FEDERAL HIGHER EDUCATION PROGRAMS
INSTITUTIONAL ELIGIBILITY

HEARINGS

BEFORE THE

SPECIAL SUBCOMMITTEE ON EDUCATION

OF THE

COMMITTEE ON EDUCATION AND LABOR
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PART 2A

CIVIL RIGHTS OBLIGATIONS

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CARL D. PERKINS, *Chairman*

Mr. O'HARA. Our next witness is Mordeca Jane Pollock representing the National Organization for Women.

We would very much like to hear your testimony.

STATEMENT OF MORDECA JANE POLLOCK, NATIONAL ORGANIZATION FOR WOMEN

Mr. O'HARA. Without objection, your statement will be printed in full at this point in the record.

You may proceed.

Ms. POLLOCK. Thank you.

I am Mordeca Jane Pollock. I am a member of the Employment Compliance Task Force of the National Organization for Women.

I must say and assert that despite the extensive legislation on the books, and despite certain agency programs such as that of the Office for Civil Rights of HEW, discrimination continues to be rampant in American colleges and universities. It continues to be rampant in the United States, but most especially, I think, in our institutions of higher education.

In the past 2 years the position of women has not improved in any significant way except perhaps in admission to law and medical schools, where there has been an improvement I am very happy to say.

The percentage of women on college faculties really has risen less than 1 percent and we witness a sort of academic musical chairs where the proportion of women on college faculties has decreased slightly and the proportion of women on university faculties—that is to say faculties which offer graduate education—has increased slightly.

We see the usual triangular phenomenon with women becoming rarer and rarer as posts become more and more prestigeous. You know that. There hasn't been any real change in the stratosphere. Men still hold 90.2 percent of the full professorships. That is all in the record.

There are a number of problems with affirmative action. First of all, colleges and universities will very often adhere to the letter of the law and they will violate the spirit. Affirmative action people around the country in institutions of higher learning, find ourselves in the somewhat anomalous situation of explaining to the department heads what the laws require of them. We are teaching people how to go through the steps to have legally justified behavior but not to end discrimination.

For example, we see job offers that are clearly not serious. I introduced some testimony on that.

We have also come to advise women who wish to file complaints with HEW to be ready for severe harassment. We are telling people, don't file individual complaints. You will be fired. Your salary will get cut. We have documented time and time again instances of harassment.

Unless a woman is independently wealthy and has an impeccable moral record and nerves of steel, she shouldn't file.

In the days previous, we heard people from institutions of higher education argue that institutions are being forced to hire unqualified and minority members and women. That isn't true. We have also heard that there are no qualified women—this is again untrue.

You set your numerical goals on what is in the work force. You are not asked to bleed a stone. You have heard others testify: there are plenty of qualified women on the scene. We hear university officials tell us that affirmative action endangers quality. Yet, every time HEW or EOC has gone into investigate university practices—we found again and again that universities are evaluating Anglo males at the expense of better qualified minority people or female people.

Another thing we found is that the universities are resisting, I think, what is a reasonable scrutiny of their hiring standards. The hiring standards in most universities—if you are in affirmative action you know this—have not been rationalized or validated.

What is the relationship between publishing 25 articles of four pages each and teaching freshman chemistry? Standards haven't been validated or rationalized. Rarely have they been set out. They certainly haven't been weighted against one another.

What is the relative weight of publications versus teaching performance versus service? (We heard about the industrial model. Dr. Sandler put that myth away.) The problem is not in the law. The problem is not that they endanger the quality of institutions. They don't take away academic freedom. Academic freedom doesn't mean freedom to deprive people of their rights.

The problem is that these affirmative action obligations of university and college contractors must be maintained, must be retained.

If this Congress wishes to aid more Americans in securing their constitutional rights, then not only must we maintain these requirements but make these requirements effective. We have to strengthen their enforcement. That, I think, is where the problem lies.

The problem is not so much in forcing universities to lower their standards. The problem is enforcing the law. The problem is in protecting people's rights, protecting those who have historically been discriminated against. The provisions of the Executive orders and the laws have not been effective simply because the Federal agencies in charge of enforcing them have not imposed real sanctions on offenders, on people who deprive other people of their constitutional rights.

