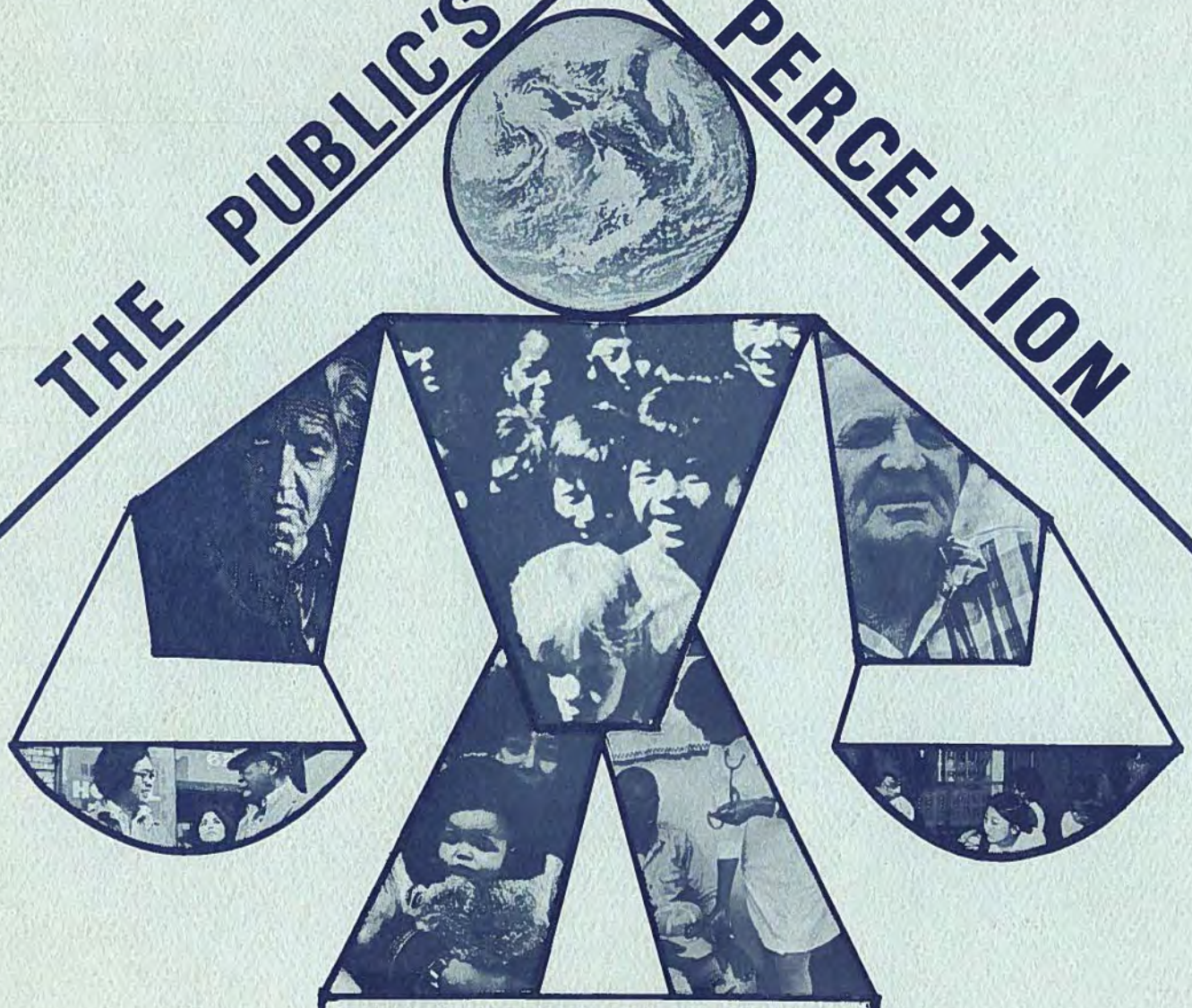
THE PUBLIC'S PERCEPTION



Alaska State Commission for Human Rights

A FUNDAMENTAL CIVIL RIGHTS PROBLEM - 1977 Annual Report

STATE OF ALASKA

HUMAN RIGHTS COMMISSION

JAY S. HAMMOND, GOVERNOR

204 East 5th Avenue
Room 213
Anchorage, Alaska 99501
Phone: 276-7474

December 22, 1977

The Honorable Jay Hammond
Pouch A
Juneau, AK 99811

Dear Governor Hammond and Members of the Legislature:

In compliance with AS 18.80.150, the Alaska State Commission for Human Rights is pleased to present its 1977 Report to the Legislature.

We believe it is significant that the Human Rights Law requires the Commission to prepare a report for each member of the Legislature "on civil rights problems it has encountered in the preceding year." This enactment is testimony to the high priority which the Legislature gives to our State's constitutional equal rights guarantees. The Human Rights Law implements this constitutional provision.

We have, therefore, endeavored to prepare a report which takes this legislative mandate somewhat more literally than in years past. This is not a report of bureaucratic achievements; it is our analysis of the major issues of discrimination which we believe to be pending in Alaska today. In some instances we have recommended legislative action, but our general theme is that primary attention must be paid to educating all of the public in this State to its rights and obligations under the law. This goal the Commission has adopted as its priority for the coming year, if the Legislature votes its support.

On behalf of all members of the Commission, let me express our appreciation for the support you have given the Commission to date, and our pledge to advance the fair administration of the Human Rights Law through the coming year.

Sincerely,

John Gonzales
Chairman

JG:pr

Enc.

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TABLE OF CONTENTS

CHAPTER 1
The Public's Perception--A Fundamental Civil Rights Problem

Imagine a conversation with the personnel director of a typical company in Anchorage:

"We have never had a real problem hiring capable workers," the director explains. "At our main office in the city, people routinely stop in to ask about jobs. They know about openings from friends and relatives who work for the company. They fill out application forms. They are tested, and if all looks favorable, someone in the employment office interviews them.

"A Department manager usually makes the final decision," the director continues.

"Factored into our decision are the applicants' work records, as revealed by reference checks. The company is concerned with how each applicant will fit in with the overall 'team effort'. We explore these personal considerations with each applicant. 'The best person for the job' is hired."

Out in the field, hourly workers are referred from union hiring halls. Collective bargaining agreements spell out all procedures to be followed.

Throughout the organization, company personnel rules govern a myriad of employment actions. Performance standards, discipline, fringe benefits, salary scales, retirement policies, and so on are the bread-and-butter of the personnel department. That department also has a specialist on equal employment opportunity. The authority for this activity comes from the company chief executive, who has put in writing the company's commitment to this national objective.

