FROM THE EDITOR . . .

Contents

The bulk of this issue is used to present the papers which were given at the DPR symposium, "Affirmative Action Revisited." The session was arranged by Barbara Adler, and took place on September 12, 1978, in Miami Beach.

You will note that these interesting and informative articles deal with professional women in general, rather than women chemists alone. If any of our female readers would like to share personal reminiscences about being a woman chemist in an overwhelmingly male field, please get in touch with me.

Report from Miami Beach

The Committee on Economic Status (of which I am Secretary) held a long meeting, covering several areas. Among other actions, it was decided to appoint a subcommittee (Dennis Chamot, chairman) to review past ACS attempts to draw up a general policy statement on employment and manpower policies; to decide if such a document would be useful; and to make appropriate recommendations in this area to the full Committee. This subject, of course, is of interest to the members of this Division, and if any of you have thoughts or suggestions which might be helpful to the subcommittee, I would be happy to receive them.

CES also agreed to allow extra questions dealing with compensation practices for employed inventors to be added to the next annual ACS comprehensive member survey. This, too, is a subject of interest to us, and I am sure we will all look forward to seeing the results. Perhaps they will settle some of the points of contention that surround this issue. Or maybe I am being too optimistic.

At the meeting of the Committee on Professional Relations, one of the liveliest discussions centered around the Kepone incident in Hopewell, Virginia. As you recall, this involved a small business (almost garage type) run by former employees of Allied Chemical, to produce Kepone for Allied. In the process, lack of attention to proper practices resulted in serious medical problems.

The incident resulted in a large fine (for Allied related to water pollution, not safety practices), and other penalties for the people who owned the small business. Throughout this tragic episode, the ACS has remained silent, and the question before CCPR was whether or not to remain so.

Much time was spent worrying over the fact that the particular Guideline that applies (Sec. II, Employer 5: The employer should strive to insure that products and processes are adequately tested and that potential hazards are properly identified to the public) was not in existence at the time of the incident. I suggested that they shouldn't be so legalistic. Instead of attempting something as formal as official citation, based on formal charges and specific guidelines, the ACS should take a public stand disavowing and protesting any objectionable actions by members of the Society and by companies within the chemical industry, actions for which they have been found guilty by the courts. It seems to me that the ACS must demonstrate a certain level of professional responsibility to the members of our profession, to expect proper behavior from the chemical industry and chemists. As chemists, we are all interested in a healthy chemical industry, and as citizens, we must also be concerned about the health of our communities.

The Kepone incident is one that drew a lot of publicity; it resulted in fines imposed by the courts; many people involved were harmed; there was a good deal of economic harm done to the community; no one is defending what happened. This appears to be about as clearcut a serious case as will ever occur (and we hope nothing like it will recur). The ACS is derelict if it does not comment, and deserves the inevitable loss of credibility in the eyes of the public.

The CCPR Subcommittee on Hazards and Toxins will come back with recommendations. The wheel turns exceedingly slow in the ACS.

The Miami meeting provided a spectacular look at the workings of the Society's so-called Fair Election Procedures (FEP) bylaws. In a nutshell, the background goes like this: the California Section has for some time had a National Elections Committee whose task is to help obtain nominees for national ACS office (they may have other duties, but this is the pertinent one). In fulfilling its charge earlier this year, the committee solicited signatures for a petition to nominate Section member Alan Nixon as a candidate for Director, Region VI. In doing this, the committee used California Section stationery. Whether one agrees with this usage, or not, or considers it of no importance, the action was legal under the Section bylaws, since the committee was carrying out an official function. In any case, I don't consider it earthshaking. Apparently, some people did.

Another candidate for the same office, also a member of the California Section, Dick Lemmon (Incumbent Director), complained that this action was a violation of ACS bylaws, in that "funds of the Local Section" (in the form of letterhead and the like) were used to benefit an individual candidate (Nixon). The complaint was considered initially by two committees, Constitution and Bylaws (C&B) and Nominations and Elections (N&E). Let me now let Dr. Nixon tell what happened (from "Nick Nacks", November, 1978):

"The C&B committee decided the action was illegal but said nothing about accepting or rejecting the nomination and appointed a subcommittee to look into the need for possible revisions of the bylaws. The N&E committee, on the other hand, voted unanimously that the action was a violation and that the name of the petition candidate should be stricken from the ballot. The matter was then brought to the Council Policy Committee of which the complaining candidate is vice chairman. They voted unanimously (1 abstention) that they thought the action was improper but that because the petition candidate did not himself initiate the letter, that his candidacy should be sustained. The matter then went to the Council where, fortunately, greater wisdom prevailed. In the first place, they very properly sustained a motion to divide the question and, after it was pointed out that the Council had been supplied with no proper documentation on which to make a judgment, the matter of legality was tabled. A motion on the second part sustained the petition candidate's right to a position on the ballot handily but not unanimously.

