

poverty law Report

A REVIEW OF ADVANCES IN THE LEGAL RIGHTS OF THE POOR

Volume 1, Number 2 A Publication of the Southern Poverty Law Center

June, 1973

POVERTY AND WOMEN

CENTER WINS IN THE U.S. SUPREME COURT Economic Discrimination Ruled Out

By
Diane Lund

One of the most insidious forms of discrimination to perpetuate poverty among Americans has been that based on sex; in our society women have always been hired less frequently (except in certain stereotype jobs), paid less, offered less job security, and extended less credit-buying power than men.

The victims of this injustice are, of course, all Americans — in families where the male breadwinner can't earn enough to rise above poverty, and in families without a male breadwinner.

Last month the Southern Poverty Law Center won a major victory in the struggle to eliminate poverty created by sex discrimination when the U.S. Supreme Court ruled for the first time that women must be paid the same and given the same benefits as men in federal employment.

*The facts that inspired the Center's work in *Frontiero v. Richardson* are clear enough. At the income level where a working wife means the difference between poverty and a decent life, half of the women find employment. Yet many federal and state regulations deprive them of the important benefits — medical and dental care, for example — that they'd be entitled to if they were men.*

Frontiero strikes down such discrimination.

Harvard Law School Professor Diane Lund, who advised the Center's lawyers on some troublesome problems in the case, writes below about the problem solved . . . and some of the problems she recognizes as yet unsolved.

The decision of the Supreme Court in *Frontiero v. Richardson* brings women very near our goal of equality with men under the law. Our satisfaction

Diane Lund was formerly professor of law at Northeastern University before moving to the Harvard faculty in 1971. She mixes her teaching duties with nuts-and-bolts litigation to end discrimination in the law.

with this result of the litigation, however, should not lead us to overlook a second aspect of the case — its treatment of the entangled themes of dependency-in-fact and dependency-at-law.

Frontiero is a landmark in women's struggle to achieve equality of treatment, but the particular benefit which Sharron Frontiero obtained for all married women in the armed forces is one to which we should give some careful thought.

The question considered in *Frontiero* was first raised when Sharron Frontiero, a lieutenant in the United States Air Force, requested dependency benefits for her husband. The pertinent statutes made these benefits available automatically to a serviceman and his spouse, but conditioned their award to a service-woman upon her ability to prove her spouse in fact dependent upon her for over half his support.

Lt. Frontiero challenged this distinction as one which discriminated against her on the basis of her sex in violation of the due process clause of the Fifth Amendment. The government initially defended itself on two grounds: (1) the armed services need more men than women and one rational means to achieve this end is to offer more fringe benefits to male members than to females; and (2) the distinction drawn lightens the government's administrative workload by enabling it to rely upon a presumption as to the dependency of female spouses which is permissible since the presumption is rooted in fact. In order to establish the validity of its presumption in this regard the government offered statistical proof that employed women in the United States, as a group, earn less than employed men. Of course, this indication of poverty on a large scale among women was exactly what the plaintiffs were attacking.

"RATIONAL BASIS" FOR DIFFERENT TREATMENT

The three judge court which originally heard the case decided that the statutory scheme was constitutional because, taken as a whole, it did not classify applicants for dependency bene-

fits solely according to their sex; and, in any event, there was a rational basis for the differing treatment. The reasoning which led two judges to this conclusion is not altogether clear, but there is a tone to the opinion which suggests they accepted the government's presumptions regarding dependency-in-fact. The third judge dissented.

The contention that a double standard regarding dependency benefits was related to Congress' preoccupation with a male/female ratio in the armed services was not supported by the legislative history, and was not relied upon by the government when the case reached the Supreme Court. Instead it based its case there squarely upon administrative convenience: "Congress might reasonably have concluded that it would be both cheaper and easier simply . . . to presume that wives of male members [of the uniformed services] are financially dependent upon their husbands, while burdening female members with the task of establishing dependency-in-fact."

In responding to this argument, four justices (Brennan, Douglas, White and Marshall) first concluded that "classifications based upon sex, like classifications based upon race, alienage, and national origin, are inherently suspect and must therefore be subjected to close judicial scrutiny."

This allowed them to require actual proof of the government's claim that the procedure being used saved money. None was available.

