



### SIX ANGRY MEN

Six males charged a government contractor with sex discrimination. The contractor who employed them, they claimed, made them move their rooms on a military site to a new set of rooms in order to make rooms available for women. The women's rooms, they said, would have telephones, TV, and only one woman in each room, while they would be living two men to a room. During the resolution conference, the contractor said that they were indeed moving people around, but that both men and women were moving. The contract with the U.S. Air Force required the company to establish contiguous floors for women which did not open onto the main hallway, for security reasons. Any telephones or TV's would be private property. The normal routine was to assign fictitious roommates to most men, meaning that their roommates were people who lived in the community with their families and not on site. There were not enough women to assign as fictitious roommates. The Commission found no cause for the charge because it was in compliance with federal regulations.

## Protection Against Common Practices

### RETALIATION

The Human Rights Law protects any individual who files a complaint or assists the Commission in its pursuit of a case. Individuals sometimes allege that some adverse action is taking place, or is about to take place, against them after being involved with the Commission.

One woman phoned the Commission to discuss a possible case and was referred to the Labor Department, because the legislation it administered spoke to her situation more directly. Later investigation of her retaliation claim revealed that she was discharged, at least in part, because of her discussion with the Commission's staff. Immediately prior to a hearing on the matter, her company settled with her for \$2,500. *Lamug v. Whitney Fidalgo*.

#### Link Needed

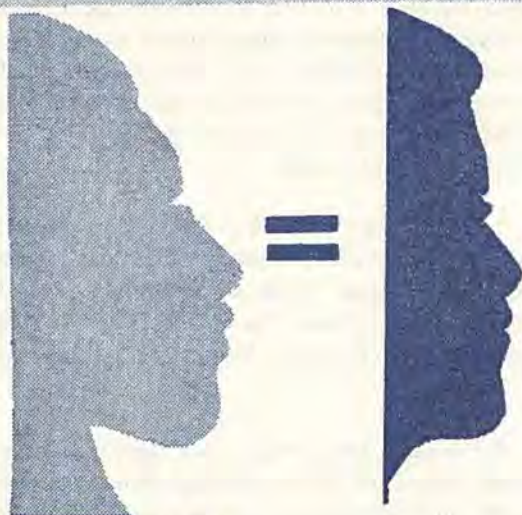
A common difficulty with cases of this type is the need to draw a link between the person's contacts with the Commission and the adverse action which occurs. On several occasions, investigation has revealed that an employer took the action for legitimate reasons. The complainant's contact with the Commission was not a factor in that decision.

In one such case, a hearing examiner found that a woman was discriminated against in not being promoted to manage a credit union, but that her subsequent conduct justified her discharge. An "irrevocable personality conflict" had developed with her supervisor, the examiner found. A final order of the hearing commissioners was pending at the end of 1977. *Fridriksson v. Alaska USA Federal Credit Union*.



### SOMETHING ELSE

Non-alleged violations frequently surface during the course of an investigation. When a female complained to her boss that she was paid less than the male employee she replaced, her employer fired her. Investigation proved her allegations of unequal pay. Also uncovered was an earlier promotion unlawfully denied her. Finally, the Commission held that her firing was an unlawful act of retaliation for advocating her rights.



### NOT RETALIATION

A black union member was thrown out of his hiring hall at the Union's request. The Union branded him a "trouble-maker". The member claimed he had been singled out by the union's leadership because he had filed a race discrimination complaint with the Commission against the union two months earlier. Investigation revealed that the member had violated various union rules, had disrupted normal business, and made unprovoked threatening remarks to the union staff. No links could be drawn to the union's knowledge of the member's complaint and the action the union took against him later. The case was therefore dismissed.

### PROMOTION

The central issue in *Fridriksson*, which arises regularly in human rights cases, was promotion. Fridriksson lived on Adak Island in the Aleutian Chain. She applied for promotion to manage the credit union's Adak branch. The examiner found that her sex was the reason she was denied the promotion in favor of a man who was brought from outside Alaska to be her boss.

### HUMILIATED WOMAN

When a Filipino woman applied for a promotional opportunity in the education field, her boss first told her that she was overqualified because of her college degree. Later, he explained that she lacked communication skills. At the same time he asked her to train the successful applicant. After filing a charge, the humiliated woman resigned to seek other employment. The Commission obtained a monetary settlement for the woman. She was also persuaded to return to her former office at the promoted level. The boss was fired.



### LOWER PAY

During the absence of his white co-worker, a black stock-handler for a school district learned that he was paid a full grade lower for the duties which they shared equally. In settlement of his claim, he received the pay differential back to his date of hire and was later promoted to a job with higher pay and more opportunity.



## STEREOTYPING

A relatively common allegation which women bring in employment cases is the kind of stereotyping to which they are subjected during oral interviews. One such woman scored 90% on the exam for the police department in Fairbanks, but failed the interview. The department claimed that her interview revealed her to be "naive". The complainant cited questions asked of her which she believes would not have been asked of men in similar circumstances. Results of the public hearing were pending at the end of 1977. *Presley v. Fairbanks Police Department*

### GOOD RECORD

A native lady alleged that she received an unfair job performance evaluation.

She charged race discrimination and subsequently quit the job. In the resolution conference, she told the organization that she did not want the job back, but wanted the unfair evaluation off her work record. The evaluation was withdrawn.

### FIGHT OVER SALE

Merchants commonly hire sales personnel on a commission basis during the holiday season. At one company, there was a pattern of disagreements between two such sales workers. After an argument over the sale of an appliance, the woman was fired but her male colleague was not. The woman complained to the Commission. The customer involved supported the woman's story. The Commission found her complaint justified on the basis that the two sales people who committed the same offense were treated differently on the basis of sex.

## Special Minority Issues Emerge

### Handicaps

Handicap discrimination has long been forbidden under the Human Rights Law, but standards to guide employers emerged for the first time in 1977.

Three cases decided by Commissioners after hearings now make it clear that employers have a burden to demonstrate a "business necessity" for denying employment opportunities to handicapped persons. In setting these standards, the Commissioners carefully distinguished between the claims of the individuals who brought the cases (each of whom lost) and the general principles which Commissioners have adopted for future cases.

For instance, in *Bell v. Parker Drilling*, Commissioners held that an oil drilling platform worker with a hearing difficulty and speech impediment was a significant danger to himself and others, even though he has suffered no accidents in three years at this type of work. Thus, his termination when the company learned of his impediment was justified.

