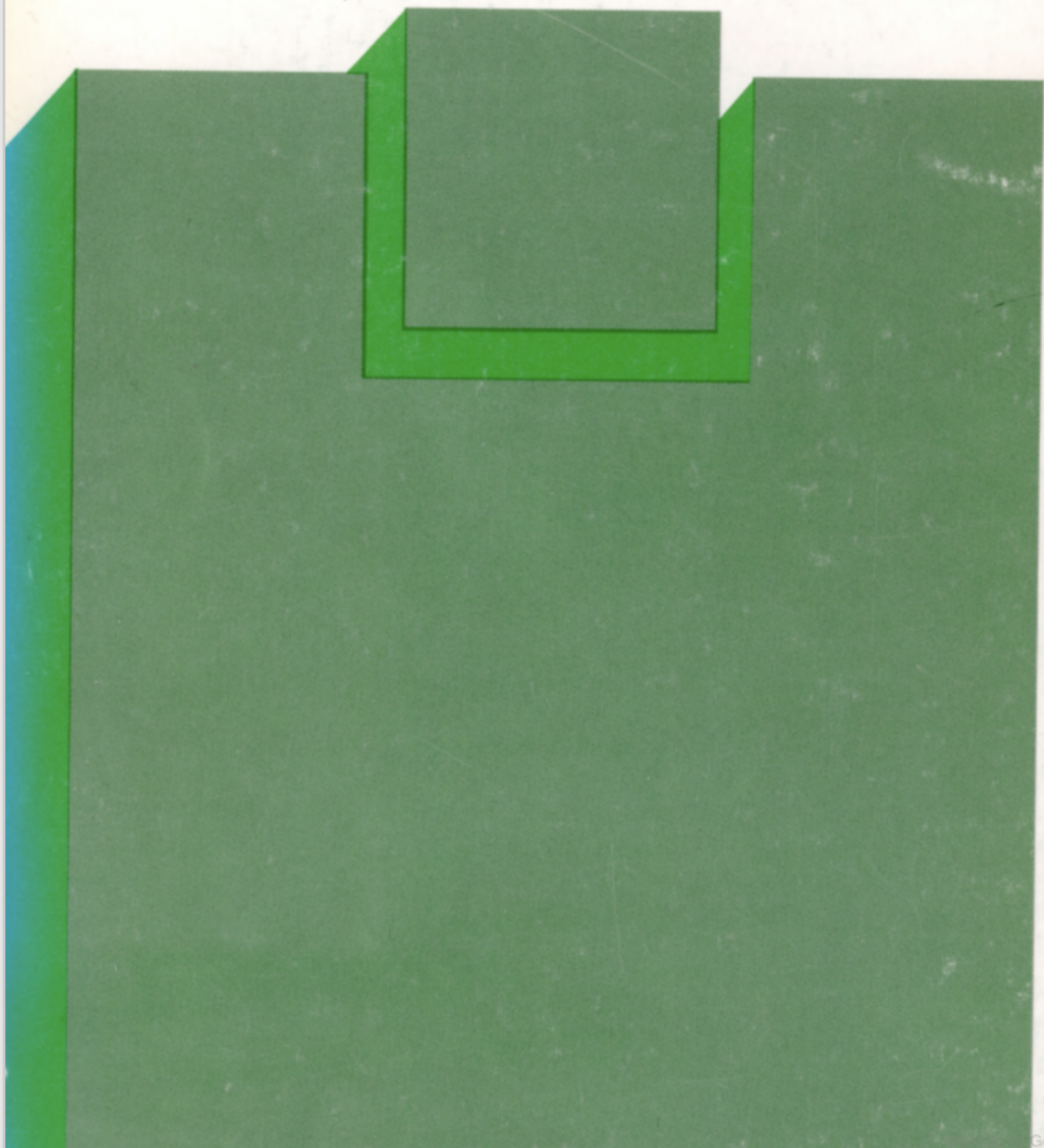


Affirmative Action In Employment in Higher Education

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RESPONSE OF MORDECA JANE POLLOCK

DR. POLLOCK. Thank you, Mr. Chairman, and distinguished members of the Commission. My name is Mordeca Jane Pollock. I am the university compliance coordinator for NOW. Being in the sex discrimination business, we run rather a large operation. I have a Ph.D. in French literature from Harvard University. I have been a member of the faculty at Brandeis University for 8 years. I teach French and French literature. I hold the rank of assistant professor.