A few people in the company are known to be less than sympathetic to minority people and to the rising aspirations of women. The company respects their private views, but would take firm action if they carried them out. Managers make efforts to anticipate the kinds of problems such people can cause. The equal employment officer finds that a good part of that job involves identifying such people and trying to limit their authority.

Seemingly out of the blue, the company finds itself the object of lawsuits and administrative actions charging it with discrimination! The company is amazed. Called into question are its methods of hiring people both at headquarters and in the field, work rules, pay schedules, and many other policies and practices. To company officials, the attack seems misdirected.

"We are no worse than most other business," they say. "To imply that our leadership, overtly or subtly, is racist and sexist is absurd!"

A battle of epic proportions looms.

Why?

The Primary Issue

The answer, we believe, points toward the single most important civil rights problem which has faced the Human Rights Commission during 1977.

That problem: The general lack of understanding of what discrimination really is. In spite of educational efforts, agency interpretations, and a blizzard of court decisions which have formed one of the strongest bodies of law in this country, the public still remains largely unaware of what conduct is prohibited by the Human Rights Law.

This hypothetical company, for instance, sees discrimination as overt acts of racial bias. It cannot understand that its employment system--and virtually every element of it--may be inherently discriminatory. The company assumes that its generally poor record of hiring minorities and women, particularly in responsible positions, is caused by a lack of skills or an unwillingness to apply on the part of minorities. The company fails to see how its "neutral" system can violate the law and even work against its legitimate business interests.

Most people recognize, and will spurn, discrimination which presents itself overtly. If it is clear that an individual's race, sex, handicap, age, etc., is used against him or her, people will shun the practice. The American dream is for people to have an equal opportunity to fulfill their destinies without irrelevant factors--many of which they can do nothing to change--being used against them.

The Customary Way

It is far more difficult for people to accept the idea that the customary way of doing things can also be held discriminatory, and against the law.

America is not far removed from the time when its fundamental documents, the Constitution and the laws of the nation, created discrimination. In voting, in education, in employment, and in most of society's benefits, minorities and women, under color of law, were denied fundamental rights.

Those times have changed. Overtly discriminatory laws have been removed from the books. Many of them have been replaced by laws which specifically protect the rights of all. Where blacks, indians and women used to be denied the right to vote (and were not even counted in the census), the Constitution now specifically guarantees the voting privileges of all. Where local law and custom used to segregate school children, federal law now grants equal educational opportunity. The same types of protective laws now govern practices in employment, housing, credit, public accommodations and access to government services.

Still, the elimination of legally-enforceable discrimination has not produced a non-discriminatory society. Instead, where discrimination used to be enforced by law, it has now gone underground. Many of the same practices still exist, but appear more subtly in the form of "institutional racism and sexism". That phrase triggers emotions. But in its most neutral sense, it means that the customary way of doing things often tends to work to the disadvantage of identifiable groups of persons. Where there is some rational basis for these customs, they sometimes can be justified. Many times they cannot. Instead, it can often be shown that today these customs serve no good purpose at all. They only serve as artificial exclusionary barriers to minorities, women and other groups which modern laws seek to protect.

"Immigrants! My whole family's been having nothing but trouble with immigrants ever since we came to this country."
finian's rainbow

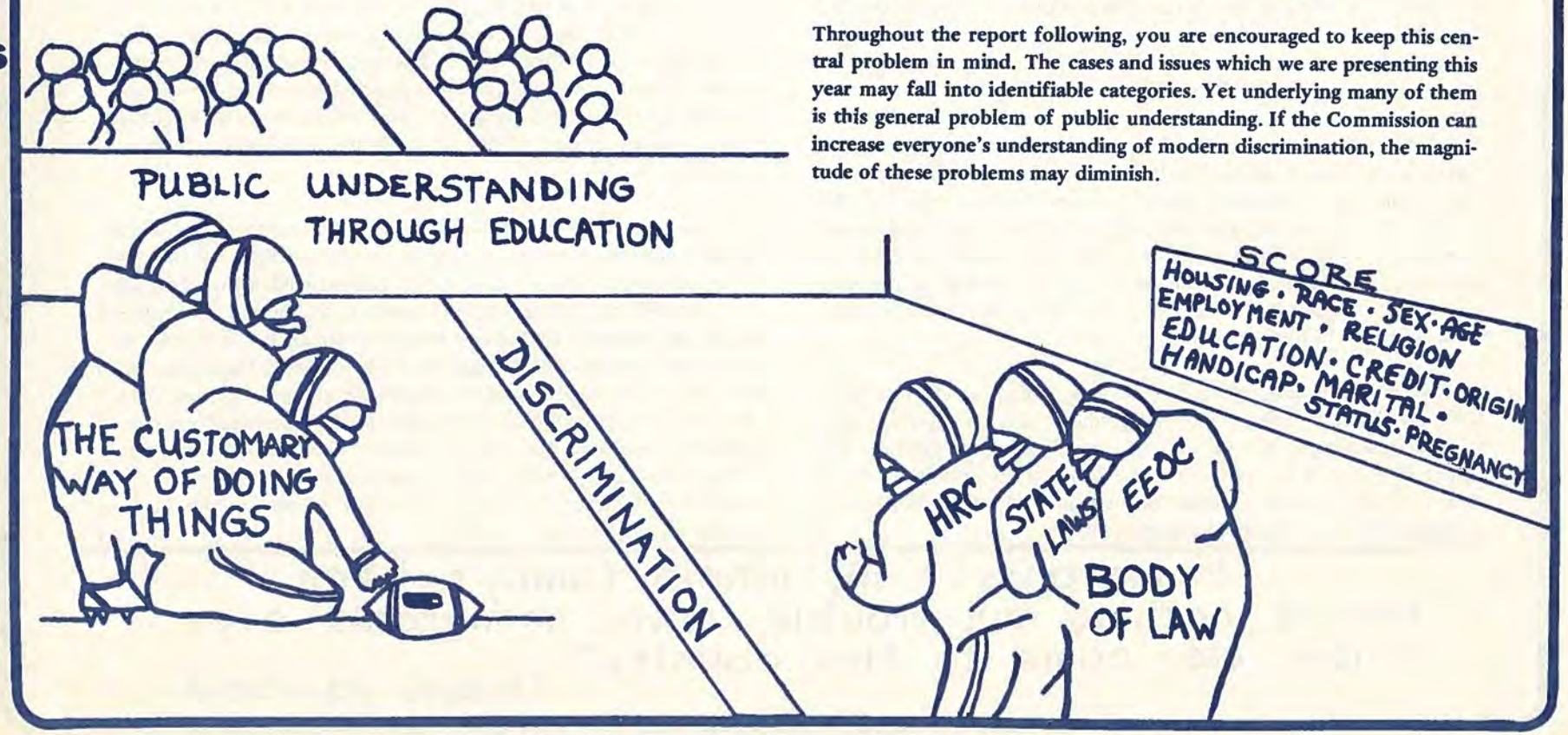
A company's customary way of hiring people might be charged as discriminatory. The total set of practices might be challenged in one case, or individual practices may be questioned in a succession of cases. The fight begins because of the company's inability to perceive that, as a matter of law, it is practicing discrimination. Instead of identifying exclusionary practices which serve no legitimate business purpose--and eliminating them voluntarily--the company sits by until those practices come under fire in equal opportunity litigation. The company resists because of its mistaken belief that it must protect the preferred place which men and whites have enjoyed through the exclusion of other people.

