I

The Road to Equality and the Passage of the First Civil Rights Law in Ohio

"But every just man, jealous of his own rights, should have a heart open to feel, an ear open to hear, and an eye quick to see the invasions of the rights of others, especially of this race, long bound in the chains of slavery, and deprived of legal personality. It is for you, therefore, to consider whether there is any danger in this direction to any citizen or sojourner in Ohio, and if there be, to provide by apt legislation in advance, for prompt and severe punishment, not discriminating, however, between white and black, but furnishing the same relief against the same wrong to both."

Governor George Hoadly
Inaugural Address to the Ohio General Assembly, 1884

In the summer of 1843, almost two decades prior to the start of the great Civil War fought by a Nation divided by the issue of slavery, African Americans from across Ohio convened for three days in the state capital. The purpose of the Convention of Colored Persons of Ohio was to address the plight of African Americans and other persons of color throughout the state, to draw attention to those laws and practices perpetuating discrimination, and to call upon all Ohioans to end the injustices suffered by so many on account of race and color.

LEFT:
An ex-slave standing at the start of the trail used by fugitive slaves on their way to the John Rankin House in Ripley, Ohio.

Although the Ohio Constitution of 1803 outlawed slavery in the state (a requirement of the Northwest Ordinance of 1787), African Americans still faced invidious discrimination in all facets of life, and in fact some African Americans were still held as slaves in southern Ohio.

While a growing number of African Americans moved to cities such as Cincinnati and Cleveland looking for employment as factory workers or other skilled professions, they usually ended up being employed in lower paying occupations. In the cities, they tended to live in the same neighborhoods, due in part to discrimination, but also in part due to self-preservation and protection from slaveholders intent on returning them to slavery.

In the late 1820's, race riots occurred in several cities, including Cincinnati where Irish immigrants were at odds with the African American community and the increased competition for employment from African American residents. In Portsmouth, the African American families and residents were actually forced out of their homes and the community.

While many African Americans left Ohio for new—and safer—lives in Canada, many others remained. Some even formed their own communities such as Carthagena in Mercer County (only to be driven out several years later).

Across the state, African Americans were denied fundamental civil liberties and basic human rights. They could not vote, serve on a jury, testify against a White person or send their children to public schools. Indeed, in an effort to prevent African Americans from moving to the state, the Ohio General Assembly passed a law requiring African Americans to post bond of five hundred dollars to ensure their good conduct.

As a result of these and other immeasurable injustices endured by African Americans in Ohio, the Convention of Colored Persons of Ohio appointed a committee to draft a statement to the people of Ohio on behalf of its attendees and those whose hopes, dreams and aspirations they represented.

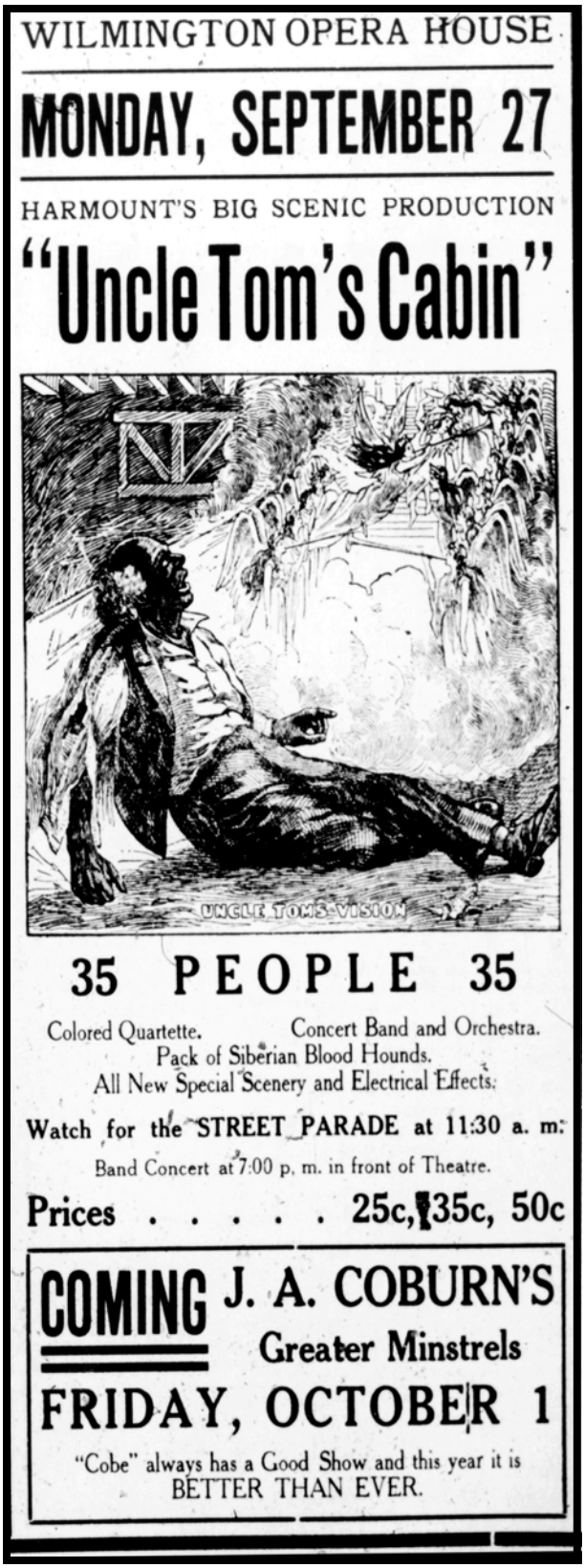
In just a few words, this committee conveyed with an unwavering veracity the hopes and dreams of generations of African Americans, past, present and future, living as second class citizens in a country founded on liberty, freedom and equality.

"The Committee appointed by a Convention of the colored people of this State . . . would respectfully address you on certain points, which are to them at least of the utmost importance.

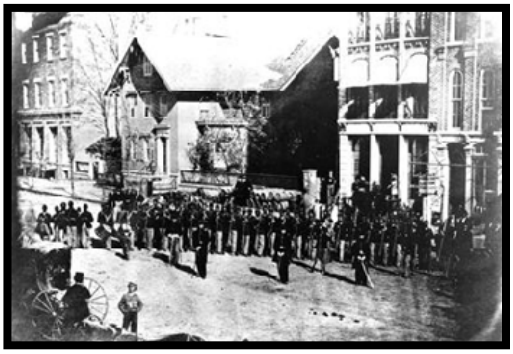
We would briefly call your attention to our condition among you; and to the unjust and impolite course which is pursued toward us; a course which grants us the name of freemen, but robs us of their attributes—which endeavors to blast our prospects, and stifle every effort which we may put forth for our moral and intellectual advancement.

We would ask you, whether this course is in accordance with the principles which lie at the foundation of this government, and which you, as Americans, are bound to support."

Convention of Colored Persons of Ohio Address to the Citizens of Ohio



Despite the need for civil rights in Ohio and across the country at the time, little would change until the Civil War and the passage of the Thirteenth, Fourteenth and Fifteenth Amendments to the United States Constitution.



Above: 127th Regiment, Ohio Volunteer Infantry. The first complete African-American regiment recruited in Ohio. Left: Poster for production of "Uncle Tom's Cabin" in Wilmington, Ohio.

Even then, commitment to the letter and spirit of these amendments was sparse, and this was as true in Ohio as any other state. Indeed, while the Ohio General Assembly easily approved the Thirteenth Amendment, which outlawed slavery, the Fifteenth Amendment and its guarantee of the right to vote for African American men passed the Ohio Senate and Ohio House of Representatives by one and two vote margins, respectively. (It should be noted that women, regardless of race or

color, still could not vote in Ohio.)

The ratification of the Fourteenth Amendment and its guarantee of equal protection under the law, however, proved more problematic. The amendment was initially ratified in 1867, but that action was revoked one year later.

It was not until 2003, after law students at the University of Cincinnati brought this oversight to the attention of legislators, that the Ohio General Assembly approved the Fourteenth Amendment.

Nevertheless, Ohio was one of the first states in the nation to enact a civil rights law, the purpose of which was to protect and secure equal rights for African Americans and to prevent discrimination against them in all places of public accommodation, resorts, institutions and places of amusement.

Introduced in the Ohio Senate by Senator William S. Crowell (Coshocton County) on January 14, 1884, Senate Bill 12 was passed by both the Ohio Senate and Ohio House of Representatives in a matter of weeks, and took effect on February 7, 1884.

The specific prohibition against race and color discrimination was set forth in Section 1:

> *A]ll persons within the jurisdiction of said State shall be entitled to the full and equal enjoyment of the accommodations, advantages, facilities and privileges of inns, public conveyances on land or water, theaters and other places of public amusement, subject only to the conditions and limitations established by law, and applicable alike to citizens of every race and color, regardless of any previous condition of servitude.*

The debate on the new civil rights law was contentious, and often times personal. Opponents of this legislation argued that its purpose (and effect) was to confer special rights and privileges upon the African Americans that were not possessed and enjoyed by other citizens of the state. Proponents, on the other hand, argued that this legislation was necessary in that the rights of Ohio's African American citizens were flagrantly and frequently abused.

Their position was that the true purpose of this legislation was to do nothing more than ensure equality by prohibiting discrimination on the basis of race or color, except on conditions and limitations applicable alike to all citizens.

One particularly contentious point concerned the scope of the law. During the debate in the Ohio House of Representatives, an amendment was offered to amend the proposed bill by making its prohibitions against race and color discrimination applicable to eating houses and restaurants.

Those members opposed to the amendment argued that it was not offered in good faith, but rather solely for the purpose of delay. In response, supporters of the amendment contended that those in opposition "intended, for the purpose of deceiving the colored people, to give them the semblance but not the substance of a law protecting them in all their rights." The proposed amendment was defeated.

After its passage, the new civil rights law was widely heralded as a step in the right direction.

The law, however, was less than perfect, primarily because it failed to fully address the societal harms and personal injustices at the time so frequently visited upon African Americans.

To begin with, the new civil rights law enumerated and covered few places of public accommodation—inns, public conveyances on land and water, theatres and other places of amusement. The new law, moreover, provided meager—and, as would soon be obvious, unpredictable—relief to the victims of discrimination who filed a civil action against the party who violated the law, and offered a very lenient punishment for those persons who violated the law under the criminal component of the statute. On top of this, a successful civil lawsuit precluded a criminal prosecution, and vice versa.

Suffice to say, it was evident from the start that the new civil rights law failed to take the steps necessary to afford African-Americans substantial protection of their civil rights, which, of course, was the goal of the legislation.

Less than one month after its initial

passage, during the same legislative session, Senator Crowell introduced Senate Bill 154 to amend the new civil rights law by specifically enumerating other places of public accommodation. This amendment extended coverage of the law to restaurants, eating houses, barber shops by designated them as places of public accommodation, as well as extending coverage of the law to "all other places of public accommodations."

The first places of public accommodation to be subjected to the new civil rights law were roller rinks. Between 1884 and 1886 numerous cases were filed against roller rinks in Youngstown, Cleveland and other cities.

The conduct of those proprietors in refusing admission to African American patrons was compared to that of "chivalrous Southern brutes." While some proprietors were actually arrested, it was generally recognized that the penalty was not sufficient, and that only several successful lawsuits would make the point where it counts (i.e., monetary profits).

While certainly an improvement to the original enactment, at least in terms of the scope and coverage of the law, the remedy and penalty provisions remained unchanged.

Regardless of the egregiousness of the discriminatory conduct, and no matter how injurious such conduct was to the victim, a civil action would award to the victim no more than One Hundred Dollars and in some cases only Five Dollars or even less. In a criminal action, a person found guilty of violating the law faced imprisonment for not more than thirty days and a fine not exceeding One Hundred Dollars, making the penalty a small price to pay and violating the law a minimal risk to take.

Even as amended, the civil rights law served as little deterrent to those persons intent on denying African-Americans equal rights in places of public accommodations. In the years following its enactment and subsequent amendment, it became increasingly apparent that the remedy and penalty provisions were hampering effective enforcement.

A series of early cases brought

against the proprietors of several roller skating rinks in Youngstown to redress acts of blatant racial discrimination against African American patrons, for example, resulted in only two favorable verdicts, and the damages awarded were simply insulting. In one of the cases, a jury determined that fifty cents would cover the damages incurred by the plaintiff having been refused admission to the roller skating rink on account of his race, while in the other case a jury determined that one cent would suffice.

A few years later, an African American patron brought two successful lawsuits after he was refused the privilege of dining at two restaurants in Cincinnati. In one case, he was awarded twenty-five dollars against the proprietors of one restaurant, but only one cent against the proprietors of the other restaurant . These and other cases made it perfectly clear that the absence of a minimum penalty made it possible for prejudiced courts and jurors to undermine cases won by victims of discrimination by awarding only nominal damages.

Some cases, moreover, were unsettling for different reasons. In *Hargo v. Harf & Cramer*, the court practically eviscerated the civil rights law by holding that it could not be made to apply to an incorporated restaurant business, where that business's existence was not dependent upon obtaining a license for its operation. The court then went on to hold that the owner could exclude any person, whether white or colored, reasonably or unreasonably:

> *"[A] man desiring to open such a business does not have to ask permission or license of the public, and the public have no concern with it, hence he could exclude part or all of the public at will. He might choose to sell only to people following a particular occupation, or of a certain age, or of a certain nationality, and the law could not compel him to abandon his whims or caprices. It follows that if he can exclude any white man or class of whites, he can exclude for color, and that the law merely says that whenever he cannot exclude at will he cannot exclude for color."*

As these and other cases demonstrated, discrimination continued unabated and unabashed throughout the state, frustrating both the letter and the spirit of the civil rights law. As aptly summarized by one leading advocate of the time—

> *"The penalty, as the law now stands, is so small that those who discriminate against us in public places of amusement and elsewhere do not fear it and Afro-Americans are not encouraged to sue under it."*

After almost a decade of mediocre deterrence and enforcement, however, the civil rights law began a significant transformation. The Honorable Harry C. Smith, an African American Representative (Cuyahoga County), quickly understood the law's inherent shortcomings and took action to remedy those deficiencies.

On January 16, 1894, Representative Smith introduced House Bill No. 141 to amend the civil rights law by increasing the severity of the redress and penalty clauses.

This legislation was enacted and became law on February 7, 1894.

Harry C. Smith

Harry C. Smith was an African American journalist, publisher and legislator from Cleveland, Ohio. He co-founded The Cleveland Gazette newspaper in 1883, and served as the paper's owner and editor for more than fifty years. Through The Cleveland Gazette, he championed various civil rights issues and causes throughout the state.

In 1892, Harry C. Smith was elected to the Ohio General Assembly, where he served three terms. After his last term, he returned to Cleveland and continued to publish The Cleveland Gazette. . He died in 1941.

The amendment, known as The Smith Amendment, changed the monetary penalty provision from a fine "not to exceed One Hundred Dollars" to a fine "not less than Fifty Dollars nor more than Five Hundred Dollars, or imprisonment not less than thirty days nor more than ninety days or both."

In 1893, a similar bill was introduced in the Ohio House of Representatives to increase the penalties under the civil rights law. In the Ohio Senate, however, this bill died in committee after an amendment was added to the bill to prohibit race and color discrimination in restaurants and barbershops. As many observed, an increase in the penalties under the civil rights law at the expense of not including restaurants and barbershops (which were covered under the current version of the law) would be a step backward, not forward.

The impact of this amendment on the effectiveness of the civil rights law could not be overstated. In a civil action, instead of receiving only a nominal monetary amount, the victim of discrimination, if successful in his or her legal action, was given the right to recover not less than Fifty Dollars and up to Five Hundred Dollars against any person who violated the law. Likewise, in a criminal action, the defendant would be fined at least Fifty Dollars and up to Five Hundred Dollars, and faced a minimum prison term of at least thirty days and up to ninety days. Without a doubt, The Smith Amendment put some much-needed teeth into the civil rights law, and the cases following its passage demonstrated the effectiveness of these enhanced redress and penalty clauses.

More than two decades after the passage of The Smith Amendment, a new effort was made to address the other noted deficiency in the civil rights law: the failure to specifically enumerate and define in the statute all of the places of public accommodations and amusement which were intended to be brought with the meaning and spirit of the law. The principal aim of this effort was to prevent the courts of the state from invoking the rule *expressio unerious*

exclusio alterious—the rule that the expression of one thing in a statute means the exclusion of other things—which had been done to the detriment of the victim of discrimination.

Over the next several decades, the courts varied greatly on whether or not a wide variety of establishments were covered as "places of public accommodation," and consequently subject to the law's prohibitions against race and color discrimination. In the case of *Duewell v. Foerester*, for example, the court held that a soda fountain was not a place of public accommodation. A soda fountain, the court reasoned—or for that matter, a candy shop, dry goods store or hardware—is not analogous to hotels, public conveyances or other establishments specifically set forth in the civil rights law—hotels, public conveyances, restaurants and barbershops. The court's conclusion was unequivocal: "A proprietor of [a soda fountain] has the absolute right to decline to sell to white, black, German, Irish, Catholic or Protestant, or any class of persons which he may choose to decline to serve, without giving rise to any right of action."

In *Fowler v. Benner*, however, a case decided the very same year, a completely different conclusion was reached regarding the law's application to an ice cream parlor, a very similar type of establishment. A place of public accommodation, the court explained, is generally a resort where those who frequented it remained more or less at ease and comfort for some considerable length of time. An ice cream parlor, where people go to relax and enjoy different types of refreshments, fits squarely within this definition and was held to be a place of public accommodation.

In one very peculiar case, wherein an African American plaintiff alleged that a drug store refused to sell her a glass of soda water because of her color, the court declared the civil rights law unconstitutional. He openly reasoned that the law was passed "solely to hold the colored vote," and that the Ohio General Assembly never intended the law to be enforced.

Other cases reached equally incompatible conclusions. While on the

one hand drug stores, movie theaters, dancing pavilions, golf courses and swimming pools were deemed to be places of public accommodation, retail clothing stores, places where intoxicating liquors are sold, and the offices of doctors, dentists and lawyers were deemed not to be places of public accommodation. It would be more than forty years before the Ohio General Assembly would take the action necessary to undo the many artificial and restrictive interpretations of the civil rights law.