In fact, the evidence available to the Court suggested that if the government really wanted to save money, the way to do so would be to require that every spouse, male and female, be proved dependent upon the armed services member for over half of his or her support in order to be eligible for dependency benefits.

ADMINISTRATIVE CONVENIENCE NOT ENOUGH

In any event, noted these four justices, even a showing of actual administrative convenience would not, under strict judicial scrutiny, justify a sex-based statutory distinction if it were the only rationale for that distinction.

Therefore, "the challenged statutes violate the Due Process Clause of the Fifth Amendment insofar as they require a female member to prove the dependency of her husband."

This judgment was concurred in by Justice Stewart, who simply agreed that "the statutes . . . work an invidious discrimination in violation of the Constitution," and by Chief Justice Burger and Justices Powell and Blackmun, who saw no need to reach the conclusion that sex is an inherently suspect classification in order to invalidate the statutes in question.

The *Frontiero* decision has obvious implications for other sex-based distinctions in our laws. It seems clear that few of these are likely to survive a constitutional challenge; only the existence of some justification beyond that of administrative convenience, and applicable to all or substantially all those persons affected by the law may remain.

These exceptions are likely to be laws which relate to procreative and child-bearing functions where the Court has in the past paid most respect to private intra-family traditions. The passage of the Equal Rights Amendment will resolve whatever doubts remain as to women's present status under the law, of course, but *Frontiero* is strong evidence of the judiciary's willingness to utilize existing concepts of equal protection to reach equivalent results. Obtaining this decision in this context was a remarkable achievement. The underlying issues in *Frontiero* could be perceived as closely related to many of our basic social institutions and thus their resolution might have far flung consequences. It is this aspect of *Frontiero* which makes it a much more difficult case to decide than *Reed v. Reed*, the Court's sole prior expression of women's equal rights.

The *Reed* case involved a state law which gave preference to a male over a female candidate for the position of administrator of a decedent's estate. A rejection of that kind of preference is not likely to have marked effects on other aspects of estate administration; the question involved is not one with significant substantive ramifications.

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COURTS:

"Brother, Can You Spare Me A Dime?"

By Joseph J. Levin, Jr.

The primary efforts of the Southern Poverty Law Center are directed at eliminating the economic burdens of society placed on low income persons by virtue of the very fact of their financial deprivation.

It is therefore extremely disheartening to observe recent decisions of the United States Supreme Court in the area of wealth discrimination.

Since the 1956 landmark decision of *Griffin v. Illinois* which guaranteed the right to a trial transcript to every person accused of a felony, the High Court has given the appearance of positive thinking in protecting the rights of the poor. Particularly in the area of criminal law, the Court has repeatedly informed the machinery of "justice" that the quality of a man's treatment at the hands of the law will not be affected by his economic condition.

The 1971 decision of *Tate v. Short* emphasized that a person could not be imprisoned because of his inability to pay a fine and in 1972, in *Argersinger v. Hamlin*, the Court decreed that no person could be tried for any crime without the right to assistance of counsel if the potential punishment included imprisonment. Therefore not only accused felons, but persons charged with misdemeanors carrying jail sentences were entitled to an attorney or, at least, the right to have an attorney if one so desired.

The Court has consistently struck down wealth classifications where the classifications at issue determined the quality of defense or the equality of defense or the equity of the sentence. The specific cases decided were limited exclusively to the criminal process.

However, in 1966 a parallel line of cases was developing. In *Harper v. Virginia*, Justice Douglas stated that "lines drawn on the basis of wealth or poverty, like those of race, are traditionally disfavored." There the Court struck down a state law requiring an otherwise qualified voter to pay a poll tax. Other voting cases followed in states throughout the nation.

ACCESS TO THE CIVIL COURTS FOR THE POOR

An even more innovative approach began to develop, which went beyond the criminal and voting processes. In 1971 the Court ruled that access to the civil courts could not be denied because of a petitioner's inability to pay the cost involved in securing relief easily available to affluent members of society. The state of Connecticut was instructed to absorb the court costs and service of process fees required of Mrs. Gladys Boddie, an indigent, in order for her to secure a divorce. How far it seemed we had come.

Meanwhile, district courts in Colorado and New York were reaching the only logical conclusion in cases in which indigent bankruptcy petitioners desired discharge from bankruptcy but were unable to pay the statutorily dictated fee. Why should indigent persons be denied access to the provisions of the bankruptcy act because of their financial condition?