Again, Dr. Sandler spoke of this.

Let's take the example of EEOC, if you will. It has been 2 years now that the EEOC has enforcement powers over private institutions of higher learning. In 2 years EEOC has not taken an institution to court. NOW has again and again gone to EEOC and said please do

your job. That is what you are funded and mandated to do. NOW has said why don't you incorporate institutions of higher learing into your tracking system?

I am sure you know the EEOC tracking system establishes and follows very high impact targets for litigation. The system has been very effective. EEOC doesn't seem even seriously to have considered the proposal. It is "researching it." Whatever that means.

There is a very important and potentially precedent setting case under title VII against the University of Pittsburgh Medical School. NOW again has repeatedly urged EEOC to intervene in this. It is Sharon Johnson versus the University of Pittsburgh. EEOC has not responded with action to our requests.

When Congress voted up the amendments to title VII in 1972, Congress made a special point of including institutions of higher education. EEOC isn't doing its clearly mandated job. The legislative history of title VII and its amendments point to this. EEOC owes explanations to this Congress, that funds it.

The Department of Justice has not been much better. That is to say, it has been even worse. Justice has authority under title VII to take people to court. It has never done this, sought to eliminate employment discrimination in an institute of public education.

The HEW Office of Civil Rights makes the other agencies look energetic. HEW has done some terrible things. It lulled colleges into complacency by saying OK, we approve your affirmative action plan. Then 2 months later EEOC came out with a finding of probable cause for sex discrimination.

I think this is an irresponsibility to the people who pay for that agency.

HEW, as you know, has responsibility for enforcing Executive Order 11246. It hasn't yet issued contract compliance regulations. It is supposed to do that. It has an informal set of guidelines but it has no regulations that we published or commented upon.

In 1964, the Civil Rights Act was passed. It has been 10 years since 1964. Still we haven't seen any HEW-issued guidelines on title VI which prohibits discrimination against minority people in educational institutions.

In 1972, title IX of the higher education amendments was passed. It took 2 years before even proposed guidelines were set out. Then HEW declined to take on any complaints under title IX on the grounds that the implementing regulations haven't been issued. Of course they haven't issued the implementing regulations. Their reasoning is circular.

I think you know the General Accounting Office, NOW, other civil rights organizations have presented a lot of evidence to the House Subcommittee on Fiscal Policy, that HEW frequently violates the Executive order, that it is poorly administered.

GAO completed an audit of the Office for Civil Rights in response to Congressman Dellenback's request and found a number of insufficiencies.

I don't know if you heard the horror story of the University of California at Berkeley where for 4 years people aggrieved have been deprived of their rights, people who don't have jobs for the wrong reasons and have not gotten relief. HEW continually backed away

from its obligation to enforce Executive orders. All this means the following:

NOW believes that any system that leaves the enforcement of civil rights to HEW is doomed to failure. We believe that civil rights responsibilities of HEW should be removed entirely from the Department and that they be lodged in a separate and independent commission.

We believe that the Commission must have cease-and-desist powers. We believe the Commission's chair must be appointed by the President but not subject to removal from office during a fixed term.

I think it is necessary to provide an office of public counsel in each of several civil rights agencies. They would be similar to the Office of Public Counsel operating within the ICC.

The Office of Public Counsel was established by the Railroad Reorganization Act of 1973 and it provides lawyers for those consumers, for the little person, who want to deal with the Agency.

Universities are large, prestigeous and very powerful corporations. They have no trouble dealing with department heads and in dealing with agencies of the Government.

Aggrieved persons are individuals and generally have a lot of trouble. Sometimes there are civil rights groups but I doubt at this point whether the Civil Rights Groups have as much or have more power than universities.

To sum our position up now opposes any legislation that would subsequently change or weaken in any way current affirmative action requirements.

We advocate the shifting of all HEW civil rights enforcement powers to a separate agency with cease and decease powers and court enforcement authority and we advocate the provision of an office of public counsel within each agency.

Thank you, sir.

Mr. O'HARA. Thank you very much, Mrs. Pollock, we appreciate your testimony.

