AMENDMENTS TO THE AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967

HEARING

BEFORE THE

SUBCOMMITTEE ON EQUAL OPPORTUNITIES

OF THE

COMMITTEE ON EDUCATION AND LABOR

HOUSE OF REPRESENTATIVES

NINETY-FOURTH CONGRESS

SECOND SESSION

ON

H.R. 14879 and H.R. 15342

TO AMEND THE AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967 TO PROVIDE THAT ALL FEDERAL EMPLOYEES DESCRIBED IN SECTION 15 OF SUCH ACT SHALL BE COVERED UNDER THE PROVISIONS OF SUCH ACT REGARDLESS OF THEIR AGE

HEARING HELD IN WASHINGTON, D.C.
SEPTEMBER 14, 1976

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CARL D. PERKINS, *Chairman*

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TUESDAY, SEPTEMBER 14, 1976

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON EQUAL OPPORTUNITIES OF THE
COMMITTEE ON EDUCATION AND LABOR,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:15 a.m., in room 2261, Rayburn House Office Building, Hon. Augustus F. Hawkins (chairman of the subcommittee) presiding.

Members present: Representatives Hawkins, Clay, Benitez, and Buchanan.

Staff present: Susan Grayson, staff director; Vicki Assevero, legislative assistant; Carole Schanzer, clerk; and Richard Mosse, assistant minority counsel.

Mr. HAWKINS. The Subcommittee on Equal Opportunities is called to order.

I do have an opening statement, which I will read in the absence of the ranking minority member, who may have something to add to the significance of this morning's meeting when he arrives.

The topic of discussion for this morning's hearing is age discrimination in employment. The chairman would like to make this brief opening statement.

In 1967 Congress passed the Age Discrimination in Employment Act, which was amended in 1974. The act forbids discrimination against workers between the ages of 40 and 65. Increasingly, evidence is surfacing regarding the negative psychological and pecuniary effects of mandatory retirement. In fact, the forced retirement of skilled workers results in an annual $10 billion reduction in the national output of goods and services.

The increased longevity of our citizenry requires a reassessment of traditional and stereotypical images of the older worker. The attainment of the arbitrary "65" does not mean a decrease in mental or physical capacities while certain studies do suggest that forced retirement accelerates the aging process.

Our hearing today will focus attention on the proposed amendments to the ADEA which would expand the act's coverage to Federal employees over the age of 65 allowing the Federal Government to set a sensible standard of nondiscrimination.

The older worker faces special difficulties in the current national climate of unemployment. The Full Employment and Balanced Growth Act which Senator Humphrey and I have sponsored endeavors to remedy the employment problems of the elderly by guarantee-

ing a job to every American who is willing and able to work. The creation of a full employment economy will expose the fallacy that older workers are keeping jobs from younger ones.

In his timely article, "Why Retire at 65?" recently published in the Washington Post, September 5, 1976, Paul Woodring astutely comments that:

> It will take time for the American people to become aware of this injustice (discrimination against those workers over 65) just as it took time for us to become aware of the injustices imposed on women, blacks and other groups.

I would like to take this opportunity to acknowledge several of my colleagues who have worked diligently in this area.

I don't need to cite the magnificent work that my dear colleague, Mr. Randall, and his committee have done and Senator Claude Pepper, who will testify this morning. Along with them, I would like to commend Paul Findley, who testified before this subcommittee earlier this year, and Ben Rosenthal of New York, both of whom have bills pending that would abolish age discrimination in the public and the private sector.

[Text of H.R. 14879 and H.R. 15342 follows:]

[H.R. 14879, 94th Cong., 2d sess.]

A BILL To amend the Age Discrimination in Employment Act of 1967 to provide that all Federal employees described in section 15 of such Act shall be covered under the provisions of such Act regardless of their age

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 12 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631) is amended—

(1) by striking out "The" and inserting in lieu thereof "(a) Except as provided in subsection (b), the"; and

(2) by adding at the end thereof the following new subsection:

"(b) The provisions of subsection (a) shall not apply to any employee or applicant for employment described in section 15 of this Act.".

SEC. 2. Section 15(a) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 633(a)) is amended by adding at the end thereof the following new sentence: "The provisions of section 12(a) of this Act shall not apply to any employee or applicant for employment who is involved in any personnel action which is subject to the provisions of this subsection.".

[H.R. 15342, 94th Cong., 2d sess.]

A BILL To amend the Age Discrimination in Employment Act of 1967 to provide that all Federal employees described in section 15 of such Act shall be covered under the provisions of such Act regardless of their age

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 12 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631) is amended—

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Mr. HAWKINS. We are pleased to have with us this morning several distinguished witnesses who have been using their time to help educate

the public on this significant issue. It is especially fitting that my colleague, Claude Pepper, who is the sponsor of one of the chief amendments under consideration should be among our first witnesses this morning. He will be followed by others whom I will introduce in turn.

Now, Mr. Randall, Mr. Pepper has indicated to the chairman that you would like to make a statement, and he has graciously consented to allow you to be the opening witness, if you so desire. I will leave that up to you and Senator Pepper.

Mr. RANDALL. Do you want to proceed, Mr. Chairman?

Mr. HAWKINS. I would prefer to take a 5-minute recess, hoping that Mr. Buchanan would arrive in the meantime.

[Whereupon, a 5-minute recess was taken.]

Mr. HAWKINS. The subcommittee is called to order.

Mr. Randall, you may proceed.

STATEMENT OF HON. WILLIAM RANDALL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSOURI

Mr. RANDALL. Thank you, Mr. Chairman.

I am most grateful to you, Mr. Chairman, and those other members of the subcommittee who participated in the scheduling of this hearing to amend the age limits of ADEA, as it is called, the Age Discrimination in Employment Act, which was passed back in 1967, insofar as Federal employment is concerned. That is what this measure, H.R. 14879, is all about.

The question of mandatory retirement and permitted age discrimination against those age 65 and over has been a growing concern of older Americans, and the subject of a number of bills.

As you so well know, and as you have alluded in your informal remarks, Mr. Chairman, my colleague from Illinois, Mr. Findley, and others have offered legislation to eliminate the upper age of 65 in ADEA for all covered employment.

As a part of our ongoing oversight in the new Select Committee on Aging, of which it has been my privilege to serve as the first chairman, we have held a number of hearings on the level of funding and general performance to enforce ADEA.

We started out with a very grandiose project, which four or five Federal agencies had given up on and quit, to try to find out how much money was spent clear across the Federal spectrum on the matter of problems on the aged.

We concentrated particularly on the Department of Labor, and on ACTION and others, concerning funding and general performance of the enforcement of ADEA. As you know, the Department of Labor is the enforcing agency.

The report of our work is being considered by members of the committee. As a matter of fact, we hope to have the report adopted either tomorrow or Thursday. I hope that this report will be of some help to you in this subcommittee.

Our hearings have indicated a number of areas in the act which need review and change. Pending a more detailed review and discussion of the proposed amendments that were addressed to all private and

all public employment, our distinguished ranking majority member, Mr. Pepper, and myself think that the Federal Government should be the one to lead the way in eliminating this discrimination in the employment of persons of all ages.

The ranking majority member and myself introduced H.R. 15342 which is identical to H.R. 14879, introduced a few days earlier by Mr. Pepper.

In testimony and for the record, it is most appropriate that we inquire, what does this bill do? What does it propose?

Under the act, ADEA of 1967, section 12 limits the prohibitions against the refusal of employment to individuals who are at least 40 years of age, but less than 65 years of age.

In section 15 of that same ADEA Act, it provides for nondiscrimination on account of age in Federal Government employment. This is pretty weak, pretty lukewarm phraseology.

The bill that we are jointly testifying on behalf of today proposes to amend sections 12 and 15 so the limitation of the 40 to 65 section does not apply to section 15 of the act. Thus, discrimination based on age, any age, would be prohibited in all personnel actions under Federal Government employment. That is the heart of the bill.

Now, what does the bill not do?

The bill makes no change in the law that pertains to the private employment section, or to State and local governments. The 40 to 65 age limit, under the provisions of the act, remain.

No change is made in the BFOQs, the Bona Fide Occupational Qualifications in section 4 of the old act. Thus exceptions would still be permitted in cases where age is a factor reasonably necessary to the normal operations of the particular business or operation, or where the terms of what sometimes is called BOQ, bona fide occupational qualifications, are observed.

No change is made in the procedural steps or the timetable required of the Secretary of Labor or the Civil Service Commission, or the timetable provided for the aggrieved person or his employer.

Thus, the net effect of this legislation is very minimal. It does not totally solve the problem of mandatory retirement at a particular age, but it is a step in the right direction. With the amendments that will be suggested by Mr. Pepper, I believe it will be a first, important step.

Now, as members of your subcommittee are quite aware, the Department of Labor has the responsibility for enforcement provisions of ADEA in all areas, except for the Federal sector, which is covered in the 1967 act by the Civil Service Commission, which has responsibility for the Federal sector.

Procedures used to enforce compliance with the act differ considerably between the Department of Labor and the Civil Service Commission. Most make extensive use of administrative efforts, short of legal action, to secure compliance.

I shall never forget some of our witnesses that we called in, some of the enforcement officials from all over the country, from the South and the west coast, Mr. Chairman, and from the southwest Texas area, and the Northwest, and all of them told us that they had to be very patient. They must go through all of these preliminary proceedings before they can file a court action by law.

As I repeat, the Department of Labor must make extensive efforts for voluntary compliance of an employer through informal methods such as conciliation and conference, and persuasion, before they can go about instituting legal action.

As a result, approximately 87 percent of the identified violations of the act, we have found as a result of our hearing, are resolved through this voluntary compliance proceeding at the administrative level.

Evidence presented to our committee indicates that the enforcement of age discrimination in employment is being conducted by, as I suggested, those enforcement officials who came up from all sections of the country. We find that they are dedicated and hard working. Their work is having an impact on this matter of age discrimination in employment.

However, in spite of their hard work and dedication, and some increased funding for manpower, the backlog of ADEA cases has grown year after year most dramatically. ADEA is only one of 82 statutes for which compliance officers have responsibility.

The Department of Labor has had unloaded on it 82 different enforcement jobs. We find that ADEA activities account for only about 5 percent of that Department of Labor budget. There are no compliance officers, out of over 1,100, assigned full time to ADEA activities.

In other words, not a one is devoting his full time to ADEA. The closest to what could be called full time was initiated this year when the Department of Labor established, out of this 1,100, a handful of specialists to handle equal pay and ADEA cases. Those are the two most difficult types to enforce.

The Civil Service Commission utilizes the same administrative mechanism established under the Equal Employment Opportunity to handle discrimination complaints based on race, color, religion, and national origin.

In other words, we see this same spectacle over here in the Civil Service. They have this whole business of sex, race, and religion, all of those things, and a very small percentage is having anything to do with discrimination because of age.

However, under the civil service proceeding, this continuous informal conciliation and informal administrative proceeding, the individual can file a civil action in Federal court prior to completing the administrative proceeding.

In that particular situation, age discrimination differs from other EEO cases.

Since the inclusion of the Federal section under ADEA actually began back in the middle of 1974, hard statistics concerning enforcement in this area are not readily available.

In 1975, 5.5 percent of the EEO cases receiving informal counseling were age related, and 10 percent of all formal complaints, age, race, religion, and all those things. We have a lot of problems in the enforcement of even existing law.

What we are seeking to do here is to put some real teeth into the Federal employment. But just a word about some of the problems of enforcement.

Certainly one of the most obvious and most publicized problems in ADEA is this upper age limit of 65. As the provisions of the act now

stands, it seeks to encourage the practice of discrimination once a person reaches 65. This arbitrary limit perpetuates the problem that the act itself, ADEA, sought to eliminate, and continues to allow under the guise of mandatory retirement.

I believe there is ample evidence to indicate that the use of chronological age as a sole criteria is a very poor measurement of an individual's ability to perform a job. The elimination of this arbitrary upper age limit, we must recognize, will not end discrimination, but it would certainly clarify the present existing contradictory public policy which is contained under the present law, ADEA.

If we cannot take this step immediately for all employers, so that the work of Paul Findley and others will not be wasted, I urge this committee to at least take this step that would require the Federal Government to take the leadership role in this important effort.

Now a simple striking out of two digits, six and five, will not totally cease the practice of age discrimination in the Federal sector or elsewhere. The ADEA does contain two exceptions that need close review in this light.

First a section 4(f), which I referred to a moment ago, the BFOQ, which refers to bona fide occupational qualifications. You are going to be saddled with that, and in effect these sections permit discrimination on the basis of age, for those 40 to 65, and would still be applicable even if we are able to get the 65 changed or eliminated. This is the reason for the suggested amendments that Mr. Pepper will offer.

Now BFOQ exempts the situations where age is reasonably necessary. We have had three or four Federal cases in which the witness believes there was some merit. The Department of Labor lost two cases at the appellate level, and another case is on trial right now.

Whether the courts are interpreting this more widely than Congress is questionable. It is a question that needs some careful attention. The wording in some of the cases, I have not had a chance to study all the fine print, I am reliably advised that is not the wording that was necessary to the decision.

If there is anything wrong with this business of mandatory retirement, it is because Congress has not really expressed itself. If Congress would clearly express itself then the court decisions might be otherwise.

The policy that we have been mentioning is one of the most important in considering amendments to the age discrimination act. Another of the factors that we should mention is that the act requires that individuals in the private sector must notify the Secretary of Labor if they intend to sue within 120 days of the alleged violations of ADEA.

This procedure has been interpreted, in the judgment of this witness, too strictly for jurisdictional purposes. The failure to comply, by one day in some cases, has been the cause of the failure of about two-thirds of the private cases being dismissed without any consideration of the merits at all.

The Department of Labor, in its efforts in the private sector, has been handicapped by the courts' interpretation of this statutory requirement that the Secretary conciliate before filing suit.

As we mentioned earlier, these enforcement officers say: "We conciliate, and then we conciliate some more. Then we mediate. Then we

confront them." It requires the patience of Job before they are ever permitted to file a suit. As a result, the enforcement officers are required to spend many more manhours of manpower in "trying" its cases twice. One before the employer, and then, again, in court.

In the review of the amendment to the act, Mr. Chairman, I would hope that your subcommittee would carefully consider some limitations, some reasonable limitations to this process of conciliation and also the strictness of the time limitation.

In our committee's review of the funding level of the Civil Service Commission, as we try to find all the funding for the aging activities, some questions were raised about the nature and the disposition of ADEA cases.

CSC representatives, as they testified, indicated that they did not have many statistics or many facts on this. They indicated that more money was spent in the Federal sector for ADEA than by DOL in the private or public sector, but they could never give us any hard figures as to the amount.

Given these findings, Mr. Chairman, I am concerned about the quality of ADEA enforcement by CSC, and I would hope, as you proceed on this bill and the other bills, you can see if you can pry out of the Civil Service Commission some more information on the subject.

If the Federal sector is to provide leadership in the elimination of age discrimination in employment, what may very well happen is that it will become sort of a test case in eliminating this upper age limit.

I would hope that a careful review of the level and quality of ADEA activities under section 15, that is what we are talking about here, will be undertaken by comparing the Civil Service Commission and the Department of Labor under the other sections of ADEA to evaluate how the goals of this act are being met by both. I think that such a review would be most appropriate before changes are made in the act.

Our conclusion is that the Age Discrimination in Employment Act has been in operation since 1968, passed in 1967, it has had some positive effects in confronting and seeking to eliminate discrimination based on age, but it is limited in scope.

However, there are many instances, we found, where the act has actually fostered some age discrimination. I believe the time has come to strengthen the act by eliminating some of these fostering provisions.

At the top of the list is the matter of mandatory retirement based arbitrarily on age, and a greater flexibility in individual choice of the components of national policy toward older persons who want to continue to work.

A critical and cautious review of ADEA and the appropriate amendments to achieve such a policy would be, of course, a major factor in further eliminating what I think could best be described as acceptable age discrimination.

I am most grateful for the opportunity to testify. I would be happy to respond to any questions that you may have.

Mr. HAWKINS. Thank you, Mr. Randall.

If your schedule permits, I would like to hear from Senator Pepper and then question the two of you together.

Mr. BENITEZ. Mr. Chairman, I have another engagement and I have to leave now. I want to say to Mr. Randall and to Senator Pepper that I fully support their position. We hope that this bill can be speedily advanced because it reiterates a basic principle in human rights, the opportunity to work as long as you are able to. Certainly age is not a deterrent.

Mr. HAWKINS. Thank you, Mr. Benitez. We certainly appreciate your remarks. They are very timely.

Senator Pepper, suppose we hear from you next. I certainly feel that your testimony will be just as valuable and just as articulate as that of your colleague, Mr. Randall.

Mr. PEPPER. Thank you, Mr. Chairman.

STATEMENT OF HON. CLAUDE PEPPER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. PEPPER. I am honored to appear before your subcommittee in support of our legislation now before this committee to end discrimination in Federal Government employment.

I am pleased to be able to follow the excellent testimony offered today by our distinguished chairman of the House Select Committee on Aging, Mr. Randall, and to be privileged to work with him toward the furtherance of what I believe to be this very desirable goal.

Mr. Chairman, a number of bills with wide bipartisan support have been introduced to ban all public and private discrimination in employment because of age. I am a cosponsor, as I am sure my distinguished chairman is, of such legislation by Representative Paul Findley and others.

Hearings before our Committee on Aging, chaired by Mr. Randall, and a report to be issued shortly, as he has indicated, have indicated that chronological age alone is a poor indicator of a person's ability to perform a job; that many workers can and do continue to work effectively beyond age 65; and that compulsory retirement often results in the loss of an individual's role and income. Compulsory retirement also causes loss of skills and experience from the work force.

Mr. Chairman, as you and your subcommittee are keenly aware, we have made great strides in equal opportunity for minorities and women in recent years. Now it is time for the same equality of opportunity to be afforded to the aged.

The American Medical Association filed an amicus in a court case challenging mandatory retirement in the Department of Housing and Urban Development, *Weisbrod* v. *Lynn*. The AMA amicus indicates that forcing persons to retire when they are able to and wish to continue to work is "a direct threat to the health and life expectancy of the persons affected."

The AMA emphasized that an employer's decision to retire a worker should be based on the same factors as the decision to hire, namely, the desire and ability to perform the job.

The National Senior Citizens Law Center, which I am pleased is scheduled to testify today, has stated:

> In enacting the Age Discrimination in Employment Act of 1967, Congress sought to protect older persons still capable of working from being refused

employment or being forced into retirement based arbitrarily on age. However, the act protects only those between the ages of 40 and 65. Increasingly it is being recognized that the 65 age limitation is also arbitrary and that many people are capable of meaningful achievement well beyond that age.

These are some of the reasons why we have sponsored the legislation before you today.

Not only in the area of retirement, but in hiring, job advancement, and all other aspects of employment, it is my firm belief that age discrimination, like racial and sexual discrimination, must be ended.

Mr. Chairman, pending the enactment of broad legislation, which I support, covering all public and private employment, we think the Federal Government should lead the way by eliminating discrimination in Federal employment for persons of all ages. That is the reason we have introduced, with cosponsors, the legislation which is before you today.

There is ample precedent on the State level for this legislation. Sixteen States, and my State was one of them through the action of its recent legislature, prohibit discrimination with no upper age limit.

Mr. HAWKINS. Senator, may I interrupt and ask you whether or not the State laws to which you refer apply only to the State and not to the private sector?

Mr. PEPPER. I am informed by the staff that 11 of 16 States relate only to public employment by the States, and not the private. The others will cover private employment.

Mr. HAWKINS. The others cover private employment?

Mr. PEPPER. That is correct.

It is our intent that the legislation under consideration will apply to all workers employed at whatever age by the Federal Government as well as applicants for employment.

Mr. Chairman, and members of the subcommittee, what a sad thing it is for a man or a woman to go out looking for a job, today, and be told, if they are over 40 or 45, that they do not want you. Just imagine a person over 65, under the present situation, going out and looking for a job, who wishes an opportunity to contribute something.

It is our intention that the bill eliminate the various existing mandatory retirement provisions of the Civil Service Commission, the Foreign Service, the Comptroller General, and other jobs where no highly irregular risks exist, such as combat military officers, air traffic controllers, and others under specific regulations to be issued.

Let me say, with respect to that, I have testified before some of the authorities in the Government on the regulations which were put out by the gentleman who was then head of the CAB, which mandatorily said that a man could not fly an airplane in commercial service after he became 60. They took advantage of some language in the legislation, "from 40 to 65," which Congress had passed, that we did recognize that in certain critical and hazardous occupations there might be a difference.

They arbitrarily made every airline pilot discontinue commercial service that was regulated by FAA at 60, regardless of that man's ability to pass any kind of a physical, mental or any other kind of a test.

I don't think, even in those areas, that it ought to be arbitrary without some regard to a provision that would allow the removal of people

in those categories only if there is serious question as to their ability to do a job.

It is our view that the bona fide occupational qualification waiver provision of the Age Discrimination in Employment Act, even for those under 65, has been abused. In addition, there is an exception in the current Age Discrimination in Employment Act which allows otherwise prohibited discrimination if part of a pension plan. Both of these exceptions must be clarified, and it is our intention to establish legislative history here and now indicating Congress' intent that both these exceptions should be extremely limited.

Pension plans have sometimes become excuses for firing people that wish to and are able to continue to work. Such individuals should have a choice to continue.

Mr. Chairman, figures we have obtained from Federal agencies indicate the following number of Federal employees to whom our bill would apply:

In December 1974, there were 29,067 Federal civilian employees, age 65 and over, who were still employed but not protected by existing law (You see, beyond 65 they have no protection under the law) and who would be protected under the legislation before you today.

There were also, as of June 1975, 34,179 persons receiving Federal civil service retirement benefits who had been mandatorily retired. The civil service requires mandatory retirement for persons at 70 and does not hire persons over 65. Of course, the bill would not affect those who choose to retire, so that the actual number affected will be significantly less.

This number does not include Federal employees mandatorily retired under other Federal retirement systems such as the Foreign Service Act, which has mandatory retirement at age 60 for most personnel and at 65 for career ambassadors and ministers to which our bill would also apply.

You will remember a little while ago, when we opened up relations with China, the President of the United States designated a man who was a good bit over 65 years of age, but had had one of the most distinguished careers in diplomacy, Mr. Bruce. He was not precluded, but it was a Presidential appointment that made that possible. Otherwise that man, under the Foreign Service law, would have been precluded from rendering that very distinguished service to his country.

In addition, the bill would protect Federal workers under age 40 who are also now excluded from protection under the current law. Just as it is arbitrary to exclude those over 65, it is equally important not to discriminate against any other age group as well. There were 948,113 Federal civilian employees under age 40 in December 1974.

Recent U.S. court cases challenging mandatory retirement, *Weisbrod* v. *Lynn*, *Massachusetts* v. *Murgia*, and *Bradley* v. *Kissinger*, have to date held that, under current law, certain but not necessary all mandatory retirement instances are legal and not unconstitutional, and that a change in the law is a policy matter for Congress to decide.

In *Bradley* v. *Kissinger*, the Court held that specific Federal mandatory retirement provisions such as those of the Foreign Service are not superseded by more general laws such as the Age Discrimination in Employment Act "unless there is clear indication that Congress intended to do so."

That is the reason that we are anxious to make it very clear in our legislative history that this legislation is intended to apply to all except for those hazardous occupations to which I referred.

We wish to state exactly our intent to abolish mandatory retirement in the Federal Government, subject to the ability of the individual, except in high risk hazardous occupations such as those cited above.

Mr. Chairman, as Mr. Findley did when he testified before you on February 9 on H.R. 2588, I would like to include for the record certain alternative language which could be added as amendments to our bill.

The bill which is now before you provides a broad sweep approach to ending age discrimination involving any personnel action, including hiring, advancement, mandatory retirement, and other employment actions.

However, in case the committee should choose to make reference to specific laws now providing for mandatory retirement, we have enclosed for the record, following our remarks, language which would relate to those supplementary laws.

Mr. Chairman, during your February 9 hearing on age discrimination, you pointed out the importance of age discrimination which, as you said, "obviously touches everyone of us eventually."

At the same time, you accurately pointed out that there had been "very little public debate on the subject and very little interest demonstrated that would allow this committee to approach the subject with the expectation of immediate action, quite apart from what our individual views may be."

Let me just say that since that time, the House Select Committee on Aging has devoted a great deal of time and effort to this subject this year, as it has been pointed out by our distinguished chairman.

We found it to be one of the most important areas within our investigative jurisdiction. We are not, as you know, a legislative committee. We can only recommend to the legislative committees. We hope you will take prompt action on this legislation.

As you know, what we are proposing is by no means a partisan issue. The 1976 Republican national platform called for an outright end to involuntary retirement. Former Secretary of Labor Willard Wirtz testified before our committee concerning the advantages of maintaining the elderly in the work force. He advocated amending the Age Discrimination in Employment Act to bar mandatory retirement.

I am pleased that national leaders in the field of aging and Federal employment are testifying here today also.

We have been in touch with Representative Findley concerning this legislation, and he is in total agreement with the strategy that pending enactment of an end to all age discrimination, the Federal Government should lead the way.

Representative Findley also informed us that, in his opinion, the over 60 cosponsors, of which we are one, of the broader legislation would support such a move. Many of our colleagues have already cosponsored our bill ending age discrimination in the Federal Government, and we will reintroduce the legislation shortly with the additional sponsors.

It is an ironic fact, Mr. Chairman, and members of the committee, that year after year the President must grant an exemption to the

U.S. Commissioner on Aging, Dr. Arthur S. Flemming, now 71 years old, an extremely competent and dedicated public servant, so that he can remain on the job rather than be subject to mandatory retirement.

It is not surprising that Commissioner Flemming himself is an ardent advocate of ending this mandatory retirement.

But what if you aren't an Arthur Flemming, and you can't obtain an exemption? You might return home, bored for the remainder of your life. You might say, as did William Bagwell, who was retired after 24 years of being a letter carrier and then an assistant postmaster, "I would have liked to go on."

In closing let me point out that at age 70 there was a man who was on the committee drafting and approving the Declaration of Independence.

At age 77, he was negotiating the peace treaty that ended the war with Great Britain.

At age 80, he was serving on the committee that drew up the Constitution of the United States of America.

At age 74, he wrote the following prescription for successful aging: "Keep up your spirits and you will keep up your bodies."

He was Benjamin Franklin, who under current law would not have been eligible for these appointments to serve his country.

Mr. Chairman, I have kept in my pocketbook a little notice that was sent to me along with an advertisement of a telephone. It is a statement that I have kept for a good many years, and I would like to read it to you.

The title of it is: "The Best Is Yet To Be."

"Feeling a little sluggish at 40, thinking that it is all over, or at 60 when you start reminiscing about the good old days? Consider these gentlemen and their accomplishments:

"Booth Tarkington wrote 16 novels after 60;

"Daniel DeFoe wrote Robinson Crusoe at 61;

"Michaelangelo painted the Sistine Chapel at 66, lying on his back;

"Hippocrates wrote the medical oath at 97;

"Gladstone became Prime Minister of Great Britain for the fourth time at 83;

"Churchill completed his six volume history of World War II at 79, while Prime Minister."

May I add that Winston Churchill became Prime Minister of Great Britain in World War II after he was 65 years of age. If Winston Churchill had been denied, because he was 65 years old, the opportunity to lead the forces of freedom in World War II, he personally would have been a very questionable figure in world history. He would never have been the giant that he is in the history of mankind, and never would have provided the immeasurable contributions he rendered to the cause of freedom in World War II.

Maybe I should not make any personal references, but at my age I would have had to have six different exemptions to be a Member of Congress at 76 if Congress were under the Civil Service since under the Federal law you have to retire mandatorily at 70, unless you get an exemption. Congress, at least, does not have these limitations, and the people of this country do not enforce the requirements that we, in the Congress, have authorized the Government to enforce against our fellow citizens.

Mr. Chairman, in conclusion, needless to say, we on the Select Committee on Aging are extremely gratified that you are holding these hearings. We are hopeful that this important bill can be enacted either this year or early in the next Congress.

Mr. Chairman, if there are no objections, I would like to insert, following my formal statement, the various materials expanding on the points in my testimony.

I would also like to express my deep gratitude to Sharon House and Karen Lewis of the Library of Congress for the tremendous amount of time and effort they have spent preparing information for our committee and me on this critical subject, and to your own subcommittee staff for all their help to me and my staff, and especially to your distinguished committee for the opportunity you have given us this morning.

Mr. HAWKINS. Thank you, Senator Pepper. Again, we want to commend you on a very excellent presentation as usual.

We have a technical difficulty at the moment. The full Education and Labor Committee which is meeting downstairs is seeking a quorum, and they wish us to join them. The subcommittee is precluded from continuing in session when the full committee is meeting, and this is a special meeting of the committee.

We are somewhat embarrassed because we are unable to ask the questions that we wanted to ask.

The subcommittee, therefore, will have to take a recess. We will return for the purpose of continuing with the other witnesses. I would not want to keep you, Senator Pepper, and you, Mr. Randall, here during our absence.

Mr. RANDALL. May I be heard just briefly.

We are confronted with the same problem in Government Operations and two other subcommittees which are trying to get a quorum right now.

I would, if I may, on the record, simply say, if you share our statements with the other members of the subcommittee, we would be grateful.

Mr. HAWKINS. We will certainly do that.

May I say to the other witnesses that we will take a 15 minute recess, hopefully, to come back and listen to the other witnesses. The staff will keep you informed of the developments in the event that we see the full committee session continuing longer than that. In that event, we will have to make other arrangements.

Mr. BUCHANAN. Mr. Chairman, before we leave, let me just apologize for my tardiness this morning, and thank our distinguished witnesses for their fine testimony and their leadership in this meritorious endeavor.

Senator Pepper, you are, yourself, an excellent current example of the merit of your own legislation. This Congress would be much much poorer without your eloquence and your presence.

Mr. PEPPER. Thank you very much.

Mr. HAWKINS. Congressman Buchanan has expressed the views of the chairman of the subcommittee.

The subcommittee is in recess for 15 minutes.

[Whereupon, an information recess was called.]

[Additional material supplied by Hon. Claude Pepper follows:]

Sues on age law

Man, 71, fights his retirement

By James Pearre

IF YOU dread retirement, Martin O. Weisbrod is your champion.

"I'm not built for retirement," says Weisbrod, a Chicago attorney. "You can go to hell fast sitting on a park bench."

Until last year Weisbrod was one of the nation's 2.7 million federal civil service employes, who are required by law to retire when they reach 70.

Weisbrod's 70th birthday arrived and he relinquished his position as associate regional legal counsel for the Chicago office of the United States Department of Housing and Urban Development [HUD].

Martin O. Weisbrod

BUT Weisbrod wasn't about to join the Social Security set without a fight.

In 1972, while still 69, Weisbrod filed suit seeking to have the federal mandatory retirement law declared unconstitutional as an abridgement of his Fifth Amendment rights to property and the pursuit of happiness. The suit still is pending.

Eschewing legal jargon in a recent interview, Weisbrod put the argument this way: "One day I'm a man of affairs, and the next day I wake up a bum, deprived of two-thirds of my income."

During his two-year fight to win a full hearing on the case, Weisbrod picked up a powerful ally.

THE American Medical Association, which first denounced mandatory retirement age laws in 1971, joined Weisbrod's case as a friend of the court last May.

Forcing persons to retire when they remain willing and able to work, the A. M. A. contends, is "a direct threat to the health and life expectancy of the persons affected."

The A. M. A. brief supporting Weisbrod's suit was published in last week's Journal of the American Medical Association.

An employer's decision to retire a worker, the A.M.A. asserts, should be ruled by the same question as a decision to hire—does the worker have the desire and ability to do the job?

SIMPLY TOTALING a person's birthdays tells nothing about his ability, the A.M.A. notes. A person of 40 may be well over the hill while another person of 80 has years of productive capability left.

More than civil service careers ride on this argument, for if Weisbrod wins his case, every state and local mandatory retirement rule and regulation may be vulnerable to legal attack.

"It has implications for untold thousands of elderly all over the country who have the will and ability to continue working but are being thrown out on their rears," Weisbrod said.

Having exhausted appeals thru the lower courts, Weisbrod and the A.M.A. petitioned the U. S. Supreme Court three weeks ago for a full hearing of his case.

"I MAY LOSE, but somebody is going to win a case like this sooner or later."

CHICAGO TRIBUNE

AGE DISTRIBUTION OF FEDERAL EMPLOYEES,
ALL EMPLOYED PERSONS, AND U.S. CIVILIAN LABOR FORCE
1974

Age	Federal Employees 1/	Employed Persons 2/	Civilian Labor Force 3/
% under 40	40.0 (948,113)	55.3 (47,493,000)	56.5 (51,394,000)
% 40 - 64	58.8 (1,392,787)	41.4 (35,622,000)	40.3 (36,696,000)
% 65+ # age 65 and over	1.2 (29,067)	3.3 (2,821,000)	3.2 (2,921,000)
Total	100.0 (2,369,967)	100.0 (85,936,000)	100.0 (91,011,000)

1/ Data are from the Central Personnel Data File (December 1974) and include all Federal civilian employees.

2/ Data are from "Employment and Earnings" (published by the Bureau of Labor Statistics, January 1975) and include all civilians in the employed U.S. labor force, 16 years of age and older.

3/ Data are from "Employment and Earnings" (published by the Bureau of Labor Statistics, January 1975) and include all civilians in the U.S. labor force, 16 years of age and older.

Civil Service Retirement
Federal Employees Group Life Insurance
Federal Employees Health Benefits
Retired Federal Employees Health Benefits

Annual Report of Financial and Statistical Data for Fiscal Year Ended June 30 1975

U.S. Civil Service Commission
Bureau of Retirement, Insurance and Occupational Health

Table B--2.—Employee annuitants added to the retirement roll during the fiscal years 1921 to 1975, by provision under which retired, and number on the roll June 30, 1975, by fiscal year retired

Fiscal year ended June 30,—	Number on roll June 30, 1975	Total	Mandatory 15 years' service	Disability	Optional				5 years' service[1]		Involuntary		Special provision			Transferred from other systems
					30 years' service		20-29 years' service ages 60–61	12-29 years' service age 62	Immediate	Deferred	20 years' service age 50	15, 25, or 30 years' service	Hazardous Duty	Air Traffic Controllers	Members of Congress	
					Age 55	Age 60										
1921–1930	8	27,759	20,897	6,862	.....	.....	.....	.....	.....	.....	.....	.....	.....	...	...	.....
1931–1940	743	72,868	32,775	20,676	.....	7,809	.....	.....	.....	.....	.....	11,608	.....	...	...	.....
1941–1950	13,449	154,430	20,406	40,840	4,608	29,634	.....	17,429	... 31,630 ...		.....	2,207	224	...	59	1,393
1951–1955	27,486	122,996	11,620	35,032	7,698	26,353	.....	15,964	... 23,039 ...		.....	1,856	1,326	...	79	29
1956	10,120	33,090	2,427	9,161	2,053	7,649	.....	5,615	2,547	3,044	.....	261	319	...	4	10
1957	15,346	44,296	3,267	11,653	4,275	11,116	.....	6,910	3,008	3,447	102	231	258	...	24	5
1958	19,725	51,840	4,184	16,802	4,154	8,741	.....	8,490	4,389	3,899	454	506	212	...	4	5
1959	18,549	44,514	4,481	14,553	2,826	6,364	.....	8,077	3,105	3,932	439	444	227	...	55	11
1960	20,434	45,161	4,136	15,477	2,583	5,868	.....	9,643	2,521	3,831	436	421	224	...	4	17
1961	24,962	50,228	4,090	16,501	3,136	7,358	.....	11,547	1,803	4,077	656	681	337	...	31	11
1962	27,186	50,524	4,127	16,737	2,980	6,780	.....	12,111	1,998	4,112	655	643	369	...	7	5
1963	28,971	49,666	4,328	15,439	3,006	6,575	.....	13,371	1,202	3,997	776	486	438	...	38	10
1964	33,489	53,449	4,258	17,490	3,180	6,857	.....	14,238	1,095	3,993	1,277	606	437	...	9	9
1965	34,634	51,996	4,155	17,927	3,229	6,235	.....	13,196	877	3,956	1,309	655	401	...	51	5
1966	56,357	77,900	3,267	20,098	7,418	14,419	.....	22,077	1,243	4,012	2,882	1,677	787	...	10	10
1967	36,687	48,759	2,475	15,434	5,192	4,302	3,644	10,186	883	3,864	1,133	1,113	436	...	27	20
1968	41,195	52,579	3,031	15,094	5,637	5,169	4,153	11,166	885	4,049	1,064	1,745	507	...	8	11
1969	44,673	55,154	2,618	15,748	5,790	6,006	4,679	12,482	1,007	4,003	850	1,424	498	...	37	12
1970	47,627	65,313	2,399	16,718	7,746	7,733	5,431	13,980	1,118	4,256	1,727	3,623	523	...	2	7
1971	71,997	81,812	2,293	20,715	8,826	8,079	6,091	15,077	1,303	4,809	3,709	10,291	578	...	34	2
1972	74,161	81,307	2,028	19,906	11,921	9,713	5,591	14,212	1,264	4,660	2,858	8,362	700	...	2	.....
1973	115,588	122,883	1,902	25,652	18,922	16,416	6,038	17,717	1,780	4,912	6,162	21,675	1,026	28	52	1
1974	128,357	133,318	1,376	30,015	24,397	19,439	6,893	18,234	2,076	5,571	5,405	18,168	1,628	106	8	2
1975	98,142	99,767	1,561	31,875	15,456	10,028	4,102	10,783	1,637	6,776	3,690	12,180	1,566	60	51	2
Total	989,786	1,671,609	148,106	472,495	155,093	239,693	47,222	282,505	175,610		35,634	100,863	13,021	194	596	1,577

[1] Distribution between immediate and deferred not available prior to 1952.

Table B–3.—Employee annuitants on the retirement roll at end of certain fiscal years, by provision under which retired

Fiscal year ended June 30,—	Total	Mandatory 15 years' service	Disability	Optional				5 years' service[1]		Involuntary		Special provision			Transferred from other systems
				30 years' service		20-29 years' service ages 60–61	12-29 years' service age 62	Immediate	Deferred	20 years' service age 50	15, 25, or 30 years' service	Hazardous Duty	Air Traffic Controllers	Members of Congress	
				Age 55	Age 60										
1925	11,689	9,741	1,948	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
1930	17,768	12,504	3,994	.....	.....	.....	.....	.....	.....	.....	1,270	.....	...	...	.....
1935	48,665	23,863	9,886	.....	4,310	.....	.....	.....	.....	.....	10,606	.....	...	...	.....
1940	62,027	30,216	15,294	.....	6,318	.....	.....	.....	.....	.....	10,199	.....	...	...	.....
1945	85,011	28,904	23,389	980	15,408	.....	5,766	.. 2,104	.....	.....	8,460	.....	...	...	.....
1950	155,135	27,503	42,869	4,249	28,578	.....	14,711	.. 27,446	.....	.....	8,177	219	...	52	1,331
1955	226,180	27,718	61,043	11,188	46,528	.....	26,081	.. 43,339	.....	.....	7,715	1,435	...	107	1,026
1956	246,362	27,835	66,093	13,005	51,771	.....	30,316	.. 47,069	.....	.....	7,484	1,714	...	103	972
1957	276,408	28,766	73,074	16,961	60,393	.....	35,546	.. 51,420	.....	100	7,199	1,922	...	122	905
1958	311,992	30,476	84,493	20,713	66,344	.....	42,051	.. 57,164	.....	535	7,172	2,087	...	114	843
1959	338,898	32,486	92,723	23,132	69,756	.....	47,961	.. 61,534	.....	950	7,145	2,263	...	161	787
1960	365,391	33,977	101,940	25,248	72,270	.....	55,100	34,218	30,848	1,350	7,150	2,405	...	143	742
1961	396,523	35,609	112,060	27,848	76,312	.....	63,860	33,994	33,960	1,950	7,395	2,657	...	163	716
1962	426,031	37,122	121,859	30,163	79,380	.....	72,810	33,977	36,823	2,530	7,602	2,939	...	158	668
1963	453,099	38,587	129,834	32,444	82,131	.....	82,553	33,062	39,517	3,215	7,662	3,287	...	187	620
1964	482,131	39,944	139,378	34,789	84,814	.....	92,562	31,969	42,055	4,385	7,846	3,613	...	184	592
1965	503,731	41,134	149,174	37,132	86,708	.....	101,083	30,748	44,408	5,560	8,109	3,910	...	223	542
1966	560,992	41,570	160,904	43,580	90,806	.....	118,328	29,960	46,899	8,248	9,400	4,570	...	221	508
1967	580,771	41,046	166,928	47,648	96,248	3,609	122,899	28,570	48,912	9,228	10,091	4,869	...	235	488
1968	604,873	41,151	172,768	52,139	96,695	7,633	128,470	27,436	51,116	10,079	11,403	5,241	...	225	457
1969	628,572	40,819	178,334	56,533	97,509	12,083	134,480	26,352	53,034	10,745	12,474	5,549	...	249	411
1970	662,223	40,197	185,081	62,811	100,079	17,233	141,866	25,417	55,107	12,212	15,710	5,922	...	232	366
1971	711,323	39,425	195,732	69,891	102,885	22,925	149,901	24,812	57,716	15,631	25,516	6,302	...	254	333
1972	758,469	38,508	205,413	79,966	107,193	27,967	156,656	24,001	60,045	18,121	33,240	6,807	...	246	306
1973	843,520	37,230	219,786	96,663	117,434	33,947	166,037	23,817	62,342	23,900	54,142	7,602	28	265	267
1974	938,654	35,762	238,543	118,535	130,669	40,059	176,099	24,076	65,268	28,798	71,248	9,017	133	251	196
1975	989,786	34,179	257,774	129,502	132,787	42,343	176,119	23,759	68,784	31,894	81,919	10,071	189	287	179

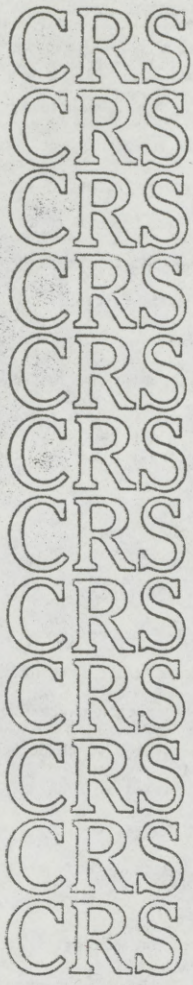
[1] Distribution between immediate and deferred not available prior to 1990.

Table 8–4.—Employee annuitants added to the retirement roll during the fiscal year ended June 30, 1975

Provision under which retired	Number added to the roll			Average monthly annuity	Type of annuity			Average survivor annuity (monthly)	Average contributions	Average age at issue	Average service (years)	Number with Federal employees' group life insurance	Number with Health Benefits
	Total	Men	Women		Life only	Life plus survivor annuity							
						Widows or widowers	Other						
BY PROVISION RETIRED													
Mandatory, 15 years' service	1,561	935	626	$519	742	813	6	$337	$9,274	70.8	25.3	1,495	1,217
Disability	31,875	23,747	8,128	502	8,933	22,942	...	300	8,738	54.0	21.4	30,611	25,265
Optional													
30 years' service, age 55	15,456	13,440	2,016	882	3,052	12,379	25	520	13,875	57.0	33.3	15,188	13,559
30 years' service, age 60	10,028	8,116	1,912	886	2,570	7,425	33	539	14,077	63.5	34.3	9,814	9,126
20–29 years' service, ages 60–61	4,102	2,683	1,419	540	1,450	2,641	11	317	10,195	60.8	25.4	3,904	3,457
12–29 years' service, age 62	10,783	6,855	3,928	426	4,060	6,705	18	255	8,785	65.0	21.4	10,287	8,833
5 years' service, age 62	1,637	1,000	637	136	687	943	7	83	4,312	65.2	9.7	357	87
Optional Subtotal	42,006	32,094	9,912	703	11,819	30,093	94	420	11,885	61.3	28.8	39,550	35,062
Deferred	6,776	4,338	2,438	114	5,300	1,472	4	107	2,017	61.4	11.3	.....	.....
Involuntary													
20 years' service, age 50	3,690	2,033	1,657	468	1,453	2,234	3	260	9,478	54.6	22.6	3,481	2,759
25 years' service	12,180	10,085	2,095	716	3,157	9,009	14	408	12,360	52.8	29.6	11,802	10,165
Involuntary Subtotal	15,870	12,118	3,752	659	4,610	11,243	17	374	11,690	53.2	28.0	15,283	12,924
Special Provision													
Hazardous Duty	1,566	1,547	19	1,145	128	1,436	2	667	15,939	56.2	31.2	1,544	1,537
Air Traffic Controller	60	58	2	1,141	8	52	...	666	18,067	55.3	31.7	59	59
Members of Congress	51	48	3	1,897	10	41	...	1,083	38,229	65.8	21.7	43	40
Transfers from other systems	2	2	.....	332	1	1	...	355	7,677	62.0	14.5	1	1
Total	99,767	74,887	24,880	597	31,551	68,093	123	377	10,218	57.7	25.1	88,586	76,105
BY LAW UNDER WHICH RETIRED													
Prior to 1948 law	2,961	2,212	749	$68	2,961	...	...	....	$598	60.6	8.8	.....	.....
1948 Law	1,385	938	447	103	1,384	1	...	$56	1,563	62.0	11.5	.....	1
1956 Law	773	456	317	151	298	473	2	91	2,827	62.0	14.3	2	1
1962 Law	919	396	523	159	353	564	2	108	4,139	61.6	15.4	15	7
1969 Law	93,729	70,885	22,844	628	26,555	67,055	119	381	10,770	57.5	26.0	88,569	76,096
Total	99,767	74,887	24,880	597	31,551	68,093	123	377	10,218	57.7	25.1	88,586	76,105

Table B–5.—Employee annuitants on the retirement roll as of June 30, 1975

Provision under which retired	Number on the roll			Average monthly annuity	Type of annuity			Average survivor annuity (monthly)	Average contributions	Average age in 1975	Average service (years)	Number with Federal employees' group life insurance	Number with Health Benefits
	Total	Men	Women		Life only	Life plus survivor annuity							
						Widows or widowers	Other						
BY PROVISION RETIRED													
Mandatory, 15 years' service	34,179	22,534	11,645	$491	16,679	17,333	167	$307	$6,222	79.9	25.6	32,328	25,691
Disability	257,774	187,940	69,834	406	88,460	169,314	....	227	5,362	60.6	18.9	234,900	184,648
Optional													
30 years' service, age 55	129,502	110,633	18,869	810	32,164	97,097	241	471	10,234	63.4	33.4	122,725	107,605
30 years' service, age 60	132,787	109,759	23,028	816	39,547	92,790	450	484	9,388	71.9	35.8	123,386	106,319
20–29 years' service, ages 60–61	42,343	27,799	14,544	549	15,670	26,585	88	318	8,636	65.0	25.7	40,371	36,111
12–29 years' service, age 62	176,119	110,522	65,597	416	78,326	97,397	396	251	6,349	72.9	21.8	165,875	135,936
5 years' service, age 62	23,759	14,484	9,275	137	13,048	10,678	33	80	2,460	76.6	9.1	2,531	1,274
Optional Subtotal	504,510	373,197	131,313	620	178,755	324,547	1,208	366	8,155	69.7	28.2	454,888	387,245
Deferred, 5 years' service	68,784	41,042	27,742	140	57,143	11,592	49	120	1,890	71.5	12.3	23	66
Involuntary													
20 years' service, age 50	31,894	20,647	11,247	451	11,170	20,674	50	253	7,434	60.1	22.6	29,649	24,145
15, 25 and 30 years' service	81,919	66,678	15,241	665	23,283	58,518	118	376	10,018	57.4	29.0	77,303	67,120
Involuntary Subtotal	113,813	87,325	26,488	479	34,453	79,192	168	342	9,294	58.2	27.2	106,952	91,265
Special Provision													
Hazardous Duty	10,071	9,840	231	938	1,403	8,657	11	548	11,695	63.2	29.1	9,634	9,073
Air Traffic Controller	189	185	4	1,190	21	168	....	679	17,021	56.3	31.4	186	187
Members of Congress	287	275	12	1,575	55	232	....	948	23,743	71.7	19.0	184	157
Transfers from other systems	179	134	45	261	136	43	....	143	3,130	79.9	18.0	1	17
Total	989,786	722,472	267,314	528	377,105	611,078	1,603	331	7,098	66.4	24.5	839,098	698,349
BY LAW UNDER WHICH RETIRED													
Prior to 1948 Law	37,213	25,553	11,660	$124	31,971	5,242	....	93	1,015	75.4	12.4	5	1,953
1948 Law	60,036	39,905	20,131	295	48,805	11,132	99	279	2,366	78.1	21.5	14,305	10,784
1956 Law	133,240	96,054	37,186	392	58,414	74,567	259	293	3,817	74.8	22.8	110,432	85,076
1962 Law	263,636	187,038	76,597	510	91,510	171,699	526	293	6,046	65.6	24.1	240,932	211,000
1969 Law	495,662	373,922	121,740	634	146,405	348,538	719	379	9,566	60.9	26.3	471,424	409,536
Total	989,786	722,472	267,314	528	377,105	611,078	1,603	331	7,098	66.4	24.5	839,098	698,349



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MANDATORY RETIREMENT

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August 20, 1976

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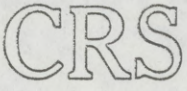

MANDATORY RETIREMENT

Introduction

Mandatory retirement may be defined as the involuntary separation of a person from a particular job because of age. Such mandatory retirement has been the subject of recent court decisions, congressional activity, and other debate.

Those who oppose mandatory retirement claim that it is discriminatory and note that job performance is not necessarily related to age. Those who support mandatory retirement point out that certain skills and abilities do decline with age on the average. They also note that older persons have held jobs for many years and say that younger persons should be given these employment opportunities.

The purpose of this paper is to survey current legislation applicable in this area, legal activity, the extent of mandatory retirement, and more fully the arguments in the debate on this issue.

Age Discrimination in Employment Act

The Age Discrimination in Employment Act (ADEA) of 1967 (29 U.S.C. 621 et seq.) was enacted to prohibit discrimination in employment because of age in such matters as hiring, job retention, compensation and other terms, conditions or privileges of employment. This law precludes certain mandatory retirement because of age. As amended, this Act protects workers aged 40 through 64 from discrimination by most employers of 20 or more persons, including Federal, State and local governments, employment agencies servicing covered employers, and labor organizations with 25 or more members related to such covered employers. There are certain exceptions in the Act, including exceptions:

(1) where age is a bona fide occupational qualification reasonably necessary to normal operation of a particular business (e.g., airline pilots within the jurisdiction of the Federal Aviation Agency or actors in character parts);

(2) where differentiation is based on reasonable factors other than age (e.g., the use of physical examinations relating to minimum standards reasonably necessary for specific work to be performed on a job may be allowable even though older persons are generally less likely to pass such examinations),

(3) to observe the terms of a bona fide seniority system or a bona fide employee benefit plan such as a retirement, pension, or insurance plan; and

(4) where discharge of an employee is for good cause.

Upper Age Limit of 65 in the ADEA

The upper age limit of 65 in the ADEA, about which there is currently much discussion, was contained in an Administration bill (S. 830, 90th Congress) which after amendment became law. Willard Wirtz, then Secretary of Labor, in response to a question as to why an age limit of 65 was chosen, stated, "While substantial numbers of employees perform productive work for many years past age 65, for the majority of workers this is the usual retirement age and an age at which pensions become payable under the Old-Age, Survivors, and Disability Insurance programs of the Social Security Act, as well as many private pension plans." 1/

Wilbur Cohen in describing how age 65 was selected as the age of entitlement for social security stated:

> "This brief account of how age 65 was selected in the old age insurance program in the United States indicates that there was no scientific, social, or gerontological basis for the selection. Rather, it may be said that it was the general consensus that 65 was the most acceptable age.
>
> ***
>
> "In appraising the prevailing attitudes at the time, it should be remembered that the selection of age 65 in the original Social Security Act was not tied up with any compulsory retirement age for all persons. Age 65 was to be the boundary line which determined when the federal government would finance old age assistance payments to needy persons and when the contributory insurance program would first begin to make payments to persons no longer regularly employed. 2/

1/ U.S. Congress. Senate. Committee on Labor and Public Welfare. Subcommittee on Labor. Age Discrimination in Employment. Hearing, 90th Congress, 1st session on S. 830 and S. 788. Mar. 15-17, 1967. Washington, U.S. Govt. Print. Off., 1967. p. 47-48.

2/ Cohen, Wilbur J. Retirement Policies under Social Security. Berkeley, University of California Press, 1957. p. 24, 25.

Pending Legislation

Two major types of bills have been introduced in the 94th Congress with the intent of generally precluding or limiting mandatory retirement of persons age 65 or over. One type, for example, H.R. 2588 introduced by Mr. Findley and others, would eliminate the upper age limit of 65 in the Age Discrimination in Employment Act. Bills of this type would also extend all current prohibitions in the ADEA to persons age 65 and over. Another type of bill, for example, H.R. 940 introduced by Mr. Roe, would add "age" to title VII of the Civil Rights Act which presently prohibits employment discrimination on account of race, color, religion, sex, or national origin. The Subcommittee on Equal Opportunities of the Committee on Education and Labor held hearings on February 9, 1976, on age discrimination in employment and H.R. 2588. No further legislative action has been taken.

Other pending bills relate specifically to mandatory retirement for Federal employees (see page 10). H.R. 14879 introduced by Mr. Pepper would eliminate the upper age limit of 65 in the ADEA for Federal employees only. Other selected bills include H.R. 13199 which would raise the mandatory retirement age for members of the Coast Guard to 65 (from the current age of 62), and H.R. 504 which would require mandatory retirement of Federal employees at age 70 with 5 years of service (instead of the current 15 years).

State Laws 3/

As of February 1, 1976, 43 States and jurisdictions had laws which prohibited discrimination in employment because of age. (Six of these States have laws which apply only to public employees.) All these laws appear to prohibit, to some extent,

3/ U.S. Department of Labor. Employment Standards Administration. Age Discrimination in Employment Act of 1967; A Report Covering Activities under the Act during 1975 Submitted to Congress in 1976 in Accordance with Section 13 of the Act. [Washington, U.S. Govt. Print. Off., 1975] p. 32-58.

the discharge or dismissal of persons on account of age. These State laws have varying upper age limits i.e. 50, 60, 62, 64; most have an age limit of 65; and 16 States have no upper age limit in the law.

Selected U.S. Court Decisions

In Weisbrod v. Lynn, 420 U.S. 940 (1975), aff'g 383 F. Supp. 933 (D.C. 1974), the U.S. Supreme Court summarily affirmed a three-judge court decision which upheld the Federal law requiring mandatory retirement from Federal employment at age 70 with 15 years of service. This law had been challenged on the basis that it was unconstitutional in that it violated the due process clause of the Constitution. The three-judge court held that the question of the constitutionality of the law had already been resolved in its favor in effect by the Supreme Court's summary affirmance of a State court decision sustaining a similar law (McIlvain v. Pennsylvania 415 U.S. 986 (1974), dismissing appeal from 454 Pa. 129, 309 A. 2d 801 (1973)

In Massachusetts v. Murgia, Docket No. 74-1044 (June 25, 1976) the U.S. Supreme Court upheld a Massachusetts statute requiring uniformed State Police officers to leave the State Police at age 50. This law had been challenged on the basis that it denied equal protection of the laws to an officer who passed the physical examinations required of younger officers. The Court in its opinion stated that there is no fundamental right to government employment per se. The Court also said that the aged, unlike "those who have been discriminated against on the basis of race or national origin have not experienced a 'history of purposeful unequal treatment' or been subjected to unique disabilities on the basis of stereotyped characteristics not truly indicative of their abilities." In addition, the Court said the Massachusetts statute met the test of rationality since physical fitness is essential to the job of a State Police officer and that physical ability generally declines with age. Justice Marshall in his dissenting opinion, noted that the Court's

conclusions did not imply that all mandatory retirement laws were constitutionally valid and that such laws covering jobs not so dependent on physical fitness might receive a different interpretation from the Court. 4/

The U.S. District Court for the District of Columbia held in Bradley v. Kissinger, Civil Action No. 76-0085 (June 30, 1976) that the provision of the Foreign Service Act requiring mandatory retirement at age 60 is neither inconsistent with nor in violation of the Age Discrimination in Employment Act. In this case, the plaintiffs' primary claim was that this mandatory retirement provision in the Foreign Service Act was superceded and repealed by the 1974 Amendments to the ADEA which extended the protection of the Act to Federal employees. The court opinion pointed out that a narrow specific statute (such as the Foreign Service Act) is not superceded by a later more general act unless there is clear indication that Congress intended to do so. However, this point was not the basis of the court's ultimate holding. The court based its decision upon section 4(f)(2) of the ADEA which states:

> (f) It shall not be unlawful for an employer, employment agency, or labor organization --
>
> (2) to observe the terms of a bona fide seniority system or any bona fide employee benefit plan such as a retirement, pension, or insurance plan, which is not a subterfuge to evade the purpose of this Act, except that no such employee benefit plan shall excuse the failure to hire any individual;

The mandatory retirement provision in the Foreign Service Act expressly cites and incorporates the annuity program and thus, it was determined by the court that this section of the Foreign Service Act is an employee benefit plan within the meaning of 4(f)(2) of the ADEA.

4/ For further discussion of this case, see Massachusetts Board of Retirement v. Murgia, A Summary and Analysis, by Karen Lewis, Legislative Attorney, American Law Division, CRS, Aug. 26, 1976.