It was the perfect "Catch-22"; if one was without income to pay one's creditors, then the obvious solution was for one to file a bankruptcy petition. However, in order to complete the process and be discharged from bankruptcy (which results in relieving the person of his debts), one must pay the required costs. Clear? Logical decision?

Neither clear nor logical to the U.S.

Supreme Court. For on January 10, 1973, in a 5-4 decision, the Court decided that Robert W. Kras must pay the \$50 discharge fee or have his petition dismissed.

POOR LIVING CONDITIONS

The conditions under which Mr. Kras and his family lived were undisputed. Mr. Kras resided in a two-and-one-half room apartment in New York. With him lived his wife, his two children, his sister and his mother. His younger child suffered from cystic fibrosis and was being treated in a medical center.

Mr. Kras last held a steady job in 1969 with Metropolitan Life Insurance Company. He was fired by Metropolitan Life when he was unable to repay premiums stolen from his home. Metropolitan Life, according to the complaint, gave Kras bad references hindering his ability to get another job. His welfare income barely covered subsistence and he was under continued harassment from creditors.

All legal jousting aside, what Justice Blackmun, writing for the majority, said was this — bankruptcy is not the only alternative for Mr. Kras — it is not his only access to relief. He may, "in theory" (Justice Blackmun's words) negotiate and adjust his debts with his creditors or he may pay in installments. After all, all Mr. Kras would have to do is sacrifice a "movie" or "two packs of cigarettes" a week in order to keep up his payments. Whose standards do we apply? Justice Blackmun's, Mr. Kras', or Howard Hughes'?

I think perhaps Mr. Justice Marshall put it most succinctly:

"It is perfectly proper for judges to disagree about what the Constitution requires. But it is disgraceful for an interpretation of the Constitution to be premised upon unfounded assumptions about how people live," — and, "... no one who has had close contact with poor people can fail to understand how close to the margin of survival many of them are."

Perhaps some of our judges, federal and state, should make it a point to learn what poverty is all about.

Recently the Supreme Court ruled that wealth discrimination among Texas school districts was not constitutionally protected; that education in America is not of such fundamental interest that the State must show compelling proof to justify grossly unequal per-pupil expenditures. That same night on public television Julie Nixon Eisenhower was heard to state that education is the birthright of every American child. Well, maybe.

FUTURE IS NOT BRIGHT

One may speculate for hours on end about the direction the Court will take in the area of wealth classifications. Clearly, the future is not bright. Such strained opinions as evidenced by *Rodriguez* (schools in Texas) and *Kras* are not encouraging. Hopefully, if the majority of the Justices must continue in this direction, they will do constitutional scholars and practicing lawyers alike the courtesy of rendering reasoned opinions so that we may know when and how economic discrimination is subject to attack. In the meantime, the Center will continue to use the courts as an arena in which to contest the causes of economic discrimination.

Joseph J. Levin, Jr., is the General Counsel for the Southern Poverty Law Center.

Making State And Local Governments Serve The Needs Of Poor People

By Julian Bond



Poor people stay poor for many reasons. But the most disgraceful reason — disgraceful because it contradicts the fundamental character of our democratic society — is that the people who run our states and cities have refused to help those who can't help themselves.

Until America's state legislatures, county commissions, and city councils are elected by all the people, their priorities will be slanted toward the haves . . . at the expense of the have nots.

State and local officials who don't care about (and don't understand) the poor, spend our tax money on super-highways instead of school lunches, convention halls instead of clinics, limousines instead of job training centers. They pass laws that favor bankers over borrowers, homeowners over ghetto-dwellers, neighbors over nobodys.

And they do everything they can to assure that they and their cohorts will be re-elected. They lay out voter districts that minimize the voting strength of poor people, blacks, and constituents of the political party not in power.

The Constitution says that this is illegal; and citizens in many states have contested malapportionment in the federal courts. In my own home state of Georgia, the Georgia General Assembly (of which I am a member) passed a reapportionment plan in 1972 . . . which has subsequently been condemned, by a three-judge federal court and by the U.S. Supreme Court, as having the potential of diluting Negro voting power.

No state elections can be held until a new plan is submitted and approved; but any plan the legislature submits may well bear the same injustices, because it will be designed to serve the same purpose.

