an affected class problem existing at a Government contractor, and that 2) the contractor questioned the Department's authority to deal with the back pay issue.

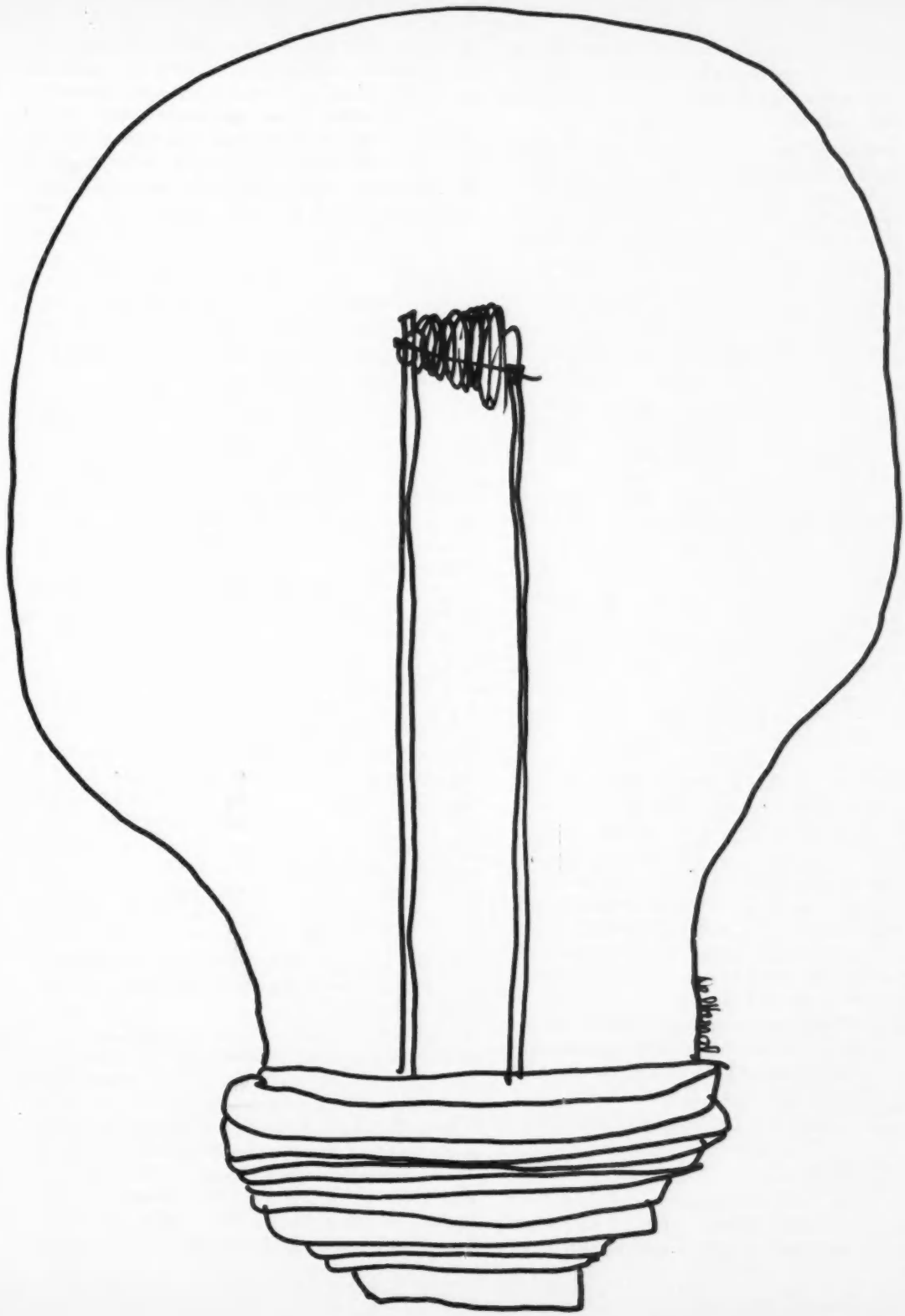
In February 1974 the Department of Commerce sent another letter to OFCC stating that negotiations with the contractor had reached the point of discussing the payment of back pay which could amount to over $1 million, but that additional technical and policy guidance was needed from OFCC on the matter. Shortly thereafter, Commerce officials met with representatives of OFCC and were advised that OFCC would respond in the very near future to the questions raised concerning back pay. Commerce officials reported in August 1974 that OFCC had not yet responded, although 8 months had elapsed since their December 1973 letter and about 6 months since their meeting.

OFCC has long recognized the need to provide the compliance agencies with guidelines on affected class identification and related remedies. In November 1971, OFCC prepared draft guidelines on affected class identification and related remedies; however, these guidelines have not yet been finalized or issued because the issues involved have not been fully resolved. The proposed guidelines are scheduled to be published for comment by December 31, 1974.