"An interesting feature of this incident was the extraordinary aggressive actions of the ACS Council and the equally extraordinary ineptitude of the N&E committee. The Counsel sounded more like a prosecuting attorney going for a hanging rather than an impartial counselor (after one committee meeting he was heard to observe, "I've got the SOB") and the committee miserably failed to act like an impartial examining body but more like a kangaroo court.

- They did not hold a public hearing on the matter. Their decisions were reached in camera.
- They failed to invite the petition originator or the petition candidate to appear before them. They were mightily disturbed when the petition candidate brought along counsel.
- They ignored the fact that the FEP were never intended to apply to the nomination procedure (the word doesn't occur in the text) but relied on dictionary and legal definitions that a candidate is a candidate when she says he's a candidate (if this were so it wouldn't be necessary to get any signatures).
- They failed to go back and look at the minutes of discussion when the FEP was being considered. There they would have found that it was expressly stated that FEP was not to apply to the nomination process and that local sec-
**DO NOT PASS GO. DO NOT COLLECT $200!**

Betty M. Vetter
Executive Director
Scientific Manpower Commission

Affirmative action is a term that is now widely recognized even though it still has no common definition accepted by all those who are involved in it. We might think of it as a game with two kinds of players — those already in the game who have, over the years, moved into positions of power; and those who are seeking entry.

The rules of the game of affirmative action not only provide that every person who wishes to become a player and is competent to do so shall be allowed to compete without regard to race, creed, color or sex but also that in certain instances those persons previously excluded because of race or sex shall, if fully qualified, be given an occasional helping hand until they become a proportionate share of all the players. The rules of the game provide financial penalties for those who refuse opportunity for entry to new players, or who show by their results that such opportunity was not provided.

The ever-increasing fascination of the game of Monopoly may be at least partly attributable to its one major correlation with real life. The more control achieved by any player — control of property in the case of the Monopoly game — the more likely it becomes that the player will become the winner. Since winning is more enjoyable to all of us than losing, a player who has achieved the balance of control is unlikely to relinquish it voluntarily either by giving away his property or by reducing his rental charge, and thus diluting his power.

In the real world or in our game of affirmative action, where accumulation of controlling power is less subject to random chance, the person who would achieve that power generally recognizes the necessity of things to prepare for the opportunity to move ahead. This preparation includes two mandatory steps:

1. **The acquisition of sufficient amounts of formal education in the area where achievement is sought:**

2. **The cultivation of those persons already in the power structure as advisors and mentors so that the accumulated wisdom about not only what we sometimes call ‘subject matter’ but also about what we might refer to as ‘the system’ or ‘the ropes’ may be absorbed.**

This step is also imperative to assure that recommendations from important persons may be obtained when an opportunity arises to move ahead in some way.

Since 1970, both minorities and women have moved rapidly and purposefully toward the first of these steps — obtaining the formal education required for participation at a professional level in science as well as in other fields. Women have moved faster than minorities in this step, and the number of minority persons who have completed educational preparation and sought to enter the game through employment is still relatively small. Indeed the numbers are small enough that they do not pose a significant threat to the original players. Thus, opportunities have opened up fairly rapidly for minority persons with good preparation for a career in science or engineering. But too few blacks, Hispanics and American Indians have completed the essential stages of preparation.

The problems for women are different. Women have obtained or are obtaining the necessary preparation in record numbers, although their proportion in science still is as much below their proportion in the population as is true for the non-Asian minorities.