In neighboring Alabama, the Southern Poverty Law Center last year proposed its own reapportionment plan. Devised by a professor of statistics with no self-serving motives, the plan is as fair a one as could possibly have been invented.

As a result of the Center's precedent-setting lawsuit, this colorblind, homogeneous plan was accepted by a three-judge federal court in January, 1972, and later affirmed by the U.S. Supreme Court.

Alabama's legislature has even now not given up yet! A new reapportionment plan, submitted to the court this year as a substitute for the Center's, has forced our lawyers to devote time and energy during the past two months toward exposing its weaknesses and injustices. We expect the court to throw out the new plan.

Alabama's next state elections will be held in 1974. Under the Center's plan, for the first time anywhere in the South, a really significant number of legislators — black and white — who care about poor people can be elected. Poor people *themselves* can be elected. Legislators who will fight to raise priorities for social reform, and spend tax money on programs that will give the poor a better opportunity to escape poverty.

But there's one thing more to be done.

Frustrated for so many years by the futility of casting meaningless votes, impoverished blacks and whites are apt to ignore the entire voting process. We must reach them with the inspiring message that in Alabama in 1974, for the first time, their votes and their candidacies will be just as good as anyone else's — that if they want to they can elect their own representatives and have a real voice in state government.

The Center is now working with the Voter Education Project, an Atlanta-based organization whose purpose is to persuade eligible voters to become actual voters, in an effort to reach the poor communities of Alabama with the good news. By winning voting power and using it effectively, Alabama's poor people can enjoy new participation in the American process.

And the example of Alabama, through the landmark precedent established in the Center's victory, can be shared by poor people in every Southern state.

poverty law Report

VOLUME I NO. 2

June 1973

The Poverty Law Report is published quarterly by the Southern Poverty Law Center, Washington Building, Montgomery, Alabama 36101.

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LAW DENIES POOR PEOPLE DUE PROCESS

FAVORS BANKERS AND BUSINESSMEN OVER BORROWERS AND HOMEOWNERS

A dramatic conflict between thirty poor black Eufaula, Alabama families and a Florida banker has moved the Southern Poverty Law Center to initiate a crucial suit challenging state laws that deny poor people due process.

Three years ago, the thirty families were approached by a transient building contractor who offered to make repairs and improvements in their small homes. In each case he quoted small monthly payments and secured notes with mortgages on the homes.

Shortly after the last mortgage was signed, the builder departed the town — leaving behind poorly done, incomplete jobs. Within days he had received all of his money by selling the thirty mortgages to a Florida banking company.

One of the homeowners was Viola Hart, now 71 years old and living on a monthly allotment of about \$65. The builder agreed to install an indoor bathroom, a water heater, and a kitchen sink . . . telling Mrs. Hart only that the work would cost \$35 a month.

If he had done the job properly, it would have been worth about \$800. But the work was done hastily, cheaply, and incredibly poorly — the bathtub has never been connected to the plumbing, the sinks and commode drain improperly, and the ceiling leaks.

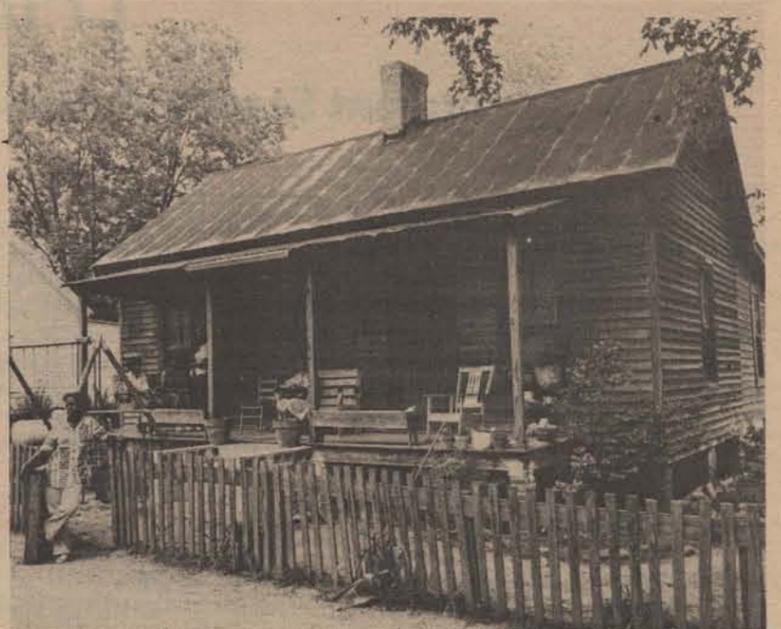
Several months ago, Mrs. Hart refused to meet any more monthly payments until repairs were made. But she was in for a shock . . . because the law in Alabama (and Florida and every other state in the South) deprived her of her legal rights.