Backlash: Hence the intense public interest in the Bakke case. A white medical school applicant is rejected in the favor of a minority candidate. The school appears to admit that the white applicant is "more qualified". Much of the public sympathizes with **Bakke's** claim because people think that the discrimination of the past has, in fact, been eradicated. They believe that minorities and women in modern times should not receive unfair advantages because of their status. An equally compelling argument suggests that institutional discrimination still puts such minority people at a distinct disadvantage, while serving no legitimate purpose.

Our purpose here is not to speculate on the Supreme Court's forthcoming decision, but to observe, with a measure of dismay, the response of large segments of the public to the case. To us, the backlash we may be witnessing speaks eloquently of the public's continuing lack of understanding of how modern discrimination works.

Public Understanding

Throughout the report following, you are encouraged to keep this central problem in mind. The cases and issues which we are presenting this year may fall into identifiable categories. Yet underlying many of them is this general problem of public understanding. If the Commission can increase everyone's understanding of modern discrimination, the magnitude of these problems may diminish.



CHAPTER 2
Public Education--The Commission's Response

The fundamental civil rights problem which the Commission encountered in 1977 is the public's general unawareness of how modern day discrimination manifests itself. Can the Commission communicate how "the customary way of doing things" has enshrined discriminatory practices which used to be legally sanctioned in this country?

The Commissioners' answer has been to vote for public education as their number one priority in Fiscal Year '79. This is a major commitment.

The first step is to obtain the resources to carry out public education. Recently, the Commission's energy has been largely devoted to addressing problems of discrimination through cases filed by individuals and by the agency itself. In their resolution to make a priority of education, the Commissioners simultaneously directed that the agency's attention to cases be maintained. Thus, energies must be devoted to obtaining new resources to support this educational program.

Some educational activities require no new resources. For instance, staff members regularly travel throughout Alaska to investigate complaints. They have simply increased the time they devote to meeting with community groups, discussing issues of discrimination with community leaders, appearing on radio, T.V. and in the newspapers. The Commission's director hosts a weekly program in Anchorage on current human rights matters. Staff members have taught classes in schools and at the university level. The Commission is actively developing more invitations.

A federal grant under the Comprehensive Education and Training Act from the Municipality of Anchorage has enabled the Commission to obtain a commerical artist and a public information specialist through June, 1977. Their assignment is to create a comprehensive public education program in support of the Commission's request to the legislature for funding for public education in Fiscal Year '79. That staff is also identifying and developing channels through which information can be passed inexpensively. They are preparing educational material which can be published at low cost.

The Commission's goal is to be prepared during the legislative sessions to answer requests about the proposed public education program thoroughly, while modifying the plan, as it is being developed, to accommodate legislative input.

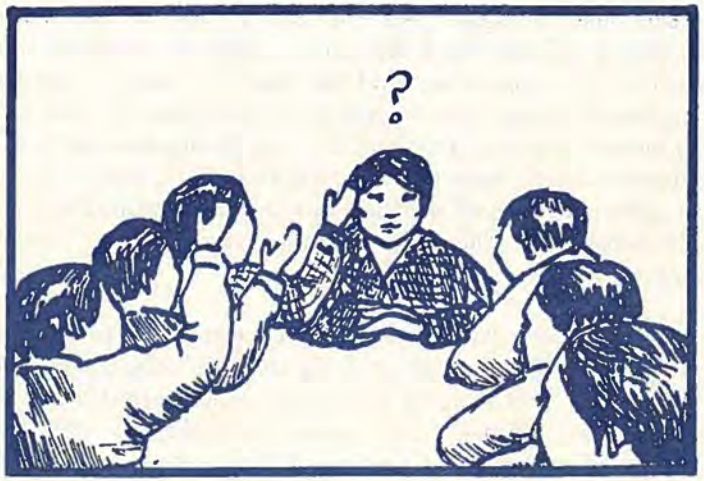
CHAPTER 3
Discrimination In Rural Alaska

The civil rights of people in rural Alaska emerged as a major human rights concern during 1977. This multi-faceted problem needs to be addressed on a broad scale.

Many problems which rural Alaskans cite to the Commission are not initially labeled "discrimination":

- Villagers see their people experiencing high unemployment. They voice concern about the trend of construction companies hiring people from cities, while ignoring people from the villages.
- A village will have transportation problems because its runways do not meet current safety standards; it will express that concern as a need for adequate funding.
- Some villages suffer sub-standard housing conditions. Villagers express concern about the general unavailability of mortgage money in rural areas.
- Questions of tension between races in villages arise, but such may be seen more as a function of the way incidents are reported in the press, than as underlying causes of discrimination.
- Other villages may lack essential governmental services, yet villagers may be unaware that the law may require that such services be readily available to all people in Alaska, no matter where they live.

It may be possible to approach rural problems as they obviously present themselves: problems which can be cured by adequate funding or by administrative discretion which reallocates services offered in cities, making them more available in rural areas. What role should the Commission play, however, if funding is not forthcoming or if administrative discretion is not used?



Governmental Discrimination

The Human Rights Law requires government, at the state and local levels, to provide services equally. If the "customary way of doing things" in effect makes governmental services less available to one racial group than to another, such custom is against the law. The Human Rights mission may address this discrimination either through a complaint filed by an individual who requires such services, or, more likely, through a complaint filed by the Commission itself. Such cases would doubtless argue that, when governmental services are readily available in the cities and not in rural areas, that practice constitutes racial discrimination against the rural native population.

Consider the airport runway question. Suppose it can be shown that rural airports are generally substandard while urban airports are generally up to par. It could be argued that the governmental service of providing airports is proportionately less available to natives in rural areas that it is to non-natives in cities. If the facts were to substantiate this theory, the Commission would be empowered to ask for relief, probably by requiring the upgrading of rural airports.

