

Civil and Human Rights

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CONCERN for civil and human rights in Vermont stretches back to the founding of the state. Vermont's first constitution began with phrases borrowed from the Declaration of Independence:

That all men are born equally free and independent, and have certain natural, inherent, and unalienable rights, amongst which are the enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining happiness and safety. . . .¹

By adopting that constitution, Vermont became the first state to prohibit slavery and to adopt universal male suffrage.²

Opposition to slavery was a central political force in Vermont from the adoption of the constitution through the Civil War. Vermonters were active participants in the Underground Railroad, a secret system for smuggling runaway slaves to Canada. Vermonters exhibited an extraordinary commitment to the Civil War, with 34,328 Vermonters serving in armed service. Of all the northern states, Vermont endured the highest rate of men killed in battle. The Vermont Republican Party, born of abolitionism, dominated the state's political scene for more than a century following the Civil War.

EARLY ANTIDISCRIMINATION STATUTES

Ironically, it was not until the end of that period of Republican dominance that Vermont government began to take tangible steps to protect and expand civil and

¹Vt Const. Ch I, Art I.

²William Doyle, *The Vermont Political Tradition* (Barre, Vt.: Northlight Studio Press, 1984), 21, 24.

human rights for its citizens. Civil rights issues were on the national agenda³ but, by the mid-1950s, had yet to become a subject of concern as a matter of in-state policy.

A single incident put civil rights on the Vermont agenda. The captain of the 1956 University of Vermont football team, Leroy Williams, Jr., was one of only seven African American students at the university. In February 1957, a friend made a reservation at a South Burlington motel for Williams's Kake Walk weekend date and three other women. One of the young women (who was white) arrived Thursday night and stayed at the motel. When Williams took his date, an African American woman, to the motel on Friday, the motel proprietor refused to accommodate her. Williams said the proprietor told him it was her policy "not to accept colored people." She said that "there was 'an arrangement on Williston Road' among motel operators to take no Negroes."⁴

Williams found other accommodations for his date at a Burlington tourist home, but he did not suffer in silence. His description of the event was published in the 26 February 1957 *Burlington Free Press* under the headline "Leroy Williams, Jr. Charges Motel Refused to Take Negro Girl Friend."⁵ A flurry of public condemnation of racial bigotry followed, including a statement by the president of the university, Dr. Carl W. Borgmann, and a *Free Press* editorial.⁶ In the aftermath of the incident, a group of Burlington area clergy and university professors and their spouses (including Edith Nuquist, coauthor of *Vermont State Government and Administration*) persuaded the Chittenden County Senate delegation to propose a bill outlawing racial discrimination in public accommodations.

The bill, S. 104, passed the Senate unanimously. After approval by the House without controversy, the legislation, entitled *An Act Relating to the Full and Equal Enjoyment of Public Accommodations*,⁷ was signed by Governor Joseph B. Johnson. By doing so, Johnson made Vermont the eighteenth state to prohibit the owners and operators of public accommodations from discriminating in providing public accommodations on account of race, creed, color, or national

³Civil rights, in the sense that the phrase is used to describe the status of African Americans, has, of course, been a major issue throughout U.S. history. The United States Supreme Court's unanimous decision in *Brown v. Board of Education of Topeka* [347 U.S. 483 (1954)], outlawing racial segregation in U.S. schools, thrust civil rights issues to the front of the American agenda. The 1956 Republican Party platform contained a civil rights plank endorsing *Brown*, and President Eisenhower proposed civil rights legislation as part of his 1957 State of the Union address. See Stephen Wrinn, "Vermont's Perceptions of Expanding Civil Rights: From Voting Rights to Fair Housing, 1945–1968" (master's thesis, University of Vermont, 1994), 18–20; Kirk H. Porter and Donald Bruce Johnson, eds., *National Party Platforms, 1840–1964* (Urbana: University of Illinois Press, 1966), 554–55; and Dwight D. Eisenhower, "Annual Message to the Congress on the State of the Union, January 10, 1957," in *The Public Papers of the Presidents of the United States: Containing the Public Messages, Speeches, and Statements of the President, Dwight D. Eisenhower, 1957* (Washington, D.C.: Federal Register Division, National Archives and Records Service, General Services Administration), Docs. 8, 23.

⁴*Burlington Free Press*, 26 February 1957.

⁵*Ibid.*

⁶"Racial Discrimination Sign of Weakness," *Burlington Free Press*, 27 February 1957.

⁷Vermont, *Acts and Resolves Passed by the General Assembly of the State of Vermont* [spine title: *Laws of Vermont*] (Montpelier, Vt.: Secretary of State's Office, 1812–), 1957, No. 109, § 409, § 1.

origin.⁸ The statute broadly defined a public accommodation as “any establishment which caters or offers its services or facilities or goods to the general public.” Violation of the statute was punishable by a fine of not more than five hundred dollars or by imprisonment for not more than thirty days or both.⁹ Since the statute was enacted as a part of the state’s criminal law, its enforcement was left to the state’s attorneys and the attorney general.

In 1961 Philip H. Hoff of Burlington, then a freshman representative to the Vermont House, introduced H. 419, *An Act to Provide Freedom from Discrimination in Employment*.¹⁰ The bill was opposed by organized labor, which believed that in Vermont, as had been the case in other states, the legislation would be used by labor’s opponents to promote the adoption of right-to-work legislation.¹¹ In fact, Representative Emory A. Hebard (later state treasurer) moved on the floor of the House to amend the bill to prohibit discrimination against employees based upon “membership or lack of membership in any labor organization or association.”¹² The amendment failed, but so much energy had been expended by the bill’s proponents in defeating the amendment that they were unable to marshal sufficient support on the floor for the bill itself. It failed on third reading by twenty-five votes.¹³

After Hoff’s election as governor in 1962 (he was the first Democrat to hold that office in 108 years), he arranged to have the legislation reintroduced, and this time with labor support, it was adopted.¹⁴ It became the forerunner of Vermont’s Fair Employment Practices Act. As originally proposed, the bill prohibited employment discrimination based on race, color, religion, ancestry, national origin, or place of birth.¹⁵ An amendment from the floor of the Senate proposed that the legislation also prohibit discrimination based upon sex and age.¹⁶ As finally enacted, the legislation outlawed “discrimination in rates of pay by reason of sex” and prohibited employment discrimination against the original litany of protected classifications.¹⁷ The statute [21 V.S.A. §§ 495–495c]¹⁸ also required that the state and its contractors include similar antidiscrimination provisions in contracts provided for work to be performed within the state.¹⁹

Vermont beat the nation to the punch, prohibiting common forms of invidious discrimination before Congress adopted the Civil Rights Act of 1964

⁸Wrinn, “Vermont’s Perceptions of Expanding Civil Rights,” 27.

⁹*Ibid.*

¹⁰Vermont, General Assembly, *Journal of the House of Representatives of the State of Vermont* (15 May 1961, Adj. Sess.), 575 (hereafter cited as *Journal of the Vermont House*).

¹¹Philip H. Hoff, interview by author, 25 May 1996.