The first time Mrs. Hart learned that her mortgage was held by the Florida banker was when she received notice of foreclosure. After having paid more than \$850, she still owed nearly \$2,500 . . . and the foreclosure was upheld by a state court because "holder in due course" laws state that she cannot withhold payments from the banker who did not provide the original services.

With the builder long since gone from Eufaula, Mrs. Hart and the other 29 victims have no other recourse. They must pay, or lose the homes they've struggled for most of their lives to own.



Bathroom in Viola Hart's home. The contractor erected two walls to section off a corner, never finished the work, sink and commode do not drain properly, ceiling leaks.



Sally Strong (at gate) and family signed a \$4,000 mortgage for construction of a tiny bathroom. The bowl had to be replaced within a week, the ceiling is falling, the water heater doesn't work, all plumbing leaks.



Robert Hardy built a bathroom in his own home, then signed a mortgage of \$5,500 for installation of two sinks that don't drain, a bathtub that doesn't work, a water heater that doesn't work.



Mrs. Strong examines rear of bathroom. Improperly vented pipes back up; sink, tub and commode drain poorly and leak.

THE LAW PROTECTS BANKERS

Both the builder and the banker knew that the law protects a "holder in due course"—a buyer of mortgages—from responsibility for the quality of the work. Throughout the South, similar laws result in poor people being unable to attach responsibility for defective work or merchandise to the financing institution.

But the Southern Poverty Law Center's federal lawsuit, with several of the Eufaula victims named as plaintiffs, can restore the rights of borrowers when dealing with bankers.

When we began our investigations, we learned that many of the Eufaula victims were unaware of the actual cost of what they'd bought. In one case, a family had signed a \$5,500 mortgage for installation of a few plumbing appliances. In another, construction of a tiny bathroom at the rear of a home resulted in a bill for nearly \$4,000.

EXORBITANT DEBT, NO RECOURSE

Knowledge of the "holder in due course" laws encourage bankers to accept mortgages without responsibility, and builders to engage in widespread abuses against homeowners. But the Center's attorneys seek a ruling in federal court which would require bankers to accept responsibility along with the mortgages they buy.

As a result, bankers would do business only with respectable merchants and contractors, and inspections would guarantee the quality of jobs and goods paid for by bank and finance company loans.

A victory will set a precedent applicable in every state in the South . . . and in other areas where "holder in due course" laws provide a shield from responsibility for moneylenders.

Our lawyers are determined that Viola Hart and the other Eufaula victims will not lose their homes; the unfair laws that deny them due process must be struck down.



71-year-old Viola Hart was ordered out of her home when a mortgage banker foreclosed. She owes \$2,500 (she already paid more than \$850) for work that if properly done should have cost \$800.

SOUTHERN POVERTY LAW CENTER EUFAULA VICTIMS FUND

The Center urgently needs support in this fight to strike down laws that favor bankers over poor people. Your tax-deductible donation to the Center will enable us to save the homes of Viola Hart and others...and to challenge the unfair laws that threaten them.

\$10 \$25 \$50 \$100 \$ enclosed

Name _____ Address _____

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Washington Building, Washington St.
Montgomery, Alabama 36101

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 I am am not already a Center member.

THE DOCKET

Current Status of Some Southern Poverty Law Center Cases

Frontiero v. Richardson

In the only women's rights case to be heard during its 1973 term, the U.S. Supreme Court ruled eight-to-one in May in favor of the Center's position that Defense Department regulations granting higher compensation to servicemen than women are unconstitutional.

This landmark decision, reversing a lower court ruling appealed by our attorneys last year, requires the Defense Department to provide identical housing allowances and medical benefits to married women and men in the uniformed services.