Until the compliance agencies are provided with adequate guidelines, they will be reluctant to utilize back pay orders as a remedy under the Executive order—notwithstanding the fact that back pay relief could act as a strong deterrent to discrimination.

Testing and Other Selection Procedures

In addition to setting forth guidelines explaining the affirmative action requirements of the Executive order,



DOL has issued a series of special guidelines on the implementation of the order's nondiscrimination clause. One of these special guidelines concerns employee testing and other selection procedures.

The testing and selection procedures apply to those employment selection criteria which have an adverse affect on the opportunities of minorities or women in terms of hiring, transfer, promotion, training, or retention. If a test or other selection method used by the contractor tends to reject a disproportionate number of minority members or women, then the contractor must show that the test has been validated; that is, that any existing differential rejection rates, based on the test, are relevant to performance on the jobs in question.

Whenever agency compliance officers have questions about the adequacy of a testing validation study submitted by a contractor, OFCC guidelines provide that compliance agencies should refer the study to OFCC. As of July 1974, only one OFCC staff member was assigned to review testing validation studies, resulting in a 6 to 8-month backlog of about 32 validation studies to be analyzed.

Further, OFCC believes that the number of validation studies forwarded to it by the compliance agencies during the current fiscal year will substanially increase.

In July 1974, GAO discussed the backlog problem with OFCC officials who said that OFCC plans to hire one additional staff member to review testing validation studies to reduce any backlog. These officials stated further that the one staff member assigned to perform testing validation studies had worked on other matters during the past several months and that he had just recently started to perform this work again.

Despite its responsibility, OFCC has done very little to implement a program or system for monitoring the compliance agencies responsible for nonconstruction contractors to ensure that the program is administered in a uniform and effective manner.

At the three OFCC regional offices which GAO visited—Chicago, Philadelphia, and San Francisco—the staff devoted almost all its efforts to monitoring compliance agencies' enforcement of the Executive order as it applied to construction contractors and virtually no effort to monitor enforcement for nonconstruction contractors.

Lack of Followup

In fiscal year 1972 OFCC evaluated the nonconstruction contract compliance programs of all 13 agencies to determine their effectiveness. However, according to OFCC officials, the scope of these evaluations was restricted to work performed at the compliance agencies' headquarters offices. As a result of these limited evaluations, certain deficiences in the areas of staffing, training, conducting compliance reviews, and issuance of show cause notices were noted, with recommendations for corrective actions.

OFCC officials said that since the 1972 evaluations, comprehensive followup reviews had not been performed at 12 of the 13 nonconstruction compliance agencies. NASA is the only agency that has been reevaluated, although comprehensive reviews of each of the nonconstruction compliance agencies is planned for the current fiscal year.

In April and September 1973, OFCC reevaluated NASA's contract compliance program and found several deficiencies, including: 1) evidence that the NASA space center program directors, who have been delegated contract compliance responsibility by NASA headquarters, follow their personal views as to appropriate compliance policies and procedures rather than the requirements and standards of OFCC; and 2) an apparent aversion by NASA to issuing show cause notices or invoking appropriate enforcement procedures against noncomplying Government contractors. (As previously noted, effective August 1, 1974, NASA's compliance responsibility has been transferred in part to DOD and in part to AEC.)

Officials of the 13 compliance agencies stated that they performed about 25,000 reviews of nonconstruction contractors during fiscal years 1973 and 1974 (through March 31, 1974). OFCC reviewed only 15 AAPs during these 2 fiscal years to determine whether the compliance agencies were following OFCC's guidelines in reviewing AAPs. All but one of these AAPs were reviewed following appeals to OFCC from individual complainants and public interest groups. OFCC concluded that not one of the 15 met its requirements and that none should have been approved, yet OFCC did not expand its monitoring of the compliance agencies.

In December 1973, a supplemental budget request for 26 additional OFCC positions was approved. The 26 additional positions increased OFCC's authorized strength from 104 to 130 employees.

The OFCC budget justification for fiscal year 1975 stated that with the additional positions, OFCC would assume the full role of a lead agency and supply the type of direction and leadership necessary for the success of the program. The budget justification further stated that OFCC would implement a com-

pliance review monitoring program and take steps necessary to insure that the program's guidelines are followed consistently by the compliance agencies.

OFCC officials said that they were making progress toward hiring qualified persons to fill the newly authorized 26 positions, but that delays had been encountered in writing job descriptions, advertising the job openings, and selecting and processing qualified applicants.

Joint Responsibility

Contractors for which OFCC has responsibility under Executive Order 11246 also fall within EEOC's responsibilities under Title VII of the Civil Rights Act of 1964.