There seems to be considerable unanimity in the view you expressed that HEW ought to be taken out of the civil rights enforcement bureau. People of all different viewpoints seem to agree on that. They may disagree on what HEW should have been doing but they all agree that it hasn't been doing it, whatever it is.

I was interested in the figures you used showing the number of women on faculties. I think the number of women on faculties, the percentage of women on faculties, has gone up slightly and the number on college faculties as a percentage has gone down slightly.

Have you tried to analyze why in most of the cases?

Ms. POLLOCK. I think what is happening is there is a shifting around of the same personnel.

Mr. O'HARA. Better endowed and stronger financially institutions have been able to hire them away.

Ms. POLLOCK. I think you are right. I think that is the case. There has been a trivial improvement but I don't think it is significant. I think we could have done much better given the pool of women, say, coming out of very prestigeous graduate universities.

Mr. O'HARA. Do you have any figures on the faculty new hires during the recent period?

Ms. POLLOCK. Not with me. I probably have it in my office.

Mr. O'HARA. Do you have any recollection or general notion of what that shows in terms of——

Ms. POLLOCK. Yes. It doesn't show any substantial improvement. Also, this is, as you know, a tight year for academies because they have been feeling the economic squeeze for a while.

I will tell you the best thing to do, the minute I get back to the office I will mail you down the figures if that is amenable.

Mr. O'HARA. This will be fine. Without objection, they will be entered into the record following your testimony.

What has been your experience with pay differentials?

Ms. POLLOCK. My experience with pay differentials has been painful.

Mr. O'HARA. How about the enforcement?

Ms. POLLOCK. Let's define some terms. First there is university faculty, teaching and nonteaching. Nonteaching would be, say, postdoctoral fellows in the sciences, who have a training period. Then on the staff side there are nonexempt and exempt jobs. Nonexempt are, roughly, nonprofessional people.

The Department of Labor has been fairly efficient about the nonexempt jobs because they are easy to classify. Where labor has been hesitant to step in, and the courts, is in the difficult analysis of faculty salary differentials and of professional salary differentials. We recently studied these differentials at my own university.

They show exempt categories and in some faculty categories, that there were differences in pay. There are inequities in salary, certainly on the faculty side and certainly on the professional side. They vary. The courts have been hesitant to come in and are just beginning to come in. Agencies have been hesitant to come in for good or not so good reasons.

Hopefully they will in the next year. It would be a good idea if they did.

Mr. O'HARA. Thank you very much, Mrs. Pollock, for your testimony.

Ms. POLLOCK. Thank you.

[The statement referred to follows:]

PREPARED STATEMENT OF MORDECA JANE POLLOCK, EMPLOYMENT COMPLIANCE TASK FORCE, EDUCATION DIVISION, NATIONAL ORGANIZATION FOR WOMEN

Good morning. I am Mordeca Jane Pollock of the Employment Compliance Task Force, Education Division, of the National Organization for Women (NOW). For purposes of identification only, I have been a faculty member of Brandeis University since 1967 and for the past year that University's affirmative action coordinator in charge of developing and implementing its affirmative action program.

NOW is a national civil rights organization, composed of more than 50,000 women and men, working in more than 500 chapters in all 50 States to bring women into the full mainstream of American society. One of our national goals is the elimination of discrimination against women and girls in educational opportunities. NOW has supported and lobbied extensively for the passage of the 1972 Amendments to Title VII of the 1964 Civil Rights Act, which extended that statute's coverage to educational institutions, as well as Title IX of the Education Amendments of 1972, and the Women's Educational Equality Act.

As testimony before this Subcommittee has already indicated, colleges and universities today are subject to a number of civil rights laws and orders mandating the elimination of most forms of discrimination based on sex, race, and national origin. Under these provisions, Federal agencies now possess many of the enforcement tools required to ensure that postsecondary institutions put an end to

traditional patterns of favoritism for white males. These civil rights provisions reflect a strong public policy against discrimination in our nation's educational institutions. Despite extensive legislation and executive agency programs, however, discrimination continues to be rampant in America's schools, especially in institutions of higher education.