Similar reasoning might substantiate discrimination claims by rural natives who are typically not approached about employment opportunities in construction projects, many of which take place in their own villages. Strong arguments can be made that the Human Rights Law is violated by an employer who fails to hire qualified native labor in favor of non-natives from cities, or even outside Alaska. Notwithstanding provisions of labor contract, the employer could be required to hire natives previously discriminated against, with back pay.

If government services available generally to the public through state government agencies are virtually inaccessible in rural areas, such a custom could be held in violation of the Human Rights Laws Funding to provide such services could be required. Administrative discretion which created the inequitable pattern of benefits could be reversed.

By a similar argument, customary standards for supporting housing activities through mortgage lending could be called in question, with the mortgage industry bearing a heavy burden to justify the business necessity for any pattern of exclusion in the villages.

Rural Tensions

Strained relationships between natives and non-natives are common in rural Alaska, even though many people on both sides of the racial fence find it difficult to acknowledge.

The common pattern imports non-natives to villages to perform technical and managerial functions for which local talent is thought to be in short supply. Occasionally the practice is evidence of employment discrimination, where it can be shown that qualified local residents are, in fact, available to perform such work. Sometimes, non-natives are imported for key functions in a village where their presence is clearly necessary. Those people sometimes hire friends, relatives and other non-natives. Many of them may be from outside Alaska. They fill support-level jobs for which the local population is often manifestly qualified. However the situation comes about, the income gap between the native and non-native population is obvious.

Living circumstances may widen this gap, particularly where superior housing, paid vacations outside Alaska, and other fringe benefits go with the job. Some of the non-natives find themselves in circumstances foreign to them. It is hard for some to adjust from city to rural, from being the majority to seeing themselves as the minority. Blatant racism rears its head.

Youth activity in villages is often another source of racial tension. Most youngsters in a village are native, if the non-natives do not bring their families. The young population of the village may have easy access to drugs and alcohol. The young people may end up in trouble with the law from time to time, and non-natives may occasionally be victims. Police services, magistrates, holding facilities, jails, or correctional facilities may be sparsely available, if at all. The non-native population may not see the problem for what it is: young people who have nothing better do, who have access to drugs and alcohol, about whom the justice system can do little. Instead, the non-native population may interpret the behavior as racially based, and overtly directed against the non-native population. The verbal non-native responses may be racist. Their comments may be met with an equal measure of defensiveness from natives. All of this interaction may be picked up in the media and sensationalized.

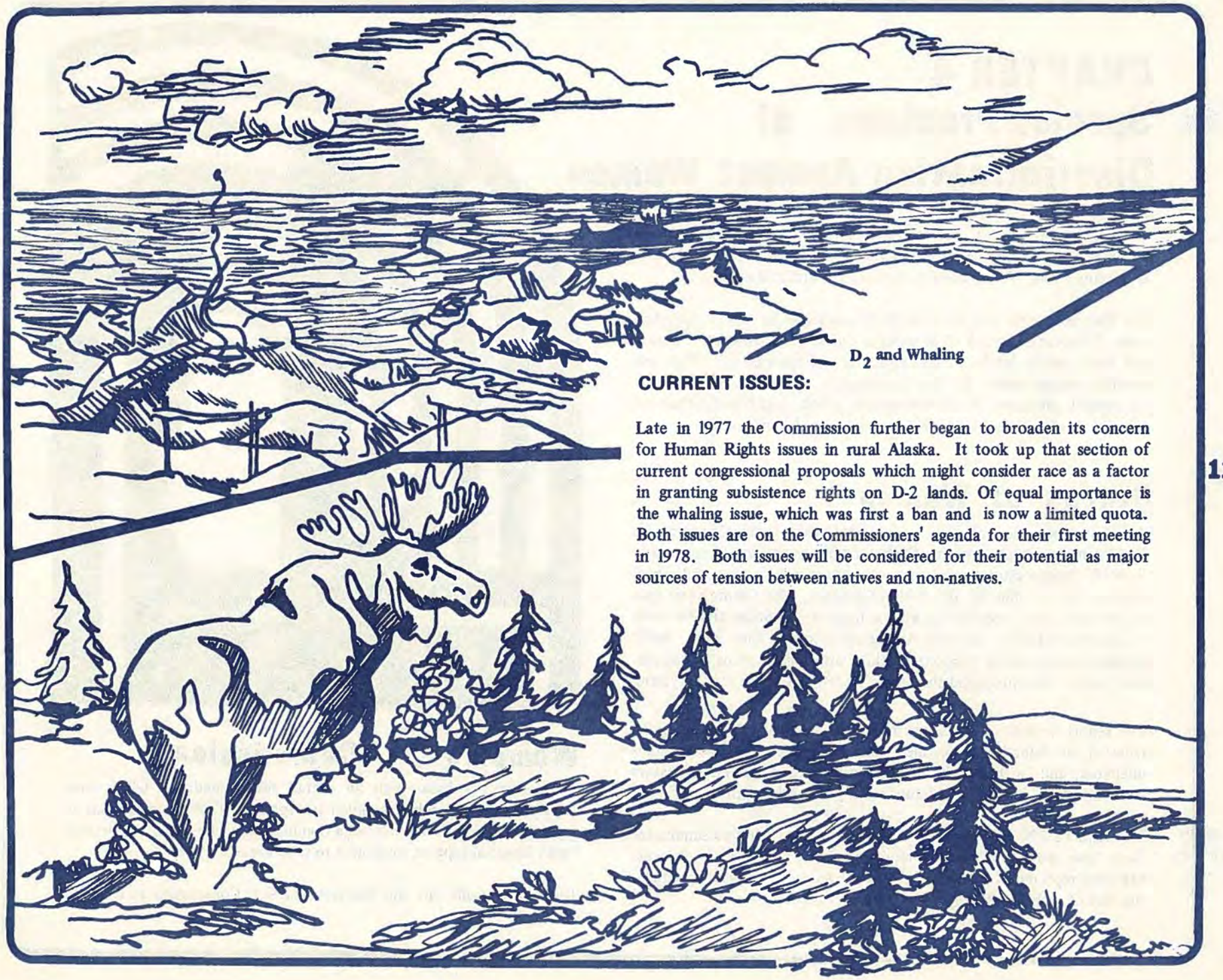
Such tension hardly rises to the level of "race wars" as some media have attempted to speculate. The tension signals deep-seated problems, nonetheless.