In Brennan v. Taft Broadcasting Co., 500 F 2d 212 (1974), the U.S. Court of Appeals for the Fifth Circuit held that the employer's "Profit Sharing Retirement Plan" was an "employee benefit plan" within the exemption provision of the ADEA - section 4(f)(2), quoted above. In this case, a worker was compelled to leave his job at age 60 in conformance with the terms of an employer profit sharing retirement plan. The Department of Labor in its arguments cited legislative history which indicates that Congress intended application of this section to be limited to cases which would otherwise cause a financial hardship on employee benefit plans. 5/ An aspect of the court's analysis that is interesting is its discussion of statutory interpretation and the weight to be given to legislative history. The rule which the court pointed to as controlling in this situation is that when a statute is unambiguous on its face, the meaning is clear and can be taken from the wording of the statute itself with no need to refer to the statute's legislative history. The Department of Labor still contends that section 4(f)(2) is limited, among other things, to situations where it "is essential to a [benefit] plan's economic survival or to some other legitimate purpose -- i.e., is not in the plan for the sole purpose of moving out older workers, which purpose has now been made unlawful by the ADEA". The Department of Labor is now attempting to develop a conflict with the Brennan v. Taft Broadcasting Co. opinion in another circuit. 6/

5/ Even in such cases, to this writer, the intent appears to have been to allow an employee to receive the protection of the ADEA by exempting himself from the benefits of any conflicting employee benefit plan.

6/ U.S. Department of Labor. Employment Standards Administration. Age Discrimination in Employment Act of 1967, A Report Covering Activities under the Act during 1974 Submitted to Congress in 1975 in Accordance with Section 13 of the Act. [Washington, U.S. Govt. Print. Off., 1975] p. 17.

Data on Workers Subject to Mandatory Retirement

Section 5 of the ADEA as enacted in 1967 directs the Secretary of Labor "to undertake an appropriate study of institutional and other arrangements giving rise to involuntary retirement and report his findings and any appropriate legislative recommendations to the President and to the Congress." No such report or recommendations have yet been made, although data from various studies related to this subject have been cited by the Department of Labor in its annual reports on the ADEA.

Data on the number of workers affected by mandatory retirement have been produced by the Social Security Administration through its Survey of Newly Entitled Beneficiaries. This was a sample survey of persons aged 62-65 who were initially awarded retired worker benefits during the survey period. Data presented here are from July through December 1968 and 1969.

The following are some of the highlights of this study as it relates to the prevalence of mandatory retirement policies. (All percentages are of all those responding to the questions: "Was there a compulsory retirement age on your last job?" and "If yes, at what age?")[7/]

- 30 percent of the wage and salary workers said that there was a mandatory retirement age on their most recent job. This was true for 36 percent of men wage and salary workers and 23 percent of women wage and salary workers.[8/]

- 65 was the mandatory retirement age for 68 percent of these workers, and 70 was the mandatory retirement age for 20 percent. (Two-thirds of public sector employees were subject to mandatory retirement at age 70 or older.)[9/]

7/ "Mandatory retirement" and "compulsory retirement" are usually considered to be synonymous terms. Because compulsory retirement has a special meaning with regard to some of the pension plan data cited later, mandatory retirement is used throughout the remainder of this paper.

8/ Reno, Virginia. Compulsory Retirement among Newly Entitled Workers: Survey of New Beneficiaries. Social Security Bulletin, March 1972. p. 4.

9/ Ibid., p. 5 and 7.

- 61 percent of these workers with pension plan coverage had jobs with mandatory retirement policies; and 80 percent of those under mandatory retirement policies had pension plan coverage.10/ (See pages 9 and 10 for data on such pension plan provisions.)

Of course, even among those subject to, or potentially subject to, mandatory retirement policies, there are various other reasons for retirement such as health, family reasons, and desire to retire. The following data were compiled from responses of beneficiaries describing the most important reason for leaving the last job:

- 52 percent of the male wage and salary workers gave mandatory retirement as the main reason for retirement at age 65.11/

- Among all women who became entitled to social security benefits at age 65 and over, and had stopped working in the past 3 years, 34 percent said the main reason for leaving their last job was mandatory retirement.12/

- Among men aged 62-65, at entitlement, whose main reason for retirement was mandatory retirement; 39 percent said they wanted to retire and 56 percent said they did not want to retire (not all answered this question).13/

10/ Ibid., p. 6.
11/ Reno, Virginia. Why Men Stop Working at or before Age 65: Findings from the Survey of New Beneficiaires. Social Security Bulletin, June 1971. p. 8.
12/ Reno, Virginia. Women Newly Entitled to Retired-Worker Benefits: Survey of New Beneficiaries. Social Security Bulletin, April 1973. p. 17.
13/ Reno, Virginia. Why Men Stop Working at or before Age 65: Findings from the Survey of New Beneficiaires. Social Security Bulletin, June 1971. p. 10.

Pension Plan Provisions

As was noted above, mandatory retirement is most often associated with companies having pension plans. This section presents some data on the type and frequency of mandatory retirement provisions in pension plans.

Mandatory retirement provisions in private pension plans are sometimes classified as either "compulsory" or "automatic." Under compulsory retirement provisions, a worker must retire at a given age unless the employer consents to let the employee continue working. Under automatic retirement provisions, all workers without exception must retire upon reaching a specified age. A Bureau of Labor Statistics study in 1971, of private pension plans covering almost 21 million workers (over two-thirds of all workers covered by private plans at the time), showed the following with respect to mandatory retirement provisions:14/

Type of Retirement Provision	Percent of Workers Covered
No mandatory retirement provision	42
All mandatory retirement provisions	58
Automatic retirement only	17
Compulsory retirement only	34
Compulsory and automatic retirement	7

A study of 271 corporate pension plans, covering 8.4 million employees (or about one-fourth of all employees covered by private pension plans), which were amended in the period 1970-1975 disclosed the following data on compulsory retirement provisions in these plans:15/

14/ Davis, Harry E. Pension Provisions Affecting the Employment of Older Workers. Monthly Labor Review, April 1973. p. 42.

15/ Bankers Trust Company. Study of Corporate Pension Plans, 1975. New York, p. 5, 23, 24.

Compulsory Retirement Age*	Percent of Pattern Plans**	Percent of Conventional Plans***
None	12	1
60	--	2
62	--	1
64	--	1
65	46	71
66	2	1
67	--	1
68	26	2
70	1	1
Not stated	13	19
Total	100%	100%

* "Compulsory retirement age" here means the age at which an employee must retire unless the employer gives special consent to continue working.

** "Pattern plans" have been negotiated by certain of the large international unions with individual companies or groups of companies. (Pattern plans apply, for example, to auto workers and steel workers.)

*** Conventional plans" are those not of a pattern type and are generally non-negotiated.

In addition to private pensions, many Federal laws establishing pension plans for Federal employees specify a mandatory retirement age. For example, under the Federal Civil Service Retirement system, employees must generally retire no later than at age 70 with 15 years of service or as soon thereafter as the employee has completed 15 years of service. There are, however, provisions for granting individual exemptions. There are earlier mandatory retirement requirements for some special groups of employees such as law enforcement employees; and no mandatory retirement requirements apply to others such as Congressional employees.

Most State pension plan systems also have mandatory retirement provisions. A 1972 survey of the largest State and local retirement systems covering about 70 percent of all employees enrolled in such systems showed that most had a mandatory retirement age; two-thirds of the plans set this at age 70 or later.16/

Arguments For and Against Mandatory Retirement

The following are arguments that have been presented for and against mandatory retirement because of age.

For

1. By forcing retirement at an earlier age than a person might otherwise choose, there are more opportunities for younger workers. This may aid in recruiting additions and replacements to the work force and allow infusion of new ideas.

2. Older workers can often retire to social security or other retirement income making jobs available to younger unemployed workers who do not have other income potential.

3. Older persons as a group may be less well suited for some jobs than younger workers because:

a. Declining physical and mental capacity are found in greater proportion among older persons.

b. Generally older persons do not learn new skills as easily as younger persons.

c. Older workers have more inflexibility with regard to work due to work rules, seniority systems and pay scales.

d. Older workers typically have less education than younger workers.

16/ Tilove, Robert. Public Employee Pension Plans. New York, Columbia University Press, 1976. p. 32.

4. Medical science is not capable of making accurate individual assessments of physical and psychological competencies of employees which would presumably be required if there was no standard mandatory retirement age; or substantial time and money may be required to make such individual determinations of fitness. Also, it is difficult to administer any such individual test of fitness fairly.

5. Mandatory retirement saves face for the older worker no longer capable of performing his or her job adequately, who would otherwise be singled out for forced retirement.

6. Mandatory retirement provides a predictable situation allowing both management and employees to plan ahead.

7. It is sometimes more costly for employers to have an older work force in terms of maintaining various health and life insurance plans.

Against

1. Mandatory retirement based on age alone is discriminatory against workers. It is contrary to equal employment opportunity. Mandatory retirement laws have been challenged as unconstitutional because of denying individuals equal protection of the law.

2. Chronological age alone is a poor indicator of ability to perform a job. Mandatory retirement at a certain age does not take into consideration actual, differing abilities and capacities. Many workers can continue to work effectively beyond age 65, and may be better employees than younger workers because of experience and job commitment.

3. Mandatory retirement can cause hardships for older persons. For example:

a. Mandatory retirement often results in loss of role and income for individuals.

b. Mandatory retirement at a certain age may very well result in a lower retirement benefit under social security if the last years the employee would have worked would have brought higher earnings than earlier years.

c. Mandatory retirement is especially disadvantageous to some women who do not start work until after the children are grown or after being widowed or divorced. Forced retirement limits the work life of these women and reduces their ability to build up significant pension benefits.

d. If a worker who was forced to retire wishes to be reemployed, he or she will have a harder time finding a new job because of age discrimination.

e. The American Medical Association's Committee on Aging argues that mandatory retirement on the basis of age will impair the health of many individuals whose job represents a major source of status, creative satisfaction, social relationships or self respect. They add, "enforced idleness - robs those affected of the will to live full, well rounded lives, deprives them of opportunities for compelling physical and mental activity, and encourages atrophy and decay."

4. Mandatory retirement causes loss of skills and experience from the work force, resulting in reduced national output (GNP).

5. Forced retirement causes an increased expense to government income maintenance programs such as social security, as well as to social service programs.

6. The declining birth rate will mean a proportionately smaller labor force supporting a larger retiree population early in the next century. The economics of this situation could be eased by later retirement or elimination of mandatory retirement at any set age.

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STATEMENT OF WILLARD WIRTZ
BEFORE THE
SUBCOMMITTEE ON RETIREMENT INCOME AND EMPLOYMENT
OF THE
HOUSE SELECT COMMITTEE ON AGING

February 25, 1976

Mr. Chairman and Members of the Subcommittee:

You have asked that I testify regarding "the accomplishments and failures of the Age Discrimination in Employment Act of 1967 and ... the Federal Government's response to the employment problems and needs of the older worker." Since others are clearly more competent to evaluate the detailed record of the administration of the 1967 legislation, I hope it will serve the Subcommittee's purpose if I refer rather to the broader principle that Act incorporated and to what seem to me the necessary further applications of that principle today.

From 1935 to about 1965, our national policy regarding ourselves as older people was directed entirely to the idea of Security.

In 1965 -- with the passage of the Older Americans Act, the amendments to the Economic Opportunity Act, and the proposal to the Congress of what was to become the Age Discrimination in Employment Act of 1967 (ADEA) -- there emerged the recognition of a second dimension of old-age policy: relating to Opportunity.

The two objectives are complementary. Most of the opportunities provided by the 1965-67 legislation, including those resulting from the prohibition of discrimination, contribute to Security. But Opportunity obviously includes the important additional element of contribution and meaningfulness.

Although the provisions for Security as such are by no means yet complete, there seems special reason to emphasize right now the Opportunity dimension. For the prospect is emerging that with the growing concern in this country about long-range employment we will not only lessen our insistence on meaningful opportunity for older people but actually curtail it -- and enlarge other forms of security as a kind of trade-off. More bluntly, there seem to me clear signs that we are moving toward preserving a pretense of acceptable employment figures -- statistics! -- by putting more and more people with more and more competence and capacity out to pasture earlier and earlier. If this is so, it is a cruel form of national self-deceit.

The figures which would confirm or allay this concern are not available. This Subcommittee has been previously advised of the shortcomings of the standard statistics when it comes to measuring the employment and unemployment of older people, those 55 to 65, and particularly those over 65. They are critically deficient and I think misleading.

The report in a private poll conducted in 1974 -- to the effect that 3 out of 10 people 65 and over who are not working would like to be -- is obviously mushy; but it comes too close to our strong sense of this situation to be disregarded.

Part of the reason for enacting the ADEA was the advice from the Secretary of Labor to the Congress in 1965 that an estimated "million man-years of productive time are unused each year because of unemployment of workers over 45; and vastly greater numbers are lost because of forced, compulsory, or automatic retirement." Today, eleven years later, I wouldn't talk about man-hours; and this is important because this problem is emerging increasingly

as involving women fully as much as men. The rest of it is that all that I can find out about this situation indicates that this lost productive time figure is much higher today than it was then, and is rising rapidly.

Section 5 of the ADEA of 1967 directs the Secretary of Labor to make a "study of institutional and other arrangements giving rise to involuntary retirement, and report his findings and any appropriate legislative recommendations to the President and to the Congress." Eleven years later, that report has not been made. The perennial advice to the Congress is that the matter is still being studied. I think the fuller truth is that we don't want to face these facts for fear that what they would show would be Opportunity curtailed, the employment prospects of younger and middle-aged people being bolstered up a little by moving more people out earlier.

The worst of it is that there are also signs of an increasing acceptance of this as both inevitable and all right. I disagree on both counts.

What then to do about it?

There are three propositions, long on the national agenda, that need no less attention just because they, too, have aged:

-- That employment discrimination on the basis of age should be stopped;

-- That arbitrary fixed age limits for mandatory retirement ought to be eliminated;

-- That special work opportunities must be provided through programs such as Operation Mainstream and Senior AIDES.

A review of even part of the testimony already presented to this and other subcommittees makes me realize that there is nothing I can add -- except by way of confirmation -- to what you have already heard.

The prohibitions on age discrimination warrant more rigorous enforcement than they have so far received. The fine print in the ADEA, limiting its protection to those under 65, should be removed; what we have now is a Slightly Older Worker Age Discrimination Act.

The mandatory retirement point is as sticky as it is important. That report called for by Section 5 is the essential basis for deciding what to do here, and there isn't any excuse for not having it.

The obvious and obviously critical fact about Operation Mainstream Senior AIDES and other similar programs is that the administration of the Comprehensive Employment and Training Act and the curtailment of funding under cover of "decentralization" and "revenue sharing" means that these programs are being cut back even as the need for them increases. I feel helpless in just saying, as so many others have here, that this seems to me terribly wrong.

To be serious, however, about building Opportunity as well as Security into the last third of our lives -- or even about stopping the reduction of present opportunities for older people -- is necessarily to recognize that this cannot be effectively dealt with as a problem of old-age policy alone. To pretend that the answer to the non-use of older workers lies in giving them jobs by force of law, when this means taking those jobs from other workers and when the unemployment rate is at the 8% level, is empty forensics. The unemployment costs of a distressed economy must not be thrown disproportionately on older people -- or on any other group. There is more reason now, not less, for rigorous enforcement of the ADEA of 1967. But to be honest with this group among us, and with ourselves, is to recognize that older worker Opportunity depends in principal measure on finding a new form and meaning of growth in this country.

We have relied in the past on an economy based on that growth which is reflected in our measure of the Gross National Product; and we have accepted the technological advances which contribute to that particular kind of growth as creating, as far as human labor is concerned, more jobs than it eliminates. But our summation of this situation has left out the long range implications of the fact that while the number of jobs did increase ... until recently ... they were increasingly occupied for shorter and shorter portions of the life span. At one end, major employers are now offering "career jobs" only to people over age 20. At the other end, workers are being removed from these jobs at earlier ages, by forcing employees to retire, buying them off with more attractive retirement incomes, or by simply not admitting them back into jobs when they get dislocated from employment in recession periods. What was at an earlier point progress toward rationalizing the place of work in life has become a form of denial of meaning to what is supposed to be its climax.

Today the ever-growing Gross National Product economy is simply no longer a reality. It was based on the fallacy that there would be never-ending tolerance in the world for 6% of its population consuming 40% of its primary natural resources. And technology is not today producing a net increase in jobs; to the contrary.

So where we go in a policy of providing opportunity for older people is inextricably linked to some choices that have to be made as to where we go as a society. Such a policy depends necessarily on a new concept of growth; not one that accepts stagnation, for it is simply not our nature to shrink, but one that draws much more creatively on the use of the limitless human resource, with less reliance on what we take from the earth's thin crust. A new and

broadened concept of growth is going to be necessary to create the quantities of opportunities for useful roles we will need for all of us, and give us more room to deal with the admittedly difficult problem of an adequate quantity of such roles for the older population.

The constructing of a new concept of growth obviously carries beyond the province of this Subcommittee. There are elements of it, however, that emerge particularly in connection with the employment -- using that term broadly -- of older people. I only suggest a few of these briefly here:

There is obviously plenty to be done in every community in this country that older people are fully and eminently qualified to do. This includes but is by no means limited to what has traditionally been handled on a "volunteer" basis -- but without any reason for its having to be handled that way. A new concept of growth based on the fuller use of the human resource will necessarily include reappraisal of the validity of attaching such disproportionate significance to what is done in "the labor market" as we have defined it. This will properly include a reconsideration of the whole system of compensation and non-compensation.

We will eventually recognize again the value that lies in the symbiotic relationship between the old and the rest of the society, as we used to within the family. There is within the community at least as much opportunity to make use of this as there used to be within single households.

There is a thoroughly rational case to be made for developing a special training or education element to be included in the life-pattern at probably the 60-to-65 age level. The productive and service potential this would develop is immeasurable. The economics of this -- on a tough-minded cost and return analysis basis -- haven't even been explored.

New "part-time" work patterns of various kinds will inevitably develop as part of a purposive effort to fit work into a more rational life pattern instead of doing all our thinking the other way around -- or letting something called "the market" do the thinking for us. There would be eminent good sense in phasing retirement, gradually reducing an individual's working time on his or her accustomed job -- instead of preserving, simply for employer's convenience, a false concept of instant uselessness that results in wholesale human trauma.

Whatever cost elements may be involved in these or the numberless other possibilities of related kind will not be validly determined until we start doing a comprehensive accounting of the immense costs of present programs -- unemployment insurance, welfare programs, retirement arrangements, institutionalization of one kind or another -- from which no contribution whatsoever to productivity or service result.

In summary, Mr. Chairman and members of the Subcommittee:

I urge, in the light of today's economic prospects, the more rigorous enforcement and the larger support of those present programs -- including the prohibition of age discrimination in employment, and special work and service programs -- which recognize Opportunity as part of what we are trying to include in our compact with each other regarding our later years;

And that we take particular care not to try to either paper over or meet national economic exigency by shutting off older people's opportunities to find purpose and meaning in doing what they can and want to do;

But that we recognize that the only ultimately satisfactory older age employment policies will have to be based on new growth policies depending

less on the conversion of limited natural resources and more on the fuller development and use of the limitless human resource -- including what is in most people after they pass those arbitrary and artificial age lines to which we currently attach out-dated importance.

An important part of any new concept of "growth" will be in creating a system that serves our humanity, with each year of life as important as any other, and a corresponding decline in our habit of adapting the human experience to service the system. The old growth concept is now faltering. We need to put something in its place. It might just as well be something better.

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MANDATORY RETIREMENT: BIBLIOGRAPHY

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Vincent E. Treacy
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August 15, 1974

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August 26, 1976

To: Select Committee on Aging
Attn: Bob Weiner

From: Education and Public Welfare Division

Subject: Selected Data on State Laws Prohibiting Age Discrimination in Employment

The following data are compiled from my interpretation of the Department of Labor's "Summary of Provisions Under State Laws Pertaining to Dis-Crimination in Employment Because of Age, February 1, 1976."

43 States and jurisdictions have laws which prohibit discrimination in employment to some extent because of age.

28 States have laws which apply to public employees to some extent. (Some of these laws apply exclusively to public employees; others cover these employees along with other employees. Also the laws may cover State and/or local employment.)

6 (of the 28 States) have laws which apply only to public employees.

16, of the 43 States which have any age discrimination laws, have no upper age limit in their laws.

11 of the 28 States which have laws applying to public employees, have no upper age limit in their laws. These States are:

Connecticut	Maine	New Mexico
Florida	Maryland	Ohio
Illinois	Montana	South Carolina
Iowa	Nevada	

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FEDERAL MANDATORY RETIREMENT POLICIES

The information we have indicates the following mandatory retirement requirements.

Civil Service - Mandatory retirement is required at age 70 with 15 years of service, or as soon thereafter as the member has completed 15 years of service.

Exemptions to this mandatory retirement requirement can be given, on a year by year basis, by the President for Presidential employees; and by the Civil Service Commission for other employees if in the public interest. Also, anyone age 70 or over can be hired on a temporary basis for one year at a time. Retired Federal employees who are temporarily rehired are referred to as "reemployed annuitants."

The following special provisions apply to specified workers:

For law-enforcement and firefighter employees, effective January 1, 1978, mandatory retirement is at age 55 with 20 years of service, or as soon thereafter as the employee has completed 20 years of service. However, the head of the agency may, in the public interest, defer an employee's mandatory separation until age 60.

For air traffic controllers mandatory separation is at age 56 except that the Secretary of Transporation may exempt, until age 61, employees with exceptional skills and experience. The mandatory separation provision does not apply to any employee appointed as an air traffic controller prior to May 16, 1972.

Foreign Service - Mandatory retirement is at age 60 for most personnel but 65 for career ambassadors and ministers.

District of Columbia Public School Teachers' Retirement System - Mandatory retirement is at age 70, except that upon recommendation of the Superintendent of Schools and a two-thirds vote of the Board of Education, a teacher may be retained beyond age 70.

District of Columbia Police and Fire Department - Mandatory retirement is discretionary with management at age 60.

District of Columbia Judges - Mandatory retirement is at age 70.

Military Retirement - Mandatory retirement for officers is at various ages up to and including age 64. There is no mandatory retirement age for enlisted persons.

In addition, the law governing the Railroad Retirement system provides that workers who work beyond age 65 lose their supplemental benefits.

Sharon House
Education and Public Welfare Division
August 30, 1976

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MASSACHUSETTS BOARD OF RETIREMENT v. MURGIA
DOCKET NO. 74-1044
(June 25, 1976)

On June 25, 1976, by a seven-to-one vote, the U.S. Supreme Court upheld the constitutionality of the Massachusetts mandatory retirement statute for uniformed state police officers. Below we discuss the facts, the issue and the Court's rationale in Murgia. We comment also upon the significance of the Court's ruling and the role of Congress with regard to legislating in the area of mandatory retirement for state and local employees.

In Murgia, the appellee was an officer in the Uniformed Branch of the Massachusetts State Police. Pursuant to a Massachusetts statute, the Massachusetts Board of Retirement retired him upon his 50th birthday. The provisions of the Massachusetts law are set out in Slip Opinion, at pp. 1-2, n.1. The Court noted in its Opinion that the primary function of the Uniformed Branch of the Massachusetts State Police is to protect persons and property and to maintain law and order. The Majority observed that "... uniformed officers participate in controlling prison and civil disorders, respond to emergencies and natural disasters, patrol highways in marked cruisers, investigate crime, apprehend criminal suspects, and provide back-up support for local law enforcement personnel." (Id. at p.3).

The duties of such a uniformed officer are described as being "arduous" and requiring "high versatility." (Id.).

The issue before the Court in Murgia was: whether the provision of the Mass. Gen. Laws Ann. c.32, §26(3)(a), that a uniformed State Police Officer "shall be retired ... upon his attaining age fifty," denies appellee police officer equal protection of the laws in violation of the Fourteenth Amendment.

In upholding the Massachusetts statute, the Court ruled that there was no violation of the equal protection clause of the Fourteenth Amendment. The Court held that " ... the Massachusetts statute clearly meets the requirements of the Equal Protection Clause, for the State's classification rationally furthers the purpose identified by the State: Through mandatory retirement at age 50, the legislature seeks to protect the public by assuring physical preparedness of its uniformed police." (Id. at 7).

The Court in Murgia reached its decision by using a standard of review which has been characterized as "passive review." The following discussion sets out the types of review which the Court employs when it is confronted with equal protection challenges under the Fourteenth Amendment of the Constitution.

The Fourteenth Amendment to the Constitution provides that:

> ... No State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.
> (U.S. Constitution, Fourteenth Amendment; Emphasis Supplied.)

In the process of hearing and determining cases, the Court has developed different standards of review. First of all, there is the traditional standard — one which mandates restrained or passive review. Then there is the second, new standard that has evolved which requires active review and the application of a more stringent test.

The traditional standard grew primarily out of cases involving economic regulation. It is still mainly applied there; however, it does appear in other contexts. This restrained or more passive review approach requires that the person attacking the classification bears the burden of proving that such classification lacks a rational basis. Behind the traditional standard is the rule that the "classification must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike." F.S. Royster Guano Co. v. Virginia 253 U.S. 412, 415 (1920). This traditional standard has come to be equated with the commonly referred to, "rational basis" test. So, whenever the governmental classification has a "rational basis" vis a\ vis a legitimate public objective, it is upheld by the Court when it is attacked as being violative of the equal protection clause. See McGowan v. Maryland 366 U.S. 420, 425 (1961). Usually, this public object is not required to be the dominating motive in the minds of the legislators; nor is it necessary to show that the relationship of the distinction to the objective is grounded in fact.

See "Developments In The Law -- Equal Protection," 82 Harvard Law Review 1065, 1077-87 (1969). Furthermore, very often, mere speculation on the part of the Court as to the existence of this relationship is sufficient to sustain the classification. Id., at p.1080, citing Goesaert v. Cleary 335 U.S. 464 (1948) and Kotch v. Board of River Port Pilot Comm'rs 330 U.S. 552 (1947).

In recent years, the Court has developed the new and higher standard of review. This more active review standard is used by the Court when classifications are based on either a "suspect" criterion or affect a "fundamental" interest. It should be emphasized that the Court will only invalidate invidious classifications. Therefore, in analyzing classifications established by certain statutes, the Court has to decide which ones are permissible and which ones are not because they are in fact invidious. In cases meriting active review, the Court exercises a "strict scrutiny." The government involved must in turn show a "compelling state interest" or a high degree of need for such legislation on its part.

Examples of "suspect classifications", as defined by the U.S. Supreme Court, include race and nationality. See McLaughlin v. Florida 379 U.S. 184, 192 (1964); and Korematsu v. United States 323 U.S. 214, 216 (1944) respectively. Neither sex nor age has been designated by the Court as being "suspect" classifications warranting an application of the active review analysis.

In Murgia, the Court rejected the strict scrutiny -- active review approach. The Majority noted,

> We need state only briefly our reasons ... that strict scrutiny is not the proper test for determining whether the mandatory retirement provision denies appellee equal protection. San Antonio Independant School District v. Rodriguez, 411 U.S. 1, 16 (1973), reaffirmed that equal protection analysis requires strict scrutiny of a legislative classification only when the classification impermissibly interferes with the exercise of a fundamental right or operates to the peculiar disadvantage of a suspect class. Mandatory retirement at age 50 under the Massachusetts statute involves neither situation. (Slip Opinion at 5-6).

The Court pointed out (1) that there was no support in any of its decisions for the proposition that a right of governmental employment per se is fundamental and (2) the class of uniformed state police officers over 50 does not constitute a suspect class for purposes of equal protection analysis. The Court distinguished among the categories of race, nationality and age. It observed that,

> While the treatment of the aged in this Nation has not been wholly free of discrimination, such persons, unlike, say, those who have been discriminated against on the basis of race or national origin, have not experienced a 'history of purposeful unequal treatment' or been subjected to unique disabilities on the basis of stereotyped characteristics not truly indicative of their abilities. (Id. at 6).

The Court reasoned that the statute did not "impose a distinction sufficiently akin to those classifications that we have found suspect to call for strict judicial scrutiny. "(Id. at 7).

In choosing the less stringent standard of review, ie. "rational basis" analysis, the Court was giving its approval for employing a more relaxed standard with regard to age distinctions which have been challenged on constitutional grounds. The Majority wrote,

> In this case, the Massachusetts statute clearly meets the requirements of the Equal Protection Clause, for the State's classification rationally furthers the purpose identified by the State: Through mandatory retirement at age 50, the legislature seeks to protect the public by assuring physical preparedness of its uniformed police. Since physical ability generally declines with age, mandatory retirement at 50 serves to remove from police service those whose fitness for uniformed work presumptively has diminished with age. This clearly is rationally related to the State's objective. There is no indication that §26(3)(a) has the effect of excluding from service so few officers who are in fact unqualified as to render age 50 a criterion wholly unrelated to the objective of the statute. (Id. at 7-9).

In its rationale, the Court emphasized that it was only deciding the issue whether the system of mandatory retirement for uniformed police officers enacted by the Massachusetts legislature denied the appellee equal protection of the law. The Court explicitly noted that it was not evaluating the appropriateness of the means chosen by the State to accomplish the purpose or objective of assuring physical fitness. The Court also pointed out that it was fully cognizant of the "substantial economic and psychological effects premature and compulsory retirement can have on an individual." (Id. at 9-10) The decision in Murgia was based exclusively upon equal protection grounds, and the Court simply concluded that upon applying the rational basis standard of review, the Massachusetts statute was constitutionally valid.

From a legal analytical point of view, it is important to distinguish between constitutional standards of interpretation and statutory ones. It is an accepted fact that no unconstitutional practice can be sanctioned statutorily. It does follow from this though that the equal protection clause in the Fourteenth Amendment of the U.S. Constitution, as well as any other constitutional provisions, establishes only the minimum scope of protection. Congress is at liberty to legislate beyond that minimum limit or guarantee. Consequently, laws such as the civil rights acts can be more expansive than the minimal requirement set forth by the Constitution. The decision whether or not to enact such broad statutes is of course a policy decision on the part of Congress. This distinction between constitutional protections and statutory ones is fundamental to a legal understanding. The standards which the U.S. Supreme Court applies in situations where the equal protection clause of the Fourteenth Amendment is violated are not necessarily the same as an analysis the Court would set forth when it is dealing with the violation of a statutory prohibition. In the constitutional context, the Court will go through an application of a particular standard of review — traditional rational basis or active — depending upon the facts of the case, the classification involved, and the nature of the discrimination. It is a highly sophisticated approach to ascertaining whether or not a person has been denied equal protection of the laws. When the Court is faced with a case that involves a specific statute, its review of the facts is done in accordance with the wording of the statute which has allegedly been violated. See Washington v. Davis, Docket No.74-1492 (June 7, 1976), for an in-depth discussion of the important distinction between constitutional and statutory standards of review.

The question arises as to whether Congress can legislate in the area of mandatory retirement with regard to state and local employees. The answer to this question depends upon how one interprets the Supreme Court's recent decision in National League of Cities v. Usery, Docket No.74-878 (June 24, 1976).

National League of Cities dealt specifically with the power of the Federal Government to mandate minimum wages and maximum hours for certain state and local employees. The Court held that "... insofar as the challenged amendments operate to directly displace the States' freedom to structure integral operations in areas of traditional governmental functions, they are not within the authority granted Congress by Art.I, §8, cl.3." (Slip Opinion at 18.) Writing for the Majority, Justice Rehnquist also distinguished Fry v. U.S. 421 U.S. 542 (1975), and declared that the "far-reaching implications" of Maryland v. Wirtz 392 U.S. 183 (1968) were being overruled.

While the Court in National League of Cities rejected Congress' ability through the commerce clause to enact laws affecting the employment conditions (in this instance their wages and hours) of public employees on the state and local levels, in a footnote it stated, "We express no view as to whether different results might obtain if Congress seeks to affect integral operations of state governments by exercising authority granted it under other sections of the Constitution such as the Spending Power, Art.I, §8, cl.1, or §5 of the Fourteenth Amendment." (Id. at n.17.) (Emphasis supplied.) Footnote 17 constitutes a reservation of judgment by the Court with regard to the constitutionality of legislation that (1) is enacted pursuant to either the taxing and spending clause or §5 of the

Fourteenth Amendment and (2) affects state and local employees in terms of their conditions of employment.

In light of the Court's reservation of judgment in footnote 17 in National League of Cities, it is conceivable that Congress may enact legislation regarding mandatory retirement, but it must act pursuant to §5 of the Fourteenth Amendment. §5 of the Fourteenth Amendment provides,

> The Congress shall have power to enforce, by appropriate legislation, the provisions of this article. (Emphasis supplied.)

We must point out, however, that the decision of Congress to propose legislation relating to mandatory retirement requirements affecting state and local employees is a policy matter. After weighing all of the facts before it, Congress will have to determine whether or not the Federal Government should get involved in this area. We also must caution that footnote 17 is merely a reservation of judgment, and we cannot predict with any degree of certainty how the Court might rule when it is confronted with a challenge to a federal statute providing mandatory retirement requirements for state and local employees. The power of Congress under the Fourteenth Amendment to outlaw racial, religious, sexual, and national origin discrimination by state and local governmental bodies was unanimously sustained by the Court in Fitzpatrick v. Bitzer, Docket No.75-251 (June 28, 1976).

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Legislative Attorney
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August 26, 1976

POSSIBLE AMENDMENT to H. R. 14879 for Purpose of Referencing Specific Existing Mandatory Retirement Statutes

Page 1, strike out line 3 and insert in lieu thereof the following:

Amendments to Age Discrimination Act of 1967

Section 1. (a) Section 12 of the Age Discrimination in Employment

Page 2, line 3, insert immediately after "Act" the following: ", other than an employee or applicant for employment in any military department".

Page 2, line 4, strike out "Sec. 2." and insert in lieu thereof "(b)".

Page 2, line 8, insert immediately after "employment" the following: "(other than an employee or applicant for employment in any military department)".

Page 2, immediately after line 10, add the following new sections:

Amendments to Title 5, United States Code

Sec. 2. (a)(1) Subchapter I of chapter 33 of title 5, United States Code, is amended by striking out section 3322.

(2) The chapter analysis for subchapter I of chapter 33 of title 5, United States Code, is amended by striking out the item relating to section 3322.

(b)(1) Subchapter I of chapter 33 of title 5, United States Code, is amended by striking out section 3323.

(2) The chapter analysis for subchapter I of chapter 33 of title 5, United States Code, is amended by striking out the item relating to section 3323.

(c)(1) Section 8335 of title 5, United States Code, is amended by striking out subsection (a) through subsection (e), and by redesignating subsection (f) and subsection (g) as subsection (a) and subsection (b), respectively.

(2) Section 8339(d) of title 5, United States Code, is amended by striking out "section 8335(g)" and inserting in lieu thereof "section 8335(b)".

(d)(1) Section 626(b) of the Act of September 4, 1961 (22 U.S.C. 2386(b)) is amended by striking out "sections 3323(a) and" and inserting in lieu thereof "section".

(2)(A) Section 103(a)(4)(E) of the District of Columbia Public Education Act (D.C. Code, sec. 31-1603(a)(4)(E)) is amended by striking out "section 3323 and".

(B) Section 103(a)(5)(C) of such Act (D.C. Code, sec. 31-1603(a)(5)(C)) is amended by striking out "section 3323 and".

(C) Section 203(a)(4)(E) of such Act (D.C. Code, sec. 31-1623(a)(4)(E)) is amended by striking out "section 3323 and".

(D) Section 203(a)(5)(C) of such Act (D.C. Code, sec. 31-1623(a)(5)(C)) is amended by striking out "section 3323 and".

Foreign Service Employees

Sec. 3. (a) Section 16(a) of the Act of August 20, 1968 (22 U.S.C. 930(a)) is amended by striking out the last sentence thereof.

(b) Section 631 of the Foreign Service Act of 1946 (22 U.S.C. 1001) is amended--

(1) by striking out "shall" the first place it appears therein and inserting in lieu thereof "may, upon his request,"; and

(2) by striking out ", but whenever" and all that follows through "exceed five years".

(c)(1) Section 632 of the Foreign Service Act of 1946 (22 U.S.C. 1002) is amended--

(A) by striking out "shall" the first place it appears therein and inserting in lieu thereof "may, upon his request,"; and

(B) by striking out ", but whenever" and all that follows through "exceed five years".

(2) Section 803(c)(2) of the Foreign Service Act of 1946 (22 U.S.C. 1063(c)(2)) is amended--

(A) by striking out "shall" and inserting in lieu thereof "may";

(B) by striking out "mandatorily"; and

(C) by striking out "during the first year" and all that follows through "and thereafter" and inserting in lieu thereof ", upon his request,".

(3) Section 9(c) of the Act of August 20, 1968 (22 U.S.C. 1229(c)) is amended--

(A) by striking out "shall" and inserting in lieu thereof "may";

(B) by striking out "manditorily"; and

(C) by striking out "during the third" and all that follows through "and thereafter" and inserting in lieu thereof ", upon his request,".

Retirement of Comptroller General and Deputy Comptroller General

Sec. 4. Section 303 of the Budget and Accounting Act, 1921 (31 U.S.C. 43) is amended--

(1) in the last sentence of the first undesignated paragraph thereof, by striking out "shall" and inserting in lieu thereof "may", and by inserting immediately before the period at the end thereof the following: ", upon his request"; and

(2) in the first sentence of the second undesignated paragraph thereof, by striking out "shall be so retired" and inserting in lieu thereof "retires".

93d Congress
1st Session

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IMPROVING THE AGE DISCRIMINATION LAW

A WORKING PAPER

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SPECIAL COMMITTEE ON AGING
UNITED STATES SENATE

SEPTEMBER 1973

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more quickly than a substantial reduction in force in which the youngest employees with the lowest retention standing are separated and the oldest employees are retained.[11]

Age 65 Limit of ADEA

The fact that the law only covers persons below age 65 may reinforce the trend toward decreasing participation of men 65 and over in the labor force and increasing acceptance of 65 as the mandatory retirement age. In 1960, the participation rate for men 65 and over was 32.2 percent and by 1971 it had dropped to 24.6 percent. This rate is projected to drop even lower in the next decade to 22.0 in 1980.[12] Even if the participation rates of the younger men alone are considered, there is a declining trend. In 1967, the year ADEA was passed, the rate for men in the age group 65–69 was 43.4 percent. This had dropped to 39.4 by 1971.[13]

This trend, it may be argued, is not to be deplored since it merely is the result of an increasingly leisure-oriented society and increased Social Security and pension benefits. However, there are also facts to the contrary which show that many persons over age 65 do not receive any pensions to supplement Social Security benefits, want to continue working, and yet are ejected from the work force. This Committee in its hearings and correspondence receives evidence of many such cases, including instances where individuals feel that they have been discriminated against and then are shocked to find that the age discrimination law does not cover them.

And there is no question that many persons over age 65 are still quite capable of working. A recent study of 132,316 workers in New York State agencies found that workers over 65 are "about equal to" and sometimes "noticeably better" than younger workers in job performance. They are at least as punctual in reporting to work, have fewer on-the-job accidents and are less often absent from work because of illness, accidents or unexplained reasons. The mandatory retirement age in the State agencies is 70.[14]

Involuntary Retirement—Below Age 65

According to an Interpretative Bulletin published by the Wage and Hour Division this year, ADEA authorizes involuntary retirement irrespective of age, provided that such retirement is according to the terms of a *bona fide* retirement plan.[15]

This exception has proven difficult to administer because of the complexities involved in determining if an employee is being terminated because of age discrimination (and only incidentally is eligible for some retirement benefit) or if he or she is being retired early accord-

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[11] U.S. Senate, Committee on Post Office and Civil Service. *To permit immediate Retirement of Certain Federal Employees.* 93d Cong. 1st Sess. Report No. 93-152, May 15, 1973, p. 5. The Congress subsequently passed legislation (H.R. 6077 and S. 1804) which implemented the recommendations of the Civil Service Commission. This proposal was later signed into law (P.L. 93-39) by President Nixon on June 12, 1973.

[12] U.S. Bureau of Labor Statistics, Special Labor Force Report No. 119, *Labor Force Projections to 1985*, as published in U.S. Bureau of the Census, *Statistical Abstract of the United States 1972*, Washington, U.S. Government Printing Office, 1972, p. 217.

[13] Jaffe, A. J. "The Retirement Dilemma", *Industrial Gerontology*, Summer 1972, p. 11.

[14] As reported in *Older Worker Specialist Newsletter*, Nov/Dec 1972, National Council on the Aging, Washington, D.C.

[15] U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, *Age Discrimination in Employment Act*. Interpretative Bulletin, Title 29, Part 860 of the Code of Federal Regulations (WH Publication 1296) Washington, U.S. Govt. Printing Office, 1973, p. 7. (See appendix 6, p. 38.

ing to the plan's stipulations. The problem is compounded by the wide variations in the provisions of pension plans. For example, some plans may have a provision that an employer may retire an employee as early as 45 or 50. This option is ordinarily not used, but in the event of a cutback in employment it may be used to get rid of older employees at reduced pension rates.

Early involuntary retirement is not a problem that is decreasing. Because of the recent economic recession and major reductions in employment in certain industries—such as the aerospace industry—there have been reports in the press concerning the increased use of early retirement (e.g. "The Gentle Boot," *The Wall Street Journal*, March 3, 1972).

The Department of Labor has also been receiving an increasing number of complaints concerning discriminatory involuntary early retirement. The Pan American case referred to earlier was judged in favor of those who were forced into early retirement, but this is only the tip of a large iceberg of complaints concerning involuntary retirement as a result of company retrenchment and mergers.

Section 5 of the Age Discrimination in Employment Act of 1967 directs the Secretary of Labor to study institutional and other arrangements giving rise to involuntary retirement and report his findings with appropriate legislative recommendations to the President and the Congress.

After more than five years, no such report has been made, although the Department of Labor reports that research has begun.

In general, there seems to be some confusion about the term "involuntary retirement" and what it means. The Interpretative Bulletin on ADEA refers to the study under its section entitled "Involuntary retirement before age 65" and yet compulsory and mandatory retirement at age 65 is discussed in reporting the activities in connection with the involuntary retirement study in the latest ADEA annual report.

Whatever arguments may be made about the scope of the study, the real issue concerns *early* involuntary retirement. The problem in enforcing ADEA is to determine when such a retirement is legitimately part of the pension program and when it is age discrimination. This problem is currently being approached on a case-by-case basis.

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MASSACHUSETTS BOARD OF RETIREMENT v. MURGIA
DOCKET NO. 74-1044
(June 25, 1976)

(BY)

Karen J. Lewis
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August 26, 1976

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On June 25, 1976, by a seven-to-one vote, the U.S. Supreme Court upheld the constitutionality of the Massachusetts mandatory retirement statute for uniformed state police officers. Below we discuss the facts, the issue and the Court's rationale in Murgia. We comment also upon the significance of the Court's ruling and the role of Congress with regard to legislating in the area of mandatory retirement for state and local employees.

In Murgia, the appellee was an officer in the Uniformed Branch of the Massachusetts State Police. Pursuant to a Massachusetts statute, the Massachusetts Board of Retirement retired him upon his 50th birthday. The provisions of the Massachusetts law are set out in Slip Opinion, at pp. 1-2, n.1. The Court noted in its Opinion that the primary function of the Uniformed Branch of the Massachusetts State Police is to protect persons and property and to maintain law and order. The Majority observed that "... uniformed officers participate in controlling prison and civil disorders, respond to emergencies and natural disasters, patrol highways in marked cruisers, investigate crime, apprehend criminal suspects, and provide back-up support for local law enforcement personnel. (Id. at p.3).

The duties of such a uniformed officer are described as being "arduous" and requiring "high versatility." (Id.).

The issue before the Court in Murgia was: whether the provision of the Mass. Gen. Laws Ann. c.32, §26(3)(a), that a uniformed State Police Officer "shall be retired ... upon his attaining age fifty," denies appellee police officer equal protection of the laws in violation of the Fourteenth Amendment.

In upholding the Massachusetts statute, the Court ruled that there was no violation of the equal protection clause of the Fourteenth Amendment. The Court held that " ... the Massachusetts statute clearly meets the requirements of the Equal Protection Clause, for the State's classification rationally furthers the purpose identified by the State: Through mandatory retirement at age 50, the legislature seeks to protect the public by assuring physical preparedness of its uniformed police." (Id. at 7).

The Court in Murgia reached its decision by using a standard of review which has been characterized as "passive review." The following discussion sets out the types of review which the Court employs when it is confronted with equal protection challenges under the Fourteenth Amendment of the Constitution.

The Fourteenth Amendment to the Constitution provides that:

> ... No State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.
> (U.S. Constitution, Fourteenth Amendment; Emphasis Supplied.)

Mr. HAWKINS. The Subcommittee on Equal Opportunities is reconvened. The Chair would like to apologize for the delay. We were not really in a position to keep you better informed because we were in the process of trying to get a quorum of the full committee, and it took longer than we realized.

We do apologize.

Our next scheduled witness is Mr. Jack Ossofsky, Executive Director of the National Council on Aging, Washington, D.C. I hope that the pronunciation comes near to what it should be.

We are very pleased to have you before the committee this morning. You may read your prepared statement or have it included in its entirety in the record at this point.

Mr. OSSOFSKY. I would appreciate having the statement inserted in the record, and would like to comment around it and through it, if I may.

[Prepared statement of Jack Ossofsky follows:]

PREPARED STATEMENT OF JACK OSSOFSKY, EXECUTIVE DIRECTOR, NATIONAL COUNCIL ON AGING, WASHINGTON, D.C.

Mr. Chairman, distinguished members of the Subcommittee on Equal Opportunity of the House Committee on Education and Labor, I am Jack Ossofsky, Executive Director of the National Council on the Aging (NCOA), a private nonprofit organization whose membership consists of individuals and organizations throughout the country who serve the nation's older citizens. In 1975, the NCOA marked its twenty-fifth year of providing leadership in the field of aging to public and private agencies at the national, state and local levels. We continue to be a national resource for planning, information, and service to those areas affecting the lives of the nation's older population.

Mr. Chairman, NCOA applauds your decision to hold hearings on HR 14879—a bill introduced by Congressman Claude Pepper (Florida) which would amend the Age Discrimination in Employment Act of 1967 (ADEA) to prohibit mandatory retirement and other forms of age discrimination against Federal workers aged 65 and over. We wish to take this opportunity to commend Congressman Pepper for his continued leadership in attempting to remove those barriers which continue to inhibit the full participation of older persons in American society.

Since passage of the Age Discrimination in Employment Act of 1967, NCOA has closely monitored its enforcement. We have widely disseminated information about the law's provisions and their potential effect on the employment needs of middle aged and older workers. We have called upon the Congress to substantially increase the size, training and qualifications of the staff assigned to enforce the law. We have urged the Congress to provide the Department of Labor (DOL) with the required resources to increase awareness of the law's provisions to both the public and private sectors. We initially criticized DOL for its inadequate enforcement of the law's provisions but have applauded the recent outstanding work by the Wage-Hour Division in attempting to carry out the law's intent despite the limited resources with which they have to work. We welcome the Fair Labor Standards Act of 1974 which extended the provisions of ADEA to Federal, State and local employees.

NCOA has continually called upon the Congress to remove the upper age limit of age 65 which now limits the law's coverage of older persons. Mr. Chairman we believe the provisions of HR 14879 would be a significant first step in that direction by eliminating mandatory retirement in Federal employment and making the Federal government a model employer in this area.

Mr. Chairman, NCOA wishes to take this opportunity to summarize the reasons why we believe mandatory retirement based solely on chronological age must be eliminated from American society.

Despite the fact that the number of older persons in the nation has been steadily rising, over the past 25 years there has been a rapid and steady decrease in labor force participation rate of older workers.

Obviously the availability of improved pension plans and Social Security has contributed to the retirement of older workers in recent years. Studies, conducted by NCOA and others, have clearly revealed, however, that a significant percentage of those taking early retirement, and many of those leaving the work force at 65, are forced to do so against their will. At the same time many older workers who manage to remain employed often find that they are overlooked for promotions, salary increases and training opportunities for which they are eligible because of the pervasive bias against older workers and the mistaken notions of their capacities to continue to perform their jobs. This age discrimination in employment is based on two pervasive myths about older persons:

First, that the older worker is not in need nor does he/she desire continued employment past 65.

Second, that chronological age is a just standard upon which to base employment/retirement decisions.

The facts clearly demonstrate that both these assumptions are myths which must once and for all be put to rest.

Myth No. 1: Older persons do not need nor do they desire to continue working past 65. Here are just some of the most relevant data which prove how fallacious, pervasive and damaging this belief is:

The number of those 45 and over in the labor force has risen from 22.2 million in 1950 to 31.3 million in 1975.

Although the number of older persons in the population has been rising steadily, there has been a decrease in the labor force participation rate of older workers over the last 25 years. In 1947, 10.4 percent of men aged 55–64 were not in the labor force; in 1974, the percentage was 22.6.

When layoffs occur, the experiences of the older age group tends to be drastically different from other age groups. In a 1970 study of layoffs, those 55 to 70 held fewer jobs in the four-year period of the study, had longer delays in finding new employment, received lower pay when reemployed and remained unemployed in far greater proportions—despite the fact that education and training were roughly equivalent for all age groups.

Older workers are far more likely to experience long periods of unemployment than are younger workers. In November 1975, average duration of unemployment for all males 16 and over was 17.5 weeks, compared to 21.4 for those 45–54, 24 for those 55–64, and 26 for those aged 65 and over. Put another way—in 1975, 25 percent of the unemployed in the 55–64 age category and 32 percent of those 65 and over had been jobless for at least 27 weeks in contrast to 13 percent for those 20–24. The lowest unemployed duration was for those 20–24 years old at nine weeks.

A substantial number of persons 55 and over have become so discouraged about finding a job that they have stopped looking. Unemployment figures understate by a considerable extent the true unemployment rate.

The American Medical Association has concluded that "Few physicians deny that a direct relationship exists between forced idleness and poor health . . . chronic complaints develop more frequently when a person is inactive and without basic interests."

A study on emotional health found a trend towards more depression in every age group when a person deos not work, concluding that ". . . Being a worker or non worker seems to be critical to the presence of psychiatric symptoms, as well as feelings of depression."

Workers who are discouraged about finding jobs tend to retire early at reduced Social Security benefits. In 1970, more than two-thirds of the women workers and over one-half of the men took benefits before age 65 at permanently reduced levels of payment.

The study which resulted in the passage of the Age Discrimination in Employment Act found that unemployment of older workers was costing the economy one million man years of productive output per year.

In March 1976, 22 percent of all those unemployed were over 45—842,000 people age 45–54, 594,000 people age 55–64 and 182,000 65 and over—a total of 1.6 million persons.

What do these figures all mean? They clearly demonstrate that unemployment and related job problems do not disappear after young adulthood. In fact, work-related problems often become more severe for older adults because of the age discrimination inherent in American society. The recent economic recession severely affected the employment status of older workers; the unemployment

rate for those over 55 more than doubled during 1974 and has only very slowly begun to decrease. Once out of a job, the older worker traditionally had a more difficult time finding a new one. Too often he is forced into early retirement after months and sometimes years of job-searching.

While these official statistics are bad enough, they do not tell the complete story of discouraged elderly who do not declare themselves as unemployed, but desire to work. NCOA has published an article in our quarterly journal Industrial Gerontology by Marc Rosenblum of the City University of New York entitled "The Last Push: From Discouraged Worker to Involuntary Retirement." His conclusions are worth noting and they substantiate what we have always thought to be the case—older workers 55 and over have the largest proportion of persons discouraged for job market reasons than any age group. The increased competition for available jobs only increases that push which forces older workers into unemployment lines, and eventually into involuntary retirement. Rosenblum concludes that these people "have relinquished even the tenuous relationship to the labor market which is indicated by the discouraged worker designation. They are beyond discouragement." This increasing problem is a tragic end for millions of older people who have worked all their lives to maintain economic security for their families and who have contributed so much toward the economic prosperity the nation has enjoyed. To lose the experience and talents of these thousands of older workers at a time of increasingly severe economic trouble would only push them further toward despair and rob the nation of skills it needs to overcome those troubles.

Mr. Chairman, we believe these unemployment statistics are evidence that older people want and need to work. That belief has recently been corroborated by a national survey conducted for NCOA by Louis Harris Associates. It is the most definitive study ever undertaken on the American public's attitudes toward aging and the aged. I wish to share with this Committee some dramatic findings which are relevant to our discussion today:

Four million people over 65 who are unemployed or retired want to work

43 percent of those over 65 with incomes below $3,000 who are not working desire employment

50 percent of blacks over 65 who are without employment want to work.

Of those aged 55–64, 14 percent of the females and five percent of the males considered themselves unemployed. Comparable government figures for the 55–64 group in this same period were reported as three percent for females and slightly over two percent for males. These people have much to contribute. We must stop building barriers which inhibit their employment opportunities.

That same study delineates some of the more pervasive barriers to those employment opportunities. Mr. Chairman—87 percent of people who say they are responsible for hiring and firing people agree that "most employers discriminate against older people and make it difficult for them to find jobs." This is a shocking confirmation of the perception of job discrimination against older people by four-fifths of the total public in response to this same question.

The July issue of Nation's Business reports the results of a readers' survey on the question "Should retirement be mandatory at a certain age?"

Four out of five readers who responded voted no. Some of the comments noted in the report are worth repeating here:

"Many men and women are old at 50, while others are still active and can contribute their share and more at 70. Why put those others out to pasture?"

"We have some salespeople who were retired at 65 and still are very productive 10 to 15 years after retirement."

"I believe forced retirement is illegal. If we may not discriminate in hiring on the basis of age, then we may not so discriminate in firing. The argument that jobs are created for younger workers is specious; the 65-year-olds will be leaving the work force soon enough."

"Forced retirement because of age is more discriminatory than discrimination because of sex, color or creed; it strikes everyone. (It is also morally wrong) because it denies older citizens their basic civil rights. It deprives them of dignity, a sense of being needed or wanted."

One reader suggested a compromise. "At age 65, hours could be cut 20 percent and the same for salary. Further phasing out of work could be based on a health and alertness formula established with the help of company physicians."

The most convincing argument, according to another reader, may be the long-term economic impact. Ending forced retirements would "somewhat relieve the Social Security funds problem and would probably help relieve the financial problems some company retirement programs are facing."

Myth No. 2: The second myth which continues to rob the nation of the experience, capabilities and wisdom of older workers is that chronological age is a just basis upon which to make employment/retirement decisions. Once again the facts from numerous studies overwhelm this most persistent and pervasive tenet of the agist:

In most jobs today the physical demands are well below the capabilities of most normal aging workers.

Variations among individuals increases with age. In each older age group there is a substantial number of persons performing at least at a level equal to the average level of their juniors.

If older workers are properly placed, they function effectively and have greater stability on the job, fewer accidents and less time from work than younger workers.

A pilot project which emphasized what a worker could do—regardless of age or disability—convinced many employers that middle-aged and older workers had the ability to perform jobs for which they would otherwise have been rejected because of age.

At least 20 studies show that vocabulary, general information and judgment either rise or never fall before age 60.

In a study of learning tasks, there were only small differences for those aged 60–82 compared to younger age groups, and this group was still learning very well.

We seem to be over-endowed for most tasks we need to carry out. The organs of the body are overbuilt in the sense that they can perform more than is ordinarily demanded, at least until age 65 in almost everyone and even after that in most people.

The director of a creativity program found that fully 80 percent of the most workable and worthwhile new ideas were produced by employees who were over 40; younger employees had a tendency to "re-invent the wheel."

A Labor Department study in two industries found that output per man hour was stable through age 54; thereafter it remained within 10 percent of the peak.

A study of clerical office workers found that older workers had a steadier rate of output and were as accurate in their work as younger persons. The oldest age group, 65 and over, actually had the best record.

Supervisors who rated over 3,000 workers aged 60 and over in 81 organizations said they considered them to be as good as or superior to average younger workers with reference to dependability, judgment, work quality, work volume, human relations and absenteeism.

The number of days lost from work tends to decrease as age increases.

Older workers are generally more satisfied with their jobs than younger workers.

In a recent study, workers over 40 reported significantly fewer psychiatric symptoms than those under 40.

Older workers in general have longer job tenure than younger workers.

Mr. Chairman, as with all groups that have experienced discrimination, there are a number of popular stereotypes that limit the participation of older workers in the labor force—stereotypes accepted by employers, counselors, the public tnd private manpower systems and in some cases by older workers themselves. We must make all those with control over the gates of employment opportunity aware that ability is ageless and in a good many cases performance does improve with age. Functional and not chronological age must become our prime criteria in all employment practices.

The National Council on the Aging recognizes and respects the desire of many Americans to retire at age 65 or even choose retirement at much earlier ages, but it also recognizes the emotional, social and economic importance of the need for work for many older persons. Flexible retirement plans should be developed by private industry, unions and government which are based upon functional capacity to perform a job rather than on chronological age. The Department of Labor should undertake a comprehensive review of recent research and development findings regarding the performance of older workers and provide for the dissemination of these findings through the use of appropriate

government and private professional publications. And the Congress should institute a nationwide public information program to make employers and the general public more aware of the techniques which have been developed for relating functional abilities of workers to the functional requirements of specific jobs, such as the Industrial Health Counseling Service operated by NCOA for a number of years in Portland, Maine.

In closing, Mr. Chairman I want to make this Committee aware of NCOA's most recent efforts to change the image of aging and the aged and break down the barriers which block the full participation of older persons in American society. NCOA's National Media Resource Center has been providing for over a year Going Strong columns which now appear in over 350 newspapers with an estimated circulation of 3 million. These columns feature people past the traditional and too often mandatory age of retirement who are still working at a variety of interesting and demanding jobs. We hope these columns will serve as a model for older persons who may believe that retirement marks the end of meaningful employment for them. I have provided some examples of those columns for the Committee.