The position of women on college and university campuses has not improved significantly in any aspect of university life, except perhaps in admissions to law and medical schools. Since Executive Order 11246 was amended in 1969 to bar sex discrimination in employment, the percentage of women on college faculties has risen less than one percent. In 1973, men still held 90.2 percent of the full professorships and 83.7 percent of the associate professorships, while women were concentrated in the lowest teaching positions. While the proportion of women on university faculties has risen slightly, the proportion of women on college faculties has actually declined. It is clear that affirmative action has not worked.

Too often, college and university officials purport to carry out affirmative action by adhering to some of the requirements of the law while at the same time violating its spirit. For example, reports from universities have cited numerous examples in which recruitment files have been padded with resumes of obviously overqualified or underqualified women with no interest in the position. One woman told of receiving a rejection letter for a position for which she never applied. An associate professor was offered a job as an assistant professor, at a salary cut of $5,000 a year. Another woman, a dean at an extremely prestigious university, has received several job offers for positions as dean at smaller, less presitgious colleges. It is difficult to believe that any of these were serious job offers. It is more likely that they were made to present the appearance of affirmative action compliance.

Punitive institutional action against those who have asserted their rights by filing complaints has been fast and forceful. Academic women have learned that attempts to make the law work for them are likely to have a disastrous effect on their own careers. They can expect to be fired, blackballed, denied tenure, given inferior teaching assignments, or subjected to a variety of lesser harassment techniques. Shortly after Executive order became applicable to her university, one professor filed a complaint alleging dual salary standards for men and women. When the university was informed of her action, it revoked her husband's tenure and reduced his teaching load to a part-time level. Another woman filed a complaint shortly before she went on a paid leave of absence. In the middle of her leave, her salary was summarily reduced to half its former amount, from $10,000 to $5,000. In several instances, complainants have been removed from positions on important university or departmental committees. All this and more have led women's rights organizations to advise women not to file complaints with HEW.

The Committee has heard several witnesses argue that the civil rights laws and orders affecting postsecondary education have worked and that favoritism to white males has stopped. Opponents of affirmative action argue—and spuriously—that institutions are now being forced to favor underqualified women and minority males.

Let us look at the hard facts. While HEW may have found that white males were subjected to discrimination in fewer than 10 instances, that same agency in conducting *one* compliance review found approximately 50 instances of discrimination against women, many of whom had not filed complaints. The instances of alleged reverse discrimination are, thus, by comparison so miniscule as to be statistically insignificant.

The Committee has also heard protestations that affirmative action goals are being imposed as quotas. Consequently, universities claim that they must hire underqualified persons, that they must lower quality. As HEW and EEOC have repeated time and again, goals are not quotas but numerical objectives by which good faith effort may be measured, along with numerous other factors. The use of goals has been long recognized by the corporate community as a sound management technique, and the same principles apply to personnel management in institutions of higher education.

But even if universities and colleges had to fill those imaginary quotas you have heard so much about, postsecondary institutions would not have to hire unqualified women. As Betty Vetter, Commissioner of the Scientific Manpower Commission, has already testified before this Committee, the notion that qualified female academicians do not exist is a myth. Fewer women than men have traditionally been trained for academic positions, but substantial numbers of highly qualified but underutilized women can be found both on campus and off. A study

by the College Art Association last year, for example, showed that while women were concentrated in the lowest ranks of the college art departments, they were on the average more highly trained than their male colleagues: 30.4 percent of the women, but only 24.7 percent of the men had Ph.D.'s.

We hear university officials express deep concern that affirmative action endangers quality. In the tiny number of cases in which the practices of post-secondary institutions have been scrutinized by EEOC or HEW, the facts have shown that the standard university practice has been to elevate white males at the expense of equally or better qualified candidates whose sex, ethnicity, or race did not qualify them for membership in the "old boy" network.

The majority of persons working in university compliance will tell us that faculty hiring and promotion practices have never been accountable to careful, measurable standards of merit or quality. Nor have measurable peer standards (such as number of publications) been assigned relative weights. Universities have urgently resisted scrutiny of their selection standards, primarily because such standards have not been rationalized, validated, or applied evenhandedly.