¹²*Journal of the Vermont House* (22 June 1961, Adj. Sess.), 816–17.

¹³*Journal of the Vermont House* (22 June 1961, Adj. Sess.), 819–21; Hoff, interview.

¹⁴Hoff, interview.

¹⁵S. 81 (1963 Vt., Bien. Sess.).

¹⁶Vermont, General Assembly, *Journal of the Senate of the State of Vermont* (12 June 1963, Bien. Sess.), 474–75. In the 1996 interview, Hoff suggested that the proposed expansion was an effort to kill the legislation.

¹⁷*Acts and Resolves*, 1963, No. 196, § 1(e).

¹⁸*Ibid.*, 1963, No. 196.

¹⁹*Ibid.*, § 2.

[42 U.S.C. § 2000e et seq.].²⁰ Vermont's law even preceded the effective date of the first piece of modern employment discrimination legislation on the national scene, the Equal Pay Act [29 U.S.C. § 206(d)(1)].²¹

Although the coverage of the Vermont law was broad, the penalties were mild. Any labor organization, employer, or employment agency willfully violating the statute could be fined up to five hundred dollars per violation.²² Again, no agency was specifically charged with enforcement, leaving that in the hands of the state's attorneys and attorney general. The statute did not expressly provide for a private right of action—the right of an aggrieved party to bring suit to enforce rights under the statute. The absence of any reported case under the statute in its original form suggests that there was no early enforcement of it.

GOVERNOR'S COMMISSION ON THE STATUS OF WOMEN

On 23 November 1964 the first Vermont governmental structure aimed at the development and expansion of civil rights was founded when Governor Hoff appointed the Governor's Commission on the Status of Women. The commission was authorized to conduct research on "how discrimination was occurring, how women's roles were changing, [to] document the needs of working women and their children, and support a more active role of women in the political life of the state."²³ The Governor's Commission acted as a public policy advisor, planner, and information source for the governor and the legislature on issues affecting women. In its early years, the commission had no staff or office. It operated through its members and from their homes. Commissioners appointed by the governor were organized into four committees: education, home and community, employment and women, and the law. The secretary of the education committee of the original commission was listed as Mrs. Arthur Kunin, later to become Governor Madeleine Kunin.²⁴

In 1970 commission member and state Senator Margaret Hammond introduced legislation intended to broaden Vermont's antidiscrimination-in-employment statute into a comprehensive fair employment practices act. The first effort was unsuccessful.²⁵ In 1971 the proponents achieved partial success. The legislature expanded the provision of the 1963 statute prohibiting discrimination in rates of pay based on sex to broadly prohibit employment discrimination based upon sex.²⁶

²⁰Pub. L. No. 88-252, Title VII, § 701, 2 July 1964, 78 Stat. 253.

²¹Pub. L. No. 88-38, § 3, 77 Stat. 56, adopted 10 June 1963 but not effective until 10 June 1964. See Mark A. Player, *Employment Discrimination Law* (St. Paul, Minn.: West Publishing Co., 1987), § 4.02 n. 6.

²²*Acts and Resolves*, 1963, No. 196, § 3.

²³Rita Edwards and Lynn Heglund, "25 Years of Change for Women," in *Gala Celebration of the 25th Anniversary of the Governor's Commission on Women* (n.p., 5 April 1989).

²⁴*Ibid.*

²⁵*Ibid.*

²⁶*Acts and Resolves*, 1971, No. 9 (Adj. Sess.), § 1.

HUMAN RIGHTS COMMISSION

Interest in Vermont in the civil rights movement sparked change within the state. The Vermont Civil Rights Union (VCRU) was organized in August 1964.²⁷ A voluntary organization, VCRU was involved in promoting and coordinating civil rights projects. Initially, its activities focused on promoting civil rights in the South through the Vermont In Mississippi project.²⁸ In 1965 VCRU turned its attention closer to home. Citing examples of racial discrimination in the rental and sale of real estate, it sought a fair housing law making it illegal to refuse to sell, lease, or rent housing because of race or color.²⁹

On 29 September 1965 Governor Hoff announced his intention to propose fair housing legislation to the 1966 legislature.³⁰ The legislation proved very controversial. Opposition centered on arguments that the bill infringed on private property rights and was not needed because discrimination was not a problem in Vermont.³¹ The Vermont Association of Realtor Boards opposed the legislation, arguing, among other things, that “the general fear of a Negro moving into a community is not the actual fear of living near a Negro, but a lowering of the real estate values.”³² The legislation failed in the House by a close vote—seventy-two to sixty-nine.³³ Efforts by VCRU to obtain reconsideration failed, as well.³⁴

The bill was reintroduced in the 1967 legislature as H. 72. Both sides were well organized. Opponents included the *Burlington Free Press*, which attacked the bill as inconsistent with the “sacred right” to the private ownership of property and suggested that the problem of discrimination was not amenable to being remedied by law.³⁵

The leading opponent from the previous session, Representative John Alden of Woodstock, proposed a human rights commission as a compromise. The idea was that a commission’s administrative proceedings would provide an alternative to litigation over housing disputes. Although the commission would have some power to end housing discrimination, its principal object was to end discrimination “through conciliation and persuasion.”³⁶ Supporters of the original bill, including Governor Hoff and VCRU, rejected the Alden compromise proposal, believing that the enforcement powers of the commission would be inadequate. The Hoff bill passed the House by nine votes, but three weeks later, it failed in

²⁷Wrinn, “Vermont’s Perceptions of Expanding Civil Rights,” 58.

²⁸Ibid., 59.

²⁹Ibid., 60–61.

³⁰Ibid., 62.

³¹Ibid., 61–67.

³²Ibid., 65, citing “Housing Discrimination Claimed in Vermont,” *Burlington Free Press*, 27 January 1965, 15.

³³Wrinn, “Vermont’s Perceptions of Expanding Civil Rights,” 66, citing “Vermont House Kills Fair Housing Measure on 72–69 Roll Call,” *Burlington Free Press*, 25 February 1969, 1.

³⁴Wrinn, “Vermont’s Perceptions of Expanding Civil Rights,” 67, citing “Fair Housing Bill Knocked Again,” *Burlington Free Press*, 12 March 1966, 9.

³⁵Wrinn, “Vermont’s Perceptions of Expanding Civil Rights,” 68, citing “‘Fair Housing’ Law Could Be Damaging,” *Burlington Free Press*, 18 January 1967, 14.