During this time period in Ohio, it was illegal for persons of different races to be married. The law made it a crime for a "person of pure white blood" to "intermarry[y] or have illicit carnal intercourse with any Negro or person having a distinct and visible admixture of African blood," or for "any Negro or person having a visible and distinct admixture of African blood" to "intermarry[y] or have illicit carnal intercourse with any person of pure white blood." The penalty for intermarriage or illicit carnal intercourse was a fine of not more than one hundred dollars or imprisonment for no more than three months

In 1883, the year before the passage of the civil rights law, this law, known as a "visible admixture" law, was deemed constitutional and not a denial of equal protection of laws because it applied to both White and African American persons alike. *Ohio v. Bailey*. This visible admixture law was first enacted by the Ohio General Assembly in 1861. It was re-enacted in 1873, in the revision and consolidation of the general statutes of Ohio, and retained in the complete revision of the general statutes of Ohio in 1880.

Of perhaps greater irony, the very same month that the first civil rights law was enacted, an African American citizen was fined one hundred dollars and sentenced to two months of hard labor at a workhouse in Toledo for violating the state law prohibiting intermarriage between persons of different races. So, at a time when an African American could not be denied service at a restaurant on the basis of race or color, he or she could still be denied marital relations on the very same basis.

In the early 1920s, the Ku Klux Klan promoted the adoption of a law that would prohibit ministers from marrying a white person and a person of any other race, and to impose a fine and imprisonment upon a minister who violated this law. While a bill was introduced in the Ohio House of Representatives in 1925, the legislation was opposed by civil rights organizations and other similar groups across the state and ultimately died in committee.

During this same time period, however, discrimination in places of public accommodation was not the only area of racial discrimination calling out for strong governmental action. In 1889, a law was enacted prohibiting discrimination in the sale of life insurance. Introduced as House Bill No. 313 by the Honorable Jere A. Brown, an African American Representative from Cuyahoga County, this legislation was aimed at preventing racial discrimination by life insurance companies.

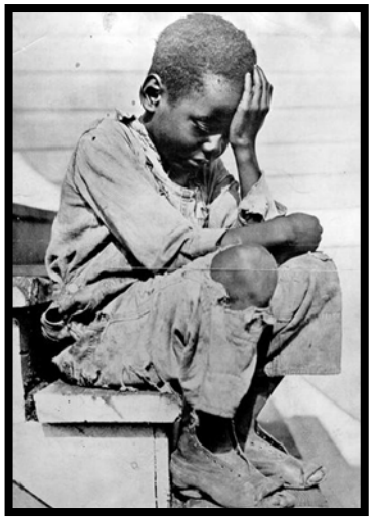
It was widely recognized at the time that life insurance companies charged equally across all classes of persons, but frequently failed to pay equally in the case of death. As explained during one of many hearings held on the legislation, one senator stated that it was "outrageous to discriminate against persons of color," and that "all honorable citizens should be treated alike."

Under this law, all life insurance companies were required to insure whoever applies, regardless of race or color, upon the same terms, so long as the applicant conformed to the general requirements of the company. Specifically, it was unlawful for any life insurance company to discriminate on the basis of race or color as to the premiums or rates charged for life insurance policies. It was likewise unlawful to require a higher premium with respect to persons of the same age, sex and general health conditions, or to make or require any rebate upon the sum to be paid on the policy in the case of death, on the basis of race.

If a company refused a person's application for life insurance, then the company was required to provided that person with a certificate of an examining physician stating that the application was denied solely upon the ground the applicant's general health condition. The penalty for

violating this law was a fine of not less than One Hundred Dollars nor more than Two Thousand Dollars.

The beneficial effects of this law were apparent almost immediately following its enactment, as several families who had shortly thereafter lost children by death received the full amount due on life insurance policies that previous paid less than the full amount (i.e., the amount received by White policyholders). As described by advocates and in some media, the intent of this law—like its predecessor the public accommodations law—was simply to place African American citizens on the same footing as their fellow White Citizens.



Student at segregated school circa 1890.

Another issue raising its head was that of separate schools for African American children. In his annual message to the Ohio General Assembly in 1885, and after passage of the initial civil rights legislation the previous year, Governor George Hoadly described the maintenance of separate colored schools as one of the remaining traces of color prejudice to be "obliterated from the statutes of Ohio." While recognizing the quality of some colored schools and commitment of the teachers at those schools to the education of African American children, he made clear that these schools, in general, are inferior to White and mixed schools:

> *Not only are the opportunities thus afforded inferior to these which white children profit, but they are furnished to a race long deprived, and thus more in need of education. Colored children are forced to travel long distances, often, of course, in unseasonable weather, while the duty of the State to furnish to all alike, irrespective of social rank or color, the same fair start and equal chance in the race of life,*

is neglected. It will be your pleasing to remedy this evil.

One prominent case occurred only a few years earlier in 1883 when an African American student, Tilford Davis, Jr., was denied admittance to the local high school in . He had completed all of his courses in the ward schools, but no arrangement had been made for African American children to take higher level courses. Initially refused by the teachers at the high school, his appeal to the superintendant was likewise refused, who explained that no orders had been received by the school board "admitting colored pupils." As observed in one commentary of the time:

And yet there are a few numbskulls left who are in favor of separate schools. The facilities are never quite so good for educating colored children as for white. The teachers may be as proficient and the appointments as good in the way of buildings and apparatus, but the buildings are farther apart, which compels the children to walk farther to get to school, and the grading more deficient for the same reason. Besides, high school privileges are seldom offered in a separate school.

The following year, a bill was introduced in the Ohio House of Representatives to repeal the law permitting separate schools for African American children. (Of equal importance, this same bill sought to abolish the penalty for intermarriage between persons of different races and to repeal of the "visible admixture law," which prohibited persons from voting who had a mixture of African American blood or who appeared to be of African descent.) This proposed legislation, however, was defeated.

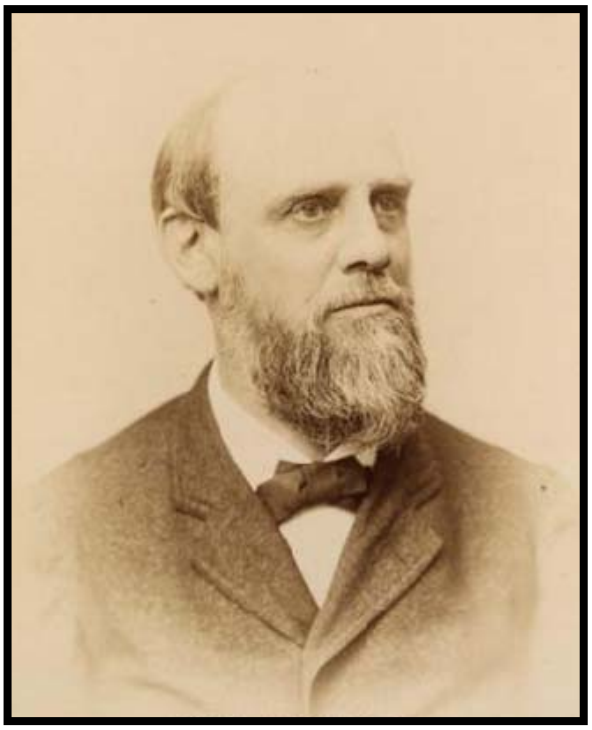
Along with other elected officials and community advocates, Governor Hoadly continued his efforts to repeal the law permitting separate schools, which he described as both wrong and oppressive. Separate schools, he maintained, were tantamount to "the condemnation of colored children, without accusation or trial, to the punishment of compulsory non-association in the common schools with white children, to education often inferior, and in places inconveniently remote from the resi-

dences of their parents."

Perhaps one of the kindest compliments paid to Governor Hoadly came from The Cleveland Gazette, which had this to say about him:

"Governor Hoadly is called a crank in politics because of his strong and open advocacy of Civil Rights for the Negro. Would that there were more such cranks active in the politics of this country. We need them."

In one particularly noteworthy speech, Governor Hoadly described the particularly devastating impact of separate schools on African American children. "This is a badge of servitude," he stated, "having the effect to degrade, and keenly felt by many most worthy colored people, as in effect stamping them as unworthy of equal privileges." While recognizing that much prejudice still existed against mixed schools, he pointed out that this feeling was most fervently found not where children of all races sit in the same school rooms, but rather those places in the state where they do not.



Govenor George Hoadly: Served one term as govenor of Ohio from 1884-1886

In a commentary appearing in *The Cleveland Gazette* during this time period, foreshadowing the lessons of the great school desegregation case of *Brown v. Board of Education*, the "evil" of separate schools referenced by Governor Hoadly in his annual address and other speeches was put into clear perspective:

One of the greatest objections to a separate school is that it inculcates a vicious principle. It teaches the black child that he is inferior to the white, for if he were endowed by the Creator with the same capabilities, the separate schools would not be needed. The black and white children see this themselves.

There is no natural hatred between them. The prejudices which are the result of slavery are taught by the parents, and by the fact of the existence of separate schools. If the children of both races were taught in the same school room, the bitterness of feeling now existing would soon pass away. If separate schools are unjust and wrong in their tendencies, it is for the best interests of both races that they be abolished at once. The question must be met some day. Why not now?

The question was met only a few years later in 1887 when separate colored schools were abolished in Ohio.

Nonetheless, many school districts throughout the state continued to practice racial segregation, either directly or indirectly. One example, occurred the same year that the separate colored schools were abolished, when colored students in the then Village of Yellow Springs were required to walk past a public school located less than a quarter mile from their homes to attend a separate school located at the edge of the village. Many decades would pass before separate schools were abolished both in theory and in practice.

In the decades that followed the enactment of Ohio's first Civil Rights Law, several issues highlighted the continued problem of racial discrimination in multiple areas throughout the state. Perhaps the most explosive was the outrage and controversy surrounding the film "The Birth of a Nation."

Initially, the Ohio Board of Motion Picture Censors rejected the film in its entirety (disapproving even an edited version), explaining that the film "strongly tends to arouse hatred and prejudice among the coming generation against a race that is living in our midst." This board also concluded that the film "represented

the Ku Klux Klan in such a manner that their conduct would be applauded," and that the film—

> *. . . tends to justify that organization in capturing the Negores and, as masked viglinace committees, trying them at night, convicting them of supposed ourtrages, ececuting them and placing their bodies at the doors of state officials who sympathized with their cause . . . [and that] present[ing] scenes of this character in a manner which to the on looker seems to be justified cannot fail to be harmful.*

The owners of this film brought legal action, but the decision of the Board of Motion Picture Censors was upheld by the Ohio Supreme Court.

The film later became a political issue in the gubernatorial election of 1916. Then Governor Willis opposed exhibition of "The Birth of a Nation," and it was not exhibited while he was governor. Those who supported exhibition of this film took concerted steps to defeat Willis, some openly declaring that the movie "would be given a clean bill of health" if was not elected. Shortly after the inauguration of Governor Cox, the Ohio Board of Motion Picture Censors approved the film, issuing a certificate of censorship to the effect that the film was of a moral, educational and harmless character.

An effort in Cleveland to prevent exhibition of the film on the grounds that it was calculated to and had a tendency to excite and create a

"Birth of a Nation" still

breach of the peace was unsuccessful. The decision issued in that case, *Epoch Producing Corp. v. Harry Davis, Mayor of Cleveland*, while noting the numerous biases and factual fabrications of the film, noted more so the many remarkable successes and ad-

vances of African American citizens:

> *[F]ifty odd years of freedom, schools and changed social environment have wrought wonders for this people. We no find them prominent in agricultural, mercantile and industrial pursuits. In all the professions, they have challenged the supremacy of the European and his descendants and are holding their own. Races who boast their civilization extends back to the time man emerged from the shadows of barbarism meet the colored man, only recently emancipated, in competition in all the avenues of trade, commerce, literature and social life, and find him a competitor worthy of admiration and respect.*

In the end, the judge could not reach the conclusion that the film would create a breach of the peace for a simple, yet poignant, reason: "To admit that this photo-play tends to provoke a breach of the peace is to confess that citizens of African descent are not law-abiding citizens. This I am not willing to admit, as it would be an uncalled-for slander upon these citizens."

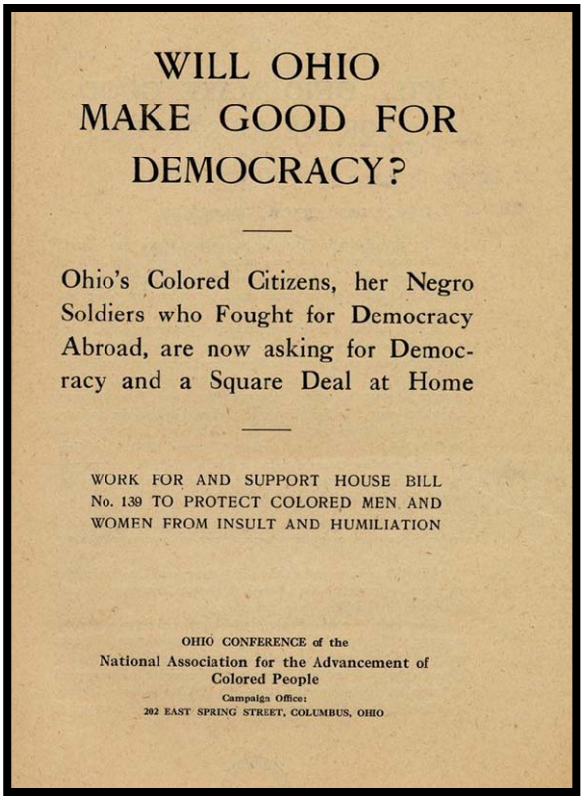
Ultimately, after the United States' entry into World War I, Governor Cox requested that the film be taken out of service, explaining that the film was "dangerous during war." This, not surprisingly, led many to question why the film was not equally dangerous during times of peace.

Toward the midway point of the twentieth century, the cause of equal employment began to gain momentum as a civil rights issue. In 1944, the first fair employment practices bill was introduced in the Ohio House of Representatives, but was defeated.

April 1919, the 372nd Infantry Regiment of the 93rd Infantry Division marching on High Street in Columbus. The regiment was Ohio's African American unit in World War I.

This bill, it is worth noting, was a bipartisan effort, cosponsored by Rep-

resentative Howard M. Metzenbaum of Cleveland and Represenative David D. Turpeau of Cincinnati.



WILL OHIO MAKE GOOD FOR DEMOCRACY?

Ohio's Colored Citizens, her Negro Soldiers who Fought for Democracy Abroad, are now asking for Democracy and a Square Deal at Home

WORK FOR AND SUPPORT HOUSE BILL No. 139 TO PROTECT COLORED MEN AND WOMEN FROM INSULT AND HUMILIATION

OHIO CONFERENCE of the National Association for the Advancement of Colored People

Campaign Office: 202 EAST SPRING STREET, COLUMBUS, OHIO

Ohio NAACP pamphlet supporting legislation to prohibit segregation.

The following year, 1945, the Ohio Commission for Fair Employment Practices Legislation was formed. This commission was composed of twenty-four local councils from across the state and was supported by the National Urban League, several brances of the NAACP, the Ohio Pastors' Council, the Anti-Defamation League of B'nai B'rith, the Consumers' League of Ohio, and state councils of the American Federation of Labor and the Congress of Industrial Organizations. The mission of the commission was to organize support for, and lobby in support of, a fair employment practices law in Ohio. It was led by Theodore M. Berry, a lawyer and Cincinnati NAACP official, and other African American activists.

The Commission for Fair Employment Practices Legislation conducted its most intensive campaign in 1948, lobbying both political parties to adopt fair employment planks in their platforms.

Senator Howard M. Metzenbaum: During U.S. Senator Howard Metzenbaum's tenure in the Ohio General Assembly he was a staunch supporter of fair employment practices legislation. He later served on the Governor's Advisory Commission on Civil Rights

In 1949, the commission drafted a bill not only establishing a fair employment practices law, but also laying the statutory framework for a strong administrative agency empowered to compel compliance and

levy fines and penalties.

The bill passed the Ohio House of Representatives, but quickly became bogged down in the Ohio Senate, with opposition testimony that a powerful administrative agency would be detrimental to personal freedom. Supporters brought in Thurgood Marshall from the NAACP to testify, but despite his thoughtful and powerful testimony, the Ohio Senate voted down the legislation.

Thereafter, up until 1959, over thirty fair employment practices bills were introduced in the Ohio General Assembly. Each bill, however, was defeated, largely due to a strong lobbying effort against the legislation by the American Council of Christian Churches, the Ohio Bankers' Association, the Ohio Chamber of Commerce and the Ohio Manufacturers' Association.

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II

The Advisory Commission on Civil Rights and the Dawn of a New Era of Enforcement in Ohio

"This Commission believes a stable, healthy society and sound economy requires the greatest possible use of all manpower potential. We further believe that progress in the field of civil rights is fundamentally a job of education, enlightenment, and influencing our neighbors to understand the many facets of this subject. Therefore, we recommend that the State of Ohio be concerned with the problem of civil rights on a continuing basis through the establishment of a State Civil Rights Commission."

Charles Y. Lazarus, Chairman
Report of The Governor's Advisory Commission
on Civil Rights, 1958

On April 25, 1958, Governor C. William O'Neill appointed a statewide Governor's Advisory Commission on Civil Rights. Citizens from all parts of the state—representing business, education, government, industry, labor, and social welfare—were invited to meet at the Governor's Office in Columbus for the first meeting of the Commission. Charles Y. Lazarus of Columbus was appointed as Chairman, and Reverend Hugh E. Dunn of Cleveland, John L. Feudner of Akron, and Anthony Haswell of Dayton were appointed as Vice Chairmen. Donald Beatty and Chester J. Gray of the Ohio Bureau of Unemployment Compensation were appointed as staff consultants.

Charles Y. Lazarus served as Chairman of the Governor's Advisory Commission on Civil Rights.

At this meeting, Governor O'Neill emphasized that it was his desire and purpose to "inaugurate and implement a constructive, long range program in Ohio to insure all citizens of the state their equitable and full enjoyment of the civil rights provided by the constitution." In furtherance of this purpose, he instructed the Commission to avoid involvement in anything that might be wrongly interpreted as a political issue.

