ESTABLISHING LITIGATION PRIORITIES TO SECURE CHICANA RIGHTS

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> On June 7, 1974, the California State Department of Health adopted *emergency* regulations which, among other things, would eliminate the use of target poverty areas as a method of determining eligibility for child care services. The so-called emergency regulations were issued without benefit of public hearing and would have severely affected service to the Chicana community in the State. On July 2, 1974, the Chicana Rights Project obtained a Temporary Restraining Order enjoining implementation of the regulations. At defendant's request, the Temporary Restraining Order was continued in order to allow the regulations to expire, and the former liberal regulations remained in effect as if the new regulations had never been issued. The State has indicated that it has no plans to issue future regulations of this sort.[1]

The Chicana Rights Project of the Mexican American Legal Defense and Educational Fund (M.A.L.D.E.F.), was born out of a recognition that among the numerous problems Chicanas face, many can be attributed to government action and inaction, and that a national research and litigation arm was needed to combat patterns of discrimination. Its primary aims include the following: (1) Disseminating civil rights *information* more broadly among women. This is especially crucial because many guarantees of equal opportunity and treatment in employment, education, day care, and other important areas remain unknown to many Chicanas, even though they comprise almost half of the Chicano population.[2] More than 350,000, in fact, qualify as heads of household;[3] (2) Identifying specific practices which most unfairly burden Chi-

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1. Lee v. State Board of Education, No. 716-916 (San Francisco Superior Court, July 2, 1974).

2. CENSUS BUREAU, U.S. DEP'T OF COMMERCE, WE THE AMERICAN WOMEN, (1973) (hereinafter referred to as *We the American Women*).

3. Employment Standards Administration, U.S. DEP'T OF LABOR, WOMEN'S BUREAU FACT SHEET, WOMEN HEAD OF HOUSEHOLD (1972).

canas and increase the number of potential claimants; (3) Formulating a litigation strategy on the basis of information compiled by the Chicana Rights Project.

Chicanas share with other women the burden of overcoming sexism to improve their educational and employment opportunity; but they additionally suffer from the sort of racism and poverty which most Anglo women fail to experience. The degree of discriminatory pressure that Chicanas must contend with places them in an invidious position as compared to Anglos and even Chicanos. This article intends to substantiate this conclusion by analyzing existing conditions in two areas. First, it shall examine the relationship between Chicanas and the educational establishment. Upon close scrutiny, it appears that certain practices in our nation's schools serve to perpetuate the ongoing discrimination against Chicanas (e.g. in vocational training). Second, the dominant theme among Chicanas is their relegation to low-income employment and welfare. Many capable, but undereducated, women are confined to occupations far below their potential. When considered with the high unemployment rate among women, and discriminatory employment practices, the reasons for the unacceptably low economic standing of Chicanos become apparent. Both of the aforementioned areas, as they relate to Chicanas, have for the most part been neglected by civil rights groups, feminist organizations, government agencies, and Chicano associations. Even with the many legal advancements that have positively influenced the elimination of sex discrimination in our institutions, the plight of Chicanas in education and employment indicates the continued existence of discriminatory patterns and practices that remain open to litigation.

I. CHICANAS AND EDUCATION

A. *Educational Attainment*

Approximately 95 percent of the 1.4 million Spanish-surnamed students who attend school in Arizona, California, Colorado, New Mexico, Texas and the rest of the Southwest are of Mexican descent. Over 80 percent of these students are in California and Texas;[4] thus, these areas present themselves as centers for litigation. In the United States, people of Mexican descent generally attain a level of educational accomplishment below that of caucasians. Within this context, it has been demonstrated that the median level of education for Chicanas is only 9.4 years, which is below the averages of both Black women (10.0) and Anglo wom-

4. U.S. COMM'N ON CIVIL RIGHTS, MEXICAN-AMERICAN EDUCATIONAL STUDY (1970).

en (12.1).[5] National statistics show that twice as many Chicanas quit high school than caucasians in the same age group.[6] In Texas, for example, 51.6 percent of all caucasians received a high school education while diplomas were received by only 28.1 percent of the Chicanas.[7]

Post high school statistics are just as discouraging. In California, where Chicanas comprise 7.5 percent of the state population, less than two percent ever reach the college or university plateau.[8] Even though there are over 106,000 students in the California State University system, less than .07 percent are Chicanas.[9] Such an unfavorable participation rate by Chicanas in our educational institutions would tend to confirm the belief that there exists a direct correlation between educational attainment and earning capacity. In Texas, for example, the incidence of poverty among Chicanas age 25 and below is 30.4 percent compared to 10.9 percent for Anglos the same age.[10]

This legacy of undereducation is a prime factor in limiting Chicanas to operative or service occupations, and welfare maintenance. The absence of advanced training, immediately eliminates them from contention for employment in technical, professional, and administrative positions. As a subsequent section will show, not only must Chicanas shoulder the burden of traditional economic impediments to equal educational opportunity, but they must also overcome academic standards and curriculum which ignore their unique ethnic qualities and social disadvantages. Without a doubt, male dominated familial and community groups need to support the educational advancement of Chicanas more vigorously; but educational institutions themselves are a major barrier to this goal.

B. *Affirmative Action in Public Education*

Title IX of the Education Act is the basic statutory authority which prohibits sex discrimination in any educational program or activity receiving federal funds. The scope of Title IX encompasses 17,000 elementary and secondary schools and 2,500 colleges and universities.[11] Its implementive guidelines focus on seven

5. CENSUS BUREAU, U.S. DEP'T OF COMMERCE, WE THE AMERICANS, OUR EDUCATION (1973).
6. *We the American Women, supra* note 2.
7. Texas Office of Economic Opportunity, *Poverty in Texas* (1972) (hereinafter referred to as *Poverty in Texas*).
8. F. Sifuentes, *Mexican-American and Higher Education in the Golden States*, 1 REGENERACION 1, at 5.
9. *Id.*
10. *Poverty in Texas, supra* note 7.
11. *HEW: Title IX Regulations*, 1 WOMEN'S L. REP. 1.181 (1975).

general areas: athletics, physical education classes, scholarships, private college admissions, pensions, benefits and curriculum.[12]

Title IX closely emulates the language found in Title VI of the Civil Rights Act of 1964, which essentially prohibits federal agencies from granting financial assistance to those institutions which discriminate on the bases of race, color, or national origin. However, Title IX differs from Title VI in that it applies to discrimination based on sex, is limited to educational programs and activities, covers employment in educational institutions, and includes certain exemptions; such as, military and religious organizations. Although Title IX was enacted by Congress in June, 1972, the final regulations did not become effective until July 21, 1975. These final regulations cover three major areas: admission of students, treatment of students, and employment.

Norma K. Raffel,[13] head of the Education Committee of the Women's Equity Action League, summarized the purpose of these regulations as follows:

> Regarding admission of students, the regulations apply only to vocational, professional and graduate schools and to institutions of public undergraduate education (except those which have been traditionally and continually single sex). The regulations do *not* cover admissions to preschools, elementary and secondary schools (except for vocational schools), *private* undergraduate institutions and public undergraduate institutions that have been traditionally and continually single sex. However often students are admitted, they must be treated equally even in schools which are exempt from the admission coverage.
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> Nondiscrimination in the treatment of students includes, but is not limited to, the following areas: education programs and activities, housing, comparable facilities, access to course offerings, access to schools operated by local educational agencies, counseling and use of appraisal and materials, financial aid, employment assistance to students, health and insurance benefits and services, marital or parental status, and athletics. It does not cover the use of particular text books or curricular materials.
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> Under Title IX, discrimination on the basis of sex in employment in education programs and activities is prohibited. The areas under employment include, but are not limited to, employment criteria, recruitment, compensation, job classification and structure, fringe benefits, marital or parental status,

12. *Id.*

13. *The Enforcement of Federal Laws and Regulations Prohibiting Sex Discrimination in Education*, A Report for the U.S. National Commission on the Observance of International Women's Year (October, 1975). The author served as a public member on the Committee on Enforcement & Laws for the Commission.

advertising, pre-employment inquiries, and sex as a *bona fide occupational qualification.*[14]

Given this broad coverage, how can a litigation strategy be formulated to maximize Chicana advancement? The most concrete approach would seem to be embodied by the affirmative action concept. By affirmatively increasing the number of minorities and women in the work force, a material breakthrough could be achieved. Arguably, this strategy would enable persons trapped in poverty an opportunity to attain the economic wherewithal to maintain themselves and their children in school. However, in the area of education, major obstacles confront the Chicana which must be dealt with in order to reach the desired educational attainment and commensurate economic gain. These obstacles may be discerned from the following statements:

1. Chicanas are disproportionately underrepresented in positions which control or influence teacher preparation programs. This includes their miniscule membership on the faculties of teacher preparatory institutions, professional staffs on state departments of education in the Southwest, and among the professional employees of the U.S. Office of Education.[15]

2. A very small percentage of the classroom teachers in the Southwest are Chicanas and the number has only nominally increased during the last four years.[16]

3. Even though data on the ethnic composition of teacher trainees is not systematically compiled, the infinitesimal number of Chicanas both as public school teachers and college students in the Southwest bespeaks of their near absence from teacher preparatory programs.[17]

4. In those Southwestern school districts with 10 percent or more Chicano/Chicana enrollment, the overall pupil-counselor ratio is 1,123 to 1.

(a) In elementary schools, the ratio is 3,837 to 1.