³⁶Wrinn, “Vermont’s Perceptions of Expanding Civil Rights,” 69.

the Senate by one vote.³⁷ The next day, Senate President Pro Tem George Cook, who had voted against the original bill, introduced an amended version containing Alden's human rights commission proposal. The Senate unanimously adopted the compromise, and on 10 April 1967 the House agreed to it by a vote of ninety-five to thirty-eight.³⁸ Four days later when Hoff signed the legislation, the Vermont Commission on Human Rights was born.³⁹

The commission consisted of five members appointed by the governor with the advice and consent of the Senate. Besides the fair housing provisions, it was authorized to enforce the 1957 antidiscrimination statute prohibiting discrimination in public accommodations. The statute contemplated that the commission, acting through staff, would informally investigate charges of violations and attempt to obtain compliance with the law by "conference, conciliation and persuasion."⁴⁰ If conciliation failed, the commission was authorized to issue a written complaint, hold a hearing, and if it found discrimination, issue an order to eliminate it.⁴¹ Compliance with the commission's order would bar criminal prosecution.⁴² The commission was entitled to seek enforcement of its orders in the county courts, and any party aggrieved by an order of the commission was entitled to seek judicial review of the order in that court.⁴³

The fair housing language prohibited discrimination on the grounds of race, religion, creed, color, or national origin in the sale, lease, or transfer of real estate offered to the general public.⁴⁴ The law contained a "Mrs. Murphy's boarding house" exemption for owner-occupied property of up to two units and for room rentals in owner-occupied homes where fewer than four rooms were rented.⁴⁵

Although the commission was authorized by statute to maintain an office and, with the approval of the governor, appoint an executive director and any necessary attorneys, hearing examiners, and other employees, the original commission received no legislative appropriation. In its early years, it had no staff and no office.

As a result, the commission proved largely incapable of exercising its statutory authority. It received few complaints of violations of the public

³⁷Ibid., 71.

³⁸Ibid., 72–73, citing "Senate Committee Approves Amended Fair Housing Bill," *Burlington Free Press*, 6 April 1967, 1; and "House Accepts Amended Fair Housing Bill, Sends It to Hoff," *Burlington Free Press*, 11 April 1967, 1.

³⁹Wrinn, "Vermont's Perceptions of Expanding Civil Rights," 73. See also *Acts and Resolves*, 1967, No. 92.

⁴⁰13 V.S.A. § 1463(c) (1974).

⁴¹13 V.S.A. § 1463(d) & (e) & (f); § 1464.

⁴²13 V.S.A. § 1465.

⁴³13 V.S.A. §§ 1466, 1467.

⁴⁴*Acts and Resolves*, 1967, No. 92, § 2; 13 V.S.A. § 1452.

⁴⁵13 V.S.A. § 1452(a)(1) & (2) (1974). The "Mrs. Murphy's boarding house" exemption entered Vermont law by a circuitous route: During congressional debate about the 1964 Civil Rights Act, Vermont Senator George D. Aiken suggested that an exemption should be written into Title II of the civil rights bill so that a hypothetical Mrs. Murphy would not have to accept persons she found personally unsuitable into her home. Aiken's formulation proved an acceptable compromise and helped pave the way for the bill's adoption (Wrinn, "Vermont's Perceptions of Expanding Civil Rights," 28). Years later, Aiken's compromise found its way home and into Vermont law.

accommodation/fair housing statute. Acting through its members, it attempted conciliation of those complaints it did receive.

During the administration of Governor Thomas P. Salmon, federal grants intermittently enabled the commission to employ an executive director.⁴⁶ At best, however, the commission's efforts were uneven.

HOFF-LINDSAY PROGRAM

Governor Hoff's interest in civil rights matters was not limited to pursuing fair housing legislation. After reading the report of the 1968 Kerner Commission on Civil Disorders,⁴⁷ he decided that Vermont should play a larger role in healing racial division.⁴⁸ He and New York City Mayor John Lindsay founded the New York-Vermont Summer Youth Project, also known as the Hoff-Lindsay Program. The program brought several hundred African American and Hispanic high school students from New York City ghettos together with Vermont high school students at six sites in Vermont for six weeks in the summer of 1968.⁴⁹ The students worked together on educational and recreational programs, but mostly they just worked on being together.

The project was controversial. Hoff urged Vermonters to support it, issuing a public statement that said in part:

[N]o Vermonter can evade responsibility for the indictment of our society included in the [Kerner Commission's] report. We know that the seeds of the conditions which have led to explosion in the cities exist in Vermont. As Americans and Vermonters, we have a responsibility for the safety and welfare of all this country's citizens.⁵⁰

But the project generated considerable reproach, as well. Criticism ranged from mild disapproval to outright hostility, one writer suggesting in verse:

Hoff wants to bring niggers to the North Country
and wants them to live with you and me,
But as any casual observer can see,
No niggers will be living near his family.

.....

⁴⁶Margaret Lucenti, former chair of the Vermont Human Rights Commission, telephone interview by author, 27 May 1996.

⁴⁷Kerner Commission, *Report of the National Advisory Commission on Civil Disorders* (New York: Bantam Books, 1968).

⁴⁸Hoff, interview; Wrinn, "Vermont's Perceptions of Expanding Civil Rights," 75, citing Stephen Terry, "The Hoff Years," *Rutland Herald*, December 1968-January 1969.

⁴⁹The project was conducted at the University of Vermont (UVM), St. Michael's College; Johnson State College, Lyndon State College, the Ripton Job Corps Center, and St. Johnsbury Academy (*Rutland Herald*, 22 August 1968). Records relating to the project are collected in the NY/VT Project Papers at the Bailey/Howe Library, UVM, Burlington.

⁵⁰Philip H. Hoff, "Vermont's Response: A Commitment to Full Citizenship for Every American" (statement from the Governor's Office, May 1968), NY/VT Project Papers, UVM, Box 1.

So Hoff claims Vermont responsibility,
 For riots that happen down country,
 But he and Lindsay overlook one trifle,
 Every Vermont farmer owns a 30-30 rifle.⁵¹

The project was discontinued as a program of state government by Hoff's successor, Deane C. Davis.⁵²

IRASBURG AFFAIR

Late that summer, the Irasburg Affair shattered any illusion that Vermont was immune from the national sickness of racial hatred. On 4 July 1968 an African American minister, the Reverend David Lee Johnson, moved with his family to Irasburg from California. Moving with the family was a white woman, Barbara Lawrence, and her two children. Around midnight on Friday, 19 July 1968, multiple shotgun blasts raked the Johnson home, shattering several windows. The blasts were fired from a passing vehicle. The vehicle turned around, and two more blasts were fired from it. Johnson returned fire with a Luger pistol.⁵³

The Vermont State Police were promptly dispatched to protect Reverend Johnson. Attorney General James L. Oakes "drove to Johnson's house the day after the shooting to offer Johnson his personal wishes for his safety and to guarantee the state would investigate properly."⁵⁴

But protection became prosecution. Although the state police quickly identified the suspect who was ultimately convicted of the crime (and who had been arrested two weeks before for verbally harassing African American participants in the Hoff-Lindsay Project⁵⁵), their investigation branched out in other directions, including an examination of Johnson's background. One of the troopers assigned to protect Reverend Johnson reported that Johnson had engaged in sexual intercourse with Lawrence. Tipped off by a *Newport Express* reporter that Johnson and Lawrence were fleeing, the state police arrested them⁵⁶ under Vermont's dormant adultery statute.⁵⁷ Lawrence entered a plea of nolo contendere, paid a fine, and returned to California.⁵⁸

On 22 August Oakes's deputy, Francis G. Mahady, obtained a conviction in the shotgunning case as the original suspect, Larry Conely of Glover, pleaded nolo contendere to breach of peace and admitted racial motivation.⁵⁹

⁵¹Wrinn, "Vermont's Perceptions of Expanding Civil Rights," 78, quoting an anonymous letter to Philip Hoff, 21 May 1968, NY/VT Papers, UVM, Box 2.