Finally, Mr. Chairman let me mention the new Advertising Council all-media campaign which has just begun across the nation—Older Persons: A National Resource—sponsored by NCOA. The campaign is designed to modify the stereotypes of older Americans. While this campaign will reach across all socio-economic and age groups, its prime target is people between 30 and 50 because members of this group are more likely to be in a position to influence the utilization of older persons and it is in their self-interest to realistically appraise their attitudes—they, too will be older Americans some day.

The key slogan of the campaign is "Get off your rocker—don't take old age sitting down." Mr. Chairman, millions of older Americans are anxious to "get off their rockers" and millions of others do not want to be forced into one. We urge this Committee to do what it can to eliminate mandatory retirement from our employment system and we pledge NCOA's continuing efforts in this regard.

Thank you for consideration of our views.

Mr. OSSOFSKY. I would also seek the opportunity to add to this statement a study which the National Council on Aging did sometime ago on the impact of middle aged and older workers employed by the Government and RIF, this is reductions in force.

The study would bear out some of the testimony that has been heard earlier this morning about the use of reductions in force to remove middle aged and older workers from the work force in Government agencies. I think that it might be helpful to the committee if we added for your review.

I will submit a copy to you, sir.

Mr. HAWKINS. That report will be reviewed and retained in the committee's files.

STATEMENT OF JACK OSSOFSKY, EXECUTIVE DIRECTOR, NATIONAL COUNCIL ON AGING, WASHINGTON, D.C.

Mr. OSSOFSKY. Thank you, Mr. Chairman.

I am pleased personally and on behalf of the Council to be able to appear before you and this committee, which has done such an outstanding job on behalf of securing employment opportunities for workers of all ages.

We are supporters of the direction in which you have been moving in the legislation which you have developed. Older workers, we believe, will benefit enormously from the progress that needs to be made in this direction, if your efforts succeed.

The National Council itself is a nonprofit organization that works with those who serve older people. Our membership is the organiza-

tions and the individuals serving the elderly. It is a technical organization, and not a mass organization of older people.

We serve as a resource for people interested in the problem of aging, and looking ahead to where we are going in our country in this regard. We are very pleased that we have an opportunity to appear here, to discuss some aspects of the issues of employment of the middle-aged and older workers, particularly related to the legislation that Congressman Pepper and Chairman Randall have submitted.

We believe that it is extremely important that the Age Discrimination in Employment Act of 1967 be amended. Indeed, we think that we need to eliminate completely the upper-age limit of that legislation and we see as a very important first step the legislation that Chairman Randall and Senator Pepper have submitted to you.

ADEA with all of the progress that it has enabled us to make, perpetuates discrimination by maintaining the concept that at age 65 and older does not need that discrimination and should not have it. It exemplifies Government policy of removing protection from workers who are most vulnerable.

We have monitored very carefully the progress of ADEA. We have been concerned with its enforcement. We have been critical of the Government agencies when they did not enforce it sufficiently, and critical of the Congress when we felt that it did not supply enough funds to enable the legislation to be adequately enforced and staffed.

We have, on the other hand, been delighted to welcome the progress that has been made in the recent period of time when ADEA legislation has been more vigorously enforced by the fair labor standards group in the Wage and Hour Division of the Department of Labor.

It was an important move to have the Fair Labor Standards Act of 1974 extend ADEA to Federal, State, and local employees. We think that it would be a very significant move on behalf of all employees, all workers, to eliminate mandatory retirement as a first step in the public sector.

We believe that the Government, as the largest employer and the most significant employer, can become and should become a model employer, establishing public policy by what it does before it goes off and tells the private sector what it should be doing.

It certainly would be much more palatable to the private sector if the Government itself eliminated age discrimination for those over 65 first.

One of the things that I would like to do in this testimony, Mr. Chairman, is to undergird the kind of specifics that were presented earlier this morning, with some broad concepts and some basic studies on the capacities of middle-aged workers and older workers, the myths that stand in the way of their employment and that press for mandatory retirement, because I believe that it provides a framework within which this legislation can and should be enacted.

Interestingly enough in the last number of years, as the number of older persons in the Nation has risen, there has at the same time been a very rapid and steady decrease in the labor force participation on the part of middle-aged and older workers.

Let me underscore at the outset an older worker is defined by the Department of Labor today as a person 45 years of age, and not 65 or

75. The stereotypes and misconceptions and prejudices against the worker who is already older are trickling down more and more on the younger worker, limiting his employment opportunities, his opportunities for upgrading, and pressing him into longer and longer periods of unemployment when he or she loses a job.

Now many people have been retiring sooner because pension plans, and social security are available. However, a very significant proportion of those taking early retirement and many of those leaving the work force at age 65 are doing so not to take advantage of a right, but are doing so because they are being compelled against their will to leave their employment.

At the same time, many older workers often find that they are overlooked for promotions, salary increases and training opportunities for which they are otherwise eligible because of the pervasive bias against older workers and the mistaken notion of their capacity to perform their job.

The discrimination in employment is based on two myths, we believe:

First, that the older worker is not in need nor does he or she need or desire continued employment past 65;

Second, that chronological age is a just standard upon which to base employment/retirement decisions.

Let me underscore, Mr. Chairman, that we consider both of these to be myths. Let me deal with some of our findings in this regard.

The number of those 45 or over in the labor force has risen from 22.2 million in 1950 to 31.3 million in 1975. But there has been a significant decrease in labor force participation during the last 25 years. In 1947, 10.4 percent of the men aged 55 to 64 were not in the labor force. In 1974, the percentage was 22.6, over twice as much.

When layoffs occur, the experiences of the older-age group tends to be drastically different from other age groups. In a 1970 study of layoffs, those 55 to 70 held fewer jobs in the 4-year period of the study, had longer delays in finding new employment, received lower pay when reemployed and remained unemployed in far greater proportions, despite the fact that education and training were roughly equivalent for all age groups.

Older workers are far more likely to experience long periods of unemployment than are younger workers. In November 1975, average duration of unemployment for all males 16 and over was 17.5 weeks, compared to 21.4 for those 45–54, 24 for those 55–64 and 26 for those aged 65 and over.

Put another way, in 1975, 25 percent of the unemployed in the 55–64-age category and 32 percent of those 65 and over had been jobless for at least 26 weeks in contrast to 13 percent for those 20 to 24. The lowest unemployed duration was for those 20 to 24 years old at 9 weeks.

Mr. Chairman, I would hate to be in a situation where we do not underscore the major problems faced by young people in getting employment. It is a terribly severe problem, particularly in central cities, particularly for minority youth. But while that issue needs attention, I hope that these studies, these statistics underscore that another most vulnerable group, indeed unemployed even longer, are the middle-aged and older workers of our country, pushed often into early retirement,

pushed often by job discrimination into long-term unemployment without very much hope of getting another job. They have been called by some students of the issue the discouraged worker.

They have stopped looking for a job after some time, and nowhere are they to be found in the unemployment statistics of our country. Indeed, as I will underscore a little later, if we had real statistics of the unemployment rate in our country, which included those over 65 who want to work full time or part time, we would have to add 4 million more unemployed Americans to the growing statistical rolls.

Those who have given up hope, and who have used up their benefits, and do not go back to the State unemployment services, are not listed as unemployed. But, indeed, they are those who are most vulnerable.

Another program that the National Council on Aging, the national service program under title IX of the Older Americans Act, we find that older workers, in our case 55 to 92, who have applied for jobs, we find 8 to 11 workers applying for each one of those part-time jobs in community service rolls, actual work, every place where we have a job.

We simply do not have enough opportunities for placement.

The American Medical Association has concluded: "Few physicians deny that the relationship exists between forced idleness and poor health. Chronic complaints develop more frequently when a person is inactive and without basic interest."

I am pleased to say that this is one issue in which I can find myself in an area of agreement with the AMA, when it has something to do with aging. We have often disagreed when it came to implementation of medicare, medicaid, and the need for such programs. But the AMA, which has not been the most liberal group in the country in examining what public response ought to be to the older persons, has found from the experience of its own physicians that enforced idleness is enforced illness, and enforced mental disease as well. This is underscored by other studies as well.

Add to that the notion that older workers who are discouraged about finding jobs tend to retire early, and tend to take social security at reduced benefits for life.

In 1970, more than two-thirds of the women workers, and more than one-half of the men took benefits before age 65 under social security, and often under private plans, at reduced rates for the rest of their lives.

We have two things at work here. The middled-aged and older worker pressed into long-term unemployment has less in social security contributions, receives a lower benefit, then is forced into taking early retirement under social security, and takes an even lower pension for the rest of his or her life.

The original study which resulted in the passage of the ADEA found that unemployment of older workers was costing the economy at that time 1 million man-years of productive output per year. How much higher would that figure be if we added to it the 22 million older Americans who are rapidly increasing the segment of our society.

These and other figures in our testimony underscore and demonstrate that unemployment and unrelated job problems do not disappear

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after young adulthood. In fact, work related problems often become more severe for older adults because of age discrimination inherent in American society.

During the recent recession, the present recession, I should say, which severely affected the employment status of older workers, the unemployment rate for those over 55 more than doubled during 1974, and has only begun very slowly to decrease.

Once out of a job, the older worker has more difficulty finding a new one, and is forced into early retirement after giving up.

I mentioned earlier the "discouraged worker" syndrome. Dr. Marc Rosenblum of the City University of New York has recently published an article in our journal Industrial Gerontology, "The Last Push: From Discouraged Worker to Involuntary Retirement."

His conclusions have a bearing on the situation that we are discussing today. Older workers 55 and over have the largest proportion of persons discouraged for job market reasons than any age group.

The increased competition for available jobs only increases that push which forces older workers into unemployment lines, and eventually into involuntary retirement.

Rosenblum concludes that these people "have relinquished even the tenuous relationship to the labor market which is indicated by the discouraged worker designation." They are beyond discouragement, this says.

This is a terrible way for millions of people to conclude their working life, who have sought in vain for economic security, and a sense of dignity for themselves and their families, who have in the past contributed much, and have much yet to contribute to the economic prosperity of the Nation. That includes Federal employees forced out at a later age as well.

To lose the experience and talents of these thousands of older workers at a time of increasingly severe economic trouble would only push them further toward despair and rob the Nation of skills it needs to overcome those troubles.

Mr. Chairman, often in discussing the subject I am confronted by the argument that we need to move older people to make room for the young. I cannot see that argument having any social or moral value, or merit. All we are doing is taking a group that has not yet organized sufficient spokesmen, leadership, and clout for itself, to protect itself in the job market.

Is it of any social value to create a notion that we create more jobs for one segment of the population by pushing another group out? I thought that one of the rights of seniority was to protect the ones who had been on the job longest.

I have no objection whatsoever to seeing people take advantage of retirement plans, when they choose to do so. That is a right and an option that a free society ought to give to people to freely choose. But to compel them out, and to rationalize that compulsion on the notion that they have contributed enough, and somebody else ought to have their chance.

At the time when the lifespan is increasing, when we need skills and ability more than at any other time in the history of our country, it seems to me that we are killing off a great potential for contributing,

indeed, to the very young people who could be benefiting from the skills of the middle-aged and older workers that we have discarded. We are in the process of losing a most valuable resource for our Nation.

We have heard a great deal of talk in recent years about national resources, but today 22 million older Americans aged 65, and in the years to come many, many more, are a resource we do not dare discard.

A little over a year ago, the National Council on Aging commissioned a Louis Harris poll on America's attitude toward older persons. Some of those findings in what we consider the most definitive study of America's attitude toward its own aging and the aged, have a bearing on today's issue.

Four million people over 65 who are unemployed or designated as retired indicated that they wanted to work.

Forty-three percent of those over 65 with incomes below $3,000 who are not working, desire employment.

Fifty percent of the blacks over 65 who are without employment indicated that they wanted to work.

Of those aged 55 to 64, 14 percent of the females and 5 percent of the males considered themselves unemployed. Comparable Government figures, on the other hand, for the same group and the same period, were reported as 3 percent for females and slightly over 2 percent for males. These people have much to contribute. Clearly, we have to stop inhibiting people's opportunities to work if they have an opportunity, and to stay on the job, and do a job capably.

The most pervasive barrier to employment built into our establishment, public and private, is the hiring prejudice and the compulsory retirement prejudice that exists in our country and is institutionalized.

Eighty-seven percent of the people who say they have responsibility for hiring and firing agree to the proposition of: "Most employers discriminate against older people and make it difficult for them to find jobs." This is 87 percent of the people who have hiring and firing responsibilities.

This is a shocking confirmation of the perception of job discrimination against older people by four-fifths of the total public in response to this same question. Bear in mind that the questionnaire was presented to people ages 18 and older. Four-fifths of them believe that there is discrimination in employment.

The picture is not without some hope. I find it very significant that the President in proclaiming Older Americans' Month this May, included in his message the fact that we need to make more use of older Americans as employees and as volunteers, and have to begin breaking down the misconceptions and stereotypes of older Americans.

I would, therefore, welcome seeing the President support the Randall-Pepper legislation, and other legislation that has come out specifically implementing the goals that he enunciated in proclaiming the Older Americans Act.

There is hope, too, in the statement of the Republican platform, seeking the elimination of age discrimination. Most convincing to me is the recent poll which we encouraged Nation's Business to take of its readers. It is, as you know, mostly industry readers who read it, executives and the like.

Four out of the five readers of Nation's Business responding to the question: "Should retirement be mandatory at a certain age?" said no. This is four out of five readers dealing with the public sector in this regard. Our testimony spells out some of the reactions of those industry people to compulsory retirement.

I, therefore, believe based on the Harris poll, based on the statements in the Republican platform, and based on the President's comments, based on the responses to Nation's Business, that enacting the legislation that is before the subcommittee today will gain great public support and have the support of the public, which is moving more and more rapidly against the concept of compulsory retirement.

Part of the problem that we face, I believe, Mr. Chairman, and members of the committee, deals with the notion that older people ought to be retired in their own self-interest and in the interest of our society because at a certain age people are not capable of doing things which they could do before.

We have listed in our testimony some of the basic findings of a study, including a summary of some of the findings, we just did for the State of Illinois which asked us to examine the response of the State institutions to middle-aged and older workers.

They are, by the way, equally applicable to Government employees and to private sector employees. There is no difference here.

In most jobs today, the physical demands are well below the capabilities of most normal workers. What we are dealing with here is a misconception that all of the elderly lose their capacity the day after they have turned 65, as if that date tells you something about individual capacities.

May I digress to suggest that aging is simply a measure of the time, the clock. We value some things that age well, and we unvalue some other things that age. We value aging in cheese and wine, but we treat people differently.

Aging is universal, but each person ages at a different rate. Chronological age tells you nothing other than how long a person has been around. It does not tell you anything about the capacities or capabilities of the individual.

We are mowing the lawn, with people, throwing out the roses along with the weeds because we mistakenly consider that chronological age tell us something which it does not. Variations among individuals increase with age, and in each age group there is a substantial number of persons performing at least at a level equal to the average level of their juniors, not old people.

We are talking about people 65 on up, who can be measured by the same standards and found succeeding. Many can. What we are pleading for here is an evaluation of the continuing capacities of an increasing number of our population.

If older workers are properly placed, they function effectively, and have greater stability on the job, fewer accidents, and less time from work than younger workers.

One of the things that I keep encountering, including recently from an actuary and I hope that he does better in his aggregation of pension plans than he does on the illnesses of older workers, is a simple myth that older workers have greater absenteeism than younger workers.

None of the studies by any segment of the academic or industrial analysts have borne that out. Indeed, older workers have a higher punctuality and attendance records than the younger ones. Some older workers, when they get ill, are ill for longer periods of time. But on the whole, when they stay on the job, have jobs that they can handle and want to handle, their morale is higher than younger workers, and they make better workers.

I think that this is reflected in the reaction of the industry people, the four out of five supporting the end of mandatory retirement.

Let me say a word about capacity, too, if I may. The National Council on Aging conducted a demonstration project in Portland, Maine, funded by the U.S. Department of Labor. During the last 2 years, that city had funding in part from 150 companies in that area.

The purpose of that study was to seek some rational technique of eliminating age discrimination in employment. During the 5 years that the study was operational, 150 companies participated in it. They had to be wooed and convinced that it would be a useful tool.

What we did was to set up a community based health clinic. We provided a detailed physical examination to workers of all ages, who were referred to us by the State employment service, or State employer, or private employer.

We did a numerical profile based on a system established under the de Havilland Aircraft Co. in Canada. We then sent a job analyst into the office or the plant, who did an analysis of the minimum capacity required to do the job, and we did a numerical profile of those capacities for the job.

Then we compared, among the applicants for that job, their physical capacity with their required capacity for the job. We gave the employers or the State employment office the information, yes, this man or woman has the capacity to do that job; or, no, he or she does not seem to have the capacity to do that job.

That program was so successful in saving money to the employers, and by the way the U.S. Post Office was one of the employers in the area who used the system, they estimated that they saved $35,000 a year by using this system, hiring workers regardless of age, who had the capacity to do the specific job available, by reducing absenteeism, turnover and poor morale in the work force.

There is a rational tool to determine capacity regardless of age, and we tested it. Of course, the demonstration project was just that. The Department of Labor was very pleased with its results, terminated the funding, and has left us fighting for means of carrying the message across the country of what that project could do for industry.

We are, from our internal resources, trying to carry that message. This is a technique that could be built into every State employment office. This is a technique that could be built into every industrial health program. We provide a data base to that effect for OSHA health standards. It eliminates discrimination based on age, sex, race, handicap. You name the category.

It provides a rational tool to determine capacity regardless of age. So it cannot be said any longer that a system does not exist which can be used at modest cost that benefits industry, and that industry, indeed, supports when given the opportunity to do so.

Similar techniques could be built into Government offices to determine who is capable of doing specific jobs.

In other areas, 20 studies have shown that vocabulary, general information and judgment either rise or never fall before age 60.

In a study of learnings tasks, there were only small differences for those aged 60 to 82 compared to younger age groups and this group was still learning very well, as well as younger groups.

Our testimony cites many other such examples. A director of a creativity program in industry, for example, found that fully 80 percent of the most workable and worthwhile new ideas were produced by employees who were over 40, because younger employees had a tendency to reinvent the wheel. What is the value of experience, if we don't use it.

The clerical study, for example, which is cited in our testimony found that older workers had a steadier rate of output, and were as accurate in their work as the younger persons. The oldest age group, 65 and over, actually had the best record.

Supervisors who rated over 3,000 workers aged 60 and over in 81 organizations said they considered them to be as good or superior to average younger workers with reference to dependability, judgment, work quality, work volume, human relations and absenteeism.

There are pages and pages of such evidence.

What this testimony seeks to present to this committee is a rationale based on a variety of studies from various sources, to underscore that we can break down the stereotypes and myths that have created age discrimination, as we began to do it on discrimination based on sex, color, race, religion, and other categories, if we look at the evidence and give it to the people who have the opportunity to make the significant decisions on employment, on hiring, and on retention.

We have got to see to it that those who are the gatekeepers of opportunity get the facts in hearings such as this, which present a very important vehicle for presenting such facts.

Let me underscore, Mr. Chairman, that nothing that I have said should in any way be misconstrued as being opposed to the right of people to retire if they should desire to do so, and feel that they should do so.

What we believe is that it is necessary to have some flexibility and some options which take into consideration the evidence that we now have. Some of it has been available for a long time. Chronologically, age tells us nothing about capacity.

We need more flexible retirement plans. In the years when I administered private pension plans, I had developed at that point a concept of trial retirement to enable people to get over that initial shock of retirement. It has worked in a number of places, and it is being used more and more.

Sweden has just developed a new concept of trial, temporary retirement, slowly helping people to move into retirement by reducing their workweek. It is being tested on a national basis.

We need to look at such options in public and private employment as well. We need to encourage the Department of Labor to undertake a comprehensive review of the research and findings, including the finding of things which have been funded in the past, and to bring

those findings not only to the academicians, to the legislators, and to the in-house people, but to the people in industry, people in the Civil Service Commission who make the policy of our country that relates to hiring and firing of people.

We strongly urge that the Congress itself undertake a major public information program to make employers, unions, and the general public aware of the techniques that have been developed for relating functional ability of workers to functional requirements to fill specific jobs.

The Congress, of course, can take a major step in this direction by enacting the Randall-Pepper bill that is before you this morning.

Mr. Chairman and members of the committee, we are not suggesting that the whole burden be put on the Congress. We have submitted both in our testimony and in our appendices to it, some of the work that the National Council on Aging is doing in trying to change the public attitude toward our older Americans.

Our National Media Resource Center has been providing for over a year the "Going Strong" columns which now appear in over 350 newspapers with an estimated circulation of 3 million readers across the country. However, our resources are limited.

We have been able to undertake an all-media campaign with the new Advertising Council of Amercia by virtue of having achieved a modest foundation grant from the McConnel-Clark Foundation which has enabled us to do these things.

We would welcome more government support for these efforts whether they be done by our agency, or Government agencies. Hopefully our campaign, with the support of the Ad Council, which has made a very significant contribution of $20 million in space and time to this cause, and a very significant contribution toward changing public attitude will begin helping further create the soil within which the seeds such as this legislation can flourish and grow into a society in which age is not a barrier to providing contributions to our society.

The key slogan of our campaign is "Get off your rocker—don't take old age sitting down. Get off your rocker—take a look at your attitude to aging."

Our hope is, Mr. Chairman, that millions of Americans who are anxious to get off their rocker, and millions of others who did not want to be forced to get into one, will be supported in this effort by this committee.

We urge you to do what you can to eliminate mandatory retirement from our employment system, public to start with and private ultimately. We pledge you our support and our help in any way we can in this effort.

We thank you for this opportunity to present our findings and our views.

Mr. HAWKINS. Thank you, Mr. Ossofsky.

We would like to commend you on a very excellent presentation and also on the fine work of the National Council on Aging. I think that your presentation this morning has certainly opened up many suggestions that this committee, I am sure, will be very anxious to follow.

The Chair would like to ask several questions of you. You referred to several studies, including the Portland, Maine, study which you said

had been terminated, or had not been adequately implemented. What is the present status of the recommendations of that study?

To whom have you reported, and what has held up any implementation of it?

Mr. OSSOFSKY. The project itself closed a year ago last July. We pleaded very hard with the Manpower Administration to maintain the program. They had been urged to continue it for 5 years, and this is longer than most such programs are continued, I must say.

We sought, with great support on the part of the industrial and corporate people in the community, and support of the labor people in the community, to get resources from the State and CETA to implement the program.

The Governor gave the local people some encouragement for a while—the Governor of Maine—but ultimately nothing came of it.

While we believe this program, which had served CETA applicants in the past as well as others in the community (I did not mention CETA earlier, but they were another source of referrals) that program died, like so many other worthwhile programs that demonstrate what can be done to have an impact in this area.

We have the findings. We have the documentation. We don't have the resources to spread the message. What we do have remaining behind are techniques, published reports and a great desire to carry that message forward.

We would certainly welcome any help that this committee could give us to help implement similar demonstration programs in other places, under auspices. We are not looking to go into the market in this area What we are trying to do is get the message out.

Regrettably, the last month—it is ironic that in the last month of the project's life, the Department of Labor's Management-Manpower magazine carried a glowing account of the program. It was like an obituary to the project.

Mr. HAWKINS. The Chair would like to suggest that any additional information concerning the project that may be of help to the committee, that will give some life to the project, assuming that the committee will agree with the evaluation you put on it, certainly would be appreciated. The record will be kept open for such information.

Mr. OSSOFSKY. I would be happy to do that, Mr. Chairman.

We have had consultants who are not members of our staff look at the project, and evaluate it. We have those findings. We also have other reports, and we will be happy to share them with the committee. We would welcome any support that you can give us.

We feel very confident in the findings of that program and its results. We sought to get similar programs operated through the State employment network and other areas. Anything that you can do, or your committee can do, we certainly would be anxious to contribute to.

Mr. HAWKINS. On page 6 of your prepared statement you indicated a number of individuals 65 and over, and those between 55 and 64, that you construed to be desirous of employment, and presumably in the labor market.

I am quite interested in this because I am among the group of individuals who has always indicated that the Department of Labor has

been very misleading to policymakers in understanding the number of individuals unemployed.

Now, instead of the present roughly 8 million unemployed persons, presumably from what you said, you have found a very substantial number, including this particular instance, of about 4 million persons over age 65.

May I ask on what basis do you make that estimate of those 65 and over, the roughly 4 million persons who desire to work, but at the present time are being denied?

Mr. OSSOFSKY. The results have been taken from the results of the Louis Harris poll which we have published under the "Myths and Realities of Aging in America." We will be happy to submit the full report to the committee for its use. It might be larger than you would wish to include in the record.

We have in the past sent copies of that report to all Members of Congress. I am sure that the chairman will remember that they received in the past a copy of this report, but it may have gone astray.

The Louis Harris poll on aging interviewed some 4,800 people around the country in a random sampling technique. In addition to Harris' experts, we added an advisory committee of outstanding gerontologists and research specialists in the field.

We included as well in our advisory committee people representatives of the Bureau of the Census, academicians, the Urban League, and other such groups, just to be sure that we had an adequate representation in our advisory group, also experts in polling and particularly with the elderly, so that we would not later be criticized for having used a poor technique.

Normally the Louis Harris poll interviews some 1,800 people. We interviewed some 4,800, 4,600 people perhaps. We then projected, based on those findings, and we oversampled purposely with certain groupings of the elderly in the advanced ages, and minority ages, to be sure that we, then, could boil those figures back into their weighted value in the population as a whole.

These figures were based on the results of a very careful, statistical evaluation of the responses we received from a cross section of the American population 18 years of age and older in their attitudes, their experience, and their living, either as people growing up or people who have already grown up, if you want to put it that way.

We studied many aspects of aging. One of the questions we asked was whether or not they had been retired voluntarily, whether they were seeking work, what kind of work they wanted to do, and things of that sort.

This is where this figure comes from.

Mr. HAWKINS. Does that study also include some definitive conclusions as to those between the age of 45 and 65?

Mr. OSSOFSKY. Yes; we have some data for younger people because the same questions were asked of all of those 18 years of age and older. I would be happy to get those figures for you.

Mr. HAWKINS. Is there a number that you reach in your conclusion of those who might be unemployed between the age of 40 and 65, who are not now included in the official unemployment figures?

Mr. OSSOFSKY. I am sure that we have such figures. I don't remember them off the top of my head, Mr. Chairman. I would be happy to submit them to you.

Mr. HAWKINS. You are not necessarily indicating that these individuals would desire full-time jobs. But at least this number would desire some form of employment, although it might be part time.

Mr. OSSOFSKY. That is correct.

We think that the employment services of our country ought to respond to a desire for part-time work.

Mr. HAWKINS. I think that we have already concluded that these individuals do not count quite as much as others do.

Mr. OSSOFSKY. Well, Mr. Chairman, other studies that we have done for the Department of Labor, including an analysis—this was in the past when we were a consultant to the Department of Labor, and I am afraid that they did not like the results, not the methodology, but the results of our study, and so our research contract with the Department of Labor was terminated rather summarily at the end of the contract time.

But this analysis underscored the use of employment services statistics, and the employment services automated system. We will be happy to submit that for the record. We think that it would be of value to the committee.

Mr. HAWKINS. I think that data would be of value to us, if you care to submit it.

[Data follows:]

A COMPARATIVE VIEW OF SERVICES TO AGE GROUPS AS REPORTED IN THE EMPLOYMENT SECURITY AUTOMATED REPORTING SYSTEM

(By Daniel A. Quirk, Senior Research Scientist, and Nancy C. Peavy, Research Associate, National Institute of Industrial Gerontology, National Council on the Aging)

INTRODUCTION

The United States Public Employment Service (ES) has as one of its primary responsibilities the alleviation of unemployment. In its thousands of offices located throughout the country, the ES serves all types of persons in search of employment. Over the years, for many historical reasons the ES has assumed the difficult task of trying to help those who have the most difficulty in finding jobs: the young, the old, the handicapped and the socially disadvantaged.[1]

This report focuses on the services provided by the ES to the various age groups in the population. Do younger workers receive more attention than middle-aged and older workers? To what extent does the ES avoid unemployment by placing young people entering the job market for the first time rather than alleviating the unemployment of middle-aged and older workers who find themselves without work? What proportion of applicants over 65 are given service? While in some instances a younger applicant may require a different set of services than an older person seeking work, is one age group given signficantly more attention by the ES than any other? In general, then, we hope to clarify the relationship between the age of an ES applicant and the service he receives.

Information Collected

The Employment Security Automated Reporting System (ESARS) provides the data necessary to answer these questions. An extensive record-keeping and reporting system (ESARS) has been developed and is required of each local ES office. Each office must keep records of its services showing each month, among other items, the number of: (1) new and total applicants who are seeking

[1] See E. Wight Bakke, The Mission of Manpower Policy, Kalamazoo, Michigan, The W. E. Upjohn Institute for Employment Research, 1969, pp. 45–56.

employment; (2) counseling interviews; (3) tests administered; (4) referrals to agricultural and nonagricultural jobs; (5) placements; (6) referrals to other supportive services, and (7) applicants in training programs. The various categories of service are broken down by the demographic background of applicants who receive them. Data are collected and reported on applicants' age, sex, residence (urban rural), ethnic group, education, military experience, special problems (alcoholism, vision, mental retardation, etc.) and other characteristics as required. Thus, while age data are collected on each applicant, we are not aware of any detailed investigations of the services provided to the various major age groupings.

With the advent of the Comprehensive Employment and Training Act (CETA) of 1973 and Manpower Revenue Sharing, an age-oriented analysis of ESARS will prove helpful towards setting criteria for equitable allocations of resources and services for all age groups in, or seeking to enter, the labor force. This report is not meant to criticize individual offices, states or the ES itself. Instead, our concern is to merely point up possible inequities in the hope of encouraging efforts to alleviate them. No attempt will be made to evaluate the reporting system already developed and in operation. Rather, for the purposes of this report, the data collected under ESARS are accepted as reliable information. It is assumed that any error in reporting is equally distributed throughout the ES offices and affects the data on the various age groups in much the same way.

PROCEDURES

Most of the data presented here were collected from ESARS at the Washington office of the Manpower Administration. Time and manpower constraints made it impossible to analyze by age all the ESARS-collected data. Three major service areas were selected for analysis: Counseling, referral to a nonagricultural job and job placement. In addition, data are reported on the total number of applicants receiving these and other services. The definitions for each of these major service areas, as reported in the ESARS HANDBOOK, are at the end of Table 1. Service areas not included in this analysis (see page 2) should be the focus of future studies on the relationship of age to employment services.

The ESARS service categories are reported for six age groupings: Under 22; 23–39; 40–44; 45–54; 55–64, and over 65. To highlight the services for middle-aged workers, the 40–44 and 45–54 categories have been combined in this analysis. Totals for all ages are also reported, and the entire analysis has been arranged by state totals for fiscal year 1973 with the states grouped by regions (Table 1). In addition, national totals covering the same service areas and time period by age group may be found in Table 2. The age distribution of the total applicants served has also been included for each state and at the national level. While the information is presented by state and national totals, we expect the procedures outlined here could be easily adapted at the local level for those desiring to compare their efforts to those of the states, regions and the nation as a whole in terms of the three age groups (under 22, 22–44 and 45 and over) obtainable from ESARS table 91.

In Table 3, the states are ranked according to total services provided to all age groups as well as by services given to middle-aged and older workers (40–54 and 55–64). For example, the state with the highest proportion of total applicants was ranked "1." and the state with the lowest was ranked "51." States were not ranked according to counseling services by age groups because of the comparative scarcity of this service and lack of variability among states.

Puerto Rico and the District of Columbia, in addition to the 50 states, are included in this analysis. Since the data for Washington state are not complete for the time period covered, it is not included in the national totals or in the ranking of states.

AGE DISTRIBUTION OF ES APPLICANTS

The overwhelming majority of ES applicants in every state is under age 39. The highest proportion of younger applicants (83.4 percent) is found in the District of Columbia and the lowest (65.2 percent) in Connecticut. Most states approximate the national totals (Table 2) in which 76.3 percent of all applicants are less than 39. According to Bureau of Labor Statistics data for calendar 1973, 73 percent of all unemployed job seekers and 71 percent of all unemployed seeking jobs from public employment agencies are under age 35. About 93 percent of all ES applicants in fiscal 1973 were unemployed.

The highest proportion of applicants 40–64 are found in Nevada (30.8 percent) and the lowest (15.3 percent) in the District of Columbia. As with the proportion of those under 39, the variability among states in the proportion of middle-aged and older applicants (40–64) is slight, with most approximating the national figure of 21.7 percent.

A similar pattern holds for applicants 65 and over. While Wyoming has the highest proportion of such persons (5.8 percent) and Colorado and Mississippi the lowest (0.7 percent), there is little variability with most states centered around the national average of two percent.

These data clearly demonstrate that ES applicants, like other unemployed job seekers, tend to fall into the younger age groups. What, then, about service delivery? How many ES applicants receive service and what kinds? Is the applicant's age related in any way to the kind of service he will receive or the likelihood that he will receive any service at all?

SERVICES TO ALL AGE GROUPS

For each state (Table 1) and for the nation (Table 2), the proportion of all applicants receiving some service—counseling, referral and placement—is presented at the right of the tables. The number of total applicants in each state is, of course, related to the state's population and labor market variables. California had the highest number of applicants (1,734,019) and Delaware the lowest (38,692). In the nation, 43.8 percent of all applicants received some service; 6.5 percent were counseled; 33.4 percent were referred to nonagricultural jobs, and 16.9 percent were placed. Thus, throughout the United States in fiscal year 1973, less than 50 percent of the total applicants received some service from the ES, and approximately half of those referred to jobs were placed. Others received information about getting a job on their own. A majority of unemployed job seekers use more than one method of job search and some may have obtained a job by other means before ES agencies had an opportunity to do more than take an application and provide information. Since the referral figures exclude agricultural jobs and the placement statistics include both agricultural and nonagricultural jobs, these figures are not strictly comparable. Most referrals to agricultural jobs are group referrals, however, and the number of referrals of individuals to such jobs is very small except in a few cases. Group referrals and mass placements are not included in these figures.

Of all the states, Mississippi has the highest proportion of total applicants (64.4 percent) receiving service. The only other states with more than three fifths receiving service were Nebraska (63.8 percent) and Texas (60.1 percent). (See Table 3 for ranking of states.) In five states and jurisdictions, one third or less of the applicants received counseling service.

Employment counseling is not a service frequently given by the ES. The District of Columbia counsels the highest proportion of their applicants (15.8 percent). It is interesting to note that the District also has the highest proportion of younger applicants, with these two facts possibly related. Only six other states counsel more than 10 percent of their applicants (Mississippi, Delaware, Maine, Montana, Pennsylvania and Rhode Island). Six states and jurisdictions give counseling interviews to less than four percent of their applicants.

Nebraska is the only state in which more than half of the applicants (50.6 percent) are referred to nonagricultural jobs. There are five other states in which more than 45 percent are referred: Rhode Island, Texas, Arkansas, Florida and Mississippi. Six states and jurisdictions refer less than one quarter of their applicants to nonagricultural jobs.

Nine states placed more than a quarter of their applicants in fiscal year 1973. And, as might be expected, states with high referral also tend to have higher placement rates. Nebraska is the only state placing more than 30 percent of applicants (30.5), and the following states placed over 25 percent: Mississippi, Wyoming, Iowa, Arkansas, Montana, North Dakota, South Dakota and Arizona. Less than 10 percent of applicants were placed in six states.

By themselves, these total statistics can tell us little about the effort expended to secure employment for middle-aged and older workers. At the same time, these data do not take into account a number of variables related to the amount of service given. The labor market is dynamic and differs from state to state and within states themselves. The staffing and budget patterns existing within ES offices are yet other variables related to the level of service delivery. Lastly, and

perhaps most important, these total figures can in no way demonstrate the quality of service provided. However, these total figures do present a background against which to compare the following analysis by age groups.

SERVICE DELIVERY BY AGE

There is a distinctive and dramatic pattern which emerges from the data relating type of service and age of ES applicant. With few exceptions, the proportion of the age group receiving a particular service consistently declines as age increases. As the total figures discussed above demonstrated, there is variability from state to state in the amount of service provided applicants. But regardless of that amount, the older the applicant, the less likely he was to receive ES service.

The national totals (Table 2) reflect the pattern found in most states. While slightly more than half of the applicants under 22 (52.2 percent) received some service, only one in four of those between 55 and 64 were accorded similar attention. It is important to note that less than one in 20 of those over 65 received service. Regardless of the type of service analyzed—counseling, referral, placement—the same pattern exists: The middle-aged and older applicant is less likely to receive service.

The Middle-Aged and Older Worker

In terms of receiving service, only five states provide some service to more than half of their 40–54-year-old applicants: Texas (55.0 percent); Nebraska (53.2 percent); South Dakota (52.6 percent); Mississippi (51.1 percent); and Maine (50.4 percent). The national average for this age group is 35 percent. There are only two states, Nebraska and Texas, which provide more than 40 percent of their applicants 55–64 with service, while nationally the average is one in four. At the same time, in each of these states, the younger age groups receive proportionately more service. Seven states and jurisdictions provide some service to less than one fourth of their applicants age 40–54, and eight states provide service to less than 17 percent of applicants 55–64.

Only two states, Nebraska (44.2 percent) and Texas (42.0 percent), referred more than two fifths of their applicants 40–54 to nonagricultural jobs. In the nation as a whole, 27 percent of this age group was referred. Seven states and jurisdictions referred less than a fifth of applicants 40–54. Nebraska also referred the highest percentage (36.9) of applicants 55–64 to nonagricultural jobs, with only Florida (33.1 percent), Texas (31.7 percent) and New Hampshire (30.0 percent) referring more than three in 10 applicants in this age group. The national average for referral of this age group is 19.3 percent. In six states, less than 12 percent of the applicants age 55–64 were referred to nonagricultural jobs.

There are numerous barriers to employment of the worker over 40. Most are based on the irrational beliefs of employers, personnel managers—and sometimes the workers themselves—about the capabilities and potentials of the middle-aged and older worker. The data presented here demonstrate that this age group receives proportionately less service from the public ES than do younger applicants seeking jobs. It is not surprising, then, that the applicant aged 40–64 is less likely to be placed in a job. Only 13 percent of those 40–54, and 9.3 percent of those 55–64, were placed nationally in fiscal year 1973 compared to 21.4 percent of the under-22 group and 16.5 percent of those 22–39.

It is true that many states' ES offices are well above the national average in placement of middle-aged and older workers. Nine states placed a fifth or more of their applicants 40–54: Wyoming (23.5 percent); Montana (22.7 percent); Nebraska (22.6 percent); Mississippi (22.1 percent); Arkansas (21.6 percent); Arizona (21.1 percent); South Dakota (21.1 percent); Texas (21.0 percent) and Oregon (20.0 percent). Similarly, eight states placed more than 15 percent of applicants 55–64: Nebraska (19.4 percent); Wyoming (17.3 percent); Montana (16.3 percent); Oregon (16.1 percent); Mississippi (16.0 percent); Texas (15.8 percent); Arkansas (15.3 percent) and North Dakota (15.2 percent).

It is also the case that in many states placement of middle-aged and older workers was far below the national average. In seven states, less than eight percent of the applicants aged 40–54 were placed, and in eight states less than five percent of applicants aged 55–64 were placed.

The Over-65 Applicant

Without question, those over 65 receive the least attention from the ES. That is not surprising in light of the culturally accepted age of retirement. With an

inadequate level of staffing, it might be reasonably argued that the employment problems of those under 65 should receive priority. However, there is a group of states where the pattern of dramatic decreases in service to those over 65 does not exist. In New Hampshire, Virginia, West Virginia, Alabama, Florida, Kentucky, Mississippi, Arkansas, Montana, Wyoming and Utah, a higher proportion of the over-65 age group is given service in each area analyzed than the 55–64 group. In fact, in some instances the amount of service provided is equal or better than that given to even younger persons. There are still additional states in which a higher proportion of the over-65 group is given attention by the ES in particular services as opposed to the 55–64 group. Interestingly, there does not seem to be any relationship between the number of older people in a state and how much service is provided to that group. Florida and Arkansas rank first and second, respectively, in the proportion of those over 65 in the population, and both these states provide a comparatively high level of service to this age group. Yet, Utah ranks forty-seventh and Virginia forty-third in the proportion of aged in their populations, and the ES in these states also pays a comparatively high level of attention to applicants over 65.

Ranking Obscures Other Factors

The data unmistakably demonstrate that some state ES offices provide middle-aged and older applicants with more service than do others. The rankings presented in Table 3 do tend to obscure the situation in which service is given at the same level to all age groups. Given a certain level of staffing and budgeting, some offices may decide to allocate their available resources evenly to all age groups, while others consciously concentrate on younger or older applicants. For example, in Oregon, the difference between the proportion of those receiving service under 22 and those 55–64 is only 15.1 percent. The placement figures for these age groups differ by only 6.6 percent in the state. Yet, Oregon ranks seventeenth in total service and 20.5 in placement of all applicants. At the same time, Mississippi ranks first in total services and second in total placement, but the difference between age groups in much greater than in Oregon. There is a difference of 32.5 percentage points between the proportion of those under 22 and those 55–64 who receive service in Mississippi, and there is a difference of 17.2 in placement figures.

CONCLUSION

There are any number of possible explanations for the differences which exist between states in the services provided to ES applicants and to middle-aged and older applicants in particular. No attempt has been made in this report to control for these factors which include the staffing and budgeting patterns of ES offices; others included are the many labor market variables which differ, sometimes significantly, within states, from state to state and from region to region. Acknowledgement is made of the existence of these factors and their possible effect on the data presented here. Any final interpretation of these data should take these factors into consideration.

It is evident that the rankings alone do not tell the complete story. While such a ranking system gives some organization to these data, it does tend to obscure other factors, such as the distribution of available resources to all age groups and the effect of labor market variables. In addition, quantitative measures do not indicate the quality of the services provided. A state relatively low in the amount of service delivered may, in fact, rank high in the kind of attention and assistance it gives to applicants it does serve. So the data for each state should be examined individually as well as in comparison to other states.

It is also evident that many states actually distribute service more equitably among age groups than other states. We do not believe that middle-aged and older workers should be given special treatment. Each age group has unique employment problems and potentials around which ES services should be developed and provided. It is only just that the concerns of middle-aged and older applicants receive as much attention as those of younger persons. State ES offices which do a comparatively good job in regard to this age group can serve as models to other offices. An analysis of the techniques used and the service plans developed by states with high rankings on services to the 40-plus applicant may result in valuable insights into equitable service delivery. This report will hopefully spark an investigation that ultimately provides middle-aged and older ES applicants with brighter employment prospects.

In recent years, elimination of all categorical manpower and employment programs has been a major thrust of Federal efforts. Attempts to treat any segment of the labor force as special are to be minimized while activities leading toward job placement for all are to be maximized. If such a trend in referral and placement efforts results in emphasizing a worker or job applicant's functional capabilities rather than his chronological age, NCOA favors such an approach.

We should, however, not deceive ourselves. All of us grow older regardless of sex, race, disability or ethnic background. This brief analysis of ESARS indicates that age is a constraint to employment opportunity. While decategorization may be a fine idea, its application may present further employment obstacles for the over-40 worker. Manpower planners, trainers and program personnel would do well to keep this in mind as they work—and age.

TABLE 1.—TOTAL EMPLOYMENT SERVICE APPLICANTS AND THOSE RECEIVING SELECTED SERVICES FOR FISCAL YEAR 1973: BY AGE AND STATE[1]

	Under 22	22 to 39	40 to 54	55 to 64	65 and over	Total for all ages
REGION I						
Connecticut:						
Applicants	81,725	167,195	75,204	36,722	20,654	381,500
Percent receiving service[2]	49.9	37.0	28.0	18.2	6.8	34.6 (131,818)
Percent Counseled[2]	6.4	4.4	2.7	1.5	0.5	4.0 (15,323)
Percent referred (nonagriculture)[2]	40.0	31.5	23.9	15.8	5.9	28.9 (110,288)
Percent placed[2]	15.8	8.8	6.1	3.5	1.2	8.9 (33,819)
Age distribution	21.4	43.8	19.7	9.6	5.4	99.9
Maine:						
Applicants	20,510	33,408	11,206	4,890	1,608	71,676
Percent receiving service	67.6	60.3	50.4	38.2	29.5	58.6 (42,033)
Percent Counseled	14.5	11.6	11.2	7.3	5.0	11.9 (8,544)
Percent referred (nonagriculture)	51.1	45.5	35.7	26.4	19.7	43.7 (31,304)
Percent placed	27.0	22.2	16.7	11.1	8.6	21.6 (15,499)
Age distribution	28.6	46.6	15.7	6.8	2.2	99.9
Massachusetts:						
Applicants	126,074	223,087	85,983	43,302	21,377	498,823
Percent receiving service	47.1	37.9	29.9	16.9	5.5	35.6 (177,725)
Percent counseled	12.0	10.0	8.0	3.7	0.7	9.2 (45,954)
Percent referred (nonagriculture)	32.2	25.9	20.1	11.9	4.3	24.4 (121,523)
Percent placed	14.5	9.4	7.1	4.2	1.7	9.5 (47,356)
Age distribution	25.1	44.7	17.2	8.7	4.3	100.0
New Hampshire:						
Applicants	15,740	23,758	9,483	4,867	1,842	55,690
Percent receiving service	64.4	53.4	40.8	34.4	51.0	52.6 (29,312)
Percent counseled	7.2	6.7	5.5	4.5	9.4	6.5 (3,642)
Percent referred (nonagriculture)	52.8	45.3	35.6	30.0	47.1	44.8 (24,967)
Percent placed	24.3	17.2	13.0	9.1	22.7	17.9 (9,991)
Age distribution	28.3	42.7	17.0	8.7	3.3	100.0
Rhode Island:						
Applicants	18,726	30,291	12,317	5,125	682	67,141
Percent receiving service	74.0	58.1	44.3	31.4	21.8	57.6 (38,663)
Percent counseled	13.0	11.3	9.5	5.4	2.6	10.0 (7,317)
Percent referred (nonagriculture)	60.1	47.3	36.0	26.4	19.1	46.9 (31,522)
Percent placed	26.2	16.8	13.4	10.1	11.4	18.2 (12,253)
Age distribution	27.9	45.1	18.3	7.6	1.0	99.9
Vermont:						
Applicants	15,250	27,057	7,766	3,463	1,445	54,981
Percent receiving service	54.7	46.4	35.9	21.4	11.7	44.7 (24,589)
Percent counseled	10.0	7.7	6.9	2.3	1.5	7.7 (4,225)
Percent referred (nonagriculture)	45.5	39.5	30.0	18.9	10.0	37.7 (20,752)
Percent placed	22.3	17.0	12.4	7.0	4.9	16.9 (9,265)
Age distribution	27.7	49.2	14.1	6.3	2.6	99.9
REGION II						
New Jersey:						
Applicants	133,496	243,005	111,257	53,718	27,889	569,365
Percent receiving service	45.7	34.1	23.3	13.8	6.3	31.4 (178,908)
Percent counseled	13.5	7.3	4.4	2.3	1.2	7.4 (42,228)
Percent referred (nonagriculture)	30.2	25.4	17.9	10.8	4.8	22.7 (129,140)
Percent placed	13.9	9.7	7.4	4.5	2.2	9.4 (53,509)
Age distribution	23.4	42.7	19.5	9.4	4.9	99.9
New York:						
Applicants	265,635	583,765	180,695	70,019	29,581	1,129,695
Percent receiving service	58.4	50.6	40.5	32.0	21.1	48.9 (552,262)
Percent counseled	14.3	10.0	6.3	4.8	5.2	9.9 (112,262)
Percent referred (nonagriculture)	39.1	37.0	29.6	22.9	12.6	34.8 (393,201)
Percent placed	16.6	15.6	12.3	10.0	6.1	14.7 (166,375)
Age distribution	23.5	51.7	16.0	6.2	2.6	100.0

TABLE 1.—TOTAL EMPLOYMENT SERVICE APPLICANTS AND THOSE RECEIVING SELECTED SERVICES FOR FISCAL YEAR 1973: BY AGE AND STATE [1]—Continued

	Under 22	22 to 39	40 to 54	55 to 64	65 and over	Total for all ages
REGION II—Continued						
Puerto Rico:						
Applicants	117,107	201,629	58,095	16,924	5,116	398,871
Percent receiving service	31.1	21.1	19.2	18.6	18.9	23.6 (94,178)
Percent counseled	5.8	2.8	2.1	1.1	0.8	3.5 (13,897)
Percent referred (nonagriculture)	21.2	16.5	14.8	13.6	14.4	17.4 (69,575)
Percent placed	13.6	8.8	9.6	12.4	12.0	10.5 (41,992)
Age distribution	29.4	50.5	14.6	4.2	1.3	100.0
REGION III						
Delaware:						
Applicants	8,357	18,038	7,546	3,003	1,747	38,692
Percent receiving service	61.6	33.5	18.8	10.8	3.0	33.6(12,985)
Percent counseled	38.4	7.7	4.6	2.8	0.7	13.0(5,043)
Percent referred (nonagriculture)	33.3	26.4	14.4	8.5	2.3	23.1(8,933)
Percent placed	15.1	10.8	5.9	3.9	1.0	9.8(3,798)
Age distribution	21.6	46.6	19.5	7.8	4.5	100.0
District of Columbia:						
Applicants	65,629	63,722	17,272	6,548	1,995	155,166
Percent receiving service	60.9	31.9	25.3	20.3	14.2	42.7(66,254)
Percent counseled	26.1	8.0	8.1	10.6	7.9	15.8(24,497)
Percent referred (nonagriculture)	41.6	22.0	15.6	9.6	5.8	28.8(44,714)
Percent placed	31.9	8.7	7.3	4.0	2.7	18.1(28,058)
Age distribution	42.3	41.1	11.1	4.2	1.3	100.0
Maryland:						
Applicants	69,637	115,198	39,803	15,749	5,345	245,732
Percent receiving service	45.4	35.5	25.3	17.4	15.9	35.1(86,224)
Percent counseled	7.0	6.0	3.6	2.3	1.6	5.5(13,635)
Percent referred (nonagriculture)	36.2	28.7	20.7	14.6	13.9	28.3(69,499)
Percent placed	17.0	11.8	9.4	6.8	7.4	12.5(30,625)
Age distribution	28.3	46.9	16.2	6.4	2.2	100.0
Pennsylvania:						
Applicants	238,187	324,875	133,343	58,217	25,053	779,675
Percent receiving service	60.2	48.6	36.6	25.5	14.5	47.3(368,484)
Percent counseled	14.2	11.6	8.3	6.1	3.8	11.2(87,320)
Percent referred (nonagriculture)	42.0	35.1	25.9	17.4	9.3	33.5(260,956)
Percent placed	25.1	17.7	12.8	8.6	5.0	18.0(140,721)
Age distribution	30.5	41.7	17.1	7.5	3.2	100.0
Virginia:						
Applicants	115,149	146,661	46,677	15,289	4,595	328,371
Percent receiving service	55.6	51.5	39.4	27.1	31.1	49.8(163,504)
Percent counseled	10.1	6.7	6.0	5.0	6.4	7.7(25,235)
Percent referred (nonagriculture)	41.0	39.8	30.1	20.9	24.8	37.8(124,033)
Percent placed	24.1	21.1	16.2	11.2	14.6	20.9(68,706)
Age distribution	35.1	44.7	14.2	4.7	1.4	100.1
West Virginia:						
Applicants	59,225	79,902	25,763	8,701	2,149	175,740
Percent receiving service	46.7	37.8	31.4	20.0	25.7	38.8(68,226)
Percent counseled	11.5	9.8	8.2	4.3	4.7	9.8(17,273)
Percent referred (nonagriculture)	28.2	26.2	20.5	13.7	13.9	25.3(44,479)
Percent placed	18.5	14.5	12.0	8.0	12.6	15.1(26,601)
Age distribution	33.7	45.5	14.7	5.0	1.2	100.1
REGION IV						
Alabama:						
Applicants	116,574	126,322	42,292	13,713	4,089	302,990
Percent receiving service	52.7	46.8	37.3	26.5	27.3	46.6(141,149)
Percent counseled	8.9	5.1	3.2	2.0	3.6	6.1(18,600)
Percent referred (nonagriculture)	39.8	39.9	31.6	22.9	23.4	37.7(114,231)
Percent placed	24.4	20.5	17.0	12.7	15.0	21.1(63,958)
Age distribution	38.5	41.7	14.0	4.5	1.3	100.0
Florida:						
Applicants	132,530	207,899	74,217	28,231	9,005	451,882
Percent receiving service	65.4	56.0	46.6	39.3	46.6	56.0(252,952)
Percent counseled	8.6	4.9	3.8	2.7	4.4	5.6(25,447)
Percent referred (nonagriculture)	52.1	46.3	38.8	33.1	38.8	45.8(206,898)
Percent placed	23.8	20.5	17.2	13.5	18.5	
Age distribution	29.3	46.0	16.4	6.3	2.0	100.0
Georgia:						
Applicants	129,343	187,057	54,692	16,944	3,994	392,030
Percent receiving service	51.6	43.8	34.5	26.0	18.1	44.1(172,686)
Percent counseled	7.0	6.2	4.3	3.2	2.8	6.0(23,61)
Percent referred (nonagriculture)	39.8	34.4	26.9	20.4	14.9	34.3(134,544)
Percent placed	22.8	18.2	15.1	11.7	10.1	18.9(74,20*)
Age distribution	33.0	47.7	14.0	4.3	1.0	100.0
Kentucky:						
Applicants	92,058	141,562	48,177	15,764	3,141	300,702
Percent receiving service	46.6	36.0	26.4	21.2	21.5	36.8(110,634)
Percent counseled	10.9	5.4	4.1	2.3	2.6	6.7(20,121)
Percent referred (nonagriculture)	29.3	26.6	19.3	15.3	16.8	25.6(76,944)
Percent placed	17.4	14.0	9.8	7.7	10.4	14.0(42,132)
Age distribution	30.6	47.1	16.0	5.2	1.0	99.9

TABLE 1.—TOTAL EMPLOYMENT SERVICE APPLICANTS AND THOSE RECEIVING SELECTED SERVICES FOR FISCAL YEAR 1973: BY AGE AND STATE [1]—Continued

	Under 22	22 to 39	40 to 54	55 to 64	65 and over	Total for all ages
REGION IV—Continued						
Mississippi:						
Applicants	105,473	102,797	34,876	11,765	1,669	256,580
Percent receiving service	69.3	67.5	51.1	36.8	39.5	64.4(165,244)
Percent counseled	18.8	13.0	10.1	6.2	7.4	14.7(37,609)
Percent referred (nonagriculture)	47.7	49.9	35.8	25.6	28.4	45.8(117,614)
Percent placed	33.2	30.6	22.1	16.0	19.9	29.8(76,346)
Age distribution	41.1	40.1	13.6	4.6	.7	100.1
North Carolina:						
Applicants	141,317	208,397	71,282	24,874	6,634	452,504
Percent receiving service	55.2	50.4	39.1	27.9	26.2	48.6(219,692)
Percent counseled	5.5	4.0	3.5	2.6	1.9	4.3(19,366)
Percent referred (nonagriculture)	39.9	38.7	29.3	21.2	19.4	36.4(164,714)
Percent placed	21.5	17.9	14.6	10.5	11.7	18.0(81,381)
Age distribution	31.2	46.1	15.8	5.5	1.5	100.1
South Carolina:						
Applicants	76,510	99,419	32,968	10,328	2,247	221,472
Percent receiving service	60.7	53.9	44.5	35.8	27.2	53.8 (119,067)
Percent counseled	7.2	4.1	3.1	2.6	1.5	4.9 (10,871)
Percent referred (nonagriculture)	43.7	42.7	34.2	27.5	19.5	40.8 (90,416)
Percent placed	25.2	20.4	18.0	14.7	12.6	21.4 (47,289)
Age distribution	34.5	44.9	14.9	4.7	1.0	100.0
Tennessee:						
Applicants	109,162	149,881	46,039	13,434	4,416	322,932
Percent receiving service	58.8	53.4	41.3	29.2	50.0	52.5 (169,439)
Percent counseled	4.8	4.6	4.0	2.1	1.8	4.4 (14,370)
Percent referred (nonagriculture)	47.3	43.9	33.0	24.2	45.8	42.7 (137,988)
Percent placed	27.3	23.0	17.7	13.3	28.9	23.4 (75,508)
Age distribution	33.8	46.4	14.3	4.2	1.4	100.1
REGION V						
Illinois:						
Applicants	234,101	372,899	132,607	50,332	21,564	811,503
Percent receiving service	45.0	32.4	23.8	16.8	12.5	33.1 (268,902)
Percent counseled	10.5	6.2	4.2	3.0	2.4	6.8 (55,160)
Percent referred (nonagriculture)	24.5	23.5	17.4	11.6	8.0	21.6 (175,656)
Percent placed	12.7	9.8	7.3	4.7	4.0	9.8 (79,469)
Age distribution	28.8	46.0	16.3	6.2	2.7	100.0
Indiana:						
Applicants	169,554	209,830	73,133	27,251	8,939	488,707
Percent receiving service	47.9	41.0	29.5	20.6	17.6	40.1 (196,100)
Percent counseled	5.2	3.9	2.5	1.4	1.3	3.9 (19,253)
Percent referred (nonagriculture)	38.2	36.0	26.2	18.3	15.3	33.9 (165,702)
Percent placed	24.3	16.5	11.5	8.0	9.0	17.8 (87,138)
Age distribution	34.7	42.9	15.0	5.6	1.9	100.1
Michigan:						
Applicants	226,623	443,162	153,265	58,096	22,209	903,355
Percent receiving service	36.3	30.7	17.7	10.4	11.4	28.1 (253,923)
Percent counseled	6.5	5.8	3.3	1.5	1.2	5.2 (46,620)
Percent referred (nonagriculture)	26.5	23.1	13.1	8.0	9.4	20.9 (189,048)
Percent placed	12.2	10.2	5.5	3.6	4.9	9.3 (84,173)
Age distribution	25.1	49.1	17.0	6.4	2.5	100.1
Minnesota:						
Applicants	121,797	136,417	39,362	17,029	3,363	317,968
Percent receiving service	43.1	39.8	33.5	24.6	26.2	39.3 (125,036)
Percent counseled	6.1	5.6	4.4	1.8	0.6	5.4 (17,138)
Percent referred (nonagriculture)	31.0	31.1	25.8	19.9	21.6	29.7 (94,421)
Percent placed	16.9	13.9	11.3	9.6	14.9	14.5 (46,192)
Age distribution	38.3	42.9	12.4	5.4	1.1	100.1
Ohio:						
Applicants	196,485	355,301	131,395	44,596	7,937	735,714
Percent receiving service	46.0	35.5	23.9	16.9	13.8	34.9 (256,449)
Percent counseled	6.3	5.9	3.4	1.6	0.5	5.2 (38,532)
Percent referred (nonagriculture)	37.0	29.8	20.3	14.7	12.2	28.9 (212,733)
Percent placed	16.2	12.3	8.0	5.6	5.6	12.1 (88,843)
Age distribution	26.7	48.3	17.9	6.1	1.1	100.1
Wisconsin:						
Applicants	118,021	158,362	49,094	21,405	8,187	355,069
Percent receiving service	47.7	44.0	30.5	18.8	14.7	41.2 (146,195)
Percent counseled	9.2	6.9	5.2	2.8	1.8	7.1 (25,107)
Percent referred (nonagriculture)	38.2	36.7	25.4	15.5	12.3	33.8 (119,967)
Percent placed	16.5	13.1	8.8	5.1	5.1	13.0 (46,091)
Age distribution	33.2	44.6	13.8	6.0	2.3	99.9
REGION VI						
Arkansas:						
Applicants	80,671	88,559	29,424	10,164	2,453	211,271
Percent receiving service	60.4	60.8	48.6	32.9	56.8	57.5 (121,526)
Percent counseled	5.7	4.5	3.7	2.9	5.3	4.8 (10,148)
Percent referred (nonagriculture)	47.8	49.2	38.5	26.2	47.9	46.1 (97,316)
Percent placed	39.7	39.1	21.6	15.3	30.6	26.7 (56,297)
Age distribution	38.2	41.9	13.9	4.8	1.2	100.0