The two agencies signed a memorandum of understanding on May 20, 1970, designed to reduce duplication, exchange information, and establish procedures for processing cases against Government contractors subject to the provisions of the Executive order. GAO's review showed, however, and representatives of most of the compliance agencies agreed that the provisions of the memorandum were not being fully followed.

The memorandum provides, in part, that OFCC would check with EEOC prior to conducting compliance reviews to determine if outstanding discrimination complaints had been filed with EEOC. Representatives of five compliance agencies (DOD, USPS, Departments of the Interior, Treasury, and Transportation) informed GAO that their compliance officers, acting on behalf of OFCC in making compliance reviews, were not routinely checking with EEOC before conducting compliance reviews. As a result, these compliance agencies were approving contractor's AAPs without considering whether complaints had been registered with EEOC.

GAO investigators reviewed complaint listings at EEOC to determine whether there were outstanding complaints against the individual contractors whose AAPs were reviewed. Eighteen of the 60 DOD contractor facilities and 14 of the 60 GSA contractor facilities had outstanding complaints filed against them with EEOC at the time the compliance reviews were performed. It appeared that the complaints on 14 of the 18 DOD contractor facilities and 13 of the 14 GSA contractor facilities were not considered at the time the compliance reviews were conducted.

As early as March 1972, AID requested guidance from OFCC concerning the approval of AAPs when there were outstanding complaints on file with EEOC against the contractors. As of July 1974, however, OFCC had not yet issued any written guidance to AID on this subject.

In another instance, DOD had made at least two compliance reviews of a contractor and each time found the contractor to be in compliance with the Executive order. The two were completed during October 1973 and May 1974.

As early as October 1970, however, EEOC had determined that a number of employment practices of the same contractor discriminated against female employees. For example, according to EEOC, the company paid males more than females for performing equal work.

As a result of its findings, EEOC is presently in the process of bringing suit charging the contractor with violation of Title VII of the Civil Rights Act of 1964.

EEOC's chief compliance officer said that the memorandum of understanding has been inoperative for several years. He asserted that EEOC no longer needs OFCC's enforcement power since EEOC now has litigation authority which is more effective than OFCC's enforcement powers.

He also stated that EEOC no longer sends OFCC any information on its activities, but EEOC still receives and incorporates charges from the compliance agencies in its employment discrimination settlements. OFCC and EEOC are in process of redefining and clarifying this memorandum.

It should be pointed out that OFCC recognizes the need for improvement in various aspects of its compliance program. In a memorandum for fiscal year 1976, OFCC sets forth certain planned improvements in the contract compliance program. These include:

- Plans to establish an audit review system to review the compliance agencies and prepare annual formal evaluations of each agency;
- New or revised regulations on affected class, back pay relief, sex discrimination, testing and selection, and religious discrimination, for fiscal year 1975;
- Response to requests by compliance agencies for specific guidance, interpretation, and clarification, from OFCC within 10 days of receipt;
- Guidelines for performing compliance reviews and issuing show cause notices; and
- A memorandum of understanding with the Department of Justice and EEOC which would include coordination of target selections, data exchange, and enforcement procedures.

READING AND VIEWING

Reports by the Commission's, State Advisory Committees

The following reports on civil rights issues of local, State, or regional concern were published during 1974 by State Advisory Committees to the Commission. Single copies of individual reports may be obtained free of charge by writing: SAC Reports, Office of Information and Publications, U.S. Commission on Civil Rights, 1121 Vermont Ave., N.W., Washington, D.C. 20425.

The Delaware Prison System (Delaware Advisory Committee). A review of problems within the State's four adult correctional institutions; they include insufficient and poorly trained staff, overcrowding, housing those waiting trial with those serving sentences, inadequate medical care, and general neglect of female prisoners. *76 pages.*

Employment Practices in Montana—The Effects on American Indians and Women (Montana Advisory Committee). Discusses employment on the seven Indian reservations in Montana, where unemployment ranges from 27 to 57 percent. Montana's Indians and women generally are underpaid and concentrated in low-level positions; in State employment and private industry, less than 10 percent of the professionals are women. *62 pages.*

Bilingual/Bicultural Education—A Privilege or a Right? (Illinois Advisory Committee). Asserts that the large population of Latino students in Chicago's public schools are denied equal educational opportunity through lack of bilingual/bicultural programs and insensitivity of the system to cultural differences. The Latino community in Chicago is a mix of Chicanos, Puerto Ricans, Cubans, and South Americans. *117 pages.*

Blacks in the Arkansas Delta (Arkansas Advisory Committee). A probe of the reasons why New Orleans' blacks—who constitute 45 percent of the city's population—are forced to live in intolerably bad housing conditions. The report examines local credit practices, code enforcement, Federal housing programs, public housing, blockbusting, and open housing. *42 pages.*