Commission Presence

The Human Rights Commission may suffer from some of the same types of deficiencies which the rest of state government experiences. Because of the budgeting process, all but one of the staff members have been located in cities. (The legislature created the only non-city position, in Barrow, in 1976). The staff travels regularly in rural areas to learn the extent, nature, and dimension of the types of problems just discussed. Cases may be developed which attack underlying discrimination. Yet to do so on a broad scale would require either (a) a significant relocation of staff away from cities (where massive numbers of complaints have been filed and are awaiting processing) or (b) costly efforts to expand the accessibility of the Commission's service to rural areas. In 1977 the Commission struck a balance between attention to cases filed in the cities, and a heavy emphasis on travel in rural areas.

This rural activity is partially in response to the report of the Commission's consulting anthropologist, Dr. Kerry Feldman. In 1976, he explored the level of interest in human rights activity on a community-basis throughout Alaska. His report documented the need for local services, and strongly urged the Commission to increase its presence in rural Alaska.

These 1977 activities have significantly broadened the Commission's understanding of civil rights problems in rural Alaska. They form the foundation for actions under the Human Rights Law which may reach some of the issues just described. In addition, the Commissioners recently endorsed a proposal under which the Commission's staff and native leaders from the Anchorage area would meet, early in 1978, to exchange information and strategy.



D_2 and Whaling

CURRENT ISSUES:

Late in 1977 the Commission further began to broaden its concern for Human Rights issues in rural Alaska. It took up that section of current congressional proposals which might consider race as a factor in granting subsistence rights on D-2 lands. Of equal importance is the whaling issue, which was first a ban and is now a limited quota. Both issues are on the Commissioners' agenda for their first meeting in 1978. Both issues will be considered for their potential as major sources of tension between natives and non-natives.

CHAPTER 4
Special Problems of Discrimination Against Women

Throughout this report, we frequently mention civil rights problems which women in Alaska have faced and have raised as issues before the Commission. Not all these problems have surfaced as cases

The Human Rights Law requires the Commission to "study the problems of discrimination in all or specific fields of human relationships.. and make public results of investigations and research ..." That law provides opportunities for the Commission to develop its expertise on special problems of discrimination which might not otherwise come to its attention through the complaint resolution process.

Status of Women

A major example of such a research effort is the Commission's **Preliminary Study on the Status of Women,** published early in 1977. Preparation of the report was underwritten by a special appropriation of $25,000 by the 1976 Legislature. The Commission contracted with the University of Alaska, Institute for Social and Economic Research (ISER) and with Anchorage attorney Joan Katz. ISER prepared three of the chapters, dealing with employment, education, and health. Katz prepared the report on women in the justice system.

The report became a best seller in Alaska, with over 1650 copies distributed to date, including one reprinting. The demand continues unabated, and by late 1977, the Commission and various legislators were searching for additional funds for yet another printing of 500.

The report's 320 pages explores so many subjects that to summarize them here would not do the report justice. The table of contents has been reproduced at appendix p. 48 . Appendix p. 49 reproduces the text of each specific recommendation of the report.

Women's Commission

The report concludes with an overall recommendation which cuts across the specific subjects which it explores. That recommendation urges the Legislature to establish a Commission on the Status of Women "with financial support to allow it to function effectively."

The report spells out the functions of that Commission as follows:

"The responsibilities of a Status of Women Commission could be manifold. As this study frequently illustrates, there is a substantial need for the collection of data on women's experience and needs. Battered wives exemplify this information gap; it exists in regard to sex discrimination in employment, credit practices, education, law enforcement, various agency services, and other areas as well. The Commission could also perform valuable analysis of sex stereotyping in the media, advertising, textbooks and counseling practices, to suggest only a few subjects. Information gathered by the agency could be made available to the Legislature, to industry and government and labor organizations and women's groups – and of course – to the Human Rights Commission. The Status of Women Commission could also serve as a clearinghouse for information, ideas and activities emanating not only from the state and local municipalities, but also from other states, the federal government, and national organizations. The potential for further endeavors is limitless."

Members of the Human Rights Commission considered this recommendation at their 1977 annual meeting and unanimously endorsed the concept of a Status of Women Commission.

Women's Correctional Facility

Chapter 3 discusses the problem which natives in rural Alaska face in securing equal access to governmental services. The Human Rights Law guarantees that there be no discrimination between racial groups in the delivery of public services by the state or its municipalities. This provision also guarantees equal access to public services on the basis of sex. Thus, where men or women can show that they are at a disadvantage in receiving "local, state or federal funds, services, goods, facilities, advantages or privileges" the Human Rights Law will provide a remedy.

One major denial of governmental services in Alaska on the basis of sex emerged in 1977. The situation which faces female prisoners in Anchorage sparked an extended battle between the Commission and the State Division of Corrections. The matter was ultimately decided in the Superior Court of Judge James Singleton at Anchorage in mid-December. That action, brought by the Commission against Corrections, was the first time in the history of the Human Rights Law that the Human Rights Commission has appeared in court against another state agency. All earlier cases involving the state had settled at preliminary stages, or had been resolved after public hearing before the Commissioners, with no appeals taken.

A brief summary of the events leading to the court's determination is in order.

In 1975 the case began when numerous women voiced informal complaints to the Commission about conditions at the State Jail Annex in Anchorage. The Commission then initiated a complaint through its Executive Director. After investigation, the Commission determined that there was a marked disparity between the state's correctional program for women at the annex and what the program offered to men at the Eagle River Correctional Center. The Commission compared the two physical plants and the rehabilitation services which are offered both groups.

In mid-1976, when the Commission issued its findings, it called upon Corrections to propose an alternative to the existing condition. The Commission's standard called for a correctional program for women substantially equivalent to that which exists for men. Instead of integrating the two correctional programs at Eagle River, Corrections proposed refurbishing a former nursing home in Anchorage known as "Ridgeview" for use as a women's correctional center. In the fall of 1976, when the Anchorage Municipal Assembly refused to grant necessary rezoning, the state's move was blocked.

In January 1977 the Governor overrode the Assembly action to pave the road for Corrections' use of Ridgeview. Settlement discussions between Corrections and the Commission began immediately, resulting in a detailed written agreement setting forth how Ridgeview would be used. The principle in that agreement was Corrections' obligation to create a physical plant and correctional program at Ridgeview which would be substantially equivalent to Eagle River. The agreement, which is court-enforceable, called for Ridgeview to be opened on Aug. 15, 1977.