(b) In secondary schools, the ratio is 468 to 1, which is almost double the ratio of 250 to 1 indicated as being adequate by the American School Counselor Association (hereinafter referred to as A.S.C.A.).[18]

5. Even though 28.5 percent of the student enrollment in Southwest School districts is Chicano/Chicana, only 5.4 percent of the counseling staff reflects this ethnic composition.[19]

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14. 45 C.F.R. §§ 86.15, 86 *et seq.*

15. U.S. COMM'N ON CIVIL RIGHTS, MEXICAN-AMERICAN EDUCATIONAL STUDY, TOWARDS QUALITY EDUCATION FOR MEXICAN-AMERICANS, Rep. VI, pt. (1-5) (1974) (hereinafter referred to as *Toward Quality Education*).

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.*

6. In addition to this unwieldly student workload, counselors are too often burdened with clerical duties which further diffuse their ability to reach Chicanas.[20]

Affirmative action legislation could remedy these deficiencies within the educational institutions, but the ultimate efficacy of such measures depends on enforcement; that is, the active discouragement of discrimination in recruitment and hiring programs by school officials. When voluntary compliance cannot be secured, Chicanas may have to resort to litigation.

Recent examples of legal action focus upon removing technical barriers which deny access to evidence of discrimination, and exposing public agencies which have become derelict in enforcing their affirmative action duties. In *E.E.O.C. v. University of New Mexico*,[21] the University of New Mexico was ordered by the U.S. District Court to hand over confidential personnel files to the Equal Employment Opportunity Commission (hereinafter referred to as EEOC), in connection with its investigation of a faculty member's national origin bias claim. Although the court and EEOC agreed that the files were "confidential and of a very sensitive nature," the court noted that "confidentiality is not reason to withhold the files from the Commission."[22] The decision held that the confidentiality of the files was adequately protected by existing statutory bars to disclosure of material obtained by EEOC. The Commission, which enforces Title VII of the 1964 Civil Rights Act, is expressly forbidden from making public any information it obtains during its investigations prior to any court proceeding.[23] Consequently, university files are now included in the list of personnel records subject to inspection by the EEOC.

The subpoena for the files was also challenged by the University on the ground that it was "overbroad and would in effect be a fishing expedition."[24] The court determined that the request for files of all current faculty members in the College of Engineering, as well as those of faculty members who had been terminated between January of 1970 and May of 1973, was "relevant to the area of inquiry of the Commission," and added that ". . . it would not be appropriate for the University to have the authority to determine which files might contain evidence of comparable situations having occurred in the College."[25] The same reasoning prompted the court to reject the contention that the Commission should first interview persons in the institutions before being per-

20. *Id.*
21. 7 E.P.D. ¶ 9118 (D.N.M., 1973).
22. 7 E.P.D. ¶ 9118 (D.N.M., 1973).
23. 42 U.S.C. § 709(e).
24. 7 E.P.D. ¶ 9118 (D.N.M., 1973).
25. 7 E.P.D. ¶ 9118 (D.N.M., 1973).

mitted to examine the files sought. The court noted that "the order of procedure and inquiry is a matter for the Commission's judgment rather than the University's."[26]

Related to litigation against educational institutions is the current suit in the U.S. District Court involving the Department of Health, Education and Welfare (hereinafter referred to as HEW), and the Labor Department, as defendants, filed by four women's rights groups and a national educational organization.[27] The federal agencies are charged with a failure to fulfill their obligations under federal antidiscrimination laws.[28] The plaintiffs filed a class action complaint on behalf of individual women who are, have been, or seek to be employees of educational institutions; as well as students, parents of students and taxpayers.

The suit is the first class action charging federal agencies with not fulfilling their legally mandated responsibility to end sex discrimination in education. The two federal agencies are charged with the following:

(1) violation of Executive Order No. 11246, as amended, by failing to keep adequate records of compliance, to issue adequate regulations, to follow requirements for preaward review of institutions, and to require institutions receiving federal funds to develop adequate affirmative action plans;[29]

(2) violation of the provisions of Title IX of the Education Amendments of 1972, and Titles VII and VIII of the Public Health Service Act, by failing to issue final regulations to implement these statutes.[30]

It is argued that HEW has never cut off federal funds to approximately 550 institutions formally charged with sex discrimination. According to the complaint, even where the enforcement staff at HEW or the Labor Department have found evidence of sex discrimination practiced against an individual woman, no action was taken by the agencies to eliminate the unfair practice.[31] The aim of the suit, therefore, is to compel the two agencies to enforce the anti-sex discrimination laws, to issue final regulations to implement the laws or, alternatively, that the Labor Department relieve HEW of responsibility for enforcing contract compliance.[32] A resort to litigation is necessary so long as HEW's Office of Civil

26. 7 E.P.D. ¶ 9118 (D.N.M., 1973).
27. Project on the Status of Women, No. 11, *On Campus with Women* (May, 1975) (hereinafter referred to as *On Campus with Women*).
28. *Id.*
29. *Id.*
30. *Id.*
31. HEW has approved only 14 affirmative action plans, even though more than 900 colleges and universities have federal contracts.
32. *On Campus with Women, supra* note 27.

Rights continues to ignore its anti-sex discrimination responsibility. In a United States Commission on Civil Rights report,[33] it was recommended that the Department of Labor "should consider revoking the authority it has delegated to HEW for enforcing the Executive Order in institutions of higher education." The report further charged the Office of Civil Rights, along with the Internal Revenue Service and the Veterans Administration, with failing to properly enforce Title VI of the 1964 Civil Rights Act, Titles VII and VIII of the Public Health Service Act (hereinafter referred to as PHSA), Title IX of the Education Act amendments of 1972, and Executive Order No. 11246.[34]

Other appropriate remedies include bringing private legal action, filing with State Education Associations or other professional organizations, and filing under the Equal Pay Act.

A successful affirmative action litigation strategy within the educational context may help to initiate a new cycle of economic progress for Chicanas. When educational institutions are compelled to affirmatively recruit and employ Chicana educators in numbers commensurate with their demographic representation, at the state and local level, a more favorable attitude toward Chicana students may result. The empirical data just surveyed seems to indicate that the existing composition of school staffs produces inadequate results. Perhaps an alteration of staff composition would best program Chicanas for success; rather than the existing pattern of failure, and enable them to attain the qualifications necessary for employment in moderate and high paying positions. At present, however, employment conditions for Chicanas reflect their educational impoverishment.

II. Occupational Status Among Chicanas in the Southwest

Not only must Chicanas confront an ineffective educational system, but they are also limited to inferior employment opportunities. The extent to which Chicanas are socially disadvantaged is illuminated through the examination of existing employment patterns. This study demonstrates that they are disproportionately unemployed, occupy the most menial jobs, and receive comparatively less income than do other groups.

A. *Unemployment Rate*

Whereas the level of educational attainment for Chicanas is

33. U.S. Comm'n on Civil Rights, The Federal Civil Rights Enforcement Effort to Ensure Equal Educational Opportunity (1974).

34. *On Campus with Women, supra* note 27.

comparatively low, the rate of their unemployment is disproportionately high. For example, Chicanas are unemployed at a rate of 9.4 percent compared to the total unemployment rate for all women of 7.9 percent.[35] The Department of Labor's unemployment figures for Chicanas in the Southwest are as follows: Arizona, 7.3 percent; California, 9.6 percent; Colorado, 7.0 percent; New Mexico, 8.2 percent; Texas, 6.8 percent.[36] Moreover, these statistics do not reflect the overall rise in unemployment during the last several years.

B. *Labor Force Participation*

In 1970, the majority of employed Chicanas were relegated to three occupational categories: (1) clerical and kindred work, 30 percent; (2) operative (requiring operation of machines); 23.7 percent; (3) service (other than household work), 18.5 percent.[37] Chicanas were found to have their highest participation rate in the labor force as farmworkers, non-farm laborers, machine operatives, service workers (except household), and private household workers.[38] What this means is that Chicanas are virtually excluded from the higher paying vocations.

In proportion to the overall percentage of employed women, more Chicanas occupy physically menial jobs than do other women. Females outnumber men in clerical positions and this description is valid both generally and among Chicanas; however, there are more caucasian women in clerical occupations (37 percent) than there are Chicanas (27 percent).[39] Service work is the second largest category of occupation for working women (17 percent); but, many more Chicanas (25 percent) perform services than do Anglo women.[40] Semiskilled machine operatives constitute the third largest occupational category for Chicanas (22 percent); but only 14 percent of all female workers are so employed.[41]

On the other hand, Chicanas participate least in technical, professional, managerial and administrative occupations. For example, the third largest job category for women in general is professional technical workers (15 percent). Caucasian women occupy 16.3 percent of these jobs and Anglo men comprise the

35. A. Gomez, *Chicanas in the Labor Force*, 1 ENCUENTRO FEMENIL 2, at 2 (hereinafter referred to as *Chicanas in the Labor Force*).
36. Employment Standards Administration, WOMEN'S BUREAU, U.S. DEP'T OF LABOR, WOMEN WORKERS IN ARIZONA, CALIFORNIA, COLORADO, *etc.* (1970).
37. CENSUS BUREAU, U.S. DEP'T OF COMMERCE, CENSUS OF POPULATION: 1970 GENERAL SOCIAL AND ECONOMIC CHARACTERISTICS.
38. *Id.*
39. *Chicanas in the Labor Force*, *supra* note 35, at 28.
40. *Id.* at 29.
41. *Id.*

majority of this employment; but only 5.4 percent of the Chicanas and 5 percent of all Chicanos are found in this category.[42]

This pattern of exclusion from gainful employment and heavy reliance on menial work, not only limits the earning capacity of the average Chicana, but greatly burdens the single parent. As previously noted, out of approximately 5 million Chicanas, 12 percent or more than 350,000 women qualify as heads of households. The U.S. Department of Labor adds:

> Thirty-six percent of all Mexican origin women of the usual working age (16 to 64) were working or were seeking work in March 1971 . . . . The likelihood of being poor was very high for families headed by a woman and for women classified as unrelated individuals; 62 percent of all persons so situated were poor.[43]

This statistic not only reflects the high unemployment rate among Chicanas, but also their inordinate dependence on low-income yielding vocations.