In some fields where women’s participation was particularly low, such as engineering, the proportionate increase has been spectacular. Women were only three of every 200 students in the entering engineering class in the Fall of 1969. They were 23 of every 200 in the Fall of 1977 — a 763% increase in just eight years. Among baccalaureate graduates in engineering — the professional entry level in that field — they have moved from 8 of every 1,000 graduates in 1969 to 48 of every 1,000 in 1977 — a 600% increase. Among non-Asian minorities, there has also been a striking increase in engineering. The number of black baccalaureate graduates rose 168% from 1969 to 1977, with blacks being only 0.8% of
TABLE 1. UNEMPLOYMENT RATES OF SCIENTISTS AND ENGINEERS, 1971-1977, BY FIELD AND SEX

<table>
<thead>
<tr>
<th>Year</th>
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<th>Women</th>
<th>Men</th>
<th>Women</th>
<th>Men</th>
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<td>3.6</td>
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<td>3.6</td>
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**Sources:** National Science Foundation
But among doctorate chemists for example, who are aged 35 to 39, the average salary for men was $24,600 in 1977 and for women $20,100. She earns just 78% of his earnings — the same differential as for the entire group.

There are some indicators in the salary figures that do show progress, and that again emphasize that at the higher degree levels women are farther behind men than they are at lower degree levels. Among new baccalaureate graduates in engineering, women average slightly higher beginning salary offers than men both this year and last year. Among chemists at the baccalaureate level, average offers to women were only $24 per year less than to men in 1977, but by 1978, the women's average is $276 below men's. Women chemists and engineers are lucky compared to graduates in other fields. For the great bulk of baccalaureate graduates, the women's starting salary continues to be well below the men's.

The salary figures show us something else. The fields with the highest proportion of job offers have the smallest proportion of women. Demand exceeds supply here. But in the humanities, where salaries are lowest and women predominate, the number of offers also is lowest. Thus, 56% of all offers made by businesses and industry to new baccalaureate graduates were to new engineers, who were only 25% of the graduates. But they were 9% of the men and less than 1% of the women graduates.

In 1978, the annual survey of salaries of chemical professionals conducted by the American Chemical Society continued to show significantly lower salaries for women than for men at each degree level, each experience level, within each employer type and for each chemical specialty.

Salary is important not only for what it will buy, but also because it is a symbol of worth and of power. If you wonder why I seem to stress the importance of women getting some of that power in order to move ahead, let us look for a moment at an example of what happens when all power continues to vest in men. Let us look at employment in academic chemistry departments.

Over the past ten years, women have earned 9.8% of all Ph.D.'s in chemistry awarded by U.S. universities. Over the past 20 years, the women's proportion is 8.1%. The studies of Sister Agnes Green on Women Chemistry Faculty Members in U.S. Doctorate-Granting Departments show that, in 1970-71, women were only 1.5% of the full-time chemical faculties at the level of assistant professor and above. By 1976-77, six years later, that proportion has risen to a magnificent 2.4%. Even in 1976-77, an astonishing 114 doctoral chemistry departments — 62% of the total — still have no women faculty members, and only 2.2% of these 184 departments have two or more women on their full-time faculty. Still heading the group of departments without women is the University of California at Berkeley with a chemical faculty of 51 men. UCB shares this dubious honor with 18 large departments of 30 or more full-time chemists. There are only 98 women out of a total U.S. chemical faculty of 4,123.

How can this happen? Our affirmative action game has rules that prohibit this, and provide a penalty for institutions which make no great effort to change their sexist character — namely the withdrawal of federal funds. Yet withdrawal would really hurt any university with a large research program. But the penalty has never been applied to any university.

Academic women in all the science areas should have made significant gains over the past decade. The proportion of science doctors earned by women rose from 9% in 1970 to 18% in 1977 so the proportion of women among all doctorate scientists and engineers at universities and colleges also should show a striking increase. There is an increase, but it is not very striking. The proportion of women among all doctorate scientists and engineers at universities and colleges was 8.4% in 1973 and had moved up to 11.5% in 1977. But many of these women are not faculty members. They may be research assistants, or others on temporary appointments.

So where do we stand now, fifteen years after affirmative action was mandated? More women have been allowed to enter the game at the graduate school level and they have responded with rapid increases in the proportions of the student body at both undergraduate and graduate levels. Additionally, somewhat larger proportions of all women college students are choosing fields that have traditionally been dominated by men including chemistry, engineering, medicine, business and law.

Some improvement in women's salaries relative to men can be seen at the entry levels, but it is too soon to tell whether these women will move forward at the same rate of speed as the men in their graduation cohorts. Most entry salary averages for women are still well below those of men, whatever their field of college specialization.