The decision also adopts the principle that employers have an obligation to consider reasonable alternative employment for handicapped workers, although such alternatives were not available in this particular case.

### BODY CHEMISTRY

A man diagnosed as a manic depressive was terminated by a state agency. He complained to the Commission of discrimination on the basis of handicap. The Commission closed the case because the current laws cover physical handicap but not mental disabilities. The man appealed that his handicap was chemically based and modern drugs allowed him to cope. The Commission researched the issue of chemical origin and found that it falls within the Human Rights Law. The Commission reopened the case.





#### Proof of Control

Problems of proof in handicap cases emerged in the two other cases, *Hoolsema v. Alaska Lumber and Pulp Co.* and *Kirkpatrick v. Ketchikan Pulp Co.*

Hoolsema is a diabetic who sought work as a painter. The company argued that the work involved climbing to locations which could be dangerous for him unless he could demonstrate that his diabetes was adequately controlled. The Commission found that Hoolsema had not offered sufficient evidence that his condition was adequately controlled and dismissed the action.

Kirkpatrick had problems of eczema during her pregnancies. She was therefore rejected for employment because her condition might be aggravated by dangerous chemicals regularly used at the mill. The Commission's examiner agreed with the company's position. The Commissioners were scheduled to render their decision in early 1978.

## AGE DISCRIMINATION

Both federal and state laws prohibit discrimination because of age. Workers lose their federal protection upon reaching age 65, however. Under state law, according to the Alaska Federal Court, protection continues after age 65.

#### Retirement

In *Simpson v. Providence Washington Insurance Group*, which was brought under the state's Human Rights Law, the forced retirement of an employee under a company retirement plan was found to be unlawful age discrimination. The matter is pending in the Federal Appeals Court at San Francisco.

#### Too Old

A 69-year old painter believed he was denied a position because of his age. Shortly before hearing, the complainant received a \$4,750 settlement. *Hamilton v. Bechtel Inc.*

Strikingly similar was the case of a carpenter who was in his early fifties. He was discharged from a job at the Chena View Hotel in Fairbanks, allegedly by a supervisor who said he was too old. That case settled with \$1,500 award shortly before hearing. *Fetterman v. Christie and Strait.*

#### DETAILED ANALYSIS

A 70-year old applicant for state employment qualified for several administrative positions, but was not hired. Commission investigation consisted of tracing each possible discriminatory hiring action. Analysis of the complex selection system included comparison of the 70-year old applicant's qualifications with each job description, and other applicants' qualifications. No probable cause was found, at least partly because of a lack of statistical data on older applicants.



### NO RECORDS

A doctor who was charged with age discrimination was hard pressed to rebut it because he routinely threw away employment applications. The charge was found not substantiable because the applicant had been belligerent over the telephone with the doctor. But the doctor was reminded that the law requires him to keep records of applications.

### TOO OLD FOR A SABBATICAL

A University professor, almost 65 years old, filed a charge of age discrimination when he was denied a Sabbatical. Commission investigation found that age was a factor in the denial and that no attempts were made to alter the report that mentions his age. Although the case was filed over 300 days after the fact, the professor did not learn about the age factor until then. The Commission accepted the case on that basis. During the investigation, the University settled—giving the professor a half-year sabbatical and a special assignment to work off campus. The professor estimated the benefits of the settlement equal to \$50,000.

### ON ALL COUNTS

A white German woman over 40 claimed a state agency failed to promote her four times on the basis of age, national origin and sex. Investigation showed that one foreign person, and two females had been promoted, but that a pattern of discrimination did exist in the age of people promoted. As in many cases, however, the particular woman's claim was found "no cause". The state agency claimed that she had numerous difficulties with co-workers (which she admitted) and would have difficulty in a supervisory position.



### RAPID SETTLEMENT

A 52-year old woman filed a charge of sex and age discrimination against her employer when she discovered that her pay was significantly lower than a young man with similar duties. She received \$2,500 in settlement within 3 1/2 months of filing her charge.



## PREGNANCY

The foresight of the Alaska legislature in adding "pregnancy" to the Human Rights Law as a basis for discrimination became evident in 1977.

In three separate decisions, the U.S. Supreme Court has held that discrimination against pregnant women is neither unconstitutional nor unlawful sex discrimination. These decisions have triggered moves in Congress to add "pregnancy" as a separate basis for discrimination, as Alaska has already done. In those decisions, the Supreme Court held that the Constitution does not require a state government insurance plan to cover pregnant women, nor do sex discrimination laws require private employers to give such benefits, nor do women have the right to use accrued sick leave when they take time off for pregnancy.

None of these decisions should affect Alaska, because, although such conduct may not be sex discrimination, it is clearly the type of discrimination the Legislature had in mind when it added pregnancy to Alaska's Human Rights Law.

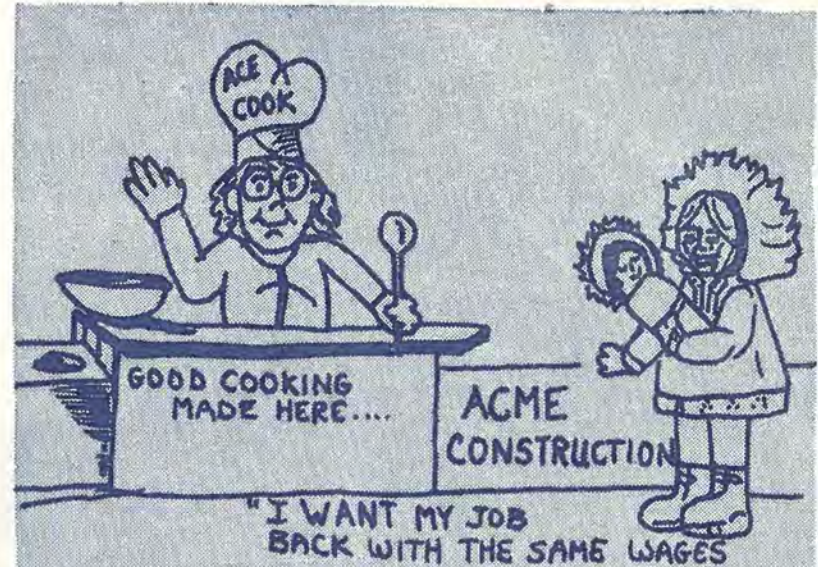
One case heard by the Commission in 1977 raises these issues. A woman who was pregnant was fired from her job as a waitress in Ketchikan. The Commission's examiner found that she was terminated because of a seasonal economic slump in the business and her bad work habits, not because of her pregnancy.