Governor O'Neill's recommendation to the Commission was that the body conduct studies and obtain factual field information in all of the principal categories wherein civil rights are involved. Specifically, his comments referenced employment, housing, education and places of public accommodations. Still, he made clear that it was not his intent or desire to limit the work of the Commission, or to focus on any single area or problem. Instead, he urged the Commission to embrace a broad, constructive and long range approach to the issue of civil rights, to concentrate on the development of a sound, constructive program based upon research and field stud-

ies, and to work for and encourage lasting results as opposed to current headlines.

As a final matter, Governor O'Neill requested a report on the Commission's work prior to the next legislative session, and that any recommendations formulated by the Commission based upon its studies, research, interviews, regional meetings and conferences be provided along with its report. It is worth noting that only a few months after establishing the Advisory Commission, Governor O'Neill issued an executive order directing the Ohio State Employment Service not to accept discriminatory requests for employment.

As one of its first acts, the Advisory Commission—in discussing the whole field of civil rights—concluded that the problem was too broad and had too many facets to be tackled all at one time, and that it should be divided into its major component parts as outlined by the Governor: employment, housing, education and places of public accommodation. Consequently, the Commission decided to begin its research and study in the area of employment, to consider its findings, and then to make recommendations to the Governor on the matter of civil rights in relation to employment. Thereafter, the Commission agreed, it would move on to research and study the other areas identified by the Governor.

Governor C. William O'Neill: *Govenor O'Neill served one, two year term as Governor from 1957-1959.*

It was widely understood that minority groups were disadvantaged in opportunities for vocational training and employment for reasons of race, religion and national origin. In order to make sound and constructive recommendations to the Governor, the Commission needed accurate

and reliable information on which to base its recommendations.

Under the direction of Dr. Frank Simonetti, Head of the Department of Industrial Management of the University of Akron, a research staff was engaged to perform the research for the initial study on employment and a research model was developed. As a business researcher, the Advisory Commission was confident that Dr. Simonetti would use an objective analytical approach, and present facts, data and information in an unbiased manner. He and his research staff, moreover, recognized that various points of view, opinions and rationalizations would be presented in this type of study since human thought, feeling and emotion are all part of the problem of discrimination.

The overall purpose of the study on employment was to obtain data and information in order to evaluate and measure discriminatory employment and personnel practices toward minority groups. The scope of the study included a variety of factors to assist in its completion.

The Advisory Commission's work included a thorough examination of a wide range of data and information, including:

- *data and information collected to provide an empirical measure of the degree of employment discrimination currently in existence,*
- *data and information gathered concerning certain factors that affect employment practices, such as inadequate vocational guidance, lack of training programs, lack of vocational schools, union seniority rules, placement services and restrictive apprenticeship rules, and*
- *data and information collected regarding the existence of available training and employment opportunities for minority group members in which they are not participating.*

Due to the limited amount of time to complete the study, it was not possi-

ble to conduct original research. The Advisory Commission, consequently, decided to utilize existing sources of facts, information and opinion throughout the state, and that doing so would be of invaluable aid for such a complex study in a state with a dynamic industrial society. The Commission utilized many sources and agencies that were involved in different areas of interest to the study, and these sources provided a vast amount of data which was used and included.

In addition to relying on existing sources of facts and information, the Commission also held one-day conference in each of nine cities at which a number of the community's leaders and informed persons were invited to present papers and to discuss the subject with individual commissioners. These conferences also included employers, whose point-of-view the Commission pointed out was necessary for the study. Indeed, the Commission conducted one hundred unstructured interviews with executives and leaders from various business industries and activities throughout the state.

Other groups and interests contacted, and from whom data, information, evaluations and opinions was obtained, included public and private educators, labor union officials, and the heads of state agencies (regarding their own employment and personnel practices as well as their opinion and judgment). Perhaps the most important source of data was the Ohio State Employment Service, which provided a wealth of useful information based upon its placement and unemployment compensation programs.

As noted by the Advisory Commission, one encouraging sign highlighted by the study itself was the high degree of friendliness and cooperation demonstrated by nearly all of the sources contacted by the research staff. With only rare instances of hostility and unwillingness to discuss the subject of employment discrimination or provide information, nearly all employers discussed their situations openly and frankly (even though in many cases they were not able to provide detailed and accurate information because they did not keep their employment data on a racial or religious basis).

In evaluating the data and information provided by various sources, the Advisory Commission had to assess the reliability of each of the sources. Sometimes, the information was highly precise and recent, and sometimes the data was precise but not current. Frequently, however, the information was provided in the context of informed opinion rather than fact (as with the opinions of informed sources in several prominent minority group organizations).

The data and information provided by the Ohio State Employment Service, for example, was deemed highly reliable and accorded significant weight. The data and information provided by public and private educational institutions was also considered highly reliable because these institutions generally collected enrollment data on the basis of race and religion. Similarly, the information and data received from social agencies working with minority groups was considered fairly reliable because it was based upon those agencies' own files and records used for referral and placement of minority group members.

Employers, in contrast, provided accurate and detailed data and information for some occupations but only general data and information for other occupations. When available, the data and information concerned racial group members, and nearly all employers said they could not determine the numbers of various religious groups in various occupations in their businesses. Likewise, labor unions did not provide detailed and accurate data and information because they did not keep membership information on a racial or religious basis, so their information and data was provided in a descriptive manner or in rounded numbers usually indicated to be estimates.

Still, the researchers were able to verify the data and information provided by cross checking the information obtained. Where, for example, the Urban League provided information about an employer, that information could be verified by contacting the employer, by contacting the Minority Groups Services in the Ohio State Employment Service in that city, or by contacting the labor union involved with that employer.

Throughout the study, the researchers strived for impartiality, obtaining facts, information, judgments and opinions which would lead to reliable conclusions based upon the information collected, which in turn would lead to the formulation of supportable recommendations for future action. Overall, the study concluded that minority groups had made some small gains in a few occupations in certain areas of employment, but that these groups—particularly African Americans—faced substantial obstacles and resistance in their efforts to secure equal employment opportunities.

The federal government agencies and offices in the state, for example, were identified as the major source of employment for African Americans in other than traditional jobs, with many sources stating that opportunities for African Americans to obtain other than traditional jobs would be greatly limited if not for these federal agencies.

The State of Ohio agencies and offices likewise constituted an important source of clerical, technical and professional employment for African Americans in the state. Many of those agencies and offices employed African Americans in a wide variety of occupations, as well as in professional and supervisory positions.

Still, there were complaints that some state agencies and offices did not hire African Americans in certain categories of occupations. One considerable complaint was that the Liquor Department did not place African American clerks or store managers in white or predominantly white neighborhoods, while another was that the Ohio Highway Patrol did not have African American patrolmen. One overriding complaint was that African Americans were employed in state agencies in technical, professional and supervisory positions, but they were not employed in policy making positions.

Some of the city governments offered considerable job opportunities in clerical and professional positions for African Americans. There were, however, complaints that African Americans were not hired by certain departments in city government, and were not hired in certain occupations.

Overall, federal, state and local gov-

ernment agencies and offices made available desirable job opportunities for African Americans, and upgrading and job promotion possibilities were generally deemed fair. Still, while a number of African American supervisors were employed in government agencies and facilities, there was still substantial feeling that in none of these agencies were African Americans employed in high-level or policy making positions.

The findings were similar for certain religious and nationality groups, with many members employed in the same agencies and offices, as well as given fair opportunities for upgrades and job promotion. Notably, these government agencies and facilities reported that there was little difficulty between employees on the basis of race or religion.

In other areas, however, the study concluded that employment of African Americans varied greatly. In the field of utilities, for example, it was found that one of the three major utilities in the state had developed a broad program of employment of African Americans, and they are employed in a wide variety of jobs at this major utility. There was general satisfaction amongst the African American community and its social agencies that opportunities for upgrades and promotions at this utility were fair. Similarly, another of the major utilities had begun a process of slow integration in a few occupations, upgrading African Americans from traditional jobs to skilled jobs through training programs, and hiring some African Americans in professional capacities in the utilities field. Only one of the major utilities hired few African Americans and clung to the belief that African Americans were not interested in working in the industry.

The results were far more troubling in other private sectors of employment. The manufacturing industry, for example, was viewed as an important area for the African American job placement, given the tremendous number of industrial and manufacturing establishments throughout Ohio. Still, the employment of African Americans in the manufacturing industry followed certain identifiable patterns.

While the large manufacturing plants employed African Americans in various production departments

and in a number of semi-skilled levels, there were few African Americans at these plants employed in skilled positions, and in some instances none. The most common explanation for the absence of African Americans in skilled positions was lack of seniority. Some employers contended that African Americans were not interested in undertaking long periods of training, but the fact that African Americans had been upgraded to skilled jobs at manufacturing plants in different parts of the state undermined this contention.

In contrast, few African Americans were employed at the smaller manufacturing plants across the state. Those that did employ African Americans, moreover, assigned them to jobs as porters, janitors and hourly laborers, not even employing them in unskilled production jobs. Some employers at the smaller manufacturing plants thought that employing African Americans in production jobs would cause difficulties with other employees or that African Americans would not be good employees, but again, experiences at other manufacturing plants that had hired African Americans undermined these stereotypical beliefs.

One of the frequent complaints related to employment in the manufacturing field was the refusal of unions to admit African Americans, their failure to obtain plant-wide seniority so that African Americans could transfer and upgrade throughout production departments, and their failure to process the grievances of African American members. It was found, however, that the larger unions had recently removed facially discriminatory clauses in their bylaws, and that the exclusion of African Americans from local chapters was gradually decreasing.

Finally, just as differences emerged within large and small manufacturing plants, similar differences emerged amongst certain industries with respect to the employment of African Americans in other than traditional jobs. This was especially true of the machinery manufacturing industry where considerable numbers of skilled workers were employed and the plants were not usually very large.

In the banking industry, the study concluded that banks hired African

Americans, but only in traditional jobs. The African Americans that were employed in nontraditional jobs, moreover, held those jobs not requiring public contact. Several bank executives admitted that they believed that the nature of their business precluded the employment of African Americans. Some even stated that they believed that their African American customers preferred white tellers, even in predominately African American neighborhoods.

The results were similar in the retail trade field, where few African Americans were found to be employed as sales clerks, and then only in the major department stores. Again, most African Americans employed in retail trade held traditional jobs. The same was true of supermarkets, where the national chain supermarkets hired a few African Americans, but primarily at supermarkets located in mixed or predominately African American neighborhoods.

Other industries—transportation, office employment, professional and technical employment—found similar patterns: few African Americans employed except in the largest organizations, and then usually in traditional jobs.

Two notable exceptions to this pattern found by the Advisory Commission were employment in hospitals and in the area of education. Hospitals had made considerable progress, employing African Americans as nurses and nurses' aides in large numbers. Moreover, many hospitals employed African Americans as technicians in x-ray and other laboratory departments, and some African Americans were employed on professional staff. Overall, hospitals indicated a sincere interest in hiring more African Americans as nurses and technicians.

The Advisory Commission further found that some progress had been made in each of Ohio's major cities with respect to the employment of African Americans as teachers, and that most African American teachers were placed in mixed or predominantly white schools. There was, however, a general complaint in the African American community that these teachers were placed in schools that are predominately African American or have a large pro-

portion of African American students, that they are usually placed in elementary schools as opposed to high schools, and that they face great difficulty in advancing to administrative positions, including school principal. Similarly, it was widely felt that the suburban school systems generally excluded African Americans from teaching positions.

Based upon these and other pertinent findings made as part of its more than 8 months of study and analysis, the Advisory Commission concluded that discrimination in employment and personnel practices toward minority groups existed in many firms, industries and areas of employment throughout the state, although some employers had made progress and were continuing to make progress in addressing discrimination against African American employees and job applicants.

Despite the fact that most employers stated that they hired and promoted on the basis of qualification and did not discriminate against any racial or religious group, the Advisory Commission concluded that their employment patterns give no evidence of hiring and promoting solely on the basis of qualifications and merit without regard to race. Moreover, even at those typically large employers where hiring discrimination is minimal, this was usually true only with respect to jobs requiring little or no training, and which were generally viewed as the least desirable positions.

The Advisory Commission further concluded that the reasons offered by many employers to explain or defend their hiring practices and employment patterns with respect to African Americans and other minorities were proven to be unjustified based upon the evidence and experience of other employers in the same or similar businesses or industries. These discriminatory hiring practices, moreover, grew out of traditional attitudes toward minority groups, coupled with a concept of "their place." It was clear that many top management executives and personnel officials were basing employment decisions on common stereotypes of racial and religious minorities.

With respect to those employers that hired African Americans in traditional jobs, most felt that this was

persuasive evidence that they did not discriminate in their employment practices. Indeed, they usually gave the impression that hiring African American applicants for clerical, technical, supervisory and other nontraditional positions as part of a nondiscriminatory employment policy never occurred to them.

Notably, where African Americans had made progress in securing employment in nontraditional jobs or expanding opportunities in nontraditional fields of employment, this success was widely agreed to be due to the efforts of the Minority Groups Services Department of the Ohio Bureau of Unemployment Compensation and the Urban League.

While noting that "the element of malicious discrimination is not wide-spread," the Advisory Commission concluded that discriminatory hiring practices existed across the state, at all levels. The progress that was occurring with respect to the employment and placement of African American workers, moreover, was occurring at a far slower pace than was justified or desirable, and there were several areas of employment in which no progress had been at all.

In order to address the findings and conclusions regarding discriminatory employment practices in the state, and to ensure for all citizens the full enjoyment of civil rights, the Advisory Commission made the following recommendations:

1. *That an Ohio Civil Rights Commission be established by legislation.*
2. *That the Ohio Civil Rights Commission develop and educational and informative program to eliminate discrimination based on race, creed, color, or national origin in all fields and all areas of civil rights.*
3. *That the Ohio Civil Rights Commission create such advisory agencies and conciliatory councils, local, regional or statewide, as in its judgment will aid in effectuating the purposes of these recommendations.*
4. *That the Ohio Civil Rights Commission be empowered to use effective enforcement procedures in the field of employment discrimination when other procedures prove ineffective.*

Less than two months after the issuance of the report of the Advisory Commission, Senate Bill 10—known as the Fair Employment Practices Commission Legislation—was introduced by Senator John Carney of Youngstown and Senator Edward Whitmere of Canton. Despite opposition from those trade associations and other organizations that had opposed such legislation for more than a decade, Senate Bill 10 was quickly enacted by the ____ General Assembly and became effective July 29, 1959.

Upon its enactment, the Fair Employment Practices Commission Legislation, codified in Chapter 4112 of the Ohio Revised Code and setting forth the state's laws against discrimination, was heralded as the most advanced of any fair employment law in effect at the time. With the addition of Ohio's civil rights statute, fair employment practices laws covered nearly all non-Southern industrial states—New York, New Jersey, Massachusetts, Connecticut, New Mexico, Oregon, Rhode Island, Washington, Michigan, Minnesota, Pennsylvania, Colorado, Alaska, Wisconsin and California. These laws, moreover, provided protection against discriminatory employment practices on the basis of race, color, religion, national origin and ancestry for approximately 49% of the population of the country, 25% of the non-white population and 82% of the Jewish population, in addition to a substantial number of Spanish-speaking Americans, and persons deprived of equal economic opportunity because of national origin.

The various provisions of Chapter 4112 prohibited a wide spectrum of practices in employment based upon race, color, religion, national origin or ancestry. Indeed, the sheer breadth of its primary protection in employment was to be admired:

> *It shall be an unlawful discriminatory practice . . . for any employer, because of the race, color, religion, national origin or ancestry of any person, to discharge without just cause, to refuse to hire, or otherwise to discriminate against that person with respect to hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment.*

These prohibitions, moreover, applied not just to employers, but also to employment agencies, personnel placement services, labor organizations, and joint labor-management committees. Likewise, the law prohibited aiding, abetting or coercing the doing of an unlawful discriminatory practice, preventing any person from complying with the law, or attempting directly or indirectly to violate the law. The new law, in fact, was so broad that it even applied to those seeking employment, prohibiting them from advertising their race, color, religion, national origin or ancestry.

In order to protect those who asserted their right to be free from discriminatory employment practices, a provision was included that prohibited any form of retaliation against a person who filed a discrimination charge or otherwise opposed a discriminatory employment practice. Without this protection, of course, many employees would not complain about discriminatory employment practices for fear of losing their employment altogether.

Perhaps most indicative of the state's commitment to fair employment practices, however, was the creation of a state agency empowered to enforce these provisions and order appropriate relief to the victims of discrimination. Originally known as the Fair Employment Practices Commission, the agency's name was officially changed to the Ohio Civil Rights Commission in 1961. In addition to enforcement, the newly created state agency was directed to carry out a number of other important duties, and granted authority to study, advise, and issue statements regarding all civil rights problems in the state.

In its first year of operation, the Ohio Civil Rights Commission sought to establish the basic structure of its program by taking initial action on each of its assigned statutory duties. Mindful of its legislative mandate, some progress was made in all areas, even though throughout most of its first year, the Commission was comprised of five commissioners, an executive director and three administrative staff members. With a total operating budget of $277,334 for the biennium, the Commission established a principal office in Columbus, and regional offices in Cleveland,

Cincinnati, Bellaire and Toledo. The agency also hired an educational director and a survey and research director.

The agency's most high visible function—receiving, investigating and passing upon charges of discriminatory employment practices—resulted in the filing of 160 charges in the first year. Of these, 78 cases proceeded to investigation, most of which were still pending investigation at the end of that first year. Twelve cases were dismissed on the ground that there was no probable cause that a discriminatory practice had been committed, and ten cases were conciliated. The cases investigated in that first year ranged from a corner service station where the owner apologetically hired an African American applicant to large employers and labor organizations involving thousands of individuals. Indeed, one of the first cases filed involved an employer with over five thousand employees and fourteen unions.

While acutely aware of the importance of its investigative and remedial duties, the Commission recognized early on that case-by-case enforcement alone was not adequate to ensure fair employment opportunity. For this reason, the Commission commenced a concentrated effort to inform employers and labor organizations in various industries of the requirements of the new civil rights law and their obligations. As part of this effort, the Commission prepared a summary of the law and distributed that summary to over 160,000 employers, labor organizations and employment agencies across the state.