The precedent set by the Center in *Frontiero* is a significant step toward ending economic discrimination against women — in employment opportunity and compensation, treatment by banks and credit managers, etc. (See story on page one.)

Alabama v. McCloud

Jimmy Lee McCloud, an indigent black man charged with murdering a white woman during a burglary, was found guilty in May of second-degree murder and given the minimum sentence allowable, ten years' imprisonment.

The state had presented wholly circumstantial evidence in seeking a first-degree murder conviction; the Center has filed notice of immediate appeal.

Since November, 1971, when McCloud was denied a preliminary hearing and indicted by an all-white grand jury whose docket had already been closed, the Center has contended that selection of the jury which indicted him was unconstitutional. A separate suit has been filed in federal court on this issue (see *Penn v. Eubanks*, below).

In addition, our lawyers had petitioned the court to provide funds deemed essential to the preparation of an adequate defense for our impoverished client — principally for retention of a professional investigator to pursue leads that could clear him rather than convict him.

(After the murder, thirty law enforcement officers worked to "solve" the crime by following only leads that would strengthen their case against McCloud. Other leads, including an unidentified fingerprint found at the murder scene, were not pursued.)

Other grounds for appeal include our contention that McCloud, who refused to sign a waiver of rights when he was arrested (but was later said to have waived them orally), should have had a lawyer present during interrogation. We seek a ruling that an individual without legal training is unqualified to understand the implications of a waiver of legal rights.

Penn v. Eubanks

For the first time, a federal court has recognized poor people as a legal class in this important lawsuit challenging the system by which juries are selected in Montgomery County, Alabama.

An order already issued in the suit states that women, blacks, and members of low-income families must not be systematically excluded from jury service.

Penn v. Eubanks was brought by the Center's lawyers nearly two years ago, after Jimmy Lee McCloud was indicted by an all-white grand jury composed mainly of high-income businessmen and executives.

Sims v. Amos

Our victory eighteen months ago forcing reapportionment of Alabama's State Legislature is under new attack. Eleventh-hour efforts by legislators to substitute a racially motivated plan for the Center-proposed one adopted by a three-judge federal court and affirmed by the U.S. Supreme Court have forced our lawyers to undertake complex and time-consuming briefs in rebuttal.

Under the Center's plan, which we are confident will be upheld by the court, poor Alabamians of all races will enjoy fair representation in state government for the first time after 1974's elections. Elimination of racial gerrymandering and vote-canceling "at large" representation should result in the election of as many as thirty legislators attuned to the needs of Alabama's low-income communities. (See *Julian Bond article*, page two.)

Anderson v. Mobile County Commission

Our suit to end racial discrimination in the employment practices of the city and county of Mobile — the first in which sophisticated computer techniques are being used to establish proof of unconstitutional bias in hiring and promoting employees — has moved into the analysis phase.

Under federal court order, the Mobile personnel boards have furnished the Center with masses of statistical information which have been recorded by computers along with additional data obtained through depositions by the Center's attorneys.

As soon as this data has been correlated and analyzed — a procedure now being completed by computer engineers and other experts — we'll be able to prepare briefs requested by the court.

By using these advanced technological methods to present our case clearly and decisively, we expect to win a ruling which will open hundreds of good-paying jobs to qualified blacks... and to establish computer analysis as a

practical tool applicable in discrimination cases Southwide.

Player v. Department of Pensions and Securities

In our federal suit to force the state of Alabama to provide shelter for unwanted, neglected and orphaned black children, the court has denied defendants' motions to dismiss and ordered the directors of several state-licensed orphanages to give our lawyers essential statistical information.

Alabama does not own or operate any child shelters, but licenses and subsidizes seventeen private institutions. Our suit seeks an order that would require the state to refer children to these institutions without regard to race.

One of the Center's named plaintiffs spent five years in a reformatory because the state had refused to refer him to any of the all-white orphanages and could find no other place to put him.

Gilmore v. City of Montgomery

To strengthen the impact of a suit won by the Center last year prohibiting indirect subsidy of segregated private schools by municipalities, the Center has mailed an explanation of the ruling to several hundred Southern mayors.

The recreation department of the city of Montgomery had permitted several segregated private schools to use city-owned ball fields for exclusive activities. The court's injunction against the practice stripped the private schools of an attractive aspect of their curriculum — and set a precedent prohibiting public support of "white flight" academies Southwide.