TABLE 1.—TOTAL EMPLOYMENT SERVICE APPLICANTS AND THOSE RECEIVING SELECTED SERVICES FOR FISCAL YEAR 1973: BY AGE AND STATE [1]—Continued

	Under 22	22 to 39	40 to 54	55 to 64	65 and over	Total for all ages
REGION VI—Continued						
Louisiana:						
Applicants	113,506	147,820	49,636	18,774	4,350	334,086
Percent receiving service	41.8	36.5	24.5	14.3	10.9	34.9 (116,700)
Percent counseled	5.0	3.7	1.6	0.5	0.3	3.6 (12,128)
Percent referred (nonagriculture)	30.5	29.4	20.5	12.1	8.6	27.2 (90,939)
Percent placed	18.1	15.1	11.4	7.3	5.5	15.0 (50,203)
Age distribution	34.0	44.2	14.9	5.6	1.3	100.0
NeW Mexico:						
Applicants	53,126	69,477	20,681	7,266	1,500	152,050
Percent receiving service	44.9	36.7	32.1	21.8	22.7	38.1 (57,906)
Percent counseled	8.1	5.6	4.1	1.9	1.5	6.0 (9,181)
Percent referred (nonagriculture)	34.4	29.1	25.0	17.1	16.9	29.7 (45,182)
Percent placed	19.7	14.6	12.7	8.3	12.5	15.8 (24,049)
Age distribution	34.9	45.7	13.6	4.8	1.0	100.0
Oklahoma:						
Applicants	84,343	131,704	45,859	16,690	3,550	282,146
Percent receiving service	51.3	47.5	40.9	26.3	21.8	46.0 (129,752)
Percent counseled	11.7	9.0	7.7	4.5	3.2	9.3 (26,147)
Percent referred (nonagriculture)	35.4	34.3	28.0	17.5	15.7	32.4 (91,331)
Percent placed	24.4	21.2	18.1	12.1	11.7	21.0 (59,351)
Age distribution	29.9	46.7	16.3	5.9	1.3	100.1
Texas:						
Applicants	354,544	455,650	159,313	54 220	10,531	1,034,258
Percent receiving service	60.0	64.7	55:0	41.7	35.6	60.1 (621,613)
Percent counseled	7.7	7.4	5.5	4.4	4.6	7.0 (72,425)
Percent referred (nonagriculture)	46.9	50.2	42.0	31.7	26.8	46.6 (481,571)
Percent placed	23.0	23.2	21.0	15.8	14.9	22.3 (230,627)
Age distribution	34.3	44.1	15.4	5.2	1.0	100.0
REGION VII						
Iowa:						
Applicants	82,524	91,002	27,799	10,768	2,410	214,503
Percent receiving service	64.4	58.2	47.5	36.2	45.8	57.9 (124,273)
Percent counseled	4.2	5.5	4.2	1.8	1.5	4.6 (9,911)
Percent referred (nonagriculture)	43.8	45.7	34.7	25.3	36.8	42.4 (91,041)
Percent placed	37.5	24.3	17.9	13.3	25.6	28.1 (60,171)
Age distribution	38.5	42.4	13.0	5.0	1.1	100.0
Kansas:						
Applicants	64,577	76,382	24,296	8,848	3,059	177,162
Percent receiving service	58.2	54.3	44.7	31.1	26.6	52.8 (93,499)
Percent counseled	8.2	9.1	8.6	4.7	3.1	8.4 (14,824)
Percent referred (nonagriculture)	43.1	40.9	32.7	24.2	21.3	39.4 (69,816)
Percent placed	29.5	21.3	17.7	13.2	14.2	23.2 (41,190)
Age distribution	36.5	43.1	13.7	5.0	1.7	100.0
Missouri:						
Applicants	144,859	176,951	59,362	20,430	5,390	406,992
Percent receiving service	51.4	49.3	36.1	26.1	24.8	46.6 (189,742)
Percent counseled	5.6	4.8	3.6	2.7	2.3	4.8 (19,495)
Percent referred (nonagriculture)	39.1	40.4	29.1	21.3	21.2	37.1 (150,980)
Percent placed	22.5	20.1	14.3	10.5	12.0	19.5 (79,475)
Age distribution	35.6	43.5	14.6	5.0	1.3	100.0
Nebraska:						
Applicants	37,938	40,233	12,576	4,661	1,635	97,043
Percent receiving service	73.8	60.6	53.2	44.1	49.2	63.8 (61,933)
Percent counseled	5.8	6.7	5.0	3.5	3.2	5.9 (5,752)
Percent referred (nonagriculture)	54.0	51.2	44.2	36.9	43.7	50.6 (49,075)
Percent placed	40.3	25.1	22.6	19.4	27.8	30.5 (29,567)
Age distribution	39.1	41.5	13.0	4.8	1.7	100.1
REGION VIII						
Colorado:						
Applicants	83,960	119,660	30,028	9,145	1,662	244,455
Percent receiving service	48.5	40.8	35.8	25.5	35.6	42.2 (103,158)
Percent counseled	9.9	5.3	5.8	3.1	3.1	6.8 (16,741)
Percent referred (nonagriculture)	36.9	32.8	27.4	20.2	30.4	33.1 (80,869)
Percent placed	18.9	15.2	13.3	9.8	17.6	16.1 (39,260)
Age distribution	34.3	48.9	12.3	3.7	0.7	99.9
Montana:						
Applicants	36,865	45,121	14,508	5,788	1,303	103,585
Percent receiving service	51.6	46.0	37.9	26.5	26.8	45.5 (47,141)
Percent counseled	15.3	11.6	8.1	3.6	4.2	11.9 (12,322)
Percent referred (nonagriculture)	32.6	30.7	23.2	15.7	17.0	29.3 (30,358)
Percent placed	30.1	26.6	22.7	16.9	17.4	26.6 (27,596)
Age distribution	35.6	43.6	14.0	5.6	1.3	100.1

TABLE 1.—TOTAL EMPLOYMENT SERVICE APPLICANTS AND THOSE RECEIVING SELECTED SERVICES FOR FISCAL YEAR 1973: BY AGE AND STATE [1]—Continued

	Under 22	22 to 39	40 to 54	55 to 64	65 and over	Total for all ages
REGION VIII—Continued						
North Dakota:						
Applicants	29,253	33,261	8,681	3,668	899	75,762
Percent receiving service	62.4	57.9	43.1	33.1	31.3	56.4 (42,731)
Percent counseled	8.3	7.1	6.5	3.1	1.8	7.2 (5,470)
Percent referred (nonagriculture)	46.5	48.0	33.3	26.9	25.7	44.4 (33,649)
Percent placed	31.1	25.0	17.7	15.2	16.4	25.9 (19,642)
Age distribution	38.6	43.9	11.5	4.8	1.2	100.0
South Dakota:						
Applicants	31,949	31,681	9,219	3,862	1,028	77,739
Percent receiving service	61.6	59.4	52.6	35.8	32.9	58.0 (45,059)
Percent counseled	9.5	10.1	11.0	5.7	1.5	9.6 (7,498)
Percent referred (nonagriculture)	46.5	46.4	39.1	27.4	27.1	44.4 (34,533)
Percent placed	30.2	25.0	21.1	14.8	17.8	26.0 (20,245)
Age distribution	41.1	40.8	11.9	5.0	1.3	100.1
Utah:						
Applicants	54,593	61,777	17,275	6,159	2,376	142,180
Percent receiving service	60.0	54.5	45.4	29.8	43.6	54.3 (77,159)
Percent counseled	5.9	8.6	7.4	3.0	4.1	7.1 (10,099)
Percent referred (nonagriculture)	49.2	45.4	37.4	25.9	36.0	44.9 (63,811)
Percent placed	24.8	21.4	17.3	11.8	18.5	21.7 (30,906)
Age distribution	38.4	43.4	12.2	4.3	1.7	100.0
Wyoming:						
Applicants	13,378	17,826	5,535	1,936	2,385	41,060
Percent receiving service	55.9	50.4	43.6	33.0	52.2	50.6 (20,770)
Percent counseled	6.7	8.5	6.2	3.1	9.7	7.4 (3,033)
Percent referred (nonagriculture)	42.2	37.5	31.4	24.2	37.4	37.6 (15,424)
Percent placed	33.4	27.9	23.5	17.3	31.8	28.8 (11,831)
Age distribution	32.6	43.4	13.5	4.7	5.8	100.0
REGION IX						
Arizona:						
Applicants	83,891	124,097	43,542	15,208	2,945	269,683
Percent receiving service	69.4	55.2	47.4	32.6	25.4	56.7 (153,021)
Percent counseled	2.6	3.2	2.6	1.1	0.7	2.8 (7,495)
Percent referred (nonagriculture)	53.9	44.4	34.7	26.0	20.7	44.8 (120,933)
Percent placed	30.8	24.1	21.1	14.4	11.5	25.0 (67,459)
Age distribution	31.1	46.0	16.2	5.6	1.1	100.0
California:						
Applicants	449,325	867,302	305,409	89,096	22,887	1,734,019
Percent receiving service	46.6	43.3	38.8	31.9	29.0	42.6 (738,679)
Percent counseled	3.4	4.2	2.9	1.7	1.4	3.6 (62,345)
Percent referred (nonagriculture)	37.4	35.9	30.6	26.1	24.4	34.7 (601,099)
Percent placed	22.5	17.5	15.3	12.6	14.2	18.1 (314,053)
Age distribution	25.9	50.0	17.6	5.1	1.3	99.9
Hawaii:						
Applicants	34,477	48,649	13,760	6,707	2,828	106,391
Percent service	44.4	36.2	27.9	16.9	9.8	35.8 (38,118)
Percent counseled	5.8	4.5	3.3	1.2	0.8	4.5 (4,806)
Percent referred (nonagriculture)	33.3	30.3	23.2	14.1	7.6	28.7 (30,546)
Percent placed	17.7	10.5	8.1	4.6	1.9	11.9 (12,706)
Age distribution	32.4	45.7	12.9	6.3	2.7	100.0
Nevada:						
Applicants	23,241	50,218	24,594	9,504	2,787	110,344
Percent receiving service	46.4	35.9	31.5	21.1	15.8	35.4(39,020)
Percent counseled	4.8	3.4	2.3	1.4	0.7	3.2(3,532
Percent referred (nonagriculture)	37.8	29.1	26.0	17.4	12.9	28.8(31,787)
Percent placed	20.8	15.6	14.6	10.1	8.1	15.8(17,467)
Age distribution	21.1	45.5	22.2	8.6	2.5	99.9
REGION X						
Alaska:						
Applicants	12,660	25,864	6,849	1,857	375	47,605
Percent receiving service	53.8	50.2	39.2	26.2	20.5	48.4(23,053)
Percent counseled	5.9	6.0	5.4	3.9	6.7	5.8(2,773)
Percent referred (nonagriculture)	40.9	37.6	30.0	20.4	13.9	36.4(17,347)
Percent placed	25.6	22.0	15.1	10.2	6.9	21.4(10,166)
Age distribution	26.6	54.3	14.4	3.9	0.8	100.0
Idaho:						
Applicants	37,272	47,389	17,290	7,050	1,605	110,606
Percent receiving service	52.2	47.4	37.3	24.8	21.1	45.7(50,489)
Percent counseled	7.1	6.7	4.4	2.1	1.2	6.1(6,742)
Percent referred (nonagriculture)	37.5	36.2	26.2	17.2	14.1	33.5(37,094)
Percent placed	25.8	22.2	17.0	11.1	11.6	21.7(24,040)
Age distribution	33.7	42.8	15.6	6.4	1.5	100.0

TABLE 1.—TOTAL EMPLOYMENT SERVICE APPLICANTS AND THOSE RECEIVING SELECTED SERVICES FOR FISCAL YEAR 1973: BY AGE AND STATE [1]—Continued

	Under 22	22 to 39	40 to 54	55 to 64	65 and over	Total for all ages
REGION X—Continued						
Oregon:						
Applicants	85,708	129,405	36,077	12,036	5,233	268,459
Percent receiving service	52.6	52.8	48.5	37.5	34.7	51.1(137,240)
Percent counseled	7.2	8.8	7.4	4.0	4.3	7.8(20,936)
Percent referred (nonagriculture)	40.0	40.2	35.1	27.8	27.8	38.7(103,777)
Percent placed	22.7	20.5	20.0	16.1	15.8	20.9(55,978)
Age distribution	31.9	48.2	13.4	4.5	1.9	99.9
Washington: [3]						
Applicants	48,221	118,692	30,697	10,953	3,509	212,072
Percent receiving service	22.9	29.5	20.9	13.4	5.7	25.5(54,093)
Percent counseled	2.4	2.4	2.1	0.9	0.3	2.3(4,771)
Percent referred (nonagriculture)	17.6	21.9	16.7	11.3	4.8	19.3(40,993)
Percent placed	2.0	2.9	1.5	9.9	0.4	2.4(4,978
Age distribution	22.7	56.0	14.5	5.2	1.7	100.1)

[1] Employment Security Automated Reporting System (ESARS), Manpower Administration, U.S. Department of Labor, Washington, D.C., monthly year to date for period ending June 30, 1973, tables 3, 4, 5, and 6.

[2] Definition of terms (ESARS Handbook):

Receiving Service—Services refer to manpower activities related to training and employment efforts, such as those listed below, which are provided by employment service offices and which are designed to result in the training and/or employment of the applicant. Included among these services are the following:

Counseling, testing, job development contact, enrollment in orientation, enrollment in training, referral to training, referral to supportive service, job referral, placement, followup contacts.

Counseled—An interview (1) in which a face-to-face discussion occurs between a specially trained or designated counselor in which the counselor helps the applicant resolve problems of vocational choice, vocational change, or vocational adjustment; and (2) which results in obtaining and recording on the applicant's card and/or other appropriate applicant records one or more of the following (a) a summary statement to establish the existence of a vocational problem, (b) additional information contributing to a sharper definition of the problem or to its solution, (c) a statement of a vocational plan or recommendation for the solution of the problem, (d) a statement concerning the outcome and effectiveness of the counseling service elicited in the course of the followup.

Referred (nonagriculture)—Arranged to bring to the attention of an employer (or another local office) an applicant who is available for a job under one of the following conditions:

1. An opening existed prior to the referral.
2. No opening existed but the employer actually hires the applicant.

Placed—Hired for a job by an employer to whom an individual was referred by the employment office for a job or an interview, providing that the employment office completed all of the following steps: (a) Made prior arrangements with the employer for the referral of an individual or individuals; (b) referred an individual who had not been specifically designated by the employer; (c) verified from a reliable source, preferably the employer, that the individual had entered on a job; and (d) recorded the transaction on an employer order form and other appropriate ES forms.

[3] Data for Washington State only for 1st quarter fiscal year 1973.

TABLE 2.—TOTAL EMPLOYMENT SERVICE APPLICANTS AND THOSE RECEIVING SELECTED SERVICES BY AGE NATIONAL TOTALS FISCAL YEAR 1973 [1]

	Under 22	22 to 39	40 to 54	55 to 64	65 and over	Total for all ages
Applicants	5,311,618	8,060,930	2,767,576	1,024,136	341,663	17,505,923
Percent receiving service	52.2	44.7	35.1	25.0	4.9	43.8 (7,665,237)
Percent counseled	8.5	6.5	4.7	3.0	0.6	6.5 (1,142,004)
Percent referred (nonagriculture)	38.4	35.0	27.0	19.3	3.8	33.4 (5,854,271)
Percent placed	21.4	16.5	13.0	9.3	2.1	16.9 (2,955,931)
Age distribution	30.3	46.0	15.8	5.9	2.0	100.0

[1] Washington excluded because comparable data not available. Puerto Rico and the District of Columbia are included in the totals.

TABLE 3.—RANKING OF STATES BY SELECTED EMPLOYMENT SERVICE VARIABLES [1]

	Total ES applicants	Applicants receiving service			Applicants counseled,[2]	Applicants referred			Applicants placed		
		All ages	40 to 54	55 to 64	All ages	All ages	40 to 54	55 to 64	All ages	40 to 54	55 to 64
REGION I											
Connecticut	16	46.0	40.0	42.0	45.0	37.5	37.0	36.0	51.0	49.0	51.0
Maine	45	4.0	5.0	4.0	4.5	12.0	9.0	9.5	15.0	20.0	23.5
Massachusetts	9	41.0	38.0	45.0	12.0	46.0	44.0	46.0	48.0	48.0	47.0
New Hampshire	47	15.0	19.0	10.0	26.0	8.5	10.0	4.0	30.0	30.0	33.0
Rhode Island	46	7.0	14.0	17.0	7.0	2.0	7.0	9.5	25.0	28.0	28.5
Vermont	48	29.0	30.0	34.0	15.5	19.5	22.5	29.0	32.0	33.0	40.0

TABLE 3.—RANKING OF STATES BY SELECTED EMPLOYMENT SERVICE VARIABLES[1]—Continued

	Total ES applicant	Applicants receiving service			Applicants counseled[2]	Applicants referred			Applicants placed		
		All ages	40 to 54	55 to 64	All ages	All ages	40 to 54	55 to 64	All ages	40 to 54	55 to 64
REGION II											
New Jersey	8	49.0	48.0	49.0	17.5	48.0	46.0	48.0	49.0	45.0	46.0
New York	2	20.0	20.0	15.0	8.0	25.0	24.0	20.5	38.0	34.0	30.0
Puerto Rico	14	51.0	49.0	41.0	49.0	51.0	49.0	44.0	45.0	40.0	18.0
REGION III											
Delaware	51	47.0	50.0	50.0	3.0	47.0	50.0	50.0	46.5	50.0	49.0
District of Columbia	35	31.0	43.5	38.0	1.0	39.5	48.0	49.0	26.5	46.5	48.0
Maryland	28	43.0	43.5	43.0	34.0	42.0	40.0	41.0	42.0	41.0	41.0
Pennsylvania	6	23.0	28.0	29.5	6.0	30.5	33.0	32.5	28.5	31.0	34.0
Virginia	19	19.0	21.0	22.0	15.5	18.0	21.0	24.0	20.5	21.0	22.0
West Virginia	34	37.0	36.0	39.0	9.0	45.0	41.5	43.0	36.0	35.0	36.5
REGION IV											
Alabama	22	24.5	26.5	23.5	27.5	19.5	18.0	20.5	18.0	18.5	16.0
Florida	12	11.0	10.0	3.0	33.0	5.5	4.0	2.0	22.0	17.0	12.0
Georgia	15	30.0	32.0	28.0	29.5	27.0	29.0	25.5	24.0	23.5	21.0
Kentucky	23	39.0	42.0	35.0	25.0	44.0	45.0	39.0	40.0	39.0	38.0
Mississippi	27	1.0	4.0	6.0	2.0	5.5	8.0	15.0	2.0	4.0	5.0
North Carolina	11	21.0	23.0	21.0	44.0	23.5	25.0	23.0	28.5	25.5	25.5
South Carolina	30	13.0	13.0	8.5	38.0	15.0	14.0	6.0	16.5	11.0	10.0
Tennessee	20	16.0	17.0	20.0	43.0	13.0	16.0	18.0	10.0	14.0	13.5
REGION V											
Illinois	5	48.0	47.0	47.0	23.5	49.0	47.0	47.0	46.5	46.5	44.0
Indiana	10	35.0	39.0	37.0	46.0	28.0	30.5	30.0	31.0	36.0	36.5
Michigan	4	50.0	51.0	51.0	36.5	50.0	51.0	51.0	50.0	51.0	50.0
Minnesota	21	36.0	33.0	32.0	35.0	34.5	34.0	28.0	39.0	38.0	32.0
Ohio	7	44.5	46.0	45.0	36.5	37.5	43.0	40.0	43.0	44.0	42.0
Wisconsin	17	34.0	37.0	40.0	20.5	29.0	35.0	38.0	41.0	42.0	43.0
REGION VI											
Arkansas	32	8.0	6.0	13.0	39.5	4.0	5.0	11.0	5.0	5.0	7.0
Louisiana	18	44.5	45.0	48.0	47.5	43.0	41.5	45.0	37.0	37.0	39.0
New Mexico	36	38.0	34.0	33.0	29.5	34.5	36.0	35.0	34.5	32.0	35.0
Oklahoma	24	26.0	18.0	25.0	11.0	33.0	27.0	31.0	19.0	10.0	19.0
Texas	3	3.0	1.0	2.0	22.0	3.0	2.0	3.0	12.0	8.0	6.0
REGION VII											
Iowa	31	6.0	8.0	7.0	41.0	14.0	12.5	16.0	4.0	12.0	13.5
Kansas	33	14.0	12.0	18.0	13.0	16.0	17.0	18.0	11.0	14.0	15.0
Missouri	13	24.5	29.0	27.0	39.5	22.0	26.0	22.0	23.0	27.0	25.5
Nebraska	42	2.0	2.0	1.0	31.0	1.0	1.0	1.0	1.0	3.0	1.0
REGION VIII											
Colorado	29	33.0	31.0	29.5	23.5	32.0	28.0	27.0	33.0	29.0	31.0
Montana	41	28.0	25.0	23.5	4.5	36.0	38.5	37.0	6.0	2.0	3.0
North Dakota	44	10.0	16.0	11.0	19.0	10.5	15.0	8.0	8.0	14.0	8.0
South Dakota	43	5.0	3.0	8.5	10.0	10.5	3.0	7.0	7.0	6.5	9.0
Utah	37	12.0	11.0	19.0	20.5	7.0	6.0	14.0	13.5	16.0	20.0
Wyoming	50	18.0	15.0	12.0	17.5	21.0	19.0	18.0	3.0	1.0	2.0
REGION IX											
Arizona	25	9.0	9.0	14.0	51.0	8.5	12.5	13.0	9.0	6.5	11.0
California	1	32.0	24.0	16.0	47.5	26.0	20.0	12.0	26.5	22.0	17.0
Hawaii	40	40.0	41.0	45.0	42.0	41.0	38.5	42.0	44.0	43.0	45.0
Nevada	39	42.0	35.0	36.0	50.0	39.5	32.0	32.5	34.5	25.5	28.5
REGION X											
Alaska	49	22.0	22.0	26.0	32.0	23.5	22.5	25.5	16.5	23.5	27.0
Idaho	38	27.0	26.5	31.0	27.5	30.5	30.5	34.0	13.5	18.5	23.5
Oregon	26	17.0	7.0	5.0	14.0	17.0	11.0	5.0	20.5	9.0	4.0
Washington[3]											

[1] States are ranked in order of decreasing percentages—highest is rank 1, lowest is 51. States with identical percentages are assigned the same rank in the following way: if 2 States are tied for rank 4, then each is assigned rank 4.5 and the next State assigned 6 (i.e., 3, 4.5, 4.5, 6); if 3 States are tied for rank 4, each is assigned rank 5 and the next State is assigned 7 (i.e., 3, 5, 5, 5, 7).

[2] Not ranked by age due to generally low level of service and lack of variability among States.

[3] Washington excluded because comparable data not available.

Mr. OSSOFSKY. Services to the middle-aged and older worker went down, job placement, counseling services, the works. Clearly it was a built-in pattern of discrimination against the middle-aged and older worker in the present setup of the employment services.

Given the equal counseling, we found that the older worker had as much of a chance of being placed as the younger worker. But there were less opportunities given to that older worker for counseling.

We will be happy to submit those studies to you.

Mr. HAWKINS. We would appreciate it.

In the closing part of your presentation, you made some reference to flexible retirement plans. You did not specify any particular ones. Could you just briefly give us some indication of specific flexible retirement plans, or give us some evaluation of the cost of such plans, and the success with which they have developed?

Mr. OSSOFSKY. I would be happy to do that in a more thorough fashion, Mr. Chairman.

Mr. HAWKINS. If you wish to submit that material for the record, it may be better.

Mr. OSSOFSKY. I would be glad to.

Mr. HAWKINS. You made reference to it, but if we could, we would appreciate something more specific.

Mr. OSSOFSKY. I will be happy to do that Mr. Chairman.

[The material follows:]

The physical demands of most jobs today are well below the capacities of most normal aging workers. Properly placed, older workers function effectively and have greater stability on the job, fewer accidents and less time lost from work than younger workers.

At least 20 studies show that vocabulary, general information and judgment either rise or never fall before age 60.

Generally, older workers are more satisfied with their jobs than younger workers.

Capabilities of Middle-aged And Older Workers:

*A Survey of the Literature**

ELIZABETH L. MEIER and ELIZABETH A. KERR

Just as with other groups that have experienced discrimination, there are a number of popular stereotypes that limit the participation of middle-aged and older workers in the labor force—stereotypes accepted not just by employers and counselors but, in some cases, by the older workers themselves. Employers and workers alike must be made aware of research findings which can modify or completely change attitudes and practices.

Following is a summary of pertinent studies on middle-aged and older workers in five broad categories:

Physical Capacity
Learning Ability
Job Performance
Performance in Training
Work Attitudes

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*This survey was compiled primarily from past issues of *Industrial Gerontology* as part of a research contract for the Illinois Department on Aging and is published with the permission of IDOA. Employers and employment counselors will find the information in this article helpful in dispelling stereotypes often associated with workers over 40.

PHYSICAL CAPACITY

It is often assumed that as a worker's age increases, the capacity to perform physical or mental tasks declines sufficiently to reduce his or her ability to perform a job. Yet, in most jobs today, the physical demands are well below the capacities of most normal aging workers (Laufer and Fowler, 1972). Some of the changes in physical capacity that occur with age are summarized in *The Older Worker and His Job* by Hillary Clay (Kelleher and Quirk, 1973, p. 83):

> The older worker was found to be generally more accurate and stable than the younger and usually able to continue heavy work, though less able to keep up speed demands of a machine or work team. Some loss of acute hearing, vision or fine muscular control may also occur with age. Short-term memory may be impaired, but older people can be satisfactorily trained if a relaxed training pace is allowed.

Though performance slows somewhat with age, variation among individuals increases with age. In each older age group, a substantial number of persons perform at a level at least equal to the average level of their juniors (Welford, 1958).

In many tasks, individuals are working well within their physical and mental capacities. Therefore, even when capacity is reduced there may be no change in performance. When performance is affected, a comparatively small change in the task could bring it again within the capacity of the older person.

One usual concept with regard to older workers is that they should be given "lighter" tasks. However, studies at the Nuffield Research Unit in Cambridge, England, showed that it is not the heaviness of the work in itself which put it beyond the older worker's capacity but rather the time-stress which results from a combination of heavy work and continuous effort to maintain a high rate of productivity (Welford, 1958). In other words, if the pressure to produce is lowered, older workers will continue to perform well. This factor also has important implications for training programs.

Functional Age

McFarland (1973) notes that, with the advent of World War II, it became necessary to employ a large number of retired older workers in the war industries. In his study, *The Older Worker in Industry*, he reported that, if older workers were properly placed, they could function effectively and had greater stability on the job, fewer accidents and less time lost from work than did younger workers. McFarland's investigation showed that, rather than judging workers in terms of their chronological ages, it was important to examine functional ability on the job by testing what a worker could actually do.

In his discussion of functional age measurements, McFarland observes:

> A striking development in current thinking about matching workers and jobs is the recognition that most of us are unsuited in some ways, either physically or psychologically, for most jobs. In the area of physical abilities, for example, it is difficult to find even a few individuals who are physically suited to pilot planes, work on docks, tend blast furnaces, and stand up under heavy construction work in all kinds of weather. Persons who lack the special capabilities to do these things are physically handicapped, whether or not they are otherwise qualified. But essentially all persons are at the same time suited for some activities, while unsuited or unfit for others.

For 16 years, an aircraft company in Toronto has successfully used a method for measuring the physical capacity of workers which emphasizes what the individual *can do* in a specific job role, regardless of age or disability. Briefly described, the system—called GULHEMP—works as follows: The individual is given an extensive physical examination that assesses his physical, mental and interpersonal work capabilities. The results are rated on a seven-category scale, corresponding to the seven major functional areas according to levels of competency under each category.

General Physique
Upper Extremities
Lower Extremities
Hearing
Eyesight
Mentality (i.e., intelligence)
Personality

Fitness levels range from a rating of one, indicating complete competence, to seven, indicating complete inability to perform. After completion of a worker's functional fitness profile, a corresponding job analysis profile is made on a specific job or a series of specific jobs. The same seven numerically rated categories are utilized to rate the given job according to minimum requirements for effective performance. To the extent possible, the physical profile and the job profile are matched. The outcome is that a worker is placed in a job role consistent with his capacities (Batten, 1973).

A demonstration project based on this method was conducted by NCOA in Portland, Maine, from 1970 to 1975. Data from a 1973 study of the project indicate that (1) the great majority of prospective employees—both young and old—seek jobs they are physically capable of performing; (2) the project convinced many employers that middle-aged and older workers had the ability to perform jobs for which they would otherwise have been rejected because of age (Quirk and Skinner, 1973).

A good many workers are able to function effectively even after the "normal" retirement age of 65. Jaffe (1972) points out that:

> . . . very large numbers of men age 65 and over are in sufficiently good health to be able to work. A survey carried on in the mid-1960's found that only half of the men reported themselves as suffering from chronic

conditions which limited or prevented the carrying on of work activities; the other half reported themselves as being physically capable of working. Yet of this latter group—those physically capable of working—three in five were not in the labor force—*i.e.*, they were retired.

LEARNING ABILITY

In reviewing the research on the ability of adults to learn, Green (1972) states: "For 40 years there has been sufficient evidence to warrant optimism concerning the ability of anyone under 60 to learn about as well as ever. However, this evidence has had surprisingly little impact upon society." And in the same article he notes:

> At least 20 studies show that vocabulary, general information, similarities and judgment either rise or never fall before age 60. Older persons do better than younger on tests requiring pre-planning and decisions concerning what is not worth doing. Most studies agree that ideational fluency and expressional fluency, spontaneous flexibility, associative fluency and word fluency are creative types of activities. These activities either increase or do not decline from ages 20 to 55 or 60. Most people are more able in these respects [in their later years] than when they were 20 years of age.

Haberlandt (1973) notes that research on learning and memory illustrates that individuals between 40 and 60 years of age are no less intelligent than younger people. When performance differences occur, they are related to the element of uncertainty in a given task and to the fact that older people apply more caution than younger people to the task solution. An initial difference between younger and older persons is often overcome when both groups are compared over a longer period of time.

Thumin (1969) tested 176 men, aged 19 to 56, who were referred for evaluation by 34 business firms and were either applying for a position or being considered for promotion. The men were tested for various personality factors and given a standard test of mental functioning. The findings did not coincide with the stereotype of older workers as rigid and inflexible and unable to compete in mental ability with younger workers. Average test performance for each of four age groups did not differ significantly on any of the tests.

As for those over 60, Green (1972) cites research on three groups aged 12 to 17, 34 to 59 and 60 to 82. On 33 kinds of learning tasks, the oldest group (those 60 to 82) did average lower, but the differences were rather small and this group was still learning well.

Green summarizes his report on age, intelligence and learning as follows:

> Does I.Q. decline? Probably yes, sooner or later, but much later than people had thought. When does it become critical to performance? For many people not until ages such as the 70's, 80's or even 90's. In other words, we seem to be over-endowed for most tasks we need to carry out. We can absorb a lot of physical deterioration, especially in the

brain, because these losses do not necessarily reduce our normal functioning range. In fact, there is reason to believe that if measurable decline appears before age 60, then some disease of or substantial injury to the central nervous system must have been incurred.

. . . Fortunately, the organs of the body are overbuilt in the sense that they can perform more than is ordinarily demanded, at least until age 65 in almost everyone, and even after that in most people.

JOB PERFORMANCE

In 1953, the National Committee on the Aging* appointed several technical committees to examine the available data on older workers and jobs. The Committee on Job Requirements and Work Performance concluded:

> On the basis of both subjective and objective data, the older worker can be regarded as an asset rather than a liability to industry . . . [There was an] impressive body of favorable testimony from employers regarding the performance of older workers. Their superiority is not easily reduced to statistics, since it is a product of such factors as superior craftsmanship, steadiness, experience, stability, regard for tools and equipment and loyalty—assets that are hard to measure when comparing workers of different ages (Mathiasen, 1959).

Labor Department Studies

Since that time, other studies have provided statistics bearing out the committee's finding that the older worker can be regarded as an asset. In 1956, the Bureau of Labor Statistics made an exploratory pilot study as part of the Labor Department's efforts to investigate and help solve the employment problems of older workers. The study examined records of output per man-hour, attendance, industrial injuries and separations (quits, lay-offs, discharges) in light manufacturing establishments in two industries—footwear and men's clothing (Kelleher and Quirk, 1973). Some of the results:

- *Output per man-hour:* Data showed a stable average performance through age 54, with some decline thereafter but remaining within 10 percent of the peak. Considerable variation was noted in the output of persons in the same age group.
- *Attendance:* Only small differences were found among all age groups studied.
- *Separations:* Investigation revealed a high rate for workers under 25 and an extremely low rate for workers 45-64.
- *Industrial injuries:* Not enough data were received for comparison.

An extension of this study was conducted in 1957 in the footwear and furniture industries. Output per man-hour showed a rise up to age 35, with gradual declines thereafter; however, *up to age 65 the output remained*

*Predecessor to The National Council on the Aging, Inc.

within eight percentage points of the base (35-44) age group. Again, attendance differences among age groups were extremely small. *Workers between 45 and 64 had the highest rate of continuity of service, which generally increased with age* (Kelleher and Quirk, 1973).

A third study, in 1960, was designed to test the assumption that productivity declines with age. Office records of 6,000 clerical office workers were studied, and these findings emerged (Kelleher and Quirk, 1973):

- Many older workers performed better than the average younger worker.
- Workers in the older age group had a steadier rate of output.
- Older workers were as accurate in their work as younger persons.
- Differences in output among age groups were insignificant.

In a 1965 report to the Congress, the Secretary of Labor commented on the foregoing studies (U.S. Department of Labor, 1965):

> . . . An analysis of the findings of these studies indicates that in factory work, entailing substantial physical effort, productivity decreased slightly in advancing age groups after age 45 and substantially after age 65, but that in office work and in mail sorting, productivity declined little, if any, up to age 60, and only slightly after that. (See Table 1.) In the study of performance of office workers, the oldest age group, 65 and over, actually had the best record. Among mail sorters, production did not decline noticeably before age 60. The large proportion of workers in all age groups with above average performance indicates the need for individual evaluation of workers.
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> The studies of office workers and mail sorters also looked into consistency and quality of performance. Office workers in the higher age groups maintained not only an average output rate equal to that of younger groups but also an equal degree of accuracy. With respect to consistency of output, older office workers had a steadier rate of output, with considerably less variation in output from week to week than the younger workers.
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> In the mail sorter study, consistency increased with age (except for a slight dip in the 55-59 group) in each of the 12 cities studied, although the degree of consistency varied considerably among individual cities.

Ratings by Supervisors

In three studies conducted by the Bureau of Business Management of the University of Illinois, supervisors rated 3,077 personnel aged 60 and over in 81 organizations in retailing, industrial, office and managerial positions (Peterson, ND). Some of the conclusions:

1. Supervisors consider a majority of their workers aged 60 and over to be as good as, or superior to, average younger workers with reference to absenteeism, dependability, judgment, work quality, work volume and human relations.

Table 1 COMPARATIVE JOB PERFORMANCE BY AGE, SELECTED OCCUPATIONS AND INDUSTRIES

(Indexes of output per man-hour: age group 35-44 = 100)

Occupation or industry	Under 25 Years	25-34 Years	35-44 Years	45-54 Years	55-64 Years	65 Years and over
Incentive workers (a)						
Men's Footwear						
Men	93.8	100.3	100.0	97.7	92.5	81.1
Women	94.4	102.8	100.0	98.8	94.1	88.0
Household Furniture						
Men	98.5	101.5	100.0	96.1	94.5	93.6
Women	101.4	107.4	100.0	98.7	85.6	(b)
Office workers	92.4	99.4	100.0	100.0	98.6	101.2
Federal mail sorters	101.2	100.7	100.0	100.1	98.5	93.3

(a) Based on a study of 15 large establishments in the men's footwear industry and 11 large establishments in the household furniture industry. The great majority of the workers surveyed were piece-rate workers.

(b) Insufficient data to warrant presentation.

Source: U.S. Department of Labor, Bureau of Labor Statistics, *Comparative Job Performance by Age: Large Plants in the Men's Footwear and Household Furniture Industries*, Bull. 1223 (Washington, D.C. 1957); "Comparative Job Performance of Office Workers by Age," *Monthly Labor Review*, January 1960, pp. 39-43; "The Job Performance of Federal Mail Sorters by Age," *Monthly Labor Review*, March 1964, pp. 296-300.

2. There is no specific age at which employees become unproductive. Satisfactory work performance may continue into the eighth decade.

3. Supervisors believe that a majority of their older workers have no apparent and specific age-connected weaknesses.

A 1972 study related job performance and test scores for a group of 266 female clerical workers, 34 percent aged 25 or under and 35 percent aged 50 or more. Younger workers performed better on three of the tests and older workers on two. However, *the two groups were rated equally on actual job performance* (Arvey and Mussio, 1973).

A Canadian study of age and performance in two large department stores determined that *older salesclerks had a performance record as good as or better than younger employees. Performance tended to improve with age and experience*, with peak performance reached between ages 51 and 55 (Kelleher and Quirk, 1973).

A slightly different aspect of older workers' performance is reported in connection with creativity development programs in business. The director of some of these programs found that younger employees had a tendency to "re-invent the wheel," while fully 80 percent of the most workable and worthwhile new ideas were produced by employees who were over 40 (Taylor, 1969).

Illness, Accidents, Absenteeism

A 1948 study of illness, accidents and absenteeism by age among 17,817 workers concluded that the only disadvantage of older workers with respect to injuries is that their disabilities last longer once they are injured. But they are, on the whole, less likely to be absent and perhaps less likely to be injured than younger workers. The study showed that the number of days lost per 100 workdays, for all reasons, decreases as age increases. In every age group above 50 years, workers lost fewer scheduled workdays than those in any age group below 50 (U.S. Department of Labor, 1965).

On the matter of safety, McFarland (1973) cites the evidence that older drivers tend to have safer records than younger ones:

> A 1954 study compared the age distribution of 742 truck drivers to that of truck drivers in accidents reported to the Interstate Commerce Commission. The safest drivers were those 45 years and older, followed by the 35 to 45 age group. Drivers under 35, and especially under 25, had accidents far in excess of what was expected.
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> A study of bus drivers in the London Transport System, relating age and length of experience with the company to accidents, found the safest group (with the lowest average number of accidents in a year) to be 60-64. Those with the highest average number of accidents were 30 and younger, with less than four years of experience. In addition, drivers 30-39, with less than four years' experience, had a higher accident rate than those 40-49, 50-59 and 60-64 with the same length of experience.

He also notes Norman's finding that 450 drivers over 65 had an accident rate strikingly similar to that of the 60-64 group.

PERFORMANCE IN TRAINING

Haberlandt (1973) cites Birren's classic work on aging, in which he noted that, while younger workers performed initially better than older (above 40) in a retraining task, the latter quickly caught up and surpassed the younger. Birren reviewed two retraining programs. In the first, a large petroleum company gave a course of instruction in new working methods to 100 workers. After about 120 hours of retraining, workers over 40 received better grades on the retraining than the workers under that age. The second project, with operators in a telephone company, involved the substitution of an IBM card for a paper form. In shifting from a well-established to a new skill, workers above 45 years of age worked as efficiently as younger workers. Haberlandt concludes that, where extreme speed of performance is not an essential factor, older people work as well as those who are younger.

In terms of job survival rates after training programs, a 1969 study by the Department of Employment and Productivity in London showed that, at the end of training, men under 35 tended to have a slightly higher survival rate than those 35 and over, but three months after the training, the

survival rates begin to change in favor of older workers. Twenty-four months after training, their rate was 57 percent, compared with 42 percent for younger men. Though older trainees have a shorter working life ahead of them, their expectation of employment with the company is longer than for younger workers (Newsham, 1969).

Sobel (1972), writing on the utilization of older workers, comments on the small proportions of workers over 45 in government retraining programs:

> Training authorities such as R. M. Belbin emphasize that much higher proportions, in fact, can be successfully trained. Other experts in the field of the economics of training . . . have shown that training programs of even a year's duration, at age 55 and beyond, "pay off." Other data would indicate that older workers have a much lower "turnover" rate and are much more likely than their younger counterparts to remain on the job in their trained field.

WORK ATTITUDES

In a summary of the research on job satisfaction, Carroll (1970) notes that most studies have indicated that older people are generally more satisfied with their jobs than younger ones. A number of studies made prior to 1960 showed that people begin working with a high level of satisfaction, then become increasingly dissatisfied for a number of years, after which their satisfaction rises steadily for the rest of their working lives. More recent studies have not supported these findings, however. Some research has shown that job satisfaction increases steadily with age.

Siazzi, *et. al.*, (1975) compared older and younger age groups on the presence or absence of psychiatric symptoms. In contrast to the general view of younger workers as psychologically healthier and more flexible and resilient, workers over 40 reported significantly fewer psychiatric symptoms than those under 40, were more satisfied with their jobs and were no more depressed, lonely or dissatisfied with their lives in general than younger workers.

A special labor force report based on a 1968 survey confirmed that older workers in general have longer job tenure than younger workers. Further exploration of the data showed that this pattern prevailed for every major industry, for different occupational groups and for varied educational levels (O'Boyle, 1970). □

Mr. OSSOFSKY. Let me just underscore that what is true for social security is also true for private pension plans. If people are not forced to retire, the funds are not used up.

There are studies that have been done as long as 20 years ago. In the Consolidated Edison plan, a fellow by the name of Dwight Sargent, who was then one of their executives, underscored the growth of their pension plan as they eliminated compulsory retirement. They were able to increase the benefits for those who opted to retire, when they did not compel all people to leave at a particular time.

There is no doubt that part of the problem we face in the area of social security and trust funds today is a reflection on the one hand of the great unemployment we are still facing in our country, less contributions being made and more people collecting benefits.

Second, compulsory retirement, some of those who are most concerned about the problem of social security trust fund, are the very people who are compelling people to use that trust fund by compelling them to retire. The same is true of private funds.

There is ample evidence of the advantages to pension funds to follow a good social policy rather than a negative social policy if they choose to do so.

I can speak as someone who administered private pension funds under labor management, the Taft-Hartley pension fund. Pension funds can be designed to do anything the designers want them to do. History has shown that it is possible to strengthen certain aspects of pension funds without destroying the pension fund with all the problems that exist in this area today.

I believe that if we have a social policy that we want to achieve, that encourages people to work, that does not force them out. We can do so, and benefit our plans without endangering the actuarial capabilities.

I will be glad to submit some material on that for the committee's review.

Mr. HAWKINS. You are very optimistic about the possibility of this committee, or this Congress acting on one of these proposals. You included an impressive list of those you thought supported the proposal, including my distinguished colleague, Mr. Buchanan, to my left here, left on the podium only.

However, there has been some intimation and it is only that there is some reticence on the part of organized labor because of negotiations and contractual relations they have some disagreement, apparently, with some of us.

Are you aware of any such opposition? If so, we might as well face it. I believe that you do not solve anything by denying the issue. What, in your opinion, is the basis of such opposition, if it exists?

Mr. OSSOFSKY. There is such opposition on the part of the labor people. I say that with regret as one who has been involved with the labor movement for most of my life. I think that it is based on the fact that the labor movement in some regard is not further advanced in its misconceptions about the capacities of older people than other segments of our society.

It believes that the way to create more employment opportunities for younger and middle-aged people is to move people out of the top. I think that this flies in the face of seniority provisions. Nevertheless,

that is an inconsistency that is held by many people in the labor movement.

It is true that there are trade unions that are very dedicated to the concerns of older people, who believe that this is an issue that can best be dealt with through collective bargaining. They want to leave the options to their international or local unions.

My concern is that we do not leave that issue to collective bargaining or to the local options such as the issue of minimum wage, such issues as OSHA, and things of that sort. This is an issue, too, that will come to see its day in the limelight.

We will find that our trade union friends will be agreeing with us in time. Issues of discrimination in various areas go through difficult periods before some of those who should be its major and earlier supporters get on the bandwagon.

I think that we are beginning to see that happening in more and more places in the field of aging, and I am hopeful that our trade union friends will in time see this as an issue that they ought to be vigorously supporting.

I share with you the concern that there is less than vigorous support for this concept on the part of some trade unions. I don't want to categorize all trade unions because I certainly do not want to be stereotyping all trade unions any more than I want them to stereotype all older people.

Mr. HAWKINS. Thank you very much. You have been very helpful.

Mr. BUCHANAN. I would like to join the chairman in thanking you for your very excellent testimony. It is most impressive. I am convinced that your cause is just.

I am concerned about the conflict of equities with which we are confronted, given the present pool of jobs that are available. It certainly is a meritorious cause which you represent, and there are valuable human resources that are being wasted, and human beings who are really being denied what is their right, and that which would enable them to contribute to the gross national product.

On the other hand, you have the problem of women, of ethnic discrimination, and very major youth unemployment in the United States. I wonder if you would comment on what to do to achieve the kind of economic growth and employment opportunity which would make it possible to enact the kind of legislation you are recommending, while at the same time giving opportunities to young people, opportunities to women, and opportunities to those who traditionally have been discriminated against.

Mr. OSSOFSKY. Congressman Buchanan, the way you phrased your question, it seems to me that we are in complete agreement on all the whereas. It is where we get to the "now for" that we seem to have a problem.

You and your committee are in a position to deal with the answer to that question by supporting the Humphrey-Hawkins bill.

The answer that you are looking for at this particular moment, it seems to me that this provides us with a national policy which spells a way of creating employment opportunities for all who want to and can work.

Now I have no easy solution for the economic travails that our country is going through. I do believe, however, that the human needs

that exist in our country, the opportunities that exist for service to people all over the world, require the skills and talent of every human being that has a will to contribute.

We must be ingenius enough to find a way to tap that will. It may very well be that there are some nuances to the Humphrey-Hawkins bill that need to be modified and changed, but it seems to me that it is a step which would protect people of all ages, all of the vulnerable groups that you have referred to in your question.

At least it gives us an opportunity to try to create employment, supporting the private sector, encouraging the public sector to fill in where that need exists.

I don't have any pet, quick answers to how we put America back to work. I would suggest, however, that even in the field of aging there are great needs that exist for segments of the older population that would help put our economy back on the right track.

We need many more senior centers. We need good institutions for the frail elderly. We need public housing for older persons, and housing at various costs to suit various kinds. We could be giving more social services and human services, developing educational opportunities for older people. But all of those needs provide opportunities for employment of people to deliver the services.

The question is, Where do we want to put our money? What are the goals that we have as a society and a nation? How do we want to invest it? Do we want to invest in the delivery of services and in the enhancement of life, or do we forever invest in destructive weapons and instruments of death.

Now, this is not to suggest that we need to now make a balance between our country being weak, or our country being strong. We are the strongest Nation in the world with little variation in argument among experts.

What do we use that strength for? Do we do something about the kids who need better training and find a way to give them the training, and use the skills of the middle-aged and older people to give them that training?

What do we do about creating an opportunity for more of the women that you speak of, who want to go into the job market, to have a place to bring their kids for day care? It is an opportunity to use older people and younger people.

Certainly the foster grandparent program has proved now for 11 years the great value of older people being employed to serve young children in institutions and other places.

There is no limit, other than our ingenuity and our will, in using the resources of our people. I believe that we can do successfully, providing human services, building our economy in the process, and finding an opportunity to create jobs for all who want to work.

Certainly not take people who are currently working, throw them out on a concept that somebody else will fulfill that job. I still want to be convinced, and need to be convinced that compulsory retirement creates a job anywhere.

I think that compulsory retirement is used, as often as not, as a means of reducing the work force. Maybe the president of a corporation leaves, and the 15th vice president haggles for the job that is

created. There are not an awful lot of instances that I have been able to document in which one machinist is forced to retire, and somebody else moves up a slot. That is a study that is worth undertaking.

I would like to see some documentation that convinces me that compulsory retirement is used for anything other than RIFing in the public sector. What has happened with all the jobs that were spelled out in the testimony earlier this morning about people who were forced into retirement? How many of those jobs were kept open because new resources were being kept from those Government agencies. That was a means of reducing the work force.

Congressman Buchanan, that is perhaps a longer answer than I had intended to give you, but it is an issue on which I feel very strongly.

Mr. BUCHANAN. You may be surprised to learn that I am not surprised by the beginning of your answer, because we have gone through a long series of hearings both on H.R. 50 and on such subjects as this, and other subjects of the problem of discrimination based on age, sex, or whatever.

It has become more and more apparent to me that the only way we can achieve what we must achieve for the Americans that you so eloquently represent and defend here today, and the others like women, minority groups, disabled, is through economic growth and the creation of more job opportunities for more people. I don't see how we can get there any other way.

Mr. OSSOFSKY. The thing is, Congressman, all those groups that you talk about, if they live, will be older workers. So to me the needs of the blacks, the women, the handicapped, all but the youth, I guess, we need to do something ultimately about the middle-aged or older workers.

Mr. BUCHANAN. Let me just raise one more question, and then I will yield.

We had testimony this morning specifically from Senator Pepper and Congressman Randall on legislation designed to see the Federal Government lead the way in the elimination of mandatory retirement based on chronological age purely.

I would be very pleased if the Federal Government would lead the way in anything pertaining to discrimination. It is the largest employer, and it has not done a very good job of eliminating discrimination in society. It has done a worse job of handling discrimination within the Federal Establishment in my judgment, and especially in in the area of sex discrimination.

We have a white male establishment in the Federal Government that is the most entrenched establishment around in my opinion.

Would you comment on the Federal Government's role in leadership in this area, and view of this specific legislation. Again, I would raise the problem that the Federal Government has considered itself immune from all the remedies that have been used, in effect, to try to end ethnic and sex discrimination in the private sector.

So we do have this entrenched white male establishment in all the upper echelons of the Federal Government. If we eliminate the mandatory retirement provisions, what effect is that going to have toward continuing that kind of entrenchment, and the curing of those ills in the Federal Government?

Mr. OSSOFSKY. I am not sure that all the ills that you describe so accurately are the result of people who are of advanced age not retiring, and that we will necessarily cure them by moving some effective people who are the advocate for change, but who are older persons, out.

We may replace them with younger people who have more negative attitudes. I don't accept the stereotype that all old people are the conservative backbone of America, and that includes those who are the entrenched bureaucracy that you speak of.

Some years ago, in the time that I was administering pension plans as I referred to earlier, we had a voluntary retirement plan. In our particular industry, management was very adamant that they wanted to get some of the so-called superannuated employees who were very good employees, but who had been in the industry for many, many years, they wanted to see that many more of them retired.

The union's position was that they would not accept a compulsory retirement program. As the administrator of the pension plan, I suggested a program which seemed to work: Very good pension benefits to encourage people to want to take advantage of the option; retirement with dignity so that those workers who left did so with a sense that the company continued to be interested in their welfare, gave them the same employee benefits and discounts that they had before; valuing the role of the retiree as someone who could come back as a part-time worker, who was still making contributions in whatever he or she did in the community; and an intensive program of preretirement education which enabled people to evaluate the options and take advantage of them.

Now, while pension benefits for most Government employees are significantly better than a great number of other elderly people—I am not suggesting that there is not significant room for improvement—confront in other areas, the Federal employer is no further advanced than the smallest or most backward employer.

Retirement preparation is almost nonexistent. Certainly it is poorly handled in most Government agencies and the Civil Service Commission, which has done nothing to encourage—indeed in the recent period, its own actions have discouraged it.

Where it is being handled it is often pushed on to the lower echelons of training in personnel work without the sensitivity or knowledge of what to do with this very sensitive issue.

The retiree could be brought back to work as a consultant, or providing some of his skills and knowledge to Government agencies; or he or she might be brought back during periods of particular pressure or particular roles.

So there are many things that can be done in a positive way in how we approach the issue of retirement, which still enable those people who want to and can function to continue to work, and those people who want and seek retirement to do so.

I don't believe that we solve massive social problems by creating new ones. What we, in fact, are doing in an awful lot of areas is using the vulnerable elderly as a stopgap. We want to create employment, so we say that we will push the elderly out and make room for the younger persons.

We don't deal with the monotony of mass production and the blue-collar blues that affect middle-aged and older workers.

So instead of reexamining or rationalizing the employment practice, and the devices that dehumanize mass industry, we created early retirement so that people can get out sooner.

I am suggesting that what we are doing in the area of retirement and employment practices is creating new problems which reverberate around our society, and increase cost of medicare ultimately, increase cost for institutionalization, higher rates of suicide levels among older men than any other group in this society in their advanced years, except perhaps teenagers in the college years.

All kinds of social traumas in the way of solving some problems, social traumas which often result in great cost to the Government as well. We are not solving a problem that way. We are simply replacing one with another.

I think, therefore, we have to have some comprehensive view of people of all groupings. I do not want to see us in a situation where we are fighting jobs for young people in order to carve out some jobs for young people.

It is disastrous for our country. It is not what older people would want either. But why, now, push someone into unemployment who has a job, and why give that older person a sense that either she or he is useless when he or she may have much to offer, particularly when we have some impartial, rational instruments that can be applied to determine capacity to do a job.

By the way, industry, which may be pushing a lot of people out, does not hesitate at all when a younger worker has a problem on the job; there are arbitration techniques, and the labor movement does not hesitate to use arbitration techniques to protect somebody's job who has been pushed out at a younger age group. Why not use such techniques to objectively evaluate capacity to do a job for older workers for protection for that worker.

I do not suggest that every older worker can do every job, but an awful lot can. We are wasting those who can, when we throw out those who can't. It may be that a job cannot be done by an individual, but he or she could do another job.

We have to begin to get much more creative about the whole business of employment opportunity in our country. That is true not just about older people, but everyone else.

Mr. BUCHANAN. Thank you very much, Mr. Chairman.

Mr. HAWKINS. Mr. Clay.

Mr. CLAY. Thank you, Mr. Chairman.

I want to ask you a little bit about that Portland project. I think you said that it lasted for 5 years.

Mr. OSSOFSKY. Yes.

Mr. CLAY. How many people were involved in that project?

Mr. OSSOFSKY. There were about 160 companies at the last period of the project, and altogether 4,000 workers went through the process, men and women, and people of all ages.

While our interest was to study the middle-aged and older worker, in order to encourage industry to use the service, and because we ourselves did not want to discriminate, we gave physical examinations and evaluated potential jobs for potential employees or potential employees sent to us by the company or by the employment service itself.

Mr. CLAY. How much did the Department of Labor invest into the project?

Mr. OSSOFSKY. Over the 5 years, it was somewhere over $1 million. As I recall, the average cost of operating the project full time, physicians, nurses, clerical and industrial engineers, it was about a quarter of a million dollars a year.

Mr. CLAY. How much would you estimate it would cost to duplicate it in other communities?

Mr. OSSOFSKY. In some communities it might cost an awful lot, and again it could cost less because we now know that it would be possible, in the place of a full-time physician, to use a nurse clinician to give much of the physical examination, supervised by a physician.

It would be possible to institute the same program into HMO's, to give them an additional role in the community serving industry. It is possible to put such a program into existing hospital facilities. It is possible right now to train the physician in an existing health program in industry to use the same technique.