C. *Income Potential*

The median income from all sources for families with a male head of Mexican origin was $7,117.[44] The income for families headed by a Chicana was approximately half that amount,[45] which is at the bottom of the economic ladder. Even though the level of educational attainment for both Chicanos and Chicanas hovers at 9.5 years, the median income for the Chicano ($5,100) is almost three times the median amount earned by Chicanas ($1,800).[46] In fact, 54 percent of all Chicanas had incomes below $2,000, and only 20.5 percent had incomes comparable to Chicanos.[47] Nearly 82 percent of all Chicanas earned less than $3,999 as compared to only 40 percent of the men.[48] Only 10 percent of the Chicanos and 8 percent of the Chicanas earned between $5,000 to $7,000.[49]

This information would tend to pinpoint certain factors which compel the Chicana to work. Male earning power, which is $5,100 for the average family of four, rises only $1,432 above the poverty income level of $4,137.[50] So even if a Chicana is living with her Chicano husband, the need for her to be employed may be compelling. The need for employment becomes more definite for

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42. *Id.*
43. *Id.*
44. Women's Bureau, U.S. DEP'T OF COMMERCE, 1972 CENSUS FOR THE SPANISH SPEAKING POPULATION, HANDBOOK ON WOMEN WORKERS (1972).
45. *Id.* at 139.
46. *Chicanas in the Labor Force, supra* note 33, at 28.
47. *Id.*
48. *Id.*
49. *Id.*
50. *Id.* at 29.

the 44 percent of all Chicanas, 14 years of age and over, who are not living with a husband present in the home;[51] 17 percent of which serve as heads of households with an average of 3.6 persons.[52] Of these female heads of household, 26 percent are married with the spouse absent from the home, 29 percent are widows, and 39 percent are divorced.[53]

The Chicana Service Action Center of Los Angeles, which counsels Spanish-speaking women on employment, found that 50 percent of the Chicanas that use its facilities are unskilled and untrained, under 30 years of age, high school dropouts and mothers.[54] Women 31 to 41 years old tend to request assistance to upgrade their jobs and pay.[55] Those over 45 years old who can no longer do heavy factory work seek less physically demanding positions.[56] When these older women are forced to maintain the family due to abandonment, divorce, separation, spousal death or disability; occupational options are grossly minimized because of their age, lack of job experience, education and training.[57]

III. EMPLOYMENT DISCRIMINATION REMEDIES

Despite the fact that numerous remedies exist or are formally proposed to protect minorities and women (e.g. Equal Rights Amendment), it is evident that these groups continue to suffer from discriminatory practices. Additional remedies are not the major priority, rather the implementation of existing statutory guarantees is necessary. Only the immediate enforcement of these remedies will enable Chicanas to overcome discrimination.

A. *Title VII of the Civil Rights Act and Sex Discrimination*

Since employment inequities are of major concern to Chicanas, the most promising legal remedies seem to be embodied by Title VII of the Civil Rights Act of 1964 (hereinafter referred to as the Act).[58] The Act created the EEOC[59] with the authority to investi-

51. *Id.*
52. *Id.*
53. *Id.*
54. *Id.*
55. *Id.*
56. *Id.*
57. *Id.*
58. Act of July 2, 1964, Pub. L. 88-352 § 701, 78 Stat. 253, Codified at 42 U.S.C. §§ 2000e-2000e-17. Specifically, § 2000e-2 provides: (a) It shall be an unlawful employment practice for an employer (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individuals' race, color, religion, sex, or national origin.

gate and conciliate complaints, and pursuant to the Equal Opportunity Act of 1972 (hereinafter referred to as 1972 Act),[60] to bring civil actions against employers on behalf of aggrieved persons.[61] The Act allows the EEOC to bring "pattern and practice" suits against private employers.[62] The EEOC also has the authority to bring suit against state and local government agencies ,[63] which, as the result of the 1972 Act, are now covered by Title VII.[64] Private complainants may also bring suit,[65] or they may

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In addition, section (b) of 2000e-2 forbids employment agencies to refuse to refer for employment or otherwise discriminate against any individual for any of the above listed reasons. Training programs are prohibited from discriminating in admission to or employment in any such program. *Id.* § 2000e-2(d).

Labor organizations are also affected by this legislation. Section 2000e-2(c) forbids labor organizations to (1) exclude or expel members; (2) limit, segregate or classify members or applicants in any way which deprive or tend to deprive individuals of employment opportunities, (3) or to cause or attempt to cause an employer to discriminate against an individual because of any of the prohibited reasons.

Material on Title VII as to coverage and with specific attention paid to sex discrimination is part of the LEGAL SERVICES MANUAL FOR TITLE VII LITIGATION prepared by the National Employment Law Project and supplemented by M.A.L.D.E.F.

59. 42 U.S.C. §§ 2000e(4,5) (Supp. II, 1972). The EEOC is composed of five members, one chairman and four commissioners. The Commission maintains headquarters in Washington, D.C., and also maintains regional offices. The EEOC investigates complaints to decide whether a violation of Title VII has occurred.

60. Act of Mar. 24, 1972, Pub. L. No. 92-261 § 2, 86 Stat. 103. The Act enacted sections 2000e-16 and 2000e-17, and amended 2000e-(1-6), 2000e(8,9), 2000e(13,14).

61. 42 U.S.C. § 2000e(6)(e). The section provides: . . . the Commission shall have authority to investigate and act on a charge of a pattern or practice of discrimination, whether filed by or on behalf of a person claiming to be aggrieved or by a member of the Commission.

62. 42 U.S.C. § 2000e(6)(a) reads: Whenever the Commission has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights secured by this subchapter, and that the pattern or practice is of such a nature and is intended to deny the full exercise of the rights herein described, the Commission may bring a civil action in the appropriate district court of the United States by filing with it a complaint (1) signed by a member of the Commission . . . (2) setting forth facts pertaining to such pattern or practice, and (3) requesting such relief, including an application for a permanent or temporary injunction, restraining order or other order against the person or persons responsible for such pattern or practice, as he deems necessary to insure the full enjoyment of the rights herein described.

As of March 24, 1974, the EEOC assumed the full range of "pattern and practice" functions which had belonged to the Justice Department since the effective date of Title VII, July 2, 1965. Authority for the transfer of these powers from the Justice Department to the EEOC is found in § 2000e(6)(c) of 42 U.S.C. *See also*, United States v. Allegheny Ludlum Industries, Ind., 517 F.2d 826 (5th Cir. 1975).

63. 42 U.S.C. § 2000e(f)(1). Section 2000e(5)(f)(1) states: . . . In the case of a respondent which is a government, governmental agency, or political subdivision, if the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission shall take no further action and shall refer the case to the Attorney General who may bring a civil action against such respondent in the appropriate United States district court.

64. 42 U.S.C. § 2000e(a). Section 2000e(a) provides: The term "person" includes one or more individuals, governments, governmental agencies, political subdivisions, etc. . . .

65. 42 U.S.C. § 2000e(5)(b). *See* Drew v. Liberty Mutual Insurance Co.,

intervene when the EEOC or the U.S. Attorney General sues.[66]

1. Coverage of Title VII

Title VII covers employers engaged in commerce,[67] employment agencies,[68] labor organizations,[69] and joint labor-management apprenticeship committees.[70] Also included within the definition of "employers," as the result of the 1972 Act, are state and local government agencies[71] and educational institutions[72] that employ fifteen or more employees each working day for 20 weeks of the current or preceding calender year.[73]

The Act proscribes employment discrimination on the basis of race, color, religion, sex[74] or national origin. Specifically prohibited are discriminatory failures or refusals to hire, discharges, classifications, referrals and acts that otherwise discriminate.[75] Also forbidden is any discriminatory reprisal against persons who assert Title VII rights,[76] and advertizing by employers which indicates a

480 F.2d 69 (5th Cir. 1973); Jefferson v. Peerless Pumps Hydrodynamic, Div. of FMC Corp., 456 F.2d 1359 (9th Cir. 1972); Hackett v. McGuire Bros., Inc., 445 F.2d 442 (3d Cir. 1971).

66. 42 U.S.C. § 2000e(5)(f)(1). The person or persons aggrieved shall have the right to intervene in a civil action brought by the Commission . . . in a case involving a government, governmental agency or political subdivision.

67. 42 U.S.C. § 2000e(b). This section states: The term "employer" means a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year . . . . *Id.*, § 2000e(2)(a).

68. 42 U.S.C. § 2000e(c). This section provides: The term "employment agency" means any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such a person. *Id.* § 2000e-(2)(b), *supra* note 58.

69. 42 U.S.C. § 2000e(d). Section 2000e(d) states: The term "labor organization" means a labor organization engaged in an industry affecting commerce and any agent of such an organization, and includes any organization of any kind, any agency, or employee representation committee, group, association or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment . . . . *Id.* § 2000e(2)(c), *supra* note 58.