Another claim we have heard is that the policy of affirmative action is based on an industrial model and thus not appropriate to institutions of higher learning. Even assuming that the first claim is true—a view to which NOW does not subscribe—universities' personnel systems have grown to be very much like those existing in private industry. Second, the federal courts have already applied many of the precepts of affirmative action to educational institutions in cases challenging teacher selection procedures which operate to exclude minorities.

Finally, preference for female and minority candidates does have a place when two candidates possess equal qualifications which have been validated as necessary to the job and when past discrimination has produced an underrepresentation of women and minorities. White males should no longer receive preference on the basis of unvalidated qualifications which proportionately fewer minority males and women have had the opportunity to acquire. Affirmative action is based on the legally upheld view that a benign practice neutral on its face but discriminatory in effect, tends to perpetuate the *status quo ante* indefinitely.

It is NOW's position that the affirmative action obligations of university and college contractors must be retained. If the Congress wishes to help more than half of all Americans secure their Constitutional rights, affirmative action requirements not only must be retained, but they must be made effective by strengthening their enforcement.

Patterns of employment in postsecondary institutions prove that civil rights enforcement efforts have not been effective. The fault does not necessarily lie in the statutes and orders themselves. These provisions have not had the effect intended because Federal agencies responsible for their enforcement have failed to impose sanctions on offenders, in the face of serious violations, or to seek relief for discriminatees through the courts.

Let us take the example of the Equal Employment Opportunity Commission. For two years now, the EEOC has had enforcement powers over private institutions of higher learning. EEOC has determined that there is probable cause to believe that certain of these institutions have committed illegal discriminatory practices. In two years, however, EEOC has not taken one such institution to court. NOW has again and again proposed to the Chairman of EEOC and members of his staff that the Commission do its job; that the commission incorporate private colleges and universities into its tracking system. The tracking system was established to select high impact targets for litigation.

To our knowledge, EEOC has not seriously considered this proposal. Instead, as Chairman Powell has already indicated to this Committee, EEOC is "researching" special problems presented by educational institutions. NOW seriously questions to what extent EEOC has committed resources to such research and what findings have resulted.

In addition, NOW has repeatedly urged EEOC to intervenue in a potentially precedential Title VII action against the University of Pittsburgh. But NOW's reiterated requests have not produced any action.

Congress made a special point of including educational institutions in the 1972 amendments to Title VII. NOW submits that EEOC owes Congress an explanation for its failure to use virtually any of its appropriations to carry out the intent of Congress.

The Department of Justice has been just as reluctant to assume its civil rights responsibilities in higher education. Never has Justice used its authority under

Title VII to eliminate employment discrimination at a public institution of education. Justice's inaction continues while hundreds of charges against universities pile up in EEOC's backlog.

But the inertia of EEOC and the Department of Justice has been far less harmful to women and minorities than the persistence with which HEW has lured colleges and universities into complacency by approving affirmative action plans which do not comply with Executive order regulations. This pattern of negative re-enforcement has been accompanied by the agency's failure to inform these institutions of their civil rights obligations.

For example, HEW has had responsibility for enforcing Executive Order 11246 since 1969. As of September 1974, however, it has still not issued contract compliance regulations, as it is required to do by the Secretary of Labor's regulations implementing the Executive order. Instead, HEW released in 1972 an informal set of guidelines, which were not published for comment pursuant to the Administrative Procedures Act and which fail to specify clearly to colleges and universities the extent and scope of their legal obligations. Further, it has been 10 years since Title VI of the 1964 Civil Rights Act was passed, yet HEW has never issued guidelines on the application of this statute to such critical issues as student admission policies. It was not until after two years following the passage of the 1972 Higher Education Amendments that HEW proposed guidelines on Title IX. HEW has declined to investigate complaints lodged against educational institutions under Title IX on the grounds that the implementing regulations have not been finalized. By the time the Title IX regulations are finalized, the law will be at least three years old.

HEW's failure to issue adequate regulations, or any regulations at all, is only the tip of the iceberg. Its compliance review procedures, both of employment practices and student services, have been wholly inadequate. The General Accounting Office, NOW, and other civil rights organizations in 1973 and 1974 have presented much evidence to the Subcommittee on Fiscal Policy of the Joint Economic Committee showing that HEW has frequently violated the Executive order and that it is generally ineffective as an administrative agency. In addition, the GAO recently completed a special audit of HEW's Office for Civil Rights in response to a request from Congressman Dellums, which NOW understands found a number of extreme deficiencies. NOW recommends that this report, as well as previous testimony before other committees, be considered by this Committee in the context of the current hearings.