⁵²Wrinn, "Vermont's Perceptions of Expanding Civil Rights," 85.

⁵³"Chronology: From Victim to Suspect," *Rutland Herald*, 19 July 1988.

⁵⁴"Fear of Racism Remains Today," *Rutland Herald*, 19 July 1988.

⁵⁵Wrinn, "Vermont's Perceptions of Expanding Civil Rights," 79.

⁵⁶"Vermont Press Can't Be Proud of Role in Irasburg Case," *Herald of Randolph*, 17 October 1996.

⁵⁷*Rutland Herald*, 10 August 1968.

⁵⁸*Rutland Herald*, 13 August 1968.

⁵⁹"Fear of Racism Remains Today"; "Chronology: From Victim to Suspect."

The prosecution of Johnson was dropped on 11 September after the state's attorney's efforts to return Lawrence from California to testify failed⁶⁰ and evidence at a pretrial hearing suggested the charges were racially motivated.⁶¹

The controversy was deafening. The nation and the state were in the midst of election campaigns. Representative Emory Hebard, a candidate for the state Senate from Orleans County, charged that Hoff had brought on the event by bringing minority youths to Vermont in the Hoff-Lindsay Program.⁶²

Vermont's commissioner of public safety, Erwin Alexander, publicly expressed doubt that the event was race related and was reluctant to continue police protection of Johnson even as trouble continued in town. Hoff reacted angrily and let it be known that Alexander's job was on the line.⁶³ Although there was mention that the Human Rights Commission might investigate the incident,⁶⁴ ultimately it played no role. Hoff appointed a blue-ribbon commission, chaired by U.S. District Judge Ernest W. Gibson, Jr., to investigate the entire incident, including the role of the state police.⁶⁵

Oakes was in the midst of an unsuccessful campaign for the Republican nomination for governor. His primary opponent, Deane C. Davis, generally refrained from commenting on the matter.⁶⁶ Hoff believes that Oakes's prominence in investigating the Irasburg Affair "had a decided impact in his resounding defeat."⁶⁷ Hoff also insists that his own association with the Vermont-New York Youth Project "finished me politically."⁶⁸ Whether or not these appraisals of the impact of civil rights controversies are correct, it is clear that civil rights initiatives in Vermont took a hiatus with the end of Hoff's administration in 1968.⁶⁹

⁶⁰Angell Explains Role," *Herald of Randolph*, 17 October 1996.

⁶¹*Rutland Herald*, 12 September 1968.

⁶²Wrinn, "Vermont's Perceptions of Expanding Civil Rights," 84, citing *Vermont Sunday News*, 20 July 1968.

⁶³*Vermont Sunday News*, 10 September 1968; "Political Fallout," *Herald of Randolph*, 17 October 1996.

⁶⁴*Vermont Sunday News*, 16 August 1968.

⁶⁵Vermont, Board of Inquiry Investigating the So-Called Irasburg Affair, *Findings and Recommendations of Board of Inquiry Investigating the So-Called Irasburg Affair* (n.p., n.d. [1969?]). Gibson was a former Vermont governor and founder of the state Department of Public Safety.

⁶⁶Although Davis stayed away from the Irasburg Affair, he did not remain entirely silent on civil rights in Vermont, saying at one point: "I hope Vermonters will understand that when Governor Hoff uses the term racist to describe anyone who happens to be confused about his NY-Vt program, he is acting neither in the best interest of the negro community nor of the people of Vermont" (quoted in Wrinn, "Vermont's Perceptions of Expanding Civil Rights," 83, citing an 11 June 1968 press release, NY/VT Project Papers, UVM, Box 1).

⁶⁷"Political Fallout." Stephen Wrinn points out that Oakes lost to Davis by a statewide vote of 36,719 to 21,641, nearly a two-to-one margin. In Orleans County, where Irasburg lies, the totals were 2,314 to 714, more than a three-to-one margin (Wrinn, "Vermont's Perceptions of Expanding Civil Rights," 84 n. 75).

⁶⁸*Ibid.* See also "Fear of Racism Remains Today." Wrinn notes that political pollster John Becker said that "he had never seen a political figure fall so far and so fast in public esteem as Hoff did after 1968" (Wrinn, "Vermont's Perceptions of Expanding Civil Rights," 84 n. 76).

⁶⁹An important exception is the 1971 improvement in the antidiscrimination statutes noted in the section on the Governor's Commission on the Status of Women.

FAIR EMPLOYMENT PRACTICES ACT

In 1975, under the leadership of Chair Margaret Lucenti of Barre, the Vermont Human Rights Commission determined that funding might be available to support antidiscrimination enforcement in Vermont through the deferral program of the U.S. Equal Employment Opportunity Commission (EEOC). The EEOC program permitted states with laws and enforcement structures meeting its standards to investigate employment discrimination complaints themselves for sixty days before any federal involvement.⁷⁰

Acting on this suggestion, Attorney General M. Jerome Diamond established a civil rights unit within his office.⁷¹ Diamond and his staff drafted and lobbied for major revisions of the state's existing antidiscrimination employment practices statute [21 V.S.A. §§ 495–495c]. The product was Vermont's modern Fair Employment Practices Act (FEPA), approved 27 March 1976.⁷²

The new statute deleted exceptions from the prior act relating to national security regulations, family employment, employment requiring persons of a particular sect, and employment in domestic service, substituting the bona fide occupational qualification exception (bfoq).⁷³ This exception permits an employer to engage in disparate treatment (usually based on sex or age) when the employer can demonstrate that an otherwise discriminatory job prerequisite involves the essence of the business and that substantially all persons lacking the prerequisite cannot perform the job or that it would be impossible to deal with employees lacking the characteristic on an individual basis.⁷⁴ One example of a job in which the courts have found gender to be a bfoq has been that of restroom attendants.⁷⁵ Few employers have been able to meet this test.

The new statute also prohibited retaliation against employees for lodging a complaint of discrimination or cooperating with an investigation of discriminatory practices by the attorney general or a state's attorney.⁷⁶

Most important, the new statute established effective enforcement devices for the first time. The attorney general and state's attorneys were empowered to enforce the statute by "restraining prohibited acts, seeking civil penalties, obtaining assurances of discontinuance, and conducting civil investigations in accordance with the procedures established" under the Consumer Fraud Statute

⁷⁰*Valente v. Moore Business Forms, Inc.*, 596 F. Supp. 1280 (D. Vt. 1984). Note that, by contract, Vermont as a deferral state waives the sixty-day, hands-off period. In fact, the EEOC is rarely, if ever, able to conduct an investigation within such a short time.

⁷¹Diamond's predecessor, Attorney General Kimberly B. Cheney, had already initiated involvement in civil rights matters by the office. In 1973 he appointed an assistant attorney general responsible for prosecuting civil rights cases and initiating legislation (letter of Kimberly B. Cheney to editor Michael Sherman, 12 September 1996).