I am informed that the Fairchild Components Co., which makes electrical components, which was one of the users of the program in Portland, Maine, was so impressed with it while it used the program there, that they have now instituted the program in their plants throughout the country, using their own industrial staff to do so.

We have the materials, the training guides, the wherewithal to provide such training for industrial physicians.

It is very hard for me to give you a specific figure as to what it would cost in a large city. It would probably be costly, based on enough of the volume. On the other hand, it is conceivable that greater utilization of existing community resources, medical resources, and facilities in clinics, the costs could be greatly reduced.

Mr. CLAY. What were some of the conclusions that project reached, which would, in your opinion, justify the Department of Labor expanding the program.

Mr. OSSOFSKY. First of all, it gives a rational basis for employing an individual worker, eliminating discrimination based on sex, race, age, or handicap. It emphasizes the capacity to do a job, and not limitations in regard to a job.

Second, it increased the number of employees in the community who ended up using the State employment service, knowing that the program was related to the State employment service. That is something sorely to be desired because of the attitude of many employees about the employment service, the manpower network.

Third, it helped to break down each discrimination practice and belief of directors, who were ultimately encouraged to use the service. Their attitude changed visibly. They became major spokesmen for the program, including the results of the times when they did not take the advice of the project.

There were times when the project would recommend that they not hire someone because we were objective. In one instance that comes to mind, the manager of a particular company sought to hire a worker that our physician had indicated could not do that particular kind of job because of a bursitis problem.

The manager decided to hire that worker anyway. In a week's time, that worker ended up with a very severe problem. That company became a major supporter of the program.

Insurance companies throughout the State of Maine began referring employers to us because they found that there was a reduction in accidents by the people who had been cleared by the project, because they were capable of doing the job.

Four thousand workers went through that project during the 5 years that the project operated. We did not find evidence of one workman's compensation case, one workman's compensation illness or accident as a result of that.

Actually, we provided a data base of great importance to OSHA on the health status of workers, both as a protection to the worker, if he or she had a disability later on, and protection to management because they had these data.

If someone claimed a hearing loss, and indeed the record showed that the hearing had been bad before, it protected the company. If the record showed that hearing was good before, now there was a loss, it protected the worker.

These are just some of the basic findings that we had in this program. It was a tool designed, at that point, to strengthen the capacity of the local employment service, to serve the unemployed worker and industry as well.

There were many problems in implementing the program, convincing industry to use it. They thought that it was going to be some kind of a gimmick, and they did not want to have their arm twisted. There were difficulties in getting the employment service personnel to pay attention to it, and do the special casework and referral that needed to be done.

Once they saw that it worked, we managed to get great support for the program, considerable community support. I have never in past experience seen a campaign to maintain a program by the local chamber of commerce and the business association, who sent telegrams to the Department of Labor to continue the program rather than stop it. This is one where it did work that way.

Mr. CLAY. Thank you.

Mr. HAWKINS. Thank you, Mr. Clay.

Mr. Ossofsky, we certainly appreciate your very valuable testimony. I think that the length of time that we have taken indicates the interest of the committee in the subject matter, and the manner in which you presented it. I think that you have been most helpful to the committee, and we will be calling on you, I am quite sure, for additional assistance to the committee.

Mr. OSSOFSKY. Thank you very much, Mr. Chairman. We will welcome the opportunity to be of assistance to you and your committee at any time.

[Additional material submitted by Jack Ossofsky follows:]

Application of A Unique Industrial Health System

Michael D. Batten

The author is Assistant Director, Research and Demonstration, NCOA.

The Industrial Health Counseling Service (IHCS) is a research and demonstration program testing the effectiveness of a specific industrial health system as a job placement instrument for workers over 40.

The GULHEMP system, developed by Leon F. Koyl, M.D., and applied successfully for over 14 years at deHavilland Aircraft, Ltd., in Toronto, Canada, was transferred and implemented by IHCS as a community occupational health resource in Portland, Maine.

It is a unique system, emphasizing what individuals — regardless of age or disability — can do in a specific job role.

While the final word is not yet in, IHCS so far has been deemed a success. Expectations are that the GULHEMP technique can and will become both practical and feasible for broader application in other states and communities over the coming years.

The previous articles examined and discussed functional criteria for the performance of work which, if carefully applied, can eliminate chronological age as an over-restrictive and discriminatory factor in employment. This article will describe a research and demonstration program which applies and tests an industrial health system as a job placement instrument for workers over 40.

This project — the Industrial Health Counseling Service (IHCS) — operates in Portland, Maine, as a program of The National Council on the Aging (NCOA) under contract with the Maine Employment Security Commission (MESC), through a grant from the Manpower Administration of the U.S. Department of Labor. The industrial health system implemented in the project was originally developed by Dr. Leon F. Koyl and applied successfully for more than 14 years at deHavilland Aircraft, Ltd., of Toronto, Canada.

INDUSTRIAL HEALTH SYSTEMS

Industrial health systems vary greatly within U.S. industry. Firm X, valuing the health conditions of employees as an end in itself and as necessary for production, may have a well-staffed

and expensive medical facility. Firm Y, due to size or the nature of its production system, may utilize extramural health services and allocate funds for them through its personnel budget. Firm Z may utilize a combination of the above or provide no industrial health services other than the minimum required by law.

Most work organizations, however, realize the importance of industrial health systems for both remedial and preventive health care for employees. They must provide care for a variety of on-job accidents. They understand the value and need for annual physical examinations for all levels of employees.

But the systems used often describe general health conditions or impose work restrictions on employees. They accentuate the negative aspects of an employee's physical condition, such as a condition of disability noted in a health report as "arrested pulmonary tuberculosis" or "heart condition." Or the reports may include such functional limitation statements as "cannot lift heavy loads" or "should not be subjected to continuous stress." Though important, these conditions and functional statements tend to tell managers and supervisors only what employees should not or cannot do. These kinds of health reports emphasize work restrictions rather than the physical capacity and work potential of an individual.

In general, it would seem that there is no one industrial health system which medical personnel or management see as optimal, either from the health care or the cost-benefit viewpoint. Dr. Koyl's approach and system of industrial health reverses the generalized nature of this discipline. It emphasizes what individuals, regardless of age or disability, *can do* in a specific job role.

THE GULHEMP SYSTEM

Dr. Leon Koyl's work in the field of industrial health adds a major dimension that other systems seem to lack. He views industrial health as a two-sided coin. The first side is the physical condition of the employee. While acknowledging disability and functional limitations, this system underscores the capacities of the worker. The other side deals with job analysis, that is, Koyl ties the health and work capacity of the individual to the minimal requirements for productive execution of a specific job.

The literature on physical demands and work requirements is vast, as the annotated bibliography in this journal indicates. Koyl's work is unique in that his GULHEMP technique was im-

plemented and tested in an industrial setting. For over 14 years it has been successfully applied at deHavilland. All employees are examined. Every single job in the production system is analyzed and profiled according to minimal work requirements. All types of staff, ranging from union shop stewards to foremen, to workers, to managers, have been involved in job profile review.

Rated on Seven Category Scale

Briefly described, Koyl's GULHEMP system works as follows. The individual is given an extensive physical examination that assesses his physical, mental and interpersonal work capabilities. The results are rated on a seven category scale which corresponds to seven major functional areas according to levels of competency under each category.

FIGURE 1

GULHEMP Categories

G — General Physique
U — Upper Extremities
L — Lower Extremities
H — Hearing
E — Eyesight
M — Mentality (i.e., intelligence)
P — Personality

Fitness levels range from a rating of 1, indicating complete competence, to 7, indicating complete inability to perform.*

After completion of the worker's functional fitness profile, a corresponding job analysis profile is made on a specific job or a series of specific jobs. The same seven numerically rated categories are utilized to rate the given job according to minimum requirements for effective performance. To the extent possible, the physical profile and the job profile are matched. The outcome is a worker placed in a job role consistent with his capacities.

IHCS PROJECT ASSUMPTIONS

The IHCS was based on the following assumptions:

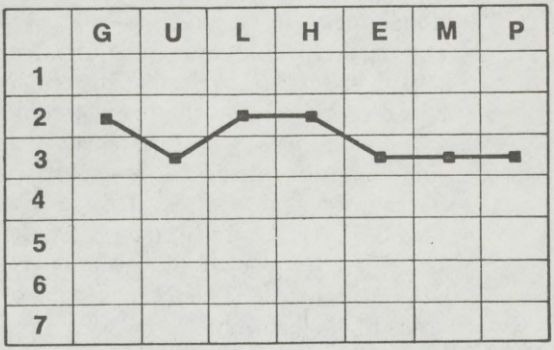
- Individuals can be employed productively regardless of age if hiring decisions and job placement are based on functional ability and functional work requirements.
- The GULHEMP system, which had proved effective in the

* Koyl describes his method in the manual, EMPLOYING THE OLDER WORKER, to be published by NCOA and available in late 1973. A brief, more informal description of the GULHEMP technique by Koyl and Pamela Marsters Hanson, AGE, PHYSICAL ABILITY AND WORK POTENTIAL, is now available from NCOA.

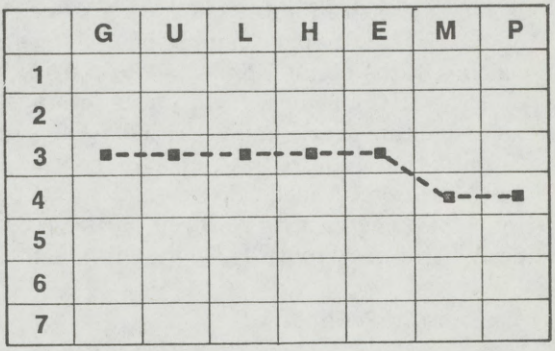
FIGURE 2

——— Worker X - - - - - - Job Requirements

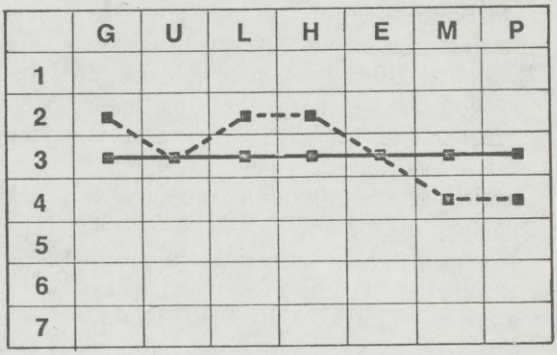
PHYSICAL PROFILE
(Worker X)



JOB PROFILE
(Operative, level 3)



Profile Comparison



NOTE: Matchings of workers' abilities to job requirements are rarely isomorphic. As long as capacity does not exceed requirements too greatly, effective performance may be expected.

employment and utilization of older workers in a large industrial setting, could be set up with similar results as a community occupational health resource for placing individuals over 40 in jobs.

- The project would, over time, demonstrate a positive cost-benefit effect for participating employers.
- Based on the above, the project could become an ongoing, self-sustaining occupational health facility funded through public and private sector support from the state and local community.
- The GULHEMP technique could be tested, refined and developed for use by state employment agencies and related organizations concerned with older workers in other areas of the country.

The IHCS began operations early in 1971. Portland was selected as the site for the pilot project due to the interest and cooperation shown by Commissioner James C. Schoenthaler and officials of the Maine Employment Security Commission (MESC).

The IHCS medical facility was set up in the central Portland metropolitan area. Sophisticated medical equipment along the lines of that required at deHavilland was installed and readied for operation. A medical doctor, two occupational nurses and an industrial engineer were hired as the IHCS core team. All received training from Dr. Koyl and the deHavilland medical staff.

Medical and Job Profiles Set Up

A given job applicant is referred to the IHCS through the Portland office of the MESC or through industry. A complete medical and social history is taken by a staff nurse. The individual is then given a physical exam. Included are visual and audio tests, electrocardiogram, urinalysis, blood work, pulmonary functions tests and all other aspects of the physician's exam. A "Pap" test is given women applicants. After discussing the outcome with the individual, the physician completes the GULHEMP medical profile.*

Meanwhile, the industrial engineer analyzes and profiles the specific job or jobs for which the individual has applied. The analyst is familiar with the DICTIONARY OF OCCUPATIONAL TITLES

* The M (Mental) and P (Physical) factors were determined by staff psychologists at deHavilland. Applications of these factors are still under review and being researched by IHCS. When applied, they have been used as general guidelines, based on clinical observations of the medical staff.

(D.O.T.)* which gives him initial gross data on the job requirements. At the site visit to the plant or firm in which the job is situated, the analyst, through job observation and conferences with foremen, supervisors and workers, obtains the specific data needed to complete the job profile.**

Industrial Health Counseling Service team, headed by Mrs. Eula W. Keenan, director (standing), discusses GULHEMP profile.

A comparison is then made between the medical profile and the job profile by the IHCS staff, and formal recommendation is forwarded either to MESC or the employer. Should the need arise for additional health or job analysis data regarding an applicant, the service is provided. The hiring, promotional or transfer decision is then made.

All medical and personal data gathered on an individual are stored in confidential files. The job analysis data, however, is useful to MESC and industrial personnel. Both groups, as they become familiar with the system, are learning to make job referrals and to restructure jobs with more objectivity.

The ideal outcome of the IHCS model is the double payoff demonstrated through the deHavilland experience. Workers obtain jobs, transfers or promotions consistent with their capacities. Management can make more objective hiring decisions, reduce

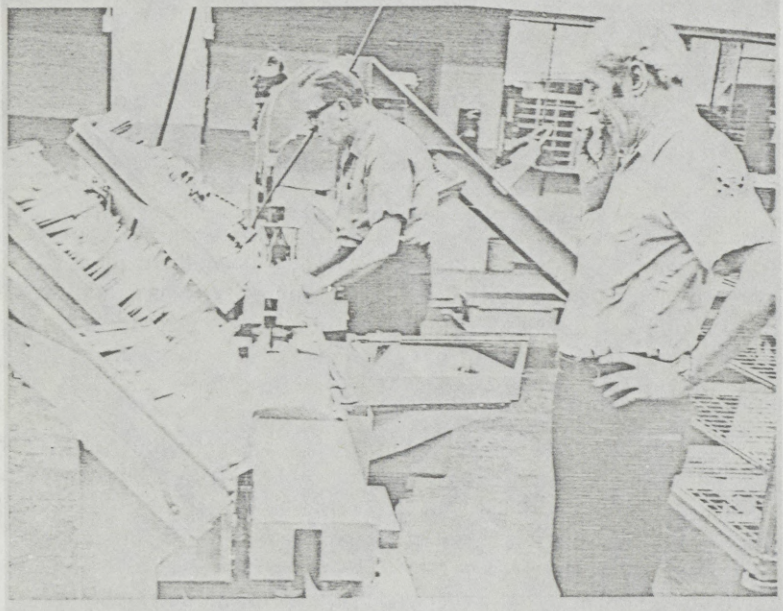
* U.S. Department of Labor. DICTIONARY OF OCCUPATIONAL TITLES, 3rd ed., Washington, D.C., U.S. Government Printing Office, 1972.

** A description of the procedures in job analysis can be found in Neil Nelson's TECHNICAL TRAINING GUIDE FOR PHYSICAL DEMANDS ANALYSIS, available from NCOA.

sick leave, reduce job-related accidents and, in the long run, save money.

GENERAL OUTCOMES OF THE PORTLAND PROJECT

The IHCS has been in full operation for almost three years, with more than 2,400 job applicants examined and GULHEMP profiles completed. Approximately 51 percent of the examinees were placed in jobs. Many others were referred to other community resources, since they were not physically able to enter the labor force. Not quite half of the group placed in jobs were over 40, a percentage consistent with labor force participation by that age group in the Portland area. An index of over 1,800 jobs has been created in accordance with the techniques of the GULHEMP system. More than 100 firms employing from 10 to 1,700 workers have participated in the project.



A couple of older workers operate Postal Service cancelling machine. See interview of Postal Service Support Division director, page 71.

The Portland experiment has demonstrated that functional criteria can be applied effectively in screening, referral, hiring and placement processes. It shows that age-related disability can be eliminated as a barrier to employment. While such conclusions

have been established before at deHavilland and elsewhere, the uniqueness of the Portland project is its organization and introduction of functional criteria into the labor exchange process of a large community with diversified industry.

GULHEMP System Tested

The GULHEMP method has been carefully tested and isolated in the deHavilland plant setting where its effectiveness is further measured by the fact that it has been utilized there for over 14 years. The question of the system's reliability did arise when the system was transferred from Toronto to Portland, and the mode of implementation was changed.

This aspect of the project has been tested carefully and the results are available in the project research report.* It will suffice here to state that the five doctors who examine applicants and rate them on a GULHEMP profile participated in the reliability test. The outcomes indicate that these physicians achieved as high a degree of reliability as that of any other medical inter-rater reliability tests.

Cost Savings Analyzed

The project's cost savings aspects have been analyzed on a sample case basis. In three large organizations utilizing project services for more than a year, considerable savings accrued through the reduction of sick leave. This result was established by comparisons made in the firms between workers screened and placed through the project and peer workers not examined by IHCS. The result should be emphasized here because it supports one of the major assumptions undergirding the entire project, i.e., that the IHCS would prove profitable to participating employers.**

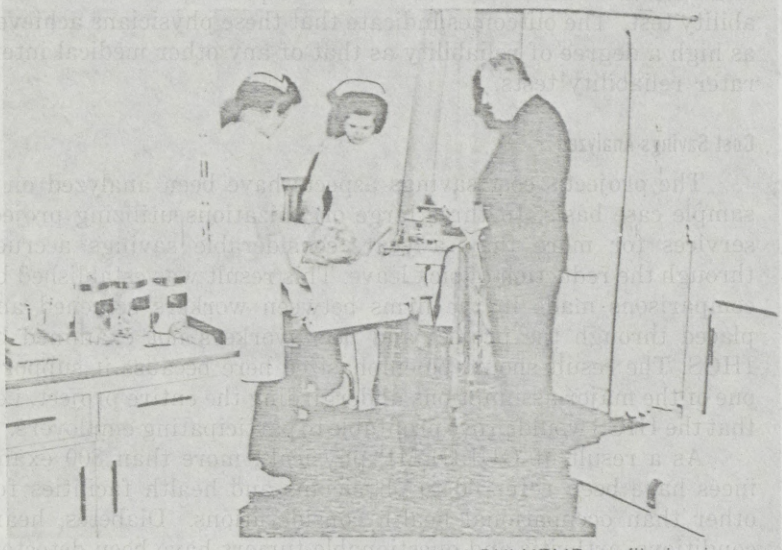
As a result of GULHEMP physicals, more than 800 examinees have been referred to physicians and health facilities for other than occupational health considerations. Diabetes, heart conditions, arthritis and questionable tumors have been detected. Some of these cases proved to be serious; others were minor, such as recommended tests for eyeglasses. These health spin-off effects must be regarded as cost savings for the individual, the employers and the community at large. Without the IHCS examinations and referrals, the health condition of a large number

* Skinner, John H. and Daniel A. Quirk. THE IMPACT OF AGE, PHYSICAL CAPACITY AND WORK, Washington, D.C., The National Council on the Aging, Inc., June, 1973.
** See Levine, p. 63.

of individuals would have deteriorated. Sooner or later the Portland community would indirectly have had to pay the price.

Self-maintenance Is A Goal

The last major goal of the Portland project is self-maintenance. Can the IHCS, through a variety of funding sources, become an ongoing, self-supporting occupational and community health resource? There is some evidence for optimism. Since employers now recognize the cost savings aspect of the IHCS project, they are willing to pay for project services. Other organizations, such as the State Commission on Aging and public health service agencies, have recognized the project's value and may provide partial support. Insurance companies have manifested interest in the project and are another potential source of support.



Testing of employee for physical part of GULHEMP profile begins.

One long-range contribution of the Department of Labor in supporting the IHCS project was to make the GULHEMP system available to state employment agencies and related groups as a technology for placing older workers. The functional components of the project, and not its particular design, offer export potential. IHCS employs medical staff and utilizes medical equipment. It requires and receives the cooperation of the local em-

ployment service office and local industry. The components that make the project work are available in all metropolitan areas. Medical facilities exist in community clinics and hospitals. Required medical staffing can be organized in a variety of ways, including volunteer help, public health programs and the purchase of medical service. State employment services already have analysts who, with training, could supply the job analysis requirements.

Public and Private Support Possible

Funding support could come from a variety of public and private groups. Industry and business see the relevance of adequate health care and safety for their employees, as well as reduced absenteeism and turnover, and will pay for industrial health systems. Public and private vocational rehabilitation agencies are aware of how the GULHEMP system can meet their job placement needs. The interest of commissions on aging and public health agencies can be stimulated to support local research and demonstration efforts to initiate an IHCS-type program. In brief, the budget strategy is multiple. It requires partial support from several sources or organizations. If each can see its specific interests or needs met, cooperation and money may well be forthcoming.

IHCS organized and implemented the GULHEMP system in one particular way, but the options for planning and managing similar projects are many.

Conclusions and Implications for the Future

There is no technology which can guarantee success and no system without faults. The GULHEMP system and the Portland project are not panaceas for workers over 40 or any group of profit-minded employers.

The system and the demonstration project offer one path towards the solution of age discrimination in employment and the productive use of U.S. manpower resources, regardless of age.

The project has proven effective in many ways. But much more research is needed on the system's M (Mental) and P (Personality) factors if they are to become truly functional and nondiscriminatory criteria for employment. The IHCS itself must become a self-sustaining operation with multiple payoffs to employers and other potential community support groups.

While the final word is not yet in on the exportability of the

Portland project, NCOA, MESC and the Department of Labor Manpower Administration have well-grounded expectations that this system will become practical and feasible for broader application in other states and communities over the coming years. □

IHCS: A Help in Meeting Safety and Health Standards

The major purpose of the 1970 Occupational Safety and Health Act (OSHA) is to reduce the number and severity of work-related injuries and illnesses for men and women throughout the country. Under the act, the Occupational Safety and Health Administration was created in the U.S. Department of Labor to insure effective enforcement of its provisions.

The administration works closely with the states, encouraging their full participation. Stringent job safety and health standards have been established. Without going to court, OSHA may order the correction or "abatement" of violations or may propose penalties on its own administrative authority up to $1,000 a day for failure to comply. Employers, especially those previously unconcerned with employee safety and health, are finding compliance costly and are looking for ways to reduce these costs.

The Industrial Health Counseling Service (IHCS) assists employers in meeting OSHA regulations and standards by determining the physical capacity of an individual and matching him to a specific job he can safely perform and by analyzing the demands and environmental factors of a job to determine any hazards that might cause injury.

For example, the IHCS exam provides audiometric testing that meets OSHA standards. Each person examined by IHCS has his hearing baseline established. Annual and job termination audiometric exams provide the employee and employer with a complete occupational hearing program. Therefore, if hearing loss is claimed after time on the job, IHCS records can prove whether this loss occurred before or after a person was employed by a company. The employee's right to compensation for job-related hearing loss is protected, and the employer is also protected against false claims.

Often the industrial engineer, while analyzing a job's demands and environmental factors, recognizes the existence of a hazardous job condition. He can determine whether a particular job design places unnecessary demands on an employee that might be potentially detrimental to the workers' health and safety. The analyst then discusses the job and its operation with the employer and makes recommendations to improve the job's design and safety.

The GULHEMP system offers the government and employers an effective instrument for meeting the legislative intent of OSHA.

Eula W. Keenan, Project Director
Industrial Health Counseling Service

GULHEMP: What Workers *Can* Do

by Mary Youry

"I was GULHEMPed," the older man said to his friend. "Now I have a job." GULHEMPed? The friend looked blank. And no wonder. Except for a small but efficient operation in Portland, Maine, an aircraft factory in Canada, a physician who specializes in industrial health, and The National Council on the Aging, Inc., few people have ever heard of GULHEMP.

But for those few, GULHEMP has great significance. It is the key to opening the door to a closed job market; it can mean life renewed for the discouraged and emotionally moribund; it is a giant step toward changing American industry's attitude toward the aging process.

Here is what the odd-sounding acronym stands for:[1] G-General physique; U-Upper extremities; L-Lower extremities; H-Hearing; E-Eyesight; M-Mental-

[1] M and P factors are no longer utilized as measures in the system due to possible conflict with Equal Employment Opportunity Commission requirements.

Mary Youry is director of the Editorial/Publications Department of The National Council on the Aging, Inc.

System for Relating Job Requirements and Health Is Helping Many Older Workers

ity; and P-Personality. The combination forms the name of a unique system for testing an employee's physical condition and providing a parallel analysis of a particular job. GULHEMP aims to match workers to specific jobs, to underscore an individual worker's physical capacities for job performance, and to make it clear to all concerned that capacity and ability—not chronological age—are the determining factors in job performance.

The GULHEMP technique was developed by Dr. Leon Koyl. It has been implemented and tested in an industrial setting, and, for more than 14 years, has been applied successfully at deHavilland Aircraft, Ltd., in Toronto, Canada.

Accentuates the Positive

Unlike most employee health evaluations, GULHEMP does not stress the negative aspects of a worker's physical condition. Typical health reports note "heart condition" or "arrested pulmonary tuberculosis" and include functional limitation statements such as "cannot lift heavy loads" or "continuous pressure ill-advised." Managers and supervisors learn only what the worker should not or cannot do. GULHEMP is the reverse; it emphasizes what individuals, regardless of age or disability, *can* do in a specific job role.

In June 1970, the GULHEMP system became the focal point of operations for the Industrial Health Counseling Service (IHCS) in Portland, Maine. The Maine Employment Security Commission (MESC), through a grant from the Manpower Administration of the U.S. Department of Labor, had contracted with The National Council on the Aging, Inc. (NCOA), to set up IHCS as an experimental project to be implemented by the National Institute of Gerontology, a program of NCOA headquartered in Washington, D.C.

Portland is ideally suited to the experiment. Located in a State with a high proportion of middle-aged and older persons and ranked as a city of small-to-medium size (110,000 population), it contains varied kinds of both large and small industries.

IHCS began life with a small office in the heart of downtown Portland and four staff members—director Neil Nelson; an industrial physician; an industrial nurse, Mrs. Eula Keenan; and a secretary.

Then, as now, at least two of the staff members wore more than one hat. They had to. Word of the project had to be spread, and only IHCS personnel could supply the information that explained its presence, outlined its aims, and—vitally important—convinced employers to change their hiring policies. So, in addition to his basic duties as director, Nelson functioned also as the project job analyst, as its chief salesman, and as contact man between industry and MESC. Canvassing local industry and business to enlist their cooperation in referring prospective employees to the IHCS office was an ongoing activity.

At the same time, Mrs. Keenan had extra duties that included a series of personal visits to social service agencies to publicize IHCS and to line up these agencies as places to refer IHCS clients if the need arose. Early on, it was discovered that physical examinations and interviews could and did reveal problems beyond the IHCS scope, problems ranging from no money to pay the rent or buy food (cases for the city welfare department) to findings of cancer or arthritis that required further medical attention.

No one physically examined at the IHCS medical unit "has ever been upset at learning about a physical disease or malfunction," said Mrs. Keenan. "They are eager to have it taken care of by the right doctor—and not disturbed because they don't get the jobs they were GULHEMPed for."

Mrs. Keenan succeeded Nelson as director in June 1972, and was succeeded by Dr. Donald Marshall, former chief of urology at the Maine Medical Center, who became acting director in early 1975. By June 1972, almost 100 Portland industries had subscribed to IHCS, and more than 1,000 middle-aged and older workers who had been unable to find work because of their age had found jobs after GULHEMP.

Today, the IHCS staff has expanded to seven—the project director, a physician, two registered nurses, a job analyst, a secretary, and a part-time senior community services project aide. Besides receiving funds from the U.S. Government, IHCS operates partially on money it earns in fees from local industries.

Exams Are Thorough

Local firms that use IHCS services pay $25 for the physical examination of an employee or prospective employee, plus $75 for a job analysis. The dual process begins as soon as an individual walks through the IHCS door. First there is the physical examination by Dr. Marshall. The head-to-toe examination lasts about an hour and includes extensive testing by modern equipment that checks hearing and visual capacity, heart and pulmonary function, ability to lift and push, and the range of the individual's mobility. One of the two nurses administers a battery of blood tests, six in all, and another nurse subjects the person's urine to five different analyses. Though the average caseload is nine patients a day, as many as 15 have been examined in a single day during peak periods.

GULHEMP

"It's a very thorough job," recalls Raymond M. Whitten, a worker helped by GULHEMP. "They didn't leave anything out, and I felt the report they gave me afterwards was a full, true picture of my health." That same worker, age 67, is now employed as an office clerk, a job found after months of "beautiful runarounds" from firms that didn't want him because of age.

The IHCS medical facility, which operates as a screening center rather than a diagnostic center, is a suite partitioned into two examining rooms, a laboratory where nurses perform the "lab work," a dressing room, and a lavatory. The equipment and medical supplies cost more than $10,000. In Dr. Marshall's private office down the hall, patients are told the complete results of their medical exams. If problems have surfaced, a nurse assists in making referral arrangements. When patients come through with a clean bill of health, their hopes and dreams to work again productively become the business of Charles A. Full, the IHCS job analyst.

Job Profile Is Developed

What is a job analysis? Full, 63, a retired industrial engineer now in his third year at IHCS, would say it is what the two words plainly suggest: an analysis of a particular job to formulate an accurate profile of its fitness requirements and to insure that a particular worker (whose physical abilities have been determined by the IHCS medical examination) can meet these requirements. Full analyzes and profiles the specific job or jobs for which the individual has applied. Essential to the work is his "bible," the Manpower Administration's *Dictionary of Occupational Titles*, which lists more than 30,000 jobs by category and supplies basic information about the requirements of each.

Ultimately, Full compares the completed job profile and an individual's medical profile. The ideal outcome is for the two to match. If they do, both are sent to MESC or to a company known to have appropriate job openings, with an IHCS recommendation to hire the person.

In his booklet, "Technical Training Guide for Physical Demands Analysis," former IHCS director Nelson describes the purpose of job analysis as follows:

To collect and analyze occupational data to facilitate personnel, administrative, or information functions. The analyst consults with management to determine type, scope, and purpose of analysis, and compiles staffing schedules, flow charts, and other background information about company policies and facilities to expedite study. . . . Physical demands analysis entails studying jobs and interviewing workers and supervisors to determine physical and mental requirements of jobs in relation to materials, machines and equipment, products, procedures, subject matter, and services involved.

Full, then, does not spend his work days sitting at a desk; on the contrary, he spends more than half his work time anywhere that work is done: at a factory, a post office, a distributing firm. His chief contacts are top management and personnel officers. It is their responsibility to explain Full's presence and tell employees why he is there with pencil and notebook, observing the minute details of a given job performance and asking questions. "Otherwise, unless they're told, the workers think I'm around to check on them," says Full, "and that makes them uneasy."

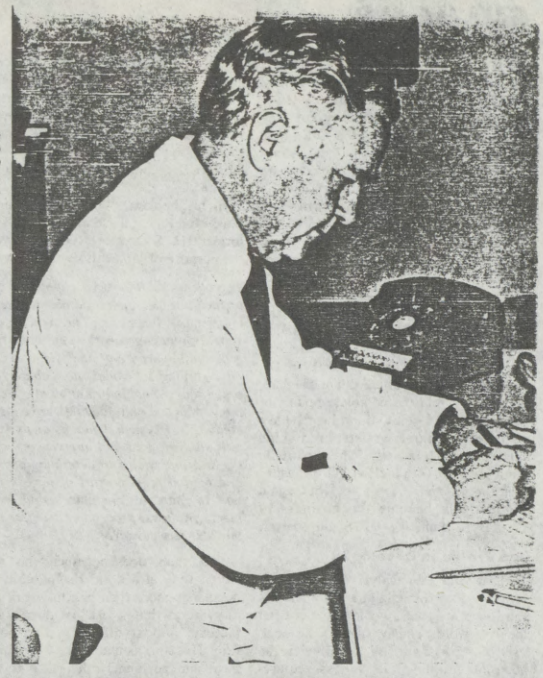
For every job analyzed, Full must prepare a worksheet representing the job's physical and environmental demands, then review his findings with the supervisor. Physical demands listed on the worksheet include such items as "lifting," "carrying," and "pulling." Environmental factors range from "inside work" to "hazardous machines" and include other elements that may jeopardize a worker's safety—for example, "sharp tools or materials," "exposure to burns," and "slippery floors." IHCS helps employers meet standards of the 1970 Occupational Safety and Health Act by recommending ways to eliminate hazardous job conditions revealed through job analysis.

Analysis of Job Design

The job analyst can see whether a particular job design places unnecessary demands on an employee which might be potentially detrimental to the worker's health and safety. The analyst then discusses the job and its operation with the employer and makes recommendations to improve the job's design and safety.

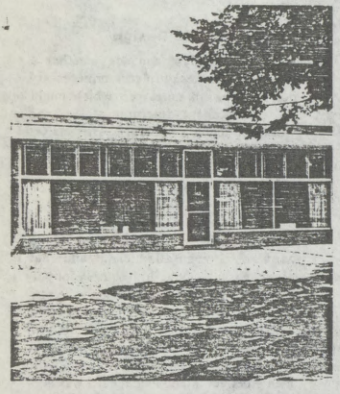
Full says that no worker who has been through GULHEMP has filed a workers' compensation claim and that absenteeism tends to drop sharply for participants who have been through the program. He cites as an example a post office employee whose job had for two decades required that he stand at a machine for long hours at a time. With no warning, the man's perfect attendance record was suddenly marred by frequent absences. An analysis of his job and a medical examination which showed that he was afflicted with high blood pressure, varicose veins, and diabetes led to the conclusion that the job was no longer appropriate for him. He sits at a desk now, doing different work but still employed by the post office.

Gary E. Whitney, for the past 3 years manager of the Maine Employment Security Commission office in Portland, enthusiastically praised IHCS and the



Dr. Donald F. Marshall, Industrial Health Counseling Service physician, who in peak periods examines—from head to toe—15 persons a day.

Industrial Health Counseling Service offices in Portland, Maine.



service it performs. "IHCS is a very important part of the total employment picture here," declared Whitney, "and the spinoffs are electrifying." Arnold Hawks is the chief job counselor in the employment security office, and under him two staff members are assigned exclusively to counsel middle-aged and older workers. A manpower specialist handles the intake process and refers individuals to jobs—if there are no problems. Those with problems—often persons who can't find work because of age discrimination—go the counseling route.

Last August, 137 middle-aged and older workers—30 percent of them between 40 and 45—applied for jobs at the employment security office. Whitney pointed out that prospective employers who consider such persons "too old" for certain types of jobs tend to change their minds when confronted with GULHEMP and physical examination results. Evidence of the physical capac-

Mildred Morong's pulmonary function is tested by Vera Quinn, R.N., part of the GULHEMP process at the Industrial Health Counseling Service. Mrs. Morong, 59, seeks a new career as an office worker.

A truck tire is changed at the Noyes Tire Company (right), a job that proved too arduous for Lewis F. Kennedy, 67, who was rehired as a serviceman after retirement, GULHEMPed and then reassigned to general maintenance work.

GULHEMP

ity to do a job involving physical activity is a plus for the jobseeker; the IHCS material is an added tool employment security counselors can use to persuade employers to hire older clients. In the past year, jobs in the metal and machine trades of three separate industries have been filled by older workers whom employers had considered ineligible before GULHEMP results indicated that they could perform the work.

Whitney said IHCS has helped to change the employment security office image. Once the accent was "unemployment, negative" he explained. Now it is positive, particularly for people in the "older age" bracket, because the chance of job placement is enhanced by GULHEMP and the IHCS screening process. Before the IHCS breakthrough, older workers seemed to resent counselors and acted as if they were hindering rather than helping. Many, after halfheartedly agreeing to talk with counselors, failed to show up for appointments. Pessimistic attitudes and outlook altered radically when word got around that people were landing jobs after exposure to the IHCS program.

"What a difference!" stated Whitney. "The entire IHCS program is a fantas-

"Company after company turned me down," repo Raymond M. Whitten of his discouraging job sear "It was my age." Today, at 63 and after successfu GULHEMPing, he is an office clerk, just joined his firm's pension plan.

tic success. I think it should be incorporated physically as part of the employment security operation. Today our client booking there is solid."

Lives dramatically touched by IHCS include that of Mildred Morong, 59, whose job was taken over by a computer at the shoe manufacturing firm where she had worked as a checker in the payroll department for nearly 19 years. Says Mrs. Morong simply, "They picked the younger ones to stay."

After an IHCS physical examination showed no recurrence of the cancer for which she had surgery in 1971, Mrs. Morong was placed in training provided by the Concentrated Employment Program which is now funded under the Comprehensive Employment and Training Act. Mrs. Morong is attending school to obtain the equivalent of a high school diploma and to learn new skills to fit her for general office work. IHCS will step in again with another GULHEMP and a new job analysis when her training is completed.

Raymond M. Whitten is 63, softspoken and intense. His varied working experience has ranged from the presidency of a lumber company to office worker to night watchman. It was in the last occupation that he suffered a heart attack, his second in a decade. GULHEMP findings indicated that he was still capable of working, and today, Whitten is an office clerk for a manufacturer and supplier of building materials. He has just put in for the company's pension plan.

His bitterness reduced now because of present job security, Whitten has still vivid memories of the discouraging days when he fruitlessly sought work. "Company after company turned me down. It was my age, though many just said I was overqualified. One firm that I went back to several times finally put 'under 40' as a job requirement in its want ad." (Such advertising is illegal under the Age Discrimination in Employment Act.)

Lewis F. Kennedy, 67, retired in 1972 from the Noyes Tire Company, but retirement didn't set too well with him. He had been a serviceman at Noyes, changing tires 90 percent of the time, and he liked the work. He missed it, and when a former customer telephoned to deplore his absence, Kennedy decided to ask for his old job back. The company was willing, Kennedy obviously was willing—but the years had taken their toll. "I was feeling it after a couple of days," he reports, "and realized it was the job for a younger man."

Kennedy continues to work for Noyes, though, now as a general maintenance worker. He works from 7 a.m. to 4 p.m. 3 days a week. "I was GULHEMPed," he says, "and came out fine. I love this work and this place and hope to stay here as long as I'm efficient."

Firm Endorses GULHEMP

Noyes Tire Company's personnel manager, John W. Meredith, said in 1973 that 43 of the 143 employees in the firm's two Portland area branches had been hired through IHCS services over a 2-year span. He quoted from a letter written by Noyes' president to the greater Portland business community: "Would you like to reduce your turnover rate by 22 percent, enjoy the lowest number of workmen's compensation claims in a 5-year period, and—at the same time—increase your work force by 51 percent? I did. How did I do it? With the help of IHCS."

Similar tributes have been paid IHCS by other companies. Client firms include distributing centers for appliances and other equipment, factories, precision instrument designers, commodity dealers (such as Noyes), and a division of the U.S. Postal Service that encompasses 134 offices. Many companies say that IHCS has proved helpful in hiring, job placement, and reassignment decisions.

In nearly 3 years of operation, IHCS has processed 4,000 job applicants, given 3,800 physical examinations, compiled a 2,000-job index, and served more than 130 companies ranging in size from 10 to 1,700 workers. IHCS estimates the financial savings to these companies to be over $500,000. In the course of the physical examinations, 2,215 health problems were identified, and 1,831 examinees were referred to other medical facilities for treatment.

Efforts are underway to export the program to other States and, at the same time, to keep Portland's facility going. Potential sources for the broad base of financial support needed to maintain the facility are the fees charged for service; the Comprehensive Employment and Training Act; the Administration on Aging of the Department of Health, Education, and Welfare; the Community Chest; and contracts with additional organizations for specific industrial health and manpower services. By supporting the project now, the Maine Employment Security Commission is helping to insure the place of IHCS as a permanent industrial health facility. The commission would continue to gain special services and benefits at diminishing cost as other agencies pick up a share of the IHCS budget.

Data collected from participating companies leave no question of the project's multiple benefits. The overall goal is to convince others in industry of the inherent truth: Age is never a barrier to working, only physical limitations are. And these can be measured and fully compensated for by using a yardstick called GULHEMP. □

ESARS II

A COMPARATIVE VIEW OF SERVICES TO AGE GROUPS

as reported in

THE EMPLOYMENT SECURITY AUTOMATED REPORTING SYSTEM

by

Elizabeth M. Heidbreder and Michael D. Batten

Arthur Nygard

Nancy C. Peavy

Elizabeth Kerr

INTRODUCTION

The purpose of this study is quite direct. It is intended to present data on comparative services and placement activities on the part of State Employment Service agencies to different age groups. It will analyze the Employment Security Automated Reporting System (ESARS) data and raise implications, observations and recommendations with special regard for middle-aged and older applicants. Thus, it will provide the means whereby a given State Employment Service can get a rough measure of its performance as to how it has served applicants over 40.

Furthermore, ESARS II is a follow-up to a study completed and distributed last year.[1] Manpower Administration officials at the national and regional levels as well as State Employment Service officials will now have a two-year trend for analysis. They will be in a better position to reassess services to older applicants and modify priorities and plans of service to assist this group of applicants in a positive and equitable manner.

SCOPE OF STUDY

The study first presents national ESARS data and analyzes them according to selected ES service and placement variables by age groups. It then examines a series of variables which relate to selected special emphasis or priority groups, such as veterans and minorities, by age categories. These special emphasis groups are established according to policies set by the Manpower Administration. By relating age factors to these groups, we are

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[1] Daniel A. Quirk and Nancy C. Peavy, A COMPARATIVE VIEW OF SERVICES TO AGE GROUPS AS REPORTED IN THE EMPLOYMENT SECURITY AUTOMATED REPORTING SYSTEM, (Middle-Aged and Older Workers in Industry, Facts and Trends No. 3), Washington, D.C., The National Council on the Aging, Inc., March 1974, 38 pp.

stressing the fact that age is a universal category which affects all groups of applicants. This fact is too often forgotten, not only by employers but by State Employment Service agencies, to the detriment of the older members of special emphasis groups.

The study then examines ES service functions by age at the regional and state levels. It should be noted that the study has limits. We have neither the time nor the resources to analyze each state in the detail accorded to national and regional data. Any state, however, which is truly concerned about doing an in-depth needs assessment for middle-aged and older applicants can apply and expand upon the analytical model presented in this study. In fact, there is no reason why a state ES cannot, by use of the standard "Table 91," assess service performance by age groups for each local office.

Another note must be made at the outset. NCOA is not concerned with any validation or other technical concern relating to the ESARS system. We have accepted the data as they are and assessed the implications for diverse age groups.

I. NATIONAL TRENDS

Employment Service (ES) applicants are generally younger than might be expected from the overall age distribution of the labor force. While men and women age 40 and over make up almost one-half of the labor force, only 22 percent of ES applicants in fiscal 1974 were 40 and over and only seven percent were 55 and over.

The proportion of middle-aged and older workers among ES applicants is somewhat similar to their representation among the total number of unemployed jobseekers, and almost all applicants are not only seeking jobs but are unemployed. Calendar year 1973 data show that 73 percent of all unemployed jobseekers were under 35 and only 8 percent were 55 and over.[2] Of course, these figures do not reflect the full extent of the employment problem for the latter group. An unknown number have withdrawn from the labor market after fruitlessly searching for work.

When last year's ESARS data are compared with this year's, it is apparent that the age distribution of applicants did not substantially change. In fiscal 1973, 24 percent were 40 and over. This declined slightly to 22 percent in fiscal 1974. The total number of applicants was also very similar in the two years. There were 17.5 million applicants in 1973 and 17.7 million in 1974.

Services by Age

Employment Service personnel provide a variety of services for job applicants.[3] These include activities such as counseling and testing in addition

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[2] Source: U.S. Department of Labor, Bureau of Labor Statistics, EMPLOYMENT AND EARNINGS, January 1974, p. 149.

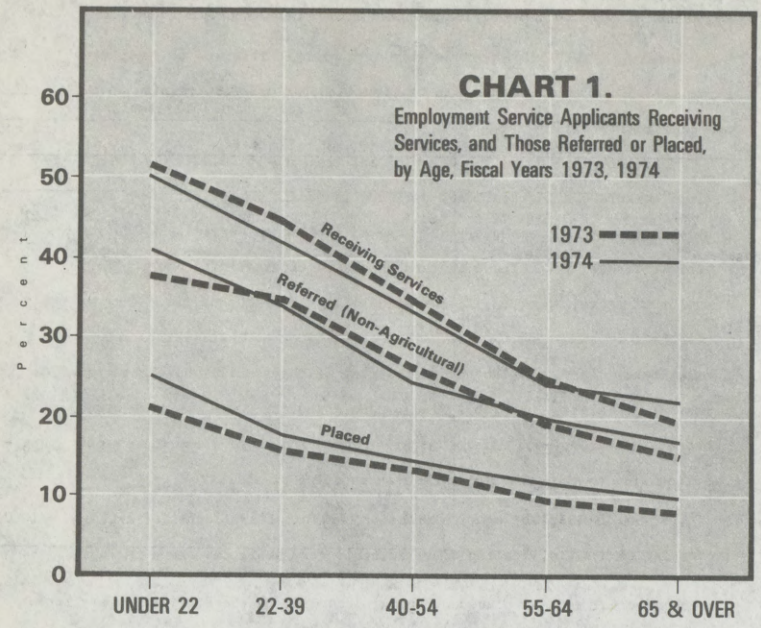
[3] See appendix for more complete listing of services provided and definition of terms.

TABLE 1: EMPLOYMENT SERVICE APPLICANTS AND THOSE RECEIVING SERVICES BY AGE, FISCAL YEAR 1974

Services	Total		Age - Percentage Distribution					
	Number	Per-cent	Under 22	22-39	40-44	45-54	55-64	65 and Over
Total	17,723,647	100	31.2	46.5	5.7	9.6	5.4	1.6
Receiving Services	7,651,555	43.2	51.5	43.1	37.0	33.5	25.2	21.2
Counseled	981,516	5.5	6.7	5.7	4.7	3.9	2.6	2.3
Tested	853,521	4.8	6.8	4.8	3.1	2.3	1.1	0.7
Enrolled in Training	348,601	2.0	3.2	1.7	1.3	0.8	0.4	0.5
Job Development Contacts	937,411	5.3	5.0	5.9	5.3	4.7	3.7	2.9
Referred Non-Agricultural	6,024,514	34.0	41.1	34.1	27.2	25.3	19.7	16.7
Agricultural	300,660	1.7	2.2	1.4	1.6	1.6	1.2	1.2
Placed	3,333,702	18.8	25.1	17.5	14.6	13.3	10.3	10.0

to job referral and job placement which, according to the statistics, are the services most often provided. As shown in Table 1, over six million of the 7.6 million applicants receiving services nationwide, or about four-fifths, were referred to jobs. Of those referred, over half were placed in a job.

Less than half of the total applicants, however, received any services and middle-aged and older applicants are less likely to receive services than those under age 40. A decline in the proportion of services received occurs in each of the selected services listed in Table 1 for the older age groups as compared to the younger age groups, with few exceptions. Thus, generally, applicants under the age of 22 received the largest proportion of services and those 65 and over, generally, the least. This precipitous decline is graphically shown in Chart 1, which also illustrates the similarity between



fiscal 1973 and fiscal 1974 data. As the report stated last year, "With few exceptions, the proportion of the age group receiving a particular service declines as age increases."[4]

These findings of declining proportions of services for middle-aged and older workers by Employment Service offices reaffirm the findings of a 10-year-old study, The Job Hunt. The authors found: "Although the vast majority of workers, regardless of age, used the local office of the state Employment Service, older workers received differential treatment. Compared to younger

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[4] Quirk and Peavy, op. cit., p. 7.

jobseekers, a smaller proportion were, for example referred to employers for a job interview; given tests or counseled; or offered training in a new occupation."[5]

The need for counseling, testing and training for middle-aged and older workers has certainly not declined in recent years. It seems reasonable to assume, for example, that many ES applicants were displaced from jobs in fiscal 1974. Those who are displaced after holding one job for a number of years are often ill-equipped to look for another job. They may need help in analyzing the job market in relation to their skills and experience. They may also need retraining if their skills have been too narrowly related to one job. Middle-aged and older women who have been out of the labor force raising a family for a number of years also require orientation to the labor market and an updating of skills.

It should be noted, too, that the proportion of applicants of any age receiving counseling, testing or training is very small, as shown in Table 1, with less than seven percent counseled or tested and only three percent enrolled in training. This may be because Employment Service offices do not have the resources to provide anything more than token services in these areas or because these services are not given sufficient emphasis, despite the fact that they have long been used in the ES.

One interesting fact brought out by the national statistics on referrals and placements concerns the proportion of the older age groups placed. When middle-aged and older workers are referred to a job, they are placed as often as the younger age groups. Chart 2 shows that all of the age groups referred

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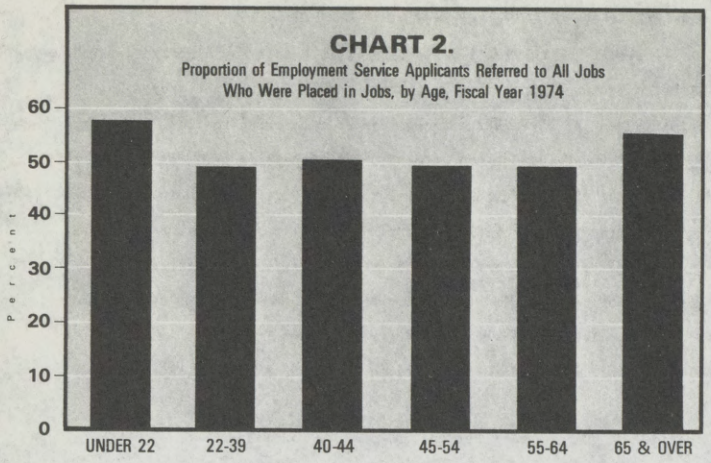
[5] As cited by one of the authors in NEW PERSPECTIVES ON OLDER WORKERS by Harold L. Sheppard, Kalamazoo, Michigan, The W. E. Upjohn Institute for Employment Research, 1971, p. 11.



were placed about 50 percent of the time. The youngest and the oldest age groups did slightly better than the other categories, with 58 percent and 56 percent placed. This appears to indicate that employers are as willing to hire older ES referrals as they are younger applicants and find them as qualified. Of course, we know nothing of the types of jobs obtained by the various age groups or the amount of wages.

It should be remembered, moreover, that middle-aged and older applicants are not referred to jobs as often as younger applicants. Only 18 percent of those age 65 and over and 21 percent of those 55-64 were referred to jobs compared to 41 percent of those under 22. Only about a fourth of the applicants in the middle age groups of 40-44 and 45-54 were referred to jobs compared to a third of those 22-39. It is possible that a smaller number were referred

because of anticipated difficulties in placement, but it is impossible to determine from the data if those who were not referred had less education and skills than those who were referred.

The results of the small proportion of referrals for older workers can only be conjectured since this statistical analysis does not provide any information on the fate of those who were not referred to jobs. However, the earlier study, The Job Hunt, found, "The proportion of older workers re-employed among those referred by the Employment Service was nearly twice the reemployed proportion of workers not referred (81 percent versus 43 percent)."[6] Assuming the same relationship between those referred and not referred to the population covered by this study, only about 25 percent of the middle-aged and older applicants who were not referred to jobs (the great majority of these applicants) will obtain jobs compared to about 50 percent of those who were referred.

Special Emphasis Groups

National manpower policies have in the last several decades emphasized the need to assist disadvantaged groups such as the hard-core unemployed, young members of minorities entering the labor force and veterans who require readjustment to civilian life. As an instrument of these policies, the Employment Service also emphasizes services to these groups. Vietnam veterans, the poor, members of minorities and others have received priority attention and are identified in the ESARS figures.

In order to determine if older members of these groups are obtaining a fair share of this attention, an analysis by age of members of such groups was undertaken. The results for the entire nation are presented in Table 2 and Chart 3.

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[6] Ibid., p. 11.

TABLE 2. SELECTED SPECIAL EMPHASIS GROUPS, AND PERCENT RECEIVING SELECTED SERVICES BY AGE, FISCAL YEAR 1974

Group	Total	Age					
		Under 22	22-39	40-44	45-54	55-64	65 and Over
All Veterans	3,389,874	228,503	2,018,394	303,173	564,260	235,115	40,429
Receiving Services	41.7	59.9	44.7	37.3	33.5	27.5	20.7
Counseled	5.7	10.9	5.8	4.6	4.0	3.5	2.7
Referred (Non-Ag.)	34.5	50.8	37.3	29.9	26.9	21.5	16.1
Placed	18.0	29.0	19.5	15.1	13.4	10.4	8.3
Vietnam Veterans	1,882,221	217,273	1,540,575	58,502	49,840	12,038	3,993
Receiving Services	47.5	60.2	46.2	44.5	41.1	35.6	44.2
Counseled	6.6	10.9	6.1	6.2	5.6	4.7	6.0
Referred (Non-Ag.)	39.7	51.0	38.6	34.6	32.3	27.8	39.0
Placed	20.9	29.1	20.2	17.0	14.8	13.1	21.7
Minorities	5,394,502	1,831,974	2,535,221	323,751	462,982	200,783	39,791
Receiving Services	47.0	53.6	46.9	39.3	36.0	29.0	29.6
Counseled	7.9	9.5	8.1	5.7	4.4	2.9	3.3
Referred (Non-Ag.)	35.2	40.7	35.5	26.7	25.2	21.6	22.7
Placed	20.7	25.2	19.2	12.2	16.6	14.9	16.6
Poor	5,094,756	1,727,045	2,324,618	325,631	472,077	209,385	36,000
Receiving Services	42.5	51.0	40.9	35.5	32.4	25.9	34.5
Counseled	9.7	11.2	10.9	7.6	6.3	4.3	5.8
Referred (Non-Ag.)	27.5	35.6	25.6	19.1	18.3	16.7	23.8
Placed	17.4	24.0	14.8	12.1	11.9	11.4	18.3
WIN	1,604,935	266,525	942,808	161,033	189,709	41,231	3,629
Receiving Services	40.9	44.4	42.6	37.4	33.9	27.3	40.5
Counseled	12.8	15.9	13.6	10.1	8.3	5.8	9.4
Referred (Non-Ag.)	14.4	18.1	15.5	10.7	8.6	5.8	16.0
Placed	9.0	11.1	9.7	6.8	5.4	3.7	9.6

As can be seen in Table 2, the Vietnam veterans in all age categories received the highest proportion of services as compared to the other categories, and Vietnam veterans under age 22 received more services than older Vietnam veterans. Three-fifths of the younger Vietnam veterans received some services and slightly over half were referred to jobs.

Over a million, or about a third of all the veterans (including Vietnam veterans) were 40 and over, but the proportion of services received by this special emphasis group did not differ significantly from the amount of services provided to all middle-aged and older applicants, as can be seen by the following tabulation:

	Percent Receiving Services, by Age			
	40-44	45-54	55-64	65 and over
All Applicants	37.0	33.5	25.2	21.2
All Veterans	37.3	33.5	27.5	20.7

It is apparent that the amount of service received is related to the age of the veteran rather than to the fact that the applicant is a veteran. Of the groups listed in Table 2,[7] minorities age 40 and over showed the largest proportion of services received compared to all of the applicants in the older age categories. With the exception of the 40-44 age group, their placements were also higher. Still, the increase is not dramatic, as shown by the following comparison:

	Percent Placed, by Age			
	40-44	45-54	55-64	65 and over
All Applicants	14.6	13.3	10.3	10.0
Minorities	12.2	16.6	14.9	16.6

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[7] These groups are not mutually exclusive. For example, an applicant can be a veteran, member of a minority group and poor, and will be counted in each group.

As usual, the younger members of this special emphasis group had a higher proportion of job placements. Table 2 shows that a fourth of minorities under 22 and almost a fifth of those 22-39 were placed.

The group of over five million applicants designated as poor was second in size only to the minority group and includes an undetermined number of the latter, an undetermined number of veterans, and probably all of the Work Incentive Program (WIN) applicants. This composition makes it difficult to analyze in comparison to the more limited definitions of the other selected emphasis groups. In relation to the general population, the percent of middle-aged and older applicants receiving services was very similar, with the exception of the age 65 and over group.

	Percent Receiving Services, by Age			
	40-44	45-54	55-64	65 and over
All Applicants	37.0	33.5	25.2	21.2
Poor	35.5	32.4	25.9	34.5

Applicants who are enrolled in the WIN program in all age groups received far more counseling than the other special emphasis groups (Table 2). They also received fewer referrals and were placed less often. Referrals and placements were particularly low for those 40 and over, and reached a low point of six percent referred and four percent placed for the 41 thousand WIN participants 55-64.

Although the ESARS data does not provide a sex/age breakdown and thus we cannot determine how many of the WIN applicants are women, it can be assumed that the majority are, since three out of four WIN participants are women.[8] They are also poor, since WIN participants are Aid to Families with

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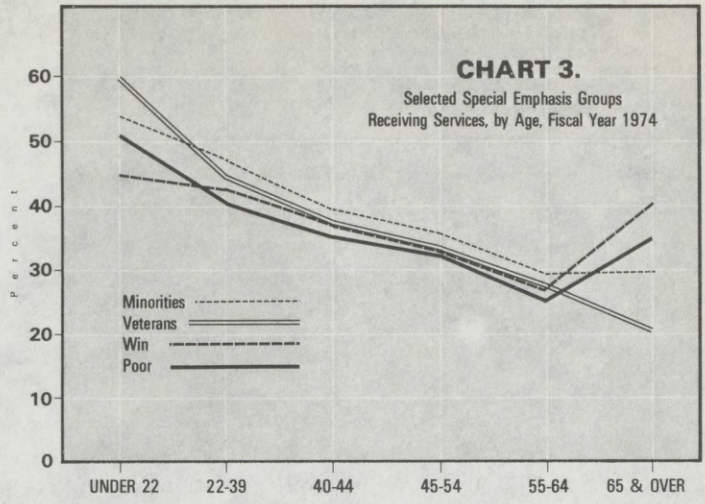
[8] U.S. Department of Labor, 1974 MANPOWER REPORT OF THE PRESIDENT, Washington, D.C., U.S. Government Printing Office, 1974, p. 132.