Should we be encouraged by the progress of women that has resulted from the game of affirmative action? Yes, we should. But we should be equally disheartened that the game has continued to be played by the persons in power as if the rules were optional rather than mandatory. All too many women and minorities have found themselves caught again and again in this game by what appears to be the random chance card saying "Do Not Pass Go, Do Not Collect $200." But it isn't quite random chance. The dice in the game are still rigged in favor of the original players.

As late comers to the game, women and minorities have caught the brunt of layoffs, of a too highly tenured faculty of white men, of an oversupply of applicants occasioned by the post-war baby boom and the dropping birth rate after 1961. Most important, the penalties of the game as instituted by affirmative action have not been invoked against those who break the rules. The stick approach has not worked very well because the stick has not been used. It is time either to use that stick or perhaps to substitute a carrot — and reward those players who are really making an effort to include in appropriate proportion that 25% of the population who are not white males.

There is one other way to measure whether or not affirmative action has done its job and is no longer needed. We will know that time has come when both women and minorities have earned the same right to be mediocre and still advance that white men already have.

### TABLE 2. UNEMPLOYMENT RATES FOR ACS MEMBERS

<table>
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<tr>
<td>1978</td>
<td>2.8</td>
<td>2.8</td>
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</tr>
</tbody>
</table>

Source: American Chemical Society

AN EMPLOYER’S AND A FEMINIST PERSPECTIVE ON AFFIRMATIVE ACTION PROGRAMS

Anne M. Saunier
Director of Human Resources
Advanced Systems Group
Mead Corporation

I wish I could begin by saying today that I'm delighted to be here, but I find it appalling that the American Chemical Society is meeting in an unratified state (Florida has not ratified ERA — ed.) when many, many of your sister organizations and brother organizations have joined the boycott which now numbers between 85 and 100 organizations. I would encourage you to try to do something about that.

Once there was a chief executive officer who wanted to have an assistant to him, someone who would keep the lions away from his door. And so he wrote out a requisition for the personnel man (and I use that advisedly), and on the requisition he said, "What I want is an aggressive young man who can really keep things rolling in my office and keep the wolves away from my door." The personnel man, when he got it, went up to the chief executive officer and said, "Well, this requisition is a problem for me because we do have affirmative..."
action and you can't write a requisition like this and furthermore, I really do think we could find some very wellqualified women, and since our management has a very happy with this qualified women, we're never going to get a woman in the suite of the chief executive officer unless we allow this administrative assistant-type person to be a woman. Besides, maybe she'll bring your coffee.

The chief executive officer was persuaded that this was the right thing to do. Three candidates were presented, all very well qualified, and the chief executive officer interviewed them all. He used a story-type interview. He called the first woman in, who was very well qualified, and said to her, "You're on an airline which employs very young, very good-looking women, seventeen men and you, and you're on a desert island. How do you handle this situation?" The first woman looked around and said, "Oh, my golly, I couldn't handle that situation at all. I'd find the highest cliff and throw myself off." He thought, "Well, that obviously is not the candidate."

So he brought in the second one and he told her the same story. She thought for a while and said, "Well, I think I would find the one man among the seventeen who is the strongest and ally myself to him and depend upon him for my protection and support." Since the chief executive officer thought he was the strongest person in the corporation, he thought that was an excellent answer. "This is the woman I want to hire, but I have a third one in my waiting room so I'll interview her also." He brought in the third woman, also well qualified, and told her the same story, "You're on an airline, it goes down, there are eighteen survivors, you and seventeen men on a desert island. What do you do?" She thought and said that if she were in that situation, she'd have to be very flexible and have more opportunity to succeed as a woman or minority. You don't have to go through those personal manmud. You can just do it as long as you're not violating the law. So I'm a real advocate of the private sector. I think it's a good place to be and have found my experiences very good and have even found my feminism political activities very well supported. And I have not found that I have been penalized for my activities in the activist realm at all.

But, on to some of the problems. One of the things that is very frustrating to me as a feminist personnel officer is the technical requirements for affirmative action regulations, the requirements for affirmative action, at least in the private sector, stem from a presidential executive order, not from any law. The executive order is then implemented by a whole series of regulations that are written to which employers, if they are going to pass an audit, must comply.