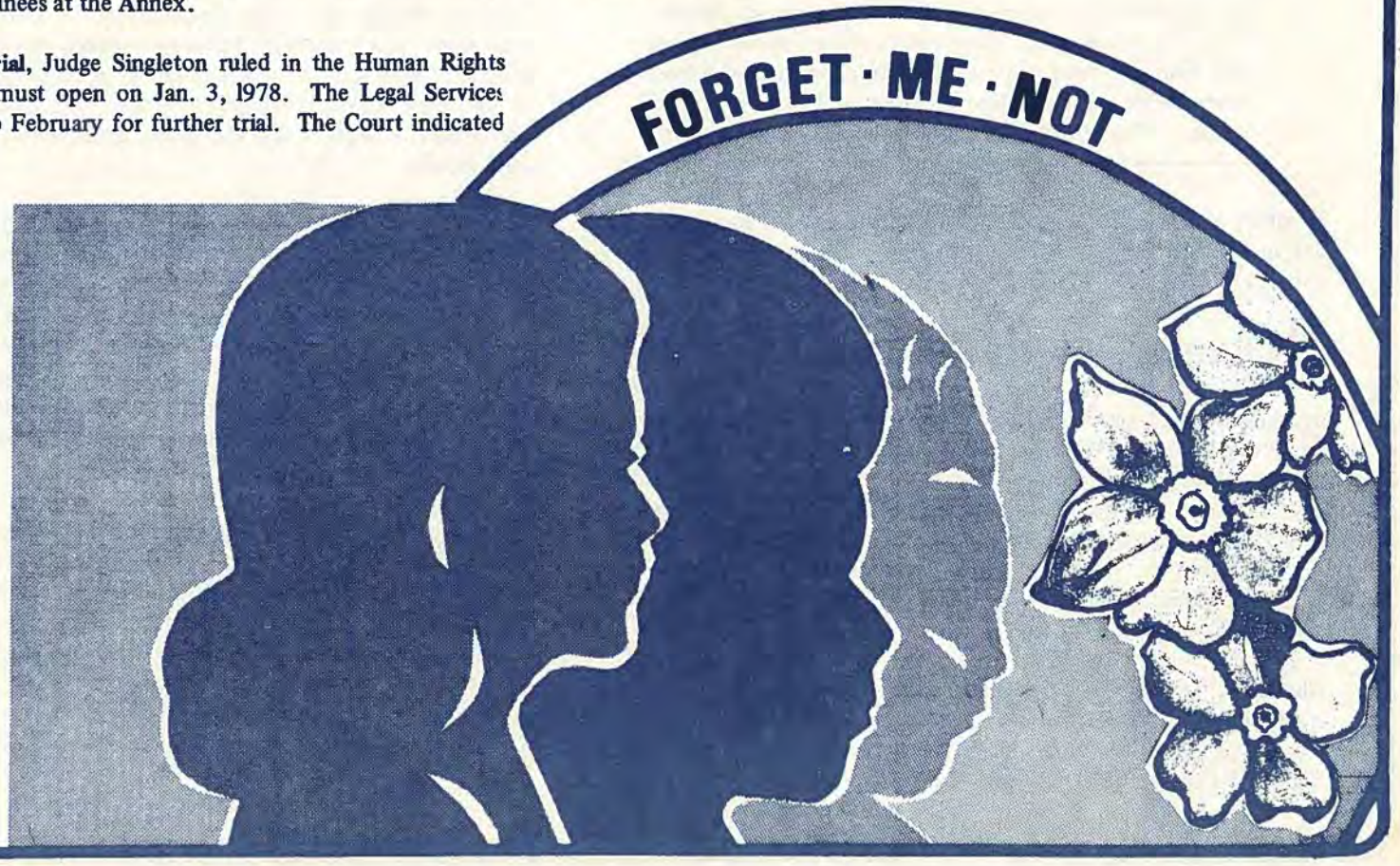
The August 15 deadline passed with the Ridgeview renovation incomplete. The Commission triggered an arbitration mechanism in the agreement, claiming that the agreement had been breached. The arbitration panel agreed with the Commission and ordered that the facility be opened by Dec. 1, 1977. The panel also ordered interim relief for the women at the Annex, including credit for good time previously denied, winter clothing, commissary privileges, daily visitation, and the opportunity to transfer to the Juneau facility.

December 1 arrived and Ridgeview remained closed. The Commission alleged substantial non-compliance with the interim relief ordered by the arbitrators. The Commission sued Corrections in the Superior Court to enforce both the arbitrator's award and the conciliation agreement. The action was consolidated with a constitutional case brought by Alaska Legal Services alleging denials of fundamental rights of pre-trial detainees at the Annex.

After four days of trial, Judge Singleton ruled in the Human Rights case that Ridgeview must open on Jan. 3, 1978. The Legal Services case was held over to February for further trial. The Court indicated its continued interest in using Eagle River as a co-correctional facility, particularly were Corrections to miss its deadline for Ridgeview.

STRENGTH OF THE LAW

The Commission's activities in connection with this case point to some of the fundamental strengths of the Human Rights Law. The Commission was shown to have the clear authority to negotiate an enforceable agreement with the state and to pursue instances of non-compliance in court. Without such authority, the Commission's ability to secure necessary remedies for governmental discrimination would be severely curtailed. This case is the only time the Commission has actually sued the state which may indicate that the state usually settles matters at early stages on terms which effectively implement the requirements of the Human Rights Law.



SHIFT TRANSFERS

An Anchorage restaurant transferred two waitresses from night work to day work and replaced them with men. The women, faced with child care responsibilities and a reduction in pay, were forced to resign. The Commission refused to accept the restaurant's argument that the changeover would improve business. Instead, the Commission held that the transfer was inherently discriminatory against women, because of their personal responsibilities and the pay reduction. Their resignation was interpreted as the same as being fired. After the Commission's findings were issued, the restaurant agreed to provide back pay from the time the women resigned to the date that they got higher paying jobs elsewhere.

CERTIFICATION REQUIREMENT

A physician's office in Anchorage required all its assistants to be certified by a national agency. A woman with considerable nursing experience was rejected. She charged sex discrimination. Investigation revealed no job-related reason for the certification requirement. It was also evident that far more men than women had been certified. After the Commission findings were issued, the physician's group settled with the woman by hiring her with back pay. The discriminatory certification requirement was also eliminated.

UNIFORM STANDARDS

One employer answering a charge filed by a female employee, who objected to the employer's dress code, was surprised to learn that providing uniforms for only female employees amounted to sex discrimination. A pre-decision settlement called for uniforms for all employees who met the public, regardless of sex.

CHAPTER 5
The Many Faces of Employment Discrimination

The civil rights problem which surfaces the most frequently in complaints to the Commission is employment discrimination. In 1977, the pattern of previous years continued, with eight out of ten complaints alleging employment discrimination. With such volume, it is difficult to summarize all the problems which emerged in these cases. The discussion below highlights major issues which came to the Commission's attention in 1977.