Most important for our proceedings here is that I was in the unique position in 1973 to 1974 to be the affirmative action coordinator of that university and to devise the university's first revised plan for affirmative action, including availability, utilization, goals, timetables, and the rest; as the French would say, "the whole earth-quake."

My remarks will be addressed to the paper the members have before them, the paper of former Secretary Weinberger. My remarks are the result of a long process of evaluation by the National Organization for Women. And I must immediately say that we do not follow the easy instinct of kicking the Government in the teeth. We follow the justified

reaction of saying that the chief problem in affirmative action has been nonenforcement of Order No. 4 by the Office for Civil Rights of the Department of Health, Education, and Welfare.

I find it ironic that both in Mr. Holmes' presentation and in the paper of former Secretary Weinberger one-third of the paper is spent on outlining the regulations which HEW-OCR does not follow. And we have no assurance that it will follow them. All of us in sex discrimination organizations read with, I think, a feeling of encouragement and gratitude the Commission report dated 1975 and called *The Federal Civil Rights Enforcement Effort* (volume III). If you read pages 275 to 306 in volume III of the January 1975 Commission report, you read that HEW-OCR has not done its job in higher education affirmative action enforcement. And so I must say (and I regretfully have to leave the politeness of academic discourse for the first of several occasions, I'm afraid), when I hear somebody from HEW talk about affirmative action, I am reminded of the Watergate defendants piously defending law and order. It's just not sensible.

What has happened is that we are in the middle; we dumb women know that we are in the middle of a massive sidestep of the real problems in academic affirmative action and that what we are seeing is not Government enforcement but its permitting special pleading on the part of institutions of higher education.

Let's look at some of the arguments that we hear. If you go to the first No. 5, now look, HEW-OCR is very aware of the fact that any selection standard that has an adverse impact on women or minorities must be demonstrably proven necessary for a job.

Now, HEW talks about peer-group standards. Mr. Willie, Dr. Willie, yesterday showed us, demonstrated how dangerous relying on peer-group standards alone can be. I'm not going to go over that again. One of the peer-group standards that I hear the most about is "promise."

Senior members of the department get together and they evaluate the promise of the junior member. But "promise" is like the term "national security." Now, there is a valid national security interest, and I believe there is a valid standard of academic promise. But the words are used to hide more things than they are for anything else.

Now, peer-group standards, peer-group evaluation, cannot be the unique criterion for academic hiring. And HEW-OCR must step in on this. I will tell you why.

A very beloved and distinguished black feminist, who is my guru, my leader, and my role model, worked as a lawyer in EEOC for many years, was a freedom rider in the 1930s, has three law degrees, the highest, a doctorate of law from Yale, was turned down for graduate study by Harvard in 1944 because she was a woman. At Brandeis University we had a wonderful chance. This person was hired; there was a tenure evaluation, and the same person was turned down for tenure.

Do you know why? Because that person did not have a Ph.D. This was in the department of American civilization. Somehow, a black feminist with three law degrees, with elaborate experience in all kinds of civil rights law, could not be a professor of American civilization at a distinguished university because she did not have a Ph.D. So much for peer standards. Luckily we had an enlightened dean of faculty, who overturned the ruling of the committee and gave Brandeis one of its finest professors.

If you go to the second No. 5 of Secretary's Weinberger's paper, these are very encouraging words, I think you will all agree. The trouble is that up until the GAO report a few months ago, HEW did not take anybody to hearing, at least any of the higher education institutions. If even one of the number of "biggies" in the education field, the higher education field, had been taken to hearing, we would have at least gotten some spillover; but we got no spillover.

What happened instead was that, and I am going to change hats for a minute, the relative inaction of HEW-OCR has made of itself a notoriously paper tiger to the colleges and universities of this nation. So that when I was an affirmative action coordinator and, we at Brandeis, we met with representatives of HEW-OCR in charge of our plan, our university counsel said, "This one was the biggest pushover I have ever seen."

I think that HEW-OCR has demolished the credibility of the entire affirmative action program. And I am here to announce that NOW has sincere doubts about the affirmative action compliance program as currently instituted.

Let's focus on the other major argument that the former Secretary makes in his presentation: A lot of talk is given to the supply side. And, of course, if you read the arguments put out by opponents of numerical employment goals, they also emphasize the supply side.