The central question, since "pregnancy" had not been added to the Human Rights Law at the time of her complaint, is whether pregnancy discrimination will be read as sex discrimination under Alaska's law, even though the federal law has not been read that way. Both this general question, and her specific complaint, were pending before the hearing Commissioners at the end of 1977. *Borsh v. The Island King*.

## MARITAL STATUS

Another 1975 addition to the Human Rights Law was the phrase "marital status" as a basis for prohibited discrimination.

When a woman in Fairbanks sought to become a clerk in the local police department, she was refused, although the department believed her to be the best qualified applicant. Her husband drove a truck for the water department and Fairbanks had a municipal ordinance which prohibited spouses from working for the city. The Commission held the local ordinance to be void because it stood in conflict with the prohibition against marital status discrimination in the state Human Rights Law. That is, had she not been married to a municipal employee, she would have received the job. *Scholle v. City of Fairbanks*.



### AFTER PREGNANCY...

A native woman returned to work as cook for a village construction company after the birth of her child only to find that she had been replaced, despite the company's promise to rehire her. Contacting the Commission by long distance call, she described her employment problems, including an unfair wage claim. The Commission coordinated efforts with the Alaska Department of Labor in reaching a fair and speedy cash settlement of both claims against the employer.



## CHAPTER 6 Discrimination in Public Accommodations,



Only one out of 5 cases with the Commission allege denial of equal opportunity in housing, public accommodations, credit or government services.

Cases in these categories raise a multiplicity of problems, most of which center on the claim of the individual who files the complaint. Employment discrimination complaints are generally the tip of a large discriminatory iceberg. Once such a complaint begins to be investigated, the case tends to grow into a general exploration of many employment practices which affect large numbers of people. Such can be the case with public accommodations and other subjects, too.

### Public Accommodations

Late in 1976, the Commission heard allegations of numerous people that the Northern Lights Disco in Anchorage had a pricing policy which charged differential admissions on the basis of race and sex. A black woman alleged that she was thrown out by the owner under a storm of racial epithets. The Commission's examiner found the pricing policy to be discriminatory, and recommended that no discrimination had occurred against the black woman. The Commission's staff objected, and the case was pending decision by the Commissioners in late 1977. *Cory et al v. Don McDaniel, et al.*

#### NO CHILDREN PLEASE

A woman filed a complaint against a supply store which denied her service because she brought her child into the store. On the door of the store, there is a large sign "NO CHILDREN ALLOWED" The store had low shelves with small parts and children tended to mess them up, the store owner said. The case was closed for lack of jurisdiction, because parenthood or age discrimination are not prohibited in public accommodations.

#### ACCIDENT REPORT

An Asian female whose car was hit from behind by a car driven by a white female claimed the trooper's report of the accident showed discrepancies which discriminated against her, because of her race. In a predetermination settlement, troopers agreed to modify the report and the trooper in charge sent an apology letter to the woman, and a note to the Commission in affirmation of the Human Rights Law.

#### CUT-OFF BLUES

A black woman protested a \$600 reconnection deposit of service proposed by a local utility. While her bill was delinquent, she had consistently made payments. She said that her white next-door neighbor had a higher delinquent utility bill, but had not had her service cut off. A quickly arranged resolution conference brought satisfaction both to the woman, whose service was restored without charge, and to the telephone company, which received full payment of the delinquent bill.





## Housing and Credit

### CALL ME

A woman in a small rural community charged the local police officer with discrimination on the basis of marital status. She claimed the officer had failed to notify her of her son's arrest because she was a single parent. The Commission found no cause when the officer claimed he had notified the woman on other occasions when her son got into trouble. On this occasion he had allowed her son to drive his motorcycle home, and had tried to call the woman, but she wasn't at work and didn't have a home phone.

### EQUAL ALTERATIONS

"Why should I pay for clothing alterations when men's alterations are free?" a female queried a nation-wide department store branch. She brought a charge of sex discrimination against the store. After a resolution conference, the store removed biased wording from their alterations price charts, made a new price schedule for alterations based on clothing articles rather than sex designations, and posted the schedule in men's and women's clothing departments.

### CIVIL OR HUMAN RIGHTS

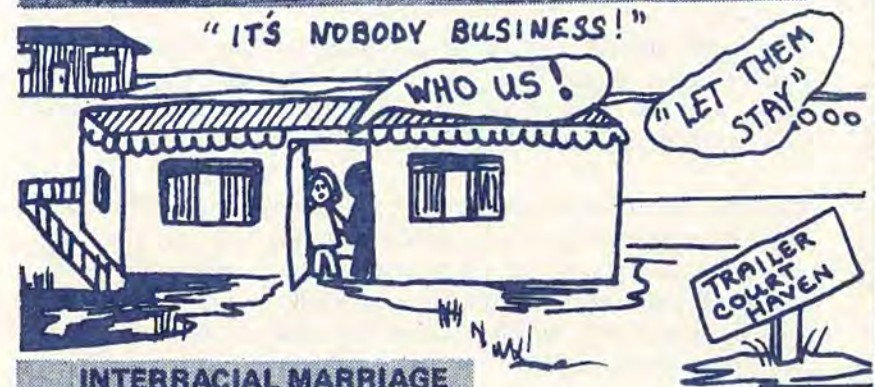
A native man and his brother were searched by an off-duty security officer when they entered the back door of their college dormitory. The officer claimed troopers were looking for "some natives on drug charges." The brothers claimed race discrimination. The case was closed for lack of evidence. The Commission warned the University to describe more than sex and race in searches, if they did not want to violate people's civil rights.

## Housing

In Fairbanks, a black woman, who declined to be identified, alleged that Victor Salberg, the owner of an apartment building, refused to rent to blacks. The Commission dispatched members of different races to apply for rentals and, on the basis of their statements, initiated a complaint against Salberg. Shortly before the case was heard before public hearing, Salberg agreed to rent 20 percent of his apartment units to minorities over the next year in exchange for the Commission closing the case. **Thomas v. Salberg.**

### "AGAINST MY WIFE'S RELIGION"

A landlord was charged with discrimination on the basis of marital status and sex when he refused to rent to a single female. Investigation showed the landlord had rented to a couple whom he thought was married, and to two single males who shared an apartment. The landlord claimed renting to single females was against his wife's religion yet refused to produce his wife's address or document her religious belief. The claim is still pending settlement.



### INTERRACIAL MARRIAGE

An interracial couple (the husband was black, the wife white) were to be evicted from their trailer space, allegedly because of their marriage. The Commission went to court to stop the eviction. Without admitting to a violation, however, the landlord agreed to permit the couple to remain in their trailer.