Challenges to Customary Hiring Practices

CONSTRUCTION WORK:

Substantial economic activity in Alaska centers around construction. The work is seasonal, and has often been cited as a source of underemployment among Alaskans. As in most types of employment, women and minorities experience the ill-effects of seasonal employment to the greatest degree.

In Rural Alaska

A special problem of discrimination occurs when construction projects are undertaken in rural areas of the state. The common pattern is for construction companies, whether union or non-union, to continue past discriminatory patterns which favor whites and males, by using workers who have previously worked for these companies. The negative effect on Alaskans is magnified when the company is based outside Alaska and hires non-residents. Alaskans have long denounced this pattern of out-of-state construction companies which undertake projects here and employ virtually no residents.

Laws requiring preference for state residents in employment are not enforced directly by the Human Rights Commission. These laws are currently under examination in the U.S. Supreme Court. A superior foundation exists, however, under the state's Human Rights legislation. It grants protection on the basis of race and sex. Thus, where a construction company (or any employer) can be shown to discriminate against Alaska's minorities and women through employment of white males on a nearly exclusive basis (no matter where they come from), that practice violates state (and federal) laws against discrimination.

SEXUAL ADVANCES

Both a native female and a white female charged sex harassment and discrimination when the foreman of a construction company allegedly "made sexual advances toward them" and they were laid off. In the resolution conference, the company offered a settlement of $2,500 to each female which was equal to the pay the women would have received for the two weeks reduction in force (rif) before the job was completed. The foreman was laid off and not rehired.

ALCOHOL PROBLEM

A native male charged a pipeline contractor with race discrimination. The contractor claimed they had dismissed the man because he had alcohol problems. When the contractor received a copy of the charge, they gave the man "another chance", and rehired him at $49,000 per year. The native withdrew his charge.

PIPELINE-RELATED CASES

Obviously, the major recent construction project is the Alyeska Pipeline. The Commission was deluged with complaints of discrimination. Many of those cases still await resolution.

Aside from the difficulty of doing justice to this volume of pipeline activity, the Commission encountered no new civil rights problems in connection with the pipeline in 1977. Instead, it began to turn its attention to how it can anticipate such problems in future projects, such as the development of the PET 4 oil field, the gas pipeline, the major hospital construction project in Bethel, and the possible construction of a refinery for Alaska's royalty oil.

A resolution in late 1977 by the Commissioners directed the staff to inquire into all major construction activities on the North Slope, and in the Bethel and Nome areas. Such projects were identified by late 1977, and information was being collected on the immediate past equal employment performance of each. Also under study are future employment forecasts, labor-management relationships, and any other factors which may operate to exclude minorities and women from employment opportunities next year.

The Commission's staff has also begun similar discussions with the gas pipeline builders and state officials negotiating possible contracts for royalty oil refinement. The goal of all these efforts is to offer employers the expertise of the Commission so that the "customary ways of doing things" which may violate human rights legislation can be identified at early stages. Then these practices can be modified so that minorities and women will have truly equal opportunities to compete in the construction job market.

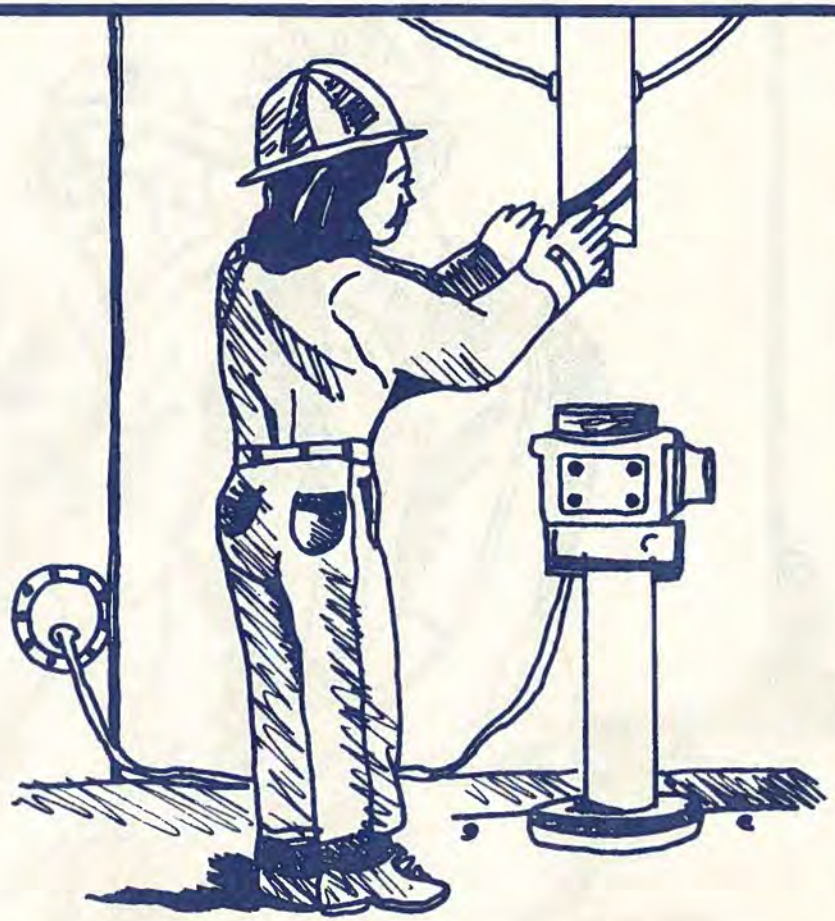
A "PREVENTIVE" FIRST

A North Slope construction firm was prohibited by court order from filling a clerical position which a black woman had applied for after she charged that she wasn't hired because of her race and sex. She was a temporary secretary to the Commission's director at the time. After learning what the law could do for her, she filed a complaint on the day of her last inconclusive interview with the company. To ensure that the position, if it really existed, would remain open while the Commission investigated, the Commission obtained a 10-day Superior Court order keeping it open. The action is believed to be the first time the Commission has ever blocked the filling of a job by court order. ASCHR (Pringle) v. VE Construction, Inc.

A week later Pringle and the company negotiated a "no fault" settlement agreement in which Pringle was pledged the first clerical job available on the Slope, with backpay.

LAID OFF

A native male who was laid off from a construction site although he had more seniority than others who were reassigned, charged the contractor with race discrimination. After a resolution conference, he was rehired and reassigned.



A well-meaning pipeline company hired a woman to work on the slope. The management team decided to "protect her womanhood" by not asking her to perform one of the functions of her job description. She was, however, paid the same rate as the man who performed all those duties. When the time came for layoff, she was the first to go because she was not doing the full job. In a three-hour conference before a Commission investigator, the employer came to understand that limiting an employee's working capacity because of sex is harmful, both to the employee and to himself financially. The employer signed an agreement to require all employees to work according to their job descriptions, regardless of sex.