70. 42 U.S.C. § 2000e(2)(d). This section provides: It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual because of race, color, religion, sex or national origin in admission to, or employment in, any program established to provide apprenticeship or other training.

71. 42 U.S.C. § 2000e(a).

72. 42 U.S.C. § 2000e(1).

73. 42 U.S.C. § 2000e(b). *See* note 67 *supra.*

74. 42 U.S.C. § 2000e(2).

75. 42 U.S.C. §§ 2000e(2)(a), (b), (c), (d). *See* note 58 *supra.*

76. 42 U.S.C. § 2000e(3)(a) reads: It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment agency, or joint-labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.

preference on the basis of a classification covered by Title VII; unless the classification is based on a *bona fide occupational qualification.*[77]

2. Sex Discrimination

Although Title VII of the Civil Rights Act of 1964 provides a comprehensive prohibition of employment discrimination, the initial introduction of the Act into Congress excluded a ban on sex discrimination. Ironically enough, the sex discrimination provision was added as a joke by opponents of the bill in an effort to kill the entire measure. Rep. Martha Griffiths then led the fight for an active support of the sex discrimination provision's inclusion.

The guidelines on discrimination because of sex[78] were issued on March 31, 1972, and emphasized: "the principle of nondiscrimination requires that individuals be considered on the basis of individual capacities and not on the basis of any characteristic generally attributed to the group."[79]

Title VII's guarantee of equal employment opportunity may ultimately have its widest impact on combating sex discrimination. Statistically, 37 percent of all workers in the labor force are women,[80] but women workers have higher unemployment[81] and underemployment rates than their male counterparts.[82] Furthermore, they earn less[83] and hold proportionately fewer of the more remunerative and prestigious professional and managerial positions.[84] This inferior female standing exists despite women's educational parity with men.[85] Significantly, among managers and professionals the females possess an educational level that is superior to the males.[86]

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77. 42 U.S.C. § 2000e(3)(b) provides: It shall be an unlawful employment practice for an employer . . . to print or publish or cause to be printed or published any notice or advertisement relating to employment by such employer . . . indicating any preference, limitation, specification, or discrimination based . . . on sex . . . except that such a notice or advertisement may indicate a preference . . . based on sex . . . when sex . . . is a bona fide occupational qualification for employment.

78. 29 C.F.R. § 1604.

79. 29 C.F.R. § 1604. Note: M.A.L.D.E.F.'s Chicana Rights Project in conjunction with M.A.L.D.E.F.'s EEOC Project have brought a Title VII class action suit in Texas to enjoin the State Employment Commission from discriminating against pregnant women in the disbursal of unemployment benefits and/or referral services.

80. BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, HANDBOOK OF LABOR STATISTICS 29-30 (1972).

81. *Id.*

82. *Id.*

83. U.S. DEP'T OF LABOR, MONTHLY LABOR REVIEW (May, 1974).

84. MANPOWER ADMINISTRATION, U.S. DEP'T OF LABOR, MANPOWER REPORT OF THE PRESIDENT, March, 1973, 141-42.

85. *Id.*

86. *Id.*

Title VII is further supplemented by the Equal Pay Act of 1963,[87] which forbids employers from paying wages at a rate less than are paid to employees of the opposite sex doing substantially the same work, if the employees are covered by the federal minimum wage standard. One example of such prohibited discrimination is the practice which denies employment to women with young children. The Supreme Court in *Phillips v. Martin Marietta Corp.*,[88] declared that the maintenance of disparate hiring policies for women and men with preschool age children was violative of the Act. The efficacy of this decision was limited, however, because the Court remanded the case for a consideration of whether the policy could be justified as a *bona fide occupational qualification.*[89]

As previously noted, section 703(e) of the Act, states that it shall not be an unlawful employment practice for an employer to hire or employ workers on the basis of sex, where sex is a *bona fide occupational qualification* reasonably necessary to the normal operation of that particular business or enterprise.[90] The EEOC regulations, however, state that this categorical exception "should be interpreted narrowly."[91] The regulations further qualify the circumstances to which this narrow exception should not be applied, such as assumed turnover rates, stereotypic presumptions, co-worker or client preferences.[92] Only an authentic and genuine sexual preference related to the nature of the employment is acceptable under the regulations.[93] This proposition was supported by Justice Marshall, who in a separate concurring opinion in *Phillips*, stated that the EEOC regulations are entitled to great deference.[94] Less than a month and a half later, Justice Burger fully accepted these regulations for a unanimous Court in *Griggs v. Duke Power Company.*[95]

Although various employment classifications which exclude women have been declared unlawful, the courts have not settled upon a uniform standard of enforcement, particularly in regard to employers who seek to camouflage their hiring practices within the exception. For example, appellate decisions have applied both an individual standard and a collective factual standard. In *Bowe v.*

87. 29 U.S.C. § 206(d)(1). For the relationship of Title VII and the Equal Pay Act, *see* 29 C.F.R. § 1604.8. 37 Fed. Reg. 6837 (1972).
88. 400 U.S. 542 (1971).
89. The Supreme Court remanded *Phillips* on the grounds that the record before it relating to the issue of bona fide occupational qualification was inadequate for resolution.
90. 42 U.S.C. § 2000e(2)(e).
91. 29 C.F.R. § 1604.2(a). 37 Fed. Reg. 6836 (1972).
92. 29 C.F.R. § 1604.2(a)(i-iii). 37 Fed. Reg. 6838 (1972).
93. 29 C.F.R. § 1604.2(a)(2). 37 Fed. Reg. 6838 (1972).
94. 400 U.S. 542 (1971).
95. 401 U.S. 424 (1971). *See*, Sprogas v. United Air Lines, Inc., 444 F.2d 1194 (7th Cir.), *cert. denied*, 404 U.S. 991 (1971).

Colgate-Palmolive Co.,[96] the employer had instituted a rule which prevented women from lifting objects in excess of thirty-five pounds.[97] In *Weeks v. Southern Bell Telephone & Telegraph Co.*,[98] the facts were similar except that the weight limit was thirty pounds. Finding the employment policy unlawful, the Fifth Circuit required that an employer have a collective factual basis, as opposed to a stereotypic notion, that all or substantially all members of one sex would be unable to perform the duties of the particular job requiring the lifting of heavy objects.[99]

Another frequently encountered defense to a Title VII sex discrimination charge, besides the *bona fide occupational qualification*, is the theory that the discrimination is required by state protective laws. Two types of protective legislation result in discrimination: (1) those laws which prohibit women from engaging in certain types of activity,[100] and (2) those which require that certain differential benefits be given to women.[101] With regard to the former, courts have uniformly held that such statutes are indefensible when in conflict with Title VII and must give way under the supremacy clause.[102] In the latter instance, courts have divided, holding either that the statute's required benefits must be extended to men,[103] or that the statute is invalid and benefits need not be extended to either men or women.[104] This precedent renders such state protective laws largely vulnerable as discriminatory barriers to employment.[105]

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96. 416 F.2d 711 (7th Cir. 1969), *rev'g* in part, 272 F. Supp. 332 (S.D. Ind. 1967).

97. 416 F.2d 711.

98. 408 F.2d 228 (5th Cir. 1969).

99. *Id.*

100. Examples of such laws include those which impose maximum hour restrictions on women. *See* Le Blanc v. Southern Bell Telephone and Telegraph Co., 333 F. Supp. 602 (E.D. La. 1971) (hours law; assignment clerk and outside plant clerk seeking promotions to test deskman position), *not appealed on this issue, and aff'd on other grounds*, 460 F.2d 1228 (5th Cir. 1972), *cert. denied*, 409 U.S. 990 (1972). Also included are those laws which prohibit the employment of women in certain jobs requiring physical exertion. General Electric Co. v. Hughes, 454 F.2d 730 (6th Cir. 1972); Rosenfeld v. Southern Pacific Co., 444 F.2d 1219 (5th Cir. 1971).

101. An example of this type of statute is one which requires payment of a special premium overtime rate to women. *See* Potluck Forests, Inc. v. Hays, 318 F. Supp. 1368 (E.D. Ark. 1970), *aff'd*, 465 F.2d 1081 (8th Cir. 1972); Homemakers Inc. of Los Angeles v. Division of Industrial Welfare, 356 F. Supp. 1111 (N.D. Cal. 1973).

102. *See* note 100 *supra*. Richards v. Griffith Rubber Mills, 300 F. Supp. 338 (D. Ore. 1969). *See also* 29 C.F.R. § 1604.2(b)(1).

103. *See e.g.*, Potluck Forest, Inc. v. Hays, 318 F. Supp. 1368 (E.D. Ark. 1970).

104. *See e.g.*, Homemakers, Inc. of Los Angeles v. Division of Industrial Welfare, 356 F. Supp. 1111 (N.D. Cal. 1973). The EEOC regulations advocate the extension of benefits to men except where the employer can prove that business necessity prevents such an extension, in which case the state law is invalid and benefits cannot be extended to either men or women. 29 C.F.R. § 1604.2(b)(3),(4).