Dependent Children (AFDC) welfare recipients. Thus, this group of applicants is disadvantaged in the labor market by age, sex and a general lack of resources which characterizes the poor. The extremely small proportion of job referrals and placements for these older welfare recipients indicates that much more must be done to find a place for them in the labor market.

In general, services to ES applicants who were also members of special emphasis groups declined with increasing age of the applicants in the same way that services declined for all applicants by age. Chart 3 plots this dropping off in all services received for minorities, veterans, WIN participants and the poor. Also shown on the chart is the exception to this rule

for the small number of applicants age 65 and over who are members of a minority group, poor, or participants in the WIN program. The small size of these groups was undoubtedly a factor in this non-conformance with the experience of age groups between 40 and 64.

II. TRENDS BY REGIONS AND STATES

Last year, ESARS data were analyzed for each state within a region but no regional totals were included. This year regional totals as well as state data are included for selected services to applicants in order to assist regional manpower planners in making needs assessments and developing emphasis programs for middle-aged and older workers. Regional totals on percentages of services received for selected special emphasis groups have also been compiled.

Regions - Services to Age Groups

Table 3 shows that there is considerable variation among the regions in the amount of services provided younger and older age groups. Middle-aged and older age groups received the most services in Region X and the least in Region V. Differences between the highest and lowest regions were quite pronounced, with Region X placing a proportion twice as large as in Region V for the age groups 40-44, and 45-54, and three times as large for the 55-64 and 65 and over categories.

There appeared to be an inverse relationship between the number of total applicants and the proportion of services provided to middle-aged and older applicants. That is, the more applicants, the smaller the proportion of services. Region V had about three and a half million applicants, compared to 734,000 in Region X. On the other hand, Region VI had twice as many applicants as Region I but provided a much larger proportion of services to middle-aged and older applicants.

TABLE 3. EMPLOYMENT SERVICE APPLICANTS AND THOSE RECEIVING SELECTED SERVICES BY AGE AND REGION, FISCAL YEAR 1974

REGION I

Applicants

Selected Services	Total		Age - Percentage Distribution					
	Number	Percent	Under 22	22-39	40-44	45-54	55-64	65 and Over
Total	1,020,016	100	27.0	46.3	5.9	10.9	7.3	2.6
Receiving Service	404,826	39.7	51.3	40.1	34.1	31.1	21.6	11.6
Counseled	67,772	6.6	7.6	7.2	6.7	5.5	3.2	1.0
Referred (Non-Ag.)	315,730	31.0	40.7	31.2	24.4	23.5	17.1	9.8
Placed	152,806	15.0	23.4	13.6	10.9	9.9	7.3	4.5

REGION II

Total	2,047,158	100	25.6	46.9	6.6	11.3	6.8	2.8
Receiving Service	774,653	37.8	49.1	37.9	32.5	29.6	22.9	16.1
Counseled	136,014	6.6	9.7	6.6	4.7	4.1	3.2	3.1
Referred (Non-Ag.)	556,769	27.2	36.2	27.4	21.6	20.3	16.1	10.1
Placed	297,556	14.5	21.4	13.5	11.4	10.6	8.9	6.6

REGION III

Total	1,510,977	100	31.4	45.9	5.7	9.8	5.6	1.7
Receiving Service	665,452	44.0	54.1	43.7	36.9	33.3	24.5	17.2
Counseled	109,678	7.3	8.5	7.5	6.5	5.6	3.8	2.6
Referred (Non-Ag.)	502,718	33.3	41.9	32.7	25.7	24.3	18.7	13.7
Placed	284,474	18.8	25.5	17.6	14.2	12.9	10.1	8.3

REGION IV

Total	2,788,263	100	34.8	44.4	5.6	9.1	4.9	1.1
Receiving Service	1,288,396	46.2	52.4	46.7	39.8	36.0	27.9	29.3
Counseled	176,984	6.3	8.3	5.9	5.0	4.2	2.9	2.9
Referred (Non-Ag.)	1,035,241	37.1	41.0	38.7	30.7	28.0	22.4	24.3
Placed	570,361	20.5	24.7	19.9	16.5	14.9	11.8	14.2

Table 3 (Continued)

REGION V

Applicants

Selected Services	Total		Age - Percentage Distribution					
	Number	Percent	Under 22	22-39	40-44	45-54	55-64	65 and Over
Total	3,476,172	100	30.0	47.8	5.6	9.6	5.4	1.5
Receiving Service	1,204,979	34.7	44.7	34.6	25.9	22.6	16.3	13.5
Counseled	159,107	4.6	5.4	4.9	3.9	2.9	1.5	1.0
Referred (Non-Ag.)	967,902	27.8	36.4	27.6	19.7	17.9	13.5	11.3
Placed	495,060	14.2	20.3	13.3	9.5	8.4	6.4	6.2

REGION VI

Total	2,014,395	100	34.1	44.4	5.5	9.2	5.5	1.3
Receiving Service	1,018,374	50.6	54.4	52.4	47.2	43.1	31.3	36.2
Counseled	112,680	5.6	6.1	6.0	5.0	3.9	2.8	3.8
Referred (Non-Ag.)	839,155	41.7	44.9	43.5	37.3	34.5	25.2	30.1
Placed	463,832	23.0	26.2	23.0	20.8	19.1	13.5	18.2

REGION VII

Total	939,825	100	38.8	42.3	4.9	8.1	4.6	1.1
Receiving Service	486,425	51.8	59.0	51.0	43.6	40.5	31.6	31.4
Counseled	50,314	5.4	5.3	5.9	5.0	4.4	3.0	2.6
Referred (Non-Ag.)	398,922	42.4	50.4	41.0	32.7	30.6	24.3	25.7
Placed	245,846	26.2	34.7	22.7	18.5	16.6	13.3	16.9

REGION VIII

Total	726,034	100	36.0	46.6	4.7	7.6	4.1	1.0
Receiving Service	349,665	48.2	55.6	46.7	41.5	37.9	29.4	33.7
Counseled	56,280	7.8	8.8	7.6	7.7	6.5	3.7	4.0
Referred (Non-Ag.)	274,049	37.7	43.5	37.2	30.6	27.9	22.2	26.9
Placed	169,860	23.4	28.8	21.7	18.3	17.0	14.0	19.6

Table 3 (Continued)

REGION IX

Applicants

Selected Services	Total		Age - Percentage Distribution					
	Number	Percent	Under 22	22-39	40-44	45-54	55-64	65 and Over
Total	2,334,113	100	27.0	50.2	6.3	10.3	5.0	1.2
Receiving Service	1,037,189	44.4	51.4	44.4	40.9	37.7	30.2	25.1
Counseled	64,076	2.7	2.8	3.0	2.6	2.1	1.5	1.0
Referred (Non-Ag.)	818,184	35.1	42.0	34.9	29.1	28.1	23.9	20.5
Placed	447,220	19.2	26.4	17.5	15.6	14.7	12.2	11.8

REGION X

Total	734,259	100	31.5	49.3	5.3	8.3	4.4	1.2
Receiving Service	366,433	49.9	54.5	49.4	48.1	45.7	36.5	33.8
Counseled	36,721	5.0	4.5	5.7	5.2	4.1	2.5	2.4
Referred (Non-Ag.)	272,111	37.1	40.0	37.6	33.7	32.3	26.4	25.0
Placed	178,509	24.3	29.2	22.4	22.7	22.1	18.6	18.1

The proportion of applicants age 40 and over to total applicants ranged from 17.4 percent in Region VIII to 27.5 percent in Region II as can be seen in the following tabulation:

Percent of Applicants Age 40 and Over
By Regions

Region I	26.7	Region VI	21.5
Region II	27.5	Region VII	18.7
Region III	22.8	Region VIII	17.4
Region IV	20.7	Region IX	22.8
Region V	22.1	Region X	19.2

Regions I and II in the northeast had the highest proportion of middle-aged and older applicants with about 27 percent each. Region VII in the Mid-West and

Region VIII and X in the West all had totals under 20 percent. These three western regions all had higher proportions of services to the age 40 and over applicants than the two northeastern regions.

There appears to be some correlation between the proportion of middle-aged and older applicants and the proportion of workers in these age groups in the regions. For example, with one exception, an analysis of 1970 Census data shows that Regions I and II had more persons in the age group 40-64 years and 65 and over than Regions VII, VIII and X.

Persons in the Labor Force 1970 by Age*

Region	Men 40-64	Women 40-64	Men 65 and over	Women 65 and over
I	47.1	47.7	4.7	4.6
II	48.7	48.4	4.8	4.2
VII	42.8	44.5	5.4	5.2
VIII	44.7	42.3	4.6	3.7
X	46.1	44.3	3.9	3.5

It should be noted also, however, that the differences in population composition are not as great as the differences in the proportion of applicants. Those regions with small numbers of middle-aged and older applicants may need outreach efforts to bring in the older age groups for ES services.

Regions - Special Emphasis Groups

Middle-aged and older veterans received the highest proportion of services in Regions VI and X as shown in Table 4. Region X also provided the highest proportion of services to minorities and the poor. The approximately 850

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*Source: Elizabeth M. Heidbreder, Nancy M. Casey and Catherine D. Eberwein, THE IMPACT OF MIDDLE-AGED AND OLDER PERSONS IN THE POPULATION, IN THE LABOR FORCE (Middle-Aged and Older Workers in Industry, Facts and Trends No. 2) Washington, D.C., The National Council on the Aging, Inc. May 1973, parts I, III, IV and V.

WIN over-40 applicants in Region VIII had the highest proportion of services. The largest number of WIN applicants (almost 80,000) was in Region IX and the proportion of services provided there was well above the national average, as follows:

WIN Applicants Receiving Services by Age

	40-44	45-54	55-64	65 and over
All WIN	37.4	33.9	27.3	40.5
Region IX	45.7	42.3	35.7	51.7

Region IV had the largest number of minority middle-aged and older applicants and the proportion of services received was very near the national average. Region V had the largest number of poor applicants as well as veteran applicants in the 40 and over categories. The proportion of services received by these groups in this region was below national averages, as follows:

Veterans and Poor Applicants Receiving Services by Age

	40-44	45-54	55-64	65 and over
All Veterans	37.3	33.5	27.5	20.7
Region V	25.6	22.0	17.0	13.5
All Poor	35.5	32.4	25.9	34.5
Region V	24.8	22.5	18.5	22.9

As observed with regard to regional totals, the number of applicants in the special emphasis groups appeared to be related to the proportion of services received. If a region had small numbers of applicants in special emphasis groups, a larger proportion of services was provided to them than in regions with large numbers of middle-aged and older applicants in the special categories. This was not always true, however. For example, Regions II and VI were not far apart in the number of special emphasis applicants but had considerable differences in the proportion of services received. Other factors, such as the size of the ES staffs and regional economic conditions, as well as attitudes to the over 40 applicant, may account for differences.

TABLE 4: SELECTED SPECIAL EMPHASIS GROUPS AND PERCENT RECEIVING SERVICES BY REGION, FISCAL YEAR 1974

REGION I

Group	Total	Age					
		Under 22	22-39	40-44	45-54	55-64	65 and Over
Veterans	214,562	11,700	117,764	20,227	41,591	19,512	3,768
Receiving Services	37.2	60.6	41.2	31.9	30.1	23.8	12.5
Vietnam Veterans	102,236	11,292	85,599	2,542	2,138	544	121
Receiving Services	44.9	60.8	43.3	38.7	35.3	30.0	47.1
Minorities	132,968	41,097	68,397	8,144	10,521	3,901	908
Receiving Services	50.2	58.9	48.9	42.2	38.9	32.7	24.3
Poor	217,454	62,355	104,955	15,919	22,595	9,895	1,735
Receiving Services	49.6	60.3	48.2	42.9	40.1	33.2	31.3
WIN	90,823	13,228	53,441	10,277	11,506	2,279	92
Receiving Services	44.9	48.7	46.1	42.7	39.0	32.6	37.0

REGION II

Veterans	352,041	20,067	195,844	31,731	64,717	31,603	8,079
Receiving Services	30.9	52.5	34.2	27.0	24.3	19.3	11.1
Vietnam Veterans	170,726	18,929	144,757	2,916	3,092	798	234
Receiving Services	37.1	52.2	34.5	32.4	28.6	30.3	38.0
Minorities	665,840	169,930	346,224	49,522	67,682	26,507	5,975
Receiving Services	44.6	54.4	43.6	38.7	36.4	31.7	27.1
Poor	641,931	203,310	296,230	45,583	63,226	27,465	6,117
Receiving Services	41.2	52.1	38.7	33.3	30.7	26.3	34.9
WIN	167,721	24,411	97,324	19,367	21,498	4,533	588
Receiving Services	40.5	42.1	42.0	38.8	35.7	28.3	41.2

TABLE 4 (Continued)

REGION III

Group	Total	Age					
		Under 22	22-39	40-44	45-54	55-64	65 and Over
Veterans	279,939	17,012	167,816	24,331	47,904	19,799	3,077
Receiving Services	43.6	63.1	47.8	37.4	33.4	27.0	19.3
Vietnam Veterans	155,173	16,544	130,236	4,132	3,357	737	167
Receiving Services	51.2	63.4	50.0	47.7	43.3	35.1	47.3
Minorities	409,869	128,423	202,324	25,009	35,330	15,138	3,645
Receiving Services	44.9	52.3	45.0	36.4	33.4	26.7	23.8
Poor	368,302	115,502	179,445	25,213	33,834	12,447	1,861
Receiving Services	44.6	53.3	43.0	38.0	34.7	27.5	31.5
WIN	152,631	26,015	93,254	14,710	15,698	2,695	259
Receiving Services	42.9	44.7	43.7	40.2	37.8	32.2	42.5

REGION IV

Veterans	430,445	32,320	257,415	40,531	69,197	27,400	3,582
Receiving Services	47.8	61.3	50.6	43.4	40.1	34.9	30.5
Vietnam Veterans	257,805	29,626	202,408	12,974	10,274	2,180	343
Receiving Services	52.1	62.3	51.6	45.5	43.3	39.1	56.6
Minorities	1,090,652	443,076	460,594	55,020	83,880	41,307	6,775
Receiving Services	48.2	52.9	48.9	40.2	36.0	29.0	34.8
Poor	895,787	374,896	340,088	51,926	81,085	41,598	6,194
Receiving Services	43.1	51.3	41.0	34.0	30.1	23.0	37.3
WIN	260,056	52,183	140,155	24,906	33,341	8,858	613
Receiving Services	37.7	41.5	39.4	33.9	30.7	23.8	40.0

TABLE 4 (Continued)

REGION V

Group	Total	Age					
		Under 22	22-39	40-44	45-54	55-64	65 and Over
Veterans	709,144	50,453	427,522	60,353	117,847	46,484	6,485
Receiving Services	32.1	52.8	35.4	25.6	22.0	17.0	13.5
Vietnam Veterans	386,336	47,914	323,312	6,560	6,064	1,965	521
Receiving Services	38.7	53.1	36.9	33.4	29.9	25.8	36.5
Minorities	876,031	264,497	443,686	55,337	76,782	29,182	6,547
Receiving Services	38.6	48.6	37.9	27.8	24.7	19.6	17.7
Poor	897,650	265,520	443,884	60,995	86,015	35,205	6,031
Receiving Services	33.9	44.5	32.5	24.8	22.5	18.5	22.9
WIN	330,326	48,826	202,959	33,107	37,337	7,524	573
Receiving Services	28.9	31.1	30.9	24.8	21.3	15.7	25.7

REGION VI

Veterans	346,737	24,265	203,671	31,925	57,851	25,415	3,610
Receiving Services	57.3	73.3	60.2	54.6	49.6	42.0	43.9
Vietnam Veterans	204,066	23,492	160,699	9,523	7,904	1,888	560
Receiving Services	62.9	73.3	61.9	59.6	57.7	49.5	70.9
Minorities	888,578	333,382	387,036	47,382	74,525	39,555	6,698
Receiving Services	51.2	53.4	54.0	46.2	42.0	31.0	43.6
Poor	555,539	217,732	220,673	31,903	51,592	28,824	4,815
Receiving Services	45.9	51.0	46.2	41.2	37.0	26.5	43.2
WIN	108,783	20,757	60,141	10,399	13,942	3,286	258
Receiving Services	42.7	46.1	43.7	41.4	37.3	31.3	42.2

TABLE 4 (Continued)

REGION VII

Group	Total	Age					
		Under 22	22-39	40-44	45-54	55-64	65 and Over
Veterans	165,526	14,234	101,756	13,902	24,350	10,090	1,194
Receiving Services	54.9	70.3	57.3	49.6	46.4	39.1	33.8
Vietnam Veterans	98,106	13,627	79,565	2,583	1,865	386	80
Receiving Services	59.6	70.3	58.3	52.1	50.7	46.6	70.0
Minorities	167,686	66,393	72,872	9,116	12,879	5,423	1,003
Receiving Services	52.4	61.0	51.1	39.3	36.0	29.6	29.7
Poor	204,168	73,815	88,386	12,652	18,730	9,091	1,494
Receiving Services	47.4	57.6	46.0	36.7	32.7	24.8	36.8
WIN	74,031	15,088	41,195	7,077	8,462	2,014	195
Receiving Services	38.1	44.2	40.1	32.1	26.9	20.0	16.9

REGION VIII

Veterans	171,315	15,767	106,741	14,237	24,186	9,270	1,114
Receiving Services	44.3	61.3	45.9	38.4	35.3	29.8	40.4
Vietnam Veterans	101,372	14,842	80,289	2,819	2,401	710	311
Receiving Services	49.4	62.0	47.6	45.7	43.2	35.5	57.2
Minorities	108,497	40,364	50,233	6,186	8,160	3,017	537
Receiving Services	52.0	60.5	49.4	42.4	40.5	33.2	45.6
Poor	165,222	66,527	72,315	7,987	11,902	5,126	1,365
Receiving Services	54.0	61.0	50.9	48.6	45.5	38.0	40.9
WIN	38,658	7,283	22,784	3,373	4,154	948	116
Receiving Services	59.1	64.5	60.5	54.0	50.3	41.1	45.7

TABLE 4 (Continued)

REGION IX

Group	Total	Age					
		Under 22	22-39	40-44	45-54	55-64	65 and Over
Veterans	541,934	29,743	329,654	50,815	90,879	35,698	5,145
Receiving Services	39.4	56.1	41.5	36.6	33.7	27.4	13.1
Vietnam Veterans	305,316	28,873	252,217	11,363	10,188	2,265	410
Receiving Services	42.7	56.2	42.0	36.7	32.3	28.3	47.8
Minorities	857,231	261,862	419,824	58,444	79,871	30,850	6,380
Receiving Services	49.3	55.3	49.7	43.6	40.1	32.2	25.8
Poor	894,541	243,814	466,195	61,318	85,755	32,595	4,864
Receiving Services	41.3	47.0	40.9	38.4	35.1	28.2	30.1
WIN	313,328	47,455	186,660	32,344	38,019	8,103	747
Receiving Services	50.5	55.3	52.3	45.7	42.3	35.7	51.7

REGION X

Veterans	159,250	11,877	108,649	13,724	23,233	8,591	1,176
Receiving Services	53.0	62.8	50.0	51.4	49.0	44.1	40.3
Vietnam Veterans	91,274	11,120	94,241	2,850	2,361	497	205
Receiving Services	55.4	63.0	54.7	51.7	51.0	47.3	48.3
Minorities	85,573	25,747	43,241	5,698	7,676	2,645	566
Receiving Services	59.5	65.4	58.5	55.1	53.4	50.0	47.5
Poor	185,029	55,294	95,951	10,696	15,421	6,393	1,274
Receiving Services	52.2	57.0	50.3	50.6	50.5	46.5	52.1
WIN	58,156	8,931	38,384	4,742	5,044	880	175
Receiving Services	53.8	58.1	54.8	49.5	44.9	39.4	58.9

State Variation

Perhaps the most arresting fact to be noted from the state data in Table 5 is that in the age categories up to 64, the proportion of services almost invariably declines with age, with few exceptions. Such declines have already been noted at the national and regional levels, but with differing labor market conditions and composition of the population, it might be expected that there would be more states which, for example, provided more counseling to the 55-64 group than to the 22-39 applicants; or placed more middle-aged applicants than applicants under 22. Nevertheless, the proportion of services almost always declines as age increases.

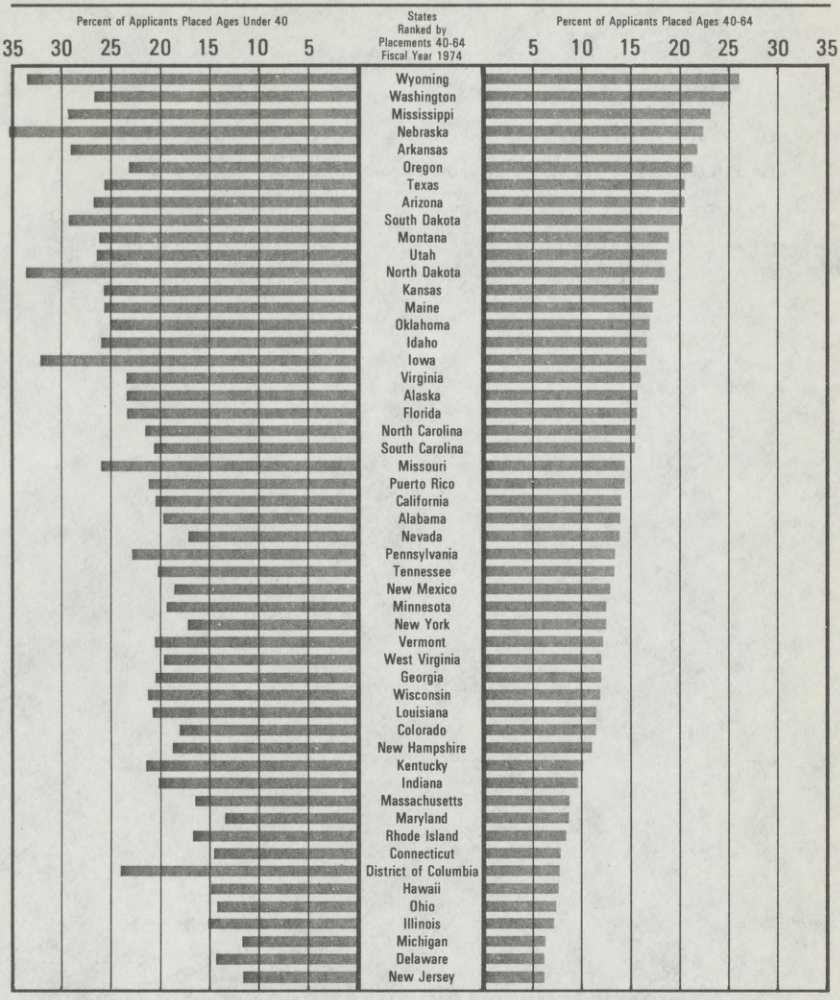
The 65 and over group of applicants is always the smallest of the age groups and receives the smallest proportion of services in a majority of the states. However, in a surprising number of states (two-fifths) they receive proportionately more services than some of the younger age groups. This may be related to size of the groups and/or to ES offices giving particular attention to the development of job opportunities for people beyond the normal retirement age.

Despite similarities in the trends by age among the states, there are large variations in the proportion of services given to middle-aged and older workers. The national average for receiving services was 37 percent for the 40-44 group, but seven states provided 50 percent or more with services. On the other hand, several states provided only a fifth or less with services. For the 45-54 group, the proportions went from a high of 51 percent to a low of 17 percent; for those 55-64, the range was 44 percent to 11 percent.

Placements are obviously the desired outcome for employment service applicants. In Chart 4, the states have been ranked by the proportion of

CHART 4.

State variation in placement of employment service applicants ages 40-64 and under 40



applicants placed in both non-agricultural and agricultural jobs between the ages of 40-64, the ages protected by the Age Discrimination in Employment Act. Also shown for comparative purposes is the percent of applicants under age 40 who were placed.

The top ten ranking states in terms of placing middle-aged and older applicants were, for the most part, western states, with the exception of Mississippi. In general, placement of applicants under 40 by these states was also relatively good and always a larger proportion than for the older groups.

At the lower end of the chart are found many of the northern and mid-western industrial states. Placements of younger applicants are also relatively small, although larger than for the older applicants.

TABLE 5. EMPLOYMENT SERVICE APPLICANTS AND THOSE RECEIVING SELECTED SERVICES BY AGE AND STATE, REGIONS I-X, FISCAL YEAR 1974

REGION I

CONNECTICUT

Applicants

Selected Services	Total		Age - Percentage Distribution					
	Number	Percent	Under 22	22-39	40-44	45-54	55-64	65 and Over
Total	295,100		25.8	44.6	6.1	11.6	8.1	3.8
Receiving Service	109,238	37.0	50.0	38.3	31.4	29.0	18.3	6.9
Counseled	8,026	2.7	3.3	3.2	2.4	1.8	0.8	0.1
Referred (Non-Ag.)	94,346	32.0	41.2	33.7	26.7	26.3	17.0	6.4
Placed	37,185	12.6	21.4	11.0	9.3	9.0	5.7	1.9

MAINE

Total	73,808		28.4	48.7	6.0	9.8	5.6	1.4
Receiving Service	42,761	57.9	65.3	58.2	51.8	50.5	43.7	34.6
Counseled	7,939	10.8	12.1	10.8	11.5	9.7	6.6	3.0
Referred (Non-Ag.)	31,343	42.5	50.7	42.3	34.6	33.8	30.4	24.3
Placed	17,304	23.4	29.6	23.0	18.8	17.0	15.5	11.0

MASSACHUSETTS

Total	433,823		27.7	47.4	6.0	10.8	6.6	1.6
Receiving Service	164,710	38.0	48.6	37.2	33.0	30.0	21.6	14.5
Counseled	39,604	9.1	10.0	9.6	9.5	8.1	5.4	2.0
Referred (Non-Ag.)	114,750	26.4	36.0	25.6	24.5	18.9	14.7	11.2
Placed	63,346	14.6	23.4	12.6	12.5	8.9	7.3	7.1

NEW HAMPSHIRE

Total	70,634		27.0	44.5	5.5	11.1	8.7	3.2
Receiving Service	28,261	40.0	50.3	40.6	32.5	31.0	25.7	27.2
Counseled	2,571	3.6	4.8	3.6	2.6	2.7	2.2	2.5
Referred (Non-Ag.)	25,206	35.7	44.5	36.2	29.3	28.0	23.5	24.5
Placed	11,730	16.6	23.1	16.3	12.4	11.9	9.1	10.1

Table 5 (Continued)

REGION I

RHODE ISLAND

Applicants

Selected Services	Total		Age - Percentage Distribution					
	Number	Percent	Under 22	22-39	40-44	45-54	55-64	65 and Over
Total	87,628		24.9	43.5	6.0	12.0	9.5	4.0
Receiving Service	33,924	38.7	55.3	40.9	33.4	28.8	15.7	4.6
Counseled	6,498	7.4	9.2	8.6	6.9	5.8	2.7	0.6
Referred (Non-Ag.)	27,779	31.7	47.2	32.9	25.4	22.8	12.7	4.0
Placed	12,250	14.0	22.1	13.9	11.1	9.8	5.2	1.8

VERMONT

Total	59,023		29.0	50.2	4.9	8.4	5.6	1.9
Receiving Service	25,932	43.9	53.5	44.1	38.2	34.1	24.5	11.0
Counseled	3,134	5.3	5.4	5.8	6.2	4.6	2.0	0.3
Referred (Non-Ag.)	22,306	37.8	47.3	37.7	29.6	27.5	21.8	10.0
Placed	10,991	18.6	26.2	17.2	14.5	12.6	9.4	5.0

Table 5 (Continued)

REGION II

NEW JERSEY

Applicants

Selected Services	Total		Age - Percentage Distribution					
	Number	Percent	Under 22	22-39	40-44	45-54	55-64	65 and Over
Total	647,223		23.5	44.4	6.8	12.5	8.7	4.2
Receiving Service	165,513	25.6	36.8	27.2	20.1	17.4	11.4	5.3
Counseled	33,618	5.2	8.1	5.6	3.8	2.9	1.6	0.8
Referred (Non-Ag.)	129,150	20.0	29.1	20.9	15.1	13.8	9.4	4.2
Placed	63,525	9.8	16.0	9.5	7.3	6.5	4.6	2.3

NEW YORK

Total	1,119,325		24.8	48.3	6.6	11.5	6.5	2.4
Receiving Service	507,910	45.4	56.9	44.8	40.9	37.9	31.4	24.5
Counseled	91,818	8.2	11.8	8.0	5.6	5.3	4.8	5.8
Referred (Non-Ag.)	350,848	31.3	40.4	31.2	26.0	24.9	21.1	14.5
Placed	177,645	15.9	21.9	14.9	13.5	12.7	10.9	8.0

PUERTO RICO

Total	280,610		33.8	47.2	5.9	8.0	3.9	1.2
Receiving Service	101,230	36.1	46.2	32.3	28.3	26.1	26.7	35.3
Counseled	10,578	3.8	5.9	2.9	2.4	1.8	1.5	1.2
Referred (Non-Ag.)	76,771	27.4	35.1	25.6	19.3	16.9	17.2	22.5
Placed	56,386	20.1	28.5	16.0	13.2	13.3	18.3	29.2

Table 5 (Continued)

REGION III

MARYLAND

Applicants

Selected Services	Total		Age - Percentage Distribution					
	Number	Percent	Under 22	22-39	40-44	45-54	55-64	65 and Over
Total	270,269		25.9	49.1	6.1	10.4	6.3	2.1
Receiving Service	79,412	29.4	37.1	30.0	26.3	21.5	14.8	12.0
Counseled	14,619	5.4	6.7	6.1	4.3	3.1	1.5	1.0
Referred (Non-Ag.)	62,499	23.1	30.7	23.0	18.5	16.5	12.4	10.7
Placed	33,510	12.4	17.0	11.9	10.2	8.9	6.9	7.1

PENNSYLVANIA

Total	682,209		31.1	44.8	5.9	10.4	6.0	1.9
Receiving Service	344,640	50.5	63.1	50.0	41.1	38.5	29.6	17.4
Counseled	57,591	8.4	9.2	9.1	7.6	6.8	4.9	2.7
Referred (Non-Ag.)	253,964	37.2	48.7	35.8	27.7	27.4	22.1	13.3
Placed	139,768	20.5	29.0	18.7	14.3	13.9	11.4	7.5

DELAWARE

Total	43,610		24.3	47.4	6.8	11.4	7.0	3.1
Receiving Service	13,715	31.4	53.8	30.0	20.0	16.8	10.9	4.3
Counseled	3,895	8.9	18.2	7.4	5.2	3.6	2.8	1.4
Referred (Non-Ag.)	10,024	23.0	35.6	23.2	15.6	13.8	8.5	2.8
Placed	5,226	12.0	21.9	10.7	7.9	6.2	4.2	1.6

DISTRICT OF COLUMBIA

Total	132,435		44.9	38.5	3.7	5.9	3.7	3.3
Receiving Service	55,163	41.7	53.6	35.8	29.1	26.6	18.5	14.8
Counseled	11,890	9.0	11.4	7.1	6.9	7.8	7.5	4.2
Referred (Non-Ag.)	43,733	33.0	45.7	25.9	19.4	17.0	11.0	11.2
Placed	28,178	21.3	35.2	11.1	9.6	8.4	5.2	4.7

Table 5 (Continued)

REGION III

VIRGINIA

Applicants

Selected Services	Total		Age - Percentage Distribution					
	Number	Percent	Under 22	22-39	40-44	45-54	55-64	65 and Over
Total	326,892		36.1	45.0	5.1	8.3	4.3	1.2
Receiving Service	155,127	42.7	52.1	48.8	41.7	37.0	26.8	28.5
Counseled	22,694	6.9	8.6	6.2	6.3	5.6	4.4	5.3
Referred (Non-Ag.)	121,748	33.5	40.4	38.8	31.3	28.6	21.7	24.2
Placed	71,704	21.9	25.3	21.8	18.3	16.4	12.3	14.8

WEST VIRGINIA

Total	187,997		33.6	46.2	5.3	9.0	4.8	1.1
Receiving Service	72,558	38.6	46.6	37.2	34.2	30.2	21.1	17.5
Counseled	10,879	5.8	6.1	6.1	6.2	5.0	2.7	2.2
Referred (Non-Ag.)	54,483	29.0	35.4	28.6	23.1	20.5	14.2	11.8
Placed	34,266	18.2	24.1	16.8	15.0	12.2	8.5	8.6

Table 5 (Continued)

REGION IV

ALABAMA

Applicants

Selected Services	Total		Age - Percentage Distribution					
	Number	Percent	Under 22	22-39	40-44	45-54	55-64	65 and Over
Total	350,869		40.8	40.2	5.2	8.2	4.4	1.2
Receiving Service	158,509	45.2	49.5	46.9	39.9	33.6	22.8	24.4
Counseled	19,335	5.5	7.2	5.2	3.2	2.7	1.7	2.7
Referred (Non-Ag.)	119,439	34.0	33.6	38.4	31.7	26.6	18.8	20.5
Placed	65,351	18.6	20.3	19.3	16.9	13.8	10.4	12.6

FLORIDA

Total	507,103		30.3	45.3	6.0	10.6	6.2	1.6
Receiving Service	268,189	52.9	63.0	52.6	44.2	42.3	35.9	38.0
Counseled	28,462	5.6	7.6	5.3	4.6	3.8	2.9	3.2
Referred (Non-Ag.)	219,337	43.3	51.4	43.3	34.2	33.9	30.0	32.6
Placed	10,797	21.3	26.6	20.8	16.7	16.2	13.2	16.0

GEORGIA

Total	398,048		34.0	46.3	5.7	8.5	4.5	0.9
Receiving Service	90,385	22.7	28.0	16.3	18.9	16.5	12.2	10.5
Counseled	25,489	6.4	6.9	7.0	5.2	4.2	2.5	1.6
Referred (Non-Ag.)	119,651	30.1	37.7	29.0	22.3	20.3	15.4	12.1
Placed	74,376	18.7	25.8	16.4	13.6	12.3	9.3	8.3

KENTUCKY

Total	287,868		34.6	44.3	6.0	9.3	5.0	0.9
Receiving Service	117,799	40.9	52.7	38.5	31.8	27.4	19.9	25.7
Counseled	24,394	8.5	14.1	6.0	5.9	4.5	2.5	2.1
Referred (Non-Ag.)	86,881	30.2	40.1	28.0	20.9	18.6	14.6	21.1
Placed	55,052	19.1	29.3	15.4	11.7	10.0	8.3	15.1

Table 5 (Continued)

REGION IV

MISSISSIPPI

Applicants

Selected Services	Total		Age - Percentage Distribution					
	Number	Percent	Under 22	22-39	40-44	45-54	55-64	65 and Over
Total	276,318		44.4	38.9	4.7	7.5	3.9	0.6
Receiving Service	159,448	57.7	59.7	60.3	53.6	47.0	37.6	43.0
Counseled	33,438	12.1	14.2	11.1	10.6	8.8	6.8	8.4
Referred (Non-Ag.)	109,900	39.8	37.0	46.0	38.6	32.8	26.0	29.4
Placed	78,623	28.5	27.7	31.6	26.9	23.1	18.7	22.1

NORTH CAROLINA

Total	403,573		32.1	46.8	5.7	9.4	4.9	1.1
Receiving Service	220,376	54.6	33.4	57.5	48.8	43.5	34.1	30.1
Counseled	18,509	4.6	5.5	4.4	3.8	3.8	3.0	2.1
Referred (Non-Ag.)	161,372	40.0	41.9	43.3	34.2	30.4	24.6	21.1
Placed	81,130	20.1	22.7	20.5	17.5	15.7	12.5	11.9

SOUTH CAROLINA

Total	233,299		33.0	45.8	5.9	9.5	5.0	1.0
Receiving Service	118,994	51.0	57.8	51.8	44.5	40.1	31.8	25.9
Counseled	13,124	5.6	7.7	5.2	4.0	2.5	6.7	2.1
Referred (Non-Ag.)	96,125	41.2	44.3	43.6	35.1	32.3	26.5	21.0
Placed	45,323	19.4	23.0	18.9	16.5	15.5	13.0	12.1

TENNESSEE

Total	331,185		33.5	46.1	5.7	8.7	4.8	1.2
Receiving Service	154,696	46.7	52.0	54.6	41.4	37.2	24.7	32.1
Counseled	14,233	4.3	4.3	4.6	4.4	3.9	2.1	2.1
Referred (Non-Ag.)	122,536	37.0	41.7	38.7	30.2	26.2	18.1	28.6
Placed	62,527	18.9	22.3	18.8	15.7	13.5	9.6	17.7

Table 5 (Continued)

REGION V

ILLINOIS

Applicants

Selected Services	Total		Age - Percentage Distribution					
	Number	Percent	Under 22	22-39	40-44	45-54	55-64	65 and Over
Total	816,575		26.1	47.7	6.3	10.8	6.4	2.6
Receiving Service	248,072	30.4	46.3	29.0	21.4	16.7	13.4	9.1
Counseled	49,806	6.1	8.6	6.4	4.7	3.4	1.8	1.1
Referred (Non-Ag.)	180,333	22.1	33.3	21.2	15.3	13.7	9.9	6.4
Placed	105,939	13.0	21.4	11.7	9.0	7.5	5.1	3.9
INDIANA								
Total	490,469		32.3	45.7	5.7	9.8	5.2	1.4
Receiving Service	190,984	38.9	53.7	35.9	27.0	24.0	18.6	18.7
Counseled	13,392	2.7	3.6	2.7	1.9	1.6	1.0	1.3
Referred (Non-Ag.)	171,375	34.9	49.0	31.9	23.9	21.2	17.1	17.7
Placed	87,743	17.9	27.8	14.8	11.1	9.9	8.0	9.4
MINNESOTA								
Total	343,800		40.3	42.6	4.1	7.4	4.6	0.9
Receiving Service	134,182	39.0	43.4	38.3	33.3	32.0	25.4	31.2
Counseled	16,742	4.9	4.6	5.5	5.7	4.6	2.1	1.1
Referred (Non-Ag.)	107,379	31.2	33.9	31.4	25.4	25.7	21.8	26.5
Placed	63,142	18.4	23.7	15.6	13.2	12.8	11.3	17.9
OHIO								
Total	735,352		28.2	49.4	6.0	10.1	5.3	1.0
Receiving Service	253,199	34.4	41.3	36.5	26.1	22.2	15.2	12.3
Counseled	28,962	3.9	4.0	4.6	4.0	2.5	0.9	0.3
Referred (Non-Ag.)	206,895	28.1	34.7	29.4	20.1	18.0	13.2	11.4
Placed	94,008	12.8	15.5	13.8	8.5	5.5	6.8	5.4

Table 5 (Continued)

REGION V

WISCONSIN

Applicants

Selected Services	Total		Age - Percentage Distribution					
	Number	Percent	Under 22	22-39	40-44	45-54	55-64	65 and Over
Total	320,481		36.3	44.9	4.5	7.7	5.0	1.6
Receiving Service	145,318	45.3	53.4	45.1	37.4	33.5	23.9	15.5
Counseled	16,501	5.1	6.0	5.1	4.5	4.2	2.8	0.9
Referred (Non-Ag.)	129,210	40.3	48.0	39.8	33.1	29.7	20.9	13.6
Placed	61,969	19.3	25.7	17.5	14.6	12.4	8.7	6.6

MICHIGAN

Total	769,495		27.4	51.1	5.6	9.4	5.1	1.3
Receiving Service	233,224	30.3	35.5	32.3	23.4	19.9	13.2	13.6
Counseled	33,704	4.4	5.2	4.8	3.4	2.5	1.2	1.2
Referred (Non-Ag.)	172,710	22.4	27.0	23.8	15.5	14.1	10.1	11.2
Placed	82,259	10.7	13.3	11.2	7.2	6.5	4.9	5.8

Table 5 (Continued)

REGION VI

ARKANSAS

Applicants

Selected Services	Total		Age - Percentage Distribution					
	Number	Percent	Under 22	22-39	40-44	45-54	55-64	65 and Over
Total	208,785		38.6	41.7	5.1	8.1	4.4	2.2
Receiving Service	114,341	54.8	57.6	56.6	49.9	46.3	35.3	51.5
Counseled	8,189	3.9	4.7	3.7	3.1	2.6	2.3	3.4
Referred (Non-Ag.)	93,665	44.9	45.8	47.9	39.6	36.6	28.1	46.1
Placed	58,002	27.8	29.2	28.9	24.8	22.3	17.3	30.3
LOUISIANA								
Total	318,541		31.8	46.1	5.5	9.2	5.6	1.7
Receiving Service	122,091	38.3	47.8	39.1	30.4	25.4	15.2	12.8
Counseled	10,655	3.3	3.8	4.0	2.8	1.3	0.5	0.5
Referred (Non-Ag.)	94,962	29.8	36.2	30.8	23.5	20.5	12.7	10.6
Placed	59,640	18.7	25.0	17.9	14.4	12.3	7.6	6.8
NEW MEXICO								
Total	177,209		33.2	48.6	4.9	7.7	4.3	1.3
Receiving Service	66,742	37.7	46.6	34.7	32.8	30.1	21.3	36.6
Counseled	8,232	4.6	5.7	4.7	3.7	2.9	1.3	2.4
Referred (Non-Ag.)	52,051	29.4	36.6	27.0	24.2	23.0	16.5	31.0
Placed	31,423	17.7	23.9	15.1	14.7	13.6	9.3	23.4
OKLAHOMA								
Total	277,796		29.6	46.6	6.2	10.4	6.0	1.2
Receiving Service	128,842	46.4	54.7	46.6	42.5	38.2	26.2	24.3
Counseled	23,551	8.5	10.5	8.4	8.4	6.2	3.7	3.9
Referred (Non-Ag.)	98,868	35.6	43.5	35.8	30.2	27.2	18.8	18.8
Placed	64,074	23.1	29.4	22.3	19.9	17.8	12.2	13.8
TEXAS								
Total	1,032,064		35.2	43.2	5.5	9.3	5.7	1.1
Receiving Service	586,358	56.8	29.4	61.0	55.5	51.2	38.3	44.6
Counseled	62,053	6.0	6.2	6.6	5.2	4.4	3.6	5.8
Referred (Non-Ag.)	499,609	48.4	48.9	52.3	45.4	42.1	31.6	36.0
Placed	250,693	24.3	25.5	25.3	23.2	21.8	15.6	18.9

Table 5 (Continued)

REGION VII

IOWA

Applicants

Selected Services	Total		Age - Percentage Distribution					
	Number	Percent	Under 22	22-39	40-44	45-54	55-64	65 and Over
Total	238,956		41.4	40.6	4.5	7.7	4.8	1.0
Receiving Service	129,202	54.1	59.1	54.1	47.4	44.1	35.6	40.4
Counseled	6,925	2.9	2.9	3.3	2.6	2.2	1.4	1.2
Referred (Non-Ag.)	104,007	43.5	51.4	41.8	33.2	29.8	23.9	31.9
Placed	70,124	29.3	39.6	24.4	19.5	16.4	13.8	23.0

KANSAS

Total	160,203		37.2	43.4	4.9	8.1	4.7	1.6
Receiving Service	83,939	52.4	57.0	53.0	47.6	45.1	35.4	28.8
Counseled	15,573	9.7	9.5	10.7	7.8	9.1	5.5	3.8
Referred (Non-Ag.)	67,393	42.1	47.2	42.1	35.4	34.2	27.8	23.5
Placed	38,369	24.0	29.2	22.4	19.3	18.4	14.8	14.7

MISSOURI

Total	439,896		37.6	43.0	5.2	8.5	4.6	1.0
Receiving Service	211,027	48.0	56.4	47.2	38.8	35.0	25.5	24.5
Counseled	20,239	4.6	4.7	5.0	4.2	3.7	2.7	2.6
Referred (Non-Ag.)	174,081	39.6	48.0	22.5	29.7	27.4	20.6	19.8
Placed	104,261	23.7	31.2	21.3	16.7	14.7	11.3	12.5

NEBRASKA

Total	100,770		40.6	41.3	4.6	7.7	4.4	1.3
Receiving Service	62,257	61.8	71.8	57.8	50.9	50.6	42.8	44.1
Counseled	7,577	7.5	7.5	8.5	6.8	5.5	4.5	2.5
Referred (Non-Ag.)	53,441	53.0	62.6	49.0	42.2	42.6	36.2	38.5
Placed	33,092	32.8	44.9	25.5	23.6	23.8	18.8	25.2

Table 5 (Continued)

REGION VIII

COLORADO

Applicants

Selected Services	Total		Age - Percentage Distribution					
	Number	Percent	Under 22	22-39	40-44	45-54	55-64	65 and Over
Total	272,757		31.1	51.8	5.0	7.8	3.7	0.6
Receiving Service	109,110	40.0	48.3	37.9	35.3	31.8	24.5	30.1
Counseled	15,805	5.8	7.3	5.2	6.4	5.4	2.8	2.7
Referred (Non-Ag.)	84,193	30.9	38.0	29.5	24.5	22.0	17.6	24.4
Placed	46,291	17.0	22.6	15.4	12.7	11.7	9.3	16.8
MONTANA								
Total	109,620		35.9	44.7	4.9	8.2	5.1	1.2
Receiving Service	45,600	41.6	49.6	40.5	33.5	31.6	23.4	26.3
Counseled	13,529	12.3	17.2	11.1	8.0	6.9	3.9	5.9
Referred (Non-Ag.)	30,343	27.7	32.1	27.9	22.5	20.0	14.5	17.0
Placed	27,156	24.8	29.0	24.0	20.3	20.0	15.9	17.5
NORTH DAKOTA								
Total	74,582		40.1	43.0	4.2	6.9	4.5	1.3
Receiving Service	44,097	59.1	66.1	60.0	46.6	42.5	33.5	34.7
Counseled	4,908	6.6	6.7	6.2	7.2	5.8	3.5	1.6
Referred (Non-Ag.)	35,651	47.8	52.0	50.4	34.9	32.2	26.7	29.1
Placed	23,286	31.2	39.1	28.8	20.1	18.8	16.7	23.5
SOUTH DAKOTA								
Total	73,492		40.8	41.9	4.4	7.2	4.6	1.1
Receiving Service	41,064	55.9	59.9	56.5	50.9	47.4	37.8	35.7
Counseled	7,368	10.0	9.9	10.6	11.8	10.1	6.0	3.0
Referred (Non-Ag.)	32,504	44.3	47.4	45.4	37.6	35.9	29.3	26.0
Placed	20,261	27.6	31.9	26.5	22.5	20.7	17.1	16.3

Table 5 (Continued)

REGION VIII

UTAH

Applicants

Selected Services	Total		Age - Percentage Distribution					
	Number	Percent	Under 22	22-39	40-44	45-54	55-64	65 and Over
Total	148,750		39.9	43.7	4.4	7.1	3.8	1.1
Receiving Service	83,978	56.5	61.3	56.9	51.0	45.7	33.5	31.7
Counseled	10,995	7.4	6.3	8.9	8.6	6.9	3.1	2.4
Referred (Non-Ag.)	69,860	47.0	50.5	48.0	41.3	37.6	28.5	26.4
Placed	37,714	25.4	28.6	25.0	22.2	19.2	13.7	13.7

WYOMING

Total	46,833		37.8	43.6	4.8	7.5	4.0	2.3
Receiving Service	25,744	55.0	59.6	54.8	50.6	46.3	38.0	49.2
Counseled	3,675	7.8	7.2	8.9	7.4	6.4	5.3	8.6
Referred (Non-Ag.)	21,498	45.9	51.3	45.1	40.8	36.1	30.0	42.4
Placed	15,152	32.4	36.8	30.8	27.9	26.2	23.4	34.0

Table 5 (Continued)

REGION IX

ARIZONA

Applicants

Selected Services	Total		Age - Percentage Distribution					
	Number	Percent	Under 22	22-39	40-44	45-54	55-64	65 and Over
Total	247,693		32.4	48.0	5.5	9.0	4.4	0.7
Receiving Service	134,030	54.1	63.2	52.5	47.1	44.6	36.8	32.9
Counseled	7,348	3.0	3.0	3.3	2.8	2.1	1.5	0.8
Referred (Non-Ag.)	114,766	46.3	53.3	45.5	39.5	38.2	31.9	29.4
Placed	63,003	25.4	30.2	24.3	22.2	21.1	16.8	17.6

CALIFORNIA

Total	1,887,471		26.3	50.7	6.5	10.4	4.9	1.2
Receiving Service	831,065	44.0	50.1	44.2	40.9	48.4	31.0	26.9
Counseled	48,187	2.6	2.5	2.9	2.4	2.0	1.5	1.0
Referred (Non-Ag.)	644,274	34.1	40.7	34.1	28.1	27.5	24.2	21.8
Placed	355,017	18.8	26.3	17.1	15.0	14.3	12.3	12.6

HAWAII

Total	101,143		29.2	48.7	4.8	8.4	6.5	2.3
Receiving Service	37,246	36.8	46.0	37.1	36.1	27.8	15.8	9.7
Counseled	4,819	4.8	7.0	4.3	4.6	3.3	1.3	0.7
Referred (Non-Ag.)	30,631	30.3	37.4	31.2	27.4	21.6	13.0	8.3
Placed	13,486	13.3	20.9	11.6	10.2	8.5	4.9	3.4

NEVADA

Total	97,806		23.5	46.8	7.2	13.1	7.6	1.9
Receiving Service	34,848	35.6	45.8	35.3	32.4	30.4	23.0	15.0
Counseled	3,722	3.8	4.5	4.0	4.0	2.8	2.3	1.6
Referred (Non-Ag.)	28,513	29.2	37.7	28.8	26.0	25.1	18.9	11.7
Placed	15,714	16.1	21.0	15.3	15.7	14.6	10.6	7.4

Table 5 (Continued)

REGION X

ALASKA

Applicants

Selected Services	Total		Age - Percentage Distribution					
	Number	Percent	Under 22	22-39	40-44	45-54	55-64	65 and Over
Total	51,866		29.4	52.5	5.4	8.3	3.6	0.7
Receiving Service	21,415	41.3	49.6	40.1	35.1	31.8	25.3	22.7
Counseled	1,707	3.3	3.2	3.6	3.3	2.6	1.8	0.5
Referred (Non-Ag.)	17,079	32.9	38.4	32.5	28.1	26.1	21.0	18.9
Placed	11,362	21.9	27.8	20.8	17.4	15.7	12.5	11.0

IDAHO

Total	124,505		34.9	43.4	5.5	9.3	5.8	1.1
Receiving Service	56,445	45.3	53.8	45.3	38.1	34.2	23.7	21.9
Counseled	5,721	4.6	4.7	5.2	4.8	3.4	1.8	1.0
Referred (Non-Ag.)	45,090	36.2	43.2	36.6	28.4	26.0	18.6	16.8
Placed	29,647	23.8	29.7	22.8	19.4	17.6	12.4	11.3

OREGON

Total	272,143		32.7	49.1	4.9	7.8	4.1	1.3
Receiving Service	133,472	49.0	51.1	49.2	48.6	46.8	38.6	38.8
Counseled	21,244	7.8	6.7	8.9	8.7	7.2	4.5	4.5
Referred (Non-Ag.)	99,090	36.4	38.0	36.9	34.2	33.3	28.5	31.0
Placed	62,171	22.8	25.8	21.5	22.1	21.9	18.9	20.6

WASHINGTON

Total	285,745		29.3	51.6	5.4	8.4	4.1	1.1
Receiving Service	155,101	54.3	59.4	52.8	54.5	52.8	44.1	34.9
Counseled	8,049	2.8	2.3	3.4	2.8	2.0	1.0	0.9
Referred (Non-Ag.)	110,852	38.8	40.8	39.5	36.5	35.6	30.0	22.3
Placed	75,329	26.4	32.9	23.3	25.6	25.7	23.2	19.2

III. OBSERVATIONS, CONCLUSIONS, RECOMMENDATIONS

While this is a statistical study utilizing ESARS data from the Office of Statistics and Research of the Manpower Administration of the U.S. Department of Labor, it has not been produced in a vacuum. NCOA staff over the past several years have worked with national and regional Manpower Administration officials and numerous administrators, older worker supervisors and specialists at the state and local levels of the Employment Service to upgrade services to older workers. We have found, in the great majority of instances, dedicated staff faced with enormous tasks and burdens, with all too few human and financial resources to do the job. We have found sympathetic Manpower Administration and ES personnel on all levels whose efforts to implement an older worker program have been diluted by multiple assignments and conflicting priorities.

Ideally, there are Manpower Administration officers at the national and regional levels who have responsibility for developing, implementing and monitoring an older workers program. On the state level there are, also ideally, ES older worker supervisors who see that the older worker programs are carried out. In each ES local office there should be a designated older worker specialist who sees that the state plan is implemented on the operational line. That is, the older worker specialist sees that the office staff, such as interviewers and counselors, are familiar with the characteristics and needs of middle-aged and older applicants and provide them with appropriate services. If staff training is required, the specialist arranges for it in cooperation with the state older worker supervisor and state training unit. In addition, the older worker specialist informs the office manager on problems, planning, etc., regarding the needs of older applicants.

All too often, this pattern disintegrates. At the national level, cutbacks in funding and personnel have necessitated assignment of national programs, including the older worker program, to only one staff member. At the regional level, the time and travel that regional personnel can allocate to the older worker program is sorely limited. A regional staff member may have responsibilities for the handicapped, veterans, youth and other programs, along with the older worker program. The State Employment Service staff face the identical problem. Often an older worker supervisor and older worker specialist will wear several hats and have responsibilities for the additional programs listed above. Indeed, we have found that at some local offices no staff member has been designated as the older worker specialist.

Conclusions

It is at the local office level, where the action is, that staff limitations and priorities take their greatest toll regarding middle-aged and older applicants. The ESARS statistics presented in this report indicate where middle-aged and older applicants stand as a result.

A distinct pattern of decline in ES services as the age of the applicant rises is affirmed by this second analysis of ESARS figures. This is clearly shown in the comparison of 1973 and 1974 national data in Chart 1. Data for the regions and the states all point to the same conclusion. Figures for selected special emphasis groups--veterans, the poor, minorities and WIN enrollees--repeat the general trend.

Within this general trend, there are important differences between the regions and the states. A large volume of applicants in a state appears to negatively affect the amount of services provided, although not always. Geography is another factor, since the western states usually out-perform the

midwest and east in the proportion of services provided. Geographical location by itself, of course, may not be the determining factor but may reflect underlying differences in ES office operations, applicant population and the labor market in different areas. Differences between the geographical areas should encourage an exchange of information between the state and regional ES administrators to determine why one area does much better than another and if its greater success can be copied elsewhere.

The finding that when middle-aged and older workers are referred to jobs they are placed as often as younger workers should prompt ES offices to refer higher proportions of qualified older applicants. The far lower proportion of referrals for the older group denies them the opportunity to compete for available jobs. Employers are forbidden to discriminate in hiring for reasons of age by the Age Discrimination in Employment Act, but ES offices should recognize that they may be encouraging covert discrimination by not referring older jobseekers as often as possible.

National manpower policies have emphasized job opportunities for Vietnam veterans, and services to these veterans in both younger and older age groups reflect the high priority given to them. There are few Vietnam veterans over 40, however, and the services provided to the over one million veterans of all wars over age 40 did not differ significantly from that given to all applicants. Since the debt owed to veterans of all the nation's wars would appear to be equal, ES officials should emphasize this fact. While giving priority to Vietnam veterans who may have adjustment problems that other veterans do not have, it should not be forgotten that veterans of other wars may be facing increased problems as they age.

Of the special emphasis groups, over-40 applicants enrolled in the WIN program received the smallest proportion of referrals and placements. This

is undoubtedly related to the special problems of poor and older women in the labor force and suggests greater attention to these problems in the services provided.

The emphasis given to job referrals and placements in the services provided to ES applicants is commendable, but the small amount of ancillary services such as counseling and testing raises questions as to their perceived role. If it is a function of the ES to provide such services for all applicants who need them in order to be referred to a job, there is a need to expand such services, since a large proportion of each age groups of applicants (particularly middle-aged and older applicants) are neither referred nor given any services. It is a known fact, furthermore, that many older workers who are seeking a job need help in adjusting to a labor market which may have significantly changed since they last had to look for a job.

Recommendations

Since ESARS II confirms that there is a downward trend in ES services to job seekers over age forty, greater emphasis on providing employment supports for these middle-aged and older Americans is obviously needed. The time has come for a general reassessment by the Manpower Administration of services to these persons.

1. It is recommended that the Manpower Administration, in cooperation with the State Employment Agencies, conduct a needs assessment on a state-by-state basis of the number of middle-aged and older persons needing assistance to enter or re-enter the labor force. This report and related ESARS data could be the starting point for such an assessment.
2. After assessing needs, State Employment Agencies should develop plans to meet the needs of older workers. They should also allocate sufficient staff and funds to implement these plans.

3. Where the deliverer of manpower services under the new Comprehensive Employment and Training Act (CETA) is not the State Employment Service, the Manpower Administration should advise prime sponsors not in the ES system that a plan of manpower services for middle-aged and older persons should be developed.

4. The Manpower Administration at the national and regional levels should coordinate all employment service and CETA manpower supports in order that middle-aged and older individuals obtain an equitable and proportionate share of these resources.

5. The Manpower Administration as well as State Employment Agency Administrators should strengthen program relationships with the Wage-Hour Division of the Employment Standards Administration which administers the Age Discrimination in Employment Act (ADEA) in order to more effectively remove employment barriers which relate to age discrimination.