⁷²*Acts and Resolves*, 1975, No. 198 (Adj. Sess.).

⁷³Compare *Acts and Resolves*, 1971, No. 9, § 1 with 1975, No. 198 (Adj. Sess.), § 1.

⁷⁴Charles A. Sullivan, Michael J. Zimmer, and Richard F. Richards, *Federal Statutory Law of Employment Discrimination* (Indianapolis: Michie Co.; Bobbs-Merrill, 1988), § 3.6.

⁷⁵*Brooks v. ACF Industries*, 537 F. Supp. 1122 (S.D. W. Va. 1982).

⁷⁶*Acts and Resolves*, 1975, No. 198 (Adj. Sess.), § 1.

[9 V.S.A. §§ 2458–61].⁷⁷ It authorized the courts to impose those civil penalties upon violators, together with investigative costs and other relief, for the benefit of the state or the aggrieved employee. Those remedies included provision for treble damages and attorney's fees.⁷⁸ In addition, the statute authorized courts to order restitution of wages or other benefits on behalf of an employee and to order reinstatement and "other appropriate relief."⁷⁹

With adoption of the Fair Employment Practices Act came deferral status under EEOC regulations and federal funding for state civil rights enforcement. The attorney general was able to fund a staff of two attorneys and two investigators to process complaints.⁸⁰ In 1979 the attorney general's office litigated the first case under FEPA before the Vermont Supreme Court. Though the attorney general lost, the Vermont Supreme Court recognized that the act was patterned after Title VII of the federal Civil Rights Act of 1964 and that the standards and burdens of proof developed under Title VII could be used to help interpret it.⁸¹

In 1981 FEPA was expanded again. The new revisions did three things: (1) they included age discrimination as to persons eighteen years of age or older, (2) they expressly extended a private right of action to persons subjected to discrimination, and (3) they protected qualified handicapped individuals from discrimination.⁸² The statute defined as a "qualified handicapped individual" a person capable of performing the essential functions of a job "with reasonable accommodation to his handicap."⁸³ These protections were patterned after similar safeguards provided to employees of federal contractors under Section 503 of the Rehabilitation Act of 1973.⁸⁴ It is the same basic pattern followed by Congress when it adopted the Americans with Disabilities Act in 1990.⁸⁵

HUMAN RIGHTS COMMISSION REVITALIZED

Although the deferral contract with EEOC permitted a new level of activity in civil rights matters by the Attorney General's Office, it left the Vermont Human Rights Commission moribund. The commission did little, if anything, from the mid-1970s until it was replaced in 1987.⁸⁶

⁷⁷Ibid., § 2.

⁷⁸9 V.S.A. §§ 2458–61.

⁷⁹*Acts and Resolves*, 1975, No. 198 (Adj. Sess.), § 2.

⁸⁰James S. Suskin, first assistant attorney general for civil rights, interview by author, 10 May 1996.

⁸¹*State v. Whitingham School Board*, 138 Vt. 15, 17, 410 A.2d 996 (1979).

⁸²*Acts and Resolves*, 1981, No. 65, §§ 1, 2.

⁸³Ibid., § 3.

⁸⁴*Rehabilitation Act of 1973*, Pub. L. No. 93-112, 87 Stat. 355 (1973), 29 U.S.C. § 791. See *Mancini v. General Electric Co.*, 820 F. Supp. 141 (D. Vt. 1983).

⁸⁵*Americans with Disabilities Act of 1990*, Pub. L. No. 101-336, 104 Stat. 327 (1990), 42 U.S.C. § 12101 et seq.

⁸⁶The last gubernatorial appointment to the former Human Rights Commission was made in 1976 (1987–88 *Vermont Legislative Directory and State Manual* [Montpelier, Vt.: Secretary of State, 1988], 495); Margaret Lucenti, telephone interview by author, 4 June 1996.

Movement toward revitalization of the Human Rights Commission began with a hearing before the Vermont Advisory Committee to the U.S. Commission on Civil Rights in September 1986.⁸⁷ There was near unanimous agreement among those testifying that a strong Human Rights Commission was needed in Vermont.⁸⁸ Former Governor Hoff, a member of the advisory committee and then state senator, was instrumental in arranging to have legislation to revitalize the commission endorsed by eighteen state senators.⁸⁹ Supporters of the legislation cited a number of incidents as demonstrating the need for the legislation. These included allegations that an African American assistant attorney general had left the state after years of unsuccessful efforts to find a job with a private law firm, that an African American student in Bradford was called "sambo" and prevented from dancing with a white student, that an African American man in Putney had been the object of a cross burning and had been shot at while jogging, and that African American and white actors and actresses filming a commercial in Enosburg had been prevented from dancing together.⁹⁰

By 25 May 1988 a new statute was adopted and a new human rights commission established.⁹¹ The legislation authorized the hiring of an attorney as a full-time executive director and the appointment of a compliance officer, an investigator, and a secretary, all as full-time, exempt state employees.⁹² That same year, the legislature adopted statutes concerned with antidiscrimination in public accommodations and fair housing.⁹³ The statutes, which form the basis of the present law, broadly prohibit discrimination in public accommodations and housing based upon race, creed, color, national origin, marital status, sex, or actual or perceived disability. The law permits a person aggrieved by a violation of the statute to bring a charge before the commission or to commence a private lawsuit seeking an injunction (a court-ordered end to illegal activity), compensatory and punitive damages, and other appropriate relief. It also allows the court to award reasonable costs and attorney's fees to an aggrieved prevailing party.⁹⁴

The new Human Rights Commission statute provides for five members appointed by the governor to five-year terms, no more than three of whom may be of the same political party.⁹⁵ The commission is authorized to "increase awareness of the importance of full civil and human rights for each inhabitant of this state" through public education, to evaluate the effectiveness of the law as well as "the existence of practices of discrimination which detract from the enjoyment of full civil and human rights," and to recommend measures to protect

⁸⁷U.S. Commission on Civil Rights, Vermont Advisory Committee, *Civil Rights Enforcement in Vermont: A Summary Report* (Montpelier, Vt.: The Committee, September 1987).

⁸⁸"Kunin Endorses Human Rights Panel," *Rutland Herald*, 19 January 1988.

⁸⁹"Senators Back Creation of Rights Commission," *Rutland Herald*, 15 January 1988; Judith Stephany, former special assistant to Governor Kunin, interview by author, 16 September 1996.

⁹⁰"Senators Back Creation of Rights Commission."

⁹¹*Acts and Resolves*, 1987, No. 234 (Adj. Sess.).

⁹²*Ibid.*, § 4.

⁹³*Ibid.*, 1987, No. 74.

⁹⁴9 V.S.A. § 4506(a)(b).