105. Regarding the granting of back pay where state protective laws are

The Act's prohibitions are likewise set forth in the EEOC regulations and guidelines which also prohibit discrimination against women based upon marital status,[106] pregnancy,[107] or "principal wage earner" status.[108] Uniform declarations against the pregnancy restrictions, however, have not been forthcoming. In *LaFleur v. Cleveland Board of Education*,[109] the U.S. Supreme Court declared that a maternity leave policy which required termination of employment five months before the birth of a child, and which prohibited a return to service earlier than the beginning of the regular school semester after the child became three months old, was unlawful. Other courts, notwithstanding *La Fleur*, have continued to uphold similar maternity leave policies.[110] This discrepancy may be resolved more quickly, however, now that Title VII has been amended to cover federal, state and local government agencies.[111]

3. Title VII and Federal Employees

Although federal employers are excluded from the definition of "persons," discrimination in federal employment is specifically forbidden by section 717 of the Act.[112] Thus, section 717, extends the coverage of Title VII to federal government employment, covering both employees and applicants.[113] Section 717 establishes a separate administrative procedure, independent of the EEOC structure, which must be exhausted before suit may be filed

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invalid, *see* Kaber v. Westinghouse Electric Corp., 480 F.2d 240 (3d Cir. 1973); Schaeffer v. San Diego Cabs, Inc., 462 F.2d 1002 (9th Cir. 1972).

106. The regulations state that practices which restrict the employment of married women but which are not applicable to married men constitute a discrimination based on sex prohibited by Title VII, 29 C.F.R. § 1604.4(a); 37 Fed. Reg. 6836-7 (1972). *See* Sprogis v. United Air Lines, Inc., 444 F.2d 1194 (7th Cir. 1971), which held that the employer's policy of employing only unmarried stewardess was not justified as a *bona fide occupational requirement.*

107. The regulations declare that a practice which excludes from employment applicants or employees because of pregnancy is a *prima facie* violation of Title VII. The regulations further state that pregnancy, miscarriage, abortion, childbirth and recovery therefrom are temporary disabilities which must be treated as such under health and temporary disability plans. 29 C.F.R. § 1604.10(a)(b). 37 Fed. Reg. 6837 (1972).

108. An employer's conditioning of fringe benefits (such as medical, life insurance and retirement plans) on principal wage earner status is *prima facie* a violation of Title VII since such benefits then "tend to be available only to male employees and their families. 29 C.F.R. § 1604.9(c). 39 Fed. Reg. 6837 (1972). Similarly, employer practices of making benefits available to employees are unlawful. 29 C.F.R. § 1604.9(d). 37 Fed. Reg. 6837 (1972).

109. 411 U.S. 947 (1973).

110. Cohen v. Chesterfield County School Board, 326 F. Supp. 1159 (E.D. Va. 1971), *aff'd*, 467 F.2d 262 (4th Cir. 1972), *rev'd*, 474 F.2d 395 (4th Cir. 1973) (en banc 4-3 decision), *petition for cert. granted*, 411 U.S. 947 (1973). Schattmas v. Texas Employment Commission, 330 F. Supp. 328 (W.D. Tex. 1971), *rev'd* 459 F.2d 32 (5th Cir. 1972), *cert. denied*, 410 U.S. 959 (1973).

111. This would be in addition to suits brought under 42 U.S.C. §§ 1981 and 1983.

112. 42 U.S.C. § 2000e(16)(a).

113. *Id.*

with the EEOC. Caution is necessarily recommended when pursuing a claim within the civil service, since the procedural requirements have yet to be clarified and interpreted by judicial review.

Section 717(c)[114] contemplates an initial administrative charge filed within the federal department or agency involved. The subsection authorizes the commencement of a civil action within thirty days of "receipt of notice of final action" taken by the department or agency on the charge; or after 180 days from the filing of the charge and until such a time as final action may be taken.[115] Appeal from an agency decision to the Civil Service Commission (hereinafter referred to as C.S.C.) is provided.[116] Furthermore, a complainant can appeal a final action by the C.S.C. to a civil court within thirty (30) days after notice of the decision, or after 180 days after the filing of an appeal with the Commission.[117] Apparently, a complainant may bring suit only after exhausting the departmental procedures, or may appeal to the C.S.C. and thereafter file a suit in accordance with the appropriate time limitation.

Section 717(b)[118] charges the C.S.C. with general responsibility for enforcing the anti-discrimination provisions in federal employment, and for issuing regulations necessary for the task.[119] The Commission's regulations implementing this authority appear in the Code of Federal Regulations.[120] Included in these rules is an outline of the procedures and standards which each federal department and agency must establish and follow in processing complaints of discrimination.[121] In handling the administrative phase of any particular case, reference must be made both to the governing standards of the Commission regulations and to the implementing regulations of the department or agency involved.

The Commission regulations also provide the procedure for appeals to the Commission from decisions of departments and agencies.[122] Also authorized are "third party" charges of discrimination "by organizations or other third parties . . . which are unrelated to an individual complaint of discrimination,"[123] and complaints of reprisal against charging parties.[124] Section 717(b)

114. 42 U.S.C. § 2000e(16)(c).
115. *Id.*
116. *Id.*
117. *Id.*
118. 42 U.S.C. § 2000e(16)(a).
119. Section 717(b) also requires each department and agency to submit and the Commission to annually review and approve, an affirmative action program of equal employment opportunity.
120. 29 C.F.R. § 713(b). *See also* 37 Fed. Reg. 22717 (1972), *as amended* by 37 Fed. Reg. 25699 (1972).
121. 29 C.F.R. §§ 713.211-713.222.
122. 29 C.F.R. §§ 713.231-713.241.
123. 29 C.F.R. § 713.251.
124. 29 C.F.R. §§ 713.261-713.262.

authorizes the Commission to award "appropriate remedies, including reinstatement or hiring of employees with or without back pay."[125]

The Commission's regulations provide for a variety of remedies.[126] In authorizing judicial action after exhaustion of the prescribed administrative procedure and within the specified time, Section 717(c) provides that the complainant "may file a civil action as provided in Section 706," the general provision for civil actions under Title VII.[127] Section 717(b) restates that "[t]he provisions of Section 706(f) through (k), as applicable, shall govern civil actions brought hereunder."[128] Those provisions could be interpreted in non-Section 717 suits to provide a trial *de novo* in federal court, regardless of what complaint processing steps may have been already taken by the EEOC.[129] In spite of the parity which Section 717 seems to contemplate between suits brought under its provisions, and all others under Title VII, one case involving such a question has been decided otherwise.[130]

Prior to the 1972 amendments to Title VII of the 1964 Civil Rights Act,[131] federal employees were formerly barred from receiving court review of complaints stemming from discriminatory practices. However, with the 1972 amendments, the protections against employment discrimination were extended to civil service employees. Essentially, the public employment provision of Section 717 mirrors that of Section 706 for private sector employees. In *McDonnel Douglas Corp. v. Green*,[132] the Supreme Court announced that private sector employees are entitled to a trial *de novo* in Title VII actions. Contrary to an inference that the *McDonnel Douglas Corp.* decision would arguably include federal employees within the grasp of its language, a majority of court opinions continue to rule that federal employees are not entitled to a trial *de novo*; but only to a review of the administrative record compiled by the alleged discriminatory agency.[133] Most of the cases denying trial *de novo* have relied on the decision in *Hackley v. Johnson*[134] which limited the scope of judicial review in federal employment cases under Title VII. The court in *Hackley* stated that "an

125. 42 U.S.C. § 2000e(16)(b).
126. 29 C.F.R. §§ 713.261-713.262.
127. 42 U.S.C. § 2000e(16)(c). Section 717(c) further provides that the head of the department, agency or unit, as appropriate, shall be the defendant.
128. 42 U.S.C. § 2000e(16)(d).
129. *See* Robinson v. Lorillard Corp., 444 F.2d 781 (4th Cir. 1971); Beverly v. Lone Star Lead Construction Corp., 437 F.2d 1136 (5th Cir. 1971).
130. Hackley v. Johnson, 6 E.P.D. ¶ 8725 (D.D.C. 1973).
131. 83 Stat. 103. *See* text note 60 *supra*.
132. 411 U.S. 792 (1973).
133. 1 WOMEN'S L. REP. 1.163-1.165.
134. 6 E.P.D. ¶ 8725.

especially high standard of review should be exercised;"[135] one which required the court to determine initially whether the clear weight, or preponderance of the evidence in the record affirmatively establishes the absence of discrimination.[136] Consequently, this interpretation of Section 717 adds an additional burden that stands in the way of complainants seeking relief from federal employment discrimination.

Other consequences flowing from *Hackley* include effectively denying complainants access to discovery as provided under the Federal Rules of Civil Procedure, class action certification since each employee must exhaust the administrative process, and independent judicial interpretations. In light of this fact, the representation of Chicana complainants at administrative hearings on national origin/sex discrimination grounds filed under Title VII is of crucial importance. At the outset, in an effort to document some of the problems facing Chicanas in employment, the Project represented civil service employees in administrative hearings, emphasizing the importance of compiling as complete an administrative record as possible.[137] However, it was determined that this ap-

135. 6 E.P.D. ¶ 8725.

136. *See* note 133 *supra.*

137. Since March 15, two U.S. Courts of Appeal have announced decisions on the question of whether federal employees suing under Title VII have a right to a trial *de novo* in federal court if the administrative agency has found that no discrimination occurred. Most previous cases, as analyzed in *Title VII and Federal Employees*, an article by Whitney M. Adman, 1 WOMEN'S L. REP. 1.163 (1975), have decided that an employee does not have that right.

The two new appellate decisions reach opposite results. In Sperling v. United States, No. 74-1533 (3d Cir., filed Apr. 18, 1975), the Third Circuit reversed a trial court decision that it had jurisdiction to review only whether due process had been afforded in the administrative fact finding proceeding. The *Sperling* court held that a federal employee has a right to a trial *de novo* in every instance.