# State Of Alaska

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### Credit Compliance

The equal credit opportunity law, enacted in 1975, has produced few complaints.

The low level of activity may be attributed to parallel federal legislation with which the industry has voluntarily complied.

It is equally possible that people are unaware of their right to secure credit without having their sex, marital status, changes in marital status, pregnancy, parenthood, race, religion, color or national origin held against them. Probably both are true.

The Commission has witnessed numerous revisions of credit application forms by most credit grantors in Alaska, including banks, credit unions, and department stores. At the same time, the Commission's staff in conducting educational programs, particularly among women, find themselves frequently surprised at how little most people know of their rights under this legislation.

Most equal credit complaints reflect the problems of an individual. When such matters are brought to the attention of credit grantors, their usual practice is to grant the credit, rather than face an enforcement action. Thus, most complaints do not develop beyond informal investigation and settlement.

For a discussion of how the government services law may apply in native context, and as a matter of sex discrimination, see chapters 3 and 4.

### BELLIGERENT ATTITUDE

A black female told the Commission that the white owner of the building where she had her apartment refused to rent to her because of her race. Commission's investigation revealed no evidence of discrimination, and substantiated the landlord's claim that the woman was belligerent. The landlord also convinced the Commission that he was planning to use the unit himself.



### COULDN'T DO REPAIRS

Two single females were told by a landlord that a house was already rented when they showed up to see it. Investigation showed that the landlord rented to a couple who showed up later. The two females charged the landlord with discrimination based on sex and marital status. The landlord claimed that he had never rented to single females before because they couldn't do the repairs. In a resolution conference, the females received a cash settlement of \$125 - - the difference between rent on the house and the place they finally rented.



## CHAPTER 7 The Frontier Battleground

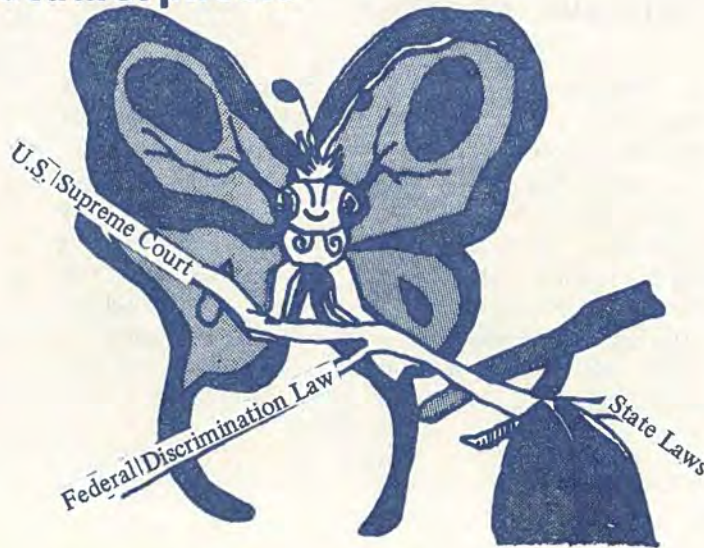
State efforts to enforce laws against discrimination have been resoundingly criticized since the 1940's. Scholarly commentaries, particularly those written at the time of the passage of the 1964 Civil Rights Act, called most state efforts "dismal failures". These observers concluded that states lacked the commitment and the technical understanding of the law to develop concepts defining discrimination which applied to modern circumstances.

The most articulate of these critics was Herbert Hill, the labor director of the National Association for Advancement of Colored People. See Hill, "20 Years of State Fair Employment Practice Commissions, a Critical Analysis with Recommendations", 14 Buffalo Law Rev. 22, 1964.

### Gradual Revolution

Since the Hill article, a gradual revolution in state efforts to enforce discrimination laws has been occurring. In general, states have im-

### Metamorphosis



proved their technical abilities by adopting principles of law which developed late in the 60's and through the early 70's under the federal discrimination law. This body of law largely came about through the efforts of private individuals bringing lawsuits under federal discrimination statutes. In all but the recent pregnancy decisions, the U.S. Supreme Court has stood solidly behind individual efforts to create workable modern definitions of discrimination and remedies.

### Resistance

As the states became more committed and technically competent to build similar bodies of law under their own statutes, they immediately met resistance from the regulated portions of the public. Sensing the implications of affirmative enforcement of civil rights legislation, based on their experiences in the federal arena, the "respondent community" began a counteroffensive. Employers, labor unions, landlords, and others began by raising questions in court which only tangentially went to the central substance of discrimination. Typical early cases questioned the constitutionality of state anti-discrimination laws, voiced objections to the procedures agencies used, and argued that federal legislation generally preempted parallel state efforts.



## Agency Procedures Attacked

Alaska, predictably, is following the same course. The Commissioners decided late in 1974 to enforce this state's law against discrimination vigorously. A mild counteroffensive has begun. The resulting cases really question the foundations of discrimination laws. If procedures can be undone or if the legislation can be declared unconstitutional or preempted by federal law, clearly no substantial results will be obtainable.

### Damage Awards

Two 1976 decisions of the Alaska Supreme Court on the Human Rights Law were excellent examples of this preliminary counteroffense. In *Loomis v. Schaefer* the Supreme Court heard the question of whether damages are awardable under this state's law against discrimination.

The answer was yes, with the Supreme Court observing that Alaska's law is meant to have real "teeth" in it.

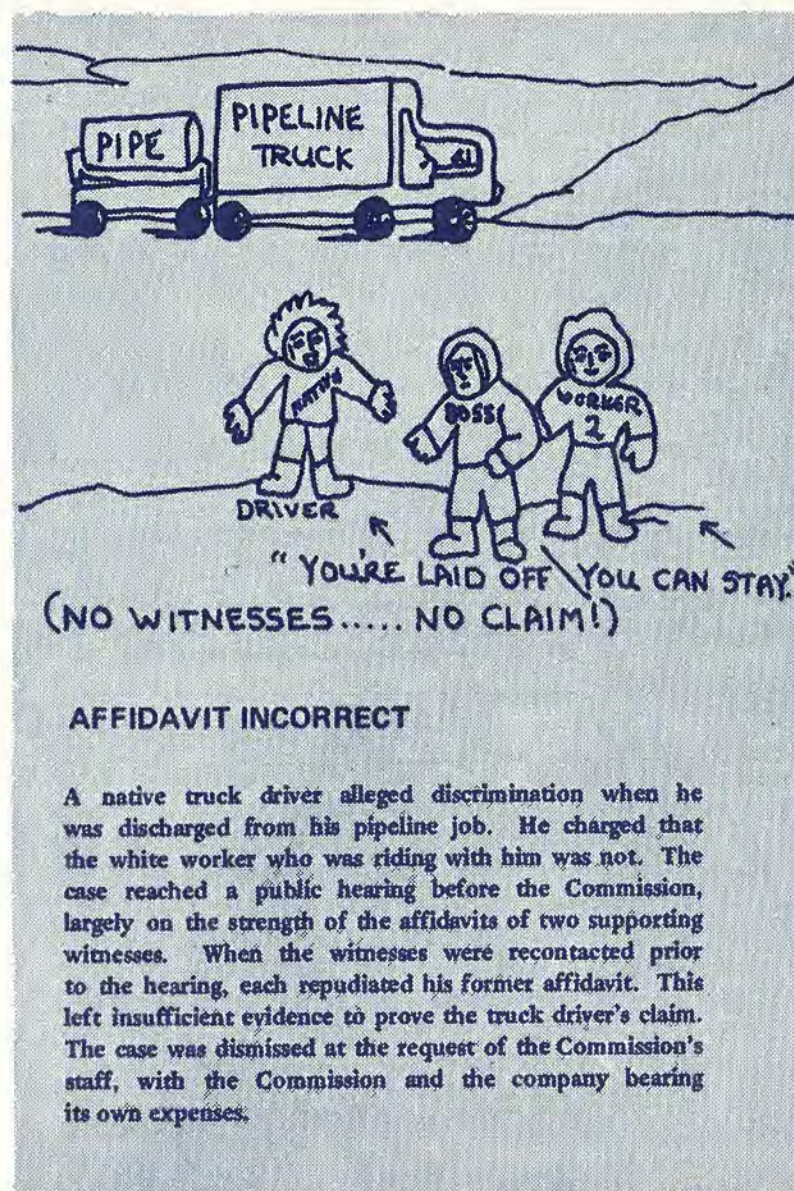
### Initiating Investigation

The second 1976 decision, *Hotel, Motel etc. Local 879 v. Thomas*, attacked the power of the Commission to initiate an investigation affecting many people. Again, the Court replied that the Commission was not to be "a mere complaint-taking bureau" but was to attack broad patterns of discrimination.

With its powers thus ratified, the Commission moved to adopt class action procedural regulations in 1977. By the close of the year, the Commission was processing claims of 55 women who alleged monetary losses as a result of alleged discriminatory practices by "Culinary" Local 879 during the early days of pipeline construction in 1974.

- 1977 -

In 1977, the attacks on the Human Rights Law and the Commission's procedures continued.

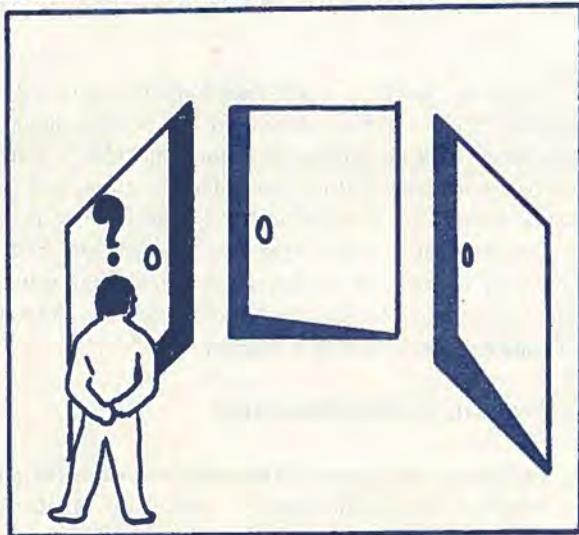




## Conflicts of Laws

### Religious Discrimination

RCA Alascom argued that only the federal labor law could apply to a claim of a religious discrimination by a Seventh-day Adventist who was fired at her union's request when she refused to pay union dues. (Supporting labor organizations is contrary to Seventh-day Adventist beliefs.) Without addressing the merits of the individual's claim, the Supreme Court held that the state laws against discrimination stand as a remedy separate from overlapping federal equal employment opportunity laws. Nor is the state law in any way invalidated by federal legislation, which reaches different issues, such as labor strife, the Court said. **Bald v. RCA**



### State Overrides Local

The city of Fairbanks argued that the Human Rights Law could not be read to override a local ordinance prohibiting the hiring of spouses. The Commission disagreed and held the city ordinance to be void because it conflicted with "marital status" discrimination provisions of the state law. **Scholle v. City of Fairbanks**

The Anchorage Telephone Utility (ATU) made similar argument in the Alaska Supreme Court in defense of a discrimination claim by a class of women. The Superior Court at Anchorage had denied their pre-trial request for personnel records which would enable the women to compare their salaries, benefits, and promotions with those of men. ATU argued that a municipal ordinance prohibiting disclosure of personnel information supported its denial of this information. The Commission sided with the women at the Supreme Court level to argue that civil rules governing discovery, as they apply to discrimination actions, override the municipal ordinance. The Supreme Court accepted this analysis and returned the case to Superior Court with instructions to allow all of the plaintiffs' discovery efforts. **Thomas v. ATU**

## Proof and Relief Standards

Another common line of attack at the early stage of enforcement of civil rights legislation is upon the methods of proof and standards of relief which cases require. In 1977, several Commissioner-level decisions adopted clear standards.

### Standards Of Proof

In a 1976 hearing, a black female who attempted to secure a correctional officer position with the State Division of Corrections was able to make out a prima facie case of discrimination. She relied upon a recent decision of the U.S. Supreme Court, and argued that she had met each of the tests required of her to discharge her initial burden. The state agreed that she had done so, and moved to rebut. Its rebuttal consisted of assertions that it had followed state personnel rules. According to that Supreme Court decision the complainant, if her initial case was rebutted, would have the opportunity to demonstrate that the state's rebuttal was a pretext. She choose not to. Instead, she argued that the state had failed to rebut her case in the first place. Following personnel rules, she claimed, where the operation of such rules can be shown to be discriminatory, does not rebut a prima facie case of discrimination.

The Commission's examiner recommended that the woman's argument was without merit, and that she should proceed to attempt to overturn the state's rebuttal. In 1977, the Commissioners, in their first decision



setting forth standards of proof, overturned their examiner and adopted the woman's position. **Muldrow v. State Division of Corrections**

## PARALLEL AGE BIAS LAWS

Providence Washington Insurance Group argued that the federal law against age discrimination would invalidate a broad reading of the state age discrimination law. The claimant argued that the state law should be read to grant coverage to workers who are over 65. (Under federal law, workers lose their rights at the age of 65.) The company urged the U.S. District Court for Alaska to limit state coverage to that of federal law. The court supported the claimant, noting that over a dozen other states have similar legislation. The state is free to regulate where the federal government chooses not to tread, the court held. **Simpson v. Providence Washington Insurance Group**. That decision is pending appeal in the U.S. Appeals Court at San Francisco.

## Confidential Investigative Files

Behrends Department Store in Juneau argued that it had the right to inspect the complete contents of every file in the Commission's Juneau office in which sex discrimination had been alleged since that office was opened in 1974. When the Commission refused, Behrends sued to block the Commission's further conciliation efforts with the store over alleged equal pay violations. The Superior Court rejected Behrends' public records demands holding that when employment discrimination cases are filed simultaneously with the federal government, they are protected under federal law which exempts investigative files from public inspection. The respondent has only the right, however, to see the file in its particular case, after confidential materials are removed, and with no right to show those materials to anyone else. **Behrends v. Bradley**

One claim argued in the Behrends case was that the state public records law makes all investigative materials of the Commission open to public inspection. Although the Superior Court was not willing to read the law this broadly, the Commission supports House Bill 131, now pending, to the extent that it provides a more clear basis for protecting confidential sources of the Commission (and, we presume, many other state law enforcement investigatory agencies.)

## Prior Filing

One complainant was briefly before the Supreme Court after her antidiscrimination suit brought directly in the Superior Court was rejected because she failed to file first with the Commission. The Commission intervened on her side in the high court to argue that the law permitting private suits in Superior Court stands independent of an individual's option of filing with the Commission. The Supreme Court indicated that she could appeal from the lower court's order, but could not use the expedited review procedure she had attempted. She failed to appeal, and there the issued died, with the question of prior filing with the Commission unresolved. **Davidson v. Kent**

## ACCEPTABLE EVIDENCE

What kind of evidence is acceptable in hearings conducted by the Commission?

That was the question raised in a physical handicap case the Commission decided in 1977. It had conducted the hearing some years before, and was faced with an inadequate record, including a transcript not taken by a court reporter and no clear identification of what material was actually before the Commissioners in the form of evidence. Although the Commissioners might have drawn inferences from such an informal record, it declined to do so and held that substantial evidence did not exist to support the case of the complainant. **Hoolsema v. Alaska Lumber and Pulp Company**

## Individual v. Patterns of Discrimination

It is common in federal employment discrimination cases for a single individual to trigger a broad-scale inquiry into many practices of a company or union. In some cases the individual's claim may fail, although patterns of discrimination may be revealed which must be remedied. This issue arose twice before the Commissioners in 1977 hearings.

It was un rebutted that the Yellow Cab Company in Fairbanks had never hired a woman as a taxi driver, even though two other local companies routinely did so. The complainant was told by the company's dispatcher that application forms were "locked up," that the



company did not hire women, but that she could talk to the owner at 5 a.m. even though it would do her no good.

The Commission rejected Yellow Cab's claim that she never "applied" because she took the dispatcher at his word. Further attempts would be fruitless, the Commission reasoned, and she was entitled to a finding that she was discriminated against.

At the same time, the Commission adopted findings of discrimination against women in general, and issued a remedial order to prevent future discrimination. Yellow Cab has appealed. **Mayer v. Yellow Cab Company**

Similar issues were brought out in the Commission's hearing into hiring practices of the Anchorage Laborer's Union local. Here the complainant failed to show that he was discriminated against, but established clearly that discrimination had long been practiced against minorities in general for union staff jobs. **Allen v. Laborers**

The appeals in **Mayer** and **Allen** can be expected to argue that the Commission is prohibited from dealing with patterns of discrimination if an individual brings a complaint. The Commission may be expected to argue that the Supreme Court's decision in the **Local 879** case expresses a legislative mandate to get to the roots of discrimination and not be a "mere complaint-taking bureau".

## DETERMINING LIABILITY

How the Commission should go about determining who is a respondent in civil rights actions sometimes creates legal problems. A female teacher in Anchorage sought to become a superintendent of one of the rural districts. Her application was not considered on the grounds that she lacked the proper credentials. She filed with the Human Rights Commission, arguing that many men now serving as superintendents don't have the same credentials which she lacks. Her original application was filed with the Alaska Unorganized Borough School District (AUBSD), which served as an interim one-year transitional agency between state operated schools and the independent 21 rural districts (REAA's). The Commission's investigation, commencing just as AUBSD

was expiring, sought to determine the extent to which the state of Alaska was responsible for AUBSD's operation. That finding would fix liability for any discrimination which may have been practiced against the Complainant. **Taylor v. State Department of Education**

The state refused to answer most written questions from the Commission, arguing that it should not have been named as responsible for AUBSD's conduct. The Commission moved to convene a hearing under new regulations designed for such situations, noting that if the complainant could make out an initial case, the state would be prohibited from defending on the basis of its refusal to answer lawful questions put to it by the Commission. Shortly before the hearing was to begin, the state answered the questions, the hearing was postponed, and the case was remanded for continued investigation.

## Who Is an "Employer"?

### NON-PROFIT ORGANIZATIONS

The Alaska USA Federal Credit Union urged that it is a non-profit organization which is exempt from the Human Rights Law.

(The University of Alaska made the same argument in 1975 in a case involving four female professors who charged sex discrimination. The case was settled in court after appeal of the Commission's order, with no determination made on this jurisdictional question.)

The Commission's examiner disagreed with the credit union, and the case went forward to the central question of discrimination against a woman in promotion to a manager's position at Adak. The present definition of "employer" in the Human Rights Law is admittedly ambiguous as to which organizations are exempt, but the Commission staff has uniformly argued that the Legislative intent was to give this law broad coverage. **Fridriksson v. Alaska U.S.A. Federal Credit Union**



## CHAPTER 8

# Civil Rights Problems The Law Doesn't Reach

Our discussion to date has centered on Commission efforts to develop the present Human Rights Law and teach people what it means. Sometimes the meaning of the words in the law is unclear. The Commissioners' most important function (with the courts reviewing their work) is to interpret the law as cases come before them.

On some subjects, however, it appears that there are civil rights issues and problems which the present law does not permit the Commission to address. These are questions of social policy for the Legislature to decide. Where it is without power to decide (as where federal law prevents state action) the Legislature may have the option of expressing itself by resolution to the federal government.

### Jurisdiction over Native Entities

Several cases have raised questions of the Commission's jurisdiction where native entities are involved. In most instances, the staff-level decision has been to not assert jurisdiction over the activities of the Metlakatla Indian Reserve (where Federal Legislation governing Indian reserves pre-empts state law). Likewise, the village of Kake. The Federal law under which it is chartered specifically allows the village corporation of Kake to charge non-members a fee for use of corporation property, despite the disparate impact this policy has on non-natives.

At the same time, the Commission, late in 1977, adopted a resolution opposing the extension of tribal sovereignty to native groups in Alaska. The Commission determined a grant of sovereignty could exempt the activities of native organizations from the coverage of the Human Rights Law.

### Sexual Preference

Homosexual groups testified for two hours before the Commission at a meeting in Fairbanks in support of legislation to add the words "sexual preference" to the Human Rights Law. (The Commission does not read the present word "sex" in the statute to extend to discrimination against homosexuals.) In 3-4 votes at two separate meetings, Commissioners declined to recommend such legislation favorably in the forthcoming legislative session.

### Government Contracts

It is often said that the government, in doing business with private companies, should be above reproach in guarding against discrimination.

Two forms of discrimination in government contracting are recognizable. The form most commonly recognized is discrimination in employment. A government program exists at the federal level to enable the government to assure itself that the firms it does business with do not practice discrimination.

The second form raises the question of which firms the government selects. The general principle is that the lowest and most responsible bidder should receive government contracts. Yet many government contracting practices operate unfairly to exclude from consideration qualified businesses owned and controlled by minorities. Bonding requirements, for instance, are often hard for small and minority businesses to meet. The requirements may not serve the public interest well, either.



# HUMAN RIGHTS



The costs which are passed on to the government of such requirements often exceed the benefits which the government derives in assurance that projects contracted for will be completed in a timely fashion. Where such requirements unfairly exclude qualified minority businesses, they may be discriminatory. They also deprive the government of the opportunity to contract with businesses, which in all other respects, may be the lowest and most responsive bidders.

The state of Alaska has no legal mechanism for addressing either of these subjects. Employment discrimination is against the law and individuals and the Commission itself may attack it. But the state of Alaska has no means to assure itself that it is not contracting with firms practicing discrimination. Nor does the state have any method under present law to exclude such companies from contracts they now hold and preclude them from future business with the state. At the federal level, these programs were instituted by Presidential Executive Order. Other state governors have exercised similar executive authority, although such has never occurred in Alaska. In some states, this authority has been exercised by the legislature.

No matter whether the state of Alaska chooses legislation or Executive Order, legal authority is needed to insure that firms owned or controlled by minorities enjoy a fair opportunity to compete for state business. The federal counterpart is a section of the Public Works Law under which Alaska receives substantial funding, 10 percent of which is to be set aside for competition by minority businesses. In Anchorage, similar legislation is also pending review by a committee chosen by the Anchorage Assembly.

Recognizing the state's deficiency in this area, the Human Rights Commissioners have voted their endorsement of legislation to deal with discrimination among government contractors and fair competition for minority-owned and controlled businesses. The Commission's staff has been directed to work with the Legislature to obtain such legislation during the coming term.



## CHAPTER 9

# Delivery of The Law: Justice Delayed

Suppose there was no Human Rights legislation at the state or federal levels?

Obviously, with no legal basis for challenging it, discrimination would abound. America's answer to discrimination has been to pass laws -- many of them -- and to set up methods of administering these laws at many levels of government. Some even argue that there are over-laps, waste, and duplication, particularly among federal agencies in the field. However, the practice in the state of Alaska uniformly has been to consolidate civil rights functions into a single agency.

Legislative efforts and strong court decisions mean little, however, if the agencies charged with enforcing the law are not effective. If one must wait years between the date the complaint is filed and when it is investigated and determined, little discrimination will ever be identified and eliminated. Witnesses will die or move away, records will be destroyed, and those who file complaints will lose interest in their cases.

One of the major civil rights problems in the state of Alaska has been the gap between what the law promises, and what the government is able to deliver.





## Expediting Changes

The Commission has made steady progress in reducing this gap between filing and resolution over the past three years. 1977 is the first year in which the Commission closed substantially more cases than it took in. The docket of unresolved cases is more than 200 below where predictions made at this time last year would have placed it. Yet the list of cases waiting to be determined still numbers many hundred, and dates back for over two years.

Throwing more money at the problem is an easy answer, but it doesn't always work. Increasing resources to fight a problem, any problem, has to be coupled with effective management so that funds are stretched as far as possible. For this reason, the Commission voted in mid-1977 to seek the smallest budget increase in its recent history, planning to focus instead on efficient operation of the existing organization.

### SUMMARY OF CASES PROCESSED BY REGION

JANUARY – DECEMBER 1977

Region	Cases Unresolved on Jan. 1, 1977	New Filings During 1977	New Filings During 1976	Cases Resolved During 1977	Cases Resolved During 1976	Cases Unresolved on Jan. 1, 1978
Southcentral	329	320	341	327	268	322
Northern	340	188	292	184	206	342
Southeastern	121	82	129	128	114	77
<b>TOTAL</b>	<b>790</b>	<b>588</b>	<b>762</b>	<b>637</b>	<b>588</b>	<b>741</b>



## NEW CASE PROCESSING PROCEDURES

Much of the Commission's success in resolving a record number of cases, with a staff which has basically remained the same size, may be attributed to new case-processing procedures instituted in late 1977.

Previously, each complaint was investigated in the order in which it was assigned. This meant that most cases would wait for over a year before being assigned to an investigator. The new practice is to convene both parties within three to four weeks of the complaint being filed. These

"resolution conferences" enable the Commission to identify what the issues are before information grows stale and people lose interest.

The conferences provide easy avenues for settlement before so much time has elapsed that potential liabilities have grown to the point that claims are cheaper to resist than to settle. The Commission's experience during five months of operation of the new system has been that approximately 40 percent of all new cases on which conferences have been held are resolved within a month of filing.

### RESOLUTION CONFERENCE ACTIVITY 1977

<b>Total Conferences</b>	<b>279</b>
<b>Resolved after conference</b>	<b>105*</b>
Settlements	28
No Discrimination	47
Withdrawn	18
Other	12
<b>Unresolved after conference</b>	<b>174</b>
Settlement pending	28*
Active investigation	17
<b>To be assigned for investigation</b>	<b>131</b>

\*47% resolution rate attributable to conferences if all settlements pending at press time are completed.

### REASONS CASES WERE CLOSED

JANUARY - DECEMBER 1977

Definitions	Number of Cases	Percentages
1. Failure of Complainant to Cooperate/Proceed	102	25%
2. Conciliation/Settlement	143	23%
3. No Probable Cause	106	17%
4. Other*	102	16%
5. Administrative Dismissal	64	10%
6. Complainant Unavailable	55	9%
<b>TOTAL</b>	<b>637</b>	<b>100%</b>

\*Includes: withdrawals, failure to file timely and lack of jurisdiction.



## INTERNAL REVAMPING

Other innovations which have reduced the need for a dramatic rise in resources have been the leasing of dictating and fast-word-processing equipment, refinement of hearing procedures, setting of performance standards for investigators, and the hiring of a full-time legal assistant to prepare cases for hearing under the fiscal year '78 budget voted by the Legislature in early 1977.

## LIBRARIAN, COMPLIANCE SPECIALIST

Two other new functions added to the Commission's staff under its CETA contract with the Municipality of Anchorage have been a librarian to coordinate and build a comprehensive library of technical civil rights materials not available elsewhere, and an attorney to review agreements which have been executed with the Commission to insure that they are being complied with.

## Local Commissions

Extension of the Human Rights Law through out the State of Alaska by local ordinances grew rapidly in 1977.

A 1975 amendment to the Human Rights Law specifically authorized the establishment of local commissions and councils to deal with human relations problems. There are basically two models which communities may adopt.

Under the enforcement model, a commission with powers similar to the State Commission is established. This local group then may enter into agreement with the State Commission by which the local group first receives all complaints of discrimination in its area. The State Commission then resolves only those cases which the local group is unable to complete.

The second model establishes a committee to study problems of discrimination, identify situations where racial tension may be occurring, make non-binding recommendations to the local governing body or executive, and conduct public education programs.



### ANCHORAGE

Anchorage has long had enforceable legislation. It was strengthened and broadened to cover the entire municipality shortly after unification with the former borough. Case-processing agreements existed through mid-1977 with the Municipal Commission and the State Commission. However, late in 1977, the Anchorage group elected to pursue its own course and process cases independently of the State Commission. Therefore, all complaints within Anchorage received by the State Commission are investigated at the state level.

### FAIRBANKS

Fairbanks has also long had human rights legislation on its books. The legislation establishes a commission to study problems of discrimination. The commission was active some time in the past, but has been inactive in recent years. The city has not appointed members of the Commission recently, and most have moved away. The State Commission urged the Fairbanks mayor to make the appointments and to spend the \$30,000 the City Council had voted to finance the local commission's activities for 1977. The mayor responded by indicating he would do so only if the State Commission would voluntarily refrain from accepting any complaints in Fairbanks. The State Commission responded that it had no power to do so.

### JUNEAU

Juneau became the third municipality in the state to adopt human rights legislation when it enacted an ordinance in early 1977. The Juneau Human Rights Commission is an advisory group of 13 Commis-



sioners. They have organized themselves into research, public education, and dispute resolution committees. That Commission has also offered tuition-free classes in landlord-tenant law, consumer rights, the aging, and youth and the law.

### **KETCHIKAN**

The voluntary Ketchikan Human Relations Commission has worked closely with the State Commission's Juneau Office to receive legal training on discrimination. That group assists citizens in Ketchikan in filing complaints with the State Commission. The Ketchikan Commission has also sponsored a housing forum on landlord-tenant law.

### **SITKA**

The State Commission set its first meeting in 1978 tentatively in Sitka, in the hopes of meeting with local citizenry there who support local human rights work in that community.

### **BARROW**

The State Commission's last 1977 meeting, in Barrow, included a joint session with the City Council of Barrow which will be considering a resolution to establish a human relations commission in the state's far-north city.

## **Federal Agreements**

It is often tempting, with Alaska at such distance from the south 48, to look only to state and local resources to support Alaska's commitment to non-discrimination. Not to be forgotten, however, is the federal effort. The Commission found 1977 to be a year of identifying the general weakness of the federal government's discharging its anti-discrimination responsibilities in Alaska.

### **FEDERAL CONTRACT COMPLIANCE**

For example, federal Executive Orders insure that contractors may be prevented from doing business with the federal government if their hiring practices discriminate against minorities and women. That effort has

been, in recent years, enforced by the Department of Interior, Office of Equal Opportunity. During 1977, the Commission, in a series of meetings with federal officials, sharply criticized Interior's failure to adequately staff its OEO office in Alaska so that it could monitor federal contractors - - construction and non-construction - - and contractors on the Alyeska Pipeline Project.

Late in the year it became clear that the U.S. Labor Department, which decides which federal agencies will bear which enforcement responsibilities from state to state, was planning to abolish Interior's authority to enforce these federal standards. The Labor Department announced its intention to transfer this responsibility to the Department of Defense. By late 1977, the transfer had not been effected, the Department of Defense had assigned no personnel to the project, and the authority of Interior to enforce equal employment directives had lapsed. Thus, as 1977 closed, there was no Federal enforcement agent in Alaska responsible for and with legal authority to enforce Presidential Executive Orders prohibiting employment discrimination by government contractors.

### **OTHER AGENCIES**

That problem was not eased by any other federal agency. All other federal agencies with civil rights enforcement responsibilities are meagerly staffed, with no employees in Alaska with civil rights enforcement responsibility. These include: Department of Health, Education and Welfare (discrimination by its contractors and sex discrimination in educational programs); Department of Housing and Urban Development (equal opportunity in housing); and Equal Employment Opportunity Commission or EEOC (employment discrimination).

The U.S. Department of Labor has one employee in Alaska to investigate all wage and hour claims. His responsibility includes equal pay violations between the sexes.



### **TEMPORARY MEASURES**

The EEOC, recognizing that its distance from Alaska prevents it from investigating many employment discrimination cases here, more than doubled its financial support of the State Human Rights Commission in 1977. Even so, pleas by the State Commission to EEOC to establish a field office in Alaska so that EEOC could carry its fair share of case resolutions have fallen on deaf ears. Instead, the Seattle office of EEOC was greatly expanded late in 1977, with a work-sharing agreement between EEOC and the State Commission pending.

### **THE NEED**

Until the federal government meets its civil rights obligations in Alaska by stationing reasonable numbers of enforcement personnel here, state government will continue to carry a disproportionate share of the responsibility.