In the last personnel department that I was in, I had a full staff, a million dollars. This budget, well over 20% of it was allocated to affirmative action situations. We were spending $120,000 a year or so on our affirmative action programs. Of that $120,000 a year, I would say nearly $60,000 of it was spent on the technical requirements of full compliance with that, that, since staff, computer time, analyses, to make sure we were meeting the technical requirements of the regulations. My view is that if I had the $120,000 myself to spend however I wanted to spend it, we could have had some magnificent recruiting programs, some excellent upward mobility programs, much more than we were able to do because we had to spend so much time on the technical requirements.

Now, I don't know as a feminist or a personnel manager exactly how to solve that problem. It's a problem that comes with federal regulations. Federal regulations regulate both 'good employers' and 'bad employers.' By getting in a good faith effort, you don't really get out from under any of the technical requirements of the regulations. It's the same with OSHA or anything else. All employers face the same regulations which may be very necessary for some employers and really debilitating for other employers. When I had direct charge of this program at my last employer, I found that to be a real frustration when we had the government auditors came, what they wanted to see was our technical compliance. A private sector officer that we are making some progress, especially women are making some progress. But it's interesting to see where that progress is. Women in the private sector are advancing in staff positions, not in line positions. We're seeing more and more women, for instance, as personnel executives or public relations executives. We're even seeing more and more in the very top jobs in corporations. You're not seeing are division heads or partners in the firm, chief executive officer and so on. I think there are some obvious reasons for that.

It's easier to promote women in staff positions because you can easily promote women who may have a humanities background, or whatever, who can learn the technical requirements of what they're going to be working on. For instance, in personnel, my background is a BA and MA in education and I learned what I needed to know on the job and through training programs and so on. That's an easier nut to crack, but it's been done. What is harder is to get women into line management positions and moving up the line. One problem is the small number of women who have been graduated from scientific and engineering disciplines in the past. But in my view, probably the bigger barrier is attitudinal in that women who move up the line generally start, for instance, in heavy manufacturing situations. When you move up into line management, you can start as a laborer, maybe a person covered by union contracts, then move into supervision. Most chief executive officers don't come through that route and I'm sure that that is an entry into lower level line management positions, and that's the where the resistance to women is the hardest and the most insidious. The other way to divisional presidencies and divisional executive positions is generally through marketing and financial planning and that sort of thing. Up until fairly recently, we haven't seen a lot of women coming out of MBA programs, so it's a very frustrating situation, believe me, to be a feminist in personnel wearing a personnel hat because you have all the good intentions in the world, but you still have the real realities of supply and demand and attitudes and so on within a corporation to work.

I think, however, we're going to see an enormous change in that fairly quickly. Of a number of new MBA's who were hired in my corporation last year, a very healthy percentage were women who were all prepared for entry into line management positions.

At my last employer, we looked at all the associate section chiefs, section chiefs and department managers to determine if women researchers were falling into that same pattern. What we found was rather discouraging in that the associate section chiefs, section chiefs, and department heads had very long tenure---average seven or eight year tenure. We just didn't have that many women who had even that tenure to compare to, to see if they were having the same kinds of experiences. We did find some useful correlation of tenure, that is to say, in every corporation no matter what its mission is or what product it is producing, and that is that there's the formal management structure and then there is also an informal management structure. By that I mean that there are a certain number of positions that I may look at, for instance, there were three positions that carried no management title at all and did not carry management pay either. But they were project leaders. They got a piece of a project that they had to lead themselves and had to have others informally reporting to them. We found that women were getting into these positions, and what I call the informal management network, so we've tried to make inroads through mentoring and other things to make sure that women were not overlooked in those kinds of experiences.
We have an enormous problem in overcoming the necessity of requirements for affirmative action as they are laid on us through the federal regulation process. In addition to that, one other thing that I would mention is the whole issue of charges, EEO charges. They also consume enormous amounts, usually, of any organization's personnel budget. The personnel department is the first line of defense in fighting them. The problem with the whole charge process is, (and you've got to remember that I have a feminist heart) this is being very gracious, that only one in three is worthwhile. One in three that has merit. Maybe it's not a discriminatory situation, it may be damned unfair, but it's not discriminatory, everybody's being treated unfairly or you've got a rotten manager who's taking everybody through the mill, not just women and minorities. Or it may be that the complainant has some other kind of problem. There are all kinds of things. My friends in both the Ohio Civil Rights Commission, the EEOC tell me the same thing. They say something more like one in ten has merit.