The Commission also launched an education program in close cooperation with the Ohio Department of Education in that first year. In furtherance of this program, the Commission formed an Educators' Advisory Committee, composed of twenty-seven prominent educators—representing university professors, members of local boards of education, superintendents, principals and teachers at high school and primary levels, representatives of private and parochial schools, and guidance and curriculum experts—who volunteered their considerable time and services. This advisory committee recommended a program

directed at teacher education, guidance and training of students, and school programs.

Along the same lines, the Commission made every effort to inform the citizens of Ohio about the new law and its meaning, though at the end of the first year many citizens remained unaware. Toward this end, the Commission issued numerous public service announcements that received wide-spread publicity in the media. The Commission also met from time to time in various cities of the state to permit residents to become more familiar with the agency's activities, and the commissioners and staff delivered 137 speeches before groups and organizations throughout the state.

Under its responsibility to study the problems of discrimination in all fields of human relationships and foster good will, the Commission, at the request of Governor DiSalle, participated in questions of discrimination that were raised concerning the Women's Reformatory at Marysville and the Soldiers and Sailors Orphanage at Xenia, with positive results in both cases. At Marysville, the agency assisted in eliminating the racially segregated living arrangements of the inmates. At Xenia, it assisted in the development of an in-

Governor Michael V. DiSalle who served one, four year term as Governor from 1959-1963

stitutional policy and plan of racial desegregation for the white and African American children. The agency also sent an observer to other incidents involving civil rights problems that occurred within the state, in the belief that information collected could be used to settle differences or as a basis for further study and legislative recommendations.

As part of its duty to survey and re-

search the existence and effect of discrimination on the enjoyment of civil rights, the Commission decided to study the problem of discrimination in places of public accommodation. This decision was largely based upon the fact that almost immediately upon commencing operations, cases filed under the existing public accommodations law were brought to the attention of the Commission, accompanied by observations and complaints that the intent of that law was not being achieved. In addition, there were widespread reports of interracial tension caused by picketing of restaurants for racial discrimination in several major cities in the state.

After conducting surveys and interviews, reviewing news accounts of court suits filed under the existing public accommodations law (originally enacted in 1884), and conducting a series of fact-finding conferences throughout the state, the Commission issued its report, entitled "Discrimination in Public Accommodations in Ohio." In this report, the Commission concluded that a new public accommodations law was needed and should be under the jurisdiction of the agency.

The Commission found that, despite the existence of a public accommodations law, discrimination in places of public accommodation existed throughout the state, and victims of these discriminatory practices were most often African Americans, dark skin Puerto Ricans and Mexican Americans. The practices ranged from restrained or unfriendly acceptance to complete denials of service, and were accompanied by everything from antagonistic rebuffs to physical assaults. The Commission further found that the discrimination in places of public accommodation was more widespread than available data indicated because of unreported cases caused by either lack of knowledge of—or more often, lack of confidence in—the existing public accommodations law.

Places of recreation evoked the largest number and the most fervent complaints, with the place of public accommodation most often at issue a roller skating rink. In one unusual case, a roller skating rink was made available to African American patrons only two nights each week after 12:00 midnight. Similarly, sev-

eral large commercial recreation areas in the state either admitted African Americans on special days, refused their admission on certain days, or restricted their patronage to certain activities within the recreational area.

A large number of complaints were also made with respect to places providing personal services, such as barber shops, health salons and hospitals. Specifically, complaints against hospitals alleged practices such as setting aside special rooms for African American patients, moving African American patients to avoid mixing them with white patients, or placing them in African American wards although their insurance coverage warranted semi-private accommodations. A particularly egregious example of discrimination was that experienced by an expectant mother who delivered her baby in the corridor of a hospital because the rooms designated for use by African Americans were occupied while at the same time other rooms were vacant.

The complaints against hotels and restaurants followed a similar pattern. The incidences of discrimination did not ordinarily involve high-price hotels or restaurants located in big cities. Instead, most complaints centered on moderate- to low-priced hotels and restaurants located in the fringes of downtown areas or those located in areas of transition.

As for the public accommodations law in effect at the time, the Commission concluded that the outcomes of cases varied by geography, often reflecting a bias by juries, public prosecutors, and police officers (in their role as witnesses) toward the concept of equal treatment in places of public accommodation. Consequently, the law was viewed as an unwieldy, uncertain provision for helping to assure citizens of their rights.

The Ohio Civil Rights Commission concluded that the law was outmoded and ineffective in providing equality of access to public accommodations and services for all regardless of race or color, and also pointed out that the law does not protect against discrimination on the basis of religion, national origin or ancestry. As its first public policy decision, the Commission recommended the enactment of legislation

with effective enforcement provisions and procedures in the area of public accommodations.

While the Commission undertook substantial work in its first twelve months, it was clear to all involved that much important work remained to be done. It was equally clear, moreover, that none of the fears concerning the enactment of fair employment practices legislation materialized. Across the state, members of minority groups were working on jobs and in industries previously closed to them without disruption. Moreover, there was not a single instance where walkouts or tense situations occurred as a result of decisions taking a firm position in carrying out a nondiscriminatory employment policy, as many opposed to the new law had predicted in their efforts to prevent its enactment. On the contrary, the reports received by the Commission expressed employee cooperation and acceptance.

Likewise, there was not a single instance of a plant or employer departure from the state that was reported as having been attributed to the existence of the new law. The Commission concluded that its program, both regulatory and educational, established hope, created incentives, encouraged training and re-training, and significantly added to the available manpower supply of the state, all of which were vital to an expanding economy.

Still, the Ohio Civil Rights Commission understood that discriminatory employment practices had far from been eliminated and that the number of charges filed—whether high or low—was not the sole index of the extent to which employment discrimination existed or how successfully it was being addressed. Therefore, in addition to continuous efforts in its regulatory and enforcement functions, the Commission believed that the elimination of discriminatory employment practices would ultimately result from new and challenging educational programs directed at traditional attitudes and habits of men which support and further prejudice and discrimination.

At the close of its first year, the Ohio Civil Rights Commission found that the acceptance of the new law and its enforcement was generally favorable. No persons, including those

who had been the subject of investigations, took the position that the law was wrong; on the contrary, it was generally conceded that the law was morally and legally right and proper, and the agency received cooperation—albeit in varying degrees—from all citizens and from all groups.

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III

Surveying the Existence of Discrimination and Strengthening the Legislative Mandate

"Crisis and tragedy have underscored the increasing need for effective enforcement of a public policy of non-discrimination with a minimum of community divisiveness. The Commission's position throughout its five years of existence has been and continues to be that its functions are, by their very nature, controversial but that the overriding consideration must be a strong commitment to and faithful execution of the anti-discrimination laws of Ohio. It is our hope and belief that the beneficial results of these laws will speak for themselves."

Dr. Arthur L. Peterson, Chairman, 1964

A Statewide Education Program

In 1960, the Ohio Civil Rights Commission began the new decade by commencing the first phase of the agency's education program, developing and implementing a broad, statewide information program for educational leaders regarding the nature of the agency and its functions. That year, the Commission held its first statewide education and civil rights conferences, one at Kent State University and the other at Bowling Green University. The purpose of these conferences was to increase understanding of the civil rights law and its implications for schools.

In terms of attendance, there were over 170 representatives attending the two conferences from 18 city, 13 county, 20 local, and 7 exempted village school systems. The conferences were planned for school administrators and the majority of the conferees were superintendents, executive heads and principals. The conference programs were divided into two parts, with the morning session focused on the new law and its implications for educators, and the afternoon session focused on the role of educators in the Commission's education programs.

The second major phase of the Commission's education program was the development and implementation of pre-service and in-service education resources for counselors working with minority group youth. As part of this phase, the agency published a professional manual, entitled "Counseling Minority Group Youth," which was distributed widely throughout the state.

Toward the end of that same year, the Commission convened a statewide civil rights conference in Columbus. Through a combination of major addresses, panel discussions and workshops, the program of the conference explored the four major areas of civil rights—employment, education, housing and public accommodations. The keynote address, "Fair Employment Legislation and Manpower Utilization," was given by Carl H. Hagerman, Vice President of the Union Carbide Corporation, one of the nation's largest corporations at

the time and a major employer in Ohio.

This first statewide civil rights conference was attended by more than three hundred people, representing management, labor, education, religion and civic organizations, from forty-nine cities. Of particular significance to the agency were sizable representation of employers, many of whom expressed their appreciation for a clear understanding of the anti-discrimination law.

Ohio AFL-CIO Civil Rights Conference, Youngstown, Mahoning County, Ohio in 1961.

A Survey of College and University Placement Offices

In 1961, the Commission undertook its second survey, this one examining the practices of Ohio college and university placement offices with regard to job placement of minority students. The purpose of this survey—which included 41 colleges and universities, including tax supported, church supported, and privately supported—was to examine the experience, procedures, and practices of college and university placement offices in Ohio with regard to the civil rights law and to assist the agency in the development of an effective program for the elimination of unlawful discriminatory practices in the development of minority group students.

Of those placement offices surveyed, only one saw a need for a written policy statement to guide placement offices, faculty personnel and others who directly or indirectly participate in placement activities. This was troubling in light of the finding that minority student status materially affected vocation counseling guidance services.

Many placement officials were unduly concerned about the possibility of sending applicants

where they weren't "wanted," and they were ready to ignore the law in order to avoid the unpleasantness of sending all qualified applicants and embarrassing employers who would then have to either meet their legal responsibilities or do the unlawful screening themselves.

Indeed, the officials in co-op programs appeared more sensitive to the discriminatory desires of employers than the regular placement officials. This, however, was not surprising given that those same officials reported that nine out of ten cooperating firms were highly discriminatory. Perhaps most troubling, however, was the finding that for all practical purposes, discriminatory job orders were still being processed by placement offices.

In order to bring the policies and practices of college and university placement offices into compliance with the anti-discrimination law, the Commission recommended that each institution adopt a policy statement for placement officials on equal opportunity and the law, restrict its programs to those employers adhering to nondiscriminatory practices, carefully orient all persons involved in placement activities and related services with regard to sound nondiscriminatory employment practices, and advise employers of instances of unlawful information requested on applications or during interviews (referring those failing to correct violations to the agency for appropriate action).

"The government of Ohio has a concern in the equal treatment of all persons in the state, and through its legislature and Governor the people have determined this to be the state's policy. An offense against the civil right of an individual Ohioan is an offense against the state."

Albert J. Dillehay, Chairman, 1962

The First Public Hearing

It was not until its third year of operation that the Ohio Civil Rights Commission held its first public hearing. On September 6, 1961 in the Montgomery County Court House, the Commission's first

hearing examiner, Roscoe L. Barrow, called to order the first such proceeding in Ohio's history. The case, *In re Lester Bass and the Van Cleve Hotel Company*, involved a musician hired to perform in a well-known downtown hotel. The hotel management, not wanting an African American musician performing in its public rooms, requested that the entertainment booking agency replace him with a white musician and this request was accommodated.

Ultimately, the Commission found that the entertainment booking agency was an employment agency and failed to refer the African American musician for performance at the hotel. The musician was awarded back wages in the amount of $180, plus legal interest.

A New Public Accommodations Law

In that same year, the 104th General Assembly passed House Bill 918, prohibiting discrimination against persons because of their race, color, religion, national origin or ancestry in any "inn, restaurant, eating house, barber shop, public conveyance, by air, land, or water, theater, store, or other place for the sale of merchandise, or any other place of public accommodation or amusement, except for reasons applicable alike to all persons."

> *"The major emphasis of the method embodied in the law is to educate, not to punish; to persuade, not to compel; and to conciliate, not to arbitrarily enforce."*
>
> **Albert Dillehay, Chairman, 1962**

Though in fact the practice of discrimination in places of public accommodation had been unlawful for over 77 years, a survey conducted by the Commission established that the intent of this law was widely ignored and through judicial construction, narrowly interpreted.

The new public accommodations law was designed to overcome the deficiencies of the original public accommodations law by replacing ineffective civil and criminal proceedings with administrative investigation and enforcement

under the jurisdiction of the Ohio Civil Rights Commission. The two principal amendments vesting jurisdiction in the Commission were the following:

> *"Place of public accommodation" means any inn, restaurant, eating house, barbershop, public conveyance by air, land, or water, theater, store, or other place for the sale of merchandise, or any other place of public accommodation or amusement where the accommodation, advantages, facilities or privileges thereof are available to the public.*
>
> *"[It shall be an unlawful discriminatory practice] For any proprietor or his employee, keeper, or manager of a place of public accommodation to deny to any person, except for reasons applicable alike to all persons regardless of race, color, religion, national origin, or ancestry, the full enjoyment of the accommodations, advantages, facilities, or privileges thereof."*

All other provisions of Revised Code Chapter 4112 were applicable to the administration and enforcement of nondiscrimination in places of public accommodation, with one exception. The Commission's authority for self-initiated investigation and issuance of complaints applied only to alleged discriminatory employment practices, and not places of public accommodation.

Another Gubernatorial Request for Assistance

In 1961, the Commission also acted upon another request referred to it under the executive authority of the Governor. This time, the request was to examine allegations of housing segregation based upon race involving the occupants of the Ohio Soldiers and Sailors Home at Sandusky. The ensuing investigation revealed that one cottage was used solely to accommodate African American residents, while all of the other cottages were reserved for only white residents. After discussions and conferences with the Home's superintendent, the situation was corrected and thereafter all residents were

accommodated on a non-segregated basis.

A Survey on the Problem of Housing Discrimination

The third—and most comprehensive—survey undertaken by the Ohio Civil Rights Commission was started in 1962. The objective of this survey was to determine the extent and effect of the minority group housing problem in Ohio, as well as to describe and analyze the methods and practices which deprive minority group persons in Ohio of fair and equal housing choice.

To this end, the Commission held fourteen public hearings in eleven different cities throughout the state. These hearings included members of banking organizations, real estate boards, apartment owners' associations, home builders' associations, as well as community agencies and organizations such as the NAACP, the Urban League, Jewish Community Federations, and community relations boards.

The following year, 1963, the Ohio Civil Rights Commission issued a comprehensive survey and report on housing discrimination, entitled "Discrimination in Housing in Ohio." In this report, the Commission concluded that the African American community in Ohio was not permitted freedom of ingress to the overall housing market but, on the contrary, is arbitrarily restricted to a segment of the market. Such factors as income, personal preferences and a host of other matters which enter into the acquisition of housing in the white community are overridden and subordinated by considerations of race.

The Commission's report contained substantial evidence to the effect that the restrictions imposed on the African American community emanated largely from such institutional sources as real estate brokers and lending institutions, rather than solely from the wishes of white owners. In as much as those segments of the real estate industry were licensed and regulated by the state, the question emerged as to whether their existing power to discriminate constituted an example of unequal protection of the laws. This philosophical and legal

question was accompanied by the many indicators of housing discrimination which were present in all Ohio cities, namely overcrowding and racial imbalance in public schools, as well as the potential stultification of community and civic morals.

Governor Rhodes with the Commissioners, 1964

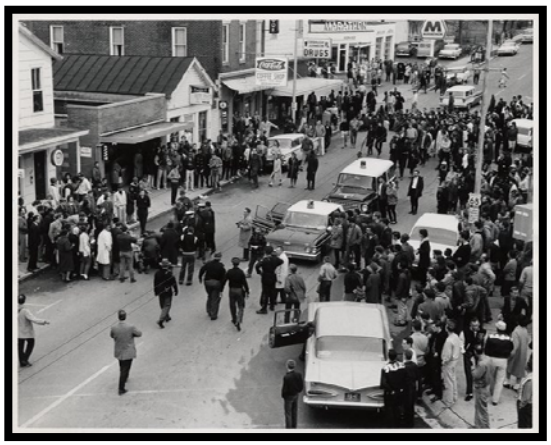
Ultimately, the Commission concluded that there existed a consistent pattern throughout Ohio whereby African Americans and other minority groups were denied free choice in housing. The agency further found that patterns of exclusion, segregation and discrimination constituted a major component of the practices of the housing and real estate business. This conclusion was based not only upon the testimony and evidence of more than 250 persons who represented various racial, nationality, and religious groups, but also upon testimony and evidence offered by representatives of the real estate and construction industries as well as lending institutions and associations.

Based upon this report, the Commission sought the enactment of comprehensive fair housing legislation on the state level, contending that the need for such legislation was as imperative at that time as it had been anytime in the past. In just a short period of the time, the comprehensive fair housing legislation sought by the agency would be enacted.

The Gegner Barbershop Case

In 1964, the constitutionality of the newly enacted public accommodations law was upheld by the Second District Court of Appeals in *Gegner v. Ohio Civil Rights Commission*, which reversed a trial court's decision invalidating the law. The case involved a barber who had refused to cut the hair of an African American patron, alleging that he did not know how to do so. The Ohio Supreme Court accepted the

case for review, but then dismissed the matter as moot because the barber shop had been sold and the new owner was providing full enjoyment to all persons, regardless of race or color.



Protesters gather outside the Barbershop of Lewis Gegner in March 1964. Mr. Gegner he refused to cut the hair of African American patrons and local civil rights advocates had sought to integrate his barbershop for almost 15 years.

"The Ohio Civil Rights Commission is a relatively young agency, but the problems with which it deals are old. The solution to these problems has long been known but seldom applied."

Dr. Arthur L. Peterson, Chairman, 1964

In its decision, the state appellate court held that the new public accommodations law "does not require him to develop new skills," but rather "merely provides that he must not deny the services of his shop to any person because of a race." The court further stated that the barber would "not be deprived of his property or the continued use of it, nor the practice of his profession, except by his own choice." "Unless the order of the commission is enforced," the court concluded, "the rights of other will be denied."

Surveying School Personnel Practices

In 1964, the Ohio Civil Rights Commission completed a survey of school personnel practices in Ohio's eight largest school systems—Akron, Canton, Cincinnati, Cleveland, Columbus, Dayton, Toledo and Youngstown. The agency believed that this survey was particularly warranted given the public schools position as governmental agencies as well as the substantial number of persons employed throughout Ohio by the public schools.