Economic and Political Problems of Indians in Robeson County (North Carolina Advisory Committee). Reviews causes of limited job opportunities and obstacles to full political participation of the 44,000 Indian people living in the coastal plane of North Carolina. Mostly Lumbees, they comprise the largest body of Indians east of the Mississippi River. *68 pages.*

Indian Civil Rights Issues in Montana, North Dakota, and South Dakota (Tri-State Joint Advisory Committee). A report on the civil rights status of Native Americans, with emphasis on issues relating to education, employment, health and welfare services, housing, and the administration of justice. The study looks at problems of urban as well as rural and reservation Indians. *62 pages.*

Racial Problems in Fort Dodge, Iowa (Iowa Advisory Committee). This report looks at Fort Dodge as a microcosm of the State in examining minority problems in employment, housing, and education, and finds that a high proportion of Fort Dodge's residents—of whom 98 percent are white—are uninformed, misinformed, or complacent concerning the needs of minorities. One-way communication, from white to black, and dependence by blacks upon the whites in power thwart progress. *58 pages.*

Inmate Rights and Institutional Response: The Nebraska Prison System (Nebraska Advisory Committee). Examines the treatment of racial minorities and women in areas such as medical services, housing, staff recruitment and training, academic and vocational programs; also looks at the functions and influence of the Board of Parole. *111 pages.*

Report on Indian Education, State of Washington (Washington Advisory Committee). Documents the failure of Washington State's public schools to provide Indian children with equal educational opportunities, and discusses factors which contribute to the high dropout rate among Indian students, including the lack of Indian participation in school decision-making and the insensitivity of white educators to Indian culture. *53 pages.*

In Search of a Better Life (Pennsylvania Advisory Committee). Two of the major problems facing the growing Puerto Rican population in Philadelphia are education for their children and housing for their families. This report discusses inadequate educational opportunities for Puerto Ricans in the city, including invalid testing procedures and the absence of bilingual programs. It also describes the lack of public housing, the dilapidated condition of most buildings, and problems encountered by Puerto Ricans who would like to buy a home. *55 pages.*

Judicial Selection in Virginia: The Absence of Black Judges (Virginia Advisory Committee). An examination of the process by which Virginia judges are selected, this study reviews the selection procedures and analyzes how the system actually works to preclude black judges. *22 pages.*

Obstacles to Financing Minority Enterprises (District of Columbia Advisory Committee). Explores whether or to what extent minority business persons are denied loans, loan guarantees, or other forms of credit by the traditional money market because of race or ethnicity. Although blacks and persons of Spanish speaking background constitute a majority of the population of the District of Columbia, they own fewer than 10 percent of the city's businesses. *68 pages.*

Employment Discrimination in the Construction Industry in Baltimore (Maryland Advisory Committee). This study finds that minority training and hiring in Baltimore's construction industry is being given even lower priority than in past years. Minority unemployment rates continue to be 50 to 100 percent higher than unemployment rates for whites. *59 pages.*

Indian Civil Rights Issues in Oklahoma (Oklahoma Advisory Committee). Explores the high dropout rate of Indian children in the public schools, widespread and severe unemployment, discrimination in the administration of justice, and inadequate health services. Oklahoma, with 98,468 Native Americans, has the largest Indian population of any State. *138 pages.*

The Struggle for Justice and Redress in Northern New Mexico (New Mexico Advisory Committee). Documents charges by minorities, particularly Chicanos, of excessive use of police powers and unequal administration of the laws in northern New Mexico. *88 pages.*

Colorado Prison Study (Colorado Advisory Committee). An examination of conditions in State adult and juvenile correctional institutions and at the Federal Youth Center, this report looks at the civil rights of all prisoners, with special concern for minorities and women, in such areas as academic and vocational programs, inmate job assignments, medical services, staffing, and parole. *202 pages.*

Las Escuelas de Guadalupe-Un Legado de Opresion Educacional: The Schools of Guadalupe-A Legacy of Educational Oppression (California Advisory Committee). A Spanish translation of a report released last year which examines a small farming community whose institutions and economy exclude Mexican Americans, although they make up 75 percent of the population. The report demonstrates how the schools are used to perpetuate a caste system, and describes a pattern of reprisal against Chicano families who fight for change. *104 pages.*

U. S. COMMISSION ON CIVIL RIGHTS
WASHINGTON, D. C. 20425

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE $300

POSTAGE AND FEES PAID
U.S. COMMISSION ON CIVIL RIGHTS
CONTROLLED CIRCULATION RATE

U.S.MAIL

Marcia Gainey CRC-6
Zerox Univ. Micro Films
300 North Zeeb Road
Ann Arbor, MI 48106