You spend time relating charges that are not indeed valid, because my strategy was always to determine if the charge is valid. If it was, caveat, conciliate immediately, fix it, get it straightened out, get it off the books. And if it wasn't valid, fight it 'til your dying day. I suspect we've gotten about one out of three. But what happens is that because those are the ones that you're fighting, those are the ones that get the corporate attention. Those are the ones you have to have attorneys for, those are the ones that you have these continuous meetings with the regulatory agencies, those are the ones that ultimately get to court. We didn't have any like that, but looking at other corporations, that is very true. I think the corporation that has any inkling that it's a long way from the line that the stakes are too high. At least that is the position of the two that I have worked with that we've been able to adapt.

Those charges that have merit get settled by the or a personnel person going to that individual manager and saying, "Look, you really blew it. We're not going to fight this case. You've got to cave in and these are the appropriate things for you to do," and get it solved. That doesn't make you go to a higher level. Maybe it gets one review, unless a lot of money is involved, it doesn't even get to the top of the corporation. What does get to the top of the corporation are the ones that are invalid. What that does to the top management is that the whole management of the organization is very bad because the view is that there's another wild-eyed radical minority at woman who doesn't know X from Y and is trying to make trouble for us. That's a very difficult process to have stopped because I don't think you should cave in on a charge that isn't appropriate.

Now, I would have to say, although I see some progress made, in my view, the progress is much too slow. I certainly agree wholeheartedly with Betty Vetter who said that we all know we have equal opportunities when a median woman can go as far as a median man. Believe me, the majority I see among men in high positions is appreciable. I also believe firmly that there are many employers who are not acting in good faith, who do resist at every turn, who allow their entire budget to be chewed up by the technical requirements and don't feel badly about that at all because they don't have to do anything. Unfortunately, the way the federal machinery works, it plays right into the hands of those employers who do exercise their good faith at all. Those employers then spend all their time and resources defending the letter of the law as opposed to the spirit of the law. There is a lot of that in the personnel area. It's very discouraging to dictate the job of personnel is fine and well and good. I worked with some unionists whose view was that you can get through the old boy network. We develop an old girl network. It's going to take a long time for that to work very effectively and in any way that we should try to formulate the new world. That also is going to take an awfully long time — a huge project.

I also see as a feminist, I think this has related to a lot of what in the last couple of years, minorities, the women against women. Unfortunately, both women and minorities play into that syndrome. The women against the male, the minority in the company, the women in the company against the minority in their employment. That is the situation, and it makes things worse and worse. I think we're seeing, in the last couple of years that I have seen before.

We are becoming who is also a personnel manager. I am a personnel manager that employers that they don't have to do anything and I really didn't know how to handle it. I also agree with the feminist point of view that progress is too slow. First, one must establish that there is a problem and that it is not just one that charges their heads. As in every story, there are two sides, and if you're going to write a book or book to see if I can't find a solution that apparently navigates between employers who are between feminists and gets the best possible with worlds.

CONSTRAINTS AND INTERACTIONS: MERIT PROMOTION, EQUAL OPPORTUNITY AND UPWARD MOBILITY IN FEDERAL SERVICE

D K Hayes
Laboratory Chief, Chemical and Biophysical Control Laboratory
U.S. Department of Agriculture
Beltsville, Md.

Women and minorities in the federal sector have not had the protection of law as long as have similar groups in the private sector. Many of you know, federal employees are covered under Title VII of the Civil Rights Act of 1964 as amended in 1972. Most of the law affecting Civil Service is contained in Title V of the U.S. Code which is further clarified and interpreted in the Federal Personnel Manual and in FPM Supplement 900-1, Chapter 33, which outlines the legal authority and is, in effect, a recap and a reproduction of U.S. Code. Although recent interest in equal rights for women goes back to the late 1960's, it was not until the federal workers were included under Title VII that enforcement was effective. Under this law several cases have been litigated and won by plaintiffs. These cases establish the right to litigate and to do so before all administrative remedies have been exhausted.

For example, an early case was Brown v. the General Service Administration. Brown lost his case (he was a little late in filing) but a point of law was affirmed — the Supreme Court concluded that Section 701 of the Civil Rights Act of 1964 as amended provides the exclusive remedy for claims of discrimination in Federal Employment. Thus, Federal Employees cannot bring suit for discrimination under the Civil Rights Act of 1964.

The Supreme Court believed that "Congress was persuaded that" (prior to 1972) "federal employees who were treated discriminatorily had no judicial remedy... Congress intended it (the 1972 amendment) to be exclusive and preemptive.

The second law which provides equal opportunity to men and women is the Equal Pay Act of 1963 as amended in May 1974, which provides that equal pay shall be given for substantially equal work, regardless of sex.

The case which established this point of law was that of Cayce v. Adams. Cayce had been doing substantially the same work for the FAA as had a man who was graded at GS-11, while she was graded at GS-8. Cayce naturally was disturbed about this and, for a year and a half, her job was audited and the classification determined that the job was correctly classified. An audit is a review by a specialist trained in evaluating the level of difficulty of a job as compared to standards developed for such jobs. The rationale for her was not done and Cayce continued to work at GS-8. Finally she brought suit and she was awarded back pay under the Equal Pay Act.

Upward Mobility is provided for by federal regulation and, although these regulations are somewhat by nature, they attempt to provide opportunities for competent individuals in dead-end jobs. The legal basis for this program is derived from two major sources — although there are others as well. These are the Government Employees Training Act PL 85-507, July 7, 1958, 15 US Code Chapter 41, sometimes abbreviated GETA; and the Civil Rights Act of
amended, which has already been discussed. The specific government regulation is part of the FPM Chapter 713 — Equal Employment Opportunity.

Upward Mobility refers to specific programs designed for deserving and capable, but at the moment, disadvantaged individuals to be selected, using merit principles, for career ladders for which they will be trained for the life of the program. The program also provides for selection out if employees fail. Thus, upward Mobility is really part of the implementation of affirmative action principles which provides another mechanism for "catch-up" for minorities and women. Programs can include such things as obtaining a high school diploma, a college degree, or further training which should qualify the individual for a higher grade.

In theory, upward Mobility is the concept. Merit principles are to apply to selections of worthy individuals who will participate in formal and on-the-job training which will make it possible for them to advance above what was previously possible. Each agency, of course, has had some informal upward Mobility practices for years, although the selection of participants may not previously have been so strictly monitored and regulated.

Problems may arise when qualifications are assessed for entry into upward Mobility Programs. Since negative selection criteria can be utilized to screen participants for the program. If used, the potential problem is the selection — out of an overqualified individual who in turn may complain, particularly in a time of scarce jobs. To my knowledge, at this writing there has not been litigation brought by a plaintiff disappointed because of non-selection for participation in an Upward Mobility Program.

EO and Upward Mobility must be compatible with the Merit System. That is, fairness in hiring and fairness in promotions for employees on board.

We have all heard a good deal about the merit system and about merit promotion. A large proportion of what we regard as "regular" government jobs are under the merit system. This system was established by law and the basic provision is found in 5 US Code 3301 in which a merit system was established to assure that merit would be the key to entry into federal employment. The law flows back to the Civil Service Act of 1883 (the Pendleton Act) in which a merit system based on principles of the system used by the British was established.

The Commission made a cautious statement in 1983, in which it stated: "It is now generally recognized that women can successfully perform the duties of many of the subordinate places under the government. There is simple justice in allowing them to compete for the public service and to receive appointments when, in fair competition, they have shown superior qualifications. The laws, however, permitted limited examinations; that is, jobs could be advertised for just one sex, and although there were some modifications favorable to women throughout the years, especially in the early 1960's, legal prohibition of sex discrimination did not really come until 1974, although merit principles were supposed to apply, and in limited fashion. In the case of race, there was some de facto discrimination which again was not fully remedied using only administrative procedures until Title VII was passed in 1972.

Merit Promotion was mandated under the law in 1955 and the Federal Personnel Manual is continually being updated. FPM Chapter 330 states: "In general, in hiring and placement, the appointing officer may choose the method to be used for filling a position except when that choice is limited by statute or the Civil Service Regulations.

"An appointing officer's discretion in all personnel decisions is to be exercised solely on the basis of merit and fitness and without discrimination." As outlined in FPM Chapter 330, an agency hires or fills a position in the General Schedule from outside the government, the selection is made from a list of eligible candidates from the Civil Service Register. The Commission has previously obtained applications for a particular type of job (examination) and either has scored these applicants according to carefully defined procedures or scored them in relation to the requirements stated in the request from the agency. Applicants are usually scored against a set of quality standards already developed by CSC. The register is then provided at the number of positions the Civil Service Commission has approved for the particular job. Under the specific request, the Commission sends a list of top ranked candidates to the selecting official.

It is just prior to this step that EEO coordinators and Federal Women's Program coordinators can influence the selection of women and minorities apply. They hope that these categories, i.e., women and minorities, appear on the best qualified list for the selecting official. This is important because if the complaint of discrimination is filed against this selection of female and it can be demonstrated that adequate women were not considered, the select official can then re-select applications in the order of the register. The list and that over a series of selections, the select official continually selected all of one racial or sex group, a legal decision can be rendered against him as was done in several cases. In the first of these cases a relatively small governmental unit was ordered as follows (in Copeland v. Urey) "positions in higher grades are to be filled so that women would be proportionately represented by a specified target date." Annual reports analyzing treatment of women in promotions, work assignments and training opportunities are available to all employees at the EEO office. Thus the merit system was apparently "bent" a bit so that a more appropriate distribution in regard to sex and age practices would be obtained.

In addition, in the operation of the merit system in hiring and placement, the Civil Service Commission, the agency and the selecting official must observe the laws which mandate Veteran's Preference. Provisions of this act do not apply to promotion actions within the government but do when selections are made for the Civil Service Register. When the law applies, the fact of being a veteran is used as an additional selection criterion. An additional 5 points is added to the Civil Service rating if a veteran and 10 points if a disabled veteran. If the veteran appears on the best qualified list, she or he must be hired. There are instances in which applicants who have passed the PACE examination for a position are not considered eligible to promote government employees (non-veterans, primarily women and minorities, as well as some Vietnam veterans) have received the highest scores of anyone taking the examination, but have been quelled on any register because of the additional points added to test scores as mandated by the Veteran's Preference laws. Veteran's Preference does not apply if the Civil Service Regulations are not used to fill a job and the hiring and placement are done within an agency or within the government.

Merit Promotion is dealt with in FPM Chapter 335. Merit Promotion is the application or merit principles to promotions and to appointment to a merit system which could lead to promotions. It applies in the competitive service and covers positions not specifically excepted by law, Presidential Action, or the Civil Service Commission. (This exception provides one out for bringing women and minorities on board.) The plan does not apply to promotions in a career ladder that was previously defined nor does it apply to an individual who has experienced an unplanned accretion of duties over a period of time. However, most actions which can ultimately result in a promotion — even including those which result initially in a reassignment, a demotion or a transfer to a position with promotion potential, or a reassignment at a higher grade or a potentially higher grade, as well as certain other assignments also are covered by Merit Promotion regulations.

Under this system, generally an evaluator or a panel of evaluators determines whether candidates meet basic eligibility criteria for a job category such as secretary or laboratory technician. The details of application of merit principles to different jobs under the General Schedule can differ in regard to setting up registers and evaluation of candidates. However, candidates all are evaluated as nearly equally as possible — whether by examination, by comparison against standards for their jobs, or by a combination of these two.

Employees who are considered for promotion under this plan are evaluated based on a number of factors. These are spelled out as follows:

1. Recent work experience
2. Education and training
3. Factors from the appraisal of skills, knowledge and ability
4. Evaluation of the potential to perform the full range of duties
5. Formal measures such as tests

A highly qualified individual meets all requirements of these tests. Experience is generally considered the most valuable and is usually given more weight than education and training. Some individuals meet basic qualifications, but are not considered highly qualified and so are not usually placed on a Merit Promotion certificate.

Usually names of 3 to 5 candidates are sent to the selecting official. If less than 3 names are supplied, the selector may request another list. However, officials are not obliged to select from the promotion certificate and some other type of placement can be used; someone can be selected from outside. In practice, then, if there are women and minorities among the candidates found through the process of identifying and selecting best qualified and qualified candidates, but the selecting official does not like what she or he sees, she can use another method. As previously discussed, this could lead to problems which eventually would result in legal action which would not be in the best interest of the agency. In hiring patterns in order to obtain a more balanced work force. In my opinion, unless questions are raised, and probably only if they are raised by an employee filing a complaint (rather than in a survey or examination) by the Civil Service Commission or by EEO officials at various levels in an agency will the courts apply the law in such a way that a portion of an