The findings of this survey were encouraging. Substantial progress, the survey's participants agreed, had been made in the utilization of minority group talents in all areas of employment, and creative and imaginative programs were implemented to further improve the situation.

However, it was also found that problem areas still remained and would require further attention. Specifically, there was a need to develop a greater supply of African American secondary teachers, counselors and administrators. Likewise, there was a need to develop a willingness between white and African American teachers to teach where assigned according to talent and need, rather than according to inclination based on the racial composition of the particular school involved. School administrators, according to the survey, would need to pay special attention to hiring, promotion and placement practices in order to remedy the existing situation where an inordinate number of African American teachers are assigned to predominately African American schools.

Civil rights workers on the Western College Campus in Oxford, Ohio in June 1964, during the National Council of Churches Commission on Religion and Race training program.

Police, Crime and Civil Rights

In 1965, the Commission convened a statewide meeting entitled "The Police and Civil Rights Dialogue" in Worthington. This meeting was attended by over one hundred police officers from across the state, and included representatives of the state highway patrol, as well as mayors and safety directors. One of the presenters, speaking on crime and race, described how statistics

perpetuate myths and stereotypes about minority racial groups, and fail to note the correlation of crime to income, education and housing, independent of race.

> *"The establishment of human relations commissions or boards by many municipalities has done much to ameliorate local problems that the Commission recognized. The Commission has provided counsel and assistance in several such efforts. Hopefully, we may continue to progress toward the end when the need for such commissions shall have slipped into obsolescence."*
>
> **Hugo A. Sabato, Chairman, 1965**

Racial Imbalance in the Public Schools

Perhaps the most significant project undertaken by the Commission that year, however, was the preparation and publication of its study entitled "Racial Imbalance in the Public Schools: A Survey of Legal Developments." This study focused upon the major decisions of federal and state courts relative to de facto segregation, or "racial imbalance," in public schools. The Commission's primary conclusion was that, while the law was unsettled as to whether de facto segregation needed to be corrected, school authorities could nonetheless voluntarily take action designed to foster racial integration in the public schools across the state.

Above: Northwest Education Advisory Committee, 1965; Below: Northeast Education Advisory Committee, 1965.

The First Fair Housing Law

The year 1965 also saw the further expansion of the state's civil rights efforts with the passage of Senate Bill 189, the Fair Housing Law, enacted by the 106th Ohio General Assembly. This law made discrimination on the basis of race, color, religion, national origin or ancestry unlawful in the sale or rental of housing (with exceptions for the personal residence of the owner of one- or two-units exempted). It included apartment houses, public housing and residential building lots.

Real estate personnel were covered by the new fair housing law, which included rentals and well as purchases. The law made illegal a wide array of practices, including any inquiry into the race, color, religion, national origin or ancestry of a prospective buyer, renter or borrower, as well as inducing panic selling or soliciting real estate listings by representing that racial or ethnic changes are occurring in a neighborhood, or by representing that such changes may lead to the future deterioration of a neighborhood or school or a decrease in property values.

Financial institutions were also covered by the law and were prohibited from refusing to lend money or otherwise discriminate with regard to a real estate loan because of the race, color, religion, national origin or ancestry of a prospective borrower. This prohibition was applicable to any loan which relates to either commercial housing or a personal residence.

There was, however, an exception for religious organizations and bona fide private or fraternal organizations. Nothing in the new law prohibited these organizations from giving preference to their members or making selections calculated to promote the religious principles or aims, purposes or fraternal principles for which they were established and maintained.

The enactment of the Fair Housing Law was in large part due to the efforts of Representative Carl Stokes of Cuyahoga County. Representative Stokes traveled the state speaking on the need for effective fair housing

legislation. His first effort to pass fair housing legislation was defeated. However, as part of a revised strategy, Representative Stokes introduced a tougher fair housing bill to attract of the attention—and ire—of those opposed to the fair housing bill, while a modified fair housing bill was introduced at the same time. The modified bill, which included exceptions for owner occupied single- and two-family homes, was ultimately passed.

Interestingly, shortly before the law was to take effect, there was a serious movement in the real estate industry to hold a referendum vote to nullify the new fair housing law. This movement, however, subsided, and was replaced by a "wait-and-see" attitude. The referendum vote, fortunately, never came about.

The purposes of this law, in the view of the Ohio Civil Rights Commission, was to accord freedom of residence and equal dignity to all members of society. In 1960, for example, 36.5% of non-whites lived in substandard housing in the state, while the number for whites was only 13.7%. Minority group members, because of low income levels and discriminatory practices, found themselves more and more deeply entrenched in congested and deteriorated neighborhoods, with escape virtually impossible.

In addition, housing discrimination was viewed as contributing to a host of other problems. For example, housing discrimination hampered school integration efforts due to patterns of residential segregation; the greater choice of housing, the Commission strongly believed, would reduce de facto segregation in public schools. Similarly, the Commission strongly believed that limiting housing choice exasperated conditions in overcrowded neighborhoods leading to problems of crime, juvenile delinquency, and personal and family disorganization.

Within its limited jurisdiction and resources, the Ohio Civil Rights Commission sought to attack the problem of housing discrimination on a wide front, utilizing complaint proceedings, educational techniques and community organization methods. Indeed, in the first 8 months after the passage of the Fair Housing Law, the Commission received 120 housing discrimination

complaints and found probable cause of discrimination in twenty-two percent of those cases.

A New Partner in Ensuring Equal Employment Opportunity

That same year, the Ohio Civil Rights Commission entered into its first partnership with the U.S. Equal Employment Opportunity Commission. The Commission was awarded a contract by the U.S. Equal Employment Opportunity Commission to study patterns of discrimination in the machine tool and glass industries.

The study revealed that African American were frequently underemployed in this industry, and in some areas excluded altogether. This was especially true of white collar positions, such as sales positions and office personnel, where African Americans held less than one percent of the positions. The Commission concluded that, in these industries, African Americans were both under-trained and underemployed, and that change in the practices of these industries was slow in coming.

A Civil Rights Library

In 1966, mindful that one picture can be worth a thousand words, the Commission established a library of audiovisual aids that could be borrowed without charge on topics such as education, employment, housing and human relations. These aids were directed to different types of audiences and various age groups, including sound films, slides and film strips for children. The three films most in demand at the time were "Adventures in Negro History," "The Frederick Douglass Years," and "The Negro in American History."

The Commission also developed a series of three hundred colored slides showing minority group members in various employment situations illustrating present-day job opportunities, with histories provided for each slide. These slides were also available from the newly established agency library.

The Human Relations Institute

The following year, 1967, the Ohio

Civil Rights Commission convened its first Human Relations Institute, the theme of which was "Human Relations in a Civil Rights Atmosphere." Nearly 400 individuals attended this two-day event, which included civil rights and human relations professional, educators, police and city officials, community leaders and interested citizens. The sessions covered throughout the event were numerous and covered a wide range of topics.

Human Relations Institute conference, 1967

Given that school segregation was the major issue of the time, a presentation entitled "Education and Racial Imbalance in Schools," was of particular interest to those in attendance. This presentation discussed the detrimental effects of segregated schools on both white and black children, concluding that quality education for every child, white and black, needs to be a synthesis of compensatory programs and integrated education.

Another presentation receiving widespread praise was "Riots and the Law, or Who enforces Which Law Against Whom?," which ascribed the failure to end the urban riots of the time to a lack of sincere commitment by government to solve urgent and glaring problems. Hopelessness, the presenter maintained, was created because of the slowness of change; if legal channels for redress of inequities of employment opportunities did not work, the presenter concluded, then resort would be had to extralegal and illegal methods.

"Progress, painful and slow though it may seem, is being made. Unquestionably, voluntary compliance, as an indirect result of the Ohio Civil Rights Commission's existence, is by far the greatest unseen portion of the iceberg."

Hugo A. Sabato, Chairman, 1967

"Excuses and the cautious approach to full utilization and implementation of the law are happily no longer the accepted order of the day."

Ellis L. Ross, Executive Director, 1967

Surveying the Existence of Discrimination

In 1968, the Commission conducted two studies, one involving the hotel, motel and restaurant industries and the other involving the rubber industry. The study of the hotel, motel and restaurant industries revealed that while minority employees were employed in these industries, they were heavily concentrated in jobs such as kitchen staff, housekeeping and other "back-of-the-house" positions, with some employers expressing that the use of minority employees in other, more public positions, would created unspecified problems. These employees, for all intents and purposes, were completely absent from office, desk, hostess and management positions.

The study of the rubber industry revealed similarly troubling statistics. Again, while minority group members were well-represented in unskilled and semiskilled positions, they held only two percent of apprenticeships and less than one percent of white collar positions.

A Study on Minority

"Ohioans are autonomous in their privilege to lend wings to equality's escalation."

Ellis L. Ross, Executive Director, 1968

Education in Ohio

In the last year of that decade, the Commission released a report of its study on minority education in Ohio. This study covered many areas, including the number and percent of minority students and staff, racial concentration in schools, minority employment, assignment of teachers, placement of new teachers, teaching of racial differences, use of multi-ethnic curriculum materials,

and even transportation services.

> *"There does not exist an agency with such controversial functions. Both Commissioners and staff must, of necessity, be strongly committed to faithful execution of the laws against discrimination in this state. We believe we are."*
>
> **Hugo A. Sabato, Chairman, 1969**

The major finding of this study was that Ohio public school students suffer seriously from racial isolation in the educational process, and that the benefits of knowing persons of different races, social backgrounds, religions, cultures, and nationalities were denied to most students. The overwhelming number of students attended schools that had an African American student population of less than two percent, and more than half of African American students attended schools with a white student population of less than two percent.

The placement of teachers followed very similar patterns. In schools with an African American student population of less than 10 percent, African American teachers comprised only one percent of teaching personnel. On the other hand, where the student population was predominately African American, nearly 60 percent of the teachers were African American. These findings, the Commission concluded, indicated that factors of race and color played a role in the placement of teachers.

> *"Those who have bitterly opposed equality of opportunity and access are perhaps fewer in number today. The residual emotions will subside with the newly-found reality of mutual and positive gain—a realization of every man's right to his tiny place in the sun."*
>
> **Ellis L. Ross, Executive Director, 1969**

The bottom line was that nearly four-fifths of Ohio's students had no interracial experiences in their formative school years. This type of segregation harmed students of all races, the Commission concluded, because the overwhelming research

to date indicated that children learned better in integrated schools, and conversely, achievement scores of students in racially segregated schools were consistently lower than those students in integrated schools.

As the 1960's drew to a close, there was a subtle shift in the paradigm of the Ohio Civil Rights Commission. While still focused on education as a tool for eliminating discrimination, the agency focused more of its efforts on enforcement through investigation and litigation. This shift is most evident in the message delivered to the Governor and Ohio General Assembly in 1969 by Ellis L. Ross, long-serving Executive Director of the Ohio Civil Rights Commission:

> *There is perhaps a vestige of shame that accompanies the sorrow in some who held, and still hold, optimistically but untenably and irrationally, to the credo of education and good will as the proper resolution in matters of civil rights despite the abundance of evidence with which we are surrounded to the contrary. Unfortunately, law remains the best educator.*

This shift toward enforcement would become more evident as the agency moved into its second decade.

* * *

IV

Ensuring Equal Housing Opportunity and Enforcing New Civil Rights Protections

"Even as shadows may not be cast without light, it is equally improbable that sources of light can really be obliterated by shadows. Laws, particularly civil rights laws, may reasonably be viewed as sources of light in terms of reducing the shadows of inequality, racial, ethnic and religious discrimination."

Ellis L. Ross, Executive Director, 1970

Blockbusting, Affordable Housing and Fair Housing Enforcement

At the beginning of this new decade, the Ohio Civil Rights Commission commenced an aggressive enforcement effort in the area of housing, having become increasingly concerned about reports that blockbusting was occurring in many Ohio cities. The Commission targeted blockbusting because it resulted in segregated housing and thwarted efforts to integrate suburban neighborhoods.

The type of blockbusting at issue resulted in a complete change of new suburban housing subdivisions from white to African American. Unscrupulous real estate agencies used panic selling techniques to induce whites to sell their homes at prices below market value, and African Americans then sought to buy those homes. The African American buyers, however, were only shown homes in the "blockbusted" neighborhood and there existed a kind of informal agreement among real estate agencies not to promote sales to whites. The result was that a segregated white neighborhood became a segregated African American neighborhood.

In one particularly egregious case, a homeowner filed a discrimination charge with the Commission when a real estate salesperson came to her door and asked her if she wanted to sell her home, and if she would list her home with his agency. When she declined, the salesperson asked her if she knew about the "race problem," and told her that "colored people live on close-by streets." Upon seeing her young child, the salesperson even told her that "black and white children playing together will lead to interracial marriages." This case was one of many that resulted in a probable cause finding and ultimately a conciliation agreement.

Another major undertaking by the Commission at that time also involved housing. Specifically, the agency conducted a housing survey to determine the status of available and satisfactory housing for minority persons in Ohio. This survey was made possible by a grant from the U.S. Department of Housing

and Urban Development. While the results of this survey indicated that homebuilders, real estate brokers and mortgage lending institutions viewed their conduct as in compliance with the state and federal fair housing laws, a series of public hearings held across the state revealed allegations of blockbusting, panic selling and redlining.

"Even as shadows may not be cast without light, it is equally improbable that sources of light can really be obliterated by shadows. Laws, particularly civil rights laws, may reasonably be viewed as sources of light in terms of reducing the shadows of inequality, racial, ethnic and religious discrimination."

Ellis L. Ross, Executive Director, 1970

The Needs of Minority Students

In 1971, the Commission undertook a survey to determine if teacher and administrator training was adequate to meet the needs of students from minority groups. Based upon the results of this survey, the agency issued a series of recommendations. Among them, it was recommended that colleges of education re-evaluate their urban education courses to include subjects on urban life, minorities, poverty, African American history and culture. It was also recommended that new teachers added to the staffs of urban schools should be experienced urban education and teaching minorities and the disadvantaged. These and other recommendations of this study were published in a report entitled "Teacher Training for Urban Schools."

Ellis L. Ross served as the Executive Director of the Ohio Civil Rights Commission for over twenty years.

Building Capacity and Increasing Visibility

The following year, 1972, proved to be a pivotal moment in the history of the Ohio Civil Rights Commission. This was the year the Commission began to build the capacity—through increased funding and additional staff—for truly aggressive enforcement of Ohio's laws against discrimination. Indeed, the number of investigators was increased from 28 to 52, which was fortunate given that the same year the Commission's investigative case load increased by fifty percent to a record number of almost 2,500 new charges of discrimination. Moreover, the Commission's budget was nearly tripled for the next biennium, reaching 4.6 million dollars.

The year 1972 was also a one of greater visibility, as the Commission moved several of its regular meetings out of Columbus and encouraged public attendance and inquiries. This also permitted Commissioners and staff members to make personal contact with urban leaders and community-based civil rights groups. The resulting news coverage brought increased awareness of the agency's activities, and twelve special radio and television programs on the work of the agency were carried on stations across the state.

> *"The one constant since the Ohio Civil Rights Commission was created has been the inadequate granting of funds permissive of adequate staffing. This reflects, with disturbing clarity, the Davidian resources with which the agency is legislatively expected to engage the Goliath of discrimination that stalks the State of Ohio."*
>
> **Hugo A. Sabato, Chairman, 1971**

Self-initiated and Systemic Investigations

At the same time, it was a year of stepped-up investigations of large-scale, systemic discrimination, initiating on its own motion 48 systemic investigations. The Commission tackled major cases of public employment—teacher assignments in the Columbus

schools, hiring practices in the City of Euclid, and recruiting procedures in the Cincinnati Fire Department. Indeed, as a result of its investigation of Columbus schools, the Commission entered into a consent order with the Columbus Board of Education providing for the racial balancing of faculty and professional staff in all public schools in the system to eliminate un-integrated faculties, as well as to reasonably and fairly distribute job opportunities for minority teachers and professional staff members.

All in all, these self-initiated investigations brought the Commission into Ohio businesses employing over 80,000 persons, and would have far-reaching ramifications for employers throughout the state.

Meaningful Relief and Monetary Awards

In furtherance of its aggressive enforcement efforts, the Commission also adopted guidelines for monetary awards to compensate victims of unlawful discrimination. Under these guidelines, any person suffering a compensable loss as a result of unlawful discrimination would be granted a monetary award as part of a conciliation agreement, a consent order or a cease and desist order. The most significant aspect of this new policy was the consideration on monetary awards for embarrassment, humiliation and indignity, as well as punitive awards in cases of willful disregard of the law.

These guidelines underscored the agency's belief that embarrassment, humiliation and indignity are the natural consequences of unlawful discrimination, that those who violate the laws against discrimination must be penalized, and that unlawful discrimination can be reduced by making it expensive to practice.

A New Fair Housing Problem: Steering

In the area of housing discrimination, the Commission still confronted cases of blockbusting, but a more sophisticated technique, "steering," was uncovered in a growing number of housing investigations. The practice of steering involved directing minority

group members to already integrated neighborhoods, rather than offering a free choice of available housing. As a result of this growing practice, provisions were added to all housing conciliation agreements requiring the real estate agencies involved to show and attempt to sell homes in non-integrated areas to all minority clients who want to purchase homes in those areas, and similarly to show and attempt to sell homes in integrated areas to all white clients who want to purchase homes in those areas.

In 1973, due to the entrenched nature of housing discrimination in the state, the Ohio Civil Rights Commission established a fair housing office and entered into an agreement with the Ohio Real Estate Commission designed to alleviate discriminatory practices by person hold Ohio real estate licenses. This agreement was believed to be the first of its kind in the country, and other state and local human relations commissions sought information from the agency on ways to establish a similar housing program.

That same year, a Housing Advisory Committee was appointed by the Commission. The purpose of this committee was to discuss and select problem areas in housing discrimination and to make recommendations to the Commission on how those problems can be addressed and solved.

Equality for Women (and Men)

The highpoint of 1973, however, was the enactment of House Bill 610 by the 110th General Assembly, which amended the law and made sex discrimination in employment, housing and places of public accommodations an unlawful discriminatory practice. This legislation was in large part the result of the work of the Committee on the Status of Women, an investigative committee, created by Governor James A. Rhodes in 1966.