⁹⁵9 V.S.A. § 4551(a).

those rights.⁹⁶ The commission is empowered to investigate and enforce complaints of unlawful discrimination in public accommodations, the rental and sale of real estate, and also employment when the party complained against is a state agency.⁹⁷ The commission's enforcement powers include the power to subpoena witnesses to testify and to compel the production of records.⁹⁸ After a preliminary investigation, the commission determines "whether there are reasonable grounds to believe an unlawful discrimination has occurred."⁹⁹ If it concludes that there is such discrimination, the commission is required, in cases in which it determines there is no emergency, to endeavor to eliminate the discrimination by informal means such as conference, conciliation, or persuasion.¹⁰⁰ The commission is also empowered to bring actions in the name of the state to enforce the law.¹⁰¹

SEXUAL ORIENTATION

The opening shot of what turned out to be a five-year campaign for equal rights for gays and lesbians was fired in February 1987, when eleven members of the Vermont House of Representatives introduced legislation to proscribe discrimination based on "affectional or sexual orientation."¹⁰² Legislation to prohibit discrimination based on positive HIV tests was introduced at the same time. The legislation was supported by Vermont's gay and lesbian community, which presented survey information showing that nearly all homosexuals had experienced some form of discrimination. As many as 84 percent of the survey respondents claimed they had been subjected to violence or intimidation.¹⁰³ Opponents argued that discrimination against gays and lesbians was exaggerated and that they did not deserve special protection.¹⁰⁴ After being recommended by the House Judiciary Committee, the legislation was committed to a second House committee for further study by a vote of ninety-four to forty-two, assuring that it would not see further action that year.¹⁰⁵

During 1988, the second year of the biennium, an early victory was attained when FEPA was amended to establish employee protection from discrimination based on positive HIV-related blood tests.¹⁰⁶ The act also prohibited discrimina-

⁹⁶9 V.S.A. § 4552(a).

⁹⁷9 V.S.A. § 4552(b).

⁹⁸9 V.S.A. § 4553(a)(5).

⁹⁹9 V.S.A. § 4554.

¹⁰⁰*Ibid.*, (e).

¹⁰¹9 V.S.A. § 4553.

¹⁰²David Karvelas, "Gay-Rights Bill to Be Introduced in State Legislature," *Burlington Free Press*, 10 February 1987, 1B.

¹⁰³*Ibid.*

¹⁰⁴David Karvelas, "Debate Over Gay Rights Intensifies," *Burlington Free Press*, 7 April 1987, 1B.

¹⁰⁵David Karvelas, "Gay Rights Legislation Sidetracked by House," *Burlington Free Press*, 9 April 1987, 1A.

¹⁰⁶*Acts and Resolves*, 1987, No. 176 (Adj. Sess.), §§ 1-3.

tion based on HIV status by schools and health care providers.¹⁰⁷ The Senate approved a broad antidiscrimination bill, but it died without further action in the House.¹⁰⁸

The legislation again came to the House in 1988, and this time saw full floor debate. It was rejected by a coalition of Republicans and conservative Democrats, eighty-six to fifty-five.¹⁰⁹

In 1990 another step toward success was taken with passage of H. 504, the so-called hate crimes bill. The legislation provided for enhanced penalties whenever a criminal act was motivated by the minority status, including homosexuality, of a victim.¹¹⁰ During Senate Judiciary Committee hearings on the legislation, Senator David Wolk became convinced of the need for broad-based antidiscrimination legislation to protect homosexuals.¹¹¹

Wolk became the legislation's principal sponsor in the final push to its adoption. He introduced S. 131 in February 1991. Referred to the Senate Judiciary Committee, it remained bottled up in that committee due to the opposition of the committee chair, Senator John Bloomer. In 1992, grateful for Wolk's support of a constitutional amendment on bail, Bloomer agreed to permit a hearing and vote on the so-called gay rights legislation as a favor to Wolk.¹¹² Although Bloomer voted against the legislation, it was approved by the committee by a vote of four to two.¹¹³ In Wolk's floor speech in support of the legislation, he referred to Vermont's civil rights tradition¹¹⁴ and used reports of discrimination based on sexual orientation collected by the Vermont Human Rights Commission.¹¹⁵ The bill passed the Senate by a vote of twenty to nine.¹¹⁶

But the fight was far from over. Debate on the House side of the legislature featured a dramatic floor speech by the only openly gay member of the legislature, Representative Ronald Squires of Guilford. He bided his time during the debate and then rose to tell his colleagues:

I cannot tell you how I felt as this body debated whether or not I had the same privileges as the other 149 members of this [h]ouse and 30 members of the body across the hall. . . . This bill is not about special

¹⁰⁷*Ibid.*, §§ 4, 5.

¹⁰⁸James E. Bressor, "Legislators Reject Gay Rights Bill," *Burlington Free Press*, 26 April 1989, 1A.

¹⁰⁹*Ibid.*

¹¹⁰*Acts and Resolves*, 1989, No. 172 (Adj. Sess.); 13 V.S.A. §§ 1454-67.

¹¹¹David Wolk, interview by author, 16 November 1996.

¹¹²*Ibid.*

¹¹³Andrea Zentz, "Senate Committee Favors Gay-Rights Legislation," *Burlington Free Press*, 5 March 1992, 5B.

¹¹⁴"This bill is about an ongoing battle for civil rights in Vermont, a state which was the first to prohibit slavery in its Constitution and a state which could become the sixth in the country to prohibit discrimination based upon one's sexual orientation" (Senator David Wolk, quoted in Susan Allen, "Discrimination Complaints Heard," *Burlington Free Press*, 25 December 1992, 2B).

¹¹⁵David Wolk, "Remarks in Support of S. 131, the 1992 Civil Rights Anti-Discrimination Bill, 31 March 1992" (copy of speech in author's possession). See also Andrea Zentz, "Gay-Rights Measure Wins Nod from Senate," *Burlington Free Press*, 1 April 1992, 1B.

¹¹⁶"Roll Call of Senate Votes on the Gay-Rights Bill," *Burlington Free Press*, 1 April 1992, 2B.

privileges or rights. It's about giving gay men and lesbians the same rights that you all have.¹¹⁷

The bill received preliminary approval on Friday by a vote of seventy-one to fifty-eight. The intervening weekend saw furious efforts to stop the legislation. The bill was apparently the subject of Sunday sermons in churches across the state. Some legislators complained of flag burnings, threats, and hate mail.¹¹⁸ The bill received final approval on a seventy-three-to-sixty-seven vote on the following Monday.¹¹⁹ Even then it was not over. On Tuesday a legislator who had voted for the bill moved to have the House reconsider it. After a half-day of maneuvering, the motion failed by a vote of eighty to sixty-seven.¹²⁰

Minor changes had been made in the legislation by the House.¹²¹ The Senate accepted the changes wholesale rather than risk further controversy in a committee of conference.¹²² Governor Howard Dean signed the legislation, *An Act Relating to Discrimination on the Basis of Sexual Orientation*, on 23 April 1992 at a signing ceremony announced at the last moment to avoid a confrontation with opponents.¹²³

The act identified sexual orientation as a protected classification under the full panoply of Vermont's antidiscrimination laws, including FEPA, 21 V.S.A. § 495; the public accommodations and real estate statutes, 9 V.S.A. §§ 4502(a) & 4503(a); and others. The statute even defines household members for the purpose of determining whether the abuse prevention laws apply as including "persons living together or sharing occupancy and persons who have lived together in a sexual relationship."¹²⁴ The statute exempts religious organizations from some discrimination prohibitions, permitting them to give preference to persons of the same religion or denomination in employment or to take action with respect to matters of employment "which is calculated by the organization to promote the religious principles for which it is established and maintained."¹²⁵

Adoption of the Civil Rights Act of 1992 closed one of the most controversial chapters in the history of civil rights legislation in Vermont. The *Burlington Free Press* called it "perhaps the bravest vote any legislator cast this year" and noted that support for the bill probably contributed to the defeat of some

¹¹⁷Andrea Zentz, "Gay Rights Wins House Approval," *Burlington Free Press*, 11 April 1992, 1A.