A week later, the Ninth Circuit decided otherwise. In Chandler v. Johnson, No. 75-1596 (9th Cir., filed Apr. 25, 1975), it affirmed a lower court's adoption of the *Hackley* standard (discussed in the Adman article) that trial *de novo* should not be automatically granted or denied, but that the trial judge should consider the fairness of the administrative hearing, and the need for further substantiality of the plaintiff's complaint, and its decision whether to order a trial *de novo. Note: As this article went to publication the United States Supreme Court reversed the Ninth Circuit's decision in Chandler [caption changed to Chandler v. Ratterbush] and remanded the case for a new determination.*

The circuits disagreed specifically on the intent of Congress in adding relief for federal employees to the scope of Title VII. The Ninth Circuit found that Congress was silent on the trial *de novo* issue, but interpreted the intent of Congress as "to assure federal and private employees equivalent, but not identical, judicial remedies under Title VII." The Sperling court, on the other hand, analyzed the legislative history in detail and concluded "that it was Congress' intent to provide an aggrieved federal employee with as full a panoply of procedural remedies as those afforded a private sector litigant."

In addition to the two appellate decisions, two district court judges in Texas have ruled that federal employees have a right to a trial *de novo. See* Hill v. Seamens, No. 72-H 1403 (S.D. Tex., filed Apr. 5, 1975), and Sylvester v. U.S. Postal Service, 393 F. Supp. 1334 (S.D. Tex. 1975).

A related issue also receiving judicial attention is the right of an aggrieved employee to proceed directly to federal court if the administrative agency fails to act within 180 days after the complaint is filed. The Sperling court noted that in

proach was not sufficiently productive in view of the Project's limited resources and its long range goal of pursuing litigation designed to have a far reaching impact on Chicanas. It has been especially important to include statistical evidence in the record which demonstrates systematic patterns of discrimination. Courts have long regarded such empirical data as highly material in both individual and class action complaints.

An example of this statistical importance is provided by examining the civilian labor force of one of the military installations in San Antonio, Texas. There, five military installations serve as the major employers in a city of over 800,000 residents, and a surrounding county of over 1,000,000 people. Kelley Air Force Base is by far the largest civilian employer with approximately 21,000 civilians employed. Specifically, the labor force breakdown at Kelley is as follows:[138]

GS 1-16	6389	male	
GS 1-16	3276	female	1490 or 45.5% Chicanas
WG 2-14	9253	male	
WG 2-14	548	female	308 or 56.2% Chicanas

As these figures indicate, women, particularly Chicanas, comprise a substantial part of the labor force in the lower grade or lower paying jobs. For example, at the GS-5 level, there are 756 women with 314 Chicanas in this same category.[139] On the other hand, out of 432 women at the GS-9 level only 75 were Chicanas; 17 were Black and 1 was Oriental.[140] This pattern of underrepresentation continues above the GS-9 job level to the detriment of Chicanas.

B. *Revenue Sharing and the Impact on Chicanas*

In keeping with the concept of tailoring existing remedies to the special needs of Chicanas, one should not overlook the implementation of existing federal statutes as effective legal mechanisms by which to achieve maximum positive results with limited resources. Legislative measures which generally prohibit sex discrimination are many, however, there are two which specifically prohibit sex discrimination: Title IX of the Education Act of 1972

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this situation, trial in the district court must be *de novo*. In Grubbs v. Butz, No. 73-1955, pending before the D.C. Circuit, the plaintiff sought to enjoin the Department of Agriculture from holding administrative hearings on her sex discrimination charge before her case in federal court went to trial. The D.C. Circuit granted an injunction pending appeal.

138. KELLEY AIR FORCE BASE WORK CENSUS REPORT, Kelley A.F.B., November 20, 1973.

139. *Id.*

140. *Id.*

[previously noted] and the Comprehensive Employment Training Act (hereinafter referred to as CETA).[141]

> CETA was designed to accomplish the following objectives: [P]rovide job training and employment opportunities for economically disadvantaged, unemployed, and under employed persons, and to assure that training and other services lead to maximum employment opportunities and enhanced self-sufficiency by establishing a flexible and decentralized system of federal, state, and local programs.[142]

The law is in the nature of "special revenue sharing," whereby block grants of federal funds are given to states and units of local government ("prime sponsors"), or their subgrantees (which may include small jurisdictions, and public or private non-profit agencies), to meet the purposes of the statute. Recipient discretion in the expenditure of federal funds is limited by the implementing regulations.[143] The Department of Labor has the responsibility, imposed by the Act, for securing compliance with these requirements.[144] However, broad monitoring responsibilities are provided to the Labor Department because it cannot by itself be counted to oversee the implementation of so many programs diffused among so many local government units. Local citizen monitoring efforts are necessary to ensure that such programs are lawfully and effectively implemented.

Title I of CETA provides funds "to establish a program to provide comprehensive manpower services throughout the Nation."[145] In seeking Title I funds, the prime sponsor must submit a comprehensive manpower plan, which includes identification of the target population, a description of the services to be provided, performance goals, coordination with community based organiza-

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141. Act of Dec. 28, 1973, Pub. L. 93-202 § 2. 87 Stat. 839. Codified at 29 U.S.C. § 800 *et seq.* CETA was amended by Pub. L. 93-567. 88 Stat. 1845 (December 31, 1974) to include Title VI, which provides for Emergency Job Programs. Pub. L. 93-567 also made certain minor changes in other sections of the Act.

29 U.S.C. § 848(f) provides that: The Secretary shall not provide financial assistance for any program under this subchapter unless the grant, contract or agreement with respect thereto specifically provides that no person with responsibilities in the operation of such program will discriminate with respect to any program participant or any applicant for participation in such program because of race, creed, color, national origin, sex, political affiliation, or beliefs.

29 U.S.C. § 991(a) states that: No person in the United States shall on the ground of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or part with funds made available under this chapter.

142. 29 U.S.C. § 801.

143. Proposed revised regulations for Title I and II of CETA have been published at 40 Fed. Reg. 10820 (March 7, 1975), and have been published in final form at 40 Fed. Reg. 22674, *et seq.* (May 23, 1975) to become effective for FY 1976 programs.

144. 29 U.S.C. § 818.

145. 29 U.S.C. § 811.

tions in planning, and provisions for occupational training in which skill shortages exist in the community.[146] The purpose of the plan is to assure that the prime sponsor directs funds toward those types of job training, employment, and back-up services most likely to achieve the Act's goal of enabling participants to become self-sufficient. A comprehensive manpower plan which does not meet the requirements of the Act and the regulations may not be funded.[147]

The CETA statute stresses the importance of the prime sponsor's development of a comprehensive plan which helps to eliminate sex discrimination in employment. The measure calls for the following provisions:

> The Secretary shall not provide financial assistance for any program under this chapter unless . . . the grant, contract, or agreement with respect thereto specifically provides that no person with responsibility in the operation of such program will discriminate with respect to any program participant or any applicant for participation in such program because of . . . sex . . . .[148]
>
> No person in the United States shall on the ground of . . . sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this chapter.[149]

The prime sponsor is to be responsible for:

> . . . designing program operating activities which are, to the maximum extent feasible, consistent with every participant's fullest capabilities and will contribute to the occupational development or upward mobility of every participant.[150]

A complete range of jobs as well as vitally needed training and counseling will enable participants of CETA programs to realize their full capabilities. The responsibility of achieving the woman's fullest capabilities can only be realized if participants are given, not only the opportunity for training, counseling and placement in nontraditional occupations, but also the opportunity for training and upgrading in the traditionally female occupations. Any CETA plan that fails to comply with the non-discrimination and fullest capabilities provisions or "otherwise fails to serve equitably the economically disadvantaged unemployed, or underemployed persons in the area" will be revoked.[151]

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146. 29 U.S.C. § 815.
147. 29 U.S.C. § 818(a).
148. 29 U.S.C. § 983.
149. 29 U.S.C. § 991(a).
150. 29 C.F.R. § 95.31(d). 29 U.S.C. §§ 880(1) and 983(9).
151. 29 U.S.C. § 818(d).

CETA also provides for public service employment under Title II and VI of the Act.[152] Title II is designed to establish programs creating public service employment for unemployed and underemployed persons which will lead to unsubsidized employment for such individuals, and to provide needed training and supportive services to accomplish this goal.[153] Some of the main features of Title II and its implementing regulations[154] are as follows:

1. Funds are targeted to areas with unemployment in excess of 6.5 percent.[155]

2. Prime sponsors (also called "eligible applicants" in this Title) may distribute funds to smaller jurisdictions, and to other public agencies or private non-profit groups.[156]

3. Not less than 90 percent of the funds expended under Title II must be used for wages and employment benefits.[157]

4. To the extent feasible, funded programs should provide public service employment that will be *transitional*, and therefore the jobs and training provided should enable individuals to move into non-CETA jobs.[158]

5. A person is eligible for a Title II job if he or she has been unemployed for at least 30 days or is underemployed (i.e., working but receiving wages below the poverty level).[159]

6. In general, manpower services under CETA must be given to "those most in need of them,"[160] and, under Title II, special consideration in filling public service employment positions must be given to "unemployed persons who are most severely disadvantaged in terms of the length of time they have been unemployed and their prospects for finding employment without assistance,"[161] to certain groups of veterans,[162] to welfare recipients, and to former manpower trainees.[163] However, what constitutes "special consideration" is undefined by both the Act and regulations.