HEW has repeatedly neglected to initiate enforcement proceedings when it has found violations by colleges and universities of the Executive order. Instead, it has routinely elected to pursue protracted negotiations, which sometimes last several years, and which ultimately lead to no relief for victims of discrimination.

The history of HEW's handling of the compliance status of the University of California at Berkeley is typical of the agency's contract compliance program. In 1970 and 1971, class action sex discrimination complaints were filed by numerous individual women and several organizations alleging sex discrimination on the Berkeley campus. More than a year after the first complaint was filed, HEW attempted to conduct a compliance review and investigation but was unable to do so because the University refused HEW access to its files. Such refusal is in violation of the Executive order, but HEW nevertheless took no enforcement action. Finally, in 1972, HEW conducted a compliance review and found extensive evidence of discrimination on that campus. Instead of initiating sanction proceedings, as Executive order regulations require, HEW simply requested the University to develop another affirmative action plan. Throughout 1973, despite extensive technical assistance from HEW, Berkeley did not produce a legally sufficient plan. Finally, in 1974, four years after the class action complaints were initiated, HEW agreed to approve Berkeley's compliance status in exchange for a commitment from the University to begin compiling information necessary for the development of an acceptable plan, to be submitted by the end of this month. In the interim, women employed on the Berkeley campus having lost all hope in HEW, in 1972 filed a class action lawsuit; this case, however, has not yet gone to trial because the Federal District Judge, relying on statements made by Berkeley and HEW officials, has delayed the proceedings on the grounds that the lawsuit would be mooted by an affirmative action plan. Yet the agreement between HEW and Berkeley does not provide that the upcoming version of the University's plan include any provision for the resolution of complaints. The Berkeley case is only one example of HEW's failure to provide relief to persons whom it identifies as victims of discrimination.

While the entire contract compliance program under the Executive order is susceptible to serious criticism for its ineffectiveness in securing equal employment, HEW's performance has been one of the worst of all 16 compliance agencies. Ultimately, the responsibility rests with the Secretary of Labor to ensure that the agencies delegated authority under the Order are doing their jobs. But the Labor Department has done nothing to oversee HEW's performance.

In view of all of the evidence presented to Congress over the past years, NOW believes that only one conclusion can be reached: HEW's record in civil rights enforcement has been appallingly deficient. Any system which leaves in the hands of HEW the enforcement of these rights will continue to fail. NOW recommends that civil rights responsibilities be removed entirely from HEW and lodged in a separate Commission. Furthermore, this Commission should have court enforcement authority and cease and desist powers if it is to be effective. The Commission's Chair should be appointed for a fixed term and not subject to removal from that position by the President.

Legislation should also be enacted to provide an office of public counsel in each civil rights agency, similar to the office now operating within the Interstate Commerce Commission. Established by the Railroad Reorganization Act of 1973, ICC's Office of Public Counsel provides lawyers to represent consumers in agency proceedings and planning. A civil rights office of public counsel could represent the concerns of victims of discrimination in proceedings involving individual complaints as well as general rulemakings. We have found that large employers, including colleges and universities, are well able to communicate their concerns regularly to the heads of federal agencies. Individual complainants, on the other hand, rarely receive a timely acknowledgement of their complaints.

In short, civil rights provisions, many of which have been in force for nearly a decade, have not brought relief to racial and ethnic minorities or to women in postsecondary institutions. If colleges and universities demonstrated stiff resistance to eliminating discrimination, with whatever spurious reasons they have put forth, Federal enforcement agencies have behaved with indifference and lethargy.

NOW opposes any legislation that would substantially change or weaken in any way current affirmative action requirements. We advocate the shifting of all HEW's civil rights enforcement powers to a separate agency, with cease and desist powers and court enforcement authority. In addition, we advocate the provision for an office of public counsel within each civil rights agency.

Mr. O'HARA. Our next witness will be Dr. Norma Raffel, Women's Equity Action League.

Dr. Raffel.