¹¹⁸Andrea Zentz, "Lawmakers Faced Sermons, Vandals during Rights Vote," *Burlington Free Press*, 16 April 1992, 1A.

¹¹⁹Andrea Zentz, "Gay-Rights Bill Clears House," *Burlington Free Press*, 4 April 1992, 1B.

¹²⁰Andrea Zentz, "Vote on Gay Rights Upheld," *Burlington Free Press*, 15 April 1992, 1B.

¹²¹Andrea Zentz, "Gay-Rights Bill Moves to House," *Burlington Free Press*, 10 April 1992, 4B. Changes were made to the definitions of *sexual orientation* and *household members*, and to clarify that the bill would not require that group insurances cover life partners.

¹²²Zentz, "Lawmakers Faced Sermons, Vandals"; Wolk, interview.

¹²³*Acts and Resolves*, 1991, No. 135 (Adj. Sess.); Andrea Zentz, "Gay-Rights Bill Signed by Gov. Dean," *Burlington Free Press*, 24 April 1992, 3B; Wolk, interview.

¹²⁴*Acts and Resolves*, 1991, No. 135 (Adj. Sess.), § 14.

¹²⁵*Ibid.*, § 15.

legislators.¹²⁶ Senator Wolk's sponsorship of the legislation "dogged" his unsuccessful campaign for lieutenant governor later that year.¹²⁷

PROTECTION FOR INDIVIDUALS WITH DISABILITIES

In 1992 Vermont's antidiscrimination statutes were again revised as Vermont law was amended to be consistent with the Americans with Disabilities Act (ADA) [42 U.S.C. § 12101 et seq.]. The legislature added language to the discrimination and public accommodations statute to prohibit discrimination by owners and operators of public accommodations based on a handicap or disability.¹²⁸

The legislation specified that its intent was to implement the ADA and that it was to be construed so as to be consistent with it.¹²⁹ The statute requires that public accommodations be afforded to disabled individuals "in the most integrated setting which is appropriate for the needs of the individual," including requiring "reasonable modifications in policies, practices, and procedures that do not fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations offered." It requires places of public accommodation having architectural or communications barriers to remove those barriers "if removal is readily achievable" or make their facilities available through alternative methods.¹³⁰

SEXUAL HARASSMENT

In 1993 the Fair Employment Practices Act was amended to add language prohibiting sexual harassment. The Vermont Human Rights Commission and the Civil Rights Division of the Office of the Attorney General were the lead organizations pursuing amendment of the law.¹³¹ Since as a matter of legal theory, sexual harassment is a form of sex discrimination,¹³² the statute did not, strictly speaking, represent the extension of a new substantive right. However, it does expressly acknowledge the obligation of employers to maintain a workplace free of sexual harassment.¹³³ The law requires each employer to adopt a policy against sexual harassment, post in the workplace a description of the

¹²⁶Meg Dennison, "Gay-Rights Vote Called Bravest of '92 Session," *Burlington Free Press*, 31 December 1992, 4B.

¹²⁷Ross Sneyd, "Backlash Is Seen Over Gay Rights," *Rutland Herald*, 18 June 1992.

¹²⁸*Acts and Resolves*, 1991, No. 243 (Adj. Sess.).

¹²⁹*Ibid.*, § 5; 9 V.S.A. § 4500.

¹³⁰*Ibid.*, § 3; 9 V.S.A. § 4502.

¹³¹Susan Sussman, Esq., former executive director of the Vermont Human Rights Commission, interview by author, 30 September 1996.

¹³²See *Meritor Savings Bank, FSB v. Vinson*, 447 U.S. 57 (1986), which states that to be actionable, sexual harassment must "alter the conditions of [the victim's] employment and create an abusive working environment." See also *Harris v. Forklift Systems, Inc.*, 510 U.S. 17 (1993).

¹³³*Acts and Resolves*, 1993, No. 39, § 4.

policy, and provide all employees with a copy of the policy. The statute also encourages education and training programs for employees.¹³⁴

GOVERNOR'S COMMISSION ON WOMEN—THE PRESENT STRUCTURE

The Governor's Commission on the Status of Women was reconstituted and renamed the Governor's Commission on Women by Governor Madeleine Kunin on 10 January 1986.¹³⁵ After meeting in members' living rooms during its first nine years, it has now become an integrated part of Vermont state government. The commission consists of sixteen commissioners appointed by the governor and an advisory council representing approximately thirty different women's organizations. Advisory council members act as liaisons between the organizations and the commission. The commission has a staff of three full-time and two part-time employees. In fiscal year 1995 it had a total general fund state appropriation office budget of \$170,575,¹³⁶ and administered state and federal grants totaling \$625,986.¹³⁷

The commission operates a direct service information line providing counseling, information, research, and advocacy. It also pursues legislative development and advocacy. In recent years, the commission has been active in supporting the successful effort to amend the Vermont Constitution to make its language gender inclusive; pursuing antisexual harassment legislation; and advocating changes in the criminal law designed to protect women and children, such as making domestic violence criminal, adopting an antistalking statute, and amending the abuse prevention act.¹³⁸

The commission administers grants for state domestic violence and sexual assault programs and promotes public education and outreach through workshops, conferences, speaking engagements, and publications such as *The Legal Rights of Women in Vermont*, *Women and Economic Development in Vermont*, and *Sexual Harassment in the Workplace: A State Prevention Model*. Although the commission remains controversial, it survived efforts during the 1996 legislative session to eliminate its budget.

HUMAN RIGHTS COMMISSION TODAY

The primary focus of the Human Rights Commission's activities has been enforcement of the antidiscrimination laws within its areas of jurisdiction: the sale and rental of housing, places of public accommodation, and state employment. The commission also operates as a clearinghouse for individuals who

¹³⁴Ibid.

¹³⁵Vt. Exec. Order No. 20.

¹³⁶Vermont, Governor's Commission on Women, *Annual Report of the Governor's Commission on Women, 1995* (Montpelier: The Commission, 1995), 20.

¹³⁷Ibid.