6. State Employment Service Agencies should be regularly informed by the Manpower Administration of the development and funding of all manpower and other related programs which could positively affect employment opportunities for older persons.

7. Since the intent of Congress in passing and extending the Age Discrimination in Employment Act of 1967 was to cover a protected group of ages 40 to 65 and not 45 to 65, it is recommended that all state ESARS systems facilitate reporting methods so that age breakouts can be easily obtained on this specific group.

Appendix

Methodological Notes and Definitions

The ESARS data presented here were obtained from the Washington office of the Manpower Administration. As was true last year, three major service areas were selected for analysis by state: counseling, referral to a non-agricultural job and job placement. For the national analysis, certain other service areas were included: tested, enrolled in training, job development contacts and referred-agricultural. In addition, age and service breakdowns for selected special emphasis groups (veterans, Vietnam veterans, minorities, poor and WIN) have been added at the national level and for regions.

In the analysis of ESARS for fiscal 1973, data for the age groups 40-44 and 45-54 were combined. This year, detail for the age category 40-44 has been included to provide more information about an age group which, although protected by the Age Discrimination in Employment Act, is often combined with younger age groups.

It should be noted that the universe consists of all applicants who have been entered into the reporting system. The need for services among these applicants is not equal, and the number of total applicants may be over-stated because of problems of data collection, such as carrying over applicants from one fiscal year to another. Moreover, reporting errors are inevitable. It is questionable, for example, if there can be as many Vietnam veterans 65 and over as was reported, even though the total was small. Percentages and numbers should, therefore, be viewed not as exact but as presenting valid age and service trends.

Definition of Terms

RECEIVING SERVICE

Services refer to manpower activities related to training and employment efforts, such as those listed below, which are provided by employment service offices and which are designed to result in the training and/or employment of the applicant. Included among these services are the following:

> Counseling, testing, job development contact, enrollment in orientation, enrollment in training, referral to training, referral to supportive service, job referral, placement, followup contacts.

COUNSELED

An interview (1) in which a face-to-face discussion occurs between a specially trained or designated counselor in which the counselor helps the applicant resolve problems of vocational choice, vocational change, or vocational adjustment; and (2) which results in obtaining and recording on the applicant's card and/or other appropriate applicant records one or more of the following: (a) a summary statement to establish the existence of a vocational problem, (b) additional information contributing to a sharper definition of the problem or to its solution, (c) a statement of a vocational plan or recommendation for the solution of the problem, (d) a statement concerning the outcome and effectiveness of the counseling service elicited in the course of the followup.

TESTED

Measured an individual's possession of, or ability to acquire, job skills and knowledge.

ENROLLED IN TRAINING

An applicant for whom a notification or other specified form is received which indicates that the applicant is enrolled in the training designated on the form.

JOB DEVELOPMENT CONTACTS

A contact for the purpose of soliciting a public or private employer's order for a specific applicant for whom the local office has no suitable opening currently on file.

REFERRED

Arranged to bring to the attention of an employer (or another local office) an applicant who is available for a job under one of the following conditions:

1. An opening existed prior to the referral.
2. No opening existed but the employer actually hires the applicant.

NON-AGRICULTURAL (referrals)

An establishment primarily engaged in one of the major industry groups 08 through 99.*

AGRICULTURAL (referrals)

An establishment primarily engaged in agricultural production (major industry group 01*) or agricultural services and hunting and trapping (major industry group 07*).

PLACED

Hired for a job by an employer to whom an individual was referred by the employment office for a job or an interview, providing that the employment office completed all of the following steps: (a) made prior arrangements with the employer for the referral of an individual or individuals; (b) referred an individual who had not been specifically designated by the employer; (c) verified from a reliable source, preferably the employer, that the individual had entered on a job; and (d) recorded the transaction on an employer order form and other appropriate ES forms.

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*As classified by the 1967 Standard Industrial Classification manual.

Mr. HAWKINS. The final witnesses are Ms. Arlene T. Shadoan, staff attorney for the National Senior Citizens Law Center; and Holbrook Bradley, plaintiff in *Bradley* v. *Kissinger*. We will try to accommodate the two final witnesses.

The Chair regrets the time taken out by the recess which has certainly put a restraint on us. We certainly apologize for having kept you here and hope that you can, before the bells start ringing, get enough of your testimony to accommodate the committee.

We will hear from Ms. Shadoan first. Do you have a written statement?

Ms. SHADOAN. I have a prepared statement, Mr. Chairman.

Mr. HAWKINS. Your statement will be inserted in the record at this point. Ms. Shadoan, you may proceed.

[Prepared statement of Arlene T. Shadoan follows:]

PREPARED STATEMENT OF ARLENE T. SHADOAN, STAFF ATTORNEY, NATIONAL SENIOR CITIZENS LAW CENTER

Chairman Hawkins, and members of the subcommittee, my name is Arlene T. Shadoan. I am a staff attorney with the Washington Office of the National Senior Citizens Law Center. The Center is currently funded under two grants, one from the Legal Services Corporation and one from the Administration on Aging. Under the first grant, the principal function of the NSCLC is to provide technical assistance to Legal Services attorneys representing low income, elderly clients. Under the second grant, the principal function of the NSCLC is to provide technical assistance to state offices on aging and area agencies funded under Title III of the Older Americans Act with a view to expanding the delivery of legal services to the elderly.

Thank you for inviting the comments of the National Senior Citizens Law Center on H.R. 14879, which would amend the federal Age Discrimination in Employment Act by removing the upper age limit to the Act's protections with respect to federal government employees, as defined in 29 U.S.C. § 633a(a). The NSCLC has maintained a continuing interest in the subject of age discrimination in employment, has monitored all the important legislative and litigative developments, and has participated in litigation under the Act and in cases questioning the constitutionality of laws requiring the mandatory retirement of public employees. The United States Supreme Court, in its past term, has ruled that, at least under certain circumstances, state mandatory retirement laws are constitutional, thus underscoring the need for congressional attention to this important question. I believe I am correct in assuming that this hearing will produce a substantial volume of non-legal data and analysis; therefore, I will confine my remarks to what we feel are important legal considerations.

The following comments will be addressed to the subject of mandatory retirement because experience has shown that it is the most pervasive form of age discrimination in employment and presents the major legal problems. It is believed free from doubt that 29 U.S.C. § 633a, which provides in pertinent part that: "All personnel actions . . . [affecting federal government employees] . . . shall be made free from any discrimination based on age" condemns mandatory retirement based upon age. Elsewhere in the Act, Congress has provided, with reference to private and state employers, that to discharge any individual because of such individual's age is an unlawful form of age discrimination, 29 U.S.C. § 623(a); and a general prohibition of "any discrimination based on age" would, therefore, necessarily include discrimination in the form of mandatory retirement. Accordingly, it is believed the only reasonable interpretation of the federal Age Discrimination in Employment Act, as amended by the Fair Labor Standards Amendments of 1974, is that it superceded all then existing legislation providing for mandatory retirement of federal employees at ages less than 65.

Running throughout the United States Code are numerous statutes providing for mandatory retirement at ages below 65. For example, the prescribed retirement age for regular Army officers below the grade of Major General is 60, 10 U.S.C. § 3883, the same age specified for foreign service employees, 22 U.S.C. § 1002. The prescribed age for air traffic controllers is 56, unless the individual is exceptional, 5 U.S.C. § 8335(f), and for law enforcement officers and firefighters the age is 55

years unless continued employment would be in the "public interest," 5 U.S.C. § 8335(g). The 1974 amendments to the federal Age Discrimination in Employment Act presumably have superceded those statutes, among many others ,although at least one court has taken a contrary view. In *Holbrook* v. *Kissinger*, Civ. No. 76–0085, the United States District Court for the District of Columbia, in an interlocutory order held that the foreign service mandatory retirement statute prevailed over the federal Age Discrimination in Employment Act, using the rationale that the specific prevails over the general. It is believed that H.R. 14879 might appropriately be amended to make specific the fact that the federal Age Discrimination in Employment Act means what it says. It goes without saying that such clarification would not result in decrepit fire fighters or senile air traffic controllers, since other provisions of the Act permit personnel actions based upon age where age is a bona fide occupational qualification, and an individual can always be discharged for cause, which would include an inability to safely and adequately perform a job.

The effect of H.R. 14879 should be the salutary one of completely eliminating, with respect to federal government employment, retirement policies predicated upon erroneous age-based stereotypes. The present general mandatory retirement age of 70 for federal government employees, 5 U.S.C. § 8335(a), would be eliminated and in the future those employees would be entitled to evaluation based upon their individual merit. The Committee will undoubtedly hear the view of social scientists and members of the medical profession concerning the desirability of that objective. For the purposes of this testimony, it is believed appropriate to suggest that the proposed amendment unequivocally express the intent of Congress that the mandatory retirement age of 70 is no longer viable. Because of the litigation discussed above, it is easy to anticipate that if such an intent is not made clear further uncertainty will result.

The NSCLC is presently involved in litigation surrounding the "bona fide employee benefit plan" exception to the Act. Contrary to congressional intent, as reflected in legislative history, several courts and the Department of Labor have construed the employee benefit plan exception to the Act as permitting involuntary retirement even within the protected age group if effected pursuant to such a plan. The issue involves a lengthy analysis, and I request permission to enter into the record a copy of the brief filed by our program with the Ninth Circuit Court of Appeals. The Department of Justice has decided not to resist the appeal and has offered to settle the case, reinstating our client with back pay, provided the appeal is dismissed. Under the circumstances, we will thus be unable to get a decision from the Ninth Circuit, and feel that further "mooting out" of cases raising similar issues should be forestalled legislatively. We suggest, therefore, that H.R. 14879 might be a vehicle to explicate the fact that, at least with respect to federal government employees, it is not permissible to circumvent the spirit and intent of the Act through the expedient of a pension plan providing for mandatory retirement at any age within the Act's protections; in other words, at any age whatsoever if the upper age limit of 65 years of age be removed.

The foregoing is an evaluation of what the NSCLC believes are the important legal issues surrounding the bill now before the Subcommittee. I would like to conclude my remarks with several general observations concerning legislation aimed at combating employment discrimination based upon age. The first deals with money. The Act now contains an appropriation authorization of $5 million per year for enforcement activities by the Department of Labor and the Civil Service Commission and the current appropriation and supplemental appropriation total only approximately $2 million. We believe that this sum of money is unrealistically low, given the magnitude of the problem and the large number of federal, state, and private sector employees theoretically protected by the Act.

Secondly, the federal Age Discrimination in Employment Act contains no affirmative action requirements comparable to those contained in Title VII of the Civil Rights Act of 1964, which bans employment discrimination based upon race, creed, color and sex. We believe that is a deficiency which should be remedied, and the remedy could take the form of an amendment to Title VII of the Civil Rights Act which would add the word "age" to the enumeration of prohibited classifications. In addition to introducing affirmative action requirements with respect to age-based employment practices, such an amendment would have the advantageous effect of consolidating enforcement activities aimed at combating employment discrimination in a single agency, the Equal Employment Opportunity Commission.

Finally, and with respect to employees of state and local governments, we observe that the 1974 Amendments to the federal Age Discrimination in Employment Act, which embraced those employees, as well as federal government employees, amendments were accomplished through the Fair Labor Standards Amendments of 1974. That fact is significant, because the United States Supreme Court, in its last term, declared unconstitutional those provisions of the FLSA Amendments of 1974 which extended minimum wage and overtime compensation strictures to employees of state and local governments. *National League of Cities* v. *Usery*, 44 U.S.L.W. 4974 (June 24, 1976). The NSCLC has analyzed the question of whether that decision casts any doubt upon the constitutional validity of the amendments, insofar as they extend the protections of the federal Age Discrimination in Employment Act to state and local government employees. Our conclusion is that the *National League of Cities* decision has no application to the federal Age Discrimination in Employment Act, and that those amendments are clearly valid; I also request permission to enter into the record a copy of a memorandum setting forth our reasoning and conclusion.

Thank you very much for the opportunity to comment upon H.R. 14879.

STATEMENT OF ARLENE T. SHADOAN, STAFF ATTORNEY, NATIONAL SENIOR CITIZENS LAW CENTER

Ms. SHADOAN. Mr. Chairman and members of the committee, I will try to depart from my prepared statement, in order to make it shorter, with the hope that I can stimulate some questions that you can either ask orally or present to me in writing.

Mr. HAWKINS. I hope that time will permit the members to question both of you.

Ms. SHADOAN. My name is Arlene T. Shadoan. As you know, I am a staff attorney with the National Senior Citizens Law Center here in Washington. Our main offices are in Los Angeles, Calif.

Since we have not testified before this committee in the past, just let me shortly give you an idea of how we are funded:

First. We have a grant from the Legal Services Corporation to provide technical services to Legal Services offices all over the country regarding legal issues affecting the elderly poor.

Second. We have a grant from the Administration on Aging to provide technical services to certain area agencies to help increase the delivery of legal services to the elderly of all ages, because we recognize that not only the elderly poor need legal services, but all of the elderly need legal services and are not getting them.

We thank you for inviting our comments on H.R. 14879, which would amend the Federal Age Discrimination in Employment Act by removing the upper age limit to the act's protections with respect to Federal Government employees, as defined in 29 U.S.C. 633a(a).

We have maintained a continuing interest in age discrimination. We have monitored the legislation, the regulations, litigation, and have participated in age discrimination litigation.

I will confine my remarks to what we feel is important legal consideration regarding mandatory retirement. I am sure that you have heard from Mr. Ossofsky enough regarding the effects of mandatory age discrimination—physically and emotionally—upon the older person, the wasted economic resources, not to mention the economic problems it causes the elderly, which I don't think really was touched upon.

Now, I want to discuss and emphasize two interrelated issues. Although I am tempted to answer one of Mr. Buchanan's questions, I will restrain myself at this time. They are mandatory retirement and the bona fide retirement plans, both of which have been mentioned, and both of which are the most pervasive form of age discrimination.

It would seem that 29 U.S.C. 633a, which provides in pertinent part that: "All personnel actions affecting Federal Government employees shall be made free from any discrimination based on age," which would condemn mandatory retirement based on age.

Elsewhere in the act, Congress has provided, with reference to private and State employers, that to discharge any individual because of such individual's age is an unlawful form of age discrimination.

Thus, discharging an employee pursuant to a pension plan is an unlawful form of discrimination against age.

It is believed that the only reasonable interpretation of the Federal Age Discrimination in Employment Act, as amended by the Fair Labor Standards Amendments of 1974, is that it superseded all then existing legislation providing for mandatory retirement of Federal employees at ages less than 65.

However, as the chairman knows from previous testimony, including testimony before you in February of this year, the United States Code is replete with sections requiring mandatory retirement of Federal employees under the age of 65. These include the prescribed retirement for regular officers below the grade of major general, which is 60; the prescribed age for air traffic controllers, which is 56, unless the individual is exceptional. For law enforcement officers and firefighters, the age is 55 years unless continued employment would be in the public interest.

It is believed that H.R. 14879—if I had more time, I would like to get into the argument of whether or not the statutes conform to the bona fide occupational employment qualifications, but I do not have that time. All I wish to say, as the chairman and the members of this committee already know, under title VII, the BOQ has been employed and interpreted very narrowly by the courts.

Therefore, it is believed that H.R. 14879 might appropriately be amended to make specific the fact that Federal Age Discrimination in Employment Act means what it says. It goes without saying that such clarification would not result in decrepit firefighters, or senile traffic controllers, since the bona fide occupational qualification exists and an individual can always be discharged for cause, which would include the inability to safely and adequately perform a job, as Mr. Ossofsky has already mentioned.

The effect of H.R. 14879 should be the salutary one of completely eliminating, with respect to Federal Government employment, retirement policies predicated upon erroneous age-based stereotypes.

This provision of the act that a bona fide retirement plan is an exception to the Age Discrimination in Employment Act has been upheld, I would say, rather casually by the courts, the words "bona fide" meaning "in good faith."

Therefore, the courts have said: Well, if a retirement plan allows for, or mandates the retirement of, a person of 62 or 60, these were initiated in good faith and, thus, the person can be retired at age 60, 62, or 55, whatever.

We maintain that the legislative history does not, or Congress does not, force this conclusion by the courts. Now in the case of *Bradley* v. *Kissinger* this is exactly what they did. The major ruling was that the retirement plan for Foreign Service officers and officers of the Information Agency would be age 62, although the courts in very persuasive dicta said that this provision did not conflict—the statutory provision did not conflict with the Age Discrimination in Employment Act, or the Age Discrimination in Employment Act did not supersede this act because the more specific prevails over the general.

I say that this is hogwash, it is dicta, it is very persuasive, which Congress can and should be urged to remedy by specifically writing legislation saying that the Federal Age Discrimination in Employment Act supersedes all other mandatory provisions or retirement plans which, in effect, require mandatory retirement because of age.

Now, I do want to make the rest very brief, but I do want to make a couple of points. We are presently engaged in litigation surrounding the bona fide retirement in bona fide employee benefit plans. We had pending before the ninth circuit a case entitled *Deutsch* v. *Vanderberg Air Force Base Exchange*, which challenges a similar statute that has affected Mr. Bradley.

The issue involved a lengthy analysis. I was going to go into it. I was going to point out and I urge you to read Ron James' testimony again before you in February. He is the Administrator of the Wage and Hour Division of the Department of Labor. He, himeslf, challenges the Secretary of Labor's regulations under the Age Discrimination in Employment Act regarding the bona fide employee retirement plan.

I will not go into the facts of the case in which the issue is raised, but I ask that it be submitted for the record.

Mr. HAWKINS. Without objection, it will be entered in the record at this point.

[Document follows:]

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

KARL DEUTSCH, Plaintiff-Appellant, vs. VANDENBERG AIR FORCE BASE EXCHANGE, a federal military non-appropriated fund activity, and the ARMY and AIR FORCE EXCHANGE AND MOTION PICTURE SERVICES, Department of the Army and Air Force, Defendants-Appellees.	]]]]]]]]]]]]	NO. 76-1803

Appeal from the United States District Court
for the Central District of California

APPELLANT'S OPENING BRIEF

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

KARL DEUTSCH, Plaintiff-Appellant, vs. VANDENBERG AIR FORCE BASE EXCHANGE, a federal military non-appropriated fund activity, and the ARMY and AIR FORCE EXCHANGE AND MOTION PICTURE SERVICES, Department of the Army and Air Force, Defendants-Appellees.	]]]]]]]]]]]]]	NO. 76-1803

ISSUES PRESENTED FOR REVIEW

1. Whether 29 U.S.C. §623(f)(2) of the Federal Age Discrimination in Employment Act of 1967, which permits, as an exception to the Act, employers to observe the terms of a bona fide employee benefit plan renders lawful the involuntary retirement of a protected employee before the age of 65 years.

2. Assuming involuntary retirement before the age of 65 is lawful under the exception to the Act embodied in 29 U.S.C. §623(f)(2), whether the appellant has stated a claim for relief by alleging that his early retirement was mandated by a military regulation and by alleging further that the employee benefit plan did not require retirement but, rather, was tailored to the requirements of the military regulation.

3. Whether the exception to the Act embodied in 29 U.S.C. §623(f)(2) is available to federal military non-appropriated fund activities which, by virtue of 1974 amendments to the Act, have been interdicted from employment discrimination based upon age.

STATEMENT OF THE CASE

This is an appeal from an order of the lower court granting the appellees' (hereafter defendants) motion to dismiss the appellant's (hereafter plaintiff) complaint for failure to state a claim upon which relief can be granted.[1/]

[1/] The defendants' motion to dismiss also challenged the court's jurisdiction over the suit but it is believed this appeal presents no jurisdictional issue for at least three reasons. In the first place, the lower court's order was expressly predicated upon the substantive issues. See Order of Dismissal entered February 24, 1976, R. 107, 108. Secondly, jurisdiction over suits on behalf of federal employees under the Act is expressly granted to federal district courts, 29 U.S.C. §633a(c), and the record conclusively establishes that a complaint was seasonably filed with the Civil Service Commission as required by 29 U.S.C. §633a(d). See Certified Administrative Record, R. 29, 30, 31. Finally, while the

The factual allegations of the plaintiff's complaint, which for present purposes are assumed true, Cruz v. Beto, 405 U.S. 319 (1972); Walling v. Beverly Enterprises, 476 F.2d 393 (9th Cir. 1973), are short and uncomplicated. After twelve years of employment by the Vandenberg Air Force Base Exchange the plaintiff was involuntarily retired effective June 1, 1974, the month following his 62nd birthday. R. 2. The Vandenberg Air Force Base Exchange is a military non-appropriated fund activity subject to military regulations, including Air Force Regulation 147-15, which provides that, unless an extension be granted, employees must be retired upon attaining the age of 62. R. 2. Civilian employees of non-appropriated fund activities are covered by a contributory retirement plan which provides, in relevant part:

1/ (continued)
defendants argued below that a notice of intent to sue was, as a matter of law, required in addition to a complaint filed with the Civil Service Commission, that argument involved a disputed question of fact which was not addressed by the lower court. See Defendants' Memorandum of Points and Authorities, pp. 6-8, R. 12, 13, 14; Plaintiff's Memorandum of Points and Authorities, pp. 1, 2, R. 92, 93; Defendants' Reply Memorandum of Points and Authorities, pp. 2, 3, R. 104, 105.

> "Your normal retirement date is the first day of the month following your 62nd birthday....
>
> ...
>
> An employee who is permitted to continue in service after attaining age 62 will continue to make regular contributions and accrue additional retirement credits until the actual date of termination of employment." R. 2, 3.

Before the plaintiff's retirement date, he unsuccessfully attempted to retain employment through his union, the National Federation of Federal Employees, and after the retirement date he sought administrative redress under the Federal Age Discrimination in Employment Act of 1967 by filing a complaint with the United States Civil Service Commission. R. 2, 3.

ARGUMENT

I. INTRODUCTION

This case presents an important question of statutory interpretation under the Federal Age Discrimination in Employment Act of 1967, 29 U.S.C. §§621-634 (hereafter the "Act"). The principal question arises from what will be referred to herein as the "bona fide employee benefit plan exception" and a subsidiary question flows from the unique treatment accorded federal employees in the Act's definitions and elsewhere. The plaintiff will show that an early interpretive regulation issued by the Secretary of Labor was, and remains, inconsistent with both the language of the Act and the unequivocally expressed legislative intent underlying the employee benefit plan exception. As a result, several courts, including the lower court, confused an effort by Congress to encourage the employment of older workers with congressional sanction of the most pernicious form of age discrimination, i.e., forced early retirement because of age. That issue is dispositive of the instant case, but the plaintiff will argue in the alternative that, in any event, the lower court erred under the factual posture of the litigation. The pertinent statutory language and administrative regulation comprise few, uncomplex words, and in the interests of clarity the plaintiff will comply with Rule 28(f) of the Federal Rules of Appellate Procedure

by reproducing them as they become relevant to the argument.

II. THE EMPLOYEE BENEFIT PLAN EXCEPTION TO THE FEDERAL AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967 DOES NOT PERMIT INVOLUNTARY RETIREMENT BEFORE THE AGE OF 65.

The Act, which protects individuals "who are at least 40 years of age but less than 65 years of age," 29 U.S.C. §631, provides, in relevant part:

> "It shall be unlawful for an employer - to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age;..." 29 U.S.C. §623(a)(1).

The following exception to that broad prohibition underlies the instant appeal:

> "It shall not be unlawful for an employer ... to observe the terms of a bona fide seniority system or any bona fide employee benefit plan such as retirement, pension, or insurance plan, which is not a subterfuge to evade the purposes of this chapter, except that no such employee

benefit plan shall excuse the failure to hire any individual;..." 29 U.S.C. §623(f)(2).

In 1969 the Secretary of Labor offered the following interpretive regulation which has not, at least as of yet, been changed or rescinded:

> "(a) Section 4(f)(2) of the Act provides that 'It shall not be unlawful for an employer, employment agency, or labor organization *** to observe the terms of *** any bona fide employee benefit plan such as a retirement, pension, or insurance plan, which is not a subterfuge to evade the purposes of this Act, except that no such employee benefit plan shall excuse the failure to hire any individual***.' Thus, the Act authorizes involuntary retirement irrespective of age, provided that such retirement is pursuant to the terms of a retirement or pension plan meeting the requirements of section 4(f)(2). The fact that an employer may decide to permit certain employees to continue working beyond the age stipulated in the formal retirement program does not, in and of itself, render an otherwise bona fide plan invalid insofar as the exception provided in section 4(f)(2) is concerned.

"(b) This exception does not apply to the involuntary retirement before 65 of employees who are not participants in the employer's retirement or pension program." 29 C.F.R. §860.110.

The Secretary's interpretation comports with neither the language of the Act nor with recorded legislative history; the former will be discussed first. Employers are prohibited by the Act from engaging in two distinct categories of discrimination, one of which is concerned with employment as a status, the other with the circumstances incident to that status. Specifically, there is a fundamental distinction between hiring or discharging an employee and dealing with an existing employee in respect of "compensation, terms, conditions or privileges of employment." 29 U.S.C. §623(a)(1). While the latter attributes of employment, once the status obtains, are important, they pale in significance to the existence or non-existence of a job. In the language of the American Medical Association Committee on Aging:

"Compulsory retirement on the basis of age will impair the health of many individuals whose job represents a major source of status, creative satisfaction, social relationships or self-respect. It will be equally disastrous for the individual who works only because he has to and who has a minimum of meaningful goals or interests in life, job related or

otherwise. Job separation may well deprive such a person of his only source of identification, and leave him floundering in a motivational vacuum with no frame of reference whatsoever.

"There is ample clinical evidence that physical and emotional problems can be precipitated or exacerbated by denial of employment opportunities. Few physicians deny that a direct relationship exists between enforced idleness and poor health. The practitioner with a patient load comprised largely of older persons is convinced that the physical and emotional ailments of many of these patients are a result of inactivity imposed by denial of work. Physicians generally agree that chronic complaints develop more frequently when a person is inactive and without basic interests. It is easy for the unemployed, unoccupied person to over-concern himself with his own normal physiological functions, and to exaggerate minor physical or emotional symptoms." See Retirement, A Medical Philosophy and Approach, AMA Committee on Aging, pages 2-3 (reproduced in appendix).

In Hodgson v. American Hardware Mutual Insurance Co., 329 F. Supp. 225 (D. Minn. 1971), the court observed:

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> "...[C]onceptually there is no difference between a mandatory retirement age of sixty-two and a refusal to hire anyone who is sixty-two years old...." 329 F. Supp. at 229.

The question which thus arises is how Congress could have seen fit to allow age discrimination through mandatory retirement before age 65 of an existing employee while prohibiting the use of age as an employment criterion for new applicants of the same age and, indeed, for the same retired employee if he asks for his job back.

The Act's proviso: "except that no such employee benefit plan shall excuse the failure to hire any individual" (emphasis added) applies, by its terms, to an individual who is retired pursuant to a benefit plan requiring involuntary retirement before the age of 65 as well as to a new applicant; such an individual could reapply for work the next day and be surrounded by the protections of the Act.[2/] That such a congressional purpose could have existed is inconceivable.

Aside from what may be logically deduced from the face of the employee benefit plan exception, further statutory evidence refutes the validity of the Secretary's interpretation.

[2/] The Secretary of Labor agrees that the Act requires such a result. Brennan v. Taft Broadcasting Company, 500 F.2d 212 (5th Cir. 1974), to be treated in detail infra.

The Act provides elsewhere:

> "The Secretary of Labor is directed to undertake an appropriate study of institutional and other arrangements giving rise to involuntary retirement, and report his findings and any appropriate legislative recommendations to the President and to the Congress." 29 U.S.C. §624.

A desire to obtain further information concerning "institutional and other arrangements giving rise to involuntary retirement" certainly negates the existence of a congressional purpose to sanction involuntary retirement of individuals within the protected age group when effected pursuant to a pension or other retirement plan. It is submitted, therefore, that had Congress intended to treat an existing employee less favorably than a new applicant for employment, it would have done so expressly and unequivocally, which it did not.

The true meaning of and intent behind the employee benefit plan exception is so well documented that the Secretary's interpretation must be attributed to inadvertence. By engrafting the exception upon the Act, Congress removed a rather substantial problem which was foreseen during the hearings and investigations underlying the legislation. In the event employers were required to enroll older workers in pension plans or group health insurance plans it was anticipated that the costs of such plans would escalate, and employers would be discouraged from adopting them. In the

language of Congressman Daniels in a speech given at the time the House passed the bill:

> "The point should be made, however, that the bill takes into full consideration the problems and interests of employers. It allows for situations in employment where age is a bona fide occupational qualification for a particular job. It also takes account of the problems of employers in the field of pension and other benefit plans. The bill would permit the hiring of older workers without requiring that they necessarily be included in all employee benefit plans. This provision is designed to maximize employment possibilities without working an undue hardship on employers in providing special and costly benefits." 113 CONG. REC. 34,746 (1967).

Congressman Dent added the following observation:

> "It is important to note that exception (3) applies to new and existing employee benefit plans, and to both the establishment and maintenance of such plans. This exception serves to emphasize the primary purpose of the bill - hiring of older workers - by permitting employment without necessarily including such workers in employee benefit

> plans. The specific exception was an amendment to the original bill, is considered vital to the legislation, and was favorably received by witnesses at the hearings." CONG. REC., supra at 34,747.

Congressman Randall, in his remarks, introduced into the record with no challenge to its accuracy an article in the Prentice-Hall Lawyers Weekly Report which described the bill, in part, as follows:

> "However, there would be these exceptions:
> (1) When age is a bona fide occupational qualification.
> (2) Companies wouldn't have to take recently hired older workers into their pension plans.
> (3) Seniority rules that apply to newly hired older workers." CONG. REC., supra at 34,752.

Most significantly, the entire series of speeches given in connection with passage of the bill are devoid of any hint that the employee benefit plan exception would legalize involuntary retirement before the age of 65. CONG. REC., supra at 34,738-34,753. The House Committee Report accompanying the Act when it became law reiterates the above expressed congressional intent. H.R. REP. NO. 805, 2 U.S. CODE CONG. & AD. NEWS, 90th Cong., 1st Sess., 2224 (1967).

In short, it is indisputable that the sole purpose of the employee benefit plan exception was to sanction

discrimination with respect to "compensation, terms, conditions or privileges of employment," 29 U.S.C. §623(a)(1), and not with respect to hiring and discharge practices. In Hodgson v. American Hardware Mutual Insurance Co., supra, 329 F. Supp. 225 (D. Minn. 1971), the court held that a pension plan requiring mandatory retirement at the age of 62 could not be used to justify compulsory retirement at that age of an employee who was not enrolled in the plan. The court did not challenge the Secretary of Labor's interpretive regulation, insofar as it applied to employees enrolled in a benefit plan, but at the same time it expressly acknowledged the underlying congressional purpose:

> "... A requirement that newly hired older workers be entitled to the same retirement benefit provisions as younger ones would make the cost of funding such retirement plans prohibitive and discourage employers from adopting them...." 329 F. Supp. at 229.

The question remaining is whether Congress fell so short of saying what it meant that the "plain meaning" axiom of statutory construction precludes resort to legislative history for interpretive guidance. As stated earlier, it is submitted that, on the contrary, when read as a whole the Act requires the conclusion that an employee benefit plan cannot be used to legalize involuntary retirement before the age of 65. At the very least, the proviso "except that no such employee benefit plan shall excuse the failure to hire

any individual" introduces an ambiguity because of the right of a retired employee to reapply for his job. The remarks of Congressman Smith at the time the House passed the bill are noteworthy:

> "Since the language of Sec. 4(f) is not clear, the language of the report is important. The report states that: 'This exception serves to emphasize the primary purpose of the bill - hiring older workers - by permitting employment without necessarily including such workers in employee benefit plans.'" CONG. REC., supra at 34,745.

The plaintiff believes that the only decision which directly confronted the present issue is Brennan v. Taft Broadcasting Co., 500 F.2d 212 (5th Cir. 1974).[3/] Paradoxically, the court chose to apply the "plain meaning" axiom of statutory construction where the meaning was not clear, and chose to rely upon presumed legislative intent where the

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[3/] In Steiner v. National League, 337 F. Supp. 945 (C.D. Cal. 1974), the court assumed the validity of the Secretary's interpretive regulation and the issue in the case revolved around the "bona fide" nature of the pension plan. In DeLorraine v. MEBA Pension Trust, 499 F.2d 49 (2nd Cir. 1974), the court commented upon the issue but did not reach it, deciding the case on other grounds. 499 F.2d at 51, n. 7.

plain meaning was clear. The Secretary of Labor had instituted suit in behalf of a 60-year old employee involuntarily retired under a profit sharing plan providing for normal retirement at the age of 60, although the plan did not specifically state that retirement was mandatory. The Secretary argued that the plan was not "bona fide" because of uncertainty regarding the mandatory retirement age and argued further that the employer was required, under the Act, to consider the retired employee's application for reemployment. As did the court in Hodgson v. American Hardware Mutual Insurance Co., supra, the court acknowledged the existence of legislative history revealing a congressional purpose to protect "plans which in the absence of the (f)(2) exception would be too costly for the employer to maintain," 500 F.2d at 216, but did not feel it was germane:

> "... It is hardly reasonable to require persons affected by legislation to delve into voluminous and conflicting collections of speeches to determine whether what a statute plainly says is what it really means." 500 F.2d at 217.

To the Secretary's argument that the employee should be reconsidered for employment under the provision "no such employee benefit plan shall excuse the failure to hire any individual," the court responded:

> "... If retired employees must be rehired immediately, the right to insist on compliance with a plan is an illusion. Congress could not have possibly intended, or directed,

such a contradictory, irreconcilable result...." 500 F.2d at 218.

The court's confusion in Taft Broadcasting speaks for itself. As stated earlier, even a signatory to the legislation felt the exception "is not clear" and the proviso relating to rehiring at least introduces an ambiguity. Furthermore, far from manifesting "conflicting collections of speeches" the legislative history reflects unanimity concerning the meaning of the employee benefit plan exception. Finally, it is inherently inconsistent to predicate a decision upon the supposed "plain meaning" of one passage of a statutory provision and to find that Congress did not mean what it said with respect to another passage within the same sentence.

Therefore, Taft Broadcasting was, it was submitted, erroneously decided and should not be followed by this court. The fact that suit was instituted in that case by the Secretary of Labor is significant, in that his theoretical position was irreconcilable with the interpretive regulation discussed earlier.[4/] The court in Taft Broadcasting was

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[4/] Indeed, it would seem the Department of Labor has unequivocally expressed disagreement with its own interpretative regulation. On February 9, 1976, at a hearing before the Subcommittee on Equal Opportunities of the House Committee on Education and Labor (on H.R. 2588, which would remove the 65 year old upper limit on the Act's protections), Ronald J. James, Administrator,

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correct in observing that Congress could not have intended that an involuntarily retired employee could reapply for his job and become surrounded by the protections of the Act;

4/ (continued)

Wage and Hour Division, Employment Standards Administration, Department of Labor, stated:

> "A major area of continuing concern is the problem of involuntary retirement prior to age 65. Many pension plans permit the employer - at his option - to force the retirement of any employee who is 55 or over - or in some cases who is 60 or over - without regard to the quality of performance or to any other factor other than age.
>
> "As you are probably aware, it is the Department's position that such forced retirements prior to age 65 are illegal. To allow such retirements, under section 4(f)(2), without a clear economic justification based on the need to preserve the economic integrity of the penson plan - and no economic justification has been advanced - creates a large loophole in the act's protection.
>
> "This is especially so in light of our experience that the highest incidence of ADEA violations

Congress did not intend that any employee under the age of 65 would be subject to involuntary retirement. Since the interpretive regulation is persuasive only to the extent it comports with the law, see, e.g., Hodgson v. Greyhound Lines, Inc., 499 F.2d 859 (7th Cir. 1974); Brennan v. Paragon Employment Agency, Inc., 356 F. Supp. 286 (S.D. N.Y. 1973), it is submitted this court should disregard the Secretary's

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4/ (continued)

occur between the ages of 55 and 65. "Thus, in our cases involving discriminatory discharges and reductions in force, about 70 percent of the affected employees are between the ages of 55 and 65. This group, as was brought out in the hearings which preceded the enactment of the ADEA, is the group which remains unemployed the longest and heads up the largest percentage of the Nation's poor families." Hearings on H.R. 2588 Before the Subcomm. on Equal Opportunities of the House Comm. on Education and Labor, 94th Cong., 2d Sess. 22 (1976).

interpretation in the instant case.[5/]

[5/] To perhaps obviate the necessity of a reply brief, a few words about "congressional acquiescence" seem appropriate. The present case, involving a law enacted in 1967, does not involve long-standing administrative practice such as that treated by the court in Saxbe v. Bustos, 419 U.S. 65, 95 S. Ct. 272 (1974), where a practice dating back to 1927 was challenged as inconsistent with the language of a statute. Moreover, in the language of the four dissenting justices:

> "Administrative construction of a statute which conflicts with the express meaning of the statutory terms can be viewed as authoritative only if it appears that Congress has in fact accepted that construction, and the burden of proof necessarily is on the proponent of the administrative view. Since 'Congressional inaction frequently betokens unawareness, preoccupation, or paralysis,' ... congressional silence standing alone cannot constitute congressional acceptance of a continuing administrative practice. The Court, however, elevates such silence to acquiescence by stressing proof of the practice and the absence of any indication that Congress has 'repealed' it." 95 S. Ct. at 283, 284.

III. PLAINTIFF WAS RETIRED PURSUANT TO AN AIR FORCE REGULATION WHICH, ON ITS FACE, IS IN VIOLATION OF THE ACT AND WAS NOT RETIRED PURSUANT TO THE TERMS OF A RETIREMENT OR PENSION PLAN.

The lower court held that the following allegation failed to state a claim for relief:

> "... [P]laintiff was not involuntarily retired pursuant to the retirement plan for employees of the Army and Air Force Exchange Service but, rather, was retired pursuant to Air Force Regulation 147-15, Sec. II; said retirement plan does not, by its terms, provide for mandatory retirement at any age but, rather, provides retirement options tailored to the requirements of said Air Force regulation." Plaintiff's Complaint, p. 4, R. 4.

While it is true that, for purposes of this appeal, "... conclusory allegations and unwarranted deductions of fact are not admitted as true...," Associated Builders, Inc. v. Alabama Power Co., 505 F.2d 97 (5th Cir. 1974), it is submitted that the quoted allegation is both factual and conclusory; and that the lower court therefore erred in granting the defendants' motion to dismiss. There is nothing in the record before this court bearing upon the genesis of either the Air Force Regulation or the retirement plan. The regulation is

dated August 1970 while the first retirement plan covering civilian employees of non-appropriated fund activities was adopted effective June 1, 1946. However, the record is devoid of facts concerning whether the 1970 Air Force Regulation merely reiterated personnel policies existing in earlier regulations or existing elsewhere. Likewise, the record is silent concerning the terms of the original retirement plan, which was amended four times before the plaintiff's retirement.[6/] These factual questions would, of course, be vital to the question of whether the plaintiff was actually retired pursuant to an employee benefit plan. Therefore, in the face of a factual allegation that the defendants retired the plaintiff pursuant to an Air Force Regulation which is in violation of the Act, dismissal of the complaint for failure to state a claim was unwarranted.

Even if the allegation be viewed as purely conclusory, it is submitted that the lower court committed an error of law. Assuming, arguendo, that the employee benefit plan exception to the Act permits involuntary retirement before the age of 65, the instant case presents a classic example of "a subterfuge to evade the purposes of this Chapter." 29 U.S.C. §623(f)(2). This becomes clear upon considering the retirement plan in juxtaposition to the Air Force Regulation.

[6/] The above dates do not appear in the record, but it is believed the defendants will not challenge their accuracy and will so stipulate for purposes of this appeal.

It is free from doubt that the regulation, on its face, is inconsistent with the Act. The provision under which the plaintiff was retired reads as follows:

> "a. Employees will be separated for retirement at age 62, except as provided below. Notice of proposed separation for retirement will be given in accordance with the appendix.
>
> "b. Employees will have 60 days after receipt of notice of proposed mandatory retirement to submit a request for extension of employment, if they so desire. If approved, extensions will not be granted in increments of more than 1 year. ... The Chief, AFFES may revoke any extension beyond age 62 at any time, subject to the notice provided in the appendix." AFR 147-15, August, 1970, Sec. II, ¶3-26.

Since the language of the Act applying to federal non-appropriated fund activity employees requires that "all personnel actions affecting employees ... shall be made free from any discrimination based on age," 29 U.S.C. §633a(a), and since a form of discrimination expressly condemned by Congress in the Act's general provisions is to "discharge any individual ... because of such individual's age," the

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antagonism between the regulation and the Act is undisputable.[7/] It is thus apparent that in the absence of a retirement plan the plaintiff would still have been subject to involuntary retirement. Can it then be contended by any reasonable man that the Army and Air Force Exchange Service can validate

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[7/] An even more flagrant provision in the regulations, which does not apply in plaintiff's case, is paragraph III-25(b), AFR 147-15, supra, which provides:

> "(1) An employee may be separated and involuntarily retired after he has completed 25 years of service or after he has attained age 50 and has completed 20 years of service.
>
> (2) Involuntary separation for early retirement shall be deemed to have occurred if it is against the will and without the consent of the employee, other than for cause on charges of misconduct or delinquency, or if it results from the employee's refusal to accept a down-grade or from the employee's declination of transfer.
>
> (3) The notice of proposed separation and notice of separation will be in accordance with the appendix for the appropriate reason for separation."

an unlawful regulation through the simple expedient of adopting a retirement plan which by its terms sanctions the illegality inherent in the regulations?

As stated earlier, the factual question of chronological precedence of the retirement plan and the Air Force Regulation, or its written or unwritten equivalent, is unresolved. For purposes of this segment of the argument, however, that fact is immaterial, since the federal Age Discrimination in Employment Act became applicable to federal employees in 1974 and thus the Air Force Regulation preceded the law which rendered it unlawful. In other words, the point made in the preceding paragraph remains valid regardless of whether the retirement plan came first; the defendants are still validating an illegal regulation by retaining a retirement plan which was tailored to the regulation.

More significantly, a casual reading of the retirement plan and the regulation makes it clear that the latter (entitled "Personnel Policies") provided the mechanism by which the plaintiff was involuntarily retired. In addition to setting forth the mandatory retirement age, the regulation specifies the procedural details for requesting extensions and for approval and revocation of such extensions. The retirement plan, in contrast, contains the following two neutral provisions:

> "A participant shall be eligible for a normal retirement annuity on the first day of the month following the date he attains

> age 62, or if later, the date he completes 5 years of credited civilian service with AAFES. The date he becomes so eligible is hereinafter referred to as his normal retirement date. ...
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> ...
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> "A participant who in accordance with the established personnel procedures of AAFES is permitted to continue in the service of AAFES beyond his normal retirement date shall, on the first day of the month coincident with his actual retirement date, and upon filing of the application prescribed therefor, be entitled to receive a retirement annuity determined in accordance with the provisions of Paragraph 5.3.1." Basic Retirement Annuity Plan for Employees of Army and Air Force Exchange Service, Art. IV, Sec. 1, 3. R. 47, 49.

The only conclusion possible, it is submitted, is that civilian employees of the Army and Air Force Exchange Service are retired pursuant to regulation rather than pursuant to a retirement plan; and that the latter was expressly designed to dovetail with the personnel procedures specified in the regulations. The retirement plan does not speak of mandatory retirement, but speaks of a "normal retirement date" which is inapplicable if a participant is permitted to continue

employment "in accordance with the established personnel procedures of AAFES." To the extent the lower court's order can be deemed a contrary legal conclusion, it is submitted its conclusion was erroneous and requires reversal.

IV. THE EMPLOYEE BENEFIT PLAN EXCEPTION TO THE ACT IS INAPPLICABLE TO FEDERAL GOVERNMENT EMPLOYEES.

Effective May 1, 1974 the Act was amended to embrace employees of states and political subdivisions thereof and employees of the federal government and its instrumentalities. P.L. 39-259, April 8, 1974, 88 Stat. 74; 29 U.S.C. §§630(b), 633a(a). The statutory treatment accorded federal government employees was different in several important aspects from that accorded employees in private industry and those of state and local governments. With respect to all but federal employees, enforcement responsibility is reposed in the Department of Labor, 29 U.S.C. §626, while the Civil Service Commission enforces that portion of the Act applicable to federal employees. 29 U.S.C. §633a. Enforcement procedures differ somewhat, compare 29 U.S.C. §626(d) with 29 U.S.C. §633a (d); and, while in the case of private and state employers the practices made unlawful by the Act are described with specificity, 29 U.S.C. §623(a)(1), the portion applicable

to the federal government provides that "all personnel actions affecting employees ... shall be made free from any discrimination based on age." 29 U.S.C. §633a(a). Finally, the definition of "employer," reads as follows:

> "The term 'employer' means a person engaged in an industry affecting commerce who has twenty or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year: Provided, that prior to June 30, 1968, employers having fewer than fifty employees shall not be considered employers. The term also means (1) any agent of such a person, and (2) a State or political subdivision of a State and any agency or instrumentality of a State or a political subidivision of a State, and any interstate agency, but such term does not include the United States, or a corporation wholly owned by the Government of the United States." 29 U.S.C. §630(b).

The above quoted definition is significant in light of the language chosen by Congress when it provided for the employee benefit plan exception to the Act:

> "It shall not be unlawful for an employer, employment agency, or labor organization - to observe the terms of a ... bona fide

employee benefit plan...." 29 U.S.C. §623(f)(2) (emphasis added).

Taken literally, the Act says that even if the employee benefit plan exception could be used to justify involuntary retirement before the age of 65, such is not the case with federal government employees. That conclusion is not inconsistent with the fact that the various employment practices, including discharge, which Congress defined with specificity are made unlawful when done by an "employer." 29 U.S.C. §623(a). That section of the Act, which is applicable to only state and private employers, articulates what Congress deemed to be employment discrimination based upon age. It is not unreasonable to conclude that when Congress outlawed "any discrimination based on age" when practiced by the federal government and its instrumentalities it intended to prohibit the various forms of age discrimination forbidden to state and private employers. In other words, while 29 U.S.C. §623(a) is not, by its terms, applicable to the federal government, the various employment practices may properly be considered as examples of "discrimination based on age" prohibited by 29 U.S.C §633a(a).

It does not, however, follow that the federal government does not have much of the latitude accorded private and state employers by various exceptions to the Act specifically made applicable to them. In addition to the employee benefit plan exception, the other exceptions applicable to state and private employers are:

> "It shall not be unlawful for an employer ... to take any action otherwise prohibited under subsections (a), (b), (c), or (e) of this section where age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business, or where the differentiation is based on reasonable factors other than age; ...
>
> ...
>
> to discharge or otherwise discipline an individual for good cause." 29 U.S.C. §623 (f)(1), (3).

Where employment decisions result in ostensible discrimination based upon age, but which in fact are made without regard to age as such, there has been no age discrimination. See Stringfellow v. Monsanto Co., 320 F. Supp. 1175 (W.D. Ark. 1970). Likewise, it could not be seriously argued that the armed forces need recruit sexagenarians to avoid the stigma of age discrimination. See 29 C.F.R. §860.102(d). Similarly, the "good cause" provision quoted above is actually surplusage because an employee discharged for that reason has not been discriminated against because of his age. Thus, while 29 U.S.C. §623(f) is not, by definition, applicable to the federal government, its articulated exceptions are relevant to the question of what constitutes discrimination by an employer, public or private.

On the other hand, the employee benefit plan exception to the Act is a true exception to the general prohibitions, since an employment practice conditioned specifically upon age as such, with no demonstrable age-related justification, would clearly be age discrimination. As pointed out in the first section of this brief, congressional intent underlying the benefit plan exception to the Act is unequivocal and involuntary retirement before the age of 65 was never contemplated. The expressed congressional purpose to protect private pension and other fringe benefit plans from economic strain is perfectly compatible with denying the employee benefit plan exception to the federal government. Apparently, the legislative history is silent as to why federal government employees were treated, in many respects, differently than employees of state and local governments, H.R. REP. NO. 93-913, 2 U.S. CODE CONG. & AD. NEWS, 93rd Cong., 2d Sess., 2811 at 2849, 2850 (1974); nevertheless, it is reasonable to construe the 1974 amendments as excluding the federal government from the benefit plan exception.

A decision favorable to the plaintiff with respect to his argument presented in the first portion of this brief would render the present discussion academic, but the two lines of argument illustrate an interesting feature in the case. The Secretary of Labor, the lower court, and the court in Brennan v. Taft Broadcasting Co., supra, all have concluded that Congress did not say what it meant when it promulgated the employee benefit plan exception to the Act;

and elected to mechanically apply what they conceived to be the literal language of the Act. The lower court, however, went further and concluded that Congress meant what it did not say and that the employee benefit plan exception was available to the federal government even though the Act provides otherwise. It is submitted that logical consistency demands that either Congress did not sanction involuntary retirement before the age of 65, regardless of the existence of a benefit plan, or that the benefit plan exception is unavailable to the federal government.

CONCLUSION

The legislative history underlying the federal Age Discrimination in Employment Act of 1967 unequivocally demonstrates that the sole purpose of the employee benefit plan exception was to permit the hiring of older workers without necessarily including them in such plans. The most reasonably facial interpretation of the Act is that it does not render lawful the involuntary retirement of a protected employee before the age of 65. Assuming, arguendo, that the exception were susceptible of two different interpretations, legislative history should be accorded great respect in determining congressional intent.

Even if the employee benefit plan exception permitted early retirement, and assuming the exception were available to the federal government, it has been abused in the present case. The plaintiff's retirement was actually pursuant to an Air Force Regulation which undeniably conflicts with the Act. Furthermore, the question of whether the plaintiff was retired pursuant to a benefit plan or pursuant to the regulation is in part a factual one, and the lower court erred in refusing to consider that factual question.

Taken literally, the benefit plan exception is inapplicable to the federal government. The "plain meaning" axiom of statutory construction by which the court in Brennan v. Taft Broadcasting Co., supra, arrived at the conclusion early retirement was permitted by the benefit plan exception would necessarily result in the conclusion that the exception is not available to the federal government in the instant case.

The plaintiff respectfully urges the court to rule upon its contention that the exception does not render lawful involuntary retirement by any employer before the age of 65. A ruling in favor of the plaintiff would almost end the litigation, the only question remaining being that of damages measured by the plaintiff's pecuniary loss due to the early retirement. In the event of an unfavorable ruling, the plaintiff further urges the court to rule upon the question of whether the benefit plan exception applies to the defendants. In the event of an unfavorable ruling with respect to said two

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issues, the plaintiff respectfully urges the court to remand the case to the lower court for trial upon the issue of whether, in fact, plaintiff was retired pursuant to an employee benefit plan.

DATED: June 15, 1976.

Respectfully submitted,

BURTON FRETZ, ESQ.
ROBERT B. GILLAN, ESQ.
PAUL S. NATHANSON, ESQ.

By: Robert B. Gillan
ROBERT B. GILLAN, ESQ.

Attorneys for Plaintiff-Appellant

Retirement—A Medical Philosophy & Approach.

FOREWORD

The AMA Committee on Aging is convinced that a sense of purpose and the opportunity to contribute to the well being of others are as vital to an individual's health as are adequate medical care, nutrition or rest. For this reason, the Committee is deeply concerned with policies which call for arbitrary retirement based on chronological age, without regard to individual desires and capabilities.

This paper summarizes the Committee's convictions as to the negative health effects of such compulsory job separation. It also suggests a medical system for determining physical and mental fitness for continued employment; a system which can be applied periodically over the employee's entire work life.

This paper does not attempt to discuss the social and economic factors which also bear on the question of retirement; it represents simply the medical philosophy of the Committee toward conservation and utilization of our most precious resource—human beings.

/s/ Frederick C. Swartz, M.D.
Frederick C. Swartz, M.D.
Chairman, Committee on Aging

A. Medical Viewpoint

The increase in life expectancy and higher health levels will prove of little benefit to man if he is denied the opportunity to continue contributing of his skills at a certain chronological age, whether this be 45, 65 or 85 years.

It is the conviction of the American Medical Association Committee on Aging that such arbitrary retirement and denial of work opportunity—whether the work is for pay or the pleasure of giving—seriously threatens the health of the individual concerned. By way of emphasis, when we speak of "retirement" in this paper, we mean the complete separation of the man from his job.

Medicine, "the oldest of the professions in the sense that it comprises a group of men who not only share a common training in the relevant sciences and arts, but who also have adopted a code of practice and obligated themselves to perform a service to their fellow men," sees in retirement a direct threat to the health and life expectancy of the persons affected.

Medicine, more than any other discipline, is that knowledge which exists totally for the service of mankind. In the rendering of this service, the basic philosophy has always been to do good, and to do no harm. No matter where we start in the cycle of a generation, the aim of medicine has been to prolong living, to reduce and eliminate suffering, and—above all—to save lives.

The gnarled, runty, deformed child, the acutely and chronically ill, and the handicapped disabled oldster are the highest objects of medical attention, for within these warped receptacles resides that spark of infinity

The well and healthy are the concern of medicine for the same reason, for there is still much to be done before the race can be perfected. Every effort is made to assist each individual to achieve his maximum potential, to utilize his abilities for his own and the human community's greatest benefit.

From the beginning of life until its end, these objectives and motivations should continue to apply. Unfortunately, however, they apply only until a certain chronological age—most often 65—when forces outside of medicine inflict a disease—or disability-producing condition upon working men and women that is no less devastating than cancer, tuberculosis, or heart disease. This condition—enforced idleness—robs those affected of the will to live full, well-rounded lives, deprives them of opportunities for compelling physical and mental activity, and encourages atrophy and decay. It robs the worker of his initiative and independence. It narrows physical and mental horizons so much that the patient's final interests and compulsions are in grumbling about his complaints.

This condition has brainwashed thousands into the belief that at 65 one is over the hill. It has imposed the philosophy of the marketplace on the employee—a philosophy that substitutes, at an arbitrary chronological age, the concept "throw out all of the old and defective" for the dictum "to do good and to do no harm."

For these reasons, medicine is compelled to oppose retirement keyed to any chronological age, as detrimental to the best interests of the employee. To do otherwise would be to lose all to those who would gradually lower the age of these so-called retirement criteria until they would be applied at birth. The gnarled, the runty, the defective, like the gnarled, runty apples and oranges, would be graded out in the beginning. This approach might make medicine of the future more simple, but it would certainly separate the "art" of medicine from the "science."

It is true that persons who have maintained broad interests throughout life and are financially secure could quite conceivably enjoy and benefit from the years following retirement. Insofar as these individuals continue to give of their abilities to others—insofar as their life still has a purpose other than self-gratification—they cannot be called "retired" in any real sense. They have re-directed rather than relinquished their channels for contribution.

The majority of persons, unfortunately, do not fall in this category. Compulsory retirement on the basis of age will impair the health of many individuals whose job represents a major source of status, creative satisfaction, social relationships or self-respect. It will be equally disastrous for the individual who works only because he has to, and who has a minimum of meaningful goals or interests in life, job-related or otherwise. Job separation may well deprive such a person of his only source of identification, and leave him foundering in a motivational vacuum with no frame of reference whatsoever.

There is ample clinical evidence that physical and emotional problems can be precipitated or exacerbated by denial of employment opportunities. Few physicians deny that a direct relationship exists between enforced idleness and poor health. The practitioner with a patient load comprised largely of older persons is convinced

that the physical and emotional ailments of many of these patients are a result of inactivity imposed by denial of work. Physicians generally agree that chronic complaints develop more frequently when a person is inactive and without basic interests. It is easy for the unemployed, unoccupied person to over-concern himself with his own normal physiological functions, and to exaggerate minor physical or emotional symptoms.

The physical and mental health of an individual can be affected by loss of status, lack of meaningful activity, fear of becoming dependent, and by isolation.

Compulsory retirement produces a chain reaction in the health of such persons. It is a fact that the working man finds it difficult to accept the feeling of no longer being needed on the job. He loses contact with his work associates—many of whom may have been his closest friends—and is thrown back on the family.

Here, having a lesser part to play, he may experience loss of dignity and status. This is particularly so if his contributions to the family social circle previously have revolved solely or primarily around a recounting of his job experiences. The individual who has developed virtually no interests outside of those connected with his paycheck, who does not keep up with community affairs or dress up as he did when working, who can offer little to the family circle except his presence underfoot for 24 hours a day, may soon find himself isolated from the family itself. While isolation, per se, does not cause illness, it increases the chances of physical or emotional disturbance. It may also activate underlying neuroses, contribute to obesity and alcoholism and even precipitate an underlying tendency to suicide.

Vital Statistics of the United States and other sources report that suicides reach a peak in upper age brackets —after retirement normally occurs. The highest incidence of suicide for white males occurs in the age group 70 years and over; for non-white males in the age group 60 and over. There is also a tendency for the person who commits suicide to do so after being isolated from society.

There may also be direct physical sequelae to the abrupt change in activity patterns. The nice nutritional adjustment to work which many individuals develop may be set awry on retirement. The person whose physical and mental exercise has been solely or primarily connected with earning a living may exhibit a progressive disuse atrophy following job separation.

Whatever may be the precise percentage adversely affected by retirement, and physicians are convinced it is high, it is ill-advised to create additional problems for people by arbitrarily denying them one of mankind's principal avenues for self-satisfaction. For these reasons, the Committee on Aging decries the practice of retirement by the calendar without regard to individual capabilities or motivation.

B. Suggested Approach

It is the conviction of the Committee that any decision for or against retirement should rest on the same three fundamentals as does a decision for or against hiring:

(1) the individual's desire to work;

(2) the individual's ability to work; and

(3) the employer's need for the skill or ability which the individual offers—or is potentially able to offer.