The Ohio Civil Rights Commission had been advocating to include sex as a protected class for many years and was heartened to see the enactment of a law granting protection to men and women against sex discrimination. Although

much broader in scope when introduced, the legislation was hailed as a long-overdue addition to the state's anti-discrimination laws. The Commission immediately engaged in an aggressive education and outreach initiative to educate the public and regulated community regarding the new provisions against sex discrimination.

"We ask the legislature to add sex as a basis of unlawful discrimination, recognizing the plight of women in our economic system."

James M. Friedman, Chairman, 1972

In the first six months that the law was in effect the Ohio Civil Rights Commission received nearly 700 discrimination charges based on sex. The majority of cases involved discrimination in employment, with women making complaints about being paid less than men for doing the same work and being denied jobs that have traditionally been held by men. Although most of the sex discrimination charges were filed by women, some were filed by men, including one by a man who alleged he was not hired as a secretary by an employer who wanted only female secretaries.

With the addition of sex discrimination as an unlawful discriminatory practice, the Commission also became an agency whose findings were given "substantial weight" by the U.S. Equal Employment Opportunity Commission. This designation meant that the EEOC would rely more heavily upon the agency's case processing and investigations than it had in the past.

"With the hopeful advent of equal opportunity for overly denied females we shall be called upon to develop new and more effective methods and techniques. The agency should not, nor will it be permitted the privilege of relaxing into an aura of comfort that occasionally accompanies a hard won victory."

Ellis L. Ross, Executive Director, 1973

Associational Discrimination and Liberal Construction

The following year the Ohio Civil Rights Commission suffered a setback in its enforcement efforts when when the Ohio Supreme Court handed down its decision in *Lysyj v. Ohio Civil Rights Commission*. The case involved a charge of racial discrimination brought by white woman who was ordered to leave a trailer park because she was visited by an African American friend.

In its decision, the Ohio Supreme Court held that the Ohio Civil Rights Commission was not empowered to award compensatory and punitive damages. This ruling, consequently, nullified the guidance issued by the Commission only a year earlier on ordering monetary awards to the victims of discrimination.

Still, the decision did have a positive element. The Court ruled that all persons, both majority and minority group members, were protected from discrimination, holding for the first time that the state's laws against discrimination prohibit discrimination against a person because of the race of a person's association, commonly referred to as associational discrimination.

> *"The job of protecting a citizenry's civil rights goes to the very core of a democracy. The Ohio Civil Rights Commission is confident it can do the job."*
>
> **James M. Friedman, Chairman, 1973**

The Court also held that a trailer park fell within the definition of a place of public accommodation and was subject to that provision's prohibition against racial discrimination. In doing so, the Court demonstrated the marked difference between the new public accommodations law and its predecessor, which as a criminal statute in derogation of the common was subject to the rules of strict construction.

The new public accommodations law, the Court explained, as well as the other anti-discrimination provisions of Chapter 4112, were remedial statutes and unbound by the rules of strict construction.

When determining the breadth and scope of these laws, moreover, the Court held that they must be construed "liberally in order to effectuate the legislative purpose and fundamental policy implicit in their enactment, and to assure that the rights granted by the statutes are not defeated by overly restrictive interpretation."

Conference, Conciliation and Persuasion: A Jurisdictional Prerequisite

Over the next few years, the Commission suffered other setbacks as a result of adverse court decisions. The first came in 1975 when the Ohio Supreme Court issued its decision in *State ex rel. Republic Steel Corp. v. Ohio Civil Rights Commission*. In this case, the Commission had issued a complaint and notice of hearing before completion of efforts to eliminate the alleged unlawful discriminatory employment practices by means of conference, conciliation and persuasion. The Court held that a completed and unsuccessful attempt by the Commission to eliminate unlawful discriminatory practices by conference, conciliation or persuasion "is a jurisdictional prerequisite to the issuance of a complaint, except where circumstances warrant the issuance of a complaint directly."

As explained by the Court, the Commission is authorized to issue a complaint stating the charges and giving notice of a hearing only when efforts at conciliation have been completed and have failed to remedy the problems by voluntary compliance. "It is clear," the Court concluded, "that the General Assembly intended a completed attempt at conciliation to be a condition precedent to the issuance of a complaint."

The second came two years later when the Ohio Supreme Court

issued its decision in *State ex rel. General Motors Corp. v. Ohio Civil Rights Commission* and further constrained the Commission's enforcement efforts. In this case, the Commission issued a complaint and notice of hearing without attempting to engage in methods of conference, conciliation and persuasion to eliminate the alleged unlawful discriminatory employment practices. This time, however, the Commission argued that the circumstances warranted the issuance of a complaint and notice of hearing directly because the large volume of pending charges did not permit such attempts at conciliation prior to the expiration of the statutory one-year period for the issuance of a complaint.

The Ohio Supreme Court, building upon its earlier precedent, was not persuaded. Instead, the Court held that that "the inability to comply with the statute of limitations is not a circumstance which warrants an exception to the requirement that conciliatory efforts precede the complaint."

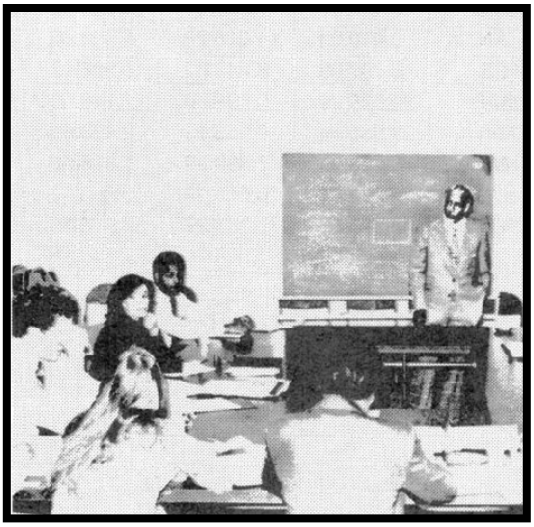
In response to the underlying issues giving rise to these cases—insufficient staffing and a growing inventory of cases, the ___ General Assembly enacted Senate Bill 162 and extended the time within which the complaint must be issued to two years after the alleged unlawful discriminatory practice was committed.

> *"The caseload which confronts the Ohio Civil Rights Commission is becoming greater and greater, and the staff is finding it increasingly difficult to keep up with the steady flow that is almost inundating the Commission."*
>
> **Burt Silverman, Chairman, 1974**

Credit and Handicap Discrimination

During this same time period, other significant pieces of civil rights legislation were enacted, further expanding state's anti-discrimination law and the jurisdiction of the Ohio Civil Rights Commission. The first enactment, Senate Bill No. 59, was passed in 1975 by the 11th General Assembly

and prohibited discrimination in the extension of credit on the basis of race, color, religion, sex, national origin, ancestry or marital status.



OCRC Staff, Mohican Training Conference, 1976

The second enactment, Senate Bill 162, was passed in 1976 by the 112th General Assembly and added provisions prohibiting discrimination on the basis of handicap in all matters falling under the jurisdiction of the agency. This legislation gave handicapped persons equal opportunity in the areas of employment and housing, and full and equal access to and within places of public accommodations.

In order to enforce this new addition to the Commission's jurisdiction, the agency added a handicap specialist, and spent the first months developing goals and objectives to make the handicapped and non-handicapped citizens of Ohio aware of the new law. The Commission received a substantial number of requests for training programs, which suggested that disabled persons were beginning to come out into the world of work, education and places of public accommodations. Businesses showed particular interest in understanding the duty to provide reasonable accommodations and how to make buildings accessible to persons with disabilities.

"The business of equal opportunity for humans is a very busy job. It takes an awful lot of working at it to really bring it off. Rarely will there be found jobs in a lifetime more painfully frustrating than the efforts to discover and substantially prove and remove discrimination when cleverly cloaked in its subtlest guise. Pursuit can consume the greater part of a lifetime. As a matter of fact, it has."

Ellis L. Ross, Executive Director, 1975

Intercultural Affairs and National Origin Discrimination

In 1976, the Ohio Civil Rights Commission established a division on intercultural affairs, whose mission was to develop and apply a program oriented approach to effectively reduce the incidence of discrimination on the basis of national origin. This division sought to increase the marketable employment skills of Spanish speakers by developing and improving employment and training services, and to increase the availability of affordable standard housing through new construction.

The efforts of this new division—responsible for planning, proposal writing and funding advocacy—resulted in the initiation of several innovative programs. One such program was the development and implementation of a college preparatory program for Latino high school graduates and drop-outs.

Another program provided training for housing specialists and law enforcement officials. The basic purpose of these programs was to provide key community individuals with the proper and necessary information to enable them to render a better service to the Latino community, and to stress the need for law enforcement officials to develop better community relations through equal employment opportunities for Spanish speakers and the establishment of community advisory groups.

Above: Commission Staff Meeting, 1976; Below: Commission Meeting with EEOC, 1976

"We, too, share the dream of those who toil in the vineyards—the vicarious pleasure drawn from the realization that all may someday quaff the wine pressed from our efforts."

Ellis L. Ross, Executive Director, 1976

The division on intercultural affairs was widely hailed by community leaders from every major metropolitan and rural area of the state for its leadership and effectiveness in providing an organizational instrument in increasing local funding opportunities, in improving the delivery of services and contributing to the improvement of the societal conditions for the Spanish speaking people in Ohio. The following year saw the creation of the Ohio Commission on Spanish Speaking Affairs.

The Challenge of Desegregation

The Commission also continued its efforts in the area of education, sponsoring a statewide educational conference in 1978 entitled "Teacher Education and the Challenge of Desegregation." A positive outcome of this conference was the development of pertinent recommendations for teachers, including the creation of a statewide program of teacher development, requiring more hours of in-service training on desegregation and related issues, and insuring that the distribution of state funding is closely related to the implementation of multi-cultural experiences and curriculum.

"Teacher Education and the Challenge of Desegregation," Education Conference, 1978 .

"The record, from 1959 to date, is commendably persuasive as regards the broader spread of equal opportunity for Ohioans than would have occurred absent the order dictated by Ohio Revised Code, Chapter 4112."

Ellis L. Ross, Executive Director, 1977

The First Work Sharing Agreement

That same year, the Ohio Civil Rights Commission entered into its first work sharing agreement with the U.S. Equal Employment Opportunity Commission, providing for the dual filing of employment discrimination charges and which divided case processing responsibilities according to each agency's resources and work capacity.

This arrangement eliminated the duplication of effort between the two agencies and permitted the development of compatible and consistent investigative standards and procedures. To this day, the Commission maintains one of the largest work sharing agreements.

The Hearings Division

In 1979, the Commission established an internal hearings division to handle public hearings, tightening accountability over this very important agency function. In previous years, the conducting of public hearings had been assigned to attorneys in private practice on a contract basis. The hearings division was comprised of three full-time hearing examiners.

The establishment of the hearings divisions resulted uniform hearing procedures and consistent decisions, as well as substantially reduced the time period for conducting public hearings through the use of more orderly administrative procedures.

Affirmative Action and Age Discrimination

In the latter part of the decade, the responsibilities of the Commission continued to expand. In 1977, Senate Bill 4 was enacted by the ____ General Assembly, requiring all state agencies and political subdivisions which have undertaken affirmative action programs to file progress reports with the Commission on an

annual basis. The Commission, then, would be required to analyze and evaluate the progress reports and report its findings to the General Assembly.

A few years later, in 1979, the jurisdiction of the agency was once again expanded. With the enactment of House Bill 598 by the 114th General Assembly, age was added as a prohibited basis of discrimination in employment and in places of public accommodation.

As the decade came to an end, and the Ohio Civil Rights Commission observed twenty years of enforcing the state's anti-discrimination laws, the Executive Director at the time, Ellis L. Ross, issued a grim prediction regarding the future of the agency.

In light of the funding shortages, continually adding to the jurisdiction and workload of the agency—while portending to be extending civil rights protections—in fact would only further dilute the effectiveness of the agency. Overloading an agency with work without increasing resources to accomplish that work, he explained, was a subtle and basic method of crippling an agency's effectiveness. The question, as he saw it, was how to draw the line between what the Ohio Civil Rights Commission can effectively do and what the agency can be legislatively delegated to do.

* * *

V

Setting the Groundwork for Future Cases and Expanding the Fair Housing Law

"We are living in a complex and stressful society. If legislation is to succeed in this area, it must be reinforced by deliberate programs of voluntary action by government, business, industry, community organizations and individuals. Legislation and voluntary actions are strengthened by each other. The answer lies within the hearts and minds of every Ohio resident to translate the intent of human rights legislation into practice."

Robert D. Brown, Executive Director, 1981

A Highpoint in Investigative Procedures

The Ohio Civil Rights Commission began its third decade of enforcing the state's anti-discrimination laws by attaining a milestone in the agency's investigate procedures. After adopting a new rapid processing procedure that was implemented by the U.S. Equal Employment Opportunity Commission, the Commission was certified by the EEOC as having investigative procedures equal to or better than any other agency in the country. For the Commission, this gave the agency the credibility and confidence that it was doing quality work and was worthy of the trust embodied in its federal certification.

In 1980, the Commission implemented a fact finding conference procedure which brought the disputing parties face-to-face to discuss their positions and voice their concerns. The primary purpose of the fact finding conference procedure was to achieve mutual resolution of discrimination charges in the shortest possible time. This procedure was immediately successful, achieving a resolution rate above thirty percent.

Protection from Pregnancy Discrimination

This same year, the Ohio Civil Rights Commission's jurisdiction was expanded to include pregnancy discrimination in employment with the enactment of House Bill 19 by the ___ General Assembly. This addition of pregnancy as a protected class meant that pregnant women cannot be fired or forced to take a leave of absence because of pregnancy or related medical conditions. The pregnancy provision applied to all areas of employment—hiring, promotion, firing, seniority rights, fringe benefits, sick leave and insurance.

This legislation was introduced by Representative Michael Stinziano of Columbus, who explained that the state law previously allowed "employers to grant disability pay to men to have hair transplants and vasectomies, but allowed employers to refuse these same benefits to female employees who were pregnant." In short, under this

provision a pregnant employee who is able to work must be treated like all other workers, and if she cannot work, she must receive the same benefits provided to other sick or disabled workers at her place of employment.

"The most important aspect of human rights legislation is the cooperation and goodwill of all people so that everyone can be treated with equality and dignity despite differences between individuals."

Robert Brown,
Executive Director, 1981

Reliable, Probative and Substantial Evidence

In 1981, the Ohio Supreme Court decided the case that would forever define the manner and method of investigating and litigating civil rights cases: *Plumbers & Steamfitters Joint Apprenticeship Committee v. Ohio Civil Rights Commission*. This case arose from a discrimination charge filed by an African American man, alleging that he was discharged from an apprenticeship program on the basis of his race. After a public hearing, the Commission issued an order requiring that he be reinstated to the apprenticeship program with back pay.

Robert D. Brown, Executive Director

When the case reached the Ohio Supreme Court, the issued focused on the meaning of "reliable, probative and substantial evidence," the phrase used to describe the type and amount of evidence needed to support the findings issued by the Commission following a full

evidentiary public hearing. The Court—noting that the phrase was not defined by statute and that its prior decisions recognized that federal case law interpreting Title VII of the Civil Rights Act of 1964 was generally applicable to cases involving alleged violations of the state's anti-discrimination laws—held that "reliable, probative, and substantial evidence" in an employment discrimination case brought pursuant to R.C. Chapter 4112 means evidence sufficient to support a finding of discrimination under Title VII."

Based upon this holding, the Court then went on to adopt the now-familiar framework for evaluating allegations of disparate treatment established by the U.S. Supreme Court in the seminal case *McDonnell Douglas v. Greene*. Applying the flexible formula established in that case, the Commission must establish a prima facie case of discrimination, thereby eliminating the most common nondiscriminatory reasons for the adverse employment action. If a prima facie case is established, the employer must set forth some legitimate, nondiscriminatory reason for the adverse action. Then, as the final step in this process, the Commission must prove that the stated reason is a pretext for discrimination.

"In an advocate role, the Ohio Civil Rights Commission has facilitated the increased participation of those persons in groups previously denied access to the political economic and social mainstreams within the public and private sectors of our society. As educators, we have attempted to develop and implement programs to sensitize the citizens of Ohio as to their needs, frustrations, fears and aspirations of minority populations."

Robert Brown
Executive Director, 1982

Over time, the rationale of this case would be used to incorporate the legal standards of other federal anti-discrimination laws such as the Age Discrimination in Employment Act of 1967 and the Americans with Disabilities Act of 1990. It is no exaggeration to say that to this day no case has proven to be more

influential than the *Plumbers & Steamfitters* case, having been cited, applied or relied upon in literally tens of thousands of court cases and administrative investigations.

Alcoholism and Drug Addiction a Civil Rights Problem

A few years later in 1986, the Ohio Supreme Court decided another important case, *Hazlett v. Martin Chevrolet, Inc.*, this one involving the scope of the provision prohibiting discrimination in employment on the basis of handicap. This case involved an employee who requested a temporary leave of absence to obtain medically recommended care and treatment at a residential drug treatment facility for his addiction to alcohol and drugs, but in response to his request was summarily terminated. The issue before the court was whether alcoholism or drug addiction constituted a "handicap" as defined in by the state's anti-discrimination laws.

In its decision, the Court took notice that drug addiction creates in its

"One measure of a culture's viability and maturity is established by how well it addresses its problems. We gain nothing by pretending alcoholics and drug addicts can solve their problems without help or that substance abuse problems do not exist. By affirming that alcoholics and drug addicts are handicapped, to the extent that a dependency exists and has not yet compromised work skills, we seek to deal with a problem at a point where these individuals are still productive members of society, can still be helped, and still have the incentive to help themselves. Beyond this point the statute does not protect the chemically dependent individual. It is with these considerations in mind that we hold that drug addiction and alcoholism are handicaps."