7. Public service employment must be made available on "an equitable basis" among all "significant segments" of the unemployed population.[164]

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152. 29 U.S.C. § 801 *et seq., as amended* by Pub. L. 93-567 (Dec. 31, 1974).
153. Pub. L. 93-567 § 201.
154. 40 Fed. Reg. 22674.
155. Pub. L. 93-567 § 204(c).
156. Pub. L. 93-567 §§ 204(d), 205(c)(23). 29 C.F.R. §§ 96.23(b)(4), 96.23(b)(5).
157. Pub. L. 93-567 § 203(b).
158. Pub. L. 93-567 §§ 201, 205(b)(4), 205(c)(4)(19), 208(a)(6).
159. Pub. L. 93-567 § 205(a). 29 C.F.R. § 96.27(a).
160. Pub. L. 93-567 § 105(a).
161. Pub. L. 93-567 § 205(c)(7).
162. Pub. L. 93-567 § 205(c)(5).
163. Pub. L. 93-567 § 205(c)(9). 29 C.F.R. §§ 96.28, 96.30.
164. Pub. L. 93-567 §§ 205(c)(2), 208(b).

8. Prime sponsors and other employing agencies must assure that there will be "maintenance of effort" so that there is actual job creation and not merely substitution of federal funds for a job which would otherwise have been funded from a non-CETA source.[165]

9. Discrimination on the basis of race, creed, color, national origin, sex, age, political affiliation or beliefs is prohibited.[166]

10. CETA funds may not be used for political activities, and administrators of CETA programs are subject to certain provisions of the Hatch Act.[167]

11. Nepotism is prohibited to the extent that no employing agency may hire persons in the immediate family of anyone employed in an administrative capacity by the same employing agency. (Immediate family includes spouse; children; parents; siblings; the spouses and children of siblings; in-laws; aunts and uncles).[168]

12. Prime sponsors must submit various plans indicating how they intend to spend their Title II money.[169]

13. Prime sponsors must collect detailed information on the characteristics of program participants and must furnish periodic reports to the Secretary of Labor.[170] The Secretary in turn must prepare at least annually a report to Congress evaluating programs under Title II.[171]

Title VI of CETA also provides funds for public service jobs under the title: "Emergency Jobs Programs."[172] The purpose of Title VI is rapid job creation to alleviate extremely high unemployment. Title VI parallels Title II in most respects, but it includes several basic differences, such as:

1. The formula for allocating funds among localities is completely different.[173]

2. The special target groups have been amplified:

> [E]ligible applicants shall give preferred consideration to the maximum extent feasible and consistent with other provisions of this Act to unemployed persons who have been unemployed for fifteen or more weeks.[174]

3. Within these target groups, special consideration must be given to the same groups specified in Title II: the most severely

165. Pub. L. 93-567 §§ 205(c)(8), 205(c)(25). 29 C.F.R. § 96.24.
166. Pub. L. 93-567 § 208(f).
167. Pub. L. 93-567 § 208(g).
168. 29 C.F.R. § 208(g).
169. Pub. L. 93-567 § 205. 29 C.F.R. § 96.14.
170. Pub. L. 93-567 § 208(e), 703(12). 29 C.F.R. §§ 98.7-98.9.
171. Pub. L. 93-567 § 209.
172. Title VI was added by the Emergency Jobs and Unemployment Assistance Act of 1974. Pub. L. 93-567 to supplement Title II.
173. Pub. L. 93-567 § 603.
174. Pub. L. 93-567 § 602(d).

disadvantaged, veterans, welfare recipients and former manpower program trainees.[175]

4. In areas where unemployment exceeds 7 percent, the "transitional" job requirements of Title II may be waived, eligibility for a job may commence after 15 days of unemployment, and a prime sponsor may use its Title VI funds on certain community capital improvement projects.[176]

Other provisions of Title II have been incorporated into Title VI as well:

1. The requirement that jobs be made available on an equitable basis among significant segments of the unemployed.[177]

2. The eligibility of private non-profit groups to receive funds from prime sponsors.[178]

3. The maintenance of effort requirements.[179]

4. The prohibitions against discrimination and political activities.[180]

5. The prohibitions against nepotism.[181]

6. The requirement that the prime sponsor submit an employment plan stating how it intends to use the funds it receives.[182]

7. The data-collection and reporting requirements.[183]

The monitoring of programs such as CETA can provide the basis for action oriented programs and litigation. For example, after CETA was monitored in San Antonio, Texas,[184] it was found that women were grossly underrepresented in employment training programs funded by CETA (i.e., of 800 job slots filled under Title VI emergency job category, only 83 were filled by women; of 330 jobs filled under Title II, only 5 went to women). Yet, at the time that CETA was evaluated women comprised 46 percent of the unemployed. In *Capers v. Beame*,[185] applicants for certain CETA-funded jobs challenged a four-year college degree requirement as being arbitrary and discriminatory. Plaintiffs were members of minority groups entitled to special consideration in the filling of CETA's public service jobs.

There can be no doubt that the statutory provisions of existing legislation should be examined closely for compliance if such legis-

175. Pub. L. 93-567 § 602(c).
176. Pub. L. 93-567 § 604. 29 C.F.R. §§ 99.50-99.53.
177. Pub. L. 93-567 §§ 205(c)(2) and 208(b). 29 C.F.R. § 99.38.
178. 29 C.F.R. §§ 99.1(f), 99.34(b), 99.42(a).
179. Pub. L. 93-567 §§ 204(c)(8) and (25). 29 C.F.R. § 99.35.
180. Pub. L. 93-567 §§ 208(f), (g).
181. 29 C.F.R. § 99.99.
182. 29 C.F.R. § 99.15.
183. Pub. L. 93-567 § 208(e). 29 C.F.R. § 99.72.
184. The Chicana Rights Project is preparing a challenge to the use of CETA monies under the anti-sex discrimination provision of the Act.
185. Capers v. Beame, No. 75 Cin. 2576 (S.D.N.Y., filed June 2, 1975).

lation is expected to result in alleviating the plight of those it was designed to assist. If such legislative remedies are not being implemented and complied with as mandated, litigation should be considered as a viable means of securing enforcement.

C. *Other Federal Job Training and Placement Programs*

Chicana participation in the labor force is predominantly situated in the household service and operative occupational categories.[186] In *Thorn v. Richardson*,[187] action was brought by two women plaintiffs for themselves and on behalf of a class of women welfare recipients. Both women were heads of households receiving public assitance. They sought entrance into the Work Incentive Program (hereinafter referred to as WIN), authorized under the Social Security Act,[188] which is federally funded, state operated, job training and employment opportunities center for persons on public assistance.

When the plaintiff's enrollment was denied, they brought suit attacking the program's system of referral which gives priority to the participation of the male welfare recipients over females. Although the *Thorn* court struck down the sex priority regulations and ordered the Departments of HEW and Labor to administer the WIN in compliance with the Social Security Act provisions, the Talmadge Amendment[189] still accords priority status to certain enrollees. These priorities focus on such criteria as employability potential, unemployed fathers, and mothers who volunteer for participation.[190] In recognition of the conflict between *Thorn* and the Talmadge criteria, certain charges can be alleged:

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186. *See* text accompanying notes 37-42 *supra*.

187. 4 E.P.D. ¶ 7630 (W.D. Wa., 1972).

188. 42 U.S.C. § 632(a). The Work Incentive Program (WIN) is the forced work component of AFDC. Women in the most financially precarious position are AFDC recipients. These women have, since 1967, been required to register for placement in WIN. At the end of 1973, women comprised 70 percent of all WIN participants. Eighty percent of these WIN women, at the end of fiscal year 1973, either were working at jobs which did not take them completely off welfare, or had been forced to leave the program because of shifts in family situations. The median entry wage for male enrollees in fiscal year 1973 was $2.58, but only $.87 for females. In 1967, Congress amended the Social Security Act to establish WIN. Theoretically, WIN was designed to enable AFDC participants to become economically self-sufficient, thereby eliminating the need for public assistance, and ultimately reducing the welfare roles. A training component was incorporated into WIN to make this goal obtainable. U.S. COMM'N ON CIVIL RIGHTS, WOMEN'S RIGHTS HEARINGS, held in Chicago, Illinois, on June 17 to 19, 1974.

189. The Talmadge Amendments to the WIN, enacted in 1972, made several changes in the program; *inter alia*, a shift in emphasis from training to placement. However, these changes did not eliminate the adverse and discriminatory effect that many of the policies and requirements have on female participants. If anything, the net effect has been to broaden opportunities for discrimination against women.

190. DAVIDSON, GINSBURG, AND KAY, SEX-BASED DISCRIMINATION 510-515 (hereinafter referred to as DAVIDSON).

1. WIN discriminates against women in the selection of enrollees and the length and quality of training given to enrollees.[191]

2. WIN consistently places women in low-paying, low esteem jobs which do not enhance the enrollees' overall employability.[192]

3. WIN does not utilize non-traditional jobs as a placement conduit making female enrollees economically self-supporting.[193]

4. WIN's emphasis on placement rather than training is at best a stop-gap approach to employability and is inadequate to provide either employment security for participants or to reduce welfare rolls.[194]

Allegations raised upon the application of *Thorn* to the Talmadge Amendment suggest another recurrent complaint against federally funded programs. Even though they are advertized to alleviate the plight of the poor, they are too often founded on stereotypic notions which permit administrators to effect discriminatory results to the detriment of minority women. Aside from secretarial and health related programs, Chicanas are underrepresented in vocational training programs due to the ineffective implementation of stated objectives.[195] When Congress amended the Jobs Corps program so that half of the enrollees were required to be women, the results were far from significant. Two years after this change of policy only a quarter of the enrollees were women.[196] In Alameda County, which includes Oakland and Berkeley, no women were enrolled in WIN before April, 1969.[197] By March, 1971, the waiting list included 1,103 women.[198] Of the few women actually enrolled most were generally assigned to low-paying clerical, sales and service positions.[199] Male participants, on the other hand, were more evenly dispersed throughout the range of occupational categories.[200]

Statutes, administrative rules and regulations, and executive orders bar discrimination in most federally sponsored apprenticeship programs. Despite these prohibitions, fewer than one percent of the over one million persons enrolled in federal apprenticeship programs, during 1970, were women.[201] Of this small number of female participants, many apprenticed as auto mechanics, engrav-

191. U.S. COMM'N ON CIVIL RIGHTS, WOMEN'S RIGHTS HEARINGS, *supra* note 188.
192. *Id.*
193. *Id.*
194. *Id.*
195. *See* DAVIDSON, note 190, *supra.*
196. *Id.*
197. *Id.*
198. *Id.*
199. *Id.*
200. *Id.*
201. *Id.*

ers, plumbers, tool makers, and other once exclusive male occupations. This demonstrated capability should lend credence to the idea that women can perform these tasks on an equal par with men.[202] The fact that Chicanas have not been included in these programs on a substantial basis could indicate discrimination, mismanagement, or simply a lack of commitment to the ideal of sexual parity in employment.

D. *Other Employment Discrimination Remedies*

The most effectively enforced federal anti-sex discrimination statute is considered to be the Equal Pay Act.[203] Its thrust is to outlaw wage discrimination based on the sex of employees. As such, it is particularly suited to the needs of Chicanas. At the end of 1974, the Department of Labor had 250 cases pending under the Equal Pay Act. Most of these cases involved custodials, health care aides and orderlies; in other words, service positions heavily populated by Chicanas.[204]

Two conditions must be present to establish a *prima facie* violation of the Act: (1) the employer must pay male workers more than he pays female workers (or vice versa), and (2) the male and female workers must perform equal work.[205] Sex alone cannot serve as the basis of unequal pay. Where these inexcusable conditions are found to exist, the responsible employer is required to eliminate the pay differential.[206]

The standard definition of *equality of work* is based on four criteria: effort, responsibility, sameness, and skill. For example, even if a female executive was able to demonstrate that sex prejudice resulted in her receipt of less pay than a male subordinate, and that her position required more skill and responsibility, this would not be enough to establish a violation of the Equal Pay Act. This is because the requirement of "similarity of employment" has not been met, and this fact will defeat her claim. But if the jobs are comparable as to duty and working conditions, the burden shifts to the employer. Any pay differential which smacks of a double standard must be justified on the basis of superior skill, effort and

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202. *Id.*

203. 29 U.S.C. § 206(d). The Equal Pay Act prohibits an employer from discrimination "between employees on the basis of sex by paying wages to employees . . . at a rate less than the rate at which he pays wages to employees of the opposite sex . . . for equal work on jobs the performance of which requires equal skill, effort and responsibility, and which are performed under similar working conditions, except where such payment is made pursuant to . . . (IV) a differential based on any other factor other than sex . . ." *Id.*

204. 29 U.S.C. § 206(d).

205. 29 U.S.C. § 206.

206. *See* DAVIDSON, note 190, *supra.*

responsibility, or upon proof that conditions under which one group of employees work are dissimilar.[207]

In addition to the federal guarantee of equal pay for equal work,[208] Executive Orders which govern contractors,[209] and sections 1981[210] and 1983[211] of the United States Code offer standing in cases of discrimination by private employers. In *Jones v. Alfred H. Mayer*,[212] the Supreme Court reshaped the use of these sections by extending their reach from racially discriminatory state action to private action. Essentially, the judicial trend[213] has been to broaden the arsenal of anti-discrimination weapons available to Chicanas beyond the procedural prerequisites embodied in Title VII. The wider application of these remedies is essential in order to obtain and secure the rights long denied to Chicanas.

IV. CONCLUSION

The contemporary problems of Chicanas have been neglected and undocumented, but they are impossible to ignore. The burdens which aggrieve Chicanas are a direct result of entrenched institutional and individual practices which discriminate against both females and people of Mexican descent. Chicanas have suffered from high unemployment, poor education, and low-income. They have been systematically denied full participation in the nation's economic life. Their disadvantageous social and economic position results in a lack of political participation which perpetuates their powerlessness.

Remedial statutes have been enacted over the last fifteen years to rectify prior discrimination; but legislation without enforcement is inadequate. Greater attention must be given to affirmative action litigation as one means of securing equal rights and oppor-

207. Brennan v. Prince William Hospital Corp., 503 F.2d 282 (4th Cir. 1974), 8 E.P.D. ¶ 9687; 1 WOMEN'S L. REP. 1.87. Hodgson v. Owensboro-Daviess County Hospital, No. 2595, 21 WH Cases 250 (W.D. Ky., Dec. 18, 1972), Hodgson v. San Diego Unified School District, No. 70-175-F, 21 WH Cases, 123, 72 (CCH Lab. Cas. 32, 920 (S.D. Cal., June 13, 1972) *aff'd mem.* No. 72-2805 (9th Cir., Sept. 5, 1974), Brennan v. Board of Education, Jersey City, N.J. Civ. A. No. 1795-71, 374 F. Supp. 817 (N.J. April 19, 1974), Brennan v. Houston Endowment, Inc. No. 72-H-672, 21 WH Cases 561, 73 CCH Lab. Cas. 33,022 (S.D. Tex. Jan. 29, 1974), Brennan v. Goose Creek Consolidated Independent School District, No. 71-H-543, 21 WH Cases 25, 71 CCH Lab. Cas. 32,904 (S.D. Tex., April 3, 1973).

208. 29 U.S.C. § 3206(d).

209. Executive Order 11246. Executive Order 11375.

210. 42 U.S.C. § 1981. Section 1981 presumed for more than a century to apply only to racial discrimination involving state action. The presumption was terminated by the Supreme Court eight years ago when it held that § 1982, companion to § 1981, prohibited private acts of racial discrimination.

211. 42 U.S.C. § 1983.

212. 392 U.S. 409 (1968).

213. Subsequent to the Supreme Court's decision in *Jones*, each circuit court of appeals which has ruled specifically on the availability of § 1981 has held that it provides a remedy against racial discrimination in private employment.

tunities for Chicanas. A vigorous attack against existing patterns and practices of discrimination can begin to improve the Chicana's occupational status. This will not only be beneficial to the individual plaintiff, her family and children, but to other Chicanas similarly situated. Without a concerted effort to resolve the existing inequities, the Chicano movement will be deprived of the strengths and talents which it seriously needs to succeed.

Despite the widely publicized advance of women's rights there remain a number of problem areas still in need of solution. Limits to uniformity are inherent within a federalist system of government; consequently, many diverse approaches to litigation must be developed to overcome discrimination against Chicanas. The *Bowe* and *Weeks* cases applied different standards, "individual determinative" and "collective factual determinative," to expose discriminatory practices otherwise concealed as *bona fide occupational qualifications*. A narrow construction of such an exception to sexual equality in employment has been endorsed by the Supreme Court in *Griggs*. But even Court pronouncements can be of limited viability. Many courts refuse to adhere to the spirit of *La Fleur* by continuing to uphold maternity leave policies which adversely affect female workers. The extended coverage of Title VII to federal, state and local governments offers a basis for the stabilization of the maternity leave issue through litigation. What this demonstrates is that the need for vigilance may be endless. By analogy, the current furor over school busing exemplifies the limitations cast upon even so monumental a decision as *Brown v. Board of Education*.[214] The issue of sex discrimination is no less fraught with uncertainty and conflict.

Intricate obstacles often pose delays in attaining satisfactory remedies. The discovery problem presented by the *New Mexico University* case is one example. Federal civil service procedures are unclear, complicated, and exhausting. An aggrieved Chicana may be forced to run an administrative maze, under rules and regulations, which the alleged discriminatory agency controls. A complainant who attempts to break through such a labyrinth by filing for a trial *de novo* may be effectively barred by the rule of *Hackley*. This means that considerable pressure, supported by extensive statistical proof, must be employed to untangle bureaucratic intransigence.

There may be cases where the spirit of anti-discrimination legislation, such as Title VII, may be chilled by a contradictory enactment. The Talmadge Amendment establishes a *potential employability* priority for enrollment in the WIN. Such a category

214. 347 U.S. 483 (1954).

suggests that only those people for which an employment market exists will be trained. Since the existing job market limits Chicanas to low-income occupations, does this mean that they would be denied training for higher paying jobs based on unemployability? Suppose that a Chicana seeks to become an auto mechanic, would the nonexistence of female auto mechanics bar her from enrollment for training?

These questions and related issues should substantiate the need for a massive litigation effort to secure Chicana rights. Legislation and litigation are indispensable tools for this purpose, but they are not a panacea. At stake is the elimination of conditions which have traditionally denied Chicanas the basic rights afforded most citizens. When fundamental rights guaranteed by the Constitution and made precise by legislation, are denied full effect due to bureaucratic complacency, redress should be sought in the courts. The continuing institutional negligence which has victimized Chicanas makes such a strategic response necessary.