The trouble is that (despite the remarks of my distinguished colleague) if you read those regulations, and at one time I knew them by heart, they have never placed a total emphasis on the demand side.

On the other hand, Order No. 4 specifically encourages you to look not only at those with the requirements (in this case, the required piece of paper) but at those capable of acquiring the expertise.

HEW had repeatedly ignored this, and now gets request after request saying, "Do you know of any research on the relationship between the Ph.D. requirements and college teaching?" "We don't know. If you do, tell us."

HEW has, however, accepted the Ph.D. standard despite the principle that if the criterion has an adverse effect on women and minorities, you have to validate it. HEW has not asked any of the universities to develop job-related qualifications. I say "job related." I want that underlined.

The other ironic thing—I can't tell you how stunned I am by the supply argument that we hear in the Weinberger paper, which was just repeated—HEW itself controls most of the supply that it accepts. Who the heck enforces or is supposed to enforce Title VI and Title IX?

You see where I am going? I think it was *Adams v. Richardson*; I am not a lawyer. I know that a bunch of us feminist groups or “outside feminist agitators” got together and took former Secretary Weinberger to court. The civil rights enforcement, the Commission report, everybody tells us over and over again that HEW itself is responsible for the situation it is now criticizing.

For example, with regard to the supply situation, let's look at Title IX. I won't even bother to talk about the delay in issuing the implementing rights. In 1973 HEW-OCR conducted only eight Title IX reviews of the 2,700 institutions of higher learning that come under Title IX. (That is volume III of the *Federal Civil Rights Enforcement Effort—1974*, page 369.)

So, even if we accept the Ph.D. as a criterion, we have to place a lot of blame for the supposed unavailability of minority people and female people squarely in the lap of HEW-OCR. Now, the supply argument is vicious, and just because we are “dumb” women doesn't mean we know it isn't vicious.

The supply argument gets away from the real issue: Who has the power in academia for academic hiring? It is the senior members, the tenured members of several university departments. The power in academia is not everywhere and nowhere, like Pascal's “hidden god.” We know where it lies.

So that what HEW does, has done, and what the former Secretary has done by focusing on supply is to sidestep the issue of who does the hiring and what type of hiring decisions are made, and what type of an archaic, unfair system has prevailed.

Now, this sidestepping is breathtaking. I can only admire it. But it is obfuscatory, dilatory, and if you are minority or female and looking for a job and you have to come up against this kind of discrimination, this sidestepping is not esthetically pleasing.

What has been going on, and what we are going to see in the Department of Labor hearings that have been continued (and that were sprung on women's groups in August), is that special pleading is going to be accepted for institutions of higher education. Somehow, we academics are morally superior to the rest of the world and, therefore, somehow, our criteria are so subtle that you can't touch them. You are violating the first principle of civil rights. You have got to challenge special pleading.

You have got to challenge these grounds of uniqueness. What has happened is that certain Ph.D.s have “done a number” on the public. Somehow, getting a Ph.D. is the equivalent of moral excellence, and so the professors who have been screaming against goals will benefit from

the same type of aura of morality that physicians benefit from those TV shows. And, of course, the malpractice awards get higher and higher.

What I am saying here, what I have been trying to say, is that special pleading must not be accepted on the part of institutions of higher education. It is the argument that, if you let one strand go, the whole net will go. Uniqueness and subjectivity must not be accepted on the part of higher education institutions, and we must demystify the hiring process of higher education institutions.

There is some good stuff in the HEW report. I agree that the analyzed data has to be simplified. The trouble is that I am unsure as to what is going to come out of the report. I think that NOW would favor the reporting of dynamic data—turnover, hiring, promotion—and that these should be included in one standardized reporting form for all sorts of people who have to deal with compliance agencies, because that was one of my chief headaches—having to fill out the same thing 15 ways.

HEW pleads for more discretion (Weinberger paper). The problem, for a person like myself, and I think for many other civil rights advocates, is that HEW has not applied its discretion in the past. It has not applied its discretion to enforce Order No. 4. Yet, it pleads for more discretion. I think this pleading is incredibly ironic. I think it comes from the head of an agency, the dilly-dallying of which amounts to the abuse of discretion, and therefore, I am going to have to say something not nice, unacademic, about HEW-OCR. I am put in mind of the old religious song, "Which Side Are You On?" Thank you.

CHAIRMAN FLEMMING. Thank you very much. At this point we will be happy to get Mr. Taylor's reaction.