Justice Ralph S. Locher
Ohio Supreme Court, 1986

victims a debilitating chemical imbalance that is an abnormal physical condition. This type of condition, the Court further noted, limits the user's functional ability, including physical endurance, mental capacity and judgment. While treatment of a drug addiction may cause the condition to go into remission, the effects of the drug may remain for a considerable period of time. Consequently, the Court held that alcoholism and drug addiction are handicaps, and persons affected by alcoholism and drug addiction are protected under the law.

Still, the Court was clear in that it was not endorsing alcohol abuse or drug usage. If alcoholism or chemical dependency adversely affected job performance of an employee, the Court explained, an employer was clearly within its rights to discharge that employee.

Strengthening the Fair Housing Law

In 1987, House Bill No. 5, which amended and greatly expanded the state's fair housing law, was sponsored by Representative Vernon Sykes of Akron and enacted by the 119th General Assembly. This legislation greatly expanded the jurisdiction of the Ohio Civil Rights Commission and specifically empowered the agency to award full and complete relief to the victims of housing discrimination, including compensatory and punitive damages and attorneys fees.

The aim of the new law, at least in part, was an attempt to make the state law substantially equivalent to the federal fair housing law. Since its enactment in 1975, the state law had been weakened by several court decisions, beginning with the *Lysyj* decision in 1974 which prohibited the Commission from awarding compensatory and punitive damages.

At first, realtor associations, the homeowners insurance industry and other groups strongly opposed the passage of the amendments to the fair housing law. These groups, however, dropped their opposition to the amendments when the provision empowering the Commission to self-initiate investigations of potential discriminatory housing practices

was removed.

While widely recognized as one of the strongest state fair housing laws in the country, there was an almost immediate concern regarding the Commission's ability to enforce the new law. This, however, was not due to a lack of technical expertise but rather a perception of inadequate funding and resources.

The Infectious Nature of Discrimination

That same year, the Ohio Supreme Court issued a decision enhancing the Commission's effort to uncover, prove and remedy unlawful discriminatory employment practices. The case of *Dayton Power & Light Company v. Ohio Civil Rights Commission* involved an African American employee who was terminated, allegedly for engaging in "horseplay." His direct supervisors had engaged in blatantly racist behavior, but did not make the ultimate termination decision.

The Ohio Supreme Court held that the biased behavior of a person involved in the decision-making process could be used to prove that an adverse employment decision was motivated by discriminatory intent. In upholding the decision of the Commission, the Court took special note of the fact that evidence was presented that some of those persons who were involved in the supervisory and termination "chain of command" had previously admitted to being racists and engaging in racist behavior.

The crux of the *Dayton Power & Light* case was that discrimination infused into a report, recommendation, or evaluation leading to an adverse employment action was just as harmful, and just as illegal, as its more blatant counterparts, infecting the process with discriminatory animus . The Court's opinion was a clear acknowledgment that it made no difference that the person making the ultimate decision was not personally motivated by discriminatory intent, if the same cannot be said of other persons involved in making that decision.

The Ohio Employment Discrimination Studies

In the late 1980's, the Commission entered into a partnership with two professors from Wright State University, Dr. William Slonaker and Dr. Ann Wendt, that would last for nearly 30 years. In what would come to be known as the Ohio Employment Discrimination Studies, these professors compiled a collection of more than 10,000 employment discrimination claims filed in Ohio since 1985, creating a stratified random sample consisting of approximately 8% of all claims filed. Moreover, because Ohio's workforce, industries, and jobs essentially mirror those of other states, the results are generally reflective of the country as a whole.

Today, the Ohio Employment Discrimination Studies database represents the most complete database on employment discrimination in the country. The information derived from this database has provided the foundation for numerous inquiries, scholarly examination and timely, pertinent recommendations.

Overall, the studies have resulted in three, basic recommendations for preventing employment discrimination:

1. focus on training and selection of front-line supervisors – 55% of claimants identify their immediate supervisor as the source of the discrimination;

2. monitor every potential discharge situation (including higher-level review before discharge) – 53% of claimants have lost their jobs; and,

3. fill-in the blank – after analyzing more than 10,000 claims of employment discrimination, it appears that many are a result of a lack of communication. When employment related actions are taken without explanations to the affected employees, they tend to "fill-in the blank" often with it must be because I am Black, or a woman, or over 50 years of age, or pregnant, and so on.

The studies also provided the information for the first overview of employment discrimination in

restaurant industry (employing nearly 10% of workers in the country), and provided insights into claims filed against four types of restaurants: national or regional quick service, national or regional table service, local quick service, and local table service. While race was consistently the most common basis, sexual harassment claims in the restaurant industry were 69% higher as compared to other industries.

Left: Dr. Ann Wendt, Wright State University ; Right: Dr. William Slonaker, Wright State University

Along the same lines, women have always known they risk job loss and other forms of retaliation if they report sexual harassment. Using information provided through the studies, however, that risk was determined to be 47% – that is, nearly half of all women report retaliation after complaining about sexual harassment in the workplace. In fact, over 60% of those women who experienced retaliation lost their jobs, and 13% experienced some form of physical aggression. The next highest rate of retaliation was 14% for both race and gender claims.

One possible explanation for the significant difference is that sexual harassment is fundamentally different from other forms of discrimination. In all others, the victim is rejected by the person discriminating. In sexual harassment, the victim is rejecting the person discriminating (along with that person's sexual overtures). There appears to be an urgent need to retaliate and thus turn the tables back to the typical pattern of rejection.

One of the more pertinent findings made as part of the studies was the glaring discrepancy between equal opportunity in hiring practices and termination. For many years, employers had been urged to monitor racial minority hiring practices (the "front door"), and as a result many did, in fact, make

employment opportunities available to all qualified applicants, regardless of races. However, the new problem, based upon information gleaned from the studies, is the "back door." It was determined that African American male claimants have a higher chance (53%) of losing their jobs during the first year of employment, than do other male claimants (32%). In other words, employers successfully recruit and hire African American males, but then their supervisors devise ways to of get rid of them.

Perhaps the most troubling revelation of the studies, however, was the degree of discrimination practiced upon women who become pregnant during their employment. A comparison was conducted of discrimination claims filed by women who went on medical leave due to pregnancy and those who took medical leave for other medical reasons. The results, to say the least, were stark: pregnant women had a 1,150% higher risk of not being returned and thus losing her job, demonstrating the entrenched bias against pregnant females in the workplace.

"The Ohio Civil Rights Commission is embarking on its second quarter-century with a challenge that duplicates the first. The Commission will continue to address old as well as new issues as they arise, with the high hope of being able to effectively recommend changes that will ensure the rights and dignity of all persons, and without being abridged by those who serve in positions of power."

Robert D. Brown,
Executive Director, 1984

* * *

VI

A New Civil Action and Personal Liability for Managers and Supervisors

"A majority of this Court have, time and time again, found that there is no place in this state for any sort of discrimination no matter its size, shape, or form or in what clothes it might masquerade."

Justice Andrew Douglas, 1999

A Private Civil Action for Damages

The new decade began with a significant change to the enforcement framework of the state's anti-discrimination laws. Up to this time, it was widely accepted that, except for age discrimination, employment discrimination claims needed to be brought to the Ohio Civil Rights Commission as the administrative body created to investigate such claims. This all changed in 1991 when the Ohio Supreme Court issued its decision in *Elek v. Huntington National Bank*.

> "
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> *As the Ohio Civil Rights Commission enters its fourth decade of service on behalf of all Ohioans, the issue of discrimination, unfortunately, remains an evil and ever-growing presence in this American society."*
>
> **Joseph T. Carmichael**
> **Executive Director, 1991**

The issue in the *Elek* case centered around a little-noticed amendment to Chapter 4112 that eliminated the provision making certain violations of that chapter a third degree misdemeanor and replaced it with a provision subjecting any person who violates any section of that chapter to a civil action. The Court, rejecting arguments that this amendment applied only to a few specific types of actions, held that a civil action for damages or injunctive relief was available to remedy any form of discrimination prohibited under Revised Code Chapter 4112.

A strongly voiced dissent, however, argued that the decision "guts the administrative scheme established to handle discrimination claims and discards the expertise that the Ohio Civil Rights Commission has developed over the past thirty years," labeling it the "Full Employment Act for Lawyers."

The unanswered question immediately following the decision in *Elek* was the applicable statute of limitations, since the provision specifically authorizing the civil action did not reference a limitations period. The Ohio Supreme Court answered this question two years later in *Cosgrove v. Williamsburg of*

Cincinnati Management Company, holding that statute of limitations for filing a private action was six years. This, it is of interest to note, is significantly longer than the 6-month period for filing an employment discrimination charge with the Commission.

A subsequent unanswered question—whether punitive damages could be awarded in a civil action—was answered in the affirmative when, in 1999, the Ohio Supreme Court decided *Rice v. Certainteed Corporation*. In holding that punitive damages could be awarded, the Court took note that Chapter 4112 possesses a deterrent component concerned with preventing socially noisome business practices, that is, discrimination.

Despite several efforts over the years to legislatively overrule the *Elek* and *Cosgrove* decisions, they remain the law to this day. Moreover, these decisions did not have the predicted impact of weakening the Commission's enforcement role and authority, although no record is kept of the number of civil actions filed that bypass the administrative process.

The Bona Fide Occupation Requirement

Since its creation, the state's anti-discrimination provision contained an exception for certain discriminatory employment practices when based upon a bona fide occupation qualification. It was not until more than 30 years later that this provision would be addressed by the Ohio Court. The case, *Little Forest Medical Center v. Ohio Civil Rights Commission*, involved a hospital's gender-based policy of hiring only females as nurse's aides.

In its analysis of the bona fide occupational qualification exception, the Court at the outset recognized that this defense, inasmuch as it constitutes an exception to the public policy embodied in Chapter 4112 as a whole to eliminate discrimination, must be construed narrowly. This defense, moreover, requires the employer to initially demonstrate that the hiring criteria utilized involve the "essence" of its business, and that it had a factual basis for believing that all or

substantially all members of the excluded gender would be unable to perform safely and efficiently the duties of the job involved, or that it is impossible or highly impractical to differentiate the qualified from the unqualified in a nondiscriminatory manner.

Expanding Fair Housing Protections and Enforcement

In 1992, the state's fair housing law was once again amended, this time with the enactment of House 321 by the 119th General Assembly. This legislation made several significant changes to the fair housing law. As was the case a few years earlier, this legislation was sponsored by Representative Vernon L. Sykes of Akron.

The most significant change implemented by this legislation was the addition of a new class of persons protected from discrimination in housing. This new class, familial status, protected persons from discrimination due to the presence of a person under 18 years old living with a parent or guardian, as well as a person who is pregnant or in the process of securing legal custody of a person under 18 years old.

> *"Discrimination in American is not as blatant in most cases as in the early years of the civil rights struggle. Rather, its practice has become sophisticated, technical, frequently masked in disguise. But it is there, and it is increasing."*
>
> **Joseph T. Carmichael**
> **Executive Director, 1992**

The protections already afforded to persons with handicaps were expanded in several important ways. To begin with, the definition of handicap was also modified to include not only persons with a physical or mental impairment that substantially limits one or more major life activities, but also persons with a record of a physical or mental impairment and persons who were regarded as having a physical or mental impairment. In other words, the new law protected persons with an actual disability, persons with a

record of a disability, and persons who were mistakenly perceived as being disabled.

Additional changes relating to handicap discrimination specifically made it an unlawful discriminatory housing practice to do any of the following:

- discriminate in the sale or rental of housing accommodations on the basis of a handicap of the buyer or renter, a person residing with the buyer or renter, or a person with whom the buyer or renter associates;
- make any inquiry of a buyer or renter to determine the existence of, or the nature or severity of, a handicap;
- refuse to permit, at the expense of a person with a handicap, reasonable modifications of existing housing accommodations that are occupied or to be occupied by the person with a handicap, if the modifications may be necessary to afford that person full enjoyment of the housing accommodations; and
- refuse to make reasonable accommodations in rules, policies, practices, or services when necessary to afford a person with a handicap equal opportunity to use and enjoy a dwelling unit, including associated public and common use areas.

Perhaps the most significant change relating to handicap discrimination was the enactment of a provision to ensure that the design and construction of new housing accommodations were accessible to and usable by disabled persons. Under this new provision, it was an unlawful discriminatory housing practice to fail to design and construct covered multifamily dwellings for first occupancy on or after June 30, 1992, in accordance with the following requirements:

1. the dwellings must have at least one building entrance on an accessible route,
2. the public use areas and common use areas of the dwellings must be readily accessible to and usable by handicapped persons,

3. all the doors designed to allow passage into and within all premises shall be sufficiently wide to allow passage by persons who are in wheelchairs,

4. all premises within covered multifamily dwelling units must contain an accessible route into and through the dwelling,

5. all light switches, electrical outlets, thermostats, and other environmental controls must be in accessible locations,

6. the bathroom walls must contain reinforcements to allow later installation of grab bars, and

7. the kitchens and bathrooms must be designed and constructed in a manner that enables an individual in a wheelchair to maneuver in those rooms.

With respect to fair housing enforcement, this legislation expanded the tools available to, as well as the damages that could be sought and awarded by, the Ohio Civil Rights Commission. As an administrative agency, the agency's authority to award punitive damages was raised from five thousand dollars to ten, twenty-five or fifty thousand dollars, depending upon whether previous discriminatory housing practices had been committed.

"Making the work, play and living environs more amenable to the needs of persons with disabilities will enable them to lead fuller, more active and productive lives in the American society."

Joseph T. Carmichael
Executive Director, 1993

The legislation also ensured the right to have a jury trial, and also provided the parties to an administrative complaint pending before the Commission with the right to elect to have the administrative proceedings addressed in a civil action. Along the same lines, the Commission was also empowered to seek temporary or permanent injunction or a temporary restraining order. Moreover, the agency could do so even prior to conciliation efforts or the issuance of a formal complaint.

While not direct self-initiation

authority, moreover, it is worth noting that the Commission was empowered to undertake on its motion investigations of problems of housing discrimination. The authority to independently investigate housing discrimination had been something sought by the agency for many years.

The passage of this legislation was the subject of a contentious legislative debate, though not directly related to fair housing. The debate centered around an effort to legislatively overrule the Ohio Supreme Court's decision in *Elek v. Huntington National Bank*. The proposed amendments to the legislation would require employment discrimination victims to first bring their claims to the Ohio Civil Rights Commission. The Commission would then determine whether probable cause exists to believe that the law had been violated. If, however, the Commission determines there is no probable cause, victims could not file a claim under the state law.

The proposed amendments, of course, would have struck a significant procedural change, because at that time (and to this day) the victim of a discriminatory employment practice can file a charge with the Commission, commence a civil action in state court, or both. Representative Sykes, however, made clear that there was no middle ground and urged defeat of the legislation if the proposed amendments were not removed, stating that he "would rather let the bill die than pit civil rights law in employment against those in fair housing." This was a bold move given that the state stood to lose substantial federal funding if the changes to the state's fair housing law were not enacted.

At the end of the day, though, all employment-related provisions were removed, the legislation was passed, and the laws were brought into substantial equivalence with the federal fair housing law.

Although unusual in a state ordinarily lacking any detailed legislative history, the intent underlying this legislative enactment was extraordinarily clear. The legislation, House Bill 321, was declared to be an emergency measure necessary for the

immediate preservation of the public peace, health and safety, and stated that "immediate action is required in order for Ohio's Fair Housing Law to achieve substantial equivalency with the federal Fair Housing Act." This legislation likewise stated that not amending the state's fair housing law would result in a withdrawal of certification of substantial equivalence "and a loss of eligibility for at least 700,000 in federal funds for fair housing investigation and enforcement in Ohio."

Ambiguities in Back Pay Resolved Against the Discriminating Employer

In 1994, the Ohio Civil Rights Commission won a significant legal battle for the victims of discrimination, ensuring that they receive back pay to the fullest extent allowed by law. In *Ohio Civil Rights Commission v. Ingram*, the issue before the Ohio Supreme Court involved back pay—how it should be calculated and whether it should be offset by unemployment compensation or similar benefits. The Court held that interest should begin to run on a back pay award from the time at which the party was discriminated against, in order to restore victims to the economic they would have been in had no discrimination occurred. To do otherwise would in effect give the discrimination employer an interest-free loan until the back pay award is finalized in some official determination. Any ambiguities in the amount of back pay to be awarded, moreover, should be resolved against the employer.

As for unemployment compensation benefits, the Court further held, to allow these benefits to be deducted from a back pay award would serve only to reduce the deterrence against discriminatory conduct while conferring no gain upon the victim. The risk of over- or under-compensation, the Court explained, should be borne by the perpetrator of the discrimination, not the victim.

Disability in Higher Education

While not a source of a large number of charges, the statutory prohibition against discrimination on the basis

of handicap in higher education came to the forefront in *Ohio Civil Rights Commission v. Case Western Reserve University*. In this novel case, a blind college student sought admission to medical school, but her application was denied. The reason for the denial was the necessity of observation in medical education and the inability to accommodate the student inability to see.

In ruling against the blind student, the Court held that an otherwise qualified handicapped person is one who is able to safely and substantially perform an educational program's essential requirements with reasonable accommodation, and that an accommodation is not reasonable where it requires fundamental alterations in the essential nature of the program or imposes an undue financial or administrative burden. In the Court's view, there was insufficient evidence to support that the student could be accommodated, and that the accommodations sought would have worked a fundamental change to the medical program.

The dissenting opinion, in the case, however, strongly disagreed with the determination that the accommodations were not reasonable, arguing that the evidence—particularly a blind student at another university who attended and successfully completed medical school years earlier—was sufficient to support the determination of the Ohio Civil Rights Commission that the blind student should have been admitted and accommodated in this case.

> *"If a particular professional door is to be closed to an entire class of people, it should not be done in such a cavalier manner. The decision as to whether a medical school may deny admittance to the blind is of great social importance. It cannot be made without a complete and careful consideration of all available information concerning possible modifications and accommodations, as well as the capabilities and limitations of the blind."*
>
> **Justice Alice Resnick, 1996**

The dissenting opinion further argued that in order to give

meaningful consideration to whether reasonable accommodations would enable a blind student to effectively complete the medical school program, the medical school must explore the nature and benefit of available methods of accommodating the blind, something that did not happen in this case.