¹³⁸Vermont, Governor's Commission on Women, "Accomplishments of the Last Five Years" (legislative briefing sheet, Montpelier, Vt., 1996[?]).

believe they have suffered human rights violations. It records claims and, when appropriate, refers claimants to other organizations and private attorneys.¹³⁹

In 1995 the staff consisted of an executive director, an investigator, and an administrative assistant. For part of the year, the commission had a second investigator. The commission processed twenty-three charges of housing discrimination, twenty-two charges of discrimination in places of public accommodation, and twelve charges of discrimination in state employment. The commission brought two lawsuits during fiscal year 1995 as co-counsel to private attorneys representing individual plaintiffs and participated in five previously filed lawsuits.¹⁴⁰

Since 1994 the commission has been the subject of considerable legislative contention. A joint legislative committee, the Legislative Committee on Civil Rights Enforcement, was formed during that session. The committee focused largely on the Human Rights Commission. After taking substantial public testimony, the committee issued a final report acknowledging the value of the commission's work and supporting its continuation as an independent agency rather than recommending that it be abolished or merged with the Attorney General's Office.¹⁴¹ The committee recommended that the commission amend its procedural rules to demonstrate balance and fairness in reaching its determinations.¹⁴²

The commission has adopted rule changes, including providing more time for parties wishing to make presentations to the commission, requiring notice to all parties within six months following final determination by the commission as to whether the commission will pursue litigation or close a case, and expanding the notice rights of the parties before the commission.¹⁴³ The 1996 legislature continued to consider legislation proposing major changes in the commission, but none were adopted.

CIVIL RIGHTS UNIT OF THE OFFICE OF THE ATTORNEY GENERAL

The Civil Rights Unit is an element within the Public Protection Division of the Office of the Attorney General. It is the Vermont "deferral agency" under Section 706 of the Civil Rights Act of 1964, as amended. The unit contracts with the federal government to process charges of discrimination to the EEOC, within the scope of EEOC jurisdiction under Title VII; the ADA; the Equal Pay Act; and the Age Discrimination in Employment Act. The EEOC pays the state five hundred dollars per charge investigated and processed. These cases are called "dual-jurisdiction" cases in that they allege violation of both federal and state

¹³⁹Vermont, Human Rights Commission, *Annual Report of the Human Rights Commission, 1995* (Montpelier: The Commission, 1995).

¹⁴⁰*Ibid.*

¹⁴¹Vermont, General Assembly, *Report of the Legislative Committee on Civil Rights Enforcement* (Montpelier, March 1995), 1.

¹⁴²*Ibid.*, 23.

¹⁴³Vermont, Human Rights Commission, *Annual Report, 1995*.

employment discrimination laws. The unit's decisions are subject to review by the EEOC to determine whether they are supported by the substantial weight of the evidence.¹⁴⁴

The Civil Rights Unit's staff consists of an assistant attorney general, two investigators, and one administrative assistant.¹⁴⁵ The unit has a total budget approaching \$200,000. In the year ending 14 May 1996, the unit resolved 102 cases with an average processing time of 420 days. During the same time period, 126 new cases were filed. Nearly one-half of the dual-jurisdiction caseload involved allegations of sex discrimination, one-third involved allegations of disability discrimination, and almost 16 percent of the charges alleged age discrimination. Less than 6 percent of the allegations charged race discrimination, and just over 5 percent of the allegations alleged discrimination based on national origin.¹⁴⁶ Most of the "state-only" jurisdiction cases fall within the general scope of the federal antidiscrimination statutes but are beyond EEOC jurisdiction because of the small numbers of persons in the employ of the employer.

The unit considers itself charged primarily with an investigative role. It does, however, occasionally litigate cases against defendant employers and generally has three to four cases pending in litigation at any one time.¹⁴⁷

In March 1993, after a period of reduced staffing, the unit administratively dismissed between 150 and 200 unprocessed charges in an effort to reduce a lengthy backlog of cases prior to investigation. The office has initiated a voluntary mediation program, bringing in the services of mediators on selected cases soon after they are filed.¹⁴⁸

CONCLUSION

The pattern described represents a broad structural framework of legal protection against invidious discrimination. Although many states have antidiscrimination laws that are more developed, few, if any, provide broader coverage and remedies. In addition to the major statutes already discussed, Vermont law prohibits discrimination in state employment, 3 V.S.A. §§ 961(8) & 963 (race, color, creed, sex, sexual orientation, age, or national origin); banking, 8 V.S.A. §§ 1211(a) & 1302(2) (sex, marital status, race, color, religion, national origin, age, sexual orientation, or handicapping condition); insurance, 8 V.S.A. § 4724(7)(B) (sex, sexual orientation, or marital status); motor vehicle retail installment contracts, 9 V.S.A. §§ 2362 & 2410 (sex, sexual orientation, marital status, race, color, religion, national origin, age, or handicapping condition);

¹⁴⁴Seth Steinzor, assistant attorney general for civil rights, telephone interview by author, 4 June 1996.

¹⁴⁵Vermont, Attorney General's Office, Civil Rights Unit, "Fact Sheet" (prepared for the Vermont Advisory Committee to the United States Commission on Civil Rights, 16 May 1996).

¹⁴⁶*Ibid.*

¹⁴⁷Steinzor, interview.

¹⁴⁸*Ibid.*

agricultural finance leases, 9 V.S.A. § 2488 (sex, sexual orientation, marital status, race, color, religion, national origin, age, or handicapping condition); housing finance, 10 V.S.A. § 601 (race, creed, national origin, sex, or sexual orientation); and municipal employment, 21 V.S.A. §§ 1726(a)(7) & 1726(b)(9) (race, color, religion, creed, sex, sexual orientation, national origin, age, or political affiliation).

The Human Rights Commission and the Civil Rights Unit of the Office of the Attorney General, supplemented by an active bar of claimants' attorneys, particularly for employment cases, are the main elements of Vermont's civil rights enforcement efforts. These agencies face caseloads that exceed available resources. Private rights of action permit claimants to attempt to vindicate their rights in court without the involvement of either state agency. Vermont, unlike most states, does not require the utilization of procedures provided by either of these law enforcement agencies before individuals can pursue private litigation. Accordingly, the Vermont agencies do not fulfill a screening function for discrimination claims under Vermont law.

It would be unrealistic to expect that these small governmental agencies could deal with every claim of discrimination arising within the state on a timely basis. To some extent, the existence of unfettered access to the courts for aggrieved parties safeguards against long agency backlogs. This protection is more or less effective, depending on the economic feasibility of private litigation. Because employment discrimination is likely to have evident and significant economic consequences, employment claimants are more successful using private remedies than those claiming public accommodations or housing discrimination.

Even with effective private remedies, governmental involvement in civil rights enforcement remains important. Many cases that would exhaust the financial resources of individuals have too much significance to be ignored, for they are of consequence not only to the claimants but also to the development of the law or the public perception of effective civil rights enforcement.

Beyond handling particular cases, participation in civil rights matters by commissioners and professional staff from the Human Rights Commission, the Governor's Commission on Women, and the Civil Rights Unit of the Office of the Attorney General has greatly influenced the development of state law. The existence of persons within state government who have practical experience with civil rights problems has influenced the policy-making process of all three branches of Vermont government.

With nearly forty years of experience in legislating and adjudicating disputes over civil rights, Vermont has made a deep public policy and institutional commitment to the enforcement of civil rights. Whether the state will continue to honor that commitment in the future depends in large measure on how it shapes the role and resources of governmental involvement in continued enforcement.