These fundamental criteria would be applied at the time of employment, would operate over the employee's entire work life with the firm, and could form the basis for a decision *at any time during this work life* for or against job reassignment, job retraining or job separation—whether in the form of retirement or dismissal.

Many of the reservations expressed about such individualized placement and retirement programs revolve around the second criterion listed above—the individual's ability to continue work—and around the development of methods by which to accurately measure this ability. Accordingly, this paper will attempt to (a) list some of the specific physical and mental characteristics which might be measured in assessing capability for continued work, and (b) suggest a general system for applying such measurements.

It should be re-emphasized that these measurements are not designed to be held "in abeyance" until a certain chronological age, and then applied periodically thereafter, but to be utilized at regular intervals throughout the employee's work life. As such, they may well assist in identifying the individual who should be replaced at 50 as well as one still capable at 90. The individual's physical and emotional status would dictate the frequency of such evaluations, and their results would of course be confidential between employee, employer and physician.

If such an individualized retirement system is to function with optimum effectiveness and benefit to both employee and employer, the firm involved will need to think in terms of hiring and utilizing an employee for his entire work life *potential* rather than just to fill a particular position or slot currently open in the organization. The firm will need to evaluate—and re-evaluate—an employee's capabilities not only for the position currently being filled, but for positions which may become available in the future. Such a personnel policy will be *employee- rather than job-centered,* and will entail greater attention to job analysis, employee training and re-training, and counseling programs within the firm.

Periodic evaluation of the employee's capabilities over his entire work life will be important in providing a base line from which to evaluate physical and mental capabilities at any time he is considered for retirement or job reassignment. Continuous employee counseling, too, will be an integral part of such a system, for a number of reasons. Counseling will be needed because a fluid rather than fixed separation date might otherwise find the worker unprepared emotionally, socially or financially. Individual interpretation may be needed to appropriately prepare the worker when retirement seems desirable. In cases where retirement is indicated, such counseling might delineate the other factors in addition to the individual's capabilities which would influence the decision for or against retirement, and thus help avoid his taking dismissal as a "failure to measure up." On the other hand, counseling may be needed in some instances to persuade an employee to *continue* working, when his own and the company's interests so indicate. Finally, counseling will be important in those cases where continued employment involves an adjustment in work status, pay and prestige for the employee. This may occur because of a decline in the employee's capabilities, or because of a decline in need for the employee's capabilities.

There is no attempt here to imply that the employer owes a greater responsibility to older workers than he does to those in any other age group. It would obviously be unrealistic, for example, to urge an employer to retain an older worker—no matter how highly proficient—if there were no further possible way of utilizing that worker's contribution or potential contribution. It is assumed, however, that employment and retirement practices would be based on conservation and fullest possible utilization of existing manpower—by selecting, placing, promoting and retraining employees on the basis of qualifications for the job. It is assumed also that employee training, re-training and counseling programs will assist the firm in achieving this objective.

Further, under the type of continuous program proposed in this report, the employee no longer needed in one firm may well secure quick employment in another, on the strength of the data developed on his capabilities and potentials over the years.

C. Medical Evaluation

Basically, evaluation of an individual's capability for a particular job, whether his present position or an alternative available opening, would consist of matching an "Employee Profile" of those physical and mental capabilities susceptible to change over his work life, with a "Job Profile" of the same physical and mental requirements, using identical gradations for comparability. The following section lists some of the specific criteria which might be included in the Employee and the Job Profiles. *It should be emphasized that this list of criteria is not all-inclusive or exclusive; nor are the gradations specified necessarily the most meaningful. The material is intended only to be suggestive of an over-all system for making such evaluations.**

1) Physical Criteria
   - Strength and endurance .....(S)
   - Mobility—range of motion .....(M)
   - Dexterity .....(D)
   - Coordination .....(C)
   - Vision .....(V)
   - Hearing .....(H)
   - Equilibrium .....(E)

The first four characteristics might be evaluated separately for:
   - Forearm and hand .....(F)
   - Upper extremities—upper arm, shoulder girdle and back .....(U)
   - Lower extremities—feet, legs pelvic girdle and lower back .....(L)

2) Mental Criteria
   - Concentration .....(C)
   - Analytical ability .....(A)
   - Judgment .....(J)
   - Flexibility .....(F)
   - Initiative .....(I)
   - Ability to work effectively with others .....(P)

A numerical gradation or scale could then be established for each of the above criteria. For example, under (S)—Strength and endurance—a scale of 1 through 4 might be established as follows:

1—Able to perform maximum sustained effort over long periods

*Adapted from the U.S. Army Physical Profile Serial system, (PULHES), used to assess the functional ability of individuals to perform military duties.

2—Able to perform sustained effort over long periods

3—Able to perform sustained effort over moderate periods

4—Unable to perform sustained effort

Similar gradations would be established for other criteria.

Using this system, a "Job Profile" would be established for each position under consideration, and would be reviewed periodically in the light of changing requirements within the firm. Thus, a hypothetical Job Profile of requirements for the position of tool and die maker might look somewhat as follows:

Physical

S (Strength and endurance) ..... (F-2) (U-2) (L-3)

M (Mobility—range of motion) ..... (F-1) (U-1) (L-2)

D (Dexterity) ..... (F-1) (U-1) (L-3)

C (Coordination) ..... (F-1) (U-1) (L-3)

V (Vision) 1

H (Hearing) 3

E (Equilibrium) 1

Mental

C (Concentration) 1

A (Analytical ability) 1

J (Judgment) 3

F (Flexibility) 2

I (Initiative) 3

P (Ability to work effectively with others) 3

A comparable Employee Profile would then be developed and updated periodically thereafter for the individual, through an evaluation of his physical and mental capabilities by his own and the plant physician, combined with a rating by his supervisor and the personnel department on certain aspects of the Profile. Many of the Employee Profile capabilities—mobility, strength and endurance, for example—will require and be directly susceptible to objective medical evaluation; others such as analytical ability, judgment, ability to work effectively with others, etc., may be more amenable to rating by the supervisor or personnel department, or to measurement by testing procedures. The methods for measuring various facets of the Employee Profile will need to be worked out in detail, utilizing accepted testing and evaluation procedures as far as possible.

The methods developed should be generally standardized and accepted between different employers, to permit comparability of results.

Of particular importance in periodic evaluation of the more "intangible" capabilities such as flexibility, judgment, and the like will be a concurrent assessment of employee *motivation*, in order to distinguish between decline in these capabilities, and a decline in *desire to use* these capabilities. This is more than an academic distinction, since it may make the difference between retirement—for cause outside the employee's control—and separation—for cause within the employee's control.

To offset normal variations in employee performance from one day to the next, as well as the fluctuation resulting from increased motivation at the time of testing, it would probably be advisable to evaluate some of

the employee characteristics over a period of time, rather than at a particular point in time. A periodic comparison of Job and Employee Profiles would then provide some quantitative frame of reference from which to consider the individual's suitability for continued employment.

No attempt is made in this report to suggest a minimum rating level below which the employee would be disqualified for continued employment. It would be fallacious to presume that simple comparison of Employee Profile with Job Profile will provide a cut-and-dried answer in itself; additional factors will influence the decision as to what constitutes an acceptable "score" on the Employee-versus-Job Profile.

The physician, in making a recommendation for or against continued employment on the basis of health, will have to consider not only the individual's present physical capabilities for the job in question, but also the presence of currently non-disabling physical or mental disorders which might be exacerbated by job demands. Other factors needing consideration include the individual's potential for training or re-training in alternative job skills, the importance of work as a source of status for the individual, and the extent to which mental health will be fostered by continued employment.

The employer will want to consider not only the physician's recommendation, the demand for skills of the employee under consideration, the firm's investment in the employee, and his current and predicted job performance, but also his potential value to the firm in future years, in terms of new products or services to be developed.

In the final analysis, it is the Committee's conviction that the decision for or against retirement, just as the decision for or against hiring, should be an individual one, in terms of a specific employee, in a specific firm, at a specific time.

PROOF OF SERVICE BY MAIL

I, Jane O. McAdams, declare that I am a resident of the City and County of San Francisco, State of California, over the age of 18 years and not a party to the within action; my business address is 1709 West Eighth Street, Suite 600, Los Angeles, California 90017.

On June 16, 1976, I served the within APPELLANT'S OPENING BRIEF on the parties to said action by placing two copies thereof enclosed in a sealed envelop with the postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as follows:

HAROLD J. HUGHES, ESQ.
Assistant U.S. Attorney
1100 U.S. Court House
312 North Spring Street
Los Angeles, California 90012

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

Executed at Los Angeles, California on June 16, 1976.

Jane O. McAdams

Ms. SHADOAN. The reason that I bring this point is that we are appellants in this case. The lower court ruled against us. The Department of Justice, however, has decided not to resist the appeal. It has offered to settle the case, reinstating our client with backpay, provided the appeal is dismissed.

Under these circumstances, we will, thus, be unable to get a decision from the ninth circuit, a very prestigious circuit, I might add. We feel that further mooting out of cases similar to this should be forestalled legislatively.

We suggest, therefore, that H.R. 14879 and any companion legislation, or similar legislation, eliminating age discrimination in Federal, State, and local as well as private employment include provisions that a bona fide retirement plan, which includes retirement, forced retirement of the person at the age below that set by Congress, will not be allowed because this is not a bona fide retirement plan as conceived by the Congress.

These are the two major points that I wanted to make. However, I would like to make some other points.

One, as I believe Congressman Randall, and I believe Mr. Ossofsky, mentioned, the appropriation authorization is far, far too low for enforcement purposes. To have a right without a remedy is to have no right at all. As you know, that is not my own phrase.

This is something that I have discussed with Dr. Arthur Flemming at length, and this is a partial answer to Mr. Buchanan's question. Since this subcommittee has jurisdiction over title VII of the Equal Employment Opportunity Act, we believe and we urge that age be added to that act in addition to sex, ethnic background, and religion.

We urge this not only because it is logical, but because the Equal Employment Opportunity Commission also has legislation with stronger teeth for affirmative action.

No. 2, there are age and sex discriminations, and there are age and race discriminations.

You mentioned, what are we going to do about older women? Well, the largest portion of the persons wishing to work past the mandatory retirement age are women who have entered the labor force, and many of those cannot qualify for pension benefits.

I would like to simply add one more point in the event that this comes up. This is on page 6 of my testimony. Recently, the Supreme Court decided the case *National League of Cities* v. *Usery*.

In this case, the Supreme Court decided that the Fair Labor Standards Amendments of 1974 regarding minimum wage and overtime compensation, strictures to employees of State and local governments, were unconstitutional.

We have analyzed that situation to see whether it casts any doubts over the same amendments, the fair labor standards amendment to the Age Discrimination in Employment Act. We have concluded that it does not. These amendments are clearly valid as to State and local governments.

I have this memorandum with me, as does your staff, and I would also ask to have this inserted in the record.

Mr. HAWKINS. Without objection, so ordered.

[Document follows:]

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M E M O R A N D U M

TO: DATE: August 11, 1976

FROM: Robert B. Gillan, Esq.
National Senior Citizens Law Center

RE: EFFECT OF THE NATIONAL LEAGUE OF CITIES v. USERY UPON THE 1974 AMENDMENTS TO THE FEDERAL AGE DISCRIMINATION IN EMPLOYMENT ACT WHICH EXTEND THE ACT'S APPLICATION TO EMPLOYEES OF STATES AND THEIR POLITICAL SUBDIVISIONS.

In National League of Cities v. Usery, 44 U.S.L.W. 4974 (June 24, 1976), the Court introduced a new limitation upon the power of Congress under the Commerce Clause of Article 1 of the Constitution. It held that while, with respect to private activity, laws enacted thereunder supersede inconsistent state laws, it is an unconstitutional infringement upon state sovereignty if such laws inhibit performance by states of essential governmental functions. Therefore, the Fair Labor Standards Amendments of 1974 which impose upon states, with respect to their employees, the same minimum wage and overtime strictures as are applicable to private employers, P.L. 93-259 §6(a)(1), 88 Stat. 58, 29 U.S.C. §203(d), were held unconstitutional. The question before the court did not necessitate consideration of those provisions of the 1974 FLSA amendments which extended the protections of the Federal Age Discrimination in Employment Act of 1967 (hereafter the ADEA) to employees of states and their political subdivisions, P.L. 93-259 §28(a), 88 Stat. 74, 29 U.S.C. §630(b); and the court did not comment upon that aspect of the 1974 amendments. As will be shown below, there is nothing in National League of Cities v. Usery from which could be reasonably inferred any question concerning the validity of those amendments to the ADEA.

The threshold inquiry is the constitutional power of Congress to enact the ADEA in 1967 and to amend it in 1974 to embrace state and local government employees (hereafter referred to, collectively, as "state employees"). The answer is clear with respect to the 1967 Act, and the statement of findings and purpose expressly rely upon the Commerce Clause:

> "...The existence in industries affecting commerce, of arbitrary discrimination in employment because of age, burdens commerce and the free flow of goods in commerce." 29 U.S.C. §621. See also 29 U.S.C. §630(b), (d).

Apparently, no legislative history articulates the precise constitutional authority under which Congress extended the ADEA to employees of state governments; the House report accompanying the legislation is silent on the point. H. REP. NO. 93-913, 2 U.S. CODE CONG. & AD. NEWS, 93rd Cong., 2d Sess. 2811 at 2849, 2850 (1974). As codified in 29 U.S.C., C. 14, the recited basis would remain the Commerce Clause, and some fragmentary legislative history supports the hypothesis that it was assumed the Commerce Clause would suffice. In his remarks concerning the 1974 Amendments to the Fair Labor Standards Act, Senator Church stated:

> "The extension of the coverage of Age Discrimination in Employment Act to Federal, State, and local employees is a significant and needed expansion of coverage. As the report from the Committee on Labor and Public Welfare states:
>
> 'The Committee recognizes that the omission of government workers from the Age Discrimination in Employment Act did not represent a conscious decision by the Congress to limit the ADEA to employment in the private sector. It reflects the fact, that in 1967, when ADEA was enacted, most government employees were outside the scope of the FLSA and the Wage Hour and Public Contracts Divisions of the Department of Labor, which enforces the Fair Labor Standards Act, and which were assigned responsibility for enforcing the Age Discrimination in Employment Act.'
>
> "Fair Labor Standards Act coverage has since been extended to Government workers and it is only logical, the committee points out, to extend Age Discrimination in Employment Act coverage." CONG. REC. 4706 (daily ed. February 28, 1974).

In point of fact, another source of congressional power is section 5 of the fourteenth amendment which provides: "The Congress shall have power to enforce, by appropriate legislation, the provisions of this article;" and, if the need to express the specific constitutional basis had been felt, it seems likely the fourteenth amendment would have been cited. When the Civil Rights Act of 1964 was enacted, the constitutional foundation was the Commerce Clause, Heart of Atlanta Motel, Inc. v. United States, 379 U.S. 241 (1964), but when, in 1972, it was broadened to include states and their political subdivisions, the constitutional basis upon which the amendments were posited was section 5 of the fourteenth amendment. Fitzpatrick v. Bitzer, 44 U.S.L.W. 5120 (June 28, 1976); see also United States v. Milwaukee, 395 F. Supp. 725 (E.D. Wis. 1975), for a recitation of pertinent legislative history.

It is free from question that Congress has the constitutional power under the fourteenth amendment to declare that age-based classifications in employment implicate the Equal Protection Clause and to enforce that declaration "by appropriate legislation." It is true that in Massachusetts Board of Retirement v. Murgia, 44 U.S.L.W. 5077 (June 25, 1976), the Court sustained the validity of a state law requiring the mandatory retirement of uniformed policemen upon attaining the age of 50. However, the latitude of Congress under section 5 of the fourteenth amendment is not delimited by the Supreme Court's constitutional decisions. In Katzenbach v. Morgan, 384 U.S. 641 (1966), the Court sustained the validity of a federal law granting the voting franchise to United States residents who had completed the sixth primary grade in Puerto Rico at a school in which the language of instruction was other than English; the law conflicted with a New York statute requiring an ability to read and write English as a condition to voting and New York registered voters challenged the validity of the federal law. Several years earlier, the Court had upheld the validity, under the Equal Protection Clause, of a state law imposing a literacy requirement upon the right to vote, Lassiter v. Northampton Election Board, 360 U.S. 45 (1959), but that fact was deemed immaterial:

> "...A construction of §5 that would require a judicial determination that the enforcement of the state law precluded by Congress violated the Amendment, as a condition of sustaining the congressional enactment, would depreciate both congressional resourcefulness and congressional responsibility for implementing the Amendment. It would confine the legislative power in this context to the insignificant role of abrogating only those state laws that the

judicial branch was prepared to adjudge unconstitutional, or of merely informing the judgment of the judiciary by particularizing the 'majestic generalities' of §1 of the Amendment. ...

"Thus our task in this case is not to determine whether the New York English literacy requirement as applied to deny the right to vote to a perscn who successfully completed the sixth grade in a Puerto Rican school violates the Equal Protection Clause. Accordingly, ... Lassiter v. Northampton Election Board ... is inapposite...." 348 U.S. at 648, 649. See also Fitzpatrick v. Bitzer, supra, 44 U.S.L.W. 5120 at 5121 n. 3.

Since it is obviously unnecessary for Congress to recite the constitutional authority under which it legislates, provided it possesses the authority, and since no reason is perceived why Congress cannot, under the fourteenth amendment, extend the protections of the ADEA to state employees, it is apparent that National League of Cities v. Usery, supra, is inapplicable. The appropriate analytical vehicle is Fitzpatrick v. Bitzer, supra, which treated another asserted conflict between a congressional enactment and state sovereignty. In holding that the 1972 Amendments to the Civil Rights Act of 1964, which embraced state employees and which authorized suits against states for monetary relief, did not conflict with the incidents of state sovereignty flowing from the eleventh amendment, the Court held:

"...When Congress acts pursuant to §5, not only is it exercising legislative authority that is plenary within the terms of the constitutional grant, it is exercising that authority under one section of a constitutional amendment whose other sections by their own terms embody limitations on state authority. We think that Congress may, in determining what is 'appropriate legislation' for the purpose of enforcing the provisions of the Fourteenth Amendment, provide for private suits against states or state officials which are constitutionally impermissible in other contexts...." 44 U.S.L.W. at 5123.

The court specifically pointed out that the source of the congressional power in question distinguished the case from National League of Cities v. Usery, supra, 44 U.S.L.W. at 5122 n. 9.[1/]

Given the plenary power of Congress under the fourteenth amendment, it is difficult to perceive any basis for questioning the validity of the 1974 amendments to the ADEA.[2] Indeed, even if the legislative authority were to be found only in the Commerce Clause, National League of Cities v. Usery would not change the picture. It was a very close decision, as evidenced by the plurality of four who joined in the majority opinion, the hesitant concurring opinion by Mr. Justice Blackmun, and the vigorous dissents; and the rationale has no application to those provisions of the Fair Labor Standards Amendments which amended the Age Discrimination in Employment Act. It can be distilled to a simple proposition, i.e., essential governmental functions can be performed only with paid employees and the effect of the minimum wage and other provisions is to visit upon the states one of two undesirable alternatives, either to curtail the scope and quality of services or to continue them at the cost of a heavier economic burden upon the populace. That proposition is unrelated to legislation banning employment discrimination based upon age because such legislation by its terms is neutral with respect to wage or salary levels.[3] Accordingly, the fact that Congress chose to tack the ADEA Amendments to the Fair Labor Standards Amendments should not cast any doubt upon the validity of the age discrimination legislation.

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[1] Conversely, in National League of Cities the Court stated:

> "We express no view as to whether different results might obtain if Congress seeks to affect integral operations of state governments by exercising authority granted it under other sections of the Constitution such as the Spending Power, Art. 1, §8, cl. 1, or §5 of the Fourteenth Amendment." 44 U.S.L.W. at 4979 n. 17.

[2] Nothing said above is meant to imply that Congress could enact a valid law requiring that all state employees be vegetarians and cite the fourteenth amendment as its authority. "Appropriate legislation" to enforce the substantive guarantees of the fourteenth amendment must necessarily bear some reasonable relationship to those guarantees. While the Court in Massachusetts Board of Retirement v. Murgia, supra, held that age-based classifications were neither "suspect" nor impinged upon "fundamental rights" it did require that the classification in question meet the rational basis test and found, under the facts before it, that it measured

2/ (continued)

up. As the dissenting opinion pointed out, the court was dealing with a classification affecting uniformed policemen and future classifications based upon age could lead to different results. 44 U.S.L.W. at 5083 n. 8. The point is that while the validity of various state age-based classifications may be debatable, the equal protection and due process clauses of the fourteenth amendment are the reasonable source of the debate. That is certainly all that Katzenbach v. Morgan, supra, requires.

3/ Some tenuous connection might be asserted between the quality of governmental services and the age of the public servant, but the ADEA contains appropriate exceptions and safeguards to permit classifications based upon age where necessary. Likewise, no economic consideration can reasonably be posited because propositions such as older workers draw more sick pay or older workers draw higher salaries are dubious, are debatable, and, within the dimensions of the constitutional issue decided in National League of Cities, would be de minimus.

Ms. SHADOAN. I thank you very much. If you would like to ask me questions, I would be happy to cooperate.

Mr. HAWKINS. I wish to thank the witness for cooperating with us. Because we are trying to get the final witness in and conserve time, we may find it necessary to submit questions in writing to you.

Mr. BUCHANAN. Could I just say in that regard that first I want the witness to understand that sometimes Members of Congress are like good lawyers. In asking questions like those I raised, we normally are not taking a position, but we are merely trying to get at the facts.

My questions to the previous witness were designed to develop the problems inherent in something which I support and do not oppose. I wanted you to understand that.

Secondly, I would welcome your answers to the questions I asked, and would appreciate your doing that for the record.

Ms. SHADOAN. I would like to give you an answer that will take less than 1 minute. If age were inserted in title VII just like sex, race, religion, everyone would be determined upon their individual basis and not as a class.

Mr. HAWKINS. Thank you, Ms. Shadoan, for a very excellent presentation.

Mr. Bradley, the bells indicate that we are called to the floor of the House for a vote. I am wondering, rather than prevent you from fully developing your presentation, whether or not it might be better to try to reschedule you at some other time, if that is possible.

We have less than 5 minutes.

STATEMENT OF HOLBROOK BRADLEY, FSIO–2, COPLAINTIFF IN CIVIL ACTION SUIT BRADLEY VERSUS KISSINGER

Mr. BRADLEY. I realize that, sir.

Mr. Chairman and Mr. Buchanan, if I may suggest that much of what I have said in my testimony has been touched on or referred by by earlier witnesses, I would suggest that my testimony be included in the record.

Mr. HAWKINS. Without objection, your statement will be included in the record at this point.

[Prepared statement of Holbrook Bradley follows:]

PREPARED STATEMENT OF HOLBROOK BRADLEY, FSIO–2, ACT. CHIEF AFRICAN BRANCH USIA IPS

As a co-plaintiff in the civil action suit filed against the Department of State and USIA under section 15(d) of the Age Discrimination in Employment Act of 1967, as amended (ADEA) I have contended that mandatory retirement from the Foreign Service at age 60, under 22 U.S.C. 1002 (Section 632 of the Foreign Service Act) rather than at age 70 under 5 U.S.C. 8335 which applies to all other employees of the Federal Goverment, is discriminatory. This committee should be aware that mandatory retirement affects not only Foreign Service employees but also secretaries, clerks, librarians, language teachers, radio technicians and many other individuals. I believe that mandatory retirement at any age violates the right of due process and equal protection granted by the Fifth Amendment to the Constitution of the United States.

The question of retirement at any age is one in which there should be, within reasonable limits, a strong element of personal decision. The elements of productivity and demonstrated ability, health, length of service and waste of trained manpower are among components that should be considered in any decision involving retirement.

It should be obvious that there have been many changes in both the climate and conditions under which today's Foreign Service officer serves abroad. There have been continuing improvements in health standards and medical facilities. Transportation has improved tremendously so that in the event that medical treatment cannot be offered at a given post, the individual can be evacuated within hours to a location where the needed services are available. Frequent Departmental medical examinations keep a running record of the general physical condition of any officer and full medical clearance will mean that an individual is deemed fit to serve at any post abroad. In my own case, both my wife and I received full medical clearance from the Department in mid-July of this year, at ages 59 and 57 respectively, following our return from four and one half years of service in Calcutta, India.

It should be of interest to this committee also that mandatory retirement affects an average of twenty-five Foreign Service personnel yearly. Further, Department of State statistics show that between the years 1970 and 1976 some 209 Foreign Service employees were retired for medical reasons. Of these, 49 were below the age of 50 and approximately 63 between the ages of 50 and 55. It is evident that rigorous Foreign Service physical exams together with the yearly system of rating an individual's proficiency thoroughly screen all officers. The process of selection out together with medical retirement means that approximately 2 percent of the Foreign Service employees reach the age of 60.

It is an absuridty to maintain that an individual who has turned in an outstanding performance prior to this sixtieth birthday, will immediately go into decline following it. In my own case, my last evaluation commended me for the high quality of my work in India. Both the Country PAO and the Deputy PAO, who were my Reviewing and Rating officers respectively, commended me and stated that they hoped there would be some way in which I could be continued in the Foreign Service

I refer to an article by Paul Woodring, Professor at Western Washington State College, formerly education editor of the Saturday Review, excerpted in the Washington Post of September 5, 1976. Professor Woodring states "Each day of the year more than 4,000 Americans reach the of 65 (sic). On that day, they are not discernibly older, either physically or mentally, than they were the day before and most of them still think of themselves as 'middleaged'. But in the literature of sociologists they have moved abruptly into a new category—'the aged'. Henceforth they will be treated as 'old' by both employers and governmental bureaucracies. They have entered into what one writer calls "statutory senility." Professor Woodring goes on "because Congress has decided that it is legitimate for employers to discriminate against employees over 65, they can now be discharged without a hearing reagrdless of their health, vigor, intelligence or alertness. It is not called 'firing'—we prefer the euphemism 'mandatory retirement'—but the result is the same: denial of the right to continue working at the job one knows best." If this is true for forced retirement at age 65, it certainly is even more so for the Foreign Service system of mandatory retirement at 60.

I will not quote the Washington Post article at length but I will note one of Professor Woodring's findings: "The people most immediately affected were not consulted (when the Social Security Act of 1935 was enacted): no effort was made to find out whether people wanted to retire at 65; nor, it appears, were there any Congressional hearings at which the choice of age 65 was discussed and debated."

Certainly, the Foreign Service Act did not consider another important aspect of the mandatory retirement at 60 regulation—the waste of human talent. Many Foreign Service officers have become over their years of service abroad and in Washington highly informed in one or another areas of interest to the United States. In my own case, I have spent more than 25 years in the Far East—South and Southeast Asia. One of the factors that should be of inestimable value to the United States is the judgemental ability of an officer in a given situation, whether it be crisis or not. This is not an ability acquired from books or the classroom. It can be acquired only through experience. To mandatorily retire an officer at a time when his judgemental peak has been achieved seems to me to be self defeating of the whole system.

The argument that age should be a determining factor in retirement is contradicted by the Foreign Service system itself. I cite the outstanding example of Ambassador Ellsworth Bunker who at 82 still is vigorously active as Am-

bassador at large in charge of the Panama Canal Treaty negotiations. Our present Ambassador to Chile, David H. Popper, is approaching 64; Deputy Chief of Mission in El Salvador James F. Campbell reached his 64th birthday last May. These are but few examples. In other areas Winston Churchill was a vigorous Prime Minister well into his seventies. President Ford and Republican contender Ronald Reagan are both in their sixties. Certainly, demands on heads of state are far more severe than on Foreign Service officers. Yet age is unfairly the determining factor in the retirement of the latter.

The demand for expertise has lead to the so-called "lateral entry" program under which an older officer with area experience and proven ability is brought into the Foreign Service system to bring to DOS/USIA a needed capability. In my own case, I was brought into USIA in January 1962 largely because of my experience in the Far East. To mandatorily retire me 15 years later has, I feel, denies me the basic annuity protection and other benefits that accrue to some other officers. That issue aside, I feel strongly that consideration of my retirement should be based on my professional ability and physical fitness and not on an arbitrary age factor.

Mr. HAWKINS. Now, Mr. Bradley, you may proceed.

Mr. BRADLEY. Thank you, sir.

I feel that under existing legislation that affect the Foreign Service, it is very clear that at the age of 60 one must mandatorily be retired. There are some exceptions, and I have alluded to some of the exceptions.

I have cited the example of Ambassador Ellsworth Bunker, who is negotiating our treaty discussions in Panama. There were, until we introduced this case in district court, other exceptions which the Department of State has corrected; namely, that career Ambassadors and foreign ministers could continue until 65, and now they have changed this to be 60. It seems retrogressive to me, but that is my own personal opinion.

My feeling is that the basic criteria for determining whether an individual should continue past the age of 60 in the Foreign Service is whether he or she has shown professional ability, or whether he or she is physically capable of meeting the standards that have been set by the Department of State.

As you well know, there are yearly evaluations of the individual performance of each officer, which are very strict. There are also very strict health examinations on a periodic basis.

It seems to me that if an individual at the age of 60, or whatever age, can meet both of these standards, he should be able to continue his employment in his chosen profession. Under the present legislation, this is not possible.

I will close with that.

Mr. BUCHANAN. Mr. Chairman, I want to say to Mr. Bradley that we certainly will look with care at the statement which you have submitted.

I personally would feel that if there is any place in the Federal Establishment where mandatory retirement at a given age would be most illogical, it would be in the Foreign Service because of the system that we have in the Foreign Service, which I wish we had in the whole civil service.

There are some rather rigorous requirements to stay in, in the first place.

Mr. BRADLEY. Right, sir.

Mr. BUCHANAN. If we could keep on, Mr. Chairman, strengthening the law against mandatory retirement based on chronological age with the adoption of the Foreign Service system—I like the Foreign Service system of clearing out the deadwood as you go along—we would end up with a much better situation than we have at the present time.

Mr. HAWKINS. The Chair is in complete agreement with you, Mr. Buchanan.

Again, may we thank the witnesses for their very fine presentations. We apologize for the manner in which we have kept you through all these delays, and hope that we can call on you as we continue these hearings, and as we begin to draft specific legislation focusing on some of the areas that have been suggested.

You have been most helpful, and certainly we thank the both of you.

That concludes the subcommittee's hearing today.

[Whereupon, at 12:20 p.m., the subcommittee adjourned, subject to call of the Chair.]

[Material submitted for inclusion in the record follows:]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT,
Chicago, Ill., September 8, 1976.

HON. AUGUSTUS F. HAWKINS,
Congress of the United States,
House Office Building Annex,
Washington, D.C.

DEAR MR. HAWKINS: Thank you for your letter dated August 31, 1976 and the opportunity for commenting upon Congressman Pepper's bill to abolish the upper age limit of 65 for federal employees.

The Supreme Court refused to note jurisdiction in my own case last February. It noted jurisdiction in Murgia v. Massachusetts a few months later and published its opinion on June 26th. You may be interested in a "letter to the editor" I mailed to every newspaper in the United States with over 100,000 circulation just a few days ago (copy attached).

I am dedicated to the principle that capability and willingness to work should be the sole criteria of employment and that anti-discrimination legislation of any kind should not be limited to arbitrary age limits.

I am not certain that Congressman Pepper's bill is necessary and here is my reason:

(a) Section 15 of the Anti-Discrimination Act of 1967 (29 USCA 633a) *now* requires personnel actions involving designated government employees to be "free from any discrimination based on age". Age is not qualified. Therefore, it can be interpreted that government employees are *not now* restricted to the age bracket 40 to 65 in their right to make such complaints.

Without researching the legislative history of Section 15, I theorize that its drafter considered the retirement age limit of 70 for government employees. Therefore, the reconciliation of the 65 upper limit in the original Anti-Discrimination Act with the extra 5 years in 5 USC 8335 was to generalize with the words "based on age" in Section 15 of the Age Discrimination Act.

(b) I have difficulty in understanding what the new subsections mean in providing that subsection (a) "shall not apply" to a government employee. If the drafter means that the "prohibitions in this chapter" do apply to government employees without regard to the 40–65 age limitation, the statement "shall not apply" is confusing. Again, referring to the additional sentence to be inserted in Section 15(a), how is the government employee helped by providing that Section 12(a) shall not apply to him? Rather, the government employee is meant to have the right to apply the "prohibitions" against age discrimination (meaning Section 12(a)). When he complains about the "prohibitions" he benefits himself.

The problem in drafting may be that the word "provisions" is so all inclusive as to include (1) the "prohibitions" in this chapter and (2) the 40–65 age bracket which limits the class in private industry which can complain about age discrimination. The "prohibitions" are really the benefits to employees who have an age discrimination complaint. Congressman Pepper wants these benefits to apply to government employees. In this sense, the twice used words "the provisions of section 12(a) shall not apply" is unfortunate.

I will not presume to suggest how the language could be made more precise.

I would appreciate receipt of a copy of your hearings on September 14th.

Respectfully,

MARTIN O. WEISBROD.

Enclosure.

LETTER TO THE EDITOR DEPARTMENT

(The article involves a simplification of complex constitutional principles for the benefit of lay readers. Its basic accuracy could be checked with your legal counsel. The writer is an Associate Regional Counsel of the Department of Housing and Urban Development.)

The cause of the working elderly has been dealt a grievous blow by the recent decision of the Supreme Court in Murgia v. Massachusetts.

The Massachusetts statute commands the retirement of state police officers at age fifty. Murgia had passed a rigid physical and mental test four months prior to his fiftieth birthday. Two lower courts held that the statute unconstitutionally deprived Murgia of his right to work. On appeal, the Supreme Court noted jurisdiction and for the first time in history gave full consideration to the problem of mandatory retirement. It declared that the statute is constitutional.

The Court admits that the statute is imperfect because the means to secure a young and vigorous police force is the use of the arbitrary age of fifty rather than an individual test of a person's capability. If the right to work is constitutionally protected, there is a strong likelihood that the statute would be declared unconstitutional. However, the Court adopted a more tolerant view of the imperfect means because it formally declared that Murgia's right to work was not constitutionally protected. My quarrel is with the dubious means adopted by the Court in arriving at that conclusion. Here is the quotation taken directly from the decision:

"This Court's decisions give no support to the proposition that a right of governmental employment per se is fundamental. See San Antonio Independent School District v. Rodriguez, supra; Lindsay v. Normet, 405 U.S. 56, 73 (1972); Dandridge v. Williams, supra, at. 485"

Would you not think that these were right to work cases? Well, Rodriguez concerned public school education, Normet concerned a forcible detainer statute and Dandridge concerned the size of a welfare check. These citations are not directly in point in deciding the nature of the right to work—lawyers call them obiter dicta.

Were these three cases the sum total of pertinent citations? No; for many years the Supreme Court had extolled the right to work within the concepts of "liberty" and "property" as fundamental to the strength and stability of American society. In 1914 the Court said, "[A]ll men are entitled to the equal protection of law in their right to work for the support of themselves and their families" * * * "insofar as a man is deprived of the right to labor, his liberty is restricted, his capacity to earn wages and acquiring property is lessened and he is denied the protection which the law affords to those who are permitted to work" * * * "the constitutional guarantee is an assurance that the citizen shall be protected in the right to use his power of mind and body in any lawful calling". Forty years later the Court said "We need not pause to consider whether an abstract right to public employment exists. It is sufficient to say constitutional protection does extend to the public servant whose exclusion pursuant to a statute is patently arbitrary or discriminatory". Smith v. Texas, (1914); Wieman v. Updegraff, (1952). This line of decisions was not without setbacks. In 1951, in Bailey v. Richardson, the Court by a tie vote upheld a lower court ruling which flatly held that a person had no constitutionally protected interest in a job and it could arbitrarily be taken away without a hearing. It took 22 years before a justice in the fine print of a footnote said that "this holding has been thoroughly undermined in the ensuing years". In the latter case (Arnett v. Kennedy), it was finally held that a government employee is constitutionally entitled to a hearing before he loses his job.

My criticism is that the long parade of these right to work cases was completely ignored by the Court in Murgia.

Both Hampton v. Mow Sun Wong (an alien's exclusion from federal employment) and Murgia v. Massachusetts were decided in June, 1976. In Hampton, the Court said "* * * ineligibility for employment in a major sector of the economy is of sufficient significance to be characterized as a deprivation of an interest in liberty". (96 S. Ct. 1895, 1905). Should we not be advised concerning the distinctions of Murgia and Mow Sun Wong? Without explanation, the right to work is plunged back to the days of Bailey v. Richardson.

Justice Marshall strongly dissented in Murgia and Justice Stevens did not participate in its consideration.

When, for the first time in history, the Supreme Court undertook full consideration of a mandatory retirement statute, this country was entitled to an intelligent analysis of the relevance or irrelevance of the host of decisions which concern the fundamental right of a man to work. Instead, we are fobbed off with an oblique and misleading reference to the areas of forcible detainer, public education and welfare.

Russia has done better. In the Soviet Constitution, the first right mentioned is the right to work.

MARTIN O. WEISBROD.

NATIONAL RETIRED TEACHERS ASSOCIATION AND
AMERICAN ASSOCIATION OF RETIRED PERSONS,
Washington, D.C., September 16, 1976.

Hon. AUGUSTUS HAWKINS,
U.S. House of Representatives, Committee on Education and Labor, Subcommittee on Equal Opportunities, House Office Building Annex, Washington, D.C.

DEAR CONGRESSMAN HAWKINS: The National Retired Teachers Association and the American Association of Retired Persons respectfully request that this letter and the accompanying statement be included in the record of the hearing on H.R. 14879, a bill to amend the Age Discrimination in Employment Act of 1967 to provide that all Federal employees, as described in Section 15 of the Act, be covered by the Act's provisions regardless of their age.

Our Associations have a combined national membership of 9.5 million older Americans. We are, therefore, acutely aware of the impact of mandatory retirement on their lives. In a period of inflation—recession like we have just experienced, older persons are particularly at a disadvantage. They are the first to be laid off, they are the last to be considered for job openings, and they have limited incomes which must be stretched very thin to cope with the artificially high prices which exist in the marketplace.

We have continually worked to create an awareness of the employment needs of older persons and we have worked to discourage mandatory retirement policies and practices as obstacles which frustrate the fulfillment of those needs. We strongly believe that this country has the resources to assure that all Americans who are willing and able to work, or who need to work, are able to do so.

Many arguments supporting mandatory retirement have been advanced. We believe, however, that the ardor of those arguments will diminish as the economic strains of supporting an even larger population of retired persons come into clearer focus.

Our Associations support H.R. 14879 as a firm step toward the elimination of mandatory retirement policies. We would, of course, prefer that the bill was extended to all employees now covered under the Act's provisions. If, however, coverage of Federal employees beyond age 65 can be achieved, we are certain that the knowledge gained from this limited extension of the Act's coverage will provide valuable justification for the extension of the Act for all workers.

We are grateful for your continued support and efforts to provide work opportunities for all Americans. We look forward to continued cooperation in working toward our common goals.

Sincerely,

PETER W. HUGHES,
Legislative Counsel.

Attachment.

PREPARED STATEMENT OF JOHN B. MARTIN, LEGISLATIVE CONSULTANT TO THE NATIONAL RETIRED TEACHERS ASSOCIATION AND THE AMERICAN ASSOCIATION OF RETIRED PERSONS

My name is John B. Martin and I am appearing here as Legislative Consultant to the National Retired Teachers Association and the American Association of Retired Persons. Accompanying me this morning is Faye Mench of our Legislation Department. We are glad to have this opportunity to testify on age discrimination in employment for older Americans and the effect upon the older worker. I shall try to answer several questions about age discrimination:

What is it?
Is it a problem?
How is it related to retirement?
What is its effect on people?
What should be done about it by additional legislation or otherwise?

Age discrimination primarily involves hiring or firing determined not by ability to do the job assigned but by chronological age. It is more prevalent in times of economic stress when jobs are scarce. Younger workers want the jobs available to take care of themselves and their families, and industry often wants to cut costs by replacing older, more expensive workers with younger workers at lower pay.

Age discrimination in employment exists at all levels of employment both among blue collar and white collar employees. It also impacts more directly on minorities, as is shown by the fact that unemployment is generally greater among these groups than among majority members of the working population.

Age discrimination in employment is also directly related to retirement. It tends to shift the support of the worker from his job to his pension—from earnings to public support in many cases and is a way to keep the older worker out of the work force and in retirement or to force him into retirement. It takes the worker out of his status of producer and makes him primarily a consumer. It is wasteful of talent and once lost, the productivity of the older worker, of course, is gone forever.

There is no question but that age discrimination in employment is a serious problem. At the present time we have some 91 million workers in the U.S. work force. Thirty-seven million of these, or 40 percent, are in the 45 to 64 age bracket. As the Committee knows, we have been going through a very serious period of economic contraction and early in 1974 the 45-plus worker group of unemployed numbered some 850,000. As of March 1975, this same 45-plus group numbered in the neighborhood of 1,535,000. and this does not record an estimated 1,350,000 "hidden" unemployed not actively engaged in seeking work but who are in need of and want to work but are unable to find employment. It does not include the 65-plus workers who are in this same "hidden" unemployment category. In all, some 2,900,000 workers over 45, plus an additional number from the 65-plus age group, are thought to have been unemployed in March 1975. As of December 1975, these figures appear to be not greatly reduced. During 1974, the average jobless worker spent some 9.7 weeks of unemployment. The 45 to 54 age group spent 12.9 weeks in unemployment. The 55 to 64 age group averaged 15.2 weeks of unemployment, and the 65-plus group averaged 16.6 weeks of unemployment.

It will be obvious that the older the worker the more difficulty he had finding a new job. Further aggravating the situation is the fact that during this same period the 45-plus group of workers held only 4.4 percent of the enrollment in federal job training programs, although the same group constituted 19 percent of total unemployment in the United States and 27 percent of long-term joblessness. This same group constituted 39 percent of very long-term joblessness of 27 weeks or more. Many of these people will ultimately be forced into retirement, and in many cases this will be early retirement at age 62, 63 or 64. The result will be a permanent reduction in Social Security benefits to some 80 percent of the basic Social Security pension if the retirement is as early as age 62. This is serious because this reduction continues throughout the life of the beneficiary.

Employment is particularly important for persons in the 40 to 65 age group because this is the period in life during which most persons start saving for their retirement years. Prolonged unemployment during this period can gravely affect the income an individual will have to live on during retirement. both in terms of pension and Social Security benefits and in the savings he is able to accumulate.

While employment during the 20 years prior to age 65 is essential, there are strong economic arguments for encouraging workers to continue working beyond age 65, so long as they are willing and able to do so. Life expectancies are increasing and persons who retire at age 65 or younger are experiencing longer and longer periods of retirement. Inflation can have a disastrous effect on retirement income over such a long period of time and a pension that seemed adequate 20 years ago may be meager by today's standards. Moreover, when the period of retirement lasts 20 or 25 years, savings and other assets are apt to be dissipated long before the need for them has ended.

Encouraging employment beyond age 65 would have a positive economic impact on society as a whole as well as on the individual. If the present trend in fertility rates continues—and we have no reason to expect that it will do otherwise—then the proportion of retirees to workers, the dependency ratio, will grow increasingly larger. In 1955 there was one retiree for every seven workers; in 1960 there wase one retiree for every four workers; and in 1974 the ratio had risen to one-to-three. As the dependency ratio increases, the transfer of income from workers to retirees which takes place under Social Security will place an ever-increasing burden on the working population and may reach the point where workers are unwilling to contribute the amounts needed to support the retired population. In fact, the Board of Trustees of the Social Security trust funds and the Senate-appointed Panel on Social Security Financing have predicted that this projected increase in the dependency ratio will result in a long-term deficit in the Social Security trust funds over the next 75 years unless changes are made in the Social Security system.

While the proportion of workers to retirees has been declining and is predicted to decline still further, the percentage of persons over age 65 who remain in the work force has fallen as well. Twenty years ago nearly half of all men over 65 were still in the work force, either employed or actively seeking employment. Now only one-fourth are in the work force, and this percentage is expected to decline still further. The proportion of men between the ages 55 and 64 who are in the work force has been slowly dropping as well.

It should be observed here that retirement is a comparatively new concept. Prior to the present century, most men and women who worked did not talk of retirement. They simply continued to work until they couldn't work any longer, and when that happened, their work life terminated. Our concept of retirement really came to birth in 1935, when the Social Security Act was passed. I don't think at that time we realized what its impact would be on retirement, but it certainly has had a marked effect not only because it provided a substantial sum to enable people to live on after retirement but also because it fastened the age of 65 on our culture as a time when most people do in fact retire, regardless of whether they want to do so or not and regardless also of whether their health may be impaired or not.

The Social Security Act was passed during a time of economic troubles. In a sense it was not too different from the present day, though the difficulties then were undoubtedly much more severe. At any rate, it was a period of job shortages when many people, particularly in the labor unions, wanted to get workers out of the labor market and therefore tried to find some way of providing inducements for people to drop out of the labor market and support for them when they did drop out. I have never researched the question of why age 65 was taken as the retirement age in the Social Security Act, but I suspect it was based on the fact that people's health and the state of medicine being what they were then, age 65 was a time when many people began to suffer physical disabilities of one kind or another. In any event, for private industry 65 was fixed upon as retirement age by the Social Security Act. Interestingly enough, the Federal Government, whose employees do not come under the Social Security Act, fixed the age by statute at age 70, which in modern times and with modern medical practice has a great deal to recommend it over the earlier retirement age. Certainly, people today at age 70, generally speaking, are in better health than they were 35 or 40 years ago at age 65.

The private pension plans followed the Social Security Act, adopting 65 as the age of retirement and in many cases this was made mandatory. Today practically 50 percent of our force is operating under some form of mandatory retirement. The present system provides strong incentives to quit work.

The retirement test, which I will discuss later, provides a penalty of one dollar in lost benefits for every two dollars earned over $2,760. This gives a strong push to the potential retiree to encourage him to stay out of the labor market after his retirement. Furthermore, he finds no incentive to stay in the labor force from any actuarial increase in benefits available if he continues to work. There is, of course, a small benefit increase of one percent for each year beyond age 65, but this is token only. It has been estimated that if the increase were actuarial in character, a person retiring at age 70 would have a benefit increase by as much as 60 percent or more. The possibility of this would be a great incentive to continue working.

Mandatory reitrement at age 65 or earlier ignores the fact that the health of many retirees at 65 is much better today than it was some years ago. It also ignores the fact that benefits are not large enough to live on and that additional income will be needed, even though we now have a cost-of-living increase formula built into the benefit system. It ignores, too, the fact that many people want to continue working and are willing and able to do so and competent to produce a good quality of work. Finally, it ignores the studies which have been made showing that older workers are just as reliable as younger workers in most respects. They have less absenteeism and they work more steadily. My own view is that incentives are needed to encourage people to continue to work if they are willing to do so and that they ought to have the option to do so if they wish.

Forced retirement can be damaging to the physical and psychological health of an individual, and the American Medical Association's Committee on Aging describes the enforced idleness of retirement as "no less devastating than cancer, tuberculosis or heart disease . . ." The AMA Committee says, "There is ample clinical evidence that physical and emotional problems can be precipitated or exacerbated by denial of employment opportunities . . . The increase in life expectancy and higher health levels will prove of little benefit to man if he is denied the opportunity to continue contributing his skills at a certain chronological age, whether this be 45, 65 or 85 years."

To argue that retirement of older workers will provide more jobs for younger workers is to admit that our society cannot effectively utilize the talents, skills and abilities of an increasingly large number of its citizens. Such waste is intolerable. The remedy is a balancing of public service and private jobs in a full employment program so that all who are able and willing to work may have the opportunity to do so. It is our belief that, while there may be from time to time more workers than jobs in private industry, the number of worthwhile and useful jobs that need to be done in the public and private sectors is always more than the number of workers available to fill such jobs. Paying workers for productive activity would seem to be always preferable to paying them for doing nothing on public assistance.

One clear answer to the problem of age discrimination in employment is the Age Discrimination in Employment Act of 1967, which is enforced by the Employment Standards Administration of the Department of Labor. The Act was enacted 8 years ago to promote the employment of persons aged 40 to 65, based on their ability rather than age and to prohibit discrimination in employment because of age in matters such as hiring, job retention, compensation and other terms, conditions or privileges of employment, also to help employers and employees find ways of meeting various problems stemming from the impact of age on employment. Most employers of 20 or more persons are subject to the Act's provisions, as are public and private employment agencies serving such employers. Labor organizations having 25 or more members or which refer persons for employment to covered employers are also subject to this law. In 1974 the law was extended to cover federal, state and local government jobs. High priority is given in the Labor Department to enforcement of this Act.

The largest suit to date has been filed against the Baltimore & Ohio Railroad Company and the Chesapeake & Ohio Railway Company, where the Department is seeking more than $20 million for some 300 present and former employees. Also sought is the reinstatement of employees who are alleged to have been unfairly discharged or demoted and the abolition of a provision in the companies' amended pension plan for mandatory retirement at the age of 62. Also, recently in a case against Standard Oil of California, the Department obtained a settlement offering the payment of $2 million to 160 former employees and reinstatement to 120 of them. Individual awards ranged generally from $10,000 to $57,000. Most

of the 40 who were not offered reinstatement were those who were 64 years of age who received instead additional compensation to the date of their 65th birthday.

The number of complaints has steadily increased during each year of the program. In Fiscal 1975 complaints were more than twice the number received in 1973. It would appear that employees as well as employers are becoming increasingly conscious of the Age Discrimination in Employment Act and the need to comply with its provisions.

Section 7 of the Act requires that conciliation be attempted before legal proceedings are initiated. A great many compliance actions constitute the less formal, time saving conciliation and compliance contacts. Full regular fact-finding investigations are also conducted, and these are more common at the present time because such investigations tend to disclose patterns of age discrimination affecting large numbers of older workers. Some of these cases stem from layoffs and some from hiring. At the present time cases involving millions of dollars are pending against Pan American Airlines, Goodyear Tire & Rubber Company, Liggett & Meyers, and a subsidiary of A.T. & T. The oil, aircraft and aerospace industries are also the subject of a general investigation.

Our Associations urge that the enforcement of the Age Discrimination in Employment Act of 1967 be stepped up and that increased funding and increased staff be provided to the Age Discrimination and Equal Pay Branch of the Labor Department's Employment Standards Administration. Furthermore, we urge that the Act be expanded to cover workers age 65 and older, as well as those between the ages of 40 and 65 as is proposed in H.R. 10040. That bill and eight identical bills introduced in the House now have a total of 36 sponsors. There can be no logical reason for arbitrarily ending the protection of the law as soon as a worker has reached his 65th birthday. The very existence of a law which forbids age discrimination between age 40 and age 64 implies that age discrimination at age 65 and beyond is permissible. That implication ought not to exist.

Our Associations also urge that the Age Discrimination in Employment Act of 1967 be amended to prohibit the inclusion of a mandatory retirement age in any employment agreement or contract. The Act provides: "It shall not be unlawful for an employer . . . [to] observe the terms of a bona fide seniority system or any bona fide employee benefit plan such as a retirement, pension, or insurance plan, which is not a subterfuge to evade the purposes of this chapter, except that no such employee benefit plan shall excuse the failure to hire any individual; . . ."

The Secretary by regulation has interpreted this as follows: ". . .[T]he Act authorizes involuntary retirement irrespective of age, provided that such retirement is pursuant to the terms of a retirement or pension plan meeting the requirements of Section 4(f)(2)." This leaves a very big loophole in the Act and encourages the inclusion of mandatory retirement provisions in retirement and pension plans. It effectively negatives the attempt to prevent age discrimination in many cases.

Still another barrier or disincentive to work which is placed in the way of older persons is the "retirement test" or "earnings limitation" which is placed on the recipient of Social Security. Under present law an individual may not earn more than $2760 a year without losing Social Security benefits—$1 for every $2 earned above $2760 until all benefits are lost. Our Associations urge immediate liberalization of the retirement test to $4000, with a view to ultimate abolishment of the test. The test discriminates severely against the worker who would like to remain active in the work force. As it is now constituted, the retirement test poses a virtually insurmountable barrier to continued employment by low income workers—the very group which would benefit most from continuing to work past age 65.

We also feel that the Social Security benefits of an individual who continues to work past age 65 and who continues to pay into the Social Security system should be readjusted on an actuarial basis at the time of retirement to reflect his increased contributions and decreased life expectancy at the time of retirement.

Finally we would call the attention of the Committee to the recent passage of Title IX of the Older Americans Act Amendments of 1975 under which low income older workers with poor employment prospects are employed on a part-time basis for a multitude of community service jobs. These include social, health, welfare, educational, library, recreational and other similar services:

conservation, maintenance or restoration of natural resources, community betterment or beautification, anti-pollution and environmental quality efforts, economic development and many other publicly needed services.

This program first arose as a part of Operation Mainstream. The NRTA–AARP Senior Community Service Aides Project was begun in 1969 as a demonstration program. It is now known as the Community Service Employment program. The program now includes 46 project sites in 18 States with an authorized enrollment of 2047 persons at a cost of $8.7 million. The average age of enrollees is 66-plus. Sixty-six percent are white, 33 percent are black, with a 10 percent Spanish-speaking enrollment since 1972. The numbers also include Indians and Orientals. Fifteen percent of the monthly enrollment are physically handicapped, and we have retrained also a large number of ex-offenders.

Our placement rate of enrollees into unsubsidized employment is at present 51 percent. During the past twelve-month period, we have placed 1025 enrollees and 1452 non-enrollees in permanent jobs. These enrollees are dependable, conscientious and completely dedicated to their work for the host agency. There is no question that it is better to have these men and women working and earning small wages than to have them on relief. They are employed only if they are in the poverty category and have poor employment prospects. Title IX is the only program which will make sure that they have an opportunity to earn a modest living.

The Comprehensive Employment and Training Act has been relied upon by the Administration to provide work for the older worker. The administrators of that Act have taken the position that prime sponsors will do whatever needs doing for the worker. Thus far, out of 132 projects submitted by CETA prime sponsors not more than six have indicated possible funding for the current older worker enrollment. From the data available from CETA project plans, approximately four percent of CETA enrollment positions are supposed to be available to assist older workers. Past manpower programs have shown a consistent lack of interest in the older worker and, based on general revenue sharing's practically total disregard of the needs of the elderly, it would appear that there is little hope of having older workers share in CETA programs in any real relation to their need.

Based upon past experience, therefore, we are of the very strong opinion that it is necessary to fund Title IX to the full extent of its $100 million authorization for 1976 and to maintain in the Labor Department a categorical older worker program which can be relied upon to find jobs for older workers. If subsequent experience with the operations of CETA should show that prime sponsors can be educated or pressured to develop adequate older worker programs, we may be able to do without the provisions of Title IX. Until that time arrives, however, it seems essential that such a program be continued.

We have urged, therefore, and the Congress has established the Title IX authorizations at $100 million for FY 1976; $37.5 million for July 1, 1976, to September 30, 1976; and $200 million for FY 1978.

We are aware that the Labor Department is not happy with a categorical program such as Title IX presents. On the other hand, we are also aware that neither the Labor Department nor state and local employment agencies have ever shown great interest in older worker programs. For this reason, we feel strongly that Title IX ought to be continued with an authorization until it is clear that the Labor Department under CETA can and will encourage the development of an older worker program throughout the country. The attitude at the present time seems to be that if the local communities want it, they will do something about it. Unfortunately, however, local communities have other pressures, and their failure to do anything about an older worker program will simply mean that the older worker, as in the past, will be the most discriminated against—last hired and first fired—and those older workers who lose their jobs will soon find themselves on the ash heap as far as further work is concerned.

NATIONAL ASSOCIATION FOR HUMAN DEVELOPMENT,
Washington, D.C., September 22, 1976.

Hon. AUGUSTUS F. HAWKINS,
Chairman, Subcommittee on Equal Opportunities, House Committee on Education and Labor, House Office Building Annex, Washington, D.C.

The National Association for Human Development, a non-profit, social service organization, favors enactment of legislation to end mandatory retirement based purely on age. We wish to be recorded as supporting H.R. 14879, an amendment to the Age Discrimination in Employment Act of 1967, the subject of a hearing before your subcommittee on September 14, 1976.

The National Association for Human Development is based on the premise that "the only antidote for aging is for a person to continue to function mentally and physically in every respect." [1] Many of our activities are designed to meet problems arising from the impact of age.

There is mounting evidence that physical and emotional problems can be brought on by lack of activity, however, fear of becoming dependent and the social and economic need for work by some older persons are also important factors. While developing programs to stimulate activity by participation in special services we recognize the need for meaningful work for older Americans.

In 1965 the Congress passed the Older Americans Act which has been amended several times to broaden the definition of social services and to add other programs to improve the quality of life for older persons.

In 1967 the Congress also passed the Age Discrimination in Employment Act, however, it only protected workers between 40 and 65 years of age. Later, the Fair Labor Standards Amendments of 1974 broadened the scope of the law to include Federal, State and local governments. The basic purposes of the Age Discrimination in Employment Act was to (1) prohibit arbitrary age discrimination in employment, (2) to promote employment of older persons based on ability rather than age and (3) find ways of meeting problems arising from pressure of age.

The decision to have compulsory retirement on the fixed chronological age of 65 was made in 1935 with the passage of the Social Security Act. We support the many efforts which have been made to eliminate mandatory retirement from our employment system, both public and private. We oppose discrimination in employment because of age and therefore support Representative Pepper in his effort to amend the Age Discrimination In Employment Act.

The bill, H.R. 14879, to protect *all* workers employed by the Federal government, not just those between 40 and 65 years of age, is a step in the right direction.

Sincerely yours,

ANNE RADD, *Project Director.*

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[1] Theodore G. Klumpp, M.D., Chairman of the Board, National Association For Human Development.

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