EMPLOYMENT DENIAL

A governmental employer conducted a vigorous recruitment program for a particular job, and many of the applicants were black. One of the minority candidates was hired. A black female complained to the Commission that her race was the reason she was not selected. Because the employer had successfully located qualified minority candidates and hired them, the Commission found the individual woman's case could not be substantiated.

IN STATE PERSONNEL PROCEDURES:

The State of Alaska's cumbersome and complicated methods of personnel selection present a dilemma for those who seek equal employment objectives. To the uninitiated, the process can be baffling. An examiner in one state personnel case before the Commission termed the system "byzantine."

On its face, the system appears to serve the state's legitimate interest in securing employees on the basis of merit. It is, in fact, a system which can be abused both on merit system grounds and on equal employment standards. Cases arising under the Human Rights Law in 1977 increasingly documented how such abuses take place.

EXCEPTIONS TO THE RULES

For instance, in one case a black woman sought to become a probation officer with the Division of Corrections. The Commission found, after a hearing, that the complainant was in fact the superior candidate but was not hired because the state took advantage of various exceptions to the rules. The individual who was thus eventually selected would not otherwise have been eligible. **(Muldrow v. State Division of Corrections)**

MERIT SYSTEM REVISIONS

The time may rapidly be approaching when the Legislature should seriously consider major revisions of the merit system to anticipate the types of abuses of equal employment standards which are beginning to emerge in cases before the Commission. Such a review has not been undertaken in recent years when equal employment standards have been quickly developing. Commonly-accepted practices of merit selection may now be obsolete in the face of litigation in Alaska and in the federal courts which is holding that many selection standards violate equal rights legislation.

OUT OF WORK

A native man, 64 years old, was one of three workers eliminated when the Governor's office consolidated certain maintenance positions. He charged age and race discrimination. In cooperation with the state equal employment office and a native corporation, the Commission got him a job with higher pay and annual leave, plus sick pay to stay with his dying wife. If he had lost the case, he would have lost his retirement benefits. He is still working.

TEMPORARY HIRES

In another case, the Commission's staff documented how a department, through a succession of adroit temporary hires (including engineering a department head's secretary from a range-10 to a range-17 job in 9-1/2 months), managed to pave the way for whites into permanent jobs. Consequently, the only black female professional the department had ever employed in a 2-1/2 year period was laid off. These events, the staff found, occurred in the face of a clear directive from the department's deputy commissioner that division chiefs take equal employment matters very seriously. **(Case in conciliation)**

IN UNION HIRING PRACTICES:

There are legions of equal employment cases through out the country which have successfully challenged labor union dispatching practices, principally in the construction trades. Not so common are cases which question procedures which unions use to hire their own staff.

The Commission rejected arguments that staff positions are confidential and union management may exercise broad discretion in hiring internally. The Commission held that Local 341 of the Laborer's Union in Anchorage had practiced discrimination in such hiring decisions since it

UNION MEMBERSHIP DENIED

Complainants frequently obtain relief before investigation as the result of the Commission's notice of the charge. A Puerto Rican was denied admission to a local Union because there were no jobs available during the off-season. Staff advised him to file a charge. When it was served, he was admitted to the union. He made the daily calls and observed that some members were dispatched but he was not. The Commission assisted him in amending his charge. A review of the dispatch procedures with the man enabled him to bid on the next local temporary job resulting in full time permanent employment with an annual salary of $23,000.

was established in 1947. The procedures were identified as completely subjective, with no written job descriptions, and no notice to union members when positions became vacant. All hiring was at the discretion of the business manager. No minority person had ever been hired to such a job.

The Commission ordered complete restructuring of the selection process to guarantee equal opportunity to all union members in competing for these positions. As with many such civil rights cases brought in the public interest by individuals, the complainant who identified those practices in this case was found not to have been discriminated against. His rejection was found to have been justified on the basis of his lack of experience and political differences with the union's leadership. The Union has appealed. **Allen v. Laborers and Hod Carriers, Local 341**

To the extent that private employers also maintain purely subjective hiring systems which result in exclusion of women and minorities, the **Allen** decision makes clear the Commission's commitment to undo "customary ways of doing things," when they operate in a discriminatory manner.

SAME OLD STORY

A native bull cook on the pipeline charged his contractor and union with harassment because of his race. The union and contractor termed him a troublemaker and fired him. After his complaint was filed, the native was rehired by the contractor.

WITH INTEGRATED LIVING FACILITES:

It has been long been traditional in many work situations for employers to limit certain jobs to one sex or the other, because to do otherwise raises the possibility of integrated living circumstances.

This was true in 1974 as pipeline camp construction began. Companies routinely made "male only" calls to union hiring halls, or unions themselves restricted dispatches to men. The Commission moved quickly that year to establish that, as a matter of law, the lack of adequate facilities for women does not justify discrimination against them. **Raymond v. Wien Air Alaska, 1976**

Since then, similar issues have arisen on the Alaska Marine Highway System, rigs in Cook Inlet and at other remote work sites. These cases are somewhat more complicated, because the possibility exists that closely integrated living circumstances will result. Men and women may even have to share the same room.

The problem was - - and continues to be - - particularly acute on the Marine Highway System, where Coast Guard safety regulations limit management's ability to set aside quarters on the basis of sex. Interim measures have included berthing in separate rooms as the general practice, arranging shifts where possible so that only members of one sex will be using a particular room at any one time, and carefully informing in advance those who may be subject to joint living circumstances so that they can decline such dispatches if they wish.

These decisions and practices have been called under question in a private law suit filed under the Human Rights Law. It is now pending in Alaska's Supreme Court. The Superior Court at Juneau held that the Human Rights Law does not require "integrated living circumstances". The Commission is not a party in that case, having deferred its administrative hearing when the issue was taken to court instead. **McLean et al, v. State Division of Marine Transportation**

The problem appears not to be quite as acute in the Cook Inlet drilling situation, because most rigs have separate rooming facilities for women. Yet the very presence of women and men on the same rig has triggered letters of protest from shore-based wives. Nevertheless, rig operators have generally adhered to equal employment standards, and women work regularly in many facets of platform operations.

NO FACILITIES FOR WOMEN

A woman alleged that she was denied a pipeline job because the employer claimed there were no facilities for women on site. (The Commission has previously held that this reason does not justify sex discrimination.) The company then asserted that the woman lacked proper qualifications. Immediately prior to the beginning of a public hearing on the matter, the company settled. They paid the woman $1,000 and made an additional donation of $500 to the Anchorage Women Attorney's Association to prove their good intentions.