The letter mailed to Southern mayors explains that under the court's ruling no city may allow segregated private schools exclusive use of public facilities.

Penn v. Richardson

Fifth Circuit Court of Appeals has requested new briefs of several technical questions of law in our suit charging seventeen federal agencies in Alabama with racially discriminatory employment practices.

Earlier, a Federal District Court judge had refused to dismiss the heads of federal agencies as defendants on grounds of sovereign immunity, and authorized an immediate appeal on that issue alone. Included among the defendants are several members of President Nixon's Cabinet.

Briefs and oral argument on the appeal had been completed by the Center's lawyers early this year; but the Court has asked for further briefing on certain technical aspects. Final briefs are due next month; our lawyers hope for

an early ruling on the appeal which will enable the lower court to deliver its order on the discrimination question.

Less than 2½% or 30,000 white collar workers employed by the defendant agencies in Alabama — including the F.B.I., the Justice Department, the Postal Service and the Defense Department — are black. This is less than half the ratio of blacks employed by the state of Alabama itself.

Sims v. Montgomery County Commission

Center attorneys, citing overwhelming evidence of racial bias in hiring of employees by Montgomery County, have persuaded the County to adopt a Center-proposed Employment Practices Plan in a settlement endorsed by a federal judge.

The Plan ends the practice of classifying white and black employees differently and providing different pay scales, seniority lists and benefits (notably, pension plans). Previously established seniority lists which were compiled unconstitutionally may not be used to determine advancement to higher-paying jobs. Examinations which have no relation to an individual's ability to perform a specific job may no longer be used as criteria for hiring. And the County must actively recruit qualified employees from the black community.

Copies of the court-sanctioned Employment Practices Plan have been distributed by the Center to attorneys and other interested parties throughout the United States as a model applicable wherever racial discrimination deprives blacks of the opportunity to escape poverty through good-paying public jobs.

Henderson v. First National Bank

The Center seeks institution of a black hiring ratio to correct the effects of past discrimination, and elimination of the use of invalidated employment exams, in this landmark lawsuit to end hiring discrimination by a private bank.

The banking industry is notorious throughout the nation for its unwillingness to recruit and hire qualified blacks. The examination under attack in our suit is the one used most commonly by banks everywhere, but has never been shown to be related to an individual's ability to perform a specific job.

Presentation of evidence in the case has been completed in District Court; a ruling is expected any day. If we win, thousands of qualified blacks can enter the banking industry for the first time... and improved relations between industry and the black community will help blacks immeasurably.

FRONTIERO Continued from Page 1

MORE BASIC PRECEDENT

The *Frontiero* holding, on the other hand, requiring that a variance in dependency benefits must be keyed to something other than a sex-related presumption, has much greater potential for affecting a broad spectrum of legislative actions.

The problem of determining and defining dependency is a frequent subject of concern to lawmakers. Nonetheless, the Supreme Court's decisive ruling in *Frontiero* suggests how (at least) four members of the Court view the separate roles of the judicial and the legislative

branches with regard to equality for women and men.

This segment of the Court appears to reject, out of hand, any classification based on sex, presumably whether or not the legislation in question is deemed to be "protective" or "beneficial." It is to be left up to legislatures to redesign the laws — achieve their goals by using other definitions and drawing other distinctions.

This puts a great deal of responsibility on local legislative bodies and upon those of us who have been working to eliminate sex-based classification systems. We now must come up with new alternatives

Frontiero makes it imperative that we do so with regard to the problems of marital support. The decision apparently implies that a legislature can no longer presume that only a male member of a marital partnership is responsible for the economic support of his spouse. Laws now must recognize that either or both partners may be responsible for breadwinning.

WILL AFFECT SUPPORT LAWS

It seems likely that the *Frontiero* decision will also be relevant to proceedings involving questions of one spouse's obligation to support the other, non-

support as a ground for divorce, and the like. In this area, *Frontiero* should give impetus to efforts to make support laws more responsive to individual situations. It seems clear that an arbitrary, sex-based allocation of responsibility is now much less likely to survive a challenge.

The court's emphasis on treating persons as individuals may be its longest-lasting contribution to the law. The decision makes it much more likely that no person — a woman or anyone else — may be blatantly categorized and subjected to inferior treatment in employment situations.