Mediation and Alternative Dispute Resolution

In 1998, the Ohio Civil Rights Commission implemented a pilot mediation program. In preparation for this pilot program, several employees received forty hours of classroom instruction in alternative dispute resolution techniques from Capital University Law School. Shortly thereafter, the Commission began offering mediation on a limited basis to the parties involved in housing discrimination charges.

The mediators provide a structured process allowing the parties to explain their positions, and then conduct private caucuses in order to assist them in reaching a mutually agreeable resolution. The mediators do not offer advice or suggestions as to whether the law has been violated, nor do they express an opinion as to whether one party is right or wrong.

"The expertise and dedication of our staff is reflected in the superior work product produced on a daily basis. Our partners have lauded our proactive relationships as we work together to fulfill our mission."

Francis W. Smith
Executive Director, 1998

Due to the initial success of the pilot, the Commission expanded the mediation program and began offering mediation in all discrimination charges. The expanded program was equally successful: 400 cases were submitted for mediation with a resolution rate above 70%. As a result, the mediation program was made a permanent component of the agency's administrative process, and quickly proved to be a very successful program.

In 1999, the mediation program received a "Best Practices" award

from the U.S. Department of Housing and Urban Development for its mediation program, selected from among 3000 entries from across the country.

Today, the mediation program continues to see dramatic success. The mediators consistently resolve upwards of 80% of the cases submitted for mediation, and usually do so within 30 days after the discrimination charge is filed.

Commission "All Hands" Meeting, 1999

Personal Liability of Managers and Supervisors

As the decade began with a significant change to the law with the decision in *Elek v. Huntington National Bank*, so it would end on a similar note. In 1999, the Ohio Supreme Court issued its decision in *Genaro v. Central Transport, Inc.*, and forever changed the landscape of employment discrimination enforcement.

The issue in *Genaro* concerned the liability of individual supervisors and managers for discriminatory employment practices. Given the Court's inclination to interpret the state's anti-discrimination law in a manner consistent with its federal counterpart, the issue seemed to be one of easy resolution. Under federal law, individual supervisors and managers could not be held liable for discriminatory employment practices.

In a surprising decision, however, the Ohio Supreme Court declined to follow federal precedent, explaining that the definition of "employer" under Chapter 4112 was on its face much broader in scope than the definition of that term under federal law. Based upon the state definition and its prior decisions on workplace discrimination, the Court held that individual supervisors and managers are accountable for their own discriminatory conduct occurring in the workplace and may be held jointly and/or severally liable with the employer for their discriminatory conduct.

It is safe to say that no decision in the history of Chapter 4112 did more to capture the attention of managers and supervisors than the *Genaro* decision.

To be certain, the 1990s proved to be a challenging, but rewarding, year for the Commission. Not only did the agency win significant cases in the courts, it also reached a highpoint in investigations, at one point receiving over 6,200 discrimination charges. Even greater challenges, though, awaited the Commission as it entered the new millennium.

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VII

Redesigned and Ready To Face the New Challenges of a New Century

"Now is not the time to rest on our laurels, lest we risk the re-emergence of the very complacency that permitted bigotry, prejudice and intolerance to flourish in the first place. Now is the time to reaffirm our commitment to civil rights, to fortify our efforts, to remain vigilant in our beliefs, to deliver the promise of equal employment opportunity, and to achieve the dream of a world free from discrimination for future generations. The Ohio Civil Rights Commission stands ready to deliver the promise and achieve the dream."

G. Michael Payton, Executive Director, 2005

The Workforce Redesign Initiative

As the Ohio Civil Rights Commission began its fifth decade, it laid the foundation a major re-engineering of its investigative process. Through a first-of-its-kind grant from the Ohio Department of Administrative Services and the Ohio Civil Service Employees Association, the Commission implemented the Workforce Redesign Initiative in 2000. The purpose of this joint labor-management initiative was to examine and redesign every process and system used by the agency in fulfilling it legislative mandate to identify, remedy and eliminate all manner of unlawful discriminatory practices.

After intensive examination and analysis, the Commission implemented its redesigned (and streamlined) investigative process. Commonly referred to as "The Task Force Initiative," this process uses a team concept to evaluate the merits of a discrimination charge before the investigation is even commenced. This preliminary evaluation allows the OCRC to expend only the amount of time and resources necessary to resolve that particular charge, which stands in stark contrast to the agency's past practice of conducting "one-size-fits-all" investigations.

With this new process, the agency could more efficiently maximize its staff and resources, a particularly timely development given the series of budget reductions that would be endured by the Commission over the next several years, taking it to levels of funding and staffing not seen for decades.

Sexual Harassment

In the first of several significant decisions issued in this decade, in 2000 the Ohio Supreme Court held in *Hampel v. Food Ingredients Specialties* that harassment on the basis of sex was a prohibited form of sex discrimination. In doing so, the Court approved the two general theories for establishing sexual harassment—*quid pro quo* and hostile work environment.

The Court further held that men as well as women were protected from sexual harassment in the workplace, even when the harasser was also a man. Moreover, harassing conduct

that is simply abusive, with no sexual element, can still support a claim for hostile environment sexual harassment if it is directed at the victim because of his or her sex.

> *"There are many, often overlapping, motivations for sexual harassment in the workplace, any one of which can be manifested in conduct as varied and multiform as human behavior itself. Not surprisingly, abusive sex-based conduct is frequently non-sexual or facially neutral in content or appearance. Any presumption that discriminatory conduct based on sex will necessarily announce itself as such would not only be unwise, but would create a means to circumvent the very statutory prohibition against it. The wisdom of rejecting a rule that excludes consideration of so-called nonsexual instances of harassment is reflected not only in the fact that courts generally refuse it, but also in the broad range of behaviors that comprise the sexual harassment claims in those cases."*
>
> **Justice Alice Robie Resnick,**

The Farmers Insurance Case

In 2001, the Ohio Civil Rights Commission entered into the largest housing discrimination settlement up to date when it settled a case against Farmers Insurance Company for 4.3 million dollars. The Commission alleged that Farmers Insurance used insurance underwriting policies that, in effect, discriminated against minority homeowners and minority neighborhoods. These policies included denying better insurance coverage to older homes and homes with low fair market values, which resulted in a negative and disproportionate impact on minority homeowners and minority neighborhoods. G. Michael Payton, Executive Director stated that "insurance companies cannot have policies that exclude customers based on their race or the racial composition of their neighborhood."

Under the terms of the settlement, Farmers Insurance agreed to advance 1 million dollars in grants and 2 million dollars in low-interest loans for community-based programs to build, repair, improve, or

remodel dwellings throughout Ohio, as well as pay other damages and fees. Farmers Insurance also agreed to adopt a fair-housing training program, to state its commitment to equal opportunities for insurance in its promotional materials, and to increase marketing and advertising in predominantly minority communities throughout Ohio.

A Process for Diversity

In partnership with the Michigan Department of Civil Rights and the U.S. Equal Employment Opportunity Commission, the Ohio Civil Rights Commission hosted "A Process for Diversity," the agency's first forum on best practices. The purpose of this forum was to recognize those businesses valuing and promoting diversity in their organizations on a daily basis.

Best Practices Forum, 2003

This forum was attended by over 140 executives and human resources professionals from Ohio and Michigan, all of whom had gathered to hear about creative and workable programs and solutions in addressing diversity issues and concerns. Several CEOs and other top executives provided insightful information reflecting the highlights and successes of their respective diversity programs. One of the key speakers at this forum described it as "proactive approach that is very meaningful to the business community," further stating that he was encouraged by this kind of educational outreach program.

In 2003, the Ohio Civil Rights Commission sponsored a fair housing conference entitled "The Midwest Fair Housing Summit: A Call to Ohio."

The Fair Housing Summit, 2003

Over 200 participants from across the country traveled to Ohio to attend this two-day conference.

They keynote address was delivered by Carolyn Y. Peoples, Assistant Secretary for the U.S. Department of Housing and Urban Development. She emphasized her agency's commitment to increase homeownership, particularly for minorities, and highlighted other fair housing initiatives.

The conference also provided numerous workshops on such varied topics as accessible design and construction, insurance redlining, predatory lending and the use of credit scoring in the homeowners insurance industry.

That same year, the Commission also held a series of community forums entitled "Know Your Rights" in partnership with the Columbus Urban League, the Columbus NAACP and the Columbus Community Relations Commission. The focus of these forums was discrimination in places of public accommodation and predatory lending.

The Diversity Bear

After decades of work directed toward spreading the message of valuing diversity amongst Ohio's schoolchildren, the Ohio Civil Rights Commission introduced the newest member of its education staff, the Diversity Bear.

The Diversity Bear will assist in promoting Commission's educational program, "Valuing Diversity: Learning and Living Together," as staff members visit elementary schools throughout the state. This program is designed to teach students to live and work in a society inclusive and respectful of differences.

The Diversity Bear, Commissioners and Governor Bob Taft

Promoting Good Credit and Homeownership

In 2005 the Ohio Civil Rights Commission and the Ohio Commission on Hispanic/Latino Affairs sponsored a series of community trainings for Ohio's Hispanic/Latino leaders and service providers entitled "Promoting Good Credit and Homeownership." The trainings will begin in April, during National Fair Housing Month, and run through May in Columbus, Cleveland, Lorain, Youngstown, Toledo and Dayton.

The trainings, held in Columbus, Cleveland, Lorain, Youngstown, Toledo and Dayton, focused on fair housing rights, understanding credit and debt, and preparing for homeownership. The trainings were conducted by local consumer credit counseling organizations, community advocacy groups, as well as personnel from the Commission and its partner agency, and were designed to provide the attendees with vital information and resources to assist their members and constituents on how to avoid predatory lending practices and make good credit decisions.

National Recognition of the Mediation Program

The Ohio Civil Rights Commission's mediation program continues to play a key role in the agency's efforts to effectively and efficiently resolve hundreds of discrimination charges each year. Recognizing the accomplishments of the its mediation program, the Commission was invited to participate in a national conference sponsored by the U.S. Equal Employment Opportunity Commission for the specific purpose of providing guidance to other state civil rights agencies in developing programs providing mediation and other forms of dispute resolution.

Likewise, in 2005 the Ohio Civil Rights Commission became one of only a handful of state civil rights agencies that contracts with the federal government to mediate cases filed with the U.S. Equal Employment Opportunity Commission.

The Office of Special Investigations

In 2001, the Ohio Civil Rights Commission re-energized its enforce-

ment efforts with the establishment of the Office of Special Investigations. This office was created to oversee novel, complex, controversial and systemic cases of discrimination. Over the next several years, this office undertook investigations into some of the most monumental and complex cases to come before the agency.

One particularly controversial case involved a discriminatory job advertisement on a website operated by the Vanguard News Network, a hate/extremist group. The website, overrun with racial and ethnic slurs and other expressions of intolerance, posted an advertisement that read, "Racially conscious, master-degreed, white male… seeks position where he can think non-PC thoughts . . . Cleveland, Ohio, area but will highly consider relocation."

The Commission self-initiated an investigation of the advertising practices on this website, concluding that, while this "so-called" news organization had the right to espouse hatred and bigotry, it did not have the right to perpetuate or facilitate discriminatory employment practices.

Another equally controversial case involved a restaurant owner who placed a sign in his window stating "For Service Speak English." Surprisingly, this matter spurred a disturbing number of hate mail, much directed against persons who do not speak English or for whom English was a second language.

Sign displayed at the Pleasure Inn restaurant, 2005

The investigation determined that, in light of the clear illegality of outright refusal to serve, a restaurant which wishes to discourage minority customers must resort to more subtle efforts to dissuade . . . efforts such as slow service, discourteous treatment, harassing comments and gestures, or in this particular case a sign. The sign, and its message con-

ditioning service on language, had the purpose or effect of discouraging patrons from entering on the basis of national origin. Ultimately, the restaurant owner agreed to remove the sign.

Of the cases handled by the Office of Special Investigations, however, none better epitomized the entrenched, institutionalized nature of discrimination than the case that arose outside of the City of Zanesville. Numerous residents living just outside the city limits complained that they had been denied the privilege of public water service because they are Black and reside in predominantly Black neighborhoods.

After an extensive investigation, the Office of Special Investigations determined that three public water authorities were responsible for denying water service to these residents. Following this determination, the City of Zanesville began a public works project to provide water services to the neglected areas. Today these residents have running water. In addition, a subsequent fair housing lawsuit resulted in a jury verdict of over 11 million dollars in damages for these residents.

"Discrimination is a subtle practice, one prevalent throughout our society, but often difficult to detect. With the problems of predatory lending and insurance redlining in our communities, racial discrimination and sexual harassment in our workplaces, religious and ethnic intolerance in our schools, and accessibility for persons with disabilities in housing and places of public accommodation, continually improving and refining our investigative and enforcement techniques becomes all the more important."

Aaron Wheeler, Sr., Chairman 2004

Surveying New Problems of Discrimination

During this decade, the Ohio Civil Rights Commission refocused its efforts on studying the problems of discrimination. In 2003, the agency oversaw a study of the use of individual credit scores to determine the cost and availability of homeowner's insurance. Insurance companies in the state had increasingly used consumer credit information – in the form of insurance credit scoring – to

determine if they will offer a consumer a residential property insurance policy and how much to charge for the policy offered.

Based upon the information analyzed in the study, it was determined that that insurers' use of insurance credit scoring for underwriting, rating, marketing and payment plan eligibility very likely has a disparate impact on poor and minority populations in Ohio. Consequently, the use of insurance credit scoring makes insurance less available and more expensive for poor and minority populations in Ohio.

As a result of the work done by the Commission, the Ohio Department of Insurance issued new regulations on the use of insurance credit scoring. Among other things, these regulations prohibit any insurer from using a credit score as the sole basis for determining whether insurance would be made available or rate to be charged for insurance. The rates and rating plans using credit scores, in addition, must establish that credit scores used in underwriting or rating determinations are valid risk characteristics and are used in accordance with actuarial principles and standards of practice.

In 2007, the Commission conducted a similar study, this time examining the growing use of consumer credit report information to screen applicants for employment. The purpose of this study was to examine the manner and frequency that employers were using credit scores, whether the use of credit scores had a disparate impact on minorities, and whether there existed any correlation between a person's credit history and their job performance. In particular, the Commission was concerned that relying on a person's credit score places minorities at a significant disadvantage when seeking employment or other promotional opportunities.

The results of this study revealed that consumer credit reports were, indeed, a common tool used by employers when screening applicants for employment. Upwards of 60% of employers request background checks that include reviewing an applicant's consumer credit report. More troubling, however, was the finding that reliance on consumer credit reports in making hiring decisions is likely to have a disparate im-

"The Ohio Civil Rights Commission must and will remain steadfastly opposed to any effort to limit, restrict or repeal those rights afforded to every Ohioan to be free from all forms of invidious discrimination in the workplace, and to seek full and complete redress for the injuries suffered at the hands of bigotry, prejudice and intolerance. There is no doubt in my mind that this duty—this clear moral responsibility—runs through the heart and spirit of the Ohio Civil Rights Act, and that anything short of steadfast opposition is not only wholly unacceptable, but also a betrayal of those who fought so long, and sacrificed so much, to make equal employment opportunity a reality in this state."

Aaron Wheeler, Sr., Chairman 2005

pact on African-American and other minority job applicants. The study concluded that there existed a substantial and disturbing racial disparity with respect to who has "good" and who has "bad" credit. Making the finding of a racial disparity even more troubling, however, was the fact that no correlation could be established between credit ratings and job performance.

Based upon the findings of this study, the Ohio Civil Rights Commission issued policy guidance to employers on the practice of using of consumer credit report information in screening applicants. The Commission advised employers that, in light of the disparate impact that such a policy has minority job applicants and employees, consumer credit report information should not be used to screen applicants or make other employment-related decisions except when job-related and based upon a legitimate, and objectively verifiable, business necessity.

Racial Harassment in Housing, Retaliation and Standing

In what could only be viewed as a serious setback in the Ohio Civil Rights Commission's fair housing enforcement efforts, in 2008 the Ohio Supreme Court held in *Ohio Civil Rights Commission v. Akron Metropolitan Housing Authority* that a landlord may not be held liable under the state's fair housing law for

failing to take corrective action against a tenant whose racial harassment of another tenant created a hostile housing environment. While a landlord has the ability to evict tenants, the Court nonetheless concluded that the power of eviction alone is insufficient to hold a landlord liable for a tenant's harassing actions against another tenant.

Along the same lines, in what could only be viewed as a serious setback for all victims of employment discrimination, in 2007 the Ohio Supreme Court in *Greer-Berger v. Temesi* made it easier for respondents to bring legal action against a person who opposes discrimination. The Ohio Supreme Court held that when an employee claims that an employer's suit against the employee was filed in retaliation, the employer must be afforded the opportunity to demonstrate that the suit is not objectively baseless. Moreover, so long as the employer's lawsuit raises genuine issues of material fact, meaning the lawsuit is not "sham litigation," that lawsuit will be permitted to proceed in court (while the proceedings before the OCRC are stayed).

This decision, however, makes it very difficult in most cases for a former employee to prove that the employer filed a lawsuit for retaliatory reasons in violation of R.C. 4112.02 (I). As the dissenting opinion in that case explained, because a sham lawsuit is objectively baseless in the sense that no reasonable litigant could realistically expect success on the merits, it is difficult to see how any lawsuit filed by an employer who successfully defended a discrimination action falls within that category. The dissent concluded that this is a loose standard that will encourage employers to sue those employees who do not prevail on discrimination claims, a result that weakens the protection given under the statutes.

In another troubling case decided in 2008, *Chance v. Fair Housing Advocates Association*, the Ninth District Court of Appeals held that private fair housing organizations lacked standing to file claims under the state's fair housing law. Despite the fact that the standing of these groups is well-established under federal law, this appellate court reached a contrary conclusion. In

doing so, it reasoned that Ohio General Assembly could have provided for enforcement of the state's fair housing law by private enforcement agencies, and that decision not to do so meant that there is no need for private fair housing enforcement in Ohio.

Together, these and several other adverse court decisions once again put into jeopardy the status of the state's fair housing law as substantially equivalent to federal law, and once again threatened the state's eligibility for federal funding. At the time of this writing, legislative action to remedy these decisions is ongoing.

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