SOUTH CAROLINA HUMAN AFFAIRS COMMISSION

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A HISTORY

1972-1997

by: Paul W. Beazley
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STATE OF SOUTH CAROLINA

HUMAN AFFAIRS COMMISSION

Willis C. Ham, Ph.D.
Commissioner

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Dear Fellow South Carolinians:

From a limited legislative mandate 25 years ago to an agency charged with administering and enforcing laws prohibiting discrimination the evolution of the South Carolina Human Affairs Commission reflects our State's efforts to ensure the constitutional promises of equality under law.

This History of the Commission, published as we celebrate the agency's 25th anniversary, chronicles the agency's significant changes in size and mission. We believe it is important to remember issues and events leading up to the creation of the agency, as well, for much of what we have done over the past 25 years can be properly understood only in the context of history.

The South Carolina Human Affairs Commission has led the nation in positive approaches to the administration and enforcement of laws which prohibit discrimination. This is the story of what we have done.

Sincerely,

Willis C. Ham

Willis C. Ham, Ph.D.
Commissioner

AUTHOR'S NOTES

I got the job of writing a history of the State Human Affairs Commission by virtue of having been the longest serving employee. The finished product is a combination of research, interviews with people who have been involved with the agency over the years, and the few things that stand out in my memory.

I have tried to be accurate in telling the stories, but have no doubt that errors will be found. I have also tried to be unbiased, but admit that even deciding to recount some events and issues while omitting others is a clearly biased act. Some one had to decide what to write and I got the job.

I would not have been able to complete the job without a lot of help from my colleagues at the Commission. They continue to make the history of the agency worth remembering and telling.

Paul W. Beazley

BACKGROUND

Governments do not operate in a socio-political vacuum. Nor do they act very fast. Neither the federal nor state governments moved with haste to address the issues of segregation or discrimination in our society. The record is clear that only after a massive and protracted civil upheaval did Congress pass the Civil Rights Act of 1964, with Title VII prohibiting discrimination in employment by private employers. Not until 1972, with enactment of the Equal Employment Opportunity Act, were state and local governments prohibited from employment discrimination.

So, it was relatively late in this century that Congress acted to outlaw pervasive patterns of racial and gender segregation and hierarchy, and South Carolina generally follows the federal government in addressing matters affecting social change. Governor Donald Russell's inaugural barbecue was the first integrated social function since Reconstruction. Governor Robert McNair formed some informal bi-racial committees in an effort to identify and resolve racial problems before they became violent. But even after passage of the 1964 Civil Rights Act, South Carolina took few official governmental steps to address the growing problems of racial unrest until things came to a head in the late 1960s.

On February 8, 1968, three students were shot and killed by highway patrolmen in Orangeburg, at the entrance to the South Carolina State College campus.[1] Thirty-seven other students were injured. The confrontation was the

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[1]Henry Smith and Samuel Hamilton were students at the all black South Carolina State College and Delano Middleton was a student at Wilkinson High School (Wilkinson was formerly all black and was merged with Orangeburg High School in 1971.)

culmination of a protest by students who were denied entrance to a bowling alley a few blocks from the campus.

The students had been boycotting the bowling alley, and had petitioned the mayor to help end discrimination; however, there was no institutionalized mechanism to address the problems grieved by the students. Over one hundred students had gathered at the bowling alley on the night of February 5th, 1968, singing, chanting and blocking the entrance. Twelve students were arrested, and the bowling alley was closed for the night. It reopened the next day, still segregated. Not until February 11th, three days after what reporter Jack Bass termed The Orangeburg Massacre,[2] did U.S. Attorney General Ramsey Clark file a complaint ordering the bowling alley owner, Harry Floyd, to appear before U.S. District Judge J. Robert Martin to answer a charge of violating the 1964 Civil Rights Act prohibition against discrimination in public accommodations.

The Columbia Council on Human Relations, a non-profit organization formed to address social problems, urged Governor McNair to form a human rights commission to "aid social justice."[3] Former Human Affairs Commissioner James E. (Jim) Clyburn has suggested that, had there been some mechanism, such as the Human Affairs Commission, to address the concerns of the students, the whole matter might well have ended without injury or loss of life. Throughout history, whenever governments have not provided peaceful mechanisms to offer redress of citizens' grievances, there has almost always been some form of uprising.

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[2]The Orangeburg Massacre, Jack Nelson and Jack Bass, World Publishing Co., New York, NY, 272pp.
[3]The State Record, February 13, 1968.

Since governments do not readily condone anarchy or rebellion, there is usually a response with police power. Once the lines are drawn between the state police and a citizenry driven by any sense of righteous destiny, the outcome is predictably violent.

In Orangeburg, it was clearly more than just a citizens uprising. It was a confrontation between races, white versus black, and the white race had the police power. Dr. Benjamin Payton, then President of Benedict College in Columbia, noted, "I have difficulty conceiving in my imagination of the highway patrolmen firing point blank at USC or Clemson students doing the same thing."[4]

Considerable attention was given to this event by elected and appointed leaders in Columbia. There was much fear that the racial strife that plagued the rest of the nation would disturb the traditional tranquility that the state had enjoyed.. In hindsight, it is easy to see that the die had been cast for the immediate future of race relations in the state. A month before the shooting in Orangeburg, hospital workers at the Medical College Hospital in Charleston had begun holding organizational meetings.

No black person had ever been invited to attend, much less address, the Charleston Rotary Club until The Reverend Father Henry L. Grant, Director of St. John's Episcopal Mission, was asked to come and reassure the members that things would be quiet in Charleston in the Summer of 1968. In an interview with Kaye Lingle Koonce, he later recalled that, rather than reassuring them, he had quoted two popular sayings of the time. One that had

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[4]Ibid. (Note: Dr. Payton made this remark in a speech before the Columbia Kiwanis Club. Dr. Payton was the first black person to ever address the club.)

been originated by the Black Panthers was "It's going to be a long hot summer" and the other voiced by the white community, "Law & Order, Law & Order." "[M]y message to the Rotary Club," he recalled, "was that law and order is a two-way street and traffic is heavy on both sides. I'd had 40 summers and they had all been long and they had all been hot and one more didn't bother me."[5]

Father Grant's words were prophetic. On March 28, 1969, The Reverend Ralph D. Abernathy, President of the Southern Christian Leadership Conference, led a rally attended by some 1,500 people, resulting in the Governor putting the SC National Guard on alert. On April 25th, Reverend Abernathy led a march of approximately 3,000 people, was arrested, and the National Guard was ordered into Charleston. By May 1st, the National Guard contingent had increased to 1,200 men, and on May 11th, a Mother's Day march and rally included an estimated 7,000 marchers.

On May 1, 1969, the first curfew since 1945 was imposed in Charleston, from 9:00 PM to 5:00 a.m. (After two weeks, the curfew was shortened to midnight to 5:00 a.m.). The issues raised by workers included pay and working conditions for black workers, primarily nurses aides and custodial workers at the Medical University Hospital. The hospital administration refused to agree to the workers' request for higher pay and better working conditions. The workers united and joined Local 1199B of the National Hospital and Nursing Home Employees Union.

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[5]Much of the information regarding the Charleston Hospital strike has been gleaned from an unpublished manuscript by Kaye Lingle Koonce entitled, The Political and Social Impact of the Charleston Hospital Strike, May 9, 1981 (used with permission by the author).

It is interesting to note that on March 19, 1968, twelve black workers employed in the intensive care section of the hospital were fired, allegedly for abandoning their responsibilities (a charge they vehemently denied). The controversy over rehiring these twelve workers remained active throughout the strike, the protests, the marches and all the legal gymnastics that occurred during the next 15 months. Not until June 27, 1969, did the hospital administration agree to rehire the workers, and then only after a threat from the White House to cut off HEW funds to the hospital, a threat from the AFL-CIO to close the Port of Charleston via an ILA strike, and a strengthening of the curfew from dusk to dawn.

On the afternoon of June 27th, a settlement to the hospital strike was announced by a group of civil rights leaders, among whom was Father Henry Grant, whose prophesies had come full circle. Unfortunately, the settlement of matters in Charleston did not assure tranquillity in other parts of the state nor the nation. At about the same time, students seized two buildings at Columbia University, and students were on strike at Harvard, Occidental, Dartmouth, Marquette, Rider College and City of Chicago College.

Perhaps one can best sense the tension of the times by hearing the words of one King Street merchant who said:

> "I stand in my store and see trucks full of soldiers and tank-looking vehicles and bayonets and I can't believe I'm in the right country. It reminds me of what happened in Nazi Germany."[6]

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[6]The State, May 7, 1969

Meanwhile, elsewhere in the State, there was a dusk to dawn curfew in the small town of Blacksburg, and twenty-one school districts had filed school desegregation plans with HEW. One of those districts was to be the site of another major act of racial violence, one that may well have been the proverbial straw that broke the camel's back, and one that was certainly a watershed in the State's history of race relations.

On Monday, March 2, 1970, approximately 200 people tried to close Lamar High School to keep it from integrating. They brandished ax handles that were passed out from a pickup truck and attacked the school buses. In one account of the incident, by the late Leon Gasque, a Captain with the State Law Enforcement Division, he observed:

> "Students were still on the second bus while it was being struck with ax handles, chains and other objects. Brickbats, broken-up cement blocks, pieces of iron pipe, chains and sticks... were being thrown at officers. I saw one child as he was pulled off. I saw he had braces on both legs and I saw him get hit just as he was put on the ground and tried to walk to the schoolhouse. He was hit so hard with a brick that it knocked him flat."[5]

This was certainly not the last act of racial violence, but it was so well publicized, so terribly embarrassing to the citizens of the State, and so shocking to the State's leadership, that from that time on, there was a marked change in the way racial disputes were addressed. Instead of knee-jerk hostile reactions to the increasing demands from black citizens for equal opportunity in employment, education, public accommodations, housing, medical treatment

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[5]The State, January 27, 1971, in connection with a grand jury action against 39 people involved in the Lamar incident.

and other areas of life, there was a trend toward listening, toward accommodation and toward proactive measures to bridge the racial gap that had always existed. Clearly, the time had come to act.

A TIME TO ACT - 1971

John C. West was elected Governor in the 1970 election. He took office on January 13, 1971, having campaigned on a platform of a "colorblind administration". His campaign was a sharp contrast to that of his opponent, Albert Watson. It was widely speculated that the attack on the school buses in Lamar was in some part incited by a speech made by Watson. Whether that is true or not, it is generally accepted that Watson's campaign theme was to hold fast to the traditions of racial segregation and hierarchy in South Carolina. The Republican mayor of Greenville, Cooper White, publicly boycotted a campaign rally by his fellow GOP candidate Watson, saying his (Watson's) "...ads polarize races".[8]

It was clear that the State was rejecting a continuation of the social and political patterns that preceded the racial confrontations reported daily in the media. It was time for a change in those patterns, and the intent to make those changes was stated clearly by Governor West in his inaugural address on January 19, 1971:

> "We can, and we shall, in the next four years eliminate from our government any vestige of discrimination because of race, creed, sex, religion or any other barrier to fairness for all citizens.
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> "We pledge to minority groups no special status other than full-

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[8]The State, September 19, 1970.

fledged responsibility in a government that is totally color-blind."[9]

Governor West hired James E. (Jim) Clyburn at the professional level on his personal staff, a first in the history of the State House.[10] Jim, in turn, hired George C. Hamilton, from Walterboro, S.C. Each was later to be appointed and serve as Human Affairs Commissioner. Racial integration of the Governor's staff was a major step toward breaking down barriers throughout the rest of State government, for there were now people in positions of some power, and positions with access to power, who knew first-hand how racial discrimination worked in a systemic way to benefit one race to the detriment of another.

THE EXECUTIVE ORDER

> "The essential quality of life in South Carolina is dependent upon the maintaining of harmony, understanding and mutual respect among all people. Ours is a state comprised of men and women of different races, religions, national origins, age groups, economic levels, political persuasions and other diverse interests. It is a state which treasures its individual freedom and liberties, and respects the basic dignity of each citizen. Such

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[9]Quoted in Urban and Regional Review, Volume 2, Number 2, Summer-Fall 1972, p.7.
[10]The first non-custodial black employee in the twentieth century history of the State House was Margaret Percell. She was hired by Governor Robert E. McNair on August 4, 1968. She was referred to the job, upon request from the Governor's office, by Ms. Daisy Johnson, the Executive Director of the Columbia Urban League. Margaret Percell left the Governor's Office in 1974 to work for the Human Affairs Commission. She was appointed to the position of Purchasing Officer in 1978 and continues in that position until the present.

dignity and personal liberty require that each person be free of the injustice of discrimination."

With these words, Governor West began his first Executive Order, which established the Governor's Advisory Commission on Human Relations.[11] The Order stipulated that the Commission,

"...shall be comprised of nineteen members..." which "...shall at all times reflect the broad concerns of all the people of the state, particularly with a view toward representing the basic ideological, economic, geographical, racial, religious and age interests within the state."

The Governor's philosophy in selecting members of the Commission was to find black people who could identify racial problems and white people who had enough influence to resolve them. The members who were appointed to the Commission met that standard well. They included:

J.W. (Bill) Travis - C.E.O., Southern Bell (Chairman)
Dr. Benjamin Payton - President, Benedict College (Vice Chairman)
Elliott E. Franks - Executive Director, Columbia Urban League
Susan Goldberg - Community Leader, Charleston
Barbara Paige - Community Leader - Aiken
William (Bill) Saunders - Charleston Community Leader (COBRA)[12]
Fred Sheheen - Community Leader and Publisher, Camden
Dr. Joe Stukes - Professor, Erskine College
Mrs. Charles H. Wickenberg - Community Leader, Columbia

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[11]This unnumbered Executive Order was signed on March 4, 1971 and attested to by Secretary of State O. Frank Thornton. (See Appendix I)

[12] COBRA - Citizens Organized for Better Racial Assurance

Arthur Williams - C.E.O., SC Electric and Gas
Rev. James T. McCain - Community Leader, Sumter
Cooper White - Mayor, Greenville
John R. Hall - NAACP President, Great Falls
Dr. R.N. Beck - Community Leader, Florence
Malcolm Haven - President, Livingston & Haven, Charleston
Andrew Hugine - Student Body President, S.C. State College
Bobby Leach - High School Principal, Spartanburg
John H. Lumpkin - Chairman and C.E.O., SC National Bank
Andrew Teszler - (Mr. Teszler passed away prior to the May 1971 meeting)

"The Governor's Advisory Committee [sic] on Human Relations met for the first time on Thursday, February 18, 1971, at 3:00 PM in the Governor's conference room."[13] Bill Travis served as chairman, and Benjamin Payton, Vice Chairman.[14]

The main topic of discussion was finding a person to serve as Executive Director of the Commission. Phil Grose, the Governor's Executive Assistant for Public Affairs, explained the duties of the person who would be selected. A sub-committee, comprised of Commission members who resided in

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[13]Commission minutes--(NOTE: All meetings of the Commission were held in the Governor's conference room.)

[14]No specific information can be found to explain the discrepancy between the date the Executive order was signed (March 4) and the first meeting of the Commission (February 18). The minutes of the March 4 meeting state, "Mr. Travis then passed out copies of the Executive Order signed by the Governor establishing the Commission. He asked that members keep the copies for their notebooks and file." Obviously, the Governor had authority to convene a meeting of the body before actually issuing the Executive Order.

Columbia, was appointed to submit names of three people to the Governor for possible appointment as Executive Director.

The next meeting was devoted largely to a discussion of appointment of an Executive Director and the role of the Commission. These two issues were unclear to the members, each having a somewhat different notion of how the Commission should operate and whether to recommend more than one name to the Governor for appointment as Executive Director. George Hamilton was appointed and introduced to the Commission at the next meeting on April 2, 1971.

The Executive Director reported to the Governor's Executive Assistant for Public Affairs. The function of the Public Affairs Division was to maintain contact between the Governor and the general public and develop new channels of communication.[15]

Among the issues discussed at the April 2nd meeting were the extent to which meetings would be open to the public, how issues would be brought before the Commission and a letter from the Governor requesting the Commission to "...undertake a study of employment in the state government for the purpose of determining whether there does appear to be any discrimination on the basis of race and for the further purpose of making recommendations to the Governor regarding any finding that might come out of such a study."[16]

The minutes of the April 2nd meeting read, in part, as follows:

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[15]The SC State Budget, 1972-73, Vol. 1, p. 69.
[16]Minutes, April 2, 1971.

> "The chairman opened the floor for discussion regarding the request by Rev. J.A. DeLaine. He called attention to the letter which each Commission member had received from Rev. DeLaine requesting assistance. Mr. McCain moved that the Commission and staff investigate Rev. DeLaine's request and determine if the Commission should become involved. The motion was seconded and passed unanimously."

The request to which the minutes refer regarded an outstanding warrant for the arrest of Rev. DeLaine in Clarendon County. The events leading up to and following that warrant are poignant reminders of a shadier chapter of the State's history of race relations. The recounting of those events serves to explain Rev. McCain's motion.[17]

Rev. DeLaine was an active NAACP leader in Clarendon County. In the early 1950s, with the encouragement of Thurgood Marshall, he helped organize legal action charging racial segregation against the County Board of Education.[18] The suit later became a part of Brown v. Topeka Board of Education in which the United States Supreme Court ruled that "separate but equal schools" are inherently unequal. Earlier, Rev. DeLaine had requested the school district to provide bus transportation to and from school for black children, but the district refused. Rev. DeLaine then raised enough funds to purchase a bus, but the district refused to maintain it.

Because of his civil rights activities, Rev. DeLaine was subjected to harassment by night riders who threw rocks and bottles and shot at his house.

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[17]Rev. McCain's papers have been donated by him to the South Caroliniana Library at the University of South Carolina.

[18]Briggs v. Elliott

On one occasion he shot back and hit one of two cars, allegedly causing injury to one of the occupants. Rev. Delaine fled to New York to avoid arrest and was sheltered there by the AME Bishop. President Truman subsequently refused to honor an extradition request by Governor George Bell Timmerman.

At the April 2, 1971, meeting, the S.C. Attorney General, Daniel R. McLeod, advised the Commission that the solicitor had the authority to nol prosse the case, but that he probably would prosecute unless the charges were dropped. Efforts to get the charges dropped were not successful, so at the next meeting, the Commission decided to notify Rev. DeLaine that the matter was being referred to the citizens of Lake City, Florence and Clarendon County to attempt to resolve the matter. This ended the Commission's involvement.

The next meeting of the Commission included discussion of a concern of the members that continues today in philosophy and practice. It is best expressed in the words from the minutes:

> "Mr. Travis noted the volume of complaints received by the office would be such that if there were local agencies throughout the state, the Executive Director could pass on the complaints for action to each local area. He then suggested that the Commission go on record as saying that they would like to actively encourage local councils in all communities in the state and particularly would like to move in the direction of trying the get local councils formed in those areas where the Commission felt they should be."[19]

[19]Ibid., p. 2. Compare with Section 1-13-70 (f) of the State Human Affairs Law

Establishing local Community Relations Councils has been an important part of the agency's programs for twenty five years, but never as successful as earlier envisioned. While some local councils, particularly in Columbia, Greenville and Spartanburg, have existed for over twenty years, other councils have been created far more recently, and many have become totally inactive after a brief flurry of activity. Unfortunately, many communities have created councils to address immediate problems, and then allowed the councils to become inactive once the immediate problems were solved.

The most far-reaching action taken at the next meeting, held on June 4, 1971, was the introduction of Dr. Gerald E. Breger, Director of the Bureau of Urban and Regional Affairs at the University of South Carolina. Dr. Breger presented to the Commission a prospectus for the study that had been requested by the Governor's letter at the April 2nd meeting. Member Elliott Franks expressed opposition to the University of South Carolina conducting the study because of its insensitivity to the needs of the black community.[20] The motion to adopt Dr. Breger's prospectus passed with Elliott Franks and Barbara Paige dissenting.

In the minutes of the Meeting held on August 6, 1971, it is noted that Dr. Ivory Lyons of Benedict College had joined with Dr. Breger in conducting the study of employment patterns in State Government. Dr. Lyons' wife, Iona Lyons, became the first director of Compliance programs for the Commission. It is also noted that the Chairman, Mr. J.W. Travis, had resigned because he was

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[20]Minutes, June 4, 1971. Note: The University of South Carolina had not allowed black students until 1963 with the admission of James L. Solomon, André Monteith and Robert Anderson. It is interesting also to note that the first black student body president, Harry L. Walker, took office in 1971.

transferred to a position in Atlanta, GA. The Vice Chairman, Dr. Benjamin Payton, presided at the meeting.

The Commission's most significant action during the August 6, 1971, meeting was a discussion of the need to recommend a law to enforce the Governor's promise for a "color-blind State Government." The idea was proposed by Mrs. Wickenberg and supported by Mrs. Paige and Mr. Sheheen with the understanding that the results of the Breger study would be in the hands of legislators by the time the bill was drafted. For that reason the Commission determined that preliminary results of the study should be presented to the Commission in January, with a final deadline of March 1, 1972.

During the August 6 meeting, there was also a brief discussion of the procedure for handling complaints. Among the complaints mentioned was one against the "State Mental Hospital Complex," which included Crafts-Farrow Hospital, Midlands Center and Whitten Village. The Commission instructed the Executive Director "to make a study of the personnel conditions at the State Hospital Complex."[21]

The next meeting of the Commission, held on September 14, 1971, was presided over by the new Chairman, Mr. Harry Lightsey, Dean of the University of South Carolina School of Law. In Executive Session, members discussed the report by the Executive Director regarding his attempts to investigate complaints against the Department of Mental Health. The public report of the discussion noted that while many employees at the Crafts-Farrow hospital had been interviewed, the Commissioner of Mental Health, Dr. William S. Hall had refused to allow access to personnel records regarding promotions. The ensuing discussion concluded "that the Commission was

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[21]Minutes, August 6, 1971, p. 3.

going to need some kind of statutory authority to carry out the various functions and programs".[22] The Chairman and Executive Director were then directed to contact the Attorney General and the Governor to clarify the Commission's power and, if finding that there was none, "...the Commission should begin to take steps to either get some or make it clear to the public that the Commission is playing games."[23]

Mr. Lightsey received a letter from Attorney General Daniel R. McLeod dated November 30, 1971. The letter begins:

> "The question has been raised as to whether personnel records of various administrative departments and agencies of the State are available to the Commission for inspection for the purpose of determining whether there exists any discrimination in the employment policies of such departments and agencies."[24]

The letter went on to conclude that the Commission is an administrative agency without Subpoena powers to compel production of documents. That power can only be granted by the legislature.

Mr. Tim Quinn, representing the Attorney General, attended the October 5, 1971, meeting of the Commission and personally outlined the status of case law on the issue. He reiterated the suggestion that statutory authority was necessary for the Commission to conduct the kind of investigation proposed. The question then arose as to whether or not the lack of authority to compel the production of records would impede the study being conducted by the

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[22]Minutes, September 14, 1971, p.3.
[23]Ibid.,p.4.
[24]Commission files.

University of South Carolina with consulting assistance being provided by Benedict College.[25]

A letter from Governor John C. West to all State agency heads was read to the Commission at the November 2, 1971, meeting in answer to the above question. The letter summarized the proposed study, the kind of data being sought, and the reason the study was being conducted. Knowing the Attorney General had already ruled that there was not sufficient authority to compel agencies to produce employment information, the Governor wrote, "I ask that you cooperate with them fully and furnish the information they request to the best of your ability."[26]

The Governor's letter seemed to solve the question of access to employment data from State agencies. What remained was a report on the results of the study. Questions regarding employment patterns in State agencies had never been raised. A consolidated personnel system for State government had only been started in 1969 and was still in a developmental stage. So a comprehensive study of employment patterns was a first for South Carolina State Government.

While a casual observer could have reported that very few blacks were employed in the offices of State agencies, the actual numbers which emerged from the study revealed, in a dramatic way, the extent to which race and sex discrimination pervaded the seventy-seven agencies studied.[27]

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[25]Commission Minutes, October 5, 1971, p.3.

[26]Letter from Gov. John C. West, Commission files, October 12, 1971, p.1.

[27]The State Public Service Authority (Santee Cooper) was not included in the statistical analysis because there was not a comparable computerized data base.

The Breger Study

On March 20, 1972, five days before the Equal Opportunity Act of 1972 amended Title VII of the 1964 Civil Rights Act, Dr. Gerald E. Breger released a report entitled Black Employment in South Carolina State Government, A Study of State Employment Practices. The study had been initiated by The Governor's Advisory Commission on Human Relations, and it included several substudies, concluding with "...recommendations for achieving equal opportunity in State employment of all citizens."[28]

The study commenced in September of 1971, and took six months to complete. It included quantitative statistical data and qualitative interpretive analysis based on interviews with State agency managers and employees, civil rights and community leaders, and placement officials from schools and colleges.

The study found blacks concentrated in the lowest pay grades (88% of the jobs in grade 01 and 80% of the jobs in grade 02 - there were 29 pay grades in 1972), and black representation quite low (single digit) above grade 09. Only six blacks were employed above grade 20, in which there were 447 employees.[29] Nineteen agencies had no black employees on September 30, 1971.

Dr. Breger, writing in the Urban and Regional Review, discussed the dimensions of discrimination he had found in the study. One dimension was "implicit" discrimination (we now use the term "systemic" discrimination). His description of "implicit" discrimination is extraordinarily insightful, given the status of Title VII case law and other writings of the period.

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[28]Ibid., p.1.

[29]See Appendix II

> "Implicit discrimination in employment does not result from malicious intent, nor does it necessarily reflect racist attitudes. Instead, it is the product of decades, perhaps centuries, of sociopsychological conditioning to a racial environment that has always set white before black. Its manifestations in the employment system are many and varied, often subtle and deeply ingrained."[30]

Publication of the Breger study findings, together with the amendments to Title VII of the 1964 Civil Rights Act, left no doubt in the minds of the Governor and his staff that South Carolina needed a State law which prohibited discrimination and provided an enforcement mechanism.

Jim Clyburn tells of a meeting held in the fall of 1971 that even further confirmed the need for action. The meeting, called by Governor West, included Phil Grose, Jim Clyburn and Earl Ellis, the State Personnel Director. The major issue of discussion was, given the meager representation of blacks in State agencies, where did State agencies recruit for new employees. When the Governor was told that recruitment was only done at the predominately white colleges and universities, the die was cast for legislative action.

Among the many interesting stories surrounding the passage of the Human Affairs Law is one told by a former State Senator and House Member from Charleston, Herbert U. Fielding. Then Representative Fielding had helped Representative Charlie Powell from Abbeville get a funeral director's license for a constituent. Representative Powell was planning to object to the proposed Human Affairs Law, a move that might well have killed the possibilities of enactment. As the votes were about to be taken, Representative

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[30]Urban and Regional Review, Volume 2, Number 2, Summer- Fall 1972, p. 10

Fielding went up to Representative Powell and reminded him that, "You owe me. Don't mess with the bill." The debt was paid and the bill passed without objection.

Few people would have given the South Carolina Human Affairs Law any chance to pass, much less pass both the House and Senate unanimously. That it did was a testimony to the State's readiness to institutionalize efforts to dismantle the many structures of racial segregation.

One of the prime movers of the Human Affairs Law in the General Assembly was Senator L. Marion Gressette from Calhoun County. Senator Gressette had led the State's legal efforts to keep the public colleges and universities segregated. But in January, 1963, he had risen on the floor of the Senate to announce that the State had run out of courts, and Harvey Gantt must be admitted to Clemson University. Nine years later he led the fight for one of the strongest state civil rights laws in the South.

THE EARLY YEARS - 1972-1975

The passage of the State Human Affairs law occurred during the last days of the 1973 legislative session, after the appropriations bill had already been passed. The new State Human Affairs Commission was thus an agency without State appropriations. Early efforts to fund the agency included the Governor's Office of Economic Opportunity and funds from the federal Emergency Employment Act.

The first issues discussed by the Commission involved how, and under what conditions various federal funds could be combined to support the Commissioner and a staff which was to be hired. George Hamilton was confirmed to continue as Commissioner and he was authorized to employ a

Deputy Commissioner, who was Father Louis E. Murphy, a Catholic Priest who had worked closely with George Hamilton in various civil rights activities.

The early Human Affairs Commission staff included the following:[31]

George D. Hamilton	Commissioner
Louis E. Murphy	Deputy Commissioner
Clayton N. Gompf	Legal Counsel
Judy C. Harris	Accountant
Paul W. Beazley	Director of Technical Services
Iona Lyons	Director of Compliance
Bobby D. Gist	Field Investigator
James F. Hendrix	Field Investigator
Larry Martin	Field Representative
Julie W. Peck	Field Representative
Virginia R. Newman	Executive Secretary
Kristeen M. Kennedy	Secretary
Daisy E. Bowers	Typist Clerk

Paul Beazley, Judy Harris and Virginia Newman are still employed at the agency. Bobby Gist and James Hendrix have transferred to other State agencies.

Although the Governor's office was openly supportive of the agency and its mission, there were no misgivings about the extent of those opposed to social change. Segregated facilities were still commonplace. Religious bigotry was prevalent. Women were still primarily relegated to careers in teaching and nursing. People were expected to retire at age 65 so they could be replaced by

[31]Annual Report of the State Human Affairs Commission, 1972-1973, p. 6.

younger workers. School desegregation efforts were facing resistance in some parts of the State.

The awareness of these competing forces led to the early decision to provide proactive services commensurate with enforcement efforts. The establishment of the Community Services Division (subsequently renamed the Technical Services Division) took on the same priority as the Compliance Division. The idea was to focus as much effort on helping employers comply with the law as there was on investigating those accused of violations. The help offered took the form of training and technical assistance in developing and implementing affirmative action plans.

The help the Commission offered was not, however, always perceived as help, partially because it began as a requirement for submission of affirmative action plans, but, mostly, because it threatened the State's system of hiring - the "good-ole-boy" system. To understand the complexity of the problem one needs a sense of the evolution of affirmative action and the continuing controversy over quotas.

The Beginnings of Affirmative Action

The genesis of affirmative action is Presidential Executive Order 11246, issued by President Lyndon B. Johnson in 1965. The Order required federally-assisted construction contractors and subcontractors to provide equal employment opportunities as a condition of federal contracts. The Order was enforced by the Office of Federal Contract Compliance (OFCC). (The agency has subsequently been renamed adding the word Programs - hence, OFCCP, a division of the U.S. Department of Labor.)

OFCC implemented four pilot programs in the construction industry in an effort to establish standards for determining equal opportunity in the industry. The programs were located, in chronological order of establishment, in St. Louis, San Francisco, Cleveland and Philadelphia.[32] An "Operational Plan for Construction Compliance" contained a phrase which, in retrospect, led inexorably to the controversy over quotas. The phrase required affirmative action programs to "...assure minority group representation in all trades and in all phases of the work."[33]

The St. Louis program, which began January 7, 1966, featured pre-award examinations of all prospective general contractors and the major subcontractors. The examination included checking recruitment and hiring procedures and requiring a number of statements committing the contractor to affirmative action. The San Francisco Bay Area program, started February, 1967, was similar to the St. Louis program, but required the contractor to provide more details as to specifically what affirmative steps would be taken.

The Cleveland Area program contained the provision destined to be central to the affirmative action controversy. It was the requirement for a plan designed to "...have the [*result*] of assuring that there was minority group representation in all trades on the job in all phases of the work."[34] The word "result" is obviously quite general and says nothing about methods or procedures. Therefore, as Jones notes, "It is ironic that what came to be referred to as

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[32] The information cited regarding the four OFCC Program Area Plans is taken from an article in the Wisconsin Law Review, Vol. 1970:341, by James E. Jones, Jr., entitled "The Bugaboo of Employment Quotas."

[33] op. cit., p. 343.

[34] op. cit., p. 346.

"manning tables," and ultimately attacked as "quotas," was first put forward by a contractor as a way of meeting his affirmative action requirement."[35]

The manning tables developed in the Cleveland Area Program, unlike the other two area programs, proved to be successful in achieving results. "At the inception of the Cleveland Plan only a dozen minorities were in the mechanical trades (sheetmetal, electrician, ironworking, and piping trades) and skilled occupations of the operating engineers. After two construction seasons with commitments on 65 projects, contractors had committed themselves to employing about 500 minority group people in these trades out of crews totaling about 2,100 workers."[36] Jones observes most succinctly the correlation between manning tables and the controversy over quotas. " The plan used numbers. Numbers equal quotas. Quotas are *per se* bad, therefore illegal and unconstitutional."[37]

The use of manning tables would be challenged repeatedly in state and federal courts.[38] The courts steadfastly upheld the manning table concept, however, because they were never shown to be anything like quotas. Rather, they were simply a method for securing an unequivocal commitment from contractors to assure non-discrimination, i.e., equal opportunity.

On January 7, 1973, Commissioner Hamilton sent a letter to all State agencies notifying them that affirmative action plans would be required and that the plans were expected to include goals and timetables. A meeting was held in

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[35]op. cit., p.346.
[36]op. cit. p. 347.
[37]op. cit. p. 349.
[38]Ethridge v. Rhodes, 268 F. Supp. 83 (S.D. Ohio 1967); Weiner v. Cuyahoga Community College, 44 Ohio Op. 2d 468.

the ETV auditorium on March 5th and was attended by representatives from each State agency. The representatives had been designated Equal Opportunity Officers.

The representatives were informed, in just slightly more detail than was in the January letter, of the basic compliance requirements for affirmative action plans. The Commission staff was still developing the standards and, since there were no models to follow, the representatives asked many questions that could not be answered with any specificity.

The inability to address all of the questions being raised was frustrating to Paul Beazley, who was responsible for developing the compliance standards. He was just beginning to find out what was going on in the rest of the country, primarily at the federal level, regarding the technical aspects of affirmative action planning. The U.S. Civil Service Commission (predecessor to the U.S. Office of Personnel Management), and the National City Service League were providing seminars on the subject, but there were no definitive standards for quantifying goals and timetables. They were in the process of being developed in the federal contract compliance programs.

The first two major affirmative action training programs conducted by the Commission for State agency EEO Officers were held at Table Rock State Park April 10-12, and April 17-19, 1973. Those workshops were conducted with the assistance of a consultant from the U.S. Civil Service Commission. He knew more about affirmative action than the Commission staff did, but he could not provide definitive guidance on how to determine and quantify goals and timetables. The result was a frustrating experience for the participants, the staff and the consultant. Matters were not helped by the weather, which was below freezing most of the time. The training had to be conducted in one of the State Park cabins with the group huddled around a fireplace to keep warm.

Whether the unhappy experience of the EEO Officers, who were forced to attend the training sessions, had any bearing on their agencies' attitudes toward affirmative action is not known. But there was a crescendo of resistance to the requirements for affirmative plans. At first, some agencies just stalled, saying they were too busy to prepare the plans, or that they were having trouble getting the information they needed. Some agencies appointed individuals who had no authority to get anything done in their respective agencies. Some agencies complained that the Commission's requirement that agencies develop affirmative action policies was beyond the Commission's authority. So the Commission changed the wording of the requirements from "policy" to "practice."[39]

Efforts to persuade agencies to cooperate with the Commission requirements for affirmative action plans seemed unsuccessful. Paul Beazley drafted a letter to State agency heads explaining the Commission's position on affirmative action and clarifying the goals and objectives of affirmative action. Commissioner Hamilton read the draft to the Commission, after which Commission member Arthur Williams[40] "...suggested that the Chairman ask the Governor to call a meeting of State Agency Heads before sending the letter because for one, they probably would not read the letter, and secondly, if they did read it they might not understand it. Mr. Zeigler concurred with Arthur Williams' suggestion, adding that letters tend to make people mad, and that he would ask the Governor to call a meeting of State Agency Heads."[41]

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[39]Commission Minutes, June 1, 1973.

[40]Arthur Williams was the Chief Executive Officer of the South Carolina Electric and Gas Company.

[41]Commission Minutes, May 4, 1973. Ernest N. (Nick) Zeigler, State Senator from Florence, replaced Harry M. Lightsey as Commission Chairman at the May 4th Meeting.

At the next meeting of the Commission, held on June 1, 1973, "Chairman Zeigler stated that the Governor had held the meeting of all Agency Heads to discuss the Affirmative Action Plans as requested by the Commission. He also pointed out that the Governor had stated that if agencies refused to cooperate with the Commission's efforts to obtain affirmative action goals, he would, as Governor, refer them to the Federal Government for legal action. Chairman Zeigler also mentioned that the Governor's meeting had received nationwide publicity and that an article had appeared in the New York Times.[42]

The New York Times article was a more in-depth account of the meeting than were the articles which appeared in The State and the Columbia Record on May 25, 1973. It read, in part, as follows:

> "Gov. John C. West bluntly warned state agency and department heads this week that if they did not cooperate with the South Carolina Human Affairs Commission to end discrimination, their practices on minority hiring would be turned over to the Federal Government for possible action....`I don't like the idea of the Federal Government having to come down and tell us to do what we know is legally and morally right....I don't mean this as a threat, ...but any state agency that refuses to cooperate, we'll simply tell the Feds, `this is your baby."[43]

During these early days of the Commission, staff members were also investigating a variety of complaints, including a study of the discriminatory impact of the National Teachers Exam (NTE) on black teachers. South Carolina used NTE scores to determine teachers salaries and the result was

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[42]Commission Minutes, June 1, 1973.
[43]The New York Times, May 26, 1973.

that black teachers were normally paid far less than white teachers because, it was believed, the NTE was culturally biased in the way it was worded. The Commission's involvement in the issue finally ended because it lacked sufficient authority to address the matter.

While there were investigations and attempts to resolve complaints of discrimination, the agency's emphasis during the first year was on affirmative action. "Mr. Hamilton noted that the COMPLIANCE DIVISION served as a passive role whereas the COMMUNITY SERVICES DIVISION served in an active capacity."[44] The belief was that, since the Commission had limited enforcement powers, efforts should be concentrated on trying to change the systemic forms of discrimination which pervaded State Government through affirmative action. Not until James E. Clyburn became Commissioner did the agency begin to focus more attention on investigating and resolving complaints and seeking additional enforcement powers.

The question of the Commission's powers was addressed formally in the agency's attempt to investigate a complaint filed by Reverend James Smith against the City of Columbia. The City, represented by Julian Gignilliat, maintained that the Commission had no authority to investigate the complaint. The wording of the statute defined an employer as an "...agency or department of the State or of its local subdivisions or...any official, employee or agency thereof."[45] The City's position was that, if the General Assembly had intended for the Commission's authority to extend to municipalities, the wording of the statute would have referred to "political Subdivisions," rather than "local subdivisions," which referred to local subdivisions of State agencies.

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[44]Commission Minutes, November 3, 1972.
[45]Section 8. (a), Act 1457 of 1972, as amended in June 1973.

Master in Equity Owens T. Cobb ruled in favor of the City of Columbia, whereupon the Commission decided not to appeal, but to "...go to the General Assembly to seek some clarification of the law and additional amendments."[46]

Other major issues before the Commission during the administration of George Hamilton included:

- The adoption of a maternity leave policy for the State to comply with the EEOC guidelines. The State's policy had been that "...a person should be employed with an agency for at least one year before one could take leave to have a child without compensation and retain one's job."[47]

- A major controversy over the sterilization of welfare mothers as a pre-condition for treatment by doctors in Aiken, S.C.[48].

- Developing a personnel system and affirmative action plan for Colleton County and the City of Walterboro, which led to strained relations between the agency and the Mayor of Walterboro, Mr. Wallace Dean, who was president of the S.C. Municipal Association. This relationship became important when the agency sought support for amendments to the law.

- Publication of the Black Graduates Resource Directory. This publication included information on all black students scheduled to graduate from predominately black colleges in the State,

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[46]Commission Minutes, August 2, 1974.
[47]Commission Minutes December 7, 1973.
[48]Commission Minutes, August 3, 1973.

based on information provided on a questionnaire submitted by the students. It had not been a practice for State agencies to recruit on predominately black campuses.[49]

- Publication of "Think Affirmative," the first manual in the nation on affirmative action. The manual was written by the Division of Technical Services under the direction of Paul Beazley. The first printing was for 1,000 copies and would be revised four times and reprinted five times.[50]

Commissioner George Hamilton and Deputy Commissioner Louis Murphy both resigned effective August 2, 1974. Commissioner Hamilton offered to avail himself to the Commission through September for a couple days a week. The legal Counsel, Clayton (Clay) N. Gompf, Jr., was appointed interim Commissioner.[51]

The most substantive issue facing the Commission during the interim was the emergence of the use of merit system tests for selecting employees at some State agencies. There was a strong suspicion that the tests screened out black applicants at a statistically significant rate, that the tests had not been properly validated according to the standards established by the American Psychological Association and that they were inherently racially biased.

A major U.S. Supreme Court decision, Griggs v. Duke Power Co.,[52] had established that:

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[49]Commission Minutes, October 5, 1973
[50]Copyright by South Carolina Human Affairs Commission, 1973, 1974, 1975, 1977.
[51]Commission Minutes, August 16, 1974.
[52]U.S.424, 1971

> "The Act proscribes not only overt discrimination but also practices that are fair in form, but discriminatory in operation. The touchstone is business necessity. If an employment practice which operates to exclude Negroes cannot be shown to be related to job performance, the practice is prohibited."

When the State Merit System agency was created, consolidating the testing operations that had been located in several different agencies, the Commission requested the State Merit System to report "...certain data regarding employment practices and allowing the Commission to monitor potential disparate effects in the administration of the Merit System. Mr. Gompf stated that Fred Haskell replied and requested that the Commission's Chairman and the Acting Commissioner meet with him to discuss their request more fully."[53]

The Chairman, Eugene Zeigler, Jim Clyburn, the new Commissioner, Clay Gompf and Paul Beazley met with representatives of the State Merit System and the State Personnel Division on the morning of November 1, 1974. Dr. Jack S. Mullins, the State Personnel Director, opened the meeting with remarks extolling the advantages of the Merit System. He was so persuasive that, at the Commission meeting later that morning the Chairman "...suggested that as an act of good faith, the Commission should voluntarily bring itself under the Merit System."[54] The Commission, however, voted to defer any action on the matter at the next meeting. The reason was that the Commission may find itself in the position of having to investigate the Merit System.

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[53]Commission Minutes, October 4, 1974.
[54]Commission Minutes, November 1, 1974.

- A Police Community Relations study designed to survey community attitudes towards police and police attitudes towards the community. The preliminary report was presented on March 5, 1976.

- Work began on the writing and publication of South Carolina Blacks and Native Americans, the Commission's Bicentennial project.[57] The publication discusses Afro-American and Native American contributions to the history and culture of the South.

- The Commission entered into a letter of cooperation with the Office of Revenue Sharing, US Department of Treasury, to "...monitor civil rights compliance aspects of the spending of revenue sharing funds in the State."[58] This agreement was opposed by Attorney Julian Gignilliat on the grounds that the Commission had no legal authority to enter into such an agreement.

- SHAC became one of the first State agencies to develop a formal instrument for evaluating the Commissioner's performance. This was a voluntary step taken by the Commission to assure accountability, and it was taken many years before evaluations were required for agency heads.

- The agency moved from its first offices at number One Main Street to an office building on Belleview Street in December, 1975.

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[57]Copyright 1976 by the State Human Affairs Commission, Dr. Marianna Davis, Editor. 254pp.

[58]Commission Minutes, September 5, 1975.

- Official guidelines were published to guide the establishment of local Community Relations Councils (CRCs). CRCs that met the guidelines would be officially recognized by the Commission.

- The agency, primarily through the leadership of Commissioner Clyburn, became active and very influential in the National Association of Human Rights Workers (NAHRW). The significance of this influence is that it ultimately changed the contract funding policies of EEOC. It had been the practice of EEOC to contract only with agencies which had full deferral status based on substantially equivalent state or local laws. This policy tended to bar agencies in the southern states from receiving contracts because of reticence to enact strong enough laws to qualify for deferral status. Deferral of complaints to state or local agencies having the authority to grant or seek relief from unlawful discrimination is required by section 706 of Title VII, Civil Rights Act of 1964. Commissioner Clyburn argued that Section 709 of Title VII empowered EEOC to enter into contracts with any State or local agency "...charged with the administration of State fair employment practices laws." By forming a coalition of NAHRW members from the Southern and Midwestern states, NAHRW voted to ask EEOC to change its contracting policy to include agencies that had fair employment practice responsibilities but limited authority. The contract dollars from EEOC enabled many agencies, like SHAC, to establish a track record, to gain investigative experience and develop local credibility which, in turn, eventually led to increased authority.

- Section 70(n) of the Human Affairs Law empowers the Commission, "To investigate problems in human affairs in the State and in connection therewith, to hold hearings, ...and following any such investigation or hearing to issue such report and recommendations as in its opinion will

assist in effectuating the purposes of this act." In December, 1977, the Commission developed a list of 18 agencies which were not making adequate progress toward meeting their affirmative action goals. The Commission decided to notify those agencies that they were subject to being called to a public hearing if their track records did not improve. Several agencies made dramatic improvement in a short period of time, but hearings were held on three agencies, The John De La Howe School, the Highway Department and the Public Service Commission.

- Discussions about adding "handicapped" as a protected class under the Human Affairs Law began in 1977, culminating with the passage of "The South Carolina Bill of Rights for Handicapped Persons" in 1983.[59] There were some jurisdictional differences between the Bill and the Human Affairs Law, and the Bill did not offer as much protection from discrimination as the Americans With Disabilities Act would in the future. But for its time, it was the strongest legislation that could be passed by the General Assembly.

- The agency moved from Belleview Street to its present address on Forest Drive in December, 1978.

- Chester, S.C. was the site of two major events that entangled the agency in controversy. One was the alleged murder and castration of an 18 year-old black youth. Leaders from the Southern Christian Leadership Conference (SCLC) alleged the youth, Mickey McClinton, was murdered because he had been dating a white girl. Golden Frinks, the SCLC Field Secretary, admitted that he knew the allegations were false but "...told the people that

[59]SC Code 43-33-510 et. seq.

he was castrated two or three times to get them motivated...."[60] Frinks ultimately led a march from Chester to the State House in Columbia. But Commissioner Clyburn consistently insisted on looking at the facts rather than playing on the emotions of people. This incident became one of many which drove the Commissioner to attempt educating the citizenry of the State about the difference between "Private advocacy vs. Public Administration."[61] The importance of the agency maintaining a neutral, fact-oriented stance on public issues has frequently been misunderstood by those who insist the agency should be an advocate for minority interests. The agency's reputation for fairness and impartiality has depended on a steadfast resistance to such pressures.

- The other controversial event in Chester was the Commission's attempt to investigate a complaint filed against the Chester County Sheriff, Robert H. Orr, Jr. by Mrs. Nancy Grant Raines. The Sheriff refused to submit information requested by the Commission and the Commission subpoenaed the information. The Sheriff, in turn, moved in the Court of Common Pleas to quash the subpoena because the Commission did not have jurisdiction. Judge George F. Coleman denied the Sheriff's request on grounds it was premature to do so since the information requested by the Commission was necessary to determine jurisdiction. "For this Court, instead of the Commission, to make the initial determination of the Commission's jurisdiction would be not only to place the cart before the horse, but to substitute a different driver for the one appointed by [the General Assembly."[62]

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[60]The State, Friday, October 19, 1979, P. C, 1.

[61]A position paper by the same title became the text for a speech by Commissioner Clyburn to the Fourteeth Annual Cross Cultural Conference, Charleston Marriott Hotel, February 25, 1992.

[62]Robert H. Orr vs. SC Human Affairs Commission, County of Chester Court of Common

- Ten years after the march from Chester over the death of Mickey McClinton, another racial controversy arose across the State in Conway, where a black quarterback for the local high school was replaced with a white quarterback. The controversy was highly publicized and the situation became potentially volatile. Governor Caroll A. Campbell requested the Commission investigate the matter to determine whether there were racial motives involved in changing quarterbacks. The staff investigated the matter, determined that race was not a motivating factor in the action taken and issued a report. The Commission, and especially the Commissioner personally, was widely criticized for not supporting the cries of "racism" heard from some black leaders in the Conway community. But the Commissioner stood by the findings of the staff investigators. Many people believe the agency's reputation for impartiality was further enhanced.[63]

- In the fall of 1979 a major disagreement arose between the Commission and EEOC over a requirement that FEPAs achieve an arbitrary settlement rate. At first the required rate was forty-five percent (45%) and then it was reduced to thirty percent (30%). The requirement meant, simply, that in thirty percent of the cases the Commission was required to get something for the complainant, regardless of whether there was a finding of discrimination. Addressing the issue before the Commission, Commissioner Clyburn stated,

"We take a legal approach here irrespective of what our emotions

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Pleas, ORDER CA#80 CP 12 62, p. 9. (Affirmed by SC Supreme Court, 290 SE 2d, 1982).

[63]See "A Commentary On Conway," Commission files.

might be. Emotionally, we can say that we feel that discrimination takes place more than thirty percent of the time in these cases. This may be true. It is one thing to feel it, but it is something else to be able to prove it in a court of law. And, that is why we are here: To make sure that these matters are handled in a legal fashion. We must remember that just because something is unfair does not make it illegal."[64]

- The Commission published The Blueprint[65] in 1981, a technical compliance manual for affirmative action planning. The manual contains all the information necessary to develop and monitor affirmative action plans required under Executive Order 11246 or Section 503 of the Rehabilitation Act of 1973. It also serves as the official compliance standard for AAPs required of State Agencies by the Commission. The Blueprint has become one of the most widely used affirmative action planning manuals in the nation.

- Congress enacted the federal Fair Housing Act in 1988. The South Carolina General Assembly passed and Governor Carroll A. Campbell signed into law the South Carolina Fair Housing Law on May 9, 1989. The objective was to make housing discrimination unlawful under State law and to qualify the Human Affairs Commission for deferral status with the U.S. Department of Housing and Urban Development (HUD). Negotiations with HUD did not go well at first. It was felt that HUD, which was new in the business of investigating complaints of discrimination, wanted to micro-manage the investigative process. The agency had been handling

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[64]Commission Minutes, September 21, 1979, p. 7.

[65]The Blueprint, Copyright 1981, South Carolina Human Affairs Commission, Paul W. Beazley and Mary D. Snead, co-editors.

cases of discrimination for twenty years. Moreover, HUD insisted that the South Carolina law was not substantially equivalent to the federal law and that amendments would be necessary to qualify the agency for deferral status. The law was amended on May 3, 1990, and negotiations with HUD resumed. HUD granted the agency a contract in November of 1994 and recognized the agency for substantial equivalency status in January, 1995.

- In the Spring of 1989 the Division of Technical Services began investigating the possibility of computerizing State Agencies' affirmative action plans (AAPs). All State Agencies with more than 15 employees had been required to submit AAPs on a annual basis since January of 1973. Development of AAPs can be a long and tedious process without the benefit of computers and in the early 1970s only a few of the larger State Agencies had computer capabilities. The effort begun in 1989 finally culminated in 1991 with the installation of the Criterion Affirmative Action Management System (CAAMS). The system enables the Division staff to generate AAPs for the agencies. As of this writing the Division generates and monitors AAPs for over 70 agencies, colleges and universities.

- The General Assembly gave the Commission some enforcement authority over yet another statute with enactment of the South Carolina Equal Enjoyment of and Privilege to Public Accommodations Law. The law resulted from an incident in North Augusta on September 5, 1989, when the Buffalo Room Restaurant refused to serve six black men. The owner, Bruce Salter stated that he "...had maintained a white-only policy since he took over the establishment 14 years ago."[66] The FBI began investigating the matter because there was no State law prohibiting discrimination in public accommodations. Governor Campbell asked the State Attorney

[66]The State, September 1, 1989.

General and the State Alcohol Beverage Commission to investigate the possibility of withdrawing the Buffalo Room's license to sell alcoholic beverages and the license was ultimately revoked. But these efforts did not solve the basic problem of there being no State remedy to discrimination in public accommodations. On April 25, 1990, The Equal Enjoyment of and Privileges to Public Accommodations Law was passed. The Human Affairs Commission acts in concert with the State Attorney General's Office and the State Law Enforcement Division to investigate and resolve discriminatory acts under the law.

Jim Clyburn announced at the Commission meeting on April 24, 1992 "...that he would like very much to offer his resignation as Human Affairs Commissioner effective at the close of the work day on June 1, 1992." At the same meeting, a motion was made and passed "...that a recommendation be sent to the Governor that he accept Willis Ham as the new Commissioner of the South Carolina Human Affairs Commission to be effective July 2, 1992."[67]

THE LAST FIVE YEARS

Dr. Willis C. Ham took office as Commissioner at the height of negotiations with HUD for deferral status. He formed a Fair Housing Investigations Division in November, 1993. The division had six investigators, most of whom had experience investigating employment discrimination cases, and was directed by Ralph H. Haile, a staff attorney. The track record set by this division led to improved relations with HUD and, finally to certification. On July 30, 1997, the Fair Housing Investigations Division received the only

[67]Commission Minutes, April 24, 1992.

HUD Certificate of Achievement Award in the Nation for "...prompt judicial enforcement action."

Another major effort of the Commission after Dr. Ham became Commissioner was to secure amendments to the S.C. Bill of Rights for Handicapped Persons. Negotiations with the Joint Legislative Committee to Study Problems of Persons with Disabilities had been unsuccessful. Members of the Committee were basically in favor of legislation to prohibit discrimination on the basis of disability, but there was opposition from some segments of the business community over definitions. The business community was, however, in favor of legislation that would qualify the Human Affairs Commission for deferral status under the Americans With Disabilities Act. Finally, on June 13, 1996, amendments were passed which added "disability" as a protected class to the Human Affairs Law. The amendments also removed from the Human Affairs Commission any responsibility for enforcement of the S.C. Bill of Rights for Handicapped Persons. One of the stipulations to which the Commission had to agree in order to secure passage of the amendments, was that the agency would not require a budget increase as a result of the amendments. That stipulation was made, although it was common knowledge that adding another protected class would increase the agency's workload. It was made clear that the Commission believed the amendments were necessary and that, if additional resources were not forthcoming, the result would be a lengthening of the time necessary for case processing and resolution.

The Commission's activity in the area of Community Relations has increased over the past five years. A long-sought goal was reached when the South Carolina Human And Community Relations Association (SCHACRA) was formed under the auspices of the Commission. The Director of the Community Relations Division, Carlette Black, worked with the directors of the thirteen active Community Relations Councils in the State to form

SCHACRA with the goal of bringing together the organizations, institutions, communities and individuals who have the goal of improving human and community relations in the State. The importance of local Community Relations Councils had been one of the earliest priorities of the Commission. It continues to be a high priority because the Commission believes problems in human and community relations are best resolved at the local governmental level.

The Commission began an Alternative Dispute Resolution program in 1996. The program is designed to provide a rapid resolution to complaints without the necessity of an investigation or determination on the merits of the complaint. The Commission involvement is restricted to inviting the parties to engage in a mediation conference. If both parties agree to mediation, a staff member serves as a mediator in the conference. When mediation is successful, the complaint is resolved to the satisfaction of both parties. When mediation fails, the complaint is forwarded to the Compliance Programs Unit for investigation. During FY 1996-97, 325 cases were selected for mediation. Both parties agreed to mediation in 79 cases and 41 cases were successfully resolved.

The Commission's successful experience with mediating charges of discrimination led to a 1997 collaborative effort in conjunction with Columbia Colleges masters degree program in Conflict Resolution. The Commission will be providing training and practicum experience for students enrolled in the program.

The first EEOC contract of $24,940 to investigate 215 cases ($116 per case) has grown dramatically over the years. During FY 1996-97 the contract was for $542,000 to investigate and resolve 1084 cases ($500 per case). The increase is a direct result of the agency's unblemished record of success in

resolving cases under contract without reversals of our findings by EEOC. In the past 25 years the agency has received a total of 20,479 cases. During the month of September, 1997, 228 charges were filed - the largest number of charges filed during a single month in the history of the agency. Moreover, during the quarter ending September 30, 1997, 518 charges were filed, again, a record number for any comparable period in the history of the agency.

A major issue emerging in recent years is state legislative attacks on affirmative action. Action on such a bill in the General Assembly was postponed during the 1997 session but will likely be reintroduced in 1998. The proposed legislation would prohibit "...discrimination based on race, sex, color, ethnicity or national origin in the State's system of public employment, public education or public contracting."[68] The bill had 53 sponsors in 1997, so it will likely have similar support when reintroduced. Supporters of the bill maintain it is not anti-affirmative action but, rather, anti-preference. Opponents fear that the language of the bill may result in reduced efforts to remedy a history of discriminatory practices.

There have also been significant judicial restrictions placed on affirmative action. The courts have consistently upheld affirmative actions which are narrowly tailored, which do not operate as an absolute bar to the success of any group, which are temporary in nature and which are based on a history of discrimination. The Human Affairs Commission's Affirmative Action compliance standards for State Agencies have consistently adhered to the parameters established by the courts, but it is anticipated that the controversy over affirmative action will continue in the legislature and the courts for some time to come.

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[68]See House Bill Number 3132 dated January 14, 1997.

The Commission continues to require 69 State Agencies to submit AAPs that meet the technical compliance standards of The Blueprint. Twelve agencies are exempted from the requirement because they have achieved their affirmative actions goal and no longer need affirmative action as a remedy. The goal of those 12 agencies is now to maintain an employment system free of discrimination.

As plans are finalized for the 25th anniversary celebration, the agency is busier than ever before. Whether the agency has made progress in achieving its legislative mandate to "eliminate and prevent discrimination" is difficult to determine. The only certainty is that the staff of the Commission remains steadfastly committed to that goal.

The history of the Human Affairs Commission would not be complete without a comment about the people who have given their best efforts to achieve the goal of equality in South Carolina. The uniqueness of the agency's mission has been matched by a unique group of employees. Typically, the employee of the Commission is one who delivers Meals on Wheels during lunch hour, works for Guardian ad Litem, tutors students with reading difficulties, mentors troubled youth or volunteers to work with a United Way agency. The Commission has led all other State agencies in per capita giving to the United Way of the Midlands and the annual Good Health Appeal for over ten consecutive years. The staff has written this history with their efforts to make South Carolina's ideals a reality for the people of the State.

Former Commissioners

Harry Lightsey	Columbia
Barbara Paige	Columbia
William Saunders	Charleston
John Hagins	Greenville
Guy S. Hutchins	Camden
Bobby Leach	Spartanburg
Margaret Wickenberg	Columbia
Arthur Williams	Columbia
Lachland Hyatt	Spartanburg
W. E. Myrick	Allendale
Dr. Benjamin F. Payton	Columbia
Malcolm Haven	Charleston Hgts.
Andrew Hugine	Orangeburg
John Lumpkin	Columbia
Roy Williams	Columbia
Marian Green	Charleston
Jean Toal	Columbia
Rev. Matthew McCollum	Charleston
Thomas B. Bryant, III	Orangeburg
E. N. Zeigler	Florence
Benjamin Morris	Columbia
Dr. William Gibson	Greenville
Dr. Jacob M. Lesesne	Spartanburg
Rev. Walter Crowe	Camden
Ben Morris	Columbia
Judith Heller	Charleston
Tom Jackson	Williston
Keller Bumgardner	Columbia
David Pugh	Darlington
Angie Frazier	Charleston
Dr. E. E. Oliver	Spartanburg
John W. Grady	Greenville
Willie Thompson	Greenville
J. B. Hood	St. Stephens
Dr. Jim Carpenter	Seneca

Edward Jenkins	Charleston
Jean Bolus	Charleston
James E. Timmons, Sr.	Florence
Samuel F. Lyons	Charleston
Andrew Julius Grove Jr.	Williston
Dr. Judith Bazemore	Spartanburg
James Beard	Timmonsville
Bob Cantrell	Walhalla
Jim Pratt	Charleston
Matt Self	Greenwood
M. D. McMullen	Spartanburg
Louis Dore	Beaufort
Louisa Freeman	Isle of Palms
Elliott Franks	Columbia
Leonard Springs	Greenville
Alice Cicenia	Summerville
Jack McIntosh	Anderson
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