

STATE OF ALASKA

HUMAN RIGHTS COMMISSION

JAY S. HAMMOND, GOVERNOR

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Dear Governor Hammond and Members of the Legislature:

As elected officials you are continually concerned with what often seem like competing obligations. The first is to be responsive to the people who elect you. The second is to devote your best energies to resolving statewide issues. Either activity could easily consume all your time, with regrettable consequences.

The Human Rights Commission has faced a similar problem this year. On the one hand we are obligated by law to furnish prompt, fair and impartial treatment to complaints which individuals bring to us. On the other hand, we also face broad issues and widespread patterns of discrimination in our state. Many of these are problems which individuals do not bring to our attention: even when they do, we quickly sense that we are only seeing the tip of an iceberg.

Although we have made significant headway in improving our service to individuals, we realized during the year that we could not permit ourselves to be consumed by this activity exclusively. Too many larger problems cried out for us to address.

Our answer has been to establish a new unit to deal with what is known as systemic discrimination, that is, discriminatory patterns or practices affecting a class of victims. The Commission accomplished this at no increase in cost by consolidating, reassigning and eliminating other functions no longer necessary. At this writing we are awaiting Federal support to bring the systemic unit to full strength.

In this report we will describe some of the steps we have taken to bring even greater strength and efficiency to the Human Rights Commission. We will also discuss our legislative recommendations and share with you our thoughts on issues of discrimination involving state government.

On behalf of the Commission, thank you for your support. Your advice and input, especially the informal exchanges many of you have had with Commission members and staff, are gratefully appreciated.

Sincerely,



Niel Thomas
Executive Director

Alaska State Commission
for Human Rights

1978 Annual Report

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STATE OF ALASKA
HUMAN RIGHTS COMMISSION
JAY HAMMOND, Governor

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I. Alaska's Anti-Discrimination Law

Alaska probably enjoys the strongest body of civil rights law in America.

To grasp this statement fully, you need to understand our phrase "body of law." That means more than just the printed text of the law written by the 1963 legislature and amended and strengthened from time to time by nearly every legislature since.

"Body of law" also includes our state constitution. We enshrine equal rights in the basic legal underpinnings of our state. The Human Rights Law carries out this constitutional provision.

"Body of law" also includes interpretations of the law. No legislature can anticipate every case which may arise under the law. So it establishes an agency to interpret the laws. To be fair to everyone, the agency tells people in advance what it believes the law means, anticipating how it will rule when cases come before it. In Alaska that agency is the Alaska State Commission for Human Rights.

The Commission is governed by a body of seven unsalaried lay people, Commissioners, who are appointed to staggered five year terms and confirmed by the Legislature. Appointments to the Commission have been made with an eye to achieving a balance between the sexes, races and national groups, and the state's geography. The Commission employs a professional staff and receives legal advice from the Department of Law. For administrative and state-wide policy purposes, the Commission is placed within the Office of the Governor.

"Body of law" also includes how Alaska's courts interpret the law. Some cases may examine the text of the law or the constitution. Other cases may decide whether a Commission interpretation of the law was correct. Regardless of the outcome of any particular case, these final interpretations by Alaska's courts are essential so that the public may know in greater detail what the law means and be guided accordingly.

The Constitution

The Alaska Constitution makes a broad and general statement about equal rights:

No person is to be denied the enjoyment of any civil or political right because of race, color, creed, sex, or national origin. The legislature shall implement this section. Art. 1, Section 3.

This provision is closely parallel to the 14th Amendment of the U.S. Constitution. The word "sex", added in 1972, is mirrored by the proposed Equal Rights Amendment, which three states must yet ratify during the extended period voted by Congress this year before it can become part of the U.S. Constitution. Alaska was one of the first states to ratify the Federal amendment. One can't help but wonder why all the supposed ills of the Federal amendment have not been visited on Alaska during the past six years that the same provision has been in our state constitution.

The Statute

The law covers discrimination in employment, housing, credit, public accommodations and government services. With variations between sections, discrimination is forbidden on the bases of race, color, religion, sex, age, physical handicap, national origin, marital status, changes in marital status, pregnancy and parenthood. The Commission receives complaints from individuals and, through complaints initiated by its Executive Director, begins investigations on its own motion. Commissioners hold hearings in cases not settled by the staff. The Commissioners' orders may be reviewed by the courts. The Commission also interprets the Alaska Human Rights law through regulations and guidelines.

Commissioners' Decisions

By the end of 1978 the Commissioners had issued 17 decisions in 15 cases, the earliest dated March 10, 1975. Of these, nine decisions were issued in 1978, bringing to the stage of judicial review many cases originally commenced in response to the Commissioners' 1974 policy decision to begin vigorously enforcing the law. The complete text of all Commissioners' decisions is available at the all offices of the Commission (Anchorage, Fairbanks and Juneau) and state law libraries in those cities. Parties to proceedings before the Commission are always encouraged to be familiar with previous decisions, because the Commission will view their decisions as precedent.

Regulations

Commission regulations govern not only procedures for processing cases, but also how the agency will interpret the law in commonly arising situations. The Commission has generally adopted relevant regulations and guidelines of Federal agencies to harmonize state and federal interpretations where the laws are similar.

One proposed adoption of a pending federal guideline will attract significant attention when it comes before the Commissioners for adoption early in 1979. It anticipates the problem of some employers when they voluntarily try to

eliminate discriminatory practices. These efforts, termed affirmative action, can trigger "reverse discrimination" lawsuits from whites or men. Why? Because when employment discrimination is practiced, there are some employers who profit from it. These are whites and men who see themselves as losing an entitlement. The proposed rule would protect employers engaged in good faith affirmative action in reliance on a Commission decision or a settlement entered into with the Commission.

Court Opinions

In the four years since the Commission began its enforcement program, the Alaska Supreme Court has issued six opinions about the Human Rights Law, three of them in 1978. One interpretation has come from the Federal District Court, now pending review in the Court of Appeals. There are also several lower state court opinions which were not appealed. Every appellate court decision to date has substantially adopted the position advanced by the Human Rights Commission. Here is the pattern which has emerged from these decisions: First, courts are called upon to interpret the law where language does not explicitly address the issue raised by the case. In many instances, the Supreme Court has looked to relevant Federal law and interpreted the state law consistent with the federal decisions. For example, the Wondzell case, decided this year, asked whether employers have a duty to make a reasonable accommodation to their employees' religious practices. They do, the Court said, because even though Alaska law does not contain such a provision explicitly, the history of related federal law and the overall purpose of the state law compel such a reading.

The second theme in the Supreme Court opinions is heard when state law speaks to a question but Federal law does not. The Simpson case, now in the federal appeals court, in effect threw out mandatory retirement based on age in Alaska because the protection of state law does not end at a fixed age as the federal law does.

What evidence is required in discrimination actions? Our Supreme Court has concluded that the Alaska law is stronger on this question than its federal counterpart. To overturn an initial showing of discrimination the Court answered that the evidence must be "clear and convincing". It was not clear and convincing that the University of Alaska needed broad discretion in setting faculty pay scales, when the discretion resulted in an unexplainably lower salary for a female professor. That 1978 decision in Brown was quickly followed by the Marine Transportation cases where the state said it would be burdensome and costly to rearrange sleeping quarters on state ferries to accommodate female employees seeking jobs in departments from which they had been exclud-

ed. The Court noted that the state had created the problem by the discrimination it had been practicing and again asserted that it would not accept the state's position with anything less than "clear and convincing" evidence that the reasonable demands of those jobs required a distinction based on sex. That standard is significantly greater than the federal standard under which one party prevails by offering the preponderance, or most weighty part, of the evidence to support his or her position.

Earlier cases, discussed in our previous reports, add to this strong legal foundation. The Court has been heard to observe that the Human Rights Law has "real teeth" in it (Loomis, 1976). The Court has called upon the Commission to engage in "vigorous, broad-scale enforcement" (Local 879, 1976). The Human Rights Law is not superseded by the National Labor Relations Act, but stands available as a separate remedy for discrimination (Bald, 1977).

Each of these seven cases goes well beyond the more narrow facts of the individuals who brought them and speaks generally to how strongly committed Alaska is to eradicating discrimination.

Note: An appendix to this report lists all human rights cases which were in court or before the Commissioners at hearing during 1978. Not listed are cases filed directly in court by individuals in which the Commission is not a party. See A.S. 18.80.220(b).

II. Individual Cases

Many allegations of discrimination brought to the Commission by individuals have the makings of something much larger. The landmark cases just discussed were not brought simply because someone wanted to make a precedent. Jack Simpson was put out of work because he reached age 65. Robert Wondzell and Bernadine Bald found their employers' union obligations incompatible with their religious beliefs. Berneda McClean wanted a better job on the state ferries. Greta Brown wanted the same pay as male university professors of her rank. Paddy J. Schaefer wanted an equal chance at a security officer job. These kinds of claims are the daily activity of each of the Human Rights Commission's field offices.

Experience has taught us, however, that many cases can be directed elsewhere -- or people can be told immediately that the law cannot help their situation -- if the Commission practices more close screening of requests for assistance. In 1978 the Commission accepted detailed training from the federal government and later adopted tougher screening standards. As a result, new filings dropped dramatically in 1978 and the staff put proportionately more energy into cases in which the complaining party was able at least to make an initial showing of discrimination.

Experience has also shown that the longer a case is allowed to remain inactive, the less likely it becomes that any resolution of the issues will take place. The parties lose interest, records are lost, and witnesses become unavailable. The Commission responded late in 1977 by establishing a system of "resolution conferences," held shortly after the filing of the complaint. The parties come informally before a Commission investigator. They have already been told in writing what the issues are and what facts will probably be relevant. If the parties are well-prepared, the investigator can often make a recommendation on the spot, and where it is appropriate, help the parties come to a mutually agreeable resolution. About half of all new cases filed in 1978 were resolved either at these conferences or shortly thereafter. (The balance are scheduled for assignment for further investigation, coming up in the order in which each is filed.) The Commission's procedure attracted considerable attention nationally after a paper describing it was distributed to related agencies in other states.

The 1974-6 deluge of pipeline-related cases and the incoming workload which is not resolved at resolution conferences leaves a backlog of 600 cases, 21 fewer than was predicted at this time last year. The reduction in backlog was 152 cases. Detailed facts and figures documenting case production appear as an appendix to this report.

The federal government has announced that it will not continue to support financially any agency which carries a "significant number of cases over one year old". (Characteristically, the federal government has not to date defined what it considers "significant".) Alaska has met and exceeded other federal standards for case screening and rapid processing of incoming complaints. Alaska's cases, many of which are cross-filed with the federal government, are reviewed after closing for compliance with federal standards. Alaska's acceptance rate is among the highest in the nation. But if Alaska's "backlog" is found to be "significant", the state stands in jeopardy of losing its Federal funding to the Commission (which now constitutes over 10% of its budget) and a declaration that it is ineligible for new forms of funding to be made available in FY'79 and FY'80 under substantially increased Congressional appropriations. The Commission's staff, therefore, has devoted extraordinary attention to resolving older cases from the backlog. The state budget request for FY'80 suggests a modest increase for the field offices to increase their capacity to process the individual case load.

It may seem odd, but a most acute civil rights problem is being caused by the fact that there are no permanent typists in the Commission's field offices to process cases already completed by the professional staff!

III. Systemic Unit

We have spoken of several lessons learned from experience with individual cases. One of those lessons involves spotting the "iceberg case". That's the kind of case which is impossible to resolve for the individual without going to the heart of the system which causes the individual's problem. We call these "systemic cases", and they often take considerable time, effort and legal battles to resolve. (Some cases of this type in the federal arena were filed in the late 1960's and are still going on, with the stakes in at least one of them totalling nearly \$100 million in back wages and attorney fees.)

The most prominent Alaskan example is the culinary workers case involving Local 879 in Fairbanks. Individual women first complained that the union would not dispatch them to the pipeline in 1974. The Commission realized that Alyeska's refusal to provide facilities and the union's dispatching rules were causing the problem. Affected were virtually all the female members of Local 879. Their potential lost wages may have been in the millions.

When the Commission brought its own action against the union, the union responded by stopping the Commission's hearing twice, first by alleging that the examiner hearing the case had a conflict of interest and second with a court order. That led to a battle in the Supreme Court over whether the Commission's executive director had the right to bring a case on behalf of many people. When the Court ruled in favor of the Commission in 1976, lengthy negotiations preparatory to renewal of the hearing led to a settlement under which each woman affected could make a claim for lost wages. The few who were still around in 1978 filed their claims, but next the international culinary union moved to place the local in receivership and tried in state court to stop the Commission from hearing the wage claims. In December, 1978 the state court denied the International's motion and, barring further hostilities in court, the claims will be heard in January, 1979. What further action may be required to secure payment of claims is uncertain, however, because of the possibility that the local may declare bankruptcy.

This case was instrumental in opening up pipeline jobs for women. The Commission demonstrated that it was willing to take on a major issue and fight it through all defense maneuvers. At that point, other unions and employers decided that compliance with the law would be far less costly than resistance to it.

This unseen spillover effect was what encouraged us to make a priority of systemic cases in 1979. We have come to believe that each case will move more rapidly than the one

before because the number of ways to challenge the Commission's authority diminishes with each favorable court decision. We will never again have to litigate our right to bring class action cases, for example, because that was decided conclusively in Local 879.

In mid 1978 the Commission established a separate systemic unit under a state-wide assistant director co-equal with the three existing field office directors. Although field offices will continue to focus mostly on backlog reduction, they will handle smaller systemic cases not assigned to the systemic unit. By the end of 1978 the Commission had adopted priorities for its systemic unit, created a docket of major cases, and applied for Federal funding to staff it fully.

As adopted by Commissioners at their December, 1978 meeting, here are the four co-equal priorities of the systemic unit:

Exclusionary employment devices: One of the most frequently occurring situations in Alaska seems to be the moderate-size to large-size employer, including state and local governments, school districts and the University of Alaska, whose employment statistics show few, if any, minorities and women in middle and upper-level management positions. In such cases, minorities and women are either clustered into the traditionally lower paid job classes, or fail to appear in significant numbers in the employer's entire workforce. Many times, neutral practices such as word-of-mouth recruitment, hiring of relatives, minimum job requirements such as unrelated educational and/or employment experience, use of unvalidated tests, lack of affirmative action recruitment programs, and other potentially unlawful employment practices are responsible for perpetuating a white male-dominated workforce. A bush construction contractor which fails to engage in any local recruitment is an example of such practices. Canneries which segregate job classes by race are another example. Occasionally, one can still trace poor employment patterns to overt discriminatory practices. Also, women are heavily impacted by equal pay violations.

Discriminatory union practices: Some unions operate a dispatching and/or registration system that appears neutral on the surface, but adversely impacts on minorities and women, thus limiting their employment opportunities. A system that requires members to register in person at the union's urban headquarters on a monthly basis may adversely impact on Natives in rural communities.

A name-requesting procedure requiring prior employment with the requesting company as a condition of eligibility may perpetuate low minority and female participation. Screening procedures for apprenticeship programs may tend to discourage or eliminate minorities and women.

Denial of state services: State services to rural areas are a large concern in Alaska. Any service or program offered by the state has the potential of failing to deliver fully to rural areas because the delivery system often overlooks unique problems in the bush. The Hootch case resulting in the state's building rural high schools is indicative of the kinds of issues that need to be addressed here. Post-retirement programs, correctional facilities, advertising of state programs, explanation of bureaucratic paperwork to rural residents, etc., are several of the concerns under this issue.

Equal educational opportunity: Some education issues of concern are:

- * Whether minority students are disciplined at a higher rate than white students.
- * Whether black, native, and other minority children are routinely put in special education classes at the early grade school level in higher percentages than white children, only to be labeled as slow learners throughout their entire education. There are indications that non-minority children may be returned to regular classes earlier than minority children. Teacher expectation and pupil performance are the two key variables in imposing the "slow learner" label on minority students.
- * Whether inadequate attention has been given to identifying and serving the needs of minority students.
- * Whether teachers and administrators have been negligent in attempting to eliminate racial and sexual stereotypes in school curriculum.

This list is, by no means, exhaustive. Recent attention has been focused on the needs of black students in the Anchorage school district because standardized test scores indicate half of the upper-grade level black students score in the bottom 25% of all district students.

As with the Local 879 case, stiff resistance may be expected as the Commission begins to address these major discriminatory practices. Discrimination is an economic force as much as it is a social phenomenon. When certain people are kept out of society's benefits, other people are profiting. Those who control that system have power or access to power: economic power, legal power, political power. The state's greatest civil rights problem, as we said in these pages last year, is the public's perception of discrimination. Can we succeed in attuning people to the fact that traditional and inter-related systems can be discriminatory? That perception will help us move from the much more narrow concept that discrimination is only isolated acts of malice directed at particular individuals. That perception will generate understanding of the Commission's systemic program, and make the Commission what the Supreme Court directed: to be more than "a mere complaint-taking bureau".

IV. Contract Compliance and Minority Contractors

During the same meeting at which the Commissioners set priorities for the systemic program, a separate resolution set in motion a case of even greater potential significance. The filing of that case was announced by the Commission's Executive Director, Niel Thomas, in a December 10, 1978 speech to state Commissioners, their deputies and others assigned equal employment responsibilities in state government:

The issue is one which the state has utterly failed to address to date, despite our frequent urgings. That issue might best be termed "economic discrimination". It is manifested in the state's business practices.

Every year the State of Alaska gives out millions upon millions of dollars in the form of contracts. The State builds things. It buys materials and supplies. And it buys services. A substantial part of this funding is federal, but it is the state which decides how to spend it. Who profits from all this economic activity? We have reason to believe that white persons, for no legitimate governmental policy reasons, are the prime beneficiaries. If such is the case, these state practices are illegal.

This economic discrimination may take two forms which are related to each other. First, the state may be passing out money and contracts with little or no consideration of the employment practices of the firms with which it does business. Ask yourselves whether any of you have ever considered the employment profiles of bidders and if you did gather this information whether you acted on it.

Has the state ever done as the Human Rights Commission has done in refusing to award a contract to the University of Alaska's Criminal Justice Center, which submitted an otherwise outstanding proposal for services to rural Alaska, because its professional staff is all white and male?

The other form of economic discrimination of which the state may be guilty has to do with the ownership of entities with which it does business. Does the state have any idea of the race of the owners of its contractors and suppliers? I doubt it. In fact, it may be shown that the very nature of the state's contracting practices, bid package size, advertising, bidding and bonding requirements for example, inherently put minority-controlled firms at a disadvantage. If they do, the

state will have to produce "clear and convincing" evidence that these requirements serve the public interest and that reasonable alternatives do not exist.

It is certainly clear that the state has no organized mechanism for assuring itself that this type of discrimination is not being practiced. We have urged the Governor to remedy this problem his predecessors left him, but there has been no forward movement to date, despite a lawsuit in which held the Ohio Governor's failure to monitor this subject to be unconstitutional.

Therefore the Human Rights Commissioners have instructed the staff to initiate a broad investigation into possible discrimination against minority contractors and employment discrimination by all contractors in both construction and service and supply contracts. The Department of Transportation, because of its intense activity in contracting, has been named in initial charges which have been served on Commissioner Ward. In moving forward on this investigation free rein has been given to redirect agency resources as necessary since this case has been designated by the Commissioners themselves as the top priority of this agency.

Nothing precludes the state while we are working on this case from dealing with this question voluntarily. Karen Cory, the State EEO officer, has already informed us of Commissioner Allen's interest in the subject.* We will, as we gather data and become more familiar with the issues, assist the state as necessary. But we should all recognize that action is long overdue. Resolution can only come when it is based upon solid facts and an understanding of the problems.

Preliminary indications from the state, especially from Department of Transportation Commissioner Ward are that the state shares the concern of the Commission over this subject and will cooperate fully with the Commission's investigation. Indeed, immediately prior to the Human Rights Commission's initiation of the case, Commissioner Ward had taken some preliminary steps to streamline the contracting process of his department in all areas, including establishing better opportunities for minority contractors.

* On December 28, 1978 the Commission received a letter from Commissioner Allen requesting an initial meeting to "define problem areas and brainstorm alternatives".

All parties appreciate that a fair examination of the facts and any ultimate resolution will require looking at a voluminous quantity of records which may be located in dozens of places or not exist at all. Preliminary information is due at the Commission on January 31, 1979, but at this early stage it is very difficult to predict how long it will take to complete the investigation.

V. Before the fact

The Commission seeks to halt on-going discriminatory practices which affect many people. The systemic program --including the contract compliance case -- will reach these issues while they are occurring, and provide remedies before many more people are hurt. This is dealing with discrimination before the fact, while exclusive attention to individual cases tends to be a matter of putting the pieces back together after the damage has been done.

Some have characterized the Commission's activities in recent years as an after-the-fact operation. That is inaccurate. Systemic cases have always been an important part of the Commission's case load: the Supreme Court has characterized it as the Commission's most important activity.

Even many individual cases have a before-the-fact effect. The 1977 Raymond case, which was settled while the appeal of the Commission's order was pending, is a good example. Wien Air Alaska denied Linda Raymond a baggage unloading job at its Deadhorse station claiming it had no facilities for women. The Commission held that employers have an obligation to provide such facilities: failure to provide quarters cannot be used as an excuse for not hiring women. Looked at from Linda Raymond's point of view the case restored her losses after the discrimination occurred. But the real significance of the case is the standard of legal relief against employers. This and other cases which were active at the time put the employer community on notice that severe financial penalties could flow from not having facilities for females. Within a year the Commission had seen an almost total end to this defense by employers: hundreds of women doubtless got jobs in remote locations at least partly because of these Commission cases.

Most of the cases listed on the case action docket of this report's appendix should be seen this way. The individual may have won (and had his or her losses restored) -- or the individual may have lost -- but important principles are established which employers thereafter tend to follow voluntarily. Here are a few more examples, from Commissioners' decisions.

Yellow Cab - To establish that one has applied for a job and been denied it is enough for the person to rely on the say-so of an employee who appears to know about hiring policies. An employer's reputation on equal employment matters can be used as evidence in an individual's case. (On appeal.)

Alaska U.S.A. - It is not unlawful retaliation to fire someone after he or she files a complaint with the Commission if the person becomes insubordinate. (On appeal on other issues.)

Allen - An individual can show that an employer's practices have historically been discriminatory and get an order remedying the problem even if the individual bringing the case cannot show he or she suffered discrimination (On appeal.)

Kirkpatrick - An employer can successfully rebut charges of physical handicap discrimination by showing, through expert testimony, that the applicant's condition would be worsened if employed.

McClinton - Refusal to consider a minority candidate is a violation of the law, even if it is doubtful whether the person would have accepted the available job; to show that an employee was forced to quit, the person must demonstrate specifically what acts of the employer made working conditions intolerable. (On appeal on the first issue and others.)

McDaniel - Discrimination by a place of public accommodation makes the business liable for monetary damages. (On appeal.)

Muldrow - An initial showing of discrimination cannot be rebutted by demonstrating that the employer followed its own personnel rules. (On appeal.)

Presley - An unvalidated, subjective oral interviewing procedure can be shown by statistics to cause discrimination, especially where some of the questions are obviously discriminatory. (On appeal.)

Kees & Times - An employer can rebut religious discrimination charges by showing how the essence of the business requires persons of a certain religion; newspapers may publish ads expressing a religious preference for such positions until it is shown that the preference is unlawful.

Scholle - It is marital status discrimination to refuse to employ spouses when the two would be working in unrelated departments.

Whether all the decisions on appeal are sustained or reversed, important future guidance will result from the process. Faced with the substantial risk of expensive lawsuits, bad press and costly remedies, many employers voluntarily comply with these interpretations as they are finalized. Each individual who brings a case, then, performs an important public service by raising on-going issues of discrimination and resolving them for all time, to the benefit of countless others who never enter a Commission office because they do not need to.

VI. Public Understanding

The major court cases, the public hearings and decisions flowing from them, the policy pronouncements of Commissioners and statements of key staff -- these tend to attract the most public notice. Less visible but possibly more important, however, are the daily activities of the Commission's three field offices. Here is where the one-to-one people contact takes place which makes the law come alive to the general public. How effectively the Commission carries out its work on this level is a large factor in furthering public understanding of the rights and obligations which the human rights law creates. After all, Alaska has a small population, and word travels fast.

The case load statistics appearing as an appendix in this report do not tell this story well. No set of numbers could describe the reactions of real, live people as they encountered human rights questions through the Commission. Some people contacted the Commission but were redirected to the agency which could help by the Commission's intake officer. There were scores of people who called to tell us that discrimination ended when they threatened to file a complaint, but never had to. There were many employers who tried to avoid problems by calling the Commission for advice. Other employers asked the Commission to train their own people on equal employment standards. There were groups of concerned citizens in several communities who started their own human rights activities on a local level with technical help from Commission field staff. There were students who studied the Commission and classes who heard staff presentations.

We believe this work has deepened public trust in the human rights law. Although the Commission staff may have a reputation for taking a no-nonsense approach when enforcing its law, we have made a conscious effort also to be known as a resource of friendly and willing expertise for people who want to see problems resolved amicably.

Here are some examples of these activities around the state:

Southeastern: The Commission's quarterly meeting last spring in Sitka became a community relations exercise when only about half the available time was needed for business sessions. After many advance staff contacts, both staff and Commissioners went as individuals to meet with key community leaders and citizens to discuss local concerns. In Ketchikan and Juneau local commissions dealing with human rights on a non-enforcement basis are meeting monthly. Commission staff visited nine different communities in connection with cases. A

major equal pay claim was settled without recourse to hearing, with 141 claimants receiving notice that they were eligible for a financial award. The Juneau staff is constantly on call for advice to state government and the legislature, thus conserving scarce travel funds.

Southcentral: The Anchorage office carries the largest case load, 60% of all new cases accepted in 1978, plus 800 inquiries not taken as cases. Over \$200,000 in lost benefits was restored to successful claimants during the year. The Anchorage staff was heavily involved with preparing a seminar for 250 employers, co-sponsored by the Anchorage Personnel Association. Videotapes were later prepared to summarize the material for showing on public television stations throughout the state. Many members of the staff are personally involved in the activities of related non-government agencies.

Northern: This staff promoted training programs in agreements it negotiates when settling cases. In addition to a remedy for the individual filing the case, the respondent (usually an employer) agrees to schedule training for its key staff to learn how to avoid such problems in the future. Such offers by the Commission are nearly always accepted, and are well received. The staff outreach also extends to regular media appearances, a twice-yearly seminar for employers at Tanana Valley Community College, and frequent appearances on public programs of community organizations. There were several trips to outlying areas, including a forum with Governor Hammond in Tok on the gas line, and case work in Tanana, the Nome area and, particularly, Barrow.

People often ask why the Commission field offices seem to take an extended amount of time with those cases which are not resolved at the early conference scheduled after each case is filed. The crushing size of the caseload, compared with staff available, is only a partial explanation. Here, from one office director's report, is a more detailed explanation of what goes on every day:

Respondents and complainants repeatedly drop into the office. In most cases we see them anyway, unless we have seen them every day for the last week. We feel that it is our responsibility as employees of a tax-supported agency to be responsive to the public. These contacts are rarely necessary to the investigative process, per se. However, the time these contacts take and the disruption in casework that occurs, seriously limits our investigative functions. Contacts made by telephone involve the same types of problems.

Respondents and complainants also break appointments, delay getting information to staff members which has been promised days or weeks before, show up for appointments without the material which they agreed to bring to discuss an important matter, and so on. Others show up with vitally important material or an important witness in the middle of a long distance telephone call, a case analysis which will lead to a finding, a conciliation session, etc. Such interruptions are a normally occurring, frustrating part of our work experience.

Inquiries from individuals who either have a problem unrelated to the Commission or are not sure they should file a complaint are handled by almost every staff member. The staff is fairly well known in the community and we receive such calls from friends or friends of friends. It is difficult to make an appropriate referral without listening to the problem, either in person or on the phone.

We could probably become much more efficient in our investigative functions if we didn't let such interruptions occur. However, we would almost certainly then have the reputation for being cold-blooded bureaucrats in a business which involves a lot of hot-blooded people. Such a reputation would then damage our ability to seek out and eliminate discrimination. Consequently, we plan to continue in the same vein, trying our best to juggle analysis of evidentiary material with our best telephone and public relations manners.

Despite these practical problems, hundreds of cases are completed every year. 1978 was no exception. Here are examples of some typical cases from around the state which never attracted public attention but which demonstrate the human rights law at work on a people-to-people level:

Custodial Position

Four native persons filed employment discrimination charges against a rural school district for failing to consider them for a custodial position. The new principal had hired the only white applicant, a male, although two native women applicants had better qualifications. The staff found discrimination and backpay was negotiated for the best qualified woman. The staff also required the district to have a training session for supervisory personnel and board members. It was presented by Commission staff members.

Working Atmosphere

A female billeting clerk filed sex discrimination charges against a pipeline contractor. The staff found discrimination because the contractor kept segregated barracks, allowed a sign of a reclining woman in a bikini to be hung over the women's barracks, and conducted a meeting concerning problems with venereal diseases for the women workers only. The staff negotiated a cash settlement.

No Records

A black union member filed race discrimination charges against his union for failing to act on his grievance and against a contractor for terminating him. The staff investigated the discharge case and found that the company had set him up for termination, but that race discrimination was not involved. Investigation of the union case revealed that union officials had actually made informal inquiries about the man's termination. However, the staff also found that the union had failed to keep the necessary records of race, sex, and age required by law. Settlement of the case involved the union agreeing to review and revise its recordkeeping procedures.

Termination Slip

An Alaska native man filed a race discrimination charge against a contractor in a rural community. During investigation, it became apparent that the man was actually concerned about the wording of his termination slip and wanted it changed. The contractor personnel indicated that there had been a misunderstanding about the termination situation and agreed to re-issue the termination slip.

Marrieds Only

A white single man filed a marital status charge against a medical clinic. He had applied for a physician's assistant position and had been told that he could not be selected for work in a small community because the local people wanted a married person, implying that a single male would cause problems in a small town's social context. The man had already worked for the clinic and had a good work record. The clinic agreed to offer him the first available position which came open in the next 18 month period.

Race Bias

A black union worker filed race and retaliation charges against a contractor. The contractor had allowed an atmosphere of racial bias to exist in a pipeline camp, and when the worker had protested this state of affairs, he was assigned tasks he could not perform, and then was terminated. A substantial settlement was negotiated.

Handicap Case

A woman with a club foot filed a handicap discrimination charge against a local hotel. The staff investigated and found that the management could not provide any documentation or witness testimony to support its reasons for terminating her. She had been fired just before she had to go to the hospital for an operation on her foot. The staff found discrimination but also found that the complainant had not been able to work after her operation. The settlement amount was therefore only for the two week's pay between her discharge and her hospital stay.

Black Foreman

A black man filed a retaliation charge against a contractor. He had been a foreman for the company and after he had complained to the personnel officer about the company's EEO practices, he had been demoted and reassigned, first to camp work, and then to another town location, away from the main office. He was eventually laid off. The investigation revealed that his race was also a factor in his treatment, since the man was the only black in a supervisory position and the company kept other white foremen with similar seniority on the job longer than him. The man received a sizeable backpay and pay differential settlement. The settlement also required the contractor to hold a training program for supervisors and management.

Absent Too Often

A black woman filed a charge of race, sex, and age discrimination against the owner of a lunch counter. She had been discharged for failing to report for her shift. She contended that she had female problems due to menopause and this had made her ill. The evidence showed that she had called in one day, but had not called in the next two that she had been absent. The company's records

showed that she had absenteeism and tardiness problems and that it had terminated other workers for the same reasons. The company's records also showed that it had not actually replaced her, but had divided her duties between two other employees. The staff found no discrimination.

Criminal Records

A painter of Hispanic origin filed a national origin complaint against a local government unit for failing to hire him. He had refused to fill out a section of an application which asked applicants to supply information about criminal records. The staff found that there was such a section on the form, but that there was no indication that the interviewer would have refused to hire him if he had filled it out. The interviewer explained that the unit had hired persons with criminal records and produced workforce records which showed that it had also employed Hispanics and other minorities. The staff found no discrimination.

House on Pilings

An Alaska native man filed a race complaint against a credit union, stating that he had been turned down for a housing loan because his dwelling was on pilings and did not have a regular foundation. The man stated that such policies have an adverse effect on rural residents, most of whom are native, because it is impractical to try to put in a regular foundation. Investigation revealed that the credit union had been processing applications for loans of federal funds and using the Federal regulations for guidance. Therefore the staff closed the case due to lack of jurisdiction. However, the situation was resolved satisfactorily anyway, because the credit union discovered that the person who was processing the loan applications was using the wrong regulations. Consequently the credit union asked the native man to submit an application again, telling him that he was eligible for a loan, even with a house on pilings.

Child Care

A female cab dispatcher was refused her old job after maternity leave despite her employer's previous promise to rehire. The employer's doubts about the woman's child care responsibilities dissolved when the charge was served. The complainant began work the day after the filing of the charge.

No More Women

When a contractor told a female applicant that he had already hired two women for a construction crew of ten laborers, the woman complained to the Commission. Three days later she was at work on the project.

Strike Three

A softball team nearly forfeited the final game of the tournament when officials refused to reschedule their Saturday playoff. Four Seventh Day Adventist team members were unable to play because of religious observance. The Commission stepped in; the game was played on the next Sunday instead. (They lost!)

Title Change

A woman alleged she was not paid on a scale comparable to that of the man she replaced. The company responded that the man had been the "purchasing agent" while the woman was only a "purchasing buyer". The evidence showed that the woman performed substantially all of the tasks formerly performed by the man. After the Commission staff found discrimination, the parties reached a substantial settlement.

Minority vs. Minority

A black woman who had been dispatched as a "temporary" worker claimed that other workers similarly dispatched had been placed in permanent positions. The company responded that she was only a temporary employee. The company also asserted that no other work was available, that transfers to retain temporaries were discouraged and that another temporary worker dispatched on the same day was only transferred in order to retain a minority (Hispanic). The Commission staff found that this constituted unlawful discrimination because a member of one minority group cannot be disadvantaged to the benefit of a member of another minority group. Additional evidence showed that several white persons were retained during that period even though they were also "temporary".

Long Legs

A man was terminated from his job because he complained that his long legs made it impossible to operate a vehicle necessary to his job. He was about six feet three inches tall. The Commission dismissed his complaint because his long legs were not considered a physical handicap which Commission regulations define as a condition caused by injury, birth defect or illness.

No Remedy

A woman alleged she was not promoted and then was terminated because she was pregnant. There was some indication that the woman's former supervisor may have acted adversely against another woman because she was pregnant. There was a considerable delay before the Commission could begin investigating the case because of a large backlog of cases due in part to insufficient staffing. When the case was assigned for investigation, the company had gone out of business and all of its assets had been divided among several creditors. The Commission staff closed this case because no discrimination could be eliminated and no possible remedy was available.

Retaliation

A man complained to his company's EEO officer about alleged employment discrimination and lack of affirmative action by the company. Within a month, the man was terminated supposedly because of a reduction in force. Actually he was replaced by a person from another job site. The company's reasons for the transfer conflicted with its avowed criteria for reduction in force. The man received a settlement.

Racial Slurs

A black male cook at a pipeline camp alleged race bias when he received a reduction-in-force. Investigation revealed the existence of a work environment tainted with prejudice and racial comments. The employer's over-staffing defense was found pretextual and its reliance on a supposedly "good-faith" seniority system for making lay-offs was not corroborated by the evidence.

Fringe Benefit

An industrial firm had a policy of awarding employees who met or exceeded management goals with a paid vacation to a resort. If the employee was married, the company provided a ticket for the spouse also; however, single employees received only one ticket. The Commission staff found that this policy violated the law because it provided for differential compensation to similarly situated employees solely because of marital status.

Complaint Withdrawn

A Jewish man claimed he was terminated from a sales position because of his religion. The complaint apparently resulted from derogatory remarks made by an inebriated sales manager during an after-work social gathering prior to the termination. The complainant believed his termination was somehow linked to the derogatory remarks. However, during a conference among the complainant, company officials and a commission representative, it was revealed that the termination was in fact based on non-discriminatory reasons. The man withdrew his complaint.

Position Awarded

A native female employed by a local outlet of a national food chain alleged race and sex discrimination because she was denied a managerial position. The position had been awarded to a caucasian male with "less seniority, experience and qualifications". Two weeks after the company was notified of a charge being filed, the complainant was awarded the managerial position. She withdrew her complaint.

VII. Complainant/Respondent Survey

How do people feel about the processing of their case by the Commission? Do complainants feel they received good service? Do persons charged with discrimination find that the Commission representatives were fair and impartial? Was the Commission thorough? Efficient?

These are the kinds of questions almost every public service agency should be asking itself. Indeed, it is common in the private sector for companies to conduct market research to get feedback about how their products are being received. Too often the public sector fails to make reasonable efforts to find out what people think. Worse still, public agencies (and those to whom they are accountable, such as legislators) tend to react to complaints when these points of view may not fairly represent dominant public opinions.

For these reasons the Commission undertook a survey of all persons whose filed complaints were resolved in 1978. Those who were filed against were asked the same questions, and the results were tabulated separately. The response was much higher than expected. Following are the complete results, reduced to percentages. (The difference between 100% and the sum of "Agree" and "Disagree" represents those expressing no opinion.)

RESULTS OF COMPLAINANT/RESPONDENT SURVEY

1. The investigation of the complaint was fair and impartial.

	<u>AGREE</u>	<u>DISAGREE</u>
Complainant	49%	42%
Respondent	54%	34%

2. I had confidence in the Commission staff.

	<u>AGREE</u>	<u>DISAGREE</u>
Complainant	47%	47%
Respondent	45%	30%

3. Commission representatives were courteous and professional.

	<u>AGREE</u>	<u>DISAGREE</u>
Complainant	62%	21%
Respondent	78%	9%

4. It was generally clear to me what was happening on the case.

	<u>AGREE</u>	<u>DISAGREE</u>
Complainant	55%	33%
Respondent	70%	24%

5. To represent my interests, I needed to obtain legal advice.

	<u>AGREE</u>	<u>DISAGREE</u>
Complainant	31%	37%
Respondent	46%	22%

7. Processing the case took too long.

	<u>AGREE</u>	<u>DISAGREE</u>
Complainant	58%	27%
Respondent	64%	27%

8. What the Commission decided to do about the case was reasonable.

	<u>AGREE</u>	<u>DISAGREE</u>
Complainant	34%	49%
Respondent	61%	24%

9. As a result of the case, I learned something of value about the Human Rights Law.

	<u>AGREE</u>	<u>DISAGREE</u>
Complainant	61%	21%
Respondent	56%	28%

10. Other government agencies should conduct surveys to see how they are being received.

	<u>AGREE</u>	<u>DISAGREE</u>
Complainant	84%	7%
Respondent	76%	6%

There was a significant correlation between opinions expressed by both groups. The greatest difference occurred in question 8, in which the complainant group expressed more dissatisfaction with the outcome of their cases while the respondent group was generally satisfied with the reasonableness of the results.

VIII. Rural Project

In these pages each year we have described human rights problems in rural areas. Chief among them are the patterns of employment which work to the disadvantage of rural-based Alaska natives. There is also a general lack of availability of state services in rural Alaska, and public schools programs may be discriminatory toward native children. These issues have been adopted among the top priorities of the Commission's systemic program.

State government commonly offers its services in rural Alaska by two methods. It maintains very costly offices there with highly paid staff, many of whom are non-native. It also, if it does not maintain offices, tries to serve rural Alaska by touring the area with urban-based staff, few of whom are native. There may be a less costly, more effective alternative.

Having experimented with both options in recent years and finding them unsatisfactory, the Commission embarked on an innovative method of making the human rights law familiar to rural Alaskans by contracting with institutions which are themselves tied to rural Alaska. Funding for the project was freed up by closing the Commission's Barrow office and abolishing the staff position after the incumbent resigned. Then the Commission sought proposals, considered 11, and made three awards to total \$60,000 for the first six months of 1979.

The three successful bidders are the Upper Tanana Development Corporation, Bristol Bay Native Corporation, and the Aleutian Pribilof Islands Association. Each organization showed how it could use its existing staff and, with the limited funding available, provide its region with information about the human rights law, counsel persons who raise issues of discrimination, and assist the Commission's staff in gathering facts from rural Alaska in connection with state-wide cases.

The Commission expects to report to the legislature on the results of this demonstration project during the legislative session. With this information the legislature can decide at what level to continue funding this contracting activity.

Media Session

Media coverage of the 1977 murders of two non-native campers in Barrow drew considerable criticism from rural Alaska when racial motives were suggested for the killings by an investigative official. This isolated speculation by a trooper received national prominence. More than one paper painted images of a "race war" in Barrow. Reporting of the incident

demonstrated strikingly how distortions can result both from the media's lack of reliable sources in rural Alaska (and possible anti-native bias), and how unfamiliar rural people are with the workings and needs of the urban press.

The U.S. Department of Justice's Community Relations Service responded to the tense aftermath of this coverage by convening a conference in 1978 at which rural people and the working press could express these concerns to each other. The Human Rights Commission became a co-sponsor, as did several other groups. The Commission prepared a role-playing model for the group which demonstrated how such distortions get started. The remainder of the session consisted of presentations by both press and rural people about their needs and expectations. The session concluded with formation of a committee whose task will be to carry the dialogue forward.

IX. Discrimination in State Government

The state's own record as an equal opportunity employer came in for strong criticism from the Commission, the Legislature, and even from some leaders in the Administration during 1978. This is particularly disconcerting when private employers are looking to the state for leadership in this area.

The process may have begun when amendment of the language in the human rights law which requires the writing of this report was proposed. The bill, which was enacted, proposed adding to the report, "once every three years", an analysis of the state's progress in meeting equal employment obligations. The Commission had suggested that the state's own internal EEO office should be able to supply this type of information, but the legislature quickly discovered that the necessary data was inaccurate or unavailable.

The Commission had analyzed the state's EEO program and had detailed the program's deficiencies in a letter to the Governor. Then the state advisory committee to the U.S. Civil Rights Commission entered the picture and announced hearings into the state's employment practices.

These independent events persuaded the legislature that EEO was only one part of a much larger problem with the state's employment system. As the Human Rights Commission's Director later told the Civil Rights Commission:

"...The apparent unresponsiveness of Alaska's antique merit system...is a system of rules in which there are no rules, to paraphrase Ogden Nash, because the exceptions so often swallow them up. A system which is founded on principles of merit too often permits favoritism and non-job-related criteria to predominate."

A "Blue Ribbon" commission to study and refine the State Personnel Act was legislated by resolution and specifically charged with addressing EEO issues in its broad examination of the personnel system. The Human Rights Commission is represented, together with legislators, representatives of the Administration, labor unions, and the Ombudsman.

This flurry of concern during the last legislative session resulted in an announcement by the Administration that a highly skilled former staff member of the Human Rights Commission had been hired to put together a new direction for the state's EEO program. These new directions were announced by Department of Administration Commissioner Allen (to whom the EEO officer reports) in a speech to the Governor's EEO Advisory Committee. The speech, and much of the new program design, was developed in close cooperation with

the Human Rights Commission. By the end of 1978 what had loomed earlier as a confrontation of sorts between the Commission and the Administration had matured into a relationship of significantly greater cooperation.

While the Administration has taken all the correct initial steps in putting together a rational EEO program, observers should not expect overnight miracles. Major employers who have effective programs put a lot of time into them. Proper EEO planning is an arduous task: much of it involves data collection and analysis. The state's ability to retrieve the facts it will require is still very limited; it will take time to design a responsive system. The state is far behind many other major employers because of its late start.

In preparing for the Civil Rights Commission hearings the Human Rights Commission analyzed its complaint filings involving the state through the fall of 1978. Following are the relevant findings from the testimony of the Commission's Director:

We have received 200 employment cases against the state during this time frame, including those which were on file as of January 1, 1975, when our recordkeeping system was put in place. The comparable figure for our total employment caseload during this period is 2162. (Employment discrimination is alleged in four out of five cases.) Thus, the state accounts for approximately 9.3% of our employment discrimination complaints. The proportion of the Alaska non-farm workforce employed by the state has fluctuated between eight and nine percent during this time, indicating that the state is probably getting about its fair share of complaints.

We can analyze these 200 cases as to the basis for the alleged discrimination and compare it with statewide filings:

<u>Basis</u>	<u>% of total allegations</u>	
	<u>State</u>	<u>Total Cases</u>
Race	36%	39%
Sex	34%	29%
Handicap	8%	5%
Marital Status	3%	3%
National Origin	6%	7%
Age	9%	5%
Other (Parenthood, Retaliation, Religion)	4%	12%

This indicates to me that the types of complaints we receive involving the state follow the general pattern of all complaints.

We can also share with you the issues alleged in this group of state cases:

	<u>State</u>
Failure to hire	34%
Discharge	14%
Promotion	6%
Terms & Conditions	8%
Unequal Pay	3%
Demotion	5%
Other & not listed	37%

We do not track this data separately for all employment complaints, although it could be retrieved from the computer if necessary. We have reason to believe that the state's pattern is not strikingly different from the statewide pattern.

Turning to cases which have been closed since January, 1975 we can show you what the final actions were, compared with state-wide data:

	<u>% of Total Closings</u>	
<u>Closing Action</u>	<u>State</u>	<u>Total Closings</u>
Failure of Complainant to cooperate/proceed	13%	25%
Conciliation/Settlement	17%	23%
No probable Cause	25%	17%
Administrative Dismissal	10%	9%
Complainant Unavailable	10%	9%
Other (Withdrawals, not timely, lack of jurisdiction, filed in court)	25%	9%

Here the state's pattern differs somewhat from state-wide totals indicating a higher rate of withdrawals balanced against a lower rate of people failing to stay in touch with us. Our no cause finding rate against the state is slightly higher, but I would hesitate to attach statistical significance to the difference.

Here is a breakout of the filing rates against major departments during this three and a half year time frame:

Transportation:		31 = 15%
(includes Highways & Marine Transportation)		
Labor:		13 = 6%
Education:		12 = 6%
Public Safety:		14 = 7%
Public Works:		17 = 8%
Health & Social Services:		51 = 24%
Corrections:	25	
API:	8	
Social Services:	4	
Public Assistance:	6	
Other:	8	
Fish & Game:		10 = 5%
Other Departments:		52 = 30%
(less than 10 complaints each)		

200

These figures do not necessarily indicate where the most discrimination is present. A department with many minorities is more likely to get complaints, particularly about upgrading, terms and conditions and discharge and demotion than a department with none.

The filing rate against Transportation is explained in part by a number of complaints by women seeking equal work opportunities on the ferry system. That issue [has been decided by] the Supreme Court and will dispose of our cases.

I do attach some significance to the filings against Corrections. That division does have a high proportion of minority people and complaints from these and from women have been well-founded. The Muldrow case is still pending an appeal from the Commission's order after some initial sparring in the Superior Court. The State failed in its claim that it had the right to depose a member of the Commission on whether she read the hearing transcript before reaching her decision.

The Superior Court will have an important question of statewide application before it in this case. Muldrow established a prima facie case of race discrimination in her failure to become a correctional officer. The state agreed. The state then argued that her case would be explained away by a showing that the officials involved followed the

personnel rules. The Commission held that such a showing, even if it were true, could not rebut a prima facie case. The crucial question, then, which all employers must face, is what evidence it takes to overturn a prima facie case of discrimination.

The only other case we have had against the state involving hearing action is McClinton. To me, in supervising the presentation of the case at hearing, this case symbolizes how the personnel rules can be used and abused to the disadvantage of minority people. [The Commission ruled that McClinton was entitled to damages for not being considered for other jobs when her job was abolished; that she was not forced to quit; but that she is due back pay in connection with a later job which was denied her because she had filed a complaint with the Commission.]

I think it is significant that only these two cases reached the hearing stage. Out of the 163 state cases closed since January, 1975, 17 were settled after filing with little or no involvement by us, seven were settled before we entered a finding, four were settled after we found cause, and one was settled just before a hearing was to be held. This indicates to me that the state is not opposed to amicably settling meritorious cases, even before we complete investigation. That McClinton and Muldrow are both being hotly contested may indicate the need to have the law construed on certain issues of general public importance and not necessarily hostility to the law itself.

People have suggested to me that there may be more to the state's fighting us on these two cases than meets the eye. What people suggest goes partly to the internal dynamics between the Department of Law and the people, even Commissioners, in the affected departments. That's attorney-client stuff and we have nothing specific to tell you about it. What might make more sense is the theory that the state is fighting us because these cases represent headlong attacks on some fundamental philosophies and practices of the merit system which the state feels must be protected. It is risky to characterize the state as a monolith in this fashion, however, because we see indications from the leadership level that some of them believe change is needed. From our point of view we are less interested in doing frontal lobotomies on state officials to see what their attitudes are than we are in seeking solid accomplishment of EEO goals.

Many of these settlements might not have occurred without the active participation and cooperation of the Department of Law. Seven cases settled for a total value of \$80,485. There were 10 lesser settlements totalling \$20,040, for a grand total of \$100,525. (In settling each of these the state does not have to admit liability.)

Our pattern has often been to deal initially with a defensive and even hostile department, division chief, or departmental personnel officer. As the facts develop, however, that department's attorney which handles all its routine business steps in and often persuades the department to settle rather than litigate a losing case. We have seen considerable growth in understanding this complex law among these attorneys, few if any of whom had any experience with civil rights law before coming in contact with our complaints.

The most dramatic example of this type of settlement dynamic was a major effort we launched two years ago against discrimination in the troopers job class, which includes fish and wildlife protection officers. We were expecting to go to hearing, with a collateral attack in federal court on the state's federal Revenue-Sharing and LEAA money, when the Attorney General himself personally reversed his subordinates and informed the offending department that the case was to be settled on our terms. That agreement, which we [have monitored] for compliance, required a complete rewriting of a written exam which had not been validated but was excluding a high proportion of minorities. The department was also required to write a comprehensive affirmative action plan and to hire one minority person or female for every two white males it hired. Natives and blacks were to be specifically included. Since such a ratio remedy sometimes required dipping below the top five, the Attorney General, in a written opinion, authorized the procedure as a remedy for past discrimination.

I should also mention that the staff of the Division of Personnel, unlike many of the departments, has been uniformly cooperative with us in supplying data relevant to complaint investigations. We have seldom had to issue subpoenas or default notices in state cases and we have never been forced to move in court to enforce them. We have far more troubles of this type in the private sector.

The Civil Rights Commission heard this testimony and that of dozens of other witnesses in Juneau and in Anchorage. Preliminary drafts of their report and recommendations are to be circulated for comment to affected agencies early in 1979, with final publication set for later in the spring.

X. Legislative recommendations

We began this report with a discussion of the "body of law" which defines human rights in Alaska. We characterized it as among the strongest in the nation. Nevertheless, even this strong law contains deficiencies which the Legislature should correct.

Sexual Preference: Although the protection of the laws is granted to a variety of groups, gay people are virtually without rights in Alaska. After extensive hearings into the problems of discrimination which gay people face, the Commission adopted the following resolution:

The Alaska State Commission for Human Rights hereby acknowledges the fundamental human rights of all persons, including those with a sexual preference which may differ from the majority population. Therefore, the Alaska State Commission for Human Rights urges and supports the Alaska State Legislature to extend the statutory jurisdiction of the Commission by incorporating the words "sexual preference" as a protected right under A.S. 18.80, "Laws Against Discrimination".

It is with deep regret that we must record the Governor's refusal to support this legislation as part of the Administration's package.

Age in Apprenticeship: There is only the barest handful of exceptions to Alaska's broad protections against age discrimination. Certain teacher retirement programs, the minimum age requirement for troopers and mandatory retirement of judges (but of no other officials, public or private) were the only exceptions before 1976. Suddenly, perhaps in response to union pressure over a handful of cases then pending before the Commission, the Legislature created a broad and curious exemption: all union apprenticeship programs registered with the federal government. (It has been traditional for such programs to carry relatively low upper age limits for admission; age 27 is common.) In no other form of employment is everyone barred from applying before even turning 30. Arguments that unions should favor the young who are chronically unemployed would apply with equal force to any employer, so it is curious indeed that labor has been granted special permission in this area. The legislature should re-think its enactment of A.S. 18.80.295 and repeal it so that apprenticeship opportunities are not denied solely on the basis of age. This action would also have a beneficial effect in opening work for Natives arriving in Alaska's urban areas in their late 20's, as well as women who desire to re-enter the workforce after completing their most intensive child-raising responsibilities.

Mini Title IX - There is a federal law which requires equality between the sexes in most aspects of the public education process. The general provisions of A.S. 18.80.255, prohibiting governmental discrimination, reach the same issues, but not with the explicit detail of the federal law. State law contains no provision to permit the Commissioner of Education to carry on these activities independent of enforcement actions by the Human Rights Commission or the federal government. The 1978 legislature saw such legislation introduced: it should be re-introduced and given full consideration.

Contract Compliance/Minority Contractors - This issue was fully discussed in Section IV of this report. The Governor has the authority -- and, we believe, a Constitutional obligation -- to guard against discrimination by government contractors, and to encourage fairness toward minority-controlled firms. The Legislature equally can require such action by passing a law. The 1978 legislature began consideration of the issue: this work should be renewed in 1979.

Ex-offenders - As this report was being prepared the Commission was considering testimony it received in hearings about discrimination against ex-offenders and others who come in contact with the criminal justice system. Legislative recommendations may become available during the 1979 session.

CASE PROCESSING STATISTICS
1978

A. Analysis of new cases filed in 1978

RACE OF PERSONS FILING CHARGES

Race	Number	Percentage
1. Caucasian	173	47%
2. Black	101	27%
3. Alaska Native	65	17%
4. Hispanic	14	4%
5. Asian	11	3%
6. Other/Unknown	7	2%
<hr/> TOTALS		371 100%

SEX OF PERSONS FILING CHARGES

Definitions	Amount of Cases	Percentages
1. Female	198	53%
2. Male	169	46%
3. Director's Charges and Multiple Charging Parties	4	1%
<hr/> TOTAL		371 100%

REASONS ALLEGED BY COMPLAINANT

Definition	Amount of Cases	Percentages
1. Race	149	41%
2. Sex	93	25%
3. Multiple Reasons	52	14%
4. Other (Religion, Pregnancy, Parenthood)	22	6%
5. National Origin	12	3%
6. Age	11	3%
7. Physical Handicap	16	4%
8. Marital Status/Changes in Marital Status	16	4%
<hr/> TOTAL		371 100%

TYPE OF UNLAWFUL PRACTICE ALLEGED

	Total Number of Cases	Percent of Total Cases
1. Employment A.S. 18.80.220	314	84%
2. Government Practices A.S. 18.80.255	13	4%
3. Retaliation/Coercion A.S. 18.80.200/A.S. 18.80.260	18	5%
4. Public Accommodations A.S. 18.80.230	7	2%
5. Housing A.S. 18.80.240	10	3%
6. Finance A.S. 18.80.250	9	2%
<hr/> TOTALS		<hr/> 100%

B. Closing Actions

REASONS CASES WERE CLOSED
JANUARY - DECEMBER 1978

Definitions	Number of Cases	Percentages
1. No Probable Cause	155	29%
2. Conciliation/Settlement	114	22%
3. Failure of Complainant to Cooperate/Proceed	84	16%
4. Withdrawals	62	12%
5. Other*	59	11%
6. Administrative Dismissal	24	5%
7. Complainant Unavailable	27	5%
<hr/> TOTAL		<hr/> 100%

* Includes: withdrawals, failure to complete filing process, lack of jurisdiction, and cases closed after hearings.

C. Analysis of unresolved cases as of December 31, 1978.

STATUS OF UNRESOLVED CASES

Status	Number	Percentage 12/31/78	Percentage 12/31/77
1. Not Yet Assigned for Investigation	241	40%	57%*
2. Under Investigation	300	50%	32%*
3. Settlement/concilia- tion Being Negotiated	26	4%	5%
4. Conciliation Failed/ Awaiting Hearing	25	4%	3%
5. Appeal Pending	4	1%	2%
6. Hearing Held/Awaiting Order.	4	1%	1%
TOTAL		600	100%
			100%

* Note the increase in proportion of cases being investi-
gated as compared with last year at this time, and propor-
tionate reduction in cases awaiting assignment to an
investigator.

AGE OF UNRESOLVED CASES

Filing Time Period	Total	Percent
1974	5	1%
January-December 1975*	30	5%
January-June 1976	55	9%
July-December 1976	77	13%
January-June 1977	98	16%
July-December 1977	110	18%
January-June 1978	106	18%
July-December 1978	120	20%
<hr/>		
TOTAL	600	100%

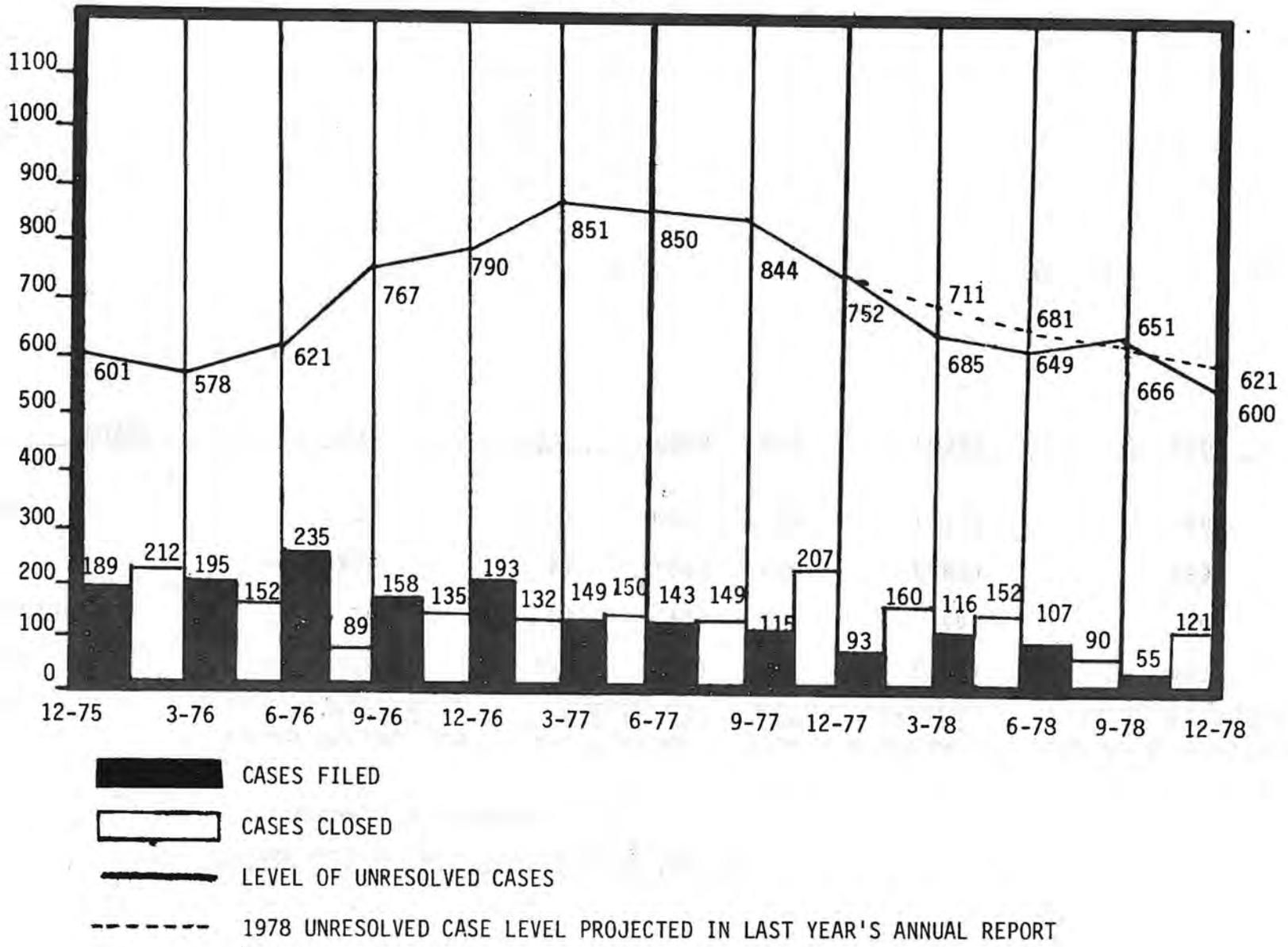
* Cases filed in 1976 and earlier are mostly in court or at hearing.

D. SUMMARY OF CASES PROCESSED BY REGION

January - December 1978

<u>Region</u>	<u>Cases Unresolved on 1/1/78</u>	<u>New Filings 1978 (1977)</u>		<u>Cases Resolved 1978 (1977)</u>		<u>Cases Unresolved on 12/31/78</u>
Southcentral	324	222	(329)	253	(329)	293
Systemic Office	20	13	(2)	7	(0)	26
Northern	330	83	(186)	180	(183)	233
Souteastern	78	53	(83)	83	(127)	48
TOTAL	752	371	(600)	523	(638)	600

E. QUARTERLY CASE PRODUCTION ANALYSIS
1975-1978



HUMAN RIGHTS CASES IN COURT
OR AT HEARING

<u>Complainant- Plaintiff</u>	<u>Respondent- Defendant</u>	<u>Stage & Forum</u>	<u>Issues</u>
Adams	Xerox Corp.	Public Hearing to be scheduled	Alleged marital status discrimination in employment.
Akpik et al.	North Slope Borough School District	Public Hearing to be scheduled.	Class action. Alleged race discrimination in employment due to District's policy of providing housing to teachers who are allegedly predominately white but not to teacher aides who are allegedly predominately Alaska Native.
ASCHR	Yellow Cab	Supreme Court	What efforts must an applicant for employment make in order to apply for employment? Whether an award of attorney's fees is justified against the ASCHR when it decides a matter of public interest.
Alaska U.S.A. Federal Credit Union	ASCHR	Commission opinion issued 5/17/78 appealed to Superior Court, Third Judicial District	Commission found that Fridriksson was denied promotion because of sex and awarded back pay and other benefits. Commission found no merit in Fridriksson's allegation that her termination was unlawful retaliation for filing a complaint.
Allen & Laborers & Hod Carriers	ASCHR	Superior Court Third Judicial District	Rule 45 appeal to overturn Commission findings relief for pattern and practice of discrimination arising out of an individual charge of discrimination. Individual complainant appeals Commission's order dismissing his complaint.
Banks	Boatel	Closed: monetary settlement prior to public hearing.	Alleged race discrimination in employment.

Beauchamp	Hydaberg School District	Closed: complaint withdrawn.	Alleged sex and marital status discrimination in employment.
Behrends	Bradley	Superior Court 4th Judicial District	The Commission's investigatory file of a complaint filed under state law must be opened to respondent for purposes of conciliation only, unless the Commission can demonstrate that unnecessary hardship or a violation of confidential sources would occur by doing so.
Brown	FELEC Services Inc.	Public Hearing to be scheduled.	Alleged sex discrimination in employment.
Cash	ITT Arctic Services	Superior Court Third Judicial District	Commission intervened to defend its jurisdiction over an age discrimination complaint and to argue that state law was not preempted by the federal age discrimination act and the NLRA. Private settlement reached with back pay (\$53,000), pension benefits (\$8,802) and reinstatement.
Crookes	IBEW Local 1547	Public Hearing to be scheduled	Alleged national origin discrimination because of alleged union policy not to let Canadian citizens become foremen.
Graham	Locher Cook Inlet, Joint Venture	Monetary settlement prior to hearing.	Alleged religious discrimination because of employer's alleged refusal to accomodate Graham's inability to work on his Sabbath (sundown Friday through sundown Saturday.)
Helms	Carlson Sales Agency	Closed: monetary settlement prior to public hearing.	Alleged physical handicap discrimination in employment.
Holt	Wien Air Alaska	Public Hearing to be scheduled.	Alleged race discrimination in failure to hire.

Hotel, Motel, & Restaurant Workers Union, Local 878	ASCHR	Supreme Court	Whether a respondent who prevails during the investigatory stage of the Commission's proceedings is entitled to attorney's fees and costs.
Hotel & Restaurant Employees & Bartenders International Union	ASCHR	Superior Court 3rd Judicial District decided 12/21/78	Complaint for preliminary injunction prohibiting the Commission from continuing to resolve discrimination claims under a conciliation agreement signed with a local union. Denied.
Kenai Peninsula Borough School District	ASCHR	Superior Court Third Judicial District	Complaint for injunctive relief to bar Commission investigation of untimely administrative complaint. Stipulated Dismissal.
Kirkpatrick	Ketchikan Pulp Co.	Commission opinion issued 2/3/78	Commission held that the KPC's failure to hire Kirkpatrick was not unlawful sex discrimination against her in her pre-hire physical examination.
McClinton	State of Alaska, Department of Community and Regional Affairs	Commission Opinion issued 11/17/78	Commission found that the Department's failure to consider McClinton for employment at the time two divisions were merged constituted unlawful race discrimination, but that McClinton failed to show that her subsequent resignation was a "constructive discharge." The Commission also found that the department's failure to hire McClinton on a subsequent occasion was unlawful retaliation. The Commission ordered back pay, reasonable attorney fees, and a job offer.
McLean	State of Alaska, Division of Marine Transportation.	Complaint withdrawn from Commission after successful court action. Supreme Court decision issued 9/15/78.	Alaska Supreme Court found sex discrimination by the division in hiring for the Marine Highways System.

McDaniel v. Cory	ASCHR	Commission opinion on liability (captioned Cory et al. v. McDaniel et al. issued 2/28/78. Opinion on damages issued 9/1/78. Appealed to 3rd Judicial District. Oral argument scheduled for 3/2/79.	Commission held that admission policies to the Disco were discriminatory on the basis of sex and race and that individual complainant Williams was subjected to a discriminatory atmosphere and treatment at the Disco. The Commission ordered Disco personnel to refrain from denying customers use of the facilities on the basis of race and to refrain from the use of racially derogatory speech in the public part of the facility. The Commission awarded \$600. in punitive and compensatory damages to Williams.
McKelvey	State of Alaska Division of Marine Transportation	Merits of case determined by Supreme Court decision in McLean (above).	This addressed the same issues decided in the McLean case (above.) McKelvey's case remains with the Commission and resolution is pending.
Martin	Ketchikan Spruce Mill	Closed: monetary settlement after public hearing.	Alleged sex discrimination in hiring.
Miller	Golden North Motel	Public Hearing to be scheduled	Alleged discrimination on the basis of marital status in termination from employment.
Muldrow	State of Alaska Division of Corrections	Commission opinion on liability issued 7/27/77. Opinion on back pay issued 2/9/78. Appeal filed. (SOA Division of Corrections v. ASCHR.) Superior Court. Determination re: deposition of Commission-ers issued 8/1/78.	Commission awarded back pay to Muldrow for the Division's failure to hire her because of her race. The fact that Muldrow left a job with the Division to accept a lower-paying position with more advancement opportunity did not end the Division's liability for the discriminatory act. In preparing its appeal, State attempted to depose one hearing commissioner and moved for a court order requiring her to answer whether she had read the transcript. Held, deposition should probably not have taken place; Commissioners not required to answer questions.

Nelson	McCarley	Public Hearing scheduled for 1/1/79	Alleged race discrimination in refusal to rent apartment.
Orr	City of Anchorage	Public Hearing scheduled for 1/3/79.	Alleged sex discrimination in failure to promote.
Painter	Ketchikan Gateway Borough School District	To be decided on stipulated facts and legal briefs.	Alleged discrimination on the basis of pregnancy because of District's disability insurance package for employees which provides fewer benefits and less coverage for pregnancy than other covered disabilities.
Peabody	State of Alaska Division of Marine Transportation.	Merits of case determined by decision in McLean (above).	Same as McKelvey (above.)
Presley	Fairbanks Police Department	Commission Opinion issued 11/6/78.	Commission found that the Department's oral board examination discriminated against Presley on the basis of sex. The Commission ordered that Presley be offered a job as patrol officer with back pay, that the Department stop using the discriminatory test and that they develop goals and timetables for hiring women patrol officers.
Schedler	State of Alaska Department of Highways	Closed: monetary settlement prior to public hearing.	Alleged sex discrimination in failure to hire.
Simpson & ASCHR	Providence Washington Insurance Group	9th Circuit Court of Appeals	Oral argument in March 1978 on whether the open ended state law prohibiting age discrimination is preempted by federal law outlawing discrimination between ages 40-65. (Federal District Court in Alaska held that state law is not preempted.)

Skewis	Ibsen	Public Hearing to be scheduled	Alleged marital status discrimination in failure to rent apartment.
Spindler	Chugach Electric Assoc.	Closed: monetary settlement prior to public hearing.	Alleged sex discrimination in failure to hire female bullcook on barge which had limited facilities.
Stainbrook	V.E. Construction and Continental Services.	Closed: monetary settlement prior to public hearing.	Alleged race discrimination. Stainbrook alleged that his termination was caused by associating with a black person at a construction camp where no blacks were employed.
Strand	Petersburg School District	Public Hearing held 9/7/78. Examiner's recommendations filed. Commission decision to be issued.	Alleged sex and age discrimination in failure to hire a sixty-two year old woman as elementary school principal.
Thomas	Anchorage Times and Kee's Kiddie Kare	Closed: non-monetary settlement after public hearing.	Alleged religious discrimination in restricting day care workers to one system of religious belief. After hearing, the Commission agreed that Kees had established a bona fide occupational qualification for such a restriction in the help-wanted column is not unlawful.
Thomas	Anchorage Telephone Utility	Supreme Court	Amicus brief filed on whether filing a complaint with the Commission tolls the time period for initiating a civil action under A.S. 18.80. Motion for Review denied.
Thomas et al.	Pipeliners Union Local 798	Public Hearing scheduled for 5/14/79	Alleged sex and race discrimination in failure to dispatch and admit to membership in the union blacks and women who sought work as welder helpers. There are eight individual complainants as well as the executive director's charge.

Thomas	Hotel, Motel, etc. Union Local 879	Individual claims filed pursuant to settlement agree- ment being pro- cessed by claims Examiner. First hearings scheduled for 1/15/79.	Examiner must determine for each claimant whether or not she was damaged by "male only" calls or failure to count in-town hours for out-of-town dispatch list. Examiner must further determine the amount of liability on each meritorious claim.
Thomas	State of Alaska Division of Marine Trans- portation.	Closed: Adminis- trative dismissal.	Alleged sex discrimination in hiring for Marine Highways System.
Witcher	State of Alaska Department of Highways.	Public Hearing to be scheduled	Alleged sex discrimination in failure to pro- mote.
Wondzell & ASCHR	Alaska Lumber & Pulp	Supreme Court	Whether the NLRA preempts state law prohibiting religious-based discrimination. Whether a duty to reasonably accommodate an employee's religious beliefs should be read into state law. September 1978 decision favorable